Making Room for Home-Based Businesses: A Survey of 12 Zoning Ordinances

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February 2017

Acknowledgements: We thank Barbara Faga, Rutgers University, for her guidance in drafting this paper.
Introduction

In an age of economic anxiety, the humble home-based business offers an unexpected source of economic development. One might be tempted to doubt the importance of home-based businesses and the restrictions zoning ordinances place on them. But consider the source of many of America’s most dynamic companies today. A budding Hewlett-Packard garage operation at 367 Addison Avenue in Palo Alto may have been shuttered by restrictions on accessory structures.¹ A young Walt Disney Company team operating out of 4406 Kingswell Avenue in Los Angeles may have been reported by neighbors and closed down for off-site employees.² A seemingly insignificant Amazon at 10704 NE 28th Street in Bellevue might have been identified as a wholesaler and shut down.³ The list could stretch on, but the message is straightforward: home-based businesses punch above their weight in innovation. For policymakers and planners interested in tapping into their potential, reforming the zoning ordinance offers a low-cost place to start.

Our aim in this paper is to explore how zoning ordinances regulate home-based businesses (HBBs). First, we map out the roots of contemporary HBB zoning regulation and recent criticism. Second, we examine available data on the economic importance of HBBs and outline how prevailing restrictions may unintentionally burden small businesses. Finally, we survey the zoning ordinances of 12 major U.S. cities and compare them to the literature on HBB regulatory reform. We conclude with a summary of essential takeaways for planners and policymakers.

I. Home-Based Regulations: Past, Present, and Future

Prior to the Industrial Revolution, work and home were intimately intermingled.⁴ For many Americans, work happened in the home, whether in a shop in front, a home office, or a workshop in a spare room. Yet as the nature of the economy changed, many independent farmers, tradesmen, and professionals transitioned to wage labor. Concurrently, due in part to the pollution of new industries as well as unique American cultural characteristics, many came to see commercial activity as inherently degrading. This confluence of forces produced the unique American ideal of home as a single-family house removed from the disarray of commerce. As scholar Sonia A. Hirt describes, this cultural shift in turn heavily shaped conventional Euclidian zoning.⁵

Implementing this modern ideal with the newly established zoning power, planners gradually mandated the strict separation of uses. Despite the apparent popularity of this

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² Ibid.
³ Ibid.
program, many customary HBBs survived, including traditional professions and home crafts. To avoid conflict with prevailing norms, early planners allowed customary HBBs—then commonly referred to as “home occupations”—to continue operating as accessory uses in residential districts. In an early legal textbook, zoning pioneer Edward M. Bassett set out three criteria for permitted HBBs: they had to be customary, incidental to the residential use, and not a business. Early ordinances typically listed occupations that accorded with this standard. This first-generation approach to HBBs produced regulations uniquely suited to their time—and perhaps none other.

In 1953, researchers at the American Society of Planning Officials (ASPO) recognized growing problems with this first-generation system and the emergence of second-generation regulations. Acknowledging the limitations of the customary standard, many cities transitioned to across-the-board restrictions and updated lists of permitted customary HBBs. Researchers identified common features, including permitted and prohibited occupations, different regulation by district, transitional zoning, nuisance regulations, and special permits, as well as restrictions on area, equipment, off-site employees, accessory structures, sales, and signs. This mixed standard has confused courts and the general public alike. Why permit cloggers and exclude braiders under a performance standard? Why permit planning consultants and prohibit bakers under a customary standard? Noting the potential conflict between these standards, researchers encouraged planners to either preserve the customary standard or shift completely toward a performance standard.

The rise of the Internet led to renewed calls for reforms to HBB regulation. Despite encouragement by the ASPO, many contemporary ordinances maintain a mixed customary and performance system. In a 2000 report, zoning administrator Charles Wunder called on planners to ease the vagueness and restrictiveness of the current system, noting that many ordinances are poorly adapted for computer-based businesses and telecommuting. Echoing these concerns, legal scholar Nicole Stelle Garnett has argued for ending the customary standard and easing across-the-board restrictions in zoning ordinances, calling instead for a new focus on addressing negative externalities. Making a similar case in 2004, the Small Business Administration (SBA)

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7 Dated occupations (e.g., dressmaking) can be found in most ordinances. As an example, see: United States. Lexington-Fayette Urban County Government. Division of Planning. Zoning Ordinance Lexington-Fayette Urban County, Kentucky. 1-11. July 01, 2016.


9 Ibid.


called for a scaling back of prohibitions on off-site employees, signs, and overly broad nuisance restrictions, among other issues.\textsuperscript{12}

\textbf{II. Home-Based Businesses and the Cost of Regulation}

Small businesses created approximately 64\% of all new jobs in the U.S. between 1993 and 2011.\textsuperscript{13} As major sources of innovation, they develop more patents per employee than large businesses.\textsuperscript{14} When looking exclusively at firms that operate primarily from within a home, 9.04 million firms fit this description in 2012. According to the SBA, HBBs represented 52\% of all firms and provided 10\% of the total receipts of the economy in 1992.\textsuperscript{15} The number of HBBs in the economy has grown from 16.37 to 27.63 million between 1992 and 2012.\textsuperscript{16}

Some residents start a home-business on the side to supplement pre-existing income, while others jump in full-time either in search of a new career or due to involuntary unemployment.\textsuperscript{17} Most HBBs were service related in 2012, including construction and professional, scientific, and technical services (Figure 1). The average salary for all sectors was $33,741 (Figure 2). Research has found that HBBs lead to economic multiplier effects for communities and provide significant alternative sources of income for residents.\textsuperscript{18}

\begin{flushright}
\textsuperscript{14} Ibid.
\textsuperscript{16} Pratt, 1993; 2012 Census Survey of Business Owners.
\end{flushright}
Figure 1. Number of Firms Operating Primarily from within a home, by industry

- Professional, scientific, and technical services
- Construction
- Other services (except public administration)
- Retail trade
- Administrative/support/waste management/remediation
- Real estate and rental and leasing
- Health care and social assistance
- Arts, entertainment, and recreation
- Transportation and warehousing
- Educational services
- Finance and insurance
- Wholesale trade
- Information
- Manufacturing
- Agriculture, forestry, fishing and hunting
- Accommodation and food services
- Mining, quarrying, and oil and gas extraction
- Utilities
- Industries not classified
- Management of companies and enterprises


Figure 2. Average Salary per HBB Employee, by industry

- Arts, entertainment, and recreation
- Management of companies and enterprises
- Professional, scientific, and technical services
- Finance and insurance
- Information
- Wholesale trade
- Mining, quarrying, and oil and gas extraction
- Real estate and rental and leasing
- Agriculture, forestry, fishing and hunting
- Construction
- Health care and social assistance
- Utilities
- Transportation and warehousing
- Manufacturing
- Retail trade
- Industries not classified
- Educational services
- Other services (except public administration)
- Administrative/support/waste management/remediation
- Accommodation and food services

Given their small size, zoning-related restrictions may disproportionally burden HBBs. SBA research has concluded that the costs of complying with regulations are consistently higher for small businesses compared to larger businesses that use similar compliance measures.\textsuperscript{19} Studies reviewed by the SBA as well as much of the economic literature conclude that regulations can act as a significant barrier to entry for firms, drive companies underground, and inhibit growth of incumbent firms. According to Calcagno and Sobel, regulations impose high fixed costs that small firms are less equipped to handle.\textsuperscript{20} These costs emerge from a range of activities; from filing paperwork and paying fees, to time spent interpreting rules and hiring legal assistance.

Numerous newspaper articles share stories of small business owners having trouble navigating the existing zoning regulatory landscape.\textsuperscript{21} While some home business owners do the research and pay fees when possible, others are unaware of zoning requirements until they are asked by zoning officials to become compliant or cease operations. In areas with more stringent rules and inconsistent enforcement, owners frequently operate underground. One entrepreneur compared the existing system to the military’s now-defunct “don’t ask don’t tell” policy.\textsuperscript{22}

### III. Home-Based Businesses in 12 Zoning Ordinances

As discussed in Section I, many have called for reforms to the second-generation hybrid of customary standards and across-the-board restrictions. The following section explores whether ordinances have changed, following the methodology of Edward J. Jepson and Anna L. Haines’ work on sustainability-oriented zoning reform.\textsuperscript{23} First, we select a sample of twelve cities for this study. Second, we determine 11 criteria to characterize the HBB regulations of each city ordinance in the sample. Third, we assess each city ordinance against these criteria. Finally, we analyze the general findings of the research and suggest noteworthy trends and opportunities.

\begin{itemize}
  \item \textsuperscript{19}Beale, 2004.
  \item \textsuperscript{22}McKnight, 2003.
\end{itemize}
Sample

Our sample contains 12 cities drawn from top 50 MSAs and are divided evenly among the four census regions. Our sample includes Cleveland, Denver, Louisville, Charlotte, Las Vegas, Cincinnati, Hartford, Buffalo, Tampa, Boston, Milwaukee, and San Diego.

Criteria

In surveying HBB regulations, we selected 11 elements to assess in the zoning ordinances sampled. Does the ordinance:

1. use the standard of customary, incidental, and not a business?
2. list permitted and prohibited ordinances?
3. restrict area?
4. restrict mechanical equipment?
5. prohibit off-site employees?
6. prohibit operating out of an accessory structure?
7. prohibit sales and retail?
8. prohibit signs and exterior modifications?
9. contain nuisance restrictions?
10. prohibit customer or client visits?
11. require a permit for HBBs?

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24 “Metropolitan and Micropolitan.” U.S. Census Bureau, Demographic Internet Staff.
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<td>Yes</td>
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**Results**
Analysis

**Ordinance Language.** Many have criticized HBB regulations for their continuing use of the vague customary standard.\(^{25}\) This language remains in many of the ordinances sampled. Five (42\%) of the ordinances use the word “customary” in describing permitted HBBs. In contrast, the language of “not a business,” has almost completely disappeared. All but two cities (83\%) require that HBBs be “incidental.”

**Permitted and Prohibited Occupations.** While eight (67\%) ordinances list permitted occupations, only seven (58\%) ordinances list prohibited occupations. Such lists have been criticized for their capacity to quickly fall out of date.\(^{26}\) Our sample ordinances reflect this concern: many lists of permitted occupations include out-of-date home occupations, including millinery and clock repair. Many lists of prohibited occupations include automotive work, adult businesses, and manufacturing.

**Area Restrictions.** Area restrictions control how much space a home-based operator may use. It is often difficult to respect or enforce these restrictions. Nonetheless, nearly all (83\%) of the ordinances sampled include area restrictions. These restrictions range from 20\% of floor area and/or 300 square feet up to 25\% and 1,000 square feet.

**Mechanical Equipment.** Many have criticized restrictions on mechanical equipment for their vagueness.\(^{27}\) Of the ordinances surveyed, half prohibit mechanical equipment not customarily found in a home. Broad restrictions on mechanical equipment threaten the legal status of construction businesses, the second most common form of HBB (see Figure 1).

**Off-Site Employees.** Prohibitions on off-site employees are a powerful restraint on HBB growth.\(^{28}\) In many cases, ordinances even restrict HBBs from employing off-site non-residents. Within our sample, 67\% of ordinance prohibit off-site employees outright. Four (33\%) ordinances permit one off-site employee.

**Accessory Structures.** Many ordinances restrict HBBs from operating in accessory structures. Critics have pointed out that these restrictions prohibit popular garage- and shed-based business.\(^{29}\) Only 42\% of the ordinances sampled contain such restrictions.

**Prohibition on Sales.** Following the rise of the online platforms like eBay and Amazon, home-based online retail businesses have grown in popularity.\(^{30}\) Of the ordinance sampled, 67\% prohibit sales and/or retail altogether. Only four (33\%) ordinances contain language that may allow for a home-based online retail business, while only Las Vegas expressly mentions computers. Overly broad restrictions on sales and retail may

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\(^{26}\) ASPO, 1953.

\(^{27}\) Wunder, 2000.

\(^{28}\) SBA, 2004.

\(^{29}\) Wunder, 2000.

\(^{30}\) Pratt, 2012.
threaten the legal status of retail trade, a significant source of HBB income (see Figure 2).

**Signs and Exterior Modifications.** Many early HBB regulations prioritized preserving residential character. Reflecting this, 67% of ordinances sampled prohibit signs. Among the remaining 33% of ordinances, signs are permitted under certain conditions. Exterior modifications related to HBBs are nearly always prohibited.

**Nuisance Restrictions.** Among the ordinances sampled, 58% contain general nuisance restrictions related to noise, vibration, glare, odors, and dust among other externalities. While laudable in their aim, many of these perhaps go too far, restricting any new noise, odors, or dust.31

**Customers and Clients.** None of the ordinances sampled prohibit customer and/or client visits. However, 67% of ordinances place restrictions on the number of clients and/or customers that may be present at once. Las Vegas, Cincinnati, Milwaukee and Tampa broadly restrict any HBB that creates additional traffic.

**Permits.** The ordinances in this sample are equally divided on the question of permitting HBBs. In most ordinances, the permitting is handled by a zoning administrator. San Diego is alone among cities in allowing low-impact HBBs by-right and issuing permits for high-impact HBBs.

Comparing the ordinances in broad brushstrokes, we might compare Charlotte and San Diego. On one of the end spectrum, Charlotte reflects the second-generation regulatory hybrid. Charlotte’s ordinance employs a customary standard as well as tight, across-the-board restrictions on area, mechanical equipment, off-site employees, and sales. On the other end of the spectrum, San Diego represents the closest ordinance among the sample toward a third-generation regulatory framework mapped out by critics: differential permitting based on impact, limited across-the-board restrictions, and the omission of a vague customary standard. While the ordinance is by no means perfect, it nonetheless offers a model for planners and policymakers interested in reform.

**IV. Conclusion**

In communities across the country, the nature of work is changing. Work in manufacturing continues to shrink. The service industry is being transformed by the rise of automation and Internet-based retailers. Throughout the 2016 election season, candidates at all levels of government proposed ambitious plans for stimulating economic development. Yet largely left out of the discussion were the millions of women and men who have formulated their own small-scale economic development plan by starting a small business in their home. By understanding the challenges posed by current zoning restrictions and the potential opportunities for reform, planners are in a powerful position to cultivate an underrated positive trend in the 21st century U.S. economy.