ZONING REGULATION OF HOME OCCUPATIONS

When the battle for use zoning was won in 1926 (Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 47 S. Ct. 114), there still remained a number of secondary points to be settled. One of the most vexing of these secondary matters concerned established uses whose nature was contrary to the principal uses permitted in residential districts.

Although the lawmakers could have declared all of these various contrary uses to be nonconforming and subject to eventual elimination either by amortization or "natural death," they chose instead to divide them into two main groups and to treat them differently with respect to continuation. The basis for distinction was whether the inconsistent use was principal or secondary. If it was found to be principal - for example, a grocery store or a filling station - it was declared to be a legal, pre-existing nonconforming use. Subject to variations in state laws, the particular nonconforming use could be continued for a period of time. However, other grocery stores and filling stations could not be built in the district where the pre-existing nonconforming uses were permitted to remain.

If, on the other hand, the established but apparently inconsistent use was found to be incidental or accessory to the main residential or other principal use - for example, a medical practice or a dressmaking establishment - it was handled quite differently in the zoning ordinance. Not only was it permitted to remain in that district, but also other like accessory uses could at any time thereafter be commenced.

Both of these legal devices for handling inconsistent uses recognized the community as it existed at the time when the zoning ordinance was first drawn. The device of the nonconforming use recognized the substantial investment an individual might have in his grocery store or filling station. The device of

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the customary home occupation recognized custom. Specifically, it recognized particular customs prevailing in certain districts. It recognized that certain occupations - with the acceptance of the community and in accordance with un-written law - had been found in incidental association with the use of the house as a dwelling.

With the home occupation, the chief problem has been to maintain the integrity of the residential district and at the same time to allow and regulate in equitable fashion the customarily accepted non-residential types of activity. For this reason it has been generally agreed that an enterprise must satisfy certain criteria in order to qualify as a permitted home occupation: it must be customary; it must be incidental to the principal use of the premises as a residence; and it must not be a business.

I. THE BASIS FOR REGULATION

A. Must Be Customary. Traditional acceptance is usually considered fundamental to a definition of home occupations. In general, those occupations which customarily have been given approval when conducted in the home are the professions, chiefly doctors and lawyers, and certain feminine occupations such as dressmaking and sewing. However, there are also likely to be, in any given city, other occupations customarily conducted in the home but which are not customary in another city. Decisions on what is to be considered as customary must necessarily be made in the light of local conditions. For this reason it is undesirable for one community to accept without careful consideration the definition of home occupation drawn up in another community. For example, in northern Minnesota certain hand operations involved in the manufacture of men's shirts are carried out in the home, the housewives taking the finished work to the factory at intervals and returning with a supply of unfinished goods to be worked on. This is certainly a customary home occupation in these communities, regardless of what it would be elsewhere. Any zoning ordinance for a city in the area should be drawn so as to allow this occupation.

B. Must Be Incidental. Of even greater importance is the requirement that the occupation be clearly incidental to the use of the premises as a residence. Obviously, a residential district is established in a zoned community to protect and encourage the use of the land in that district for residential purposes. To be permissible, any other use must prove that its existence in the district will not be contrary to the spirit and intent of the ordinance. One aspect of this proof is the demonstration that the non-residential use is not the primary use of the property, but is merely incidental to the residence. Some persons may find it desirable or necessary to carry on an occupation in the home, either as a supplement to a regular occupation or because the home is the most practical
place in which to operate. This practice has been recognized and is generally allowed so long as the occupation does not become a large scale enterprise—one that would be harmful to the residential character of the neighborhood and would violate the purpose of zoning.

The clarification of this "incidental" aspect has been accomplished through a variety of provisions in ordinances designed to place limits on the size of any operation being conducted as a home occupation. Most of the specific factors regulated in the ordinances, as discussed in Part II below, are ones which relate directly to the size of the operation. Their strict limitation is an attempt to assure that the permitted home occupations maintain the "incidental" characteristic.

C. Must Not Be a Business. A third aspect of the definition of home occupations is that they are not businesses.* Businesses are nearly always prohibited in residence districts. Many ordinances, in addition, make a distinction between two principal types of permitted home occupations, "customary home occupations" and the "professions."

There are three general reasons for the development of this distinction. Custom, of course, has played a considerable part. Certain occupations have, as Bassett says, "from time immemorial" been carried on in the home. These are the professions, such as medicine, law, art, and the domestic crafts such as millinery, dressmaking, laundering. The writers of ordinances have found no reason to change this pre-existing condition, and the courts have generally upheld this practice.

In the second place certain intangible social factors have been influential, particularly in determining the position of the professions. That is, the professions as a whole traditionally enjoy high prestige. The professional man or woman has considerably more education than most persons. The professions deal largely with personal services using knowledge and skills not readily understandable. The income of the professional person tends to be higher than average. For reasons which are not speculated on here, such characteristics as these have been looked up to. The professional office seems to be a desirable neighbor, much more so than the grocery store, machine shop or filling station. Consequently, professions are permitted occupations in most residential areas.

Finally, the overt physical characteristics of these three classes of occupations - businesses, professions, and the other "customary home occupations" - are a basis for discriminating among them. Commercial or industrial businesses possess more commonly and to greater degree those characteristics that make them undesirable in residence districts: vehicular and pedestrian traffic, noise, dirt, smoke, odor. These are the characteristics which lead to their exclusion from residential districts through zoning. However, it is not clear that overt physical characteristics are always significant reasons for discriminating between the "professions" and the "customary home occupations." And it is not certain that some businesses are more objectionable in these terms than some professions.

In this report, unless otherwise indicated, the term "home occupation" is used to include any incidental economic enterprise permitted in residential areas, including professions and domestic crafts.

II. CONTENT OF THE REGULATIONS

The major portion of this report is based on a survey of a carefully selected sample of zoning ordinances representative of the United States and Canada. Included in the sample are ordinances of types commonly found, some of which are unusually well constructed, and some of which are merely unusual. While this should not be considered to be either a random or representative sample in the statistical meanings of those terms, it is believed that the ordinances analyzed here provide a reasonably complete picture of home occupation regulations in the zoning ordinances of these countries. In references to specific ordinances the date given is that of the most recent version available.

In all, eleven points of regulation were found. No single ordinance employs all of them, and in spite of some general similarities, variety in approach to the problem is characteristic. These eleven points of regulation are:

A) Occupations permitted
B) Differential regulation by zone
C) Transitional zoning
D) Area occupied
E) Equipment used
F) Employment
G) Accessory buildings
H) Sale of goods
I) Display
J) General regulations
K) Permits
A. Occupations Permitted. About one-third of the ordinances do not name any occupations as being permitted or prohibited; in these cases reliance is placed on the effectiveness of the other specifications in the regulations, discussed below.

Those ordinances which specify (for purposes of illustration) some occupations as being permitted or prohibited, exhibit a wide area of agreement. The "professions" are allowed in nearly all cases, though not always in every residential district. Sometimes there is a provision that a principal office be maintained elsewhere for the general practice of the profession. The listings of occupations considered to be "professions" vary in inclusiveness, but most frequently list architects, artists, authors or writers, clergymen, dentists, engineers, lawyers, musicians, physicians, surgeons, teachers. Lynwood, California (1951), for example, specifically excludes, among other occupations, "doctors' offices (medical, dental, osteopathic, chiropractic)."

Among the permitted home occupations other than professions, there is general agreement on dressmaking and millinery, home cooking and preserving, and similar domestic crafts.

However, in view of the importance of custom in the definition of home occupations, it is not surprising that there are also differences among ordinances on whether certain occupations are to be permitted or prohibited. The following table illustrates this area of disagreement. The listing is not exhaustive; only some of the more interesting examples of disagreement are included.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Specifically Permitted in:</th>
<th>Specifically Prohibited in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barber Shop</td>
<td>Geneseeo, Illinois</td>
<td>Mesa, Arizona; South Pasadena, California; Des Moines, Iowa (R-1, R-2); St. Louis, Missouri; Greenville, South Carolina; Chicago Heights, Illinois; Kalamazoo, Michigan; Princeton, New Jersey; Alcoa, Tennessee; Jackson, Mississippi; Colorado Springs, Colorado; Niagara Falls, New York; Cortland, New York.</td>
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<td></td>
<td>Des Moines, Iowa (R-3, R-4); Alfred, New York</td>
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</tr>
<tr>
<td>Beauty Parlor</td>
<td>Des Moines, Iowa (R-3, R-4) Oakland, California</td>
<td>Des Moines, Iowa (R-1, R-2); Greenville, South Carolina; Chicago Heights, Illinois; Alcoa, Tennessee; Kalamazoo, Michigan; South Pasadena, California; Mesa, Arizona; Niagara Falls, New York; Cortland, New York; Jackson, Mississippi; Colorado Springs, Colorado; St. Louis, Missouri; Princeton, New York.</td>
</tr>
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<tr>
<td>Cosmetologist</td>
<td>Sacramento County, California</td>
<td>South Pasadena, California.</td>
</tr>
<tr>
<td>Dance School, Studio</td>
<td>Sacramento County, California</td>
<td>Kalamazoo, Michigan; Chicago Heights, Illinois.</td>
</tr>
<tr>
<td>Hairdresser</td>
<td>Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.</td>
<td>South Pasadena, California.</td>
</tr>
<tr>
<td>Manicuring</td>
<td>Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.</td>
<td>South Pasadena, California.</td>
</tr>
<tr>
<td>Music teaching</td>
<td>Oakland, California; Alfred, New York.</td>
<td>St. Louis, Missouri; Kalamazoo, Michigan.</td>
</tr>
<tr>
<td>Real Estate Broker Agency</td>
<td>Albion, Michigan; Sacramento County, California; Pima County, Arizona; Niagara Falls, N. Y.</td>
<td>St. Louis, Missouri; Mesa, Arizona; Princeton, New Jersey; Chicago Heights, Illinois; Kalamazoo, Michigan.</td>
</tr>
</tbody>
</table>

Some of the listings of permitted and prohibited occupations are quite unusual, which may be explained in terms of unusual existing conditions. For example, Fulton County, Georgia (1946), and Marietta, Georgia (1951) forbid clairvoyance, fortune telling, experimentation that involves the use of chemicals or matter or energy that may create or cause to be created noises, noxious odors, or hazards that will endanger the health, safety or welfare of the community.

And Geneseo, Illinois (1948) permits repairing furniture, sharpening lawn mowers, doing carpentering work, repairing radios, headquarters for plumbing, furnace or painting work, weaving, dressmaking, baking, or otherwise preparing food, preparing remedies, selling or taking orders for merchandise, selling produce raised on the premises, barber shops or similar minor operations. Photography and such other home industries similar to those above enumerated as may be permitted by the Board of Appeals.
B. Differential Regulation By Zone. While most communities allow all home occupation in all residence districts, this is not always the case. Residential areas are not all alike, and zoning ordinances treat them differently with respect to such factors as lot size, setbacks, yard requirements, building heights, population densities. So with home occupations. To the extent that home occupations represent a more intensive use of the land, they may be considered more or less undesirable in different residential districts. Various ordinances permit home occupations in some, but not all, residence districts. Others establish distinctions among different types of home occupations, allowing some only in certain zones. Examples of refinements of this sort are presented in the following table. (For comparability, when referring to residence zones an abbreviation is used: the symbol "1,3-5/5," for example, means that the occupation in question is permitted in the first, third, fourth and fifth of the five residence districts of that community. In a number of cases "rural" or "agricultural" zones are included in the tabulation where there are provisions concerning home occupations in the regulations for those zones.)

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Provision</th>
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<tbody>
<tr>
<td>Mesa, Arizona (1949)</td>
<td>In zones 1-3/3 professional offices are allowed, and in zones 2,3/3 other customary home occupations.</td>
</tr>
<tr>
<td>Los Angeles, California (1952)</td>
<td>Allows &quot;home occupations,&quot; offices of physicians, dentists, and ministers in zones 1-3/9. Customary incidental uses including non-principal home offices of physicians, dentists, and ministers are permitted in zones 5-9/9. In these same zones &quot;home occupations&quot; and the principal offices (conducted in the dwelling) of physicians and dentists are permitted as transitional uses adjacent to commercial or industrial zones.</td>
</tr>
<tr>
<td>Sacramento County, California (1950)</td>
<td>Limits the conduct of &quot;home occupations&quot; to zones 4-7/7. In zones 6,7/7 professional offices are also allowed as home occupations.</td>
</tr>
<tr>
<td>Colorado Springs, Colorado (1951)</td>
<td>In zones 1,4-6/7 there are permitted &quot;customary home occupations&quot; and offices of resident professionals. The same occupations, plus beauty shops conducted in residences are permitted in zones 1,5,6/7. In zone 7/7 only &quot;customary home occupations&quot; and beauty operators are permitted.</td>
</tr>
<tr>
<td>Ordinance</td>
<td>Provision</td>
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<tr>
<td>Enfield, Connecticut (1948)</td>
<td>In both of its two residence districts there are permitted offices of professional residents, including surgery, library or laboratory. No other type of home occupation is mentioned in the ordinance.</td>
</tr>
<tr>
<td>Des Moines, Iowa (1953)</td>
<td>In zones 1-4/4 professional offices in the home are permitted. &quot;Customary home occupations&quot; are permitted in 2-4/4. In zones 3,4/4 beauty and barber shops are permitted as home occupations.</td>
</tr>
<tr>
<td>Lexington &amp; Fayette County, Kentucky</td>
<td>Offices of resident professional persons and &quot;customary incidental home occupations&quot; are permitted in zone 1/6. In zones 2-6/6 professionals are allowed, when authorized by the Board of Adjustment. In zones 3-6/6 &quot;customary incidental home occupations&quot; are also allowed when authorized by the Board.</td>
</tr>
<tr>
<td>Baltimore County, Maryland (1948)</td>
<td>In zones 1-4/4 &quot;professional offices&quot; and other &quot;home occupations&quot; are allowed. In addition, in zones 2-4/4 &quot;tearooms&quot; are permitted as home occupations.</td>
</tr>
<tr>
<td>Pittsfield, Massachusetts (1953)</td>
<td>Professional offices are allowed in dwellings in all six zones, with &quot;customary home occupations&quot; also being allowed in zones 2-6/6.</td>
</tr>
<tr>
<td>Wayne, Michigan (1952)</td>
<td>&quot;Customary home occupations&quot; are allowed in all five residence districts. Professional offices in dwellings are also permitted in zone 5/5.</td>
</tr>
<tr>
<td>Lucas County (townships), Ohio (Proposed 1948)</td>
<td>&quot;Home occupations&quot; and the non-principal home offices of physicians, surgeons, dentists, ministers, etc., are permitted in zones 1-5/5. The principal office, in his dwelling, of a physician, surgeon or dentist, is permitted in zones 2-5/5 as transitional uses on lots abutting commercial or industrial zones.</td>
</tr>
</tbody>
</table>
Differential regulation by residence zone is also expressed in other ways. As is noted occasionally, some of the other points of regulation are varied by residence district. By way of illustration, Florence, Alabama (1943) limits a home occupation to 25 per cent of the floor area of the dwelling in its "R-A" districts but allows the use of 50 per cent in the "R-B" districts. Anaheim, California (1951) allows the use of name plates which are 64 square inches in area in the first three residence districts, and 2 square feet in the last two zones. In Kalamazoo, Michigan (proposed 1952), a professional man with his office in his dwelling can employ two non-residents in the first residence district, three in the second, and four in the third.

Variations such as these are not commonly found, however. In the great majority of ordinances the restrictions placed on home occupations, as well as the specification of permitted occupations, remain the same throughout all the residential zones of the community.

C. Transitional Zoning. The ordinances of a few communities exhibit a further refinement, making certain home occupations transitional uses in some of the residence districts. This is illustrated by the following quotation from the zoning ordinance of Los Angeles, California (1952). In the residence zones "R1" One-Family through "R5" Multiple Dwelling, there are permitted home occupations, or principal offices of physicians or dentists, as transitional uses, on lots having a side lot line adjoining a lot in a commercial or industrial zone, provided that:

(a) The lot on which the transitional use is located does not extend more than 65 feet from the boundary of the less restricted zone which it adjoins;

(c) The home occupation or principal office of a physician or dentist is conducted in conjunction with the use of a dwelling unit as a home by the occupant thereof and the residential character of the exterior of the dwelling is not changed.

Similar provisions are found in the ordinances of some other places. Long Beach, California (1951) is somewhat more explicit on one point, in requiring that the professional office be "...located in the residence used as the private dwelling place of such professional person." And Palm Springs, California (proposed 1953) elaborates on the necessity of maintaining the residential character of the premises and requires that "the parking of automobiles caused by such use does not unduly interfere with the public use of adjoining streets or alleys."
The strip devoted to these transitional uses is of different depth in different ordinances. In Long Beach and in San Fernando, California (1952), the transitional use may not extend more than fifty feet from the boundary of the less restricted zone. This limit is 100 feet in Richmond, California (1949) and in the townships of Lucas County, Ohio (proposed 1948). In Palm Springs the lot on which the transitional use is conducted cannot extend more than 100 feet from the less restricted zone.

D. Area. Slightly fewer than one-half of the ordinances examined contain provisions which specifically limit the amount of space in the home which can be devoted to a home occupation. These regulations are designed to insure in some measure that the occupation be truly incidental to the residential use of the dwelling.

Two forms of regulation are found: those which limit the occupation to a definite amount of space, and, much more frequently, those with the limitation stated as some percentage of the floor area. The absolute limitations range from 100 square feet to 400 square feet. The proportional limitations are based on either total floor area or the area of one floor. They range from 15 per cent to 50 per cent of the total floor area of the dwelling, and from 25 per cent to 100 per cent of the area of one floor (with 25 per cent and 50 per cent being the most commonly used figures).

Some unusual varieties exist. For example, Des Moines, Iowa (1953) allows, for home occupation use, 50 per cent of the area of one floor in the single-family districts and only 25 per cent of the area of one floor in the less restricted residential districts. Albion, Michigan (1950), Kalamazoo, Michigan (Proposed 1952), Menominee, Michigan (1946), and Hickory, North Carolina (1952), require that there be no special space "designed or arranged" for the conduct of a home occupation. Sacramento County, California (1950), limits home occupations to one room in the dwelling.

E. Equipment. The use of mechanical equipment is an obvious source of possible disturbance to neighboring residences, and for that reason is regulated in some fashion in most of the ordinances studied. Four types of regulation are found.

1) No mechanical equipment allowed:

Jackson, Mississippi (1950)
Providence, Rhode Island (1952)
Alcoa, Tennessee (1952)
2) Only normal domestic or household equipment allowed:

Anaheim, California (1951)
Sacramento County, California (1950)
Oak Park, Illinois (1947)
Des Moines, Iowa (1953)
Waterloo, Iowa (no date)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953)
Montgomery County, Maryland (1950)
Grand Rapids, Michigan (1951)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
St. Louis, Missouri (1950)
Princeton, New Jersey (1951)
Cleveland, Ohio (1948)
Greenville, South Carolina (1953)
Appleton, Wisconsin (Proposed 1951)

(Hamilton, Ontario (1950), uses this type of regulation, and in addition allows equipment for "medical, dental or other professional purposes." This would permit a considerable increase in the scope of the permitted operations.)

3) Equipment permitted which does not emit dust, noise, odor, etc., or is in any other way detrimental to the community:

Lynwood, California (1951)
Montabello, California (1950?)

4) Specific power limitations placed on permitted equipment:

Inglewood, California (1951) - Only electric motors allowed; maximum total power, 1/2 H. P.
South Pasadena, California (1951) - Only electric motors allowed; maximum total power, 3 H. P.; maximum power per motor, 1 H. P.
Kalamazoo, Michigan (Proposed 1952) - Type of motor not specified; maximum power per motor, 3/4 H. P.
Kansas City, Missouri (1951) - Type of motor not specified; maximum total power, 1 H. P.; maximum power per motor, 1/4 H. P.

These power limitations are set forth without a stated requirement that the equipment be of common domestic or household types.
F. Employment. The operator of a successful home occupation will occasionally be tempted to increase the efficiency and profit of the enterprise by hiring a secretary or assistant, or two or three. Over one-half of the ordinances studied forbid the employment of any person other than a member of the immediate family residing on the premises. Sacramento County, California (1950) even limits employment to two resident occupants of the dwelling. The function of such limitations is to prevent the occupation from growing to the point that it is no longer properly incidental in character and hence becoming a threat to the residential nature of the neighborhood.

In contrast, some communities have been less restrictive. In these localities there apparently is the feeling that a limited amount of employment of persons not members of the family will not prejudice the incidental character of the occupation. These cases are exceptional.

1) One employee:

Mesa, Arizona (1949)
Pima County, Arizona (1952)
Oakland, California (1952) (Allowed only for "dentist, physician, chiropractor and osteopath")
Waterloo, Iowa (no date)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953)
Grand Rapids, Michigan (1951)
Royal Oak, Michigan (1951)
Dover, New Hampshire (1948)
Cleveland, Ohio (1948)
Providence, Rhode Island (1952) (For "professional office" only)
Alcoa, Tennessee (1952)

2) Two employees:

Kalamazoo, Michigan (Proposed 1952) (For "professional offices" only, in first residence district; three employees in second residence district; four employees in third residence district.)
Salt Lake County, Utah (1951)
Bristol, Virginia (1952)
Eau Claire, Wisconsin (1952)

G. Accessory Buildings. It is typical to require that a home occupation be conducted entirely within the main building used as the dwelling. This, again, acts to insure that the size of the operation will not become too large. It also may be intended to reduce the chances of the occupation becoming annoying or harmful to the neighbors and detrimental to the residential character of the area. Most of the ordinances studied allowed no use of accessory buildings. However, a few did;
Pima County, Arizona (1952) - detached home workshop of not more than 200 square feet in area
Geneseo, Illinois (1948)
Hempstead, New York (1945)
New York, New York (Proposed 1950)
Lima, Ohio (1948)
Bristol, Virginia (1952) - accessory building, with written approval of the Board of Zoning Appeals

H. Sale of Goods. The zoning ordinance of Marietta, Georgia (1951), states that "...home occupation shall include in general personal services such as are furnished by a physician, dentist, musician, artist, or seamstress..." This emphasis on personal services is at least implicitly characteristic of most of the ordinances. One-third of the ordinances examined explicitly require that "no stock in trade be kept or commodities sold" on the premises. A similar number are not specific on the point, but are so worded that the prohibition seems to be implied. The intention is clear. If no goods are kept or sold on the premises there is less likelihood that the occupation will develop many of the characteristics of a retail store, and as such become undesirable in a residential area.

A few communities have apparently found such regulations to be too limiting. Perhaps some of the home occupations customary in these communities would be eliminated if all sale of goods on the premises were to be prohibited. As a result, several ordinances permit the sale of articles "produced by members of the immediate family residing on the premises."

Geneseo, Illinois (1948)
Lexington & Fayette County, Kentucky (Proposed 1953)
Albion, Michigan (1950)
Kalamazoo, Michigan (Proposed 1952)
Wayne, Michigan (1952)
Charlotte, North Carolina (1951)
Hickory, North Carolina (1952)
Salt Lake County, Utah (1952)
Ogden City, Utah (1951)

I. Display. One characteristic of an occupation in a residential area to which frequent objection is raised is that of accompanying advertising display. Display can take two general forms: display of goods, and signs. Display of goods is generally prohibited. Where signs are permitted, the ordinances contain various specific limitations on their use. These provisions are designed to restrict sign visibility and to limit its use to information rather than advertising. This intention is accomplished by restricting the size, lighting, location, and content of the signs.
Among the ordinances which prohibit signs in connection with home occupations are those of the following communities:

Azusa, California (1949)
Inglewood, California (1951)
South Pasadena, California (1951) - prohibited for "Home Occupations"; allowed for "Professional Offices."
Waterloo, Iowa (no date)
Kalamazoo, Michigan (Proposed 1952)
Wayne, Michigan (1952)
St. Louis, Missouri (1950)
Lucas County (Townships), Ohio (Proposed 1951)
Painesville, Ohio (1951) - prohibited for "Home Occupations"; allowed for "Professional Uses."

Regulation of permitted signs is illustrated by the following restrictions:

1) Maximum Size

One-half square foot:

New Orleans, Louisiana (Proposed 1952)
Jackson, Mississippi (1950)
Hempstead, New York (1945)

One square foot:

Anchorage, Alaska (1952)
Oakland, California (1952)
South Pasadena, California (1951)
Bensenville, Illinois (1950)
Chicago Heights, Illinois (1950)
Oak Park, Illinois (1947)
Des Moines, Iowa (1953)
Lexington & Fayette County, Kentucky (Proposed 1953 - in "S-1" and "R-1" districts, for professional office in dwelling.
Menominee, Michigan (1946)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
New York, New York (Proposed 1950)
Charlotte, North Carolina (1951)
Greenville, South Carolina (1953)
Augusta, County, Virginia (1949)
Eau Claire, Wisconsin (1952)
One and one-half square feet:

Denver, Colorado (1948)
Lexington & Fayette County, Kentucky (Proposed 1953) - for "home occupations" in "R-1" zone; in "R-2" also for professional offices.
Princeton, New Jersey (1951)
Providence, Rhode Island (1951)

Two square feet:

Florence, Alabama (1943)
Sacramento County, California (1950)
Colorado Springs, Colorado (1951)
Clearwater Florida (1952)
Clinton, Iowa (1949)
Waverly, Iowa (1952)
Baltimore County, Maryland (1948)
Montgomery County, Maryland (1950)
Hamilton, Ontario (1950)
Henderson, Tennessee (Proposed, no date)
Salt Lake County, Utah (1952)
Bristol, Virginia (1952)
Tacoma, Washington (1945)
Appleton, Wisconsin (Proposed 1951)

Over two square feet, and other:

Lexington & Fayette County, Kentucky (Proposed 1953) - 3 square feet if lighted; 6 square feet if unlighted; in "R-3" and "R-4" for "lawful accessory uses."
Albion, Michigan (1950) - 3 square feet
Royal Oak, Michigan - 3 square feet
Kansas City, Missouri (1951) - 80 square inches; in R-1, only for doctors and dentists; in R-2 through R-5, also for other home occupations.
Dover, New Hampshire (1948) - 4 square feet
Alfred, New York (1948) - 3 square feet
Painesville, Ohio (1951) - "small"

2) Lighting

Unlighted:

Denver, Colorado (1948)
Bensenville, Illinois (1950)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953) - except in "R-3" and "R-4"
Montgomery County, Maryland (1950)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
Kansas City, Missouri (1951)
Alfred, New York (1948)
Hamilton, Ontario (1950)
Henderson, Tennessee (Proposed, no date)
Appleton, Wisconsin (Proposed 1951
Eau Claire, Wisconsin (1952)

Indirect lighting:

Des Moines, Iowa (1953)
Salt Lake County, Utah (1952)

Other or unspecified lighting:

Sacramento County, California (1950)
South Pasadena, California (1951)
Lexington & Fayette County, Kentucky (Proposed 1953) - "non-flashing" lights in "R-3" and "R-4"
Providence, Rhode Island (1951)

3) Location

On the dwelling:

South Pasadena, California (1951)
Denver, Colorado (1948)
St. Clair Shores, Michigan (1951)
Charlotte, North Carolina (1951)
Eau Claire, Wisconsin (1952)

Flat against the wall of the dwelling:

Sacramento County, California (1950)
Des Moines, Iowa (1953)
Lexington & Fayette County, Kentucky (Proposed 1953)
Muskegon, Michigan (1952)
Hamilton, Ontario (1950)
Charlottesville, Virginia (1949)
4) Content

Name of professional occupant:

Denver, Colorado (1948)

Name and occupation of the occupant:

Montebello, California (1950?)  
Palm Springs, California (Proposed 1953)  
Waverly, Iowa (1952)  
Lexington & Fayette County, Kentucky (Proposed 1953)  
Muskegon, Michigan (1952)  
Hempstead, New York (1945)  
Seattle, Washington (1947)  
Tacoma, Washington (1945)  
Appleton, Wisconsin (Proposed 1951)  
Eau Claire, Wisconsin (1952)

Name, occupation and office hours of the occupant:

South Pasadena, California (1951)

J. General Regulations. A number of ordinances contain provisions of a general nature, designed to protect the residential areas against any undesirable uses which might otherwise occur. The wording is usually similar to the ordinance of Inglewood, California (1951) which states that "no home occupations shall be permitted when the same is objectionable due to dust, smoke, odor, or other causes." Among the communities having such a provision are: Pima County, Arizona (1952); Lynwood, California (1951); South Pasadena, California (1951); Colorado Springs, Colorado (1951); Marietta, Georgia (1951); Waverly, Iowa (1952); Waterloo, Iowa (no date); Albion, Michigan (1950); Lima, Ohio, (1948). It is not stated what criteria are to be used in measuring the degree of objectionability of the dust, etc.

Another general provision favored by some localities is written with the apparent intention of assuring the incidental nature of the occupation. Any enterprise with extensive or unusual physical requirements would be hampered by application of the clause: "such home occupation shall not require internal or external alterations, or involve construction features not customary in dwellings." This, or similar wording, appears in the ordinance of Waverly, Iowa (1952); Lexington & Fayette County, Kentucky (Proposed 1953); Grand Rapids, Michigan (1951); Muskegon, Michigan (1952); Lima, Ohio (1948); Appleton, Wisconsin (1951).
K. Permits. Finally, the establishment of a home occupation in some places is further regulated by the requirement that a permit first be obtained. This has the effect of placing each case before some body authorized to issue the permit (usually the board of zoning appeals). The result is that it is the judgment of the reviewing body and not the wording of the ordinance itself which will determine in many cases the occupations that will be allowed. Ordinances requiring prior approval in this manner include:

<table>
<thead>
<tr>
<th>City</th>
<th>Body Issuing Permit</th>
<th>Home Occupations Requiring Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lynwood, Calif. (1951)</td>
<td>1</td>
<td>Unspecified; presumably all</td>
</tr>
<tr>
<td>Sacramento County, Calif. (1950)</td>
<td>Planning Comm. Board of Appeals</td>
<td>All</td>
</tr>
<tr>
<td>Geneseo, Ill. (1948)</td>
<td></td>
<td>Photography and &quot;others&quot;</td>
</tr>
<tr>
<td>Waterloo, Iowa (no date)</td>
<td></td>
<td>All</td>
</tr>
<tr>
<td>Waverly, Iowa (1952)</td>
<td></td>
<td>All</td>
</tr>
<tr>
<td>Lexington &amp; Fayette</td>
<td></td>
<td>&quot;Professions&quot; 4. &quot;customary home occupations&quot;</td>
</tr>
<tr>
<td>County, Ky. (Proposed 1953)</td>
<td>Board of Adjustment</td>
<td>&quot;Professional uses&quot;</td>
</tr>
<tr>
<td>Wayne, Mich. (1952)</td>
<td>Board of Appeals</td>
<td>All 5</td>
</tr>
<tr>
<td>Eau Claire, Wis. (1952)</td>
<td>Board of Appeals</td>
<td></td>
</tr>
</tbody>
</table>

1. "Licensing procedure shall be set forth by...the City Council."
2. "...after a report has been submitted by the...Zoning Commission."
3. In S-1 suburban and other districts.
4. In R-1 one-family and other districts.
5. In one-family districts.

III. LEGAL DECISIONS ON HOME OCCUPATIONS

For convenience in reference, the following list of cases dealing with home occupations has been prepared. The cases are arranged alphabetically by name of the occupation involved. Cases previously reported in the Newsletter and in ZONING DIGEST are also cited by volume and page number of those publications.

ACCOUNTANT - exclusion upheld

Kort v. City of Los Angeles, District Court of Appeals, Second District, California June and August 1942, 127 P. 2d. 66. (9 NL 35)
BARBERSHOP - NOT a home occupation

Ryan v. Warrensburg, 117 S.W. 2d 303.

BEAUTY SHOP - NOT a home occupation

Dobres v. Schwartzman et al., Court of Appeals of Maryland, June 16, 1948, 59 A. 2d 684. (14 NL 99)

Board of Adjustment of City of San Antonio et al., v. Levinson, Court of Civil Appeals of Texas, San Antonio, November 7, 1951. Rehearing Denied December 5, 1951, 244 S.W. 2d 281. (4 ZD 73)

DANCING SCHOOL - permitted

Delpriore v. Ball et al., Supreme Court, Appellate Division, January 7, 1953, 118 N.Y.S. 2d 53. (5 ZD 89)

- NOT a home occupation

State ex rel. Kaegel v. Holekamp et al., St. Louis Court of Appeals, June 1941, 151 S.W. 2d 685. (7 NL 107)

DENTAL OFFICE - exclusion upheld

Connor v. City of University Park et al., Court of Appeals of Texas, June 8, 1940, 142 S.W. 2d 706. (7 NL 7)

DENTAL OFFICE FOR RENT ADDED TO PHYSICIAN'S OFFICE -

permit held illegal

Heady v. Zoning Board of Appeals for Town of Milford et al., Supreme Court of Errors of Connecticut, February 3, 1953, 94 A. 2d 789. (5 ZD 123)

DRESSMAKER - persons not members of the family cannot be employed

Lemp v. Township of Millburn, Supreme Court of New Jersey, November 1942, 129 N.J.L. 221, 28 A. 2d 767. (9 NL 27)
INSURANCE BROKER - agent prohibited

Otis v. Evans, 259 Appellate Division 957, 20 N.Y.S. 2d 426.

Recht et al., v. Graves et al., etc., 257 Appellate Division 889, 12 N.Y.S. 2d 158, leave to app. den., 281 N.Y. 885, 22 N.E. 2d 427.

LAWYER - permitted; SIGN - exclusion upheld

Town of Lexington v. Govenar, Supreme Court of Massachusetts, July 1936, 3 N.E. 2d 19. (2 NL 78)

NURSING HOME - exclusion upheld


PHYSICIAN--AUTHOR - permitted (authoring not a business)

City of Beverly Hills v. Brady, Supreme Court of California, in Bank, March 10, 1950, 215 P. 2d 460. (2 ZD 70)

PHYSICIAN'S OFFICE - permitted (physician's office not a business)


- exclusion upheld

City of Harlingen v. Feener, Court of Civil Appeals of Texas, July 1941, 153 S.W. 2d 671. (8 NL 17)

PROFESSIONAL OFFICE - exclusion upheld

Town of Lexington v. Govenar, Supreme Court of Massachusetts, July 1936, 3 N.E. 2d 19. (2 NL 78)

REAL ESTATE BROKER - NOT a home occupation

Pennock v. Fuller, 2 N.W. 176.
Jones v. Robertson, 180 P. 2d 929.

F. Martin Cummer et al. v. the Board of Adjustment of the Borough of Narberth, Court of Common Pleas, Montgomery County, Pennsylvania, April term 1946, No. 19. (13 NL 79)


RESTAURANT - NOT a home occupation

King County et al. v. Lunn et al., Supreme Court of Washington, December 16, 1948, 200 P. 2d 981. (1 ZD 38)

SALE OF FISH AND BAIT - NOT a home occupation

Maurer et al. v. Snyder et ux., Court of Appeals of Maryland, April 2, 1952, 87 A. 2d 612. (4 ZD 127)

UNDERTAKING ESTABLISHMENT OR FUNERAL DIRECTOR -

- exclusion upheld, or funeral director NOT a home occupation

City of Springfield et al. v. Vancil et al., 398 Ill. 575, 76 N.E. 2d 471.


O'Reilly v. Erlanger, 108 Appellate Division 318, 95 N.Y.S. 760.


Momier v. McAllister, Inc., Supreme Court of South Carolina, September 1943, 27 S.E. 2d 504. (10 NL 27)
IV. CONCLUSIONS

The customary home occupation has remained something of an anomaly in zoning law and practice. Starting out as legislative sanction of custom, its scope has in many instances been extended to a point where it is difficult to distinguish between a customary home occupation and a business in the ordinary meaning of the term. Court cases on customary home occupations have revolved mainly on the point of identification - that is, can the particular activity under consideration be construed to fall within the ordinance definition of home occupation. This process of identification may concern a new use such as an undertaking establishment, or it may concern the extension of a permitted occupation (such as the practice of medicine, for example) into a wider area of activity.

Bassett, writing in 1936, was able to comment on how remarkably well the general regulations specifying the criteria of custom, subordination, and non-business had worked out with the help of the courts, and how there seemed to be no demand for more specific rules. However, the representative zoning provisions analyzed here seem to indicate that we have arrived at a different stage in the regulation of home occupations. The refined specifications on area occupied, equipment used, persons employed, and extent of display are a development far removed from the originally simple permission of an occupation customarily incident to the use of the premises as a dwelling.

In turn, these specifications complicate the issue. If they are necessary not only to ensure compliance with the criteria of custom, subordination, and non-business, but also to prevent harm, inconvenience, or discomfort to the main residential use, then another basis for regulation has been introduced. And if this line of thinking is pursued very far, we will before long arrive at the conclusion that if one kind of occupation is permitted - in part because it is not harmful - then why not a different but equally harmless occupation?

We seem, therefore, to have reached a fork in the road. One way leads down the classical path of custom and incidentalness. The other departs from custom, retains incidentalness, and takes on specification (and perhaps even performance) criteria. For each community, a decision on the path to be followed rests on its answer to a constant, fundamental question: what is the proper use of land in a residential district? Shall it be wholly and exclusively residential, or shall non-residential uses compatible with dwellings be permitted? If non-residential uses are permitted, what basis for their authorization shall be used? Shall any use (including even manufacturing perhaps) be permitted so long as it is not in any way harmful to a residential environment, and so long as it is in harmony with the comprehensive plan, or shall non-residential uses be limited to those that are functionally related to dwellings and which need the same kind of environment, such as churches, schools, and hospitals?
Although it is true that most communities determine principles of use-segregation when the zoning ordinance is written up and adopted, it is equally true that in zoning law as in other law, the process of amendment and interpretation can and often does modify basic intentions. The basic zoning ordinance is especially vulnerable to mutation in the area of variances and special exceptions. Nonconforming uses and customary home occupations are less obvious but equally susceptible areas where the basic purposes of the zoning ordinance may be compromised unless the primary zoning plan is kept consciously in mind.

In deciding on customary home occupations, then, a city should ask itself just what it wants to achieve for its residential districts and just how the different points of regulating home occupations will affect that desired environment. Having decided upon the kind of environments desired in residential districts, a community may then follow one of two possible courses with respect to home occupations:

A. Retention of the Three Bases For Regulation, i.e., Custom, Incidentalness, and a Non-business Nature. This course will tend to simplify the administration of the ordinance and will probably not fail to gain judicial support in the event of litigation. In this event, custom is the primary basis, and if the occupation is found to be not customary, the other criteria of incidentalness and non-business would have no relevance. Custom by definition means a long-established practice. Home occupations which have developed (illegally) after the zoning ordinance is adopted in any particular locality would, therefore, not qualify as customary home occupations. A policy strictly adhering to the criterion of custom could not recognize "custom in the making" - a logically inconsistent notion so far as customary home occupations are concerned.

Persons who favor what may be termed the technological approach to zoning may deplore the inconsistencies of a policy which permits one occupation because it has been long established and prohibits another occupation no less objectionable because it has not been long established. Although this argument has obvious merit, it does not strike at the fundamental basis of the body of law surrounding home occupations. It does not, in other words, have anything to do with the role of usage and custom and the legal sanction given to it by the zoning ordinance and the support granted by judicial decisions. Abandonment of the force of custom in the matter of home occupations changes the whole conception of home occupations. However, because of tendencies in this direction, some of the possible advantages of relying upon objective standards in the choice of home occupations will be discussed in the following section.
B. Classification of Home Occupations on the Basis of Objective Standards.
A characteristic of modern zoning ordinances is the increasing use of objective standards to replace the vague notations of earlier ordinances. Courts have encouraged this by the negative act of striking down many zoning provisions for having insufficient standards to guide the action of the building commissioner or board of adjustment.

Thus far, standards for home occupations have been relatively simple. From experience planners have learned that a successful home occupation can get out of hand. A doctor's office becomes a clinic, the seamstress has a dress factory, the auto tinker a commercial garage. The need for better accommodations and more space should eventually force the expanding operation into more suitable quarters, but in the meantime it is severely damaging the neighborhood. The answer has been to limit outside employees, space used, displays, equipment and structural alterations.

It is doubtful if it will ever be practical to establish the more elaborate, and more objective, performance standard control of home occupations that is now being written into industrial district regulations. Experience indicates that for most aspects of annoyance, home occupations cannot be differentiated from residences. They generate no more noise, odor, dust, smoke or glare than the ordinary residence. Home occupations offend (where they do offend) principally because of traffic generation, aesthetics, or for psychological reasons. These are the factors still most remote from completely objective measurements and control. Standards such as those used in the Des Moines ordinance will probably continue to be used.

Finally, it should be pointed out that it is possible to prohibit specific home occupations from certain residence districts, even though their presence in the city is sanctioned by custom. Some accessory uses, such as stables or the keeping of poultry, have been shown clearly to be nuisances, despite their long-standing presence as adjuncts to residences. Prohibition through zoning control, however, does not require that the use be demonstrably a nuisance. Therefore, we have decisions upholding the prohibition of the equally venerable physician's office.

In the end, we must come to see that the control of home occupations is strictly an individual problem in each city. But it is also a problem that will probably not be solved once and for all in any growing city. It will require re-examination from time to time, just as other problems in land use regulation require re-examination.