

LAUDERDALE CITY COUNCIL MEETING AGENDA

TUESDAY, FEBRUARY 27, 2001

CITY HALL, 7:30 P.M.

The City Council is meeting as a legislative body to conduct the business of the City according to ROBERT'S RULES OF ORDER AND THE STANDING RULES OF ORDER AND BUSINESS OF THE CITY COUNCIL. Unless so ordered by the Mayor, citizen participation is limited to the times indicated and always within the prescribed rules of conduct for public input at meetings.

1. **CALL MEETING TO ORDER AT 7:30 P. M.**

2. **ROLL:**

Councilmembers:

Gower _____ Christensen _____
Gill-Gerbig _____ Hawkinson _____
Mayor Dains _____

Staff: Getschow _____

3. **APPROVAL OF THE AGENDA**

4. **APPROVAL**

- A. Approval of minutes of 2/13/01 City Council Meeting
- B. Approval of claims totaling \$25,324.57

5. **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE COUNCIL ON ITEMS NOT ON THE AGENDA**

Any member of the public may speak at this time on any item NOT on the agenda. In consideration of the public attending the meeting for specific items on the agenda, this portion of the meeting will be limited to fifteen (15) minutes. Individuals are requested to limit their comments to four (4) minutes or less. If the majority of the Council determines that additional time on a specific issue is warranted, then discussion on that issue shall be continued under Additional Items at the end of the agenda. Before addressing the City Council, members of the public are asked to step up to the microphone, give their name, address and state the subject to be discussed. All remarks shall be addressed to the Council as a whole and not to any member thereof. No person other than members of the Council and the person having the floor shall be permitted to enter any discussion without permission of the presiding officer. Your participation, as prescribed by the Council's ROBERT'S RULES OF ORDER AND THE STANDING RULES OF ORDER AND BUSINESS OF THE CITY COUNCIL, is welcomed and your cooperation is greatly appreciated.

6. CONSENT

7. SPECIAL ORDER OF BUSINESS/RECOGNITIONS/PROCLAMATIONS/ CITIZENS ADDRESSING STREET AND UTILITY IMPROVEMENTS

8. INFORMATIONAL PRESENTATIONS

- A. Plans and Specifications for the 2001 Street and Utility Improvements (City Engineer)

9. PUBLIC HEARINGS

Public hearings are conducted so that the public affected by a proposal may have input into the decision. During hearings, all affected residents will be given an opportunity to speak pursuant to the ROBERT'S RULES OF ORDER AND THE STANDING RULES OF ORDER AND BUSINESS OF THE CITY COUNCIL.

10. ACTION

- A. Resolution 022701A: A Resolution Approving Plans and Specifications and Ordering an Advertisement of Bids for the 2001 Street and Utility Improvements

11. REPORTS

12. DISCUSSION

- A. Draft Zoning Ordinance: Chapter 17- Home Occupations

13. ITEMS REMOVED FROM THE CONSENT AGENDA

14. ADDITIONAL ITEMS

15. SET AGENDA FOR NEXT MEETING

16. ADJOURNMENT

**Lauderdale City Council
Meeting Minutes
February 13, 2001**

1. Meeting called to order at 7:40 P.M.

2. ROLL

Council present: Gower, Gill-Gerbig, Christensen, Hawkinson, and
Mayor Dains

Staff present: Getschow

3. APPROVAL OF AGENDA

A. Approval of Agenda. Motion by Hawkinson, second by Gower to approve the agenda. Motion carried unanimously.

4. APPROVAL

A. Approval of Minutes. Motion by Christensen, second by Hawkinson to approve the minutes of the January 23, 2001 City Council meeting. Motion carried unanimously.

B. Approval of Claims totaling \$44,649.85. Motion by Hawkinson, second by Gill-Gerbig to approve the claims totaling \$44,649.85. Motion carried unanimously.

5. OPPORTUNITY FOR THE PUBLIC TO ADDRESS ITEMS NOT ON THE AGENDA

6. CONSENT

7. SPECIAL ORDER OF BUSINESS/RECOGNITIONS/PROCLAMATIONS/
CITIZEN'S ADDRESSING THE STREET AND UTILITY IMPROVEMENTS

A. *Snow*Commotion.* The Mayor and Council thanked the Park and Community Involvement Committee and the staff for the work done on the annual winter event, Snow*Commotion.

8. INFORMATIONAL PRESENTATIONS

9. PUBLIC HEARINGS

10. ACTION

A. *Resolution 021301A: A Resolution Authorizing Application for CDBG Funds for the 2001 Utility Infrastructure Improvements.* City staff is requesting Council approval and authorization of a grant application of \$80,000 from Ramsey County through the Community Development Block Grant (CDBG) program towards the utility improvements in the 2001 improvement project. This is the same amount of funding that was received in 2000.

Motion by Gill-Gerbig, second by Hawkinson to approve Resolution 021301A: A Resolution Authorizing Application for CDBG Funds for the 2001 Utility Infrastructure Improvements. Roll: Yes: all. Motion carried.

B. *Approval of Quotations for the Purchase of a Cable System Controller.* The City Administrator stated the camera controller that is part of the cable system has not functioned in the past year. Technicians have finally stated that the controller cannot be repaired and needs replacement. The following three quotations were received for the purchase of a new controller, Panasonic Model WV-CU 161:

1.	Alpha Audio and Video	\$779.00
2.	EPA Audio and Visual	\$829.00
3.	A/V Media Technology	\$785.00

Motion by Christensen, second by Gower to approve Alpha Audio and Video for the purchase of a Panasonic WV-CU161 new camera controller for \$779.00. Roll: Yes: all. Motion carried.

C. Approval of a Step Adjustment for Administrative Analyst James Bownik. Motion by Gill-Gerbig, second by Hawkinson to approve the step adjustment for the Administrative Analyst position, to Step 4, \$3220.76 per month, effective 2-10-01.

D. Revisions to the Lauderdale Personnel Policy. The City Administrator stated that it has been past practice to update the Lauderdale Personnel Policy to keep its language consistent with the language of the union contract. The changes included adding language regarding: (1) how overtime is calculated, (2) holidays, (3) sick leave provisions, (4) leave of absence language, and (5) vacation carry-over.

Motion by Gill-Gerbig, second by Gower to approve the proposed amended City of Lauderdale Personnel Policy. Roll: Yes: all. Motion carried.

11. REPORTS

A. Middle Mississippi River Watershed Management Organization (MMRWMO) Update. Council member Gill-Gerbig, also the representative Lauderdale MMRWMO Commissioner, updated the Council on recent developments from the MMRWMO Board meetings. The Council discussed the membership and boundaries of the three watershed districts or organizations inclusive in Lauderdale. Gill-Gerbig also briefed the Council on the watershed and sub-watershed levy issue from the MMRWMO.

12. DISCUSSION

13. ITEMS REMOVED FROM THE CONSENT AGENDA

14. ADDITIONAL ITEMS

A. Hiring of an Intern. The City Administrator stated that he had interviewed Kevin Walsh for the advertised Administrative Intern position. Kevin is in his last semester at the University of Minnesota finishing a Bachelor's of Arts Degree in Political Science. His recent work experience has been with the Office of Governor as an intern in the Citizen Outreach Department. He also has some administrative experience with the College of Saint Catherine.

Motion by Gill-Gerbig, second by Gower to approve the hiring of Kevin Walsh as a City of Lauderdale Administrative Intern for \$10.00 per hour for the period of time covering the leave of absence of the Deputy Clerk.

15. SET AGENDA FOR NEXT MEETING

1. Resolution Approving 2001 Street and Utility Improvements Plans and Specifications and Ordering an Advertisement of Bids
2. County Attorney presentation
3. Draft Zoning Ordinance- Home Occupations

16. ADJOURNMENT

Motion by Gill-Gerbig, second by Christensen to adjourn at 8:35 P.M. Ayes: All.

The City of Lauderdale

Claims for Approval

February 27, 2001 City Council Meeting

02/16/01 Payroll: Check # 6863 - 6871	\$5,509.71
02/16/01 Payroll: PERA EFT	\$781.98
02/16/01 Payroll: Federal Payroll Taxes EFT	\$2,223.56
02/27/01 Claims: Check # 15064 - 15079	\$16,809.32
Total Claims for Approval	\$25,324.57

15 Feb 2001
Thu 10:58 AM

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*Paid Register
CITY OF LAUDERDALE
CLAIMS FOR APPROVAL
PAYROLL DATE: FEBRUARY 16, 2001
COUNCIL MEETING DATE: FEBRUARY 27, 2001

Check Number	Employee Number	Employee Name	Social Security Number	Pay Period	Pay Group Number	Pay Group Description	Check Amount	Check Date	Status
006863	000000011	BOWNIK, JAMES		4	01	BI-WEEKLY	874.89	16-Feb-01	Outstanding
006864	000000003	GETSCHOW, RICK		4	01	BI-WEEKLY	1,595.64	16-Feb-01	Outstanding
006865	000000030	GOYETTE, SHANNON		4	01	BI-WEEKLY	265.73	16-Feb-01	Outstanding
006866	000000002	HINRICHS, DAVID C		4	01	BI-WEEKLY	1,002.56	16-Feb-01	Outstanding
006867	000000005	HUGHES, JOSEPH A		4	01	BI-WEEKLY	1,173.31	16-Feb-01	Outstanding
006868	000000054	EICHINGER, CHRIS		4	01	BI-WEEKLY	85.01	16-Feb-01	Outstanding
006869	000000055	HAWKINSON, LUKE		4	01	BI-WEEKLY	200.96	16-Feb-01	Outstanding
006870	000000056	HINRICHS, RICHARD		4	01	BI-WEEKLY	93.00	16-Feb-01	Outstanding
006871	000000029	VILLELLA III, HARRY		4	01	BI-WEEKLY	218.61	16-Feb-01	Outstanding

Grand Total							5,509.71		

23 Feb 2001
Fri 10:47 AM

* Paid Check Reg
CITY OF LAUDERDALE
CLAIMS FOR APPROVAL
FEBRUARY 27, 2001
CITY COUNCIL MEETING

Page 1

Check Invoice Number Number	Name	Account Code	Comments	Transaction Amount
Check Number	15064 AT & T			
15064 1214879505 AT & T		101-41200-391	02/01 LONG DISTANCE	16.87

Totals Check Number	15064 AT & T			16.87
Check Number	15065 CINTAS			
15065 754167495 CINTAS		601-49000-425	PUBLIC WORKS UNIFORMS	27.70
15065 754166068 CINTAS		601-49000-425	PUBLIC WORKS UNIFORMS	27.70

Totals Check Number	15065 CINTAS			55.40
Check Number	15066 CITY OF NEW BRIGHTON			
15066 2/27/01 CITY OF NEW BRIGHTON		101-43300-304	'01 FEES: RAMSEY CO GIS	246.00

Totals Check Number	15066 CITY OF NEW BRIGHTON			246.00
Check Number	15067 CROTEAU, MARY			
15067 2/27/01 CROTEAU, MARY		201-45600-375	REIMB: SNOW COMMOTION	32.51

Totals Check Number	15067 CROTEAU, MARY			32.51
Check Number	15068 ICMA RETIREMENT TRUST - 457			
15068 2/27/01 ICMA RETIREMENT TRUST - 457		101-21705	2/16/01 PAYROLL	1,008.53

Totals Check Number	15068 ICMA RETIREMENT TRUST - 457			1,008.53
Check Number	15069 KENNEDY & GRAVEN			
15069 36566 KENNEDY & GRAVEN		410-48410-305	'00 STREET/UTIL IMP PROJ	252.25
15069 36566 KENNEDY & GRAVEN		101-41400-355	01/01 PRINT/PROCESS	7.41

Totals Check Number	15069 KENNEDY & GRAVEN			259.66
Check Number	15070 LILLIE SUBURBAN NEWS			
15070 2/27/01 LILLIE SUBURBAN NEWS		101-41600-309	01/01 DELIV: ROSE REVIEW	647.71

Totals Check Number	15070 LILLIE SUBURBAN NEWS			647.71
Check Number	15071 MET-COUNCIL ENVIRONMENTAL SER.			
15071 716985 MET-COUNCIL ENVIRONMENTAL SER.		601-49000-387	03/01 WASTEWATER SERVICE	11,060.53

23 Feb 2001
Fri 10:47 AM

* Paid Check Reg
CITY OF LAUDERDALE
CLAIMS FOR APPROVAL
FEBRUARY 27, 2001
CITY COUNCIL MEETING

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Check Invoice Number Number	Name	Account Code	Comments	Transaction Amount
Check Number	15071 MET-COUNCIL ENVIRONMENTAL SER.			-----
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Check Number	15072 MINNESOTA AFSCME			
15072 2/27/01	MINNESOTA AFSCME	101-21709	02/01 UNION DUES	76.44

Totals Check Number	15072 MINNESOTA AFSCME			76.44
Check Number	15073 MINNESOTA CONWAY			
15073 298076	MINNESOTA CONWAY	101-43100-327	'01 FIRE EXTINGUISH INSP	92.15

Totals Check Number	15073 MINNESOTA CONWAY			92.15
Check Number	15074 MN DEPARTMENT OF REVENUE			
15074 2/27/01	MN DEPARTMENT OF REVENUE	101-21702	02/01 STATE PAYROLL TAXES	754.74

Totals Check Number	15074 MN DEPARTMENT OF REVENUE			754.74
Check Number	15075 RAMSEY COUNTY			
15075 RISK000277	RAMSEY COUNTY	101-21706	02/01 EMPLOYEE BENEFITS	411.85

Totals Check Number	15075 RAMSEY COUNTY			411.85
Check Number	15076 SAM'S CLUB			
15076 2/27/01	SAM'S CLUB	101-41100-440	VHS TAPES	21.24
15076 2/27/01	SAM'S CLUB	101-41200-201	COFFEE, ETC: CITY HALL	24.26
15076 2/27/01	SAM'S CLUB	101-43100-228	MISC CLEANING SUPPLIES	146.50

Totals Check Number	15076 SAM'S CLUB			192.00
Check Number	15077 SPRINT PCS			
15077 2/27/01	SPRINT PCS	101-41200-391	02/01 CELL PHONE: C ADMIN	13.94
15077 2/27/01	SPRINT PCS	601-49000-391	02/01 CELL PHONE: PUB WKS	17.91

Totals Check Number	15077 SPRINT PCS			31.85
Check Number	15078 U-HAUL			
15078 1463357	U-HAUL	201-45600-375	TRAILER RENTAL: SNOW COMM	85.40

23 Feb 2001
Fri 10:47 AM

* Paid Check Reg
CITY OF LAUDERDALE
CLAIMS FOR APPROVAL
FEBRUARY 27, 2001
CITY COUNCIL MEETING

Check Invoice					Transaction
Number	Number	Name	Account Code	Comments	Amount
Check Number		15078 U-HAUL			
Totals Check Number		15078 U-HAUL			85.40
Check Number		15079 WASTE MANAGEMENT			
15079 2/27/01		WASTE MANAGEMENT	203-50000-389	01/01 RECYCLING	1,837.68

Totals Check Number		15079 WASTE MANAGEMENT			1,837.68

Grand Total					16,809.32

City Council Memorandum

To:	Mayor and City Council
From:	Rick Getschow
Council Meeting Date:	February 27, 2001
Agenda Item:	Resolution 022701A: A Resolution Approving Plans and Specifications and Ordering an Advertisement for Bids

BACKGROUND:

The City Engineer will be at the meeting to address the plans and specifications for the 2001 Improvements.

Following the discussion of the plans, the Council is requested to adopt the enclosed resolution that approves the plans/specifications and orders an ad for bids.

ENCLOSURES:

1. 2001 Street and Utility Improvement Plans
2. Resolution 022701A: A Resolution Approving Plans and Specifications and Ordering an Advertisement for Bids
3. Schedule of the 2001 Street and Utility Improvement process

COUNCIL ACTION REQUESTED:

Motion to adopt Resolution 022701A: A Resolution Approving Plans and Specifications for the 2001 Street and Utility Improvements and Ordering an Advertisement for Bids

RESOLUTION NO. 022701A

**THE CITY OF LAUDERDALE
COUNTY OF RAMSEY
STATE OF MINNESOTA**

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING AN
ADVERTISEMENT OF BIDS FOR THE 2001 IMPROVEMENTS**

WHEREAS, pursuant to a resolution passed by the City Council of Lauderdale on the 9th day of January, 2001, the City Consulting Engineer has prepared plans and specifications for the improvement of Carl Street between Idaho Avenue and Roselawn Avenue, Ione Street between Eustis Street and Pleasant Street, Spring Street between Eustis Street and Pleasant Street, Summer Street between Eustis Street and Pleasant Street, and all of Idaho Avenue by conducting street reconstruction, sanitary sewer improvements and replacement, water main replacement, storm sewer system improvements, and alley improvements; and has presented such plans and specifications to the Council for approval;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LAUDERDALE, MINNESOTA:

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.
2. The City Administrator shall prepare and cause to be inserted in the official paper and in the Construction Bulletin an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for at least 21 days, shall specify the work to be done, shall state that bids will be received by the City Administrator until 11:00 a.m. on April 2, 2001, at which time they will be publicly opened in the Council Chambers of the City Hall by the City Administrator and Engineer, will then be tabulated, and will be considered by the City Council at 7:30 p.m. on April 10, 2001, in the Council Chambers. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the Council on the issue of responsibility. No bids will be considered unless sealed and filed with the City Administrator and accompanied by a cash deposit, cashier's check, bid bond or certified check payable to the City Administrator for 5 percent of the amount of such bid.

I CERTIFY THAT the above resolution was adopted by the City Council of Lauderdale this 27th day of February, 2001.

(ATTEST)

Jeff Dains, Mayor

(SEAL)

Rick Getschow, City Administrator

MEMO

Lauderdale

TO: Rick Getschow
FROM: Paul Heuer
RE: Lauderdale 2001 Improvement Project
FILE: BRA File No. 532-00-101
DATE: February 7, 2001



Due to our "freaky, technical glitch", we have revised the project schedule to be as follows:

Draft plans to City & St. Paul Regional Water Services	February 20, 2001
Approve Plans & Specs.; Authorize advertising for bids	February 27, 2001
Ad in to Roseville Review	March 1, 2001
Ad in to Construction Bulletin	March 6, 2001
Ad published in Roseville Review	March 6, 2001, March 13, 2001
Ad published in Construction Bulletin	March 9, 2001
Open Bids	April 2, 2001 (11:00 a.m.)
Award Contract	April 10, 2001
Begin Construction	May, 2001
Substantially complete construction	November, 2001
Place final bituminous course; Hold Assessment Hearing	Summer, 2002

Cc: Darren Amundsen, Bonestroo
Tom Kellogg, Bonestroo
Jerry Simons, Bonestroo

City Council Memorandum

To:	Mayor and City Council
From:	Rick Getschow
Council Meeting Date:	February 27, 2001
Agenda Item:	Draft Zoning Ordinance: Home Occupations

BACKGROUND:

The Council has just recently completed a discussion of the entire draft zoning ordinance. Before the City Administrator creates another draft of the entire ordinance for the Council and the Plan Commission, any chapters in the draft were there was still a request for discussion will now be addressed. A Council member has requested another discussion of the home occupation chapter of the draft ordinance.

As a review, I will briefly summarize the Council's discussion from a previous meeting on this Chapter.

- The Plan Commission draft adds language allowing home occupations to be extended to garages and other accessory buildings. There were some concerns raised regarding this addition.
- The new draft eliminates the licensing requirement for home occupations. While some felt that certain occupations (such as home day care, Avon sales, or computer-related businesses) should not fall under a licensing requirement and that enforcement is very difficult, certain home occupations should still possibly be licensed by the City.

I have located an excellent document from the American Planning Association regarding Home Occupation Ordinances that I have included in the packet. Some discussion may arise from this document regarding the Lauderdale draft of this Chapter.

ENCLOSURES:

1. Home Occupation Ordinances, JoAnn Butler and Judith Getzels



HOME OCCUPATION ORDINANCES

JOANN BUTLER AND JUDITH GETZELS



American Planning Association

Planning Advisory Service
Report Number 391



Chapter 1. Overview

The opportunity to be one's own boss and to schedule one's job makes home-based work attractive to many people. Although not everyone could or would wish to earn a living by working at home, for some the ideal work environment is their own home. The number of home-based workers is growing. There are arguments supporting this trend as well as arguments against it, but it is certain that home occupations will not disappear.

For many families, having two "breadwinners" has become the norm. For those families with children and elderly relatives, home-based work offers family members an excellent opportunity to contribute income while remaining available to oversee the household. For families living in sparsely settled areas with no public transportation, and for the growing number of women who head single-parent families and are faced with inadequate child care, working at home may be the only way to achieve economic self-sufficiency. The advantages to working at home are self-evident for the elderly and the handicapped population. Recognizing the contributions that the handicapped can make to the work force, a number of firms are experimenting with hiring them to do

computer jobs in the home. Thus, the ability to work at home can benefit those who find it difficult to travel to work because of physical disabilities, age, or family responsibilities.

Home-based work can offer advantages for the public sector as well as for individual workers. Savings can be achieved in the provision of public transportation and parking, facilities for day care, and special transit for the handicapped and elderly. In addition, the presence of adults working at home during daytime hours can contribute to the general vitality and safety of neighborhoods—a significant factor for school-age children who sometimes have no adult to turn to when they return from school.

A work environment in the home, however, must meet certain legal requirements. Home occupations, like any employment, are governed by a variety of laws and regulations; local zoning ordinances have the most immediate control over what types of occupations are allowed. Although many residents are not aware of the nature of these ordinances, they are used by almost all local governments. One of the difficulties with current ordinances is that they do not always reflect today's workplace. Many of the changes in the nature of home-based work have occurred so rapidly that local zoning regulations have not caught up with them. People who do try to work at home complain that they are either prevented from pursuing occupations for reasons that are not clear to them or that large

The structure of the labor force has changed markedly. More women are working at home to achieve economic self-sufficiency.

numbers of home occupations take place illegally—putting those who stay within the law at an unfair disadvantage.

This report discusses the issues that must be considered in designing a home occupation ordinance that successfully balances the concerns of neighborhood residents with the rights of home-based workers. Various suggestions for ordinance drafting are presented that take into account the changing nature of home occupations and the ability of local planning and zoning officials to deal equitably with that change for both the home-based worker and neighborhood residents. Local officials who understand the benefits of home-based work will draft regulations that retain the advantages of the residential neighborhood while encouraging the pursuit of a broad range of home occupations.

It is difficult to determine how many people actually work at home. Many people will not report that they work at home, and many others have no idea that what they do constitutes "home work." The 1980 U.S. Census reports that just over two million people (more than 2.5 percent of the total labor force) work at home for money. Although this figure (which does not include farmers) is up from the 1.6 million home-based workers of 1970, the figure does not begin to reach the unofficial estimates of the number of home workers that have been made. In 1983 the U.S. Chamber of Commerce reported that an estimated 10 million businesses are run from the home—an increase of 50 percent over a decade. This figure may be misleading as it indicates how many people list themselves as sole business proprietors operating out of their homes on their IRS form. Of course, sole proprietors may use their home address for receiving mail, etc., yet work out of an office outside of their home or perhaps work "on the road."

A recent AT&T survey found that approximately 23 million Americans do at least some work out of their home. Fifty-six percent of the survey respondents reported that they do some work at home that is related to their main employment outside the home (e.g., in an office). Those working strictly at home are estimated at 10 to 12 million persons (10.5 percent of the total work force)—a figure very close to that reported by the U.S. Chamber of Commerce but almost eight million more than the U.S. Census Bureau reported in 1980.

These figures indicate an amazing change in the way that Americans work, or at least where they work. The number of self-employed persons had dropped by half between 1950 and 1970—two decades in which employers were characteristically large organizations offering a minimum of worker independence. Apparently, in the 1970s, self-employment began to rise again during a decade that typically found large organizations providing workers with more independence at the centralized work sites. The rise both in self-employment and less structured employment situations may, in fact, have been a response to the rigid employment structures of the 1950s and 1960s.

According to AT&T, those who work either predominantly at home or who bring office work home with them are, for the most part, college-educated males, 25 to 44 years of age, with annual salaries of more than \$30,000.

Their work is typically related to white-collar occupations in fields like education, health care, government, and finance. Forty-four percent are self-employed. If the business is not a sole proprietorship, there is usually only one employee, and that employee is usually a family member.

Demographers Larry Long and Diana DeAre of the U.S. Census Bureau have tried to come to grips with the increasing number of home workers. Their assessment of the situation is related to recent patterns of population migration. They found, for example, that in the 1970s, for the first time since the census was instituted (1790), America ceased urbanizing. People were leaving urban areas for smaller, rural towns, but they continued to choose to support themselves with typically "urban" work. In fact, those who moved tended to be either professionals or workers with the technical training required in modern industry. According to Long and DeAre, "[t]he new rural demographic concentrations appear to represent small centers of urban culture transplanted to the countryside and enabled to survive by recent advances in communications, transportation, and methods of industrial production."¹

In addition to these locational shifts, the fact that the economy has become much more service-sector oriented contributes to the growth of home-based work. The centralized industrial workplace, with its heavy equipment and need for supervision, is no longer the workplace of the majority of the work force. Today, centralized workplaces—developed originally because of the need for supervision, communication, and the cooperative and economic use of resources and equipment—may not be as necessary. For example, telecommuters can keep in direct contact with their employers—not face to face but via telephone line. Although it is not likely that telecommuters will replace office workers in the foreseeable future, their numbers will probably increase.

Downturns in the economy also contribute to the growth in home-based businesses. During the economic downturn of the early 1980s, for example, there were stories about ex-automobile company executives who had to take up such occupations as the manufacture of fishing lures in their garages and spouses who produced crafts part-time or ran day care centers to supplement the family income. In a recent issue of *Handyman* magazine, there were nearly a half-dozen full-page ads suggesting that readers could supplement their incomes at home by running businesses like rug cleaning services or small-engine repair shops. Some ads offered to help readers begin unidentified "money projects" that would bring in "kitchen table" income of up to \$108,000 per year. Service businesses have recently sprung up that cater to the professional working at home. These businesses offer everything from answering phones, handling mail, and greeting clients to secretarial, telex, and copying services.

While home occupations are a boon to some workers, however, many employers, and the government, may take a different view. Those who maintain a business in commercial districts argue that allowing occupations in the home may discriminate economically against their inter-

1. *Scientific American*, July 1983, pp. 33-41.

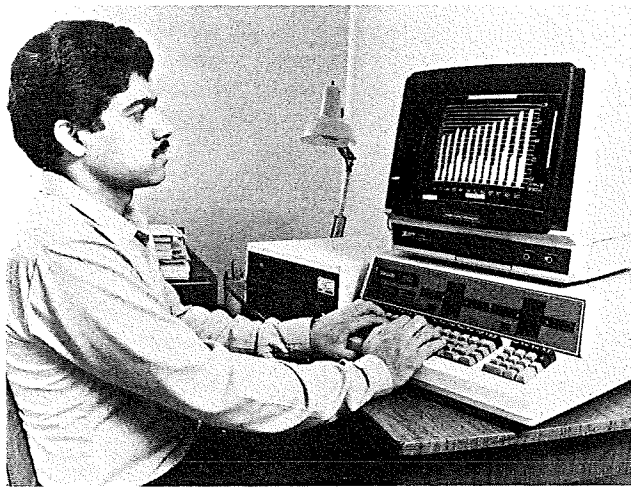
ests. These employers claim that they, too, would be able to contain costs if they could work out of their homes. An extension of this argument concerns the owners of commercial space who may have a difficult time finding tenants if people work strictly out of their homes. As far as the tax collector is concerned, home-based businesses are practically invisible. The IRS estimated in 1977 that the self-employed failed to report approximately 40 percent of their income—at that time estimated to result in almost \$26 billion in lost taxes.

More serious perhaps are the abuses that may result from entrepreneurs taking advantage of unsophisticated workers or workers with few resources. Poor women from the country, recent immigrants, and undocumented workers have often worked out of their homes to earn money. These workers are ready targets for exploitation. In 1930 a Department of Labor report found that “[l]ow wages, unregulated hours, poor working conditions and child

labor—children can certainly be used to key computer entries. Furthermore, any office—especially in one’s own home—can be hazardous to health. Chemical hazards are inevitable without proper ventilation, and fire hazards are a special concern because residential electrical circuits can be easily overloaded by office or industrial equipment. Furniture may be inappropriate, lighting and air quality may be below acceptable standards, and automated equipment can be dangerous without supervision. Few homeworkers are likely to look into these hazards or try to remedy them.

Promoters of home-based work argue that, in fact, there is no unionization to speak of among self-employed professionals such as accountants, freelance writers, and attorneys. Neither is there unionization of employed sales representatives of companies such as Avon, Shaklee, or Amway who work out of their homes. Advocates for home-based work usually cite the time and money savings associated with less commuting and child care, flexible work hours, increased productivity, better attendance, and higher quality work as being more characteristic of home occupations. Home-based business promoters argue that working at home allows aspiring entrepreneurs to avoid leasing expensive commercial space and that preventing home occupations (thereby requiring commercial leasing) may put a beginning business at an economic disadvantage. Banning home occupations, they say, violates free enterprise principles, dampens the individual spirit of self-improvement, and serves the self-interest of regulators and unions. And, as far as the child labor argument goes, homework advocates claim that laws requiring children to go to school will prevent this type of abuse (although it is uncertain how this will prevent child labor in the evening hours).

Furthermore, advocates of home-based work indicate that home occupations provide jobs for the elderly, for those who do not wish to work in a conventional work setting, and for those for whom a conventional work setting does not exist. This last argument was used by a group of rural Vermont knitters in the late 1970s when the Department of Labor attempted to stop their knitting, in part because of the decline in jobs held by members of the International Ladies Garment Workers Union. The knitters claimed that their home knitting could not possibly take jobs away from others—there were no jobs in the area to begin with. In more typical employment settings, however, an employer’s switch from on-site employees to home-based workers has been viewed as a union-busting technique. Many employers view American unions as behind the times and indicate that unions should not try to stem the tide toward home-based work. Rather, they should train their members to command a higher price in an expanded free-market economy. Paul Strassman, a Xerox vice-president, believes that the ability to work at home gives workers “absolute perfect mobility” to sell their services to the highest bidders.³ Evidence suggests that this is not necessarily the case. It would be very difficult, if not impossible, for individuals to negotiate with large companies for a fair market wage if a buyer’s market exists and



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Estimates of the number of home-based workers are as high as 12 million people. At least one major survey reported that the majority of these workers are men.

labor are familiar aspects of [home work].”² And today, despite the belief that middle-class, service-sector, home-based businesses are the predominant type of home occupations, home workers are also likely to be Hispanic or Asian immigrants in Florida, New York, and California. In California’s Silicon Valley, for instance, some companies have hired illegal aliens to work in garages just down the street from well-known high-tech companies.

Home-based work can also potentially erode wage standards and open the door for worker exploitation. The computer applications industry is probably the best modern example. Computer tasks tend to be rote and learned quickly so that employers are always likely to have a huge labor pool that will naturally keep wages low.

Trade unionists argue that isolated homeworkers have no recourse against wage cutting and cannot organize for protection. Home-based employment offers none of the benefits of regular employment like health insurance, pensions, and sick leave, and there is typically little job secu-

2. Reported in *New York Times*, November 11, 1984, p. 8E.

3. *New York Times*, May 19, 1983, p. 1.



A battle between the U.S. Department of Labor, the International Ladies Garment Workers Union, the federal courts, and rural Vermont knitters first prohibited and then permitted home-based sportswear knitting.

the service sellers have no indication of the going rate—an indication usually provided by worker representatives.

As these arguments show, a flexible viewpoint on home occupations must be developed. Martin Paule of Deva Home Sewing Industries believes that regulation of home-based industries is reasonable as long as the regulation is done on an appropriate scale. As Paule points out, "having to comply with the same standards of reporting and inspecting as a large textile manufacturer like Levi-Strauss could spell the end of small, grassroots businesses."⁴

Just as there are economic arguments on both sides of the question regarding small businesses, so are there arguments pro and con regarding the social impacts of home-based occupations, particularly for women. Many women find that they can comfortably run a business and still be available to their families and, therefore, the home environment has been favored by many women who want to enter the work force. Although the AT&T survey mentioned earlier reported that there are males who do their office work out of their home, many of these homeworkers are, in fact, women who either feel the desire or need to run their working careers from the home.⁵

Despite its obvious advantages, however, some observers point out that, in the long run, home-based occupa-

tions may have some negative results for women. Sandra Albrecht of the University of Kansas believes that home-based work may force women to assume the responsibilities of full-time child-rearing in addition to a demanding job. In this way, home-based work may be fostering a new underclass of hidden female workers—a throwback to the 1950s when women were isolated at home but at least only expected to do the domestic chores. Kathleen Christensen of the City University of New York writes that "developing home as workplace might lead to safeguarding the executive suite as the workplace for men. Today's working woman could find herself barefoot, pregnant, working at the word processor in the kitchen and out of the boardroom. . . . For those with strong career goals, it is obvious that by staying at home, they will not be as visible as their colleagues in the centralized workplace, likely limiting their access or entry to professional networks, and precluding the possibilities for developing the professional skills and political savvy needed to maneuver in the world beyond the front door."⁶

Furthermore, some home-based workers find that juggling home responsibilities and a growing business is too demanding. Some homeworkers report that they can only work well when they get up in the morning, dress for work, "go" to their office or work space in another part of the house, and close the door for eight hours. Isolating one-

4. *Rural America*, Nov.-Dec. 1983, p. 13.

5. Christensen, K. C., "Women and Homebased Work, *Social Policy* (Winter 1985): pp. 54-57.

6. Christensen, K., "Cottage Industry and Women," *Chicago Tribune*, September 22, 1983, p. 23.

self from the family and home chores is for many the only way to accomplish work without stress and strain. For some this means that child care is still necessary.

Working at home is clearly not for everyone. Margarethe Olsen, a New York University Business School professor, believes that most people are still most comfortable with crowds of colleagues who voice necessary peer approval. Furthermore, lunch with people from the company is still an important ritual.

Just as the individual worker reacts differently to the challenges of a home occupation, so do the residents of the affected neighborhoods. Neighborhood life, especially in exclusively residential areas, is seen by many as a retreat from the work-a-day world. The last thing that some residents want is a business on the block—especially if the business is going to generate traffic, parking problems, noise, odors, other nuisances, or even other businesses. Other residents, however, may be more willing to accept small, relatively clean commercial and industrial uses that were unwanted in the past. And zoning administrators are now generally more tolerant of home occupations. In addition, most zoning departments do not have the staff to rigidly enforce home occupation ordinances. Most administrators will only bar a home occupation when the business becomes a nuisance and neighbors complain about it.

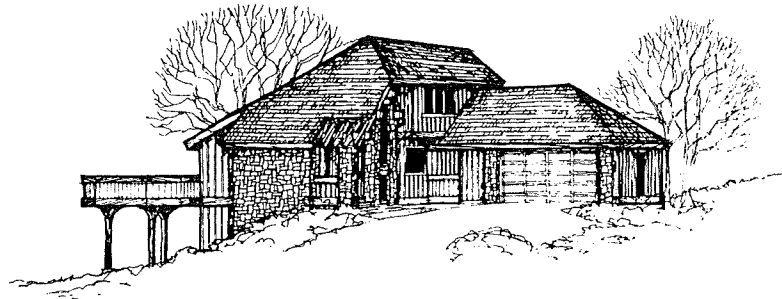
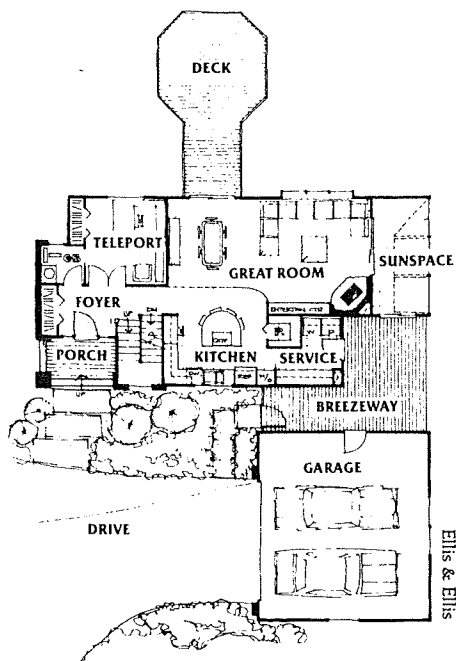
The problem for zoning officials is to know where to draw the line. Home occupations are not limited to typically unobtrusive industries such as crafting quilts, word processing, and offering legal advice. Small-engine repair, auto body work, and furniture refinishing are home occupations that can be noisy, smelly, and basically unattractive.

Proponents of home occupations complain that "archaic" zoning regulations and irate neighbors (along with unions) have combined to thwart home occupations. But

if a home occupation prompts neighborhood complaints, perhaps these regulations are not archaic; and the Department of Labor consistently discovers instances of sweatshop conditions (usually involving undocumented workers) in home occupations. Complaints are evidence that the regulations serve their purpose—the protection of the health, safety, and welfare of neighborhood residents.

In some places home occupations have not only been accepted by the neighborhood, they are a neighborhood feature. Whole subdivisions are springing up in which people live and work. Market Place in Oak Creek, Wisconsin, for example, consists of 20 homes built especially to accommodate home occupations ranging from dentists' offices to craft studios. And each home in the Eaglecrest subdivision in Foresthill, California, was designed to include a teleport containing a personal computer and modem so that the occupant could link up to computers (and employment). This phenomenon reflects the view that the opportunity to work from one's home is an asset that can increase the market value of a house. Furthermore, some believe that the importance of homework may grow to the point that zoning away the ability to work in one's home may impair the value of the property.

One community is even experimenting with a zoning technique that accommodates both residential and commercial uses in what would traditionally have been strictly a residential area. In the village of Lynwood, Illinois, a development has been started with one-acre lots in which the front of the lot is zoned for a single-family residence and the rear of the "dual-zoned" lot is for commercial use. Village officials were skeptical at first about the concept but allowed the zoning to proceed with proper architectural controls in place. Residents of the subdivision, who have drafted restrictive covenants governing the neighborhood businesses, find that because the dual zoning requires large lots, the neighborhood has a country atmo-

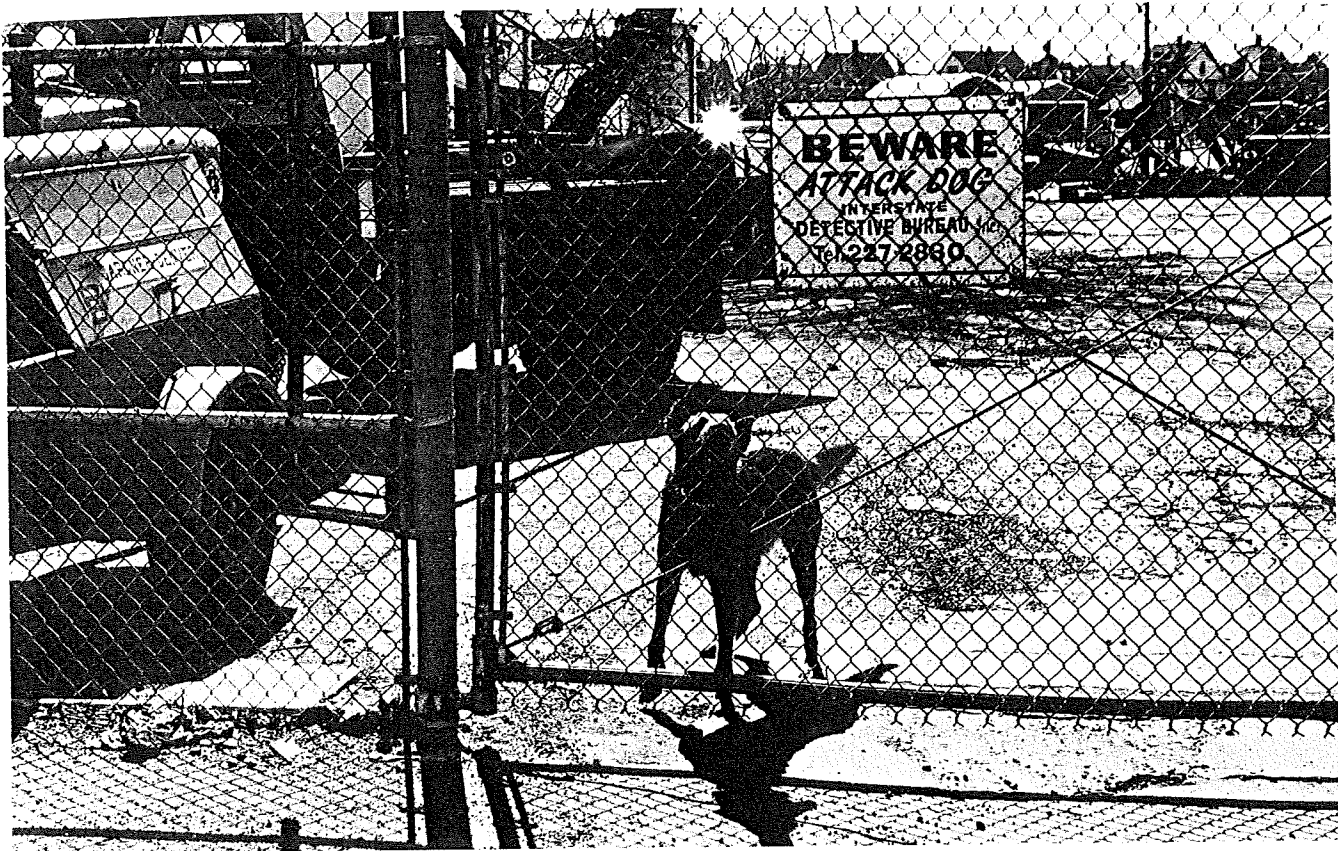


Homes with teleports in the Eaglecrest development form the nucleus of the nation's first electronic village.

sphere and the commercial aspect of the development does not detract from the residential character.

This report examines home occupation regulations that can be adapted by communities to meet their particular situation. The home occupation regulations cited have usually gone through a number of amendments that reflect the attempts by local planners and officials to strike a balance between workers needing or desiring to work from

home and their neighbors. Chapter 2 examines some typical home occupation ordinances to demonstrate what parts or elements of home occupation regulations work best for them; the appendix lists the full text of several ordinances. Chapter 3 focuses on the administrative and enforcement procedures found in most home occupation ordinances and discusses the legal issues and possible legal challenges surrounding the regulation of home occupations.



Daniel S. Brody

Chapter 2. Local Government Regulation

Although the ability to work at home offers many advantages to workers, home occupations sometimes present problems for the local community. Home-based businesses can generate heavy traffic or demands for parking, and some businesses may use noisy machinery or bright lights at late hours. Communities report offenses that range from unattractive advertising signs indicating the availability of services, all the way to the housing of 500 pigeons by a person who seemed to let the birds roam only when his neighbor was having a party. Even barring the few complaints that appear to stem from a feud with a neighbor—as the pigeon case turned out to be—it is apparent that activities that are part of running a business can cause their share of neighborhood problems. For these and similar reasons, most communities regulate home occupations.

Although planners and zoning administrators recognize the need to allow, sometimes even to promote, home occupations that meet the needs and demands of residents, local officials are also called upon to enhance the residential qualities of a neighborhood and preserve it as a comfortable place for the people who live there. Local

Home occupations are not necessarily quiet and unobtrusive and, without adequate controls, may detract from the residential qualities of a neighborhood.

officials—and the regulations they enforce—must maintain a balance between the needs of the individual who works at home and the needs of the residents who do not. Most home-based business persons support such a balanced approach; they, too, choose to live in a safe and orderly residential environment.

In view of the employment changes discussed in Chapter 1—growth in the service industry, personal computing capabilities, and recent higher rates of unemployment—many local governments find that their present home occupation ordinances are inadequate to control the undesirable impacts associated with some home occupations.

In the fall of 1984, the American Planning Association surveyed the 1,100 local planning agencies that subscribe to the Planning Advisory Service to find out how their communities regulate home occupations. The response rate of almost 60 percent, along with the responses themselves, indicated that the impacts of people working out of their homes were relatively important to many practicing planners and had raised substantial community concerns.

Except in those places that use permits or licenses to regulate home occupations (a procedure that allows the number of home occupations to be monitored), the change in the number of home occupations over the past several years remains an educated guess. For the majority of the communities that responded to the survey, the number of home occupations is only recorded through the num-

ber of neighborhood complaints, local media advertisements, and the overt display of merchandise or signs on a residential lot. Nevertheless, 65 percent of the APA survey respondents indicated that they believed that home occupations had increased in their communities. Another 31 percent indicated that the number of home occupations had remained approximately the same over the past few years; only one percent believed that the number of home occupations had decreased.

According to most survey respondents, the increase in the number of home-based businesses had little to do with inflation or a downturn in the economy. Whether this belief is justified or not, most respondents believed that it was the advances in the "high-technology" industries and the ready availability of personal computers that made it easier for people to engage in service industries at home.

But even computer-based occupations are not wholly benign in their effects on the residential neighborhood. While home occupations involving quiet, unobtrusive equipment such as telephones and/or computers may appear to have limited land-use impacts, these occupations might still generate an inordinate amount of traffic through client contact or merchandise deliveries.

Ninety percent of the survey respondents had an ordinance regulating home occupations, and most respondents had revised their ordinance at least once so that it more clearly reflected the concerns of both home-based business persons and nearby neighbors. Bridging the gap between these two opposing groups often falls to planners

and zoning officials like the PAS survey respondents. The lessons learned by these respondents in trying to serve both groups provide useful information on how to and how not to draft an ordinance regulating home occupations.

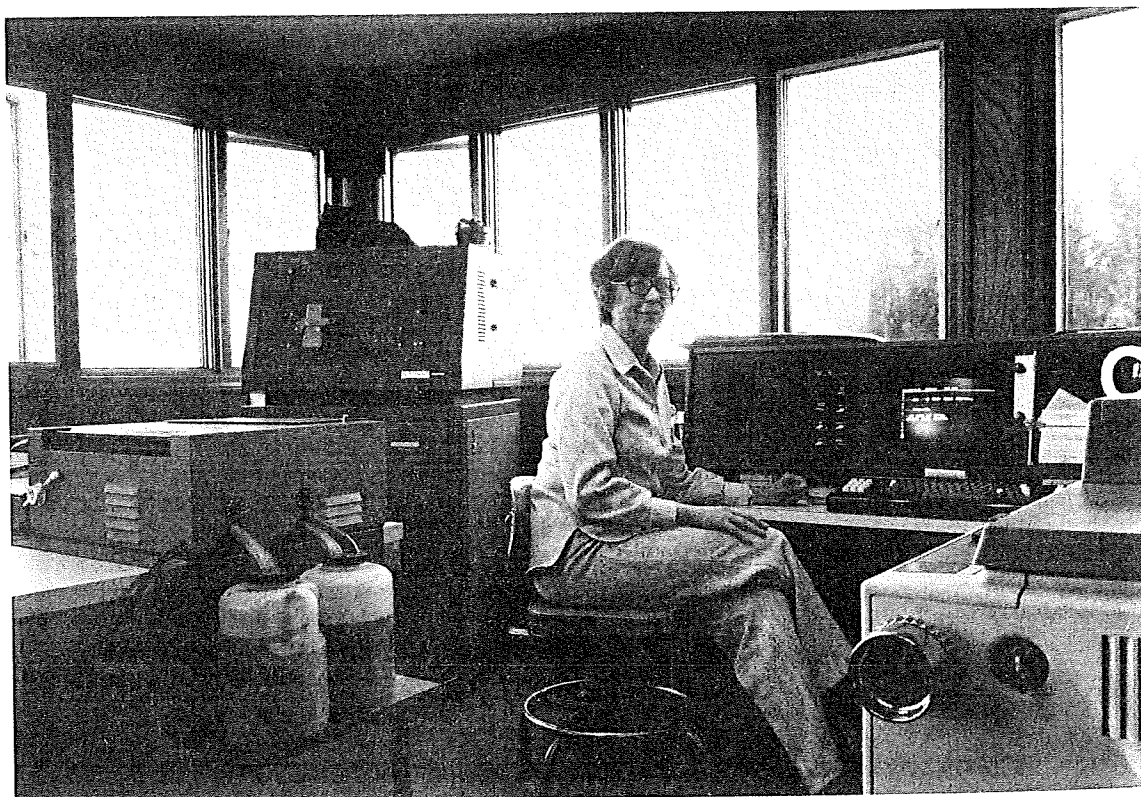
ELEMENTS OF A HOME OCCUPATION ORDINANCE

In scrutinizing the nearly 600 home occupation ordinances received from the survey respondents, APA found that the ordinances typically contained these elements:

1. A definition of home occupations;
2. The background or history preceding the ordinance enactment or amendment;
3. An intent and purpose or policy statement describing why home occupations were being regulated in the community;
4. A listing of permitted and prohibited home occupations;
5. A series of conditions or set of performance standards that home occupations must meet;
6. A statement of review procedures applied to home occupations; and
7. Enforcement procedures.

Very few home occupation ordinances received by APA contained all of these elements. However, those ordinances that provided the clearest guidance to both zon-

The decreasing costs of equipment and the ability to transmit information over the telephone enable word- and data-processing personnel to work at home.



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ing regulators and potential home-based business persons contained most of the elements. Examples of the first five elements are discussed below; administrative and enforcement procedures are discussed in Chapter 3.

Definitions

The first element of a home occupation ordinance should be a concise definition. This is easier said than done. Defining a home occupation appears to have been difficult for most local governments regulating home occupations. In most communities, problems arise when the definition of a home occupation is more elaborate than it needs to be.

Some definitions include the limitation that a home occupation be a "customary" use in the community; that it be a use carried out by a "professional"; or that only "family members" can be employed in a home occupation. Other communities include these restrictions within the body of the ordinance rather than the definition. Wherever these particular restrictions appear, they are likely to make enforcement difficult and should be avoided. For instance, dressmaking or even practicing medicine may be considered customary home occupations in a community; running a real estate office or a print shop may not. The logic behind the restriction is questionable. A substantial amount of case law has considered the requirement that home occupations be "customary," but only a few courts have laid out a test for determining whether a use was customary. For example, in *Pratt v. Building Inspector of Gloucester*, 113 N.E.2d 816 (Mass. 1953), the court reasoned that the proper test for a customary use was whether a proposed use was so necessary and commonly expected that no one could reasonably assume that the ordinance would be intended to prevent it.

Recognizing that home occupations change over time and vary between locales and different groups of people, courts have not been very restrictive in their interpretations of customary uses. For example, a music school that operated 110 hours per week and earned \$20,000 annually was held to be a customary home occupation.⁷ Recently, at least one court has held that the determination of what is a "customary home occupation" will be made with reference to what is done across the state.⁸

If a community adopts the standard that a home occupation has to be customary or traditional, another problem arises—how do new uses become acceptable as customary uses? Personal computers provide a good example here. Who would have suspected even 10 years ago that an Apple would be used in the home for more than eating or that PC jr was something other than your boss's initials?

The customary use requirement of home occupation regulations has probably been retained in ordinances as the easiest way to control the effect of a home occupation on the surrounding neighborhood. On the face of it, "customary" uses are acceptable because they appear to be compatible with the residential character of a neigh-

borhood. It has not been demonstrated, however, that allowing other, noncustomary uses—for example, word processing or receiving telephone and mail orders—will interfere with the peace and quiet of a neighborhood. An ordinance that allows only customary home occupations may be unnecessarily discriminatory.

There is also little value—but great potential for a lawsuit—in trying to make a distinction between "professional" and nonprofessionals in a home occupation ordinance. The question may arise about whether a doctor is any more or less professional than a dentist, or an insurance broker any more or less professional than an accountant? The term is ambiguous. Furthermore, such a limitation can be construed as being discriminatory against clerical or blue collar workers.

Professional status—like the "customary" criterion—is irrelevant in the maintenance of the residential character of a neighborhood. A zoning ordinance that takes into consideration the effect of a home occupation on traffic patterns, parking availability, aesthetics, and nuisances in general is a reasonable ordinance for maintaining residential character. Ordinance preferences based on personal traits or life-styles could be scrutinized severely by courts as unequal treatment of individuals.

In some ordinances, employment in home occupations is limited to "family" members residing in the dwelling. This wording presents problems. As it has become more usual for unrelated individuals to share a household and its expenses, restricting employees of home occupations by relationship has become unreasonable and challengeable. Accordingly, many communities now require that home occupations be "carried on by the occupant of a dwelling" (Redding, Calif.); or that "there shall be no on-site employment or use of labor from persons who are not bona fide residents of the dwelling" (Arlington, Va.).

To prevent problems, a simple definition that avoids easily misinterpreted words or ambiguous language is desirable. The following samples offer some good, concise definitions of a home occupation:

Any activity carried out for gain by a resident conducted as an accessory use in the resident's dwelling unit.⁹

A home occupation is defined as any business or commercial activity that is conducted or petitioned to be conducted from property that is zoned for residential use. (Blaine, Minn.)

"Home Occupation" is an occupation or business activity which results in a product or service and is conducted in whole or in part in the dwelling unit, and is clearly subordinate to the residential use of the dwelling unit. (Port Angeles, Wash.)

A concise definition might also indicate that a home occupation is to be for financial gain (to avoid regulating hobbies). A definition should not be an abstract of the entire ordinance; trying to include regulatory fragments that properly belong in the body of the ordinance only makes defining more difficult and cumbersome.

7. *Parks v. Board of Adjustment of City of Killeen*, 566 S.W.2d 365 (Tex. Civ. App. 1978).

8. *Commissioners of Bellefonte v. Coppola*, 453 A.2d 457 (Del. 1982).

9. H. S. Moskowitz and C. G. Lindbloom, *The Illustrated Book of Development Definitions* (Piscataway, N.J.: Center for Urban Policy Research, Rutgers University, 1981).



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Even "white-collar professional" occupations may affect the neighborhood by generating extra traffic, noise, and other nuisances such as electrical interference.

Ordinance History

Following their definition of home occupations, almost a third of the respondents included a short history of home occupation regulation in their community. The people who wrote these ordinances wisely included details of the social and administrative background that led to regulating home occupations. This background information is usually found in the "whereas" clauses following the ordinance title but before the ordaining clause. For example, the following "whereas" clauses introduce the Pasco, Washington, home occupation ordinance.

AN ORDINANCE amending Title 22, ZONING, by enacting a new Chapter 22.35 entitled "Home Occupations" and repealing PMC Section 22.12.390.

WHEREAS, the Pasco City Council, in early 1983, directed the planning commission to investigate the current zoning regulations pertaining to home occupations and recommend appropriate changes, if any; and

WHEREAS, the planning commission, over the period of several months, researched the type and degree of home occupation regulations used by various municipalities throughout the state of Washington and found them to present a variety of means and degrees of regulation; and

WHEREAS, the planning commission found Pasco's current home occupation regulations to be void of measurable standards and unnecessarily ambiguous; and

WHEREAS, the planning commission conducted a public hearing on October 20, 1983, and concluded the measurable standards and administrative procedures proposed by the Community Development Department to be appropri-

ate for the regulation of home occupations and recommended the city council enact same; and

WHEREAS, the Pasco City Council reviewed the commission's recommendation and directed certain modifications to be made to the recommended administrative procedures; and

WHEREAS, the city council finds the revised recommendation of the planning commission to be necessary and appropriate for the regulation of home occupations; NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF PASCO DOES ORDAIN AS FOLLOWS . . .

Although the social background to the ordinance does not become part of the local zoning law and is not a formal element of a home occupation ordinance, it is extremely useful. The background of the ordinance describes the setting for the first enactment of an ordinance. An understanding of this setting makes the ordinance easier to amend in later years.

Almost 29 percent of the survey respondents indicated that they were contemplating amending or had recently amended their home occupation ordinance. Communities found that their ordinance was either overly rigid or too vague to enforce, given the changing nature and increasing number of home occupations in the community. When there was a short history of home occupation regulation contained in the ordinance to be amended, local officials had insight into the circumstances that existed when the ordinance was first adopted or last amended. The more useful ordinances received kept this feature.

In the St. Petersburg Beach, Florida, ordinance, for instance, the "whereas" clauses indicate that the Board of Adjustment for the city had been flooded with requests for home occupation licenses from persons who wanted to offset rising costs of living. The ordinance acknowledges that responding to these requests is always costly, because responding requires a lot of administrative time. Furthermore, for many acceptable home occupations, the board thought that an extensive administrative process should not be necessary. The text clearly documents those findings:

WHEREAS, currently all requests for occupational licenses for home occupations must be granted by the Board of Adjustment, a costly and time-consuming process; and

WHEREAS, more citizens, particularly mothers and the handicapped, are being forced into the employment market to help offset rising costs; and

WHEREAS, a business in the home is the best way for many persons to work, due to obligations to family or for health reasons;

NOW, THEREFORE, THE CITY OF ST. PETERSBURG BEACH, PINELLAS COUNTY, FLORIDA, DOES ORDAIN: (ORD. NO. 200) . . .

Purpose and Intent or Policy Statements

Policy statements, sometimes called "purpose and intent" statements, are the third and probably the most important element of a local government's home occupation ordinance. The St. Petersburg Beach whereas clauses, as shown above, border on a policy statement intended to encourage home occupations, at least for handicapped persons and for mothers needing to bring in a second (or sometimes only) income. Policy statements should ideally be embedded within the body of the ordinance (i.e., after the ordaining clause) so that they remain binding despite amendments to other parts of the ordinance; that is, of course, unless the policy changes.

The policy statement can indicate quite succinctly that the local government recognizes that many people feel a need to work at home and can also indicate that the local government recognizes the rights of property owners to be free of nuisances sometimes caused by certain home occupations. Policies established by APA's respondents were usually drafted to ensure that home occupations were kept as relatively small, incidental uses that would not detract from the overall residential character of a neighborhood.

Purpose and intent statements can be short and to the point:

4.060 HOME OCCUPATIONS

1. **Purpose.** The conduct of business in residential units may be permitted under the provisions of this section. It is the intent of this section to:
 - a. Ensure the compatibility of home occupations with other uses permitted in the residential districts;
 - b. Maintain and preserve the character of residential neighborhoods; and
 - c. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned

and constructed, rather than commercial uses. (Yakima, Wash.)

33.11 HOME OCCUPATIONS

- a. **Intent.** In order to provide peace, quiet, and domestic tranquillity within all residential neighborhoods within the city, and in order to guarantee to all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas. (Blaine, Minn.)

On the other hand, policy statements can be quite long. The Rockford, Illinois, home occupation ordinance, for example, explains at length how the local planning department arrived at its regulatory policy covering home occupations.

33-29. HOME OCCUPATIONS

I. Intent and Purpose. Traditionally in zoning, certain occupational uses termed "home occupations" have been allowed in dwelling units. Such uses have been allowed largely on the basis that such uses are incidental to the use of the premises as a residence, that the nature of home occupational uses is such that they are compatible with or even "belong" in the home, or that home occupational uses are of a highly professional nature involving the use of mental rather than physical capabilities and are therefore compatible with residential uses.

Unfortunately, as perusal of court rulings on home occupations will show, all of the above criteria defy precise definition or interpretation. Definition of home occupations by the above criteria has in some cases totally prohibited home occupations while in other instances allowed uses which markedly detract from the residential character of a neighborhood and thereby infringed upon the rights of surrounding residents.

In reaction to the fact that liberal home occupation ordinances allowing a wide variety of uses are extremely difficult to administer, enforce, and control, many communities have chosen the alternative of prohibiting such uses altogether.

It is recognized, however, by this community, that certain limited home occupational uses can be useful to both the general community as well as the resident-proprietor. Also recognized is the difficulty of writing an ordinance dealing with home occupations in a "middle-of-the-road" fashion which is neither discriminatory nor arbitrary. It is hoped that both the citizens and the courts will recognize these difficulties; that the former will not abuse the privileges granted within the following test; and that the latter will aid in the enforcement of the sometimes arbitrary restrictions necessary to preserve residential character in an expedient manner.

With the above in mind, it is the intent and purpose of this article to provide for certain types of restricted occupational uses within residential districts.

Before drafting an intent and purpose section for a home occupation ordinance, it is wise to consider and record how the issue of home occupations came up in the first instance. For example, why has the community decided to write a home occupation ordinance now? Have home occupations grown tremendously? In what residen-

tial districts of the community have they established themselves? Has the establishment of home occupations caused a problem in some residential areas? What complaints have been received? What are the goals of the community? Would the community like to encourage home occupations in some or all neighborhoods? Why has the community decided to amend its home occupation ordinance? Has it become impossible to enforce the ordinance? Should the home occupations now allowed under the ordinance continue to be allowed? Have certain occupations posed insurmountable problems for neighbors? The answers to some of these questions should be summarized in the "purpose and intent" section of the ordinance.

Listing Permitted and Prohibited Home Occupations

Many communities attempt to list the home occupations that are acceptable or prohibited in one, some, or all residential areas. Such a list may be helpful if it is intended only to provide examples, but limiting home occupations to just those that appear on the list will likely make the ordinance difficult to administer and open to challenge. Zoning ordinances that use such lists tend to perpetuate them through later amendments and in spite of changes in technology and business. As long as an ordinance has not been challenged, the tendency is to not overhaul these lists.

Just as an ordinance that defines home occupations as a customary use may be vague and, consequently, troublesome, an ordinance that lists permitted and prohibited home occupations may be too specific and just as troublesome. For those occupations not listed, the question arises, was the exclusion an oversight or deliberate? For instance, why is a dance studio, left off a list of acceptable home occupations, less acceptable than a music studio? If only white collar professionals are allowed to establish home occupations, does that constitute unfounded discrimination against blue collar occupations? When an ordinance lists permitted and prohibited home occupations, those home occupations that might otherwise meet the regulations are jeopardized simply because they are not listed. Furthermore, if an ordinance specifically permits all or certain home occupations within one or more districts but remains silent as to home occupations in another district, the ordinance will probably be construed to mean that home occupations are not permitted in that district.

These lists do little to provide zoning boards with guidance about whether a new, unprecedented home occupation should be allowed. Because providing guidance to local officials and potential resident-proprietors is what an ordinance is meant to do, the practice of listing permitted and prohibited home occupations is not recommended. Furthermore, too much administrative time is taken up interpreting or amending the list. For example, officials of Ottawa, Ontario, had difficulty explaining why their ordinance permitted speech therapists but prohibited physiotherapists; psychologists but not psychiatrists; and an artist's studio but not a photographer's studio. The list seemed to have no rational basis, and city officials recognized that, because of the limiting nature of the list, potentially desirable services remained unavailable in residential areas. Those who sought to amend the list to include

a home occupation virtually identical in character and neighborhood impact to a presently permitted occupation were often discouraged by the complexity and length of time required by the zoning change process.

Long Beach, California, is one example, however, of a community that employs such a listing in a useful way. Long Beach's home occupation ordinance indicates the general standards that any home occupation in the municipality must comply with and also lists those home occupations that have and have not been approved by local officials. The ordinance provides local officials with standards for assessing the performance of home-based businesses and indicates to persons trying to establish home-based businesses what the city is likely to accept. The full text of the Long Beach ordinance is in the appendix.

Conditions/Criteria

The fifth element of a home occupation ordinance usually is a series of conditions or criteria applied to the operation of home occupations. These conditions are used to carry out the policy statement and to provide guidance for both the administrators who must approve home occupations and the individual who would like to establish a home occupation.

Under its zoning power, a local government has the authority to entirely prohibit all business enterprises from operating in residential districts.¹⁰ Most local governments, however, recognize that certain limited home occupations can be useful to both the general community and the resident-proprietor. In attempting to cater to both, most local ordinances contain reasonable restrictions on business activities in residential districts to ensure that the business remains incidental to the principal, residential use.

Courts have consistently prohibited home occupations when the commercial activity became the dominant use of the dwelling. As one court put it, such situations lead to "the business tail wagging the residential dog."¹¹ For example, in one case the court held that a ceramic business conducted in a residential district was not a home occupation because it employed 13 full- and part-time workers; required five kilns, an electric mixer for the preparation of materials, and an exhaust fan that carried waste products out of the basement work area; and ranged gross sales of \$70,000 per year.¹²

Various conditions are placed on home occupations to ensure that they remain secondary or incidental to the residential use. Some communities have limited the amount of floor space within the dwelling that can be used for the home occupation, limited the number of nonresident employees, or prohibited the storage and/or sale of merchandise on the premises. Several communities place all of these conditions (and more) on home occupations. These particular conditions seem to be the most useful as far as the survey respondents were concerned.

Limitations on floor area. More than 20 percent of the

10. See, e.g., *De Shazo v. City of Huntsville*, 416 So.2d 1100 (Ala. Civ. App. 1982).

11. *Keseling v. City of Baltimore*, 151 A.2d 726, 729 (Md. 1959).

12. *Drawing v. Lower Southampton Township Board of Supervisors*, 397 A.2d 54 (Pa. Commw. Ct. 1979).



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Home-based businesses that employ nonresidents often expand to the point that the business is no longer secondary to the residential use.

respondents to the survey indicated that their ordinance was drafted, at least in part, as an attempt to limit the expansion of particular home occupations into full-fledged commercial enterprises by restricting the gross floor area within a home that could be used for an occupation. Ordinances employing this condition limited home occupations to 10 to 33 percent of the gross floor area of the dwelling or to one room within the dwelling. With all but a few exceptions, accessory structures were not allowed, and attached garages were discouraged as locations for home occupations. Alterations within the dwelling for the purpose of supporting a home occupation (e.g., expanding a room) were actively discouraged by nine percent of the respondents. In a case where the living room, dining room, kitchen, and one bedroom of a house were being used to carry on an insurance business, the primary use was judged to be commercial and not residential.¹³ It is likely that any business that used that great a portion of a house as a base of operations would also exceed the incidental use criteria. According to respondents, medical doctors were probably the worst abusers of the space provisions. Respondents reported that a medical office was the most likely business to expand both in physical size and in the number of medical partners and support staff. This expansion often caused traffic problems in low-density, single-family neighborhoods, and several communities found that it was not uncommon for a doctor to eventually move from the premises while still maintaining offices in the neighborhood.

13. *Metropolitan Development Comm'n v. Mullin*, 399 N.E.2d 751 (Ind. App. 1979).

These ordinances contain typical language used to limit the floor area used for a home occupation:

SECTION 9142.08. CONDITIONS

1. Said use shall be conducted solely within the confines of the main dwelling and shall not exceed ten percent (10%) of the floor area.
3. Garages or carports, whether attached or detached, shall not be used for home occupation other than for the storage of automobile.
9. There shall be no entrance or exit way specifically provided in the dwelling or on the premises for the conduct of the home occupation thereon. (Downey, Calif.)

SECTION 33-29. HOME OCCUPATIONS, REQUIRED CONDITIONS

1. A home occupation shall be incidental to the use of a dwelling unit for residential purposes. No more than five hundred (500) square feet of the floor area of the dwelling unit may be used in connection with a home occupation or for storage purposes in connection with a home occupation. Floor area of a dwelling unit, in this case, shall include the floor area of all heated and ventilated and thereby habitable rooms and areas within the dwelling unit including basements and habitable attic space.
6. No more than one home occupation shall be permitted within any single dwelling unit.
7. A home occupation shall be carried on wholly within the principal building. No home occupation nor any storage of goods, materials, or products connected with a home occupation shall be allowed in accessory buildings or garages, attached or detached. (Rockford, Ill.)

Limitation on employees. Almost 33 percent of the respondents found that limiting the number of persons who can be employed in a home is an effective way to prevent home occupations from taking over as the primary use of the structure. Generally, the employees are restricted to either residents only or to one employee in addition to residents. The need for additional employees is usually an indication that the home occupation has grown to such an extent that it should no longer be considered incidental to the residential use but rather has become a full-fledged commercial business.

There shall be no on-site employment or use of labor from persons who are not bona fide residents of the dwelling. (Arlington, Va.)

Permitted home occupations shall not include the employment of any persons not residing on the premises in the performance of the occupation. (Blaine, Minn.)

No one other than residents of the dwelling shall be employed in the conduct of a home occupation. (Visala, Calif.)

In at least one case, an ordinance that did not specifically limit the number of employees or restrict the employment to occupants resulted in a court decision that declared a real estate office with one secretary and six salesmen a home occupation.¹⁴ The trend, however, clearly seems to

14. *Jones v. Board of Adjustment*, 204 P.2d 560 (Colo. 1949).



Daniel S. Brody

Communities concerned with the expansion of a home occupation restrict the storage, display, and sale of merchandise on the premises.

be to limit employment to family members or, better yet, to occupants. A challenge on constitutional grounds of due process and equal protection to a Virginia ordinance limiting employment in a home occupation to "immediate family residing in the dwelling" was turned back by the Virginia Supreme Court.¹⁵ An Alabama court has held that an ordinance restricting on the number of employees could be constitutionally challenged, yet still upheld a local ordinance restricting employment within a home occupation to one person residing in the dwelling. The issue raised in that case was whether the one person allowed (in this case a dentist) could be construed to be a manager of a business who could then employ nonresidents.¹⁶

Limitations on nonresidents. Ordinances also usually require that the individual primarily responsible for the home occupation live in the dwelling. This requirement ensures that the home occupation remains the incidental use and that the resident-proprietor does not become an absentee landlord (only working in the area), who may care less about the effect of the home occupation on the neighborhood. For example, a doctor could not turn his or her home into an office and then move out to another residence—even if the doctor then rented the residential part of the dwelling to someone else for use as a home.

Limitation on storage and sales. Limitations on the storage of goods within a dwelling (a concern of eight percent of all respondents) and restrictions on sales from the dwelling (a concern of 13 percent) were other means employed to control the size of the home occupation within the dwelling.

15. *City of Manassas v. Rosson*, 294 S.E.2d 799 (Va. 1982).

16. *DeShazo v. City of Huntsville*, 416 So.2d 1100 (Ala. Civ. App. 1982).

There shall be no outdoor storage of materials or products on the premises. Indoor storage of materials or products shall not exceed the limitations imposed by the provisions of the building, fire, health, and housing codes. (Forest Grove, Ore.)

No stock-in-trade shall be displayed or maintained on the premise and no retail sales on the premise shall occur. (Southern Pines, N.C.)

There shall not be conducted on the premises the business of selling stocks of merchandise, supplies, or products, provided that orders previously made by telephone or at a sales party may be filled on the premises. That is, direct sales of products off display shelves or racks is not allowed, but a person may pick up an order placed earlier as described above. (Danville, Ill.)

Restricting sales from the premises also ensures that additional pedestrian and vehicle traffic will not flow into the neighborhood. Most home occupation ordinances that were returned with questionnaires were very concerned with the traffic impacts of a home occupation on the neighborhood.

IMPACTS ON THE SURROUNDING NEIGHBORHOOD

In addition to ensuring that home occupations remain incidental and accessory uses within the dwelling, the conditions cited above help ensure that any coincidental nuisance remains within the dwelling. Most communities surveyed, however, were primarily concerned with the impacts of home occupations on the surrounding neighborhood. The largest potential negative impacts upon a neighborhood, as perceived by planners and evident in their zoning ordinances, were "general nuisances." Sixty percent of all respondents' ordinances specifically limit

home occupation operations on the basis of the odor, dust, glare, heat, smoke, fumes, and vibrations they may generate. Thirty-three percent of the respondents specifically singled out noise as the most pernicious nuisance; and seven percent expressly forbade home occupations that produced electrical interference with nearby neighborhood machinery or equipment. These ordinances usually specifically prohibited the use of electrical equipment that is not ordinarily found in a home and used for domestic purposes. Many communities (and courts) construe this provision to also include equipment often found in many homes (for example, personal computers). On the other hand, beauty parlors, often prevented as a home occupation because they are viewed as commercial uses, have been allowed in some communities because the equipment used is no longer substantially different from that found in many residences. The following examples give typical conditions used by communities to try to prevent general nuisances.

There shall be no audible noise, detectable vibration, or odor beyond the confines of the subject dwelling or accessory building, including transmittal through vertical or horizontal party walls. (Arlington, Va.)

The home occupation shall not cause any external effect associated with the home occupation, such as increased noise, excessive lighting, or offensive odor, which is incompatible with the characteristics of the residential zone, or in violation of the provisions of any applicable government code. There shall be no illegal discharge of any materials, fluids, or gases into the sewer system or any other manner of discharging such items in violation of any applicable government code. (Forest Grove, Ore.)

[A home occupation shall] produce no noise or obnoxious odors, vibrations, glare, fumes, or electrical interference detectable to normal sensory perception outside the structure. (Washington County, Ore.)

The conditions set forth in an ordinance to control nuisances were alluded to in a few cases as "performance standards" for home occupations. In most ordinances, however, the conditions were not performance standards in the strict sense of the term. Strictly defined, performance standards are quantitative measures of the effects or characteristics of a particular use that may not be exceeded. The precise manner in which the conditions are met may be left up to the occupant, and thus a degree of flexibility is allowed. In the case of home occupations, strict performance standards might be a measure of the amount of acceptable noise or light emanating from the business or the permitted horsepower and/or voltage of equipment used in a home occupation.

Performance standards for nuisances such as noise, glare, odor, smoke, etc., however, are generally not easy to measure and enforcing them takes time and personnel—two relative luxuries in most planning departments. Of all the ordinances scrutinized, none actually applied performance standards for the measurement of the potential nuisances mentioned above. However, quantitative measures of traffic flow, parking spaces, the number of employees and customers, and floor area can go a long way toward ensuring that home occupations do not get out of hand; they will also make an ordinance more effective.

Basically, these standards allow home occupations to exist subject to conditions that, when met, ensure that the home occupation does not change the residential character of the dwelling that houses the occupation and does not change the residential character of the surrounding neighborhood.

The second largest potential negative impact perceived by planners was excess car or pedestrian traffic generated by the home occupation. The zoning ordinances of 46 percent of the survey respondents allowed home occupations only if they did not generate an "excess amount" of extra traffic in the neighborhood.

Conditional use permits shall not be granted when it appears to the City Council that the proposed home occupations will constitute a fire hazard to neighboring residences, will adversely affect neighboring property values, or will constitute a nuisance or otherwise be detrimental to the neighbors because of excessive traffic, excessive noise, odors, or other circumstances. (Blaine, Minn.)

No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. (Southern Pines, N.C.)

Deliveries from commercial suppliers may not be made more than once each week and the deliveries shall not restrict traffic circulation. (Danville, Ill.)

In an attempt to discourage pedestrian and vehicle traffic to the residence, some ordinances prohibit any newspaper, radio, TV, or telephone directory advertising of the home occupation in which the address is supplied.¹⁷

Commercial traffic to and from the residence (for example, in the form of pick up and delivery vehicles) was discouraged in the ordinances of four percent of the respondents. A typical method for the prevention of commercial traffic is to restrict the weight limit of trucks allowed in residential areas.

Almost a third of the respondents attempted to abate general on-street parking problems in their home occupation ordinance. Ordinances either prohibited on-street parking (three percent specifically require off-street parking) or required that home-based businesses schedule client appointments or limit the number of clients received at one time to prevent parking problems in the neighborhood.

The home occupation shall not cause the elimination of required off-street parking. (Forest Grove, Ore.)

Instruction of students (including delivery of materials clearly incidental to training) and services to clients or customers shall be limited to twelve (12) persons per day but in no event more than four (4) persons at any one time. (Arlington, Va.)

Commercial vehicles owned in connection with a home occupation were prohibited from parking on site by five

17. At least one court has held that such prohibition violated the limited protection given commercial speech under the First Amendment when the regulation has not been shown to be essential for the purpose of achieving an important governmental objective. *Burger v. Board of Trustees of Montville Township*, 389 N.E.2d 866 (Ohio Misc. 1979).

percent of all the respondents. Although courts have generally supported the right of communities to require that commercial vehicles be parked in garages or carports (both to prevent on-street parking problems and to preserve the aesthetic appeal and property values of a community), they have struck down ordinances that could be used against noncommercial trucks. For example, a Florida court struck down an ordinance that prohibited the parking of 3/4 ton pick-up trucks in a residential area (unless in a garage or carport) between the hours of 9 p.m. and 6 a.m. The court found that the ordinance prevented the owners of noncommercial trucks from visiting friends and parking their trucks on the host's road, driveway, or lawn.¹⁸

A decline in the aesthetic quality of the neighborhood was a concern of 42 percent of the respondents. The regulation of neighborhood aesthetics follows the trend in case law toward the recognition of aesthetics as a proper basis for land-use regulation. Although some commentators have argued against basing any portion of a zoning ordinance on aesthetic considerations, aesthetic elements within a zoning ordinance may be a reasonable method of achieving an attractive and efficiently functioning community.

Respondents specifically regulated the signs used by home-based businesses as a first step to prevent glaring visual impacts of home occupations on surrounding

neighborhoods. Although many ordinances allow no signs, most allow at least a small, unilluminated nameplate identifying the business.

[A home occupation shall] limit any external evidence of an occupation to one (1) identification sign not to exceed two (2) square feet in area. (Washington County, Ore.)

There shall be no exterior indication of the home occupation; no exterior signs shall be used; no other on-site advertising visible from the exterior shall be used that informs the public of the address of the home occupation. (Forest Grove, Ore.)

Eleven percent of the respondents prohibit the outdoor storage and display of inventory and merchandise as a further attempt to prevent negative visual impacts upon the neighborhood or to remove exterior evidence that a home occupation exists.¹⁹

There shall be no storage of equipment, vehicles, or supplies associated with the home occupation outside the dwelling. (Visala, Calif.)

No outdoor display or storage of materials, goods, supplies, or equipment shall be allowed. (Largo, Fla.)

19. According to respondents, the biggest abusers of this provision are building contractors. Although several contractors have argued that they engage in traditional home occupations, several courts have held that contracting is not a home occupation since the business is not carried out in the home. See, for example, *Perron v. City of Concord*, 150 A.2d 403 (N.H. 1959).

18. *Proctor v. City of Coral Springs*, 396 So.2d 771 (Fla. Dist. Ct. App. 1981).



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Chapter 3. Administration and Enforcement

A common complaint among potential resident-proprietors is that home occupations are treated arbitrarily. Such complaints often stem from the fact that the resident-proprietor has little idea about the review procedures that will be used to determine whether the home occupation should be allowed. A home occupation ordinance, therefore, should include a thorough statement of these review procedures.

PERMITS

A few of the survey respondents allow all home occupations by right in residential districts, and a few communities go to the other extreme and do not allow them at all. But most of the respondents reported that they regulate home occupations through the use of special permits.²⁰ Most communities specify home occupations as accessory uses in residential districts subject to conditions such as those identified in the previous chapter and to

20. Special permits are called by different names, e.g., conditional use permits, special use permits, special exception permits, or more particularly "home occupation" permits. For simplicity's sake, all permits are referred to here as special permits.

Home occupations, or cottage industries, in sparsely populated rural areas are unlikely to disturb neighbors.

administrative review. Several of the respondent communities require a current business license as well as zoning approval; a few communities regulate home occupations solely through licensing procedures.

A permit for a home occupation is usually issued as long as the conditions spelled out in the zoning ordinance are met. The conditions must be explicit enough, however, to make it easy to determine if the permit applicant has complied; compliance is difficult to assess when the conditions are broad and vague. Furthermore, denial of a home occupation permit may be overturned by the courts if the zoning ordinance only vaguely defines "home occupation" and the conditions attached to home occupations.²¹

Respondents reported that special permits for home occupations were usually granted by the local planning board or zoning administrator. Although a few communities delegated the authority to grant special permits for home occupations directly to the governing body (e.g., the town council), the local elected legislative body usually only hears appeals following the denial of a home occupation permit by the administrative body. Respondent communities were split on whether they required special permit applicants to go through a public hearing before the permit is granted. Most required published or posted

21. See, for example, *Sanborn v. Town of Eliot*, 425 A.2d 629 (Me. 1981).

notice of a public hearing so that adjacent property owners could voice their opinions. Letters announcing the hearing are often sent to community organizations and adjacent property owners.

When special permits are authorized by the local zoning or planning officer and without public notice, the procedure is very quick. A saving of staff time and money is, of course, very important to local governments. As long as the conditions set out in the ordinance are clear, the quick approval by an administrator should pose no problem, especially when the permit applicant can appeal a denial. Many communities felt strongly that, because home occupations have the potential to interfere with the residential character of a neighborhood, there should always be a public hearing before the grant of a permit. Such a process, however, adds not only a great deal of time to the home occupation permitting process but, according to some respondents, encourages clandestine home-based businesses.

Some respondents, in an effort to streamline the permitting process, divide home occupations into those that can be issued a special permit without a public hearing and those that require a hearing. For example, the city clerk of Blaine, Minnesota, will directly issue a special permit for the following home occupations: dressmaking, sewing, and tailoring; painting, sculpturing, or writing; telephone answering; home crafts, such as model making, rug weaving, lapidary work, and cabinet making; tutoring, limited to one student at a time; home cooking and preserving; computer programming; and secretarial service. Other home occupations require a public hearing before a special permit can be issued, and all home

occupations, including those listed above, have to conform to the conditions stipulated by the zoning ordinance.

Port Angeles, Washington, goes even further: certain home occupations (e.g., composers; writers; building contractors; landscaping service; and commercial loggers) are not required to go through either administrative review or a public hearing as long as the operation of the business conforms to ordinance conditions. Port Angeles is also one of the few respondents that allow a special review for persons with demonstrated physical handicaps who want to run a home-based business. Handicapped persons in Port Angeles (unless engaging in one of the occupations listed above) have to go through a public hearing but can request a waiver of some of the home occupation ordinance conditions. For example, the Port Angeles ordinance does not allow the on-premises sale of goods not produced on the premises. However, the planning commission can waive this condition for a handicapped person working at home as long as the basic residential character of the dwelling or the neighborhood is not changed. An ordinance such as this helps prevent harsh decisions that have not allowed exceptions for handicapped persons. For example, in *Szmigiel v. Kranker*, 298 A.2d 629 (Pa. Commw. Ct. 1972), the court held that, because a part-time printing business was not a customary home occupation, the handicapped resident could not carry out the business in his basement, even though the resident "did not advertise and made little noise."

LICENSING

Licensing systems for home occupations also provide the planning and/or zoning administrator a relatively

Some employers hire the handicapped to work at home, and some ordinances have fewer restrictions on home occupations run by the handicapped.



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quick means for authorizing home occupations in residential districts. Discretion for granting the home occupation a business license may reside with the city clerk or the building inspector. There is no public hearing, but the applicant can appeal a license denial. The benefit to the local government in licensing the home occupation is that the license is temporary and subject to periodic review. Each time a license is up for renewal, the effect of the home occupation on neighbors and the residential character of the neighborhood can be reassessed. Furthermore, license fees can help defray administration, inspection, and enforcement costs. However, licensing systems can be abused; if a zoning board is inclined to automatically issue home occupation licenses, the basic rationale of establishing zoning districts can be undermined.

Very few of the survey respondents used only a licensing procedure for regulating home occupations; several used the more comprehensive regulatory system that incorporates both licensing procedures and zoning approval of the home occupation based on conditions laid down in the ordinance. Whereas licensing alone may only involve the city clerk or the building inspector, licensing and zoning approval involves the planning department as well and usually results in more effective and fair regulation.

To ensure that administrative approval does not supersede the zoning ordinance restrictions on home occupations and that the license applicant understands what is required under the ordinance, business license application forms generally incorporate the language of the zoning ordinance. For instance, license application forms in Gresham, Oregon, and Chesapeake, Virginia, list the restrictions placed on home occupations in the community. The applicant signs the form indicating that he or she understands what aspects of the operation will be subject to inspection by local agencies.

Although zoning regulations together with a licensing procedure provide a more comprehensive regulatory scheme, some communities regulate home occupations solely under the zoning ordinance or solely under a licensing procedure to avoid problems in coordinating departments. Simple interoffice procedures, however, have been used successfully in some communities. For example, the city of Roseville, California, requires anyone starting a home-based business to obtain a special home occupation permit on which he or she must indicate that the activity conforms to conditions within the ordinance. It also requires that the applicant obtain a city business license following approval of the special permit by the planning department. Fire department approval is also necessary if the home occupation involves the storage of flammable or hazardous materials. The planning department requires the applicant to fill out a "home occupation clearance form" to ensure that the applicant knows of these business license and fire department reviews.

Once home occupation applicants have passed through the special permit process or been granted a business license, a home occupation permit (or, in some communities, a certificate of occupancy) will be issued. Most communities put a time limit on the permit. For example, it may be issued for one year and, thereafter, for two-year periods upon review. Some communities issue permits good for the life of the business (as long as there is com-

pliance with zoning regulations). The permit is not transferable to subsequent occupants of a residence, and the permit holder cannot take the permit along to a new residence. In communities that grant business licenses as well as home occupation permits, the permit is usually good for as long as there is an active business license maintained.

HOME OCCUPATION CLASSIFICATIONS

Several communities over the last few years have amended their definition of a home occupation to include a classification system for home occupations. These definitions, for example, might classify major vs. minor home occupations; high-intensity vs. low-intensity home occupations; or even urban vs. rural home occupations. Falls Church, Virginia, has divided its home occupation definition into major and minor categories.

Minor Home Occupation. A home occupation in which no persons other than members of the family residing on the premises are engaged in the occupation, which has no visible exterior evidence of the conduct of the occupation, which does not create need for off-street parking beyond normal dwelling needs, which does not generate additional traffic, and in which no equipment is used other than that normally used in household, domestic, or general office use.

Major Home Occupation. A home occupation in which not more than one person other than members of the family residing on the premises is employed on the premises, which has not more than one unilluminated sign not exceeding one square foot in area as visible exterior evidence of conduct of the occupation, and which accommodates both dwelling and home occupation parking needs off the street.

The division of home occupations into major and minor occupations helps simplify administrative procedural lines. Minor home occupations do not usually require a permit or, if a permit is required, no public hearing may be required. Elkhart, Indiana, requires a special permit for home-based businesses employing people other than residents of the dwelling and for businesses that are likely to store materials and finished products (within an enclosed building). Washington County, Oregon, divides home occupations into those that require only an administrative permit and those that are likely to have a greater effect on the residential character of a neighborhood and, therefore, require that some notice of the permit be given to adjacent property owners.

Livermore, California, allows some home occupations by right—that is, home occupations "that would be almost impossible to regulate" (e.g., artists; babysitters; house cleaners; telephone solicitors), and "are customarily functions of the home and are not normally detrimental to the neighborhood." Other home occupations are allowed by permit granted by the zoning administrator. Home occupations found in this second category are thought not likely to have a negative effect on the residential character of a neighborhood and, as such, do not warrant a public hearing. These occupations include accounting, photography, typing services, day care, mail orders, and off-premises appliance repair. Still other home occupations are granted permits by the planning commission (for example, pest control services and gunsmiths), with or without a public hearing. The planning commission may



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Taxes may be for certain, but the effect of a rural home occupation on its surroundings is likely to vary.

hold a public hearing to determine the nature of the proposed home occupation; to determine if the home occupation will be detrimental to the neighborhood; to alert adjacent property owners; and to hear explanations by the applicant that may counter the objections of neighbors. The commission regularly denies permits for some home occupations, including printing, wholesale or retail sales, catering services, the practice of psychology, barber/beauty shops, and small-engine repair.

St. Petersburg Beach, Florida, permits "low-intensity" home occupations in any residential district as long as the home occupation meets several conditions stated in the ordinance (see the appendix). Examples of low-intensity home occupations include those run by artists, tailors, secretaries, telephone solicitors, and consultants. High-intensity home occupations in St. Petersburg Beach are permitted in residential districts but are subject to specific review and approval by the Board of Adjustment. The ordinance also states that, "by the nature of the capital investment required or scope of operation, certain uses . . . shall not be permitted as home occupations." These uses include automobile repair, beauty shops, medical offices, real estate brokerages, upholstery, art studios, dance or music studios with more than four students, and kennels.

A few county government home occupation ordinances have categorized home occupations as rural or urban. This classification recognizes that in sparsely populated areas of a county, home occupations are unlikely to disturb the residential peace of adjacent property owners. King County, Washington, in addition to distinguishing between rural and urban home occupations, has estab-

lished a third category for the "cottage industry." Cottage industries are permitted (with a conditional use permit) in the agricultural, suburban estate, and suburban cluster districts of the county.

21.04.096 COTTAGE INDUSTRY

"Cottage Industry" means any activity undertaken for gain or profit and carried on in a dwelling, or building accessory to a dwelling, by members of the family residing in the dwelling and up to three additional unrelated people.

P. Cottage Industries, only in the following zones: G-5, G, A, S-E, S-C, GR-5, and GR-2.5, provided the following conditions are conformed to:

1. The site shall have a minimum area of 35,000 square feet and meet the lot size requirements of the applicable zone;
2. The cottage industry shall be incidental to the use of the property for dwelling purposes and shall be less than 50 percent of the living area of the dwelling. This 50 percent square footage limitation includes outdoor assembly and storage areas but not required parking areas;
3. The following uses shall not be allowed:
 - a. Any activity that might result in excessive noise, smoke, dust, odors, heat, or glare beyond that which is common to a residential area. The proposed use shall conform to the maximum permissible sound levels under K.C.C. Chapter 12.88. The zoning adjustor may require an applicant to provide sound level tests demonstrating such conformance.
 - b. Use or manufacture of products or operations that are dangerous in terms of risk of fire, explosion, or

hazardous emissions.

- c. Any other use deemed incompatible with a residential and/or agricultural area, subject to the review of the zoning adjustor;
4. Landscaping shall be required to screen parking areas and outside storage from the view of adjacent landowners and county roads;
5. Increased setbacks or additional screening may be established by the zoning adjustor to ensure that any proposed structure is compatible with the surrounding residential or agricultural area;
6. Required zoning setbacks may be increased subject to the review of the zoning adjustor for any activity that could potentially detract from a residential area but that is not deemed incompatible with the neighborhood. Such activities include but are not limited to: employee parking areas, loading zones, outdoor storage, and outdoor work areas;
7. Any display or sign shall be subject to the review of the zoning adjustor;
8. All sales shall be an incidental use;
9. The allowable size of equipment used by the cottage industry shall be subject to the review of the zoning adjustor.

Those communities that have adopted a division of home occupations into major and minor categories have found the division most useful. Distinguishing between major and minor home occupations is intuitively obvious. The ordinances that use such distinctions clearly make the point that there is a difference between a cosmetics salesperson who works out of the home, uses the telephone, and stores some merchandise in the top of a closet, and an automobile repair shop that operates out of an attached garage with 10 customers a day.

ENFORCEMENT

Of the home occupation ordinances received from survey respondents, only a few included the sixth and final element of a home occupation ordinance, an enforcement and/or penalty section. However, many zoning codes do contain these elements as general provisions that apply to the code as a whole, so that it is unnecessary to repeat these provisions within the home occupations portion of the ordinance.

Enforcing regulations controlling home occupations is a major problem for most planning departments or zoning administrators. The home occupation ordinance may be too strict or too vague, or it may be riddled with loopholes. A common occurrence is to find the planning staff acting as the first line of defense against the complaints of neighbors, while elected city officials stand back because they consider tampering with home occupations political dynamite. Although home occupations very often go undetected, this is not a problem, practically speaking, to many ordinance enforcement agencies simply because the agency doesn't have enough staff members to worry about it. The unwritten rule in enforcement of home occupations for most communities is that if no one complains, there is no problem.

Almost 50 percent of the respondents to APA's home occupations questionnaire specifically reported that they rely on the complaints of neighbors to follow up on home occupations violations. A common comment was that the neighbors are in the area 24 hours a day and can police the neighborhood better than the enforcing department could ever hope to. Other than responding to complaints, the most frequently used method used to monitor home occupations (as reported by 49 percent of the respondents) is inspection of the home occupation based on the information obtained through a permitting and/or licensing procedure. Many respondents (30 percent) make periodic inspections, or even spot inspections, on home occupations, especially when there are obvious violations of the permit or license such as obtrusive signs or storage of materials on the lot.

When all else fails, a few enforcing agencies (three percent of the respondents) said that they monitor home occupations by making windshield surveys of neighborhoods in an attempt to discover egregious violators, or they scrutinize newspaper and yellow pages advertisements to find home occupation addresses.

Generally, any violation of the conditions set forth in the zoning ordinance, such as a change in the extent of use, area of the dwelling unit being used, outdoor storage, hours of operation, etc., is grounds for the revocation of a home occupation permit, unless the change was first cleared and approved by the planning department or zoning administrator. Failure to renew an annual or periodic business license often involves the payment of a late fee within a set period (e.g., 30 days) after the due date or the revocation of the license if it has not been renewed within that period. Many respondents reported that once a permit and/or license has been revoked, they would not allow the home-based business proprietor to reapply for a period of up to one year. Failure to allow inspections of a home occupation at reasonable times may also result in termination of a permit. Revocation of permits is usual where the applicant is found to have given false statements in the permit application.

Some ordinances provide for very strict fines and penalties for violation of the conditions stipulated in the zoning ordinance. The Marquette, Michigan, ordinance provides that any violation of the ordinance is declared to be a public nuisance per se, and the violator is guilty of a misdemeanor. If convicted, that person will be fined by not more than \$100 or spend up to 30 days in the county jail; every day that the violation is committed constitutes a separate offense. Port Angeles, Washington, punishes with a fine up to \$500 for each misdemeanor offense. However, any ordinance that is to be enforced through criminal law must be very clear and provide fixed standards as to what is permitted and prohibited in any particular instance. Otherwise, "[i]f an ordinance can be construed to create a criminal offense, not by its definite language, but merely according to a zoning administrator's interpretation of that ordinance, we become a state governed not by laws but by administrators."²²

With regard to penalty provisions, drafters should refer

22. *Trice v. City of Pine Bluffs*, 649 S.W.2d 179, (Ark. 1983).

to city or county and state law to determine if there is a limit on the penalty that may be imposed. Typical penalties incurred for the violation of a home occupation ordinance include revocation of a home occupation permit and/or business license. Regulations from Pico Rivera, California, and Rockford, Illinois, provide good examples.

G. Issuance, Terms, Revocation, and Expiration of Permits.

The zoning administrator may issue a home occupation permit that complies with the provisions of this section, on forms prescribed by him, and may require additional terms and conditions considered necessary to assure the integrity of such permit and the zone in which it is proposed to be located. Should, at any time during the period which a home occupation permit is in effect, the zoning administrator find, after conducting an investigation, that the operation of such home occupation is in violation of the provisions of this section and/or the terms and conditions subject thereto, he shall by declaration serve notice of revocation of the home occupation permit. In any case a home occupation permit shall expire at the same time a business license issued therefor expires and shall not remain in effect unless and/or until such business license has been renewed by the city clerk, provided such renewal takes place within 30 days after such expiration of business license comes due. (Pico Rivera, Calif.)

IV. Enforcement and Revocation of Home Occupation Permit.

The following shall be considered as grounds for the revocation of a home occupation permit or for the assessment of fines as specified.

- A. Any change in use or any change in extent of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that is different from that specified in the granted home occupation permit form that is not first cleared and approved by the building official shall be grounds for the revocation of a home occupation permit.
- B. Any change in use, extent of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that results in conditions not in accordance with the provisions of the "required conditions" subsection (II), shall result in immediate revocation of the home occupation permit.
- C. Failure to allow periodic inspections by representatives of the building division at any reasonable time when an adult member of the family is present shall result in the immediate revocation of the home occupation permit.
- D. Failure to pay the annual renewal fee shall result in the assessment of an additional ten dollars (\$10.00) processing fee if paid within thirty (30) days after the due date; or revocation of the home occupation permit if not paid with thirty (30) days after the due date.
- E. Home occupation permits which have been revoked may not be applied for again until a period of one year has lapsed from the date of revocation. (Rockford, Ill.)

Pullman, Washington, establishes elaborate enforcement procedures within its home occupation ordinance. Such provisions give adequate guidance both to the local citizen who would bring a complaint against a home-based business and to the local planner who must determine whether there has been an ordinance violation.

SECTION 5. 17.34.050—ENFORCEMENT PROCEDURES

1. Any aggrieved person believing that a violation or violations of this chapter is occurring and who desires that action be taken by the city shall notify the city planner of such written allegation(s). Within 30 calendar days after receipt by the city planner of such written allegation(s), the city planner shall complete an investigation of the alleged allegation(s) to determine the merits thereof. Within 10 calendar days after the city planner has completed the investigation(s), he shall notify in writing the following persons:

- (a) If the city planner determines that no violation as alleged or otherwise is occurring, then notification of that decision shall be given to the complaining person or a spokesperson for complaining person by certified mail, return requested.
- (b) If the city planner determines that a violation is occurring or has occurred as alleged, then notification of that decision and a time for compliance shall be sent by certified mail, return requested, to both the violator and the complaining person or a spokesperson for the complaining person. The notification shall also state what action, if any, will be taken if compliance is not timely effected.

LEGAL ISSUES

Only four percent of the survey respondents indicated that they had experienced legal challenges. Several respondents, however, indicated that they saw legal challenges looming on the horizon. Legal challenges encountered by respondents tended to be based on neighborhood impacts caused by high-intensity home occupations, including an automobile body shop, a bakery, and a beauty shop.

In general, courts have upheld zoning ordinances dealing with home occupations as long as the homeowner/business operator has not been subject to unreasonable restrictions on the use of the residence. However, for a zoning regulation to be considered unreasonable, application of the regulation would have to render a person's property almost worthless; an ordinance is not invalid or contradictory in nature because it does not allow a person to put his or her property to its most profitable use. With regard to home occupations, an ordinance regulating home occupations will not be considered invalid unless, because of the regulation, the property cannot yield a reasonable return if used only for the purposes allowed in the district. Any home, used as a home in a residential district, is presumed to yield a reasonable return upon resale.

Advocates for home-based businesses have argued that to restrict the use of a home so as not to allow a home occupation will reduce the value of the property and that, if the ability to develop a home occupation was part and parcel of owning the house, an owner could get a greater return on his or her investment. With regard to zoning law, the limitations of profits as a consequence of the zoning restriction and the highest and best use of the property involved are factors that a court would consider in its determination of the validity of a home occupation ordinance. Other factors, however, would also be considered—for example, the depreciation of value to adjoining properties that may be caused by allowing home occupations.

In determining the validity of any zoning ordinance, including one that regulates home occupations, the community interest must be balanced against the property rights of individual owners. A zoning ordinance is not going to be held invalid if individual rights are restricted for the greater good of the public. The welfare of the community is not going to be subordinated to the profit motive of a single individual. On the other hand, there is no basis for the exercise of a local government's zoning power if the public gain is small compared with an individual's loss and hardship.

A local government, through the use of its zoning power, can easily permit or provide for incidental, accessory uses such as home occupations in a residential district. A local government can just as easily exclude all or some home occupations from residential districts. Again, restricting all or some home occupations from a residential district will not be valid when the restriction would seem to be capricious or without relation to the public welfare.

The exclusion of places of business from residential districts is not a declaration by the local government that such businesses are nuisances, or that they are to be suppressed as such. But occupations that are not nuisances per se, but which are liable to become such, or which may become nuisances by reason of the inappropriateness of the places in which they are conducted, may be legally excluded from particular localities. Whether a zoning ordinance is arbitrary in prohibiting the use of the property for such an occupation in certain districts is a question for the courts to answer.

CONSTITUTIONAL CONSIDERATIONS

As long as a zoning regulation is valid, its enforcement will be a proper exercise of a local government's police power, even if that means that private interests are to some extent hindered, or an owner is deprived of the right to use his or her property in some specific manner. Simply stated, a valid zoning regulation conforms to state and federal constitutional requirements and is designed to promote and/or protect the public health, safety, morals, or welfare.

Due Process

If a zoning ordinance is not designed to promote or protect the general welfare, or if the ordinance is unreasonable in that the public benefit conferred is small compared to the burden placed on a private property owner, then the ordinance will not be a valid exercise of the local police power, and the ordinance enforcement amounts to a taking of property right(s) without due process of law. A decision that an ordinance is unconstitutional because it violates the due process clause of the constitution is based both on the owner's loss of property value and the fact that the public welfare does not require the zoning regulation.

It seems unlikely that a home occupation ordinance

would ever be challenged as a violation of constitutional due process rights. A person challenging would have to show that his or her house could not be put to a reasonable and lawful use under the ordinance, and, thus, the property is being taken without due process of law. Even if a homeowner is not allowed to conduct a particular home occupation, the building can still be reasonably used as a residence.

Equal Protection

Zoning regulations must also guarantee equal protection of the law to the entire community. This guarantee requires that zoning powers be exercised reasonably and that the enforcement methods of zoning ordinances have a substantial relationship to implementing zoning policy. This means that zoning authority may not go beyond public need nor place unnecessary restrictions on private property use. The zoning ordinance must also have a rational system for classifying persons or property so that no arbitrary discrimination results. There must be a reasonable basis for differentiating between a class of people or property to which an ordinance applies and the class to which it does not. Without this basis the ordinance may prove to be discriminatory.

A challenge to a home occupation ordinance would likely be based on a violation of the equal protection clause. In fact, some legal commentators have argued that many home occupation ordinances could be constitutionally invalid under the equal protection clause. However, home occupation ordinances are probably not deliberately discriminatory; any invalidity seems to stem from overly broad, vague language. (Notwithstanding the fact that at least one court has found that the term "home occupation" in a zoning ordinance is not rendered vague by the absence of a definition or examples in the ordinance. See *Town of Milford v. Bottazzi*, 443 A.2d 1269 [N.H.1981].) Such ordinances can be improved through better ordinance drafting.

There have not been many legal challenges to home occupation ordinances in the past. Yet, as home occupations have become more prevalent throughout the country, zoning ordinances that regulate them are often viewed as regulations that unduly restrict personal liberty. Several home-based work groups have been building challenges to local zoning ordinances that they believe to be vague, inconsistent, or discriminatory. The International Association for Home Business has been soliciting support from its members for a class action suit on "the right to choose the workplace."

In order to prevent legal challenges to an ordinance, drafters must indicate clearly how their ordinance provides for the general welfare. It is only within the text of the zoning ordinance that the intent can be made clear and the ordinance made legally defensible.

Appendix. Selected Home Occupation Ordinances

Rockford, Illinois

SEC. 33-29. HOME OCCUPATIONS

I. Intent and Purpose

Traditionally, in zoning, certain occupational uses termed "home occupations" have been allowed in dwelling units. Such uses have been allowed largely on the basis that such uses are incidental to the use of the premises as a residence, that the nature of home occupational uses is such that they are compatible with or even "belong" in the home, or that home occupational uses are of a highly professional nature involving the use of mental rather than physical capabilities and are therefore compatible with residential uses.

Unfortunately, as perusal of court rulings on home occupations will show, all of the above criteria defy precise definition or interpretation. Definition of home occupations by the above criteria has in some cases totally prohibited home occupations while in other instances allowed uses which markedly detract from the residential character of a neighborhood and thereby infringed upon the rights of surrounding residents.

In reaction to the fact that liberal home occupation ordinances allowing a wide variety of uses are extremely difficult to administer, enforce, and control, many communities have chosen the alternative to prohibiting such uses altogether.

It is recognized, however, by this community, that certain limited home occupational uses can be useful to both the general community as well as the resident-proprietor. Also recognized is the difficulty of writing an ordinance dealing with home occupations in a "middle-of-the-road" fashion, which is neither discriminatory nor arbitrary. It is hoped that both the citizens and the courts will recognize these difficulties; that the former will not abuse the privileges granted within the following test and that the latter will aid in the enforcement of the sometimes arbitrary restrictions necessary to preserve residential character in an expedient manner.

With the above in mind, it is the intent and purpose of this article to provide for certain types of restricted occupational uses within residential districts. Only such uses will be allowed which:

1. Are incidental to the use of the premises as a residence;
2. Are compatible with residential uses;
3. Are limited in extent; and
4. Do not detract from the residential character of the neighborhood.

II. Home Occupations, Required Conditions

A home occupation is any gainful occupation or profession engaged in by an occupant of a dwelling unit which meets the following conditions and requirements:

A. In all cases:

1. A home occupation shall be incidental to the use of a dwelling unit for residential purposes. No more than five hundred (500) square feet of the floor area of the dwelling unit may be used in connection with a home occupation or for storage purposes in connection with a home occupation. Floor area of a dwelling unit, in this case, shall include the floor area of all heated and ventilated and thereby habitable rooms and areas within the dwelling unit, including basements and habitable attic space.
2. On the premises, retail sales shall be prohibited except for the retail sales of products or goods produced or fabricated on the premises as a result of the home occupation.
3. Only members of the immediate family permanently residing on the premises shall be employed in the home occupation.
4. In no case shall a home occupation be open to the public at times earlier than 8:00 a.m. nor later than 10:00 p.m.
5. No more than ten (10) people may avail themselves of the services provided by the home occupation use at a given dwelling unit at any given moment in time.
6. No more than one home occupation shall be permitted within any single dwelling unit.
7. A home occupation shall be carried on wholly within the principal building. No home occupation nor any storage of goods, materials, or products connected with a home occupation shall be allowed in accessory buildings or garages, attached or detached.
8. There shall be no exterior indication of the home occupation or variation from the residential character of the principal building.
9. There shall be no exterior storage of materials to be used in conjunction with a home occupation.
10. There shall be no deliveries to or from a home occupation with a vehicle larger than a three-quarter ton truck.
11. No materials which decompose by detonation shall be allowed in conjunction with a home

occupation.

12. A home occupation shall produce no offensive noise, vibration, smoke, electrical interference, dust, odors, or heat. A home occupation as provided by this section shall be completely contained within the principal building. Any noise, vibration, smoke, electrical interference, dust, odors, or heat detectable beyond the property lines or beyond the walls of the dwelling unit, if the unit is part of a multifamily structure, shall constitute a violation of the terms of this provision. The judgment of the building official shall be considered decisive and final in this matter unless formally appealed to the building board

of appeals within forty-five (45) days of the building official's written determination.

B. Multifamily dwelling units

Home occupations that attract customers, clients, or students to the premises for sales or services shall not be allowed in multifamily dwelling units.

- C. Home occupations that comply with the above conditions may be permitted in any residential district upon the issuance to the applicant of a home permit. . . .

- D. All home occupations shall be subject to periodic inspections. . . .

Blaine, Minnesota

SECTION 33.11 HOME OCCUPATIONS

- a. **Intent.** In order to provide peace, quiet, and domestic tranquillity within all residential neighborhoods within the city, and in order to guarantee to all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas.

b. Definitions

1. A home occupation is defined as any business or commercial activity that is conducted or petitioned to be conducted from property that is zoned for residential use.
 2. A home occupation permit is a permit issued for home occupation that is authorized by this section without hearing.
 3. A home occupation conditional use permit is a permit authorized by the city council only after a public hearing by the planning commission.
- c. No home occupation shall be permitted without the prior issuance of a home occupation permit or conditional use permit.
- d. A home occupation permit for the following home occupations shall be issued by the City Clerk, upon application to the Office of Community Development and payment of the permit fee, without hearing, provided that said home occupation is conducted solely and singly by the applicant, who shall reside on the premises, does not constitute a significant impact upon the neighborhood, and conforms to all the rules and regulations of Section 33.11.
1. Dressmaking, sewing, and tailoring;
 2. Painting, sculpturing, or writing;
 3. Telephone answering;
 4. Home crafts, such as model making, rug weaving, lapidary work, and cabinet making;

5. Tutoring, limited to one student at a time;

6. Home cooking and preserving;

7. Computer programming; and

8. Secretarial service.

- e. All home occupations, whether authorized by permit or conditional use permit, shall conform to the following standards:

1. Permitted home occupations shall not be conducted in any building on the premises other than the building which is used by the occupant as the private dwelling; and, furthermore, that not more than one (1) room may be used for such purpose.

2. No interior or exterior business sign shall be permitted unless authorized by the sign regulations for residential districts.

3. There shall be no exterior garage storage of business equipment, materials, merchandise, inventory, or heavy equipment.

4. The area set aside for home occupations shall not exceed twenty percent (20%) of the total floor area of such residence.

5. Permitted home occupations shall not include the employment of any persons not residing on the premises in the performance of the occupation.

6. The use of mechanical equipment other than is usual for purely domestic or hobby purposes is prohibited.

7. Off-street loading and off-street parking requirements of Sections 33.14 and 33.15 must be provided.

8. Merchandise shall not be displayed or offered for sale either within or outside of the residence.

9. The operation of any wholesale or retail business, unless it is conducted entirely by mail, and does

not involve the sale, shipment, or delivery of merchandise on the premises, is prohibited.

10. Any manufacturing business or activity which produces noxious matter or perceptible noise beyond the lot line is prohibited.
11. Trucks shall not operate out of residential districts.
12. Conditional use permits shall not be granted when it appears to the city council that the proposed home occupations will constitute a fire hazard to neighboring residences, will adversely affect neighboring property values, or will constitute a nuisance or otherwise be detrimental to the neighbors because of excessive traffic, excessive noise, odors, or other circumstances.
13. In order to guarantee that a home occupation, once authorized, will not become a nuisance to the neighbors or otherwise violate these guidelines, the planning commission may recommend and the city council may impose reasonable conditions necessary to protect the public health, safety, and welfare.
14. An applicant for a permit or conditional use permit must reside at the location of the proposed home occupation.
15. Garage sales are permitted without special permit provided they meet the following standards:
 - aa. Sales last no longer than three (3) days.
 - bb. Sales are held no more than twice yearly.
 - cc. Sales are conducted on the owner's property. Multiple family sales are permitted if they are held on the property of one of the participants.
 - dd. No goods purchased for resale may be offered for sale.
 - ee. No consignment goods may be offered for sale.
 - ff. Directional signs may be placed on the street right-of-way.
 - gg. All directional and advertising signs shall be free-standing and removed after completion of the sale.
 - hh. All directional and advertising signs placed on private property shall have the owners permission.
- ii. No directional or advertising signs may be larger than two (2) feet by three (3) feet.

f. Inspections

1. There may be one (1) annual inspection each year by the Director of Community Development covered by a permit or conditional use permit. In addition, the Director of Community Development, or his designee, shall have the right at any time, upon reasonable request, to enter and inspect the premises covered by said permit for safety and compliance purposes.

g. Application for Permits

1. The annual fee for permits and conditional use permits issued under this section shall be \$10 per year and shall be payable no later than May 1 of each year.
2. Permits and conditional use permits shall expire April 30 of each year, and once granted may be renewed without additional hearings, subject to the provisions of this section, by completing the renewal form described by the Director of Community Development and paying the annual permit fee. Failure to timely apply for renewal, and/or failure to pay for the annual permit or conditional use permit, shall be grounds for revocation of a permit and conditional use permit.

h. Conditional Use Permits

1. Conditional use permits granted by this section shall be temporary in nature and shall be granted to a designated person who resides at a residential address. They are not transferable from person to person or from address to address.
2. Applications for home occupation conditional use permits shall be filed with the Director of Community Development, together with a filing fee of \$125. The application shall be forwarded to the planning commission for a public hearing. All such hearings shall be at public meetings of the planning commission and shall be conducted as provided in Section 27.04 of this ordinance. Legal notice of all such hearings shall be given as required for petitions for rezonings, variances, and other conditional uses. At the conclusion of its hearing, the planning commission shall make findings of fact and recommendations to the city council.

i. General Provisions

1. Should a home occupation permit holder or conditional use permit holder die or move to a new location, the existing permit shall be automatically terminated, except that, in the case of death, should a surviving spouse or child residing at the same address desire to continue the home occupation, written notice to that effect shall be given to the Director of Community Development, and the city council may authorize continuation of that permit without further hearing.
2. Permits and conditional use permits, once granted, may be revoked by the city council for cause after hearing before the city council. Complaints seeking the revocation of such permit shall be filed with the Director of Community Development and may be initiated by the planning commission or any three (3) residents of the block (both sides where the home occupation is being conducted). All such revocation hearings shall be conducted in accordance with Section 27.06 of this ordinance. Publication and notice requirements shall be the same as for home occupation conditional use permit application hearings.

3. All businesses being conducted at property zones for residential use on the effective date of this ordinance shall have thirty (30) days thereafter to apply for the necessary permit or conditional use permit.
4. Persons who were conducting a business from property zoned for residential use on the effective date

of this ordinance must make application under Section 33.11 but may continue to conduct such business pending final determination of their application. Should the city council deny the petition for conditional use permit, all such persons shall immediately cease their business activities from such residential premises.

