



HOME-BASED AND MICRO BUSINESSES

CASHING IN ON BUSINESS OPPORTUNITIES

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ADHERING TO REGULATORY REQUIREMENTS

PREFACE

Goal: Entrepreneurs will become familiar with regulatory issues that affect home based businesses.

Objectives: As a result of this session, entrepreneurs will learn the following:

- Where to locate local codes, regulations, and policies that affect home-based businesses.
- The importance of being on good terms with neighbors.
- How to work with local zoning boards and commissions.

HANDOUTS

Handout 1 — Do Your Own Research on Local Laws, Regulations, and Perceptions

Handout 2 — General Information about Permits and Variances

Handout 3 — Decision Considerations

Handout 4 — Basic Requirements for Home-based Businesses

Handout 5 — The Local Costs of a Home-Based Business: Positive or Negative Impact?

INSTRUCTIONAL MATERIALS

PUBLIC ISSUES AND HOW THEY AFFECT HOME-BASED BUSINESS OPERATORS

American business depends on a balance of sometimes competing interests among business, government, and members of the community. Nowhere is this truer than in the home-based business arena, people operating from their homes. They include lawyers; accountants; architects; music instructors; craftsmen, including cabinet makers, machinists, and goldsmiths; and other types of entrepreneurs such as distributors, painters, custom builders, landscapers, and inventors.

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BRIEF HISTORY OF REGULATIONS RESTRICTING WORK IN THE HOME

Historically, the abolition of homework in a particular industry reflected the level of organization and militancy of its unionized workers. The Wage and Hour division of the U.S. Department of Labor enforces several federal laws that affect home businesses. A 1940 law prohibits the manufacture of women's apparel in workers' homes. This is an old law that originally was intended to protect workers against minimum wage violations, abuses of child labor laws, and the unsafe environment of sweatshops. The Fair Labor Standards Act monitors the number of hours employees work in their homes.

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- 1904-05 — United Cloth and Hat and Capmakers Union had a 13 week strike; they won an agreement to eliminate all trade with sweatshops and home workers.
- 1910 — The International Ladies' Garment Workers won protection in 1914 — Amalgamated Clothing Workers organized and ended homework in the ready-made men's clothing industry.
- 1938 — prohibitions on homework reinforced.
- 1940 — banned the manufacture of women's apparel in workers' homes.
- 1984 — U.S. Dept. Dept. Of Labor (DOL) substituted a certification system for the ban on homework in the knitted outerwear industry. An employer can hire home workers if each worker acquires a certificate from the US DOL.
- 1990 — DOL lifted restrictions in five of the six remaining industries (gloves and mittens, buttons and buckles, embroidery, handkerchiefs, jewelry.)

Public Policy Enforcement

Government policy includes written regulations that have developed over time to protect the public. Regulations such as health department rules that restrict the use of home canned vegetables as a marketable retail food product, municipal parking rules that limit on-the-street parking to one hour, prohibitions on the use of business signs, or an association prohibition against more than normal amounts of trucks picking up and delivering shipments of goods are examples of government policies that impact business operations.

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When a home-based business is “noticed”, it may be too late for the owner to react. Some cities may immediately ask the business to “cease and desist.” Even if the entrepreneur can find another location, it may be too late as customers will find other sources.

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ADHERING TO REGULATORY REQUIREMENTS

Entrepreneurs need to educate themselves on local policies that impact home-based businesses and how those policies affect their business. Home-based business operators who have made themselves familiar with local regulations and have taken steps to address those that impact them, may avoid problems with neighbors as well as local regulatory agencies. If those issues haven't been considered ignored, conflict may occur at formal or informal levels. If it becomes severe enough, such conflict can shut down a business.

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If some aspect of a home-based business has the potential to change the neighborhood environment or pose neighbors to potential risks, health or other, there are probably regulations addressing these concerns at some level of government. Through the years, laws, ordinances, regulations, codes, and other requirements for conformity to particular standards have been created to protect people and property from a specific activities, to control or prevent the construction or establishment of a particular kind of structure, and to prohibit anything else that could change the appearance or ambiance of a neighborhood.

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Homeowners and neighborhood associations may have provisions in their charters that prohibit area residents from legally operating businesses from their homes. Deed restrictions may interfere with home business plans, too. Regardless of the kind of business that is being considered, licenses or permits probably will be needed to assure officials that safety is being observed.

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Caution!

Don't believe everything you hear about business and zoning regulations. Hearsay may be more restrictive than the actual regulations. Instead, do some research on your own and find out what laws are related to the business you want to operate from your home. Get copies of the laws and the sections of the regulations that pertain to what you want to do, where you want to do it, from your local government offices. When you pick up the information, find out whom you should contact and the phone number to call if you have questions about any of the regulations.

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DO YOUR HOMEWORK

Locate the Regulations that Apply to Your Business Idea

Begin your search by checking the local phone book in the government pages for specific phone listings for the offices of planning and zoning, vendor's permits, and development. If these listings are not obvious, contact your local city mayor, administrator, township trustees, or county administrators and ask them to direct you to the correct offices and individuals. In many states, the Secretary of State's office or Department of Commerce office may be helpful in directing you to the appropriate local offices.

If, after studying the information, you don't clearly understand the meaning, write down specific questions. Telephone the appropriate office and speak with whoever was identified when you were in the office. Be sure to get the name of the person who helps you. Unless you are required to identify yourself, ask your questions as anonymously as possible. Ask your questions clearly and write down the responses. Also ask for other sources of clarification. Write down the responses. As you gather information about regulations that

may affect your business, ask about the process for seeking a variance (see the next page for information about zoning and variances). You may also want to ask about how a regulation or ordinance can be changed and what ruling body has that authority.

KEEP CAREFUL AND COMPLETE NOTES

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Talk to your neighbors and seriously note both their spoken and unspoken concerns. Neighbors may fear their property values will suffer but will not say so directly. Provide adequate parking for clients or employees who come to your house on a regular basis. Try to schedule one person at a time. Before their arrival, instruct your visitors to park in your driveway (to keep them off the street if possible). Ask them to use a nearby parking lot (provide directions) and to walk to your home office. Try to restrict their visits and appointments to traditional work hours. Keep deliveries to a minimum. Order supplies in bulk. Explore the benefits of renting a post office box where you can pick up packages that have been dropped off during the day.

Mention that operating a business in your home can offer advantages to the neighborhood. Some people feel safer knowing there is someone around during the day to “keep an eye on the neighborhood.” Environmentally conscious neighbors might appreciate that home-based businesses keep cars off the highways at rush hour, reduce overcrowded highways, and slow down need to expand the system.

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Make an extra effort to make your business an advantage for them. Don’t be mysterious; invite them to look at your home office. Offer to send a fax for them in a pinch (if you have a fax machine). Accept packages and deliveries for your neighbors and deliver them cheerfully. Give them deep discounts on products you sell if neighbors are interested. No matter how pleasant the sounds from your business are (piano lessons, for example) promise they will not occur before 8 a.m. or after 10 p.m.

Remember; your home-based business must look and act like a business. At the same time it must be viewed by neighbors as a beneficial part of the neighborhood. Try to find the balance.

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Zoning officials discover or learn about home-based businesses in several ways.

- Unhappy neighbors may complain about increased traffic or cars parked in front of their homes. Someone may use it to fuel an existing feud.
- Utilities and businesses that provide commercial grade installations are often required to report their activity to local governmental offices that are often the same offices that issue business permits.
- An unhappy customer may comment casually to someone who works in one of those offices, who then investigates.
- Some communities have employees who scan local newspaper advertisements for local addresses and phone numbers and investigate.
- Internet searches

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Explore all the possibilities that may allow you to establish your business legally in your home.

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A Use permit (if you apply for and then get one) will allow you to use your home as an office. You may be able to avoid a public hearing.

A Special permit authorizes a use that is permitted by the zoning regulations, subject to the issuance of such permit or conditional certificate.

A conditional use permit may not be conditioned on whether the proposed use is necessary to serve community needs (such as need for a business is not a proper subject for zoning decisions).

An area variance may be appropriate when structural or lot restrictions are needed for a specific property (such as seeking to relax the need for a specific setback from the street).

A variance or a waiver of the enforcement of a regulation may be an option for you. Because zoning boards generally do not like to allow exceptions to the rules, it is important to present a solid case that justifies such action. You are more likely to be granted a variance if

- You can show the activity of your proposed business is comparable to a business activity already permitted.
- You can show you have no other way to earn a living.
- You can show there would be no harm done to the neighborhood or larger community.

Learn all you can about the planning commission, the zoning board, and the board of appeals. Become familiar with the kinds of explanations they generally deny and which they may be inclined to allow. Attend zoning meetings before your case comes before them. Learn how meetings are conducted and who among the members are the most influential.

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Neighborhood and Property Restrictions.

In addition to complying with all county and city regulations, you may live in an area that has a homeowners' or neighborhood association or an area commission. These groups may have some restrictions that can prohibit you from legally operating a business from your home. Deed restrictions may also interfere with your home business plans.

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If you plan to buy, build, or rent a house with the intention of operating a business there, it is a good idea to ask specifically about any use limitations that could affect your plans. If there are any use limitations, it might be a good idea to make getting a waiver a condition of completing any real estate transaction. Get all promises in writing from those in authority before closing.

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Factors Local Zoning Boards and Commissions Consider.

County, township, and municipal boards of zoning appeals and planning commissions consider requests for zoning variances. They may consider only the factors specifically mentioned in enabling statutes. They may not amend or alter the character and use of a zoning district. Although appeal boards may use wide discretion in granting or refusing requests for zoning variances, any decision they may make may be nullified in a court if the court finds the decision was unreasonable under any circumstances or that it was an abusive use of board powers. When that happens, a zoning appeals official must examine any

practical difficulties that might exist.

- Can the property have any beneficial use without the variance?
- Will the atmosphere of the neighborhood substantially be altered? Will adjoining properties suffer a substantial loss as a result of a variance?
- Will the general effect upon the health, safety, morals, and welfare of the community be threatened in any way?
- Will the variance adversely affect the delivery of governmental services (water, sewer, etc)?
- Was the property purchased with knowledge of the zoning restriction?
- Can the owner's predicament be corrected through some method other than a variance?
- Is the intent behind the zoning requirement observed and has substantial justice been done by granting the variance?

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LOCAL COST OF A HOME-BASED BUSINESS: POSITIVE OR NEGATIVE IMPACT?

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HANDOUT

If you are moving to a neighborhood with the intention of setting up a home-based business, ask specific questions about any limitations that could affect your plans. If you're uncertain about certain details, delay any irreversible decisions until you find the answers in writing. A formal condition of completing any real estate deal might be obtaining a needed written waiver or variance. Learn what kinds of costs may affect you and how much each will cost to set up your business. Ask about the following:

Total fees. Home occupation permits and business licenses can range from \$25 to \$650. Some communities see a business as a detriment and make permits a hurdle for the business and a source of revenue for the community. Other communities consider a new business to be a positive addition and offer encouragement by making it affordable to operate. A business license fee may be based on a percent of your **Zoning Board Requirements.**

One board may require you to submit everything from feasibility reports and photographs to traffic studies, while others will require you to do very little.

Local Taxes. These can vary. Some communities don't have local taxes. Some tax only businesses that make more than \$10,000 annually.

Available Services. What kind are readily available locally? Post office, printer, overnight delivery service, computer technical support?

Crime patterns. What kinds of security will you have to have? Is it available and what will it cost? How does law enforcement view and respond to such calls?

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DIFFICULT HOME-BASED BUSINESS CATEGORIES

Some categories of businesses are very difficult to operate from the home. These are businesses that tend to clash with community norms, create situations where an individual's rights challenge or threaten a community's rights, or have characteristics that could change

ADHERING TO REGULATORY REQUIREMENTS

the attractiveness of the neighborhood. These may include the following:

- Food handling, processing, or packaging companies; catering companies; and baked goods companies. Depending upon your state or local laws and regulations, the local health department may be required to inspect and approve any kitchens or food processing areas.
- Businesses where animals are raised or bred.
- Auto body and repair shops. Neighbors and officials fear repairing will be noisy and disruptive and that traffic will increase.
- Manufacturing, processing of any kind, and anything else that would create fumes, dust, vibrations, or pollution.
- Beauty shops, because they tend to pour chemicals down the drain and cause parking problems.
- Any assembly line with as few as two to three people; the aim is to prevent sweatshops.

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Learn the basic requirements for home-based business requirements. Check local regulations before investing time and money in setting up. Regulations will vary according to locality.

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GRANDFATHERING

A business may have certain practices “grandfathered” or exempted from new rules. This occurs when new regulations are established and existing current businesses and practices are permitted to continue, although they do not conform with the new conditions. The exemption ceases when the property is sold, the owner of the home occupation terminates the business, or upon the death of the owner. The occupation then ceases to exist or be allowed at that location until the business complies with all current regulations.

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WHERE TO LOOK FOR ADDITIONAL HELP

Local Chamber of Commerce officials may be able to provide some assistance to home-based business owners. They may know of a local home business association where local home business owners gather to socialize, network, and learn more about business. When seeking legal advice or assistance with zoning and variances, find a local attorney who specializes in zoning and other small business matters and who wins most cases. Someone in the local zoning office may be able to identify a particular individual. Read the local newspaper for zoning cases and to see who represents the various parties and who wins.

Spend time at the local public library reading magazines, new books on business, and area newspapers to learn as much as possible about what is happening to other home-based businesses. Keep up with legislative matters. Get to know your elected officials and become involved with the drafting of resolutions and regulations that pertain to your business and way of doing business.



A FINAL THOUGHT: HOW TO GET INVOLVED!

Home-based business owners, you may want to work on improving public policies that relate to your ability to operate a business from your home. You may work to change local community zoning laws or state and federal laws you feel are unfair or overly restrictive. Caution: changing laws is a slow, difficult process, but it has been done (see history of home-based work).

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HANDOUT 1

DO YOUR OWN RESEARCH ON LOCAL LAWS, REGULATIONS, AND PERCEPTIONS

- I. Find out what laws and regulations relate to the business you want to operate from your home.
 1. Get copies and carefully read them.
 2. Ask the clerk whom you should contact and the phone number to call if you have questions about any of the regulations.
 3. If the meaning doesn't seem clear, write down specific questions. Be sure to get the name of the person who helps you. Write down the answers.
 4. Unless you are required to give your identity, ask your questions as anonymously as possible.
 5. Ask for other sources of clarification. Write down the responses.
 6. Ask about the process for seeking a variance.
- II. Talk to your neighbors and seriously note both their spoken and unspoken concerns. They may fear their property values will suffer or there will be too many strange cars and visitors, delivery trucks, or unwelcomed disturbing noises, lights, and smells.
- III. Take steps to address each issue and concern.
 1. Provide adequate parking for clients or employees who come to your house on a regular basis.
 - a. Keep the street clear. Park in driveway. Use a nearby parking lot with permission (provide directions).
 - b. Restrict visits and appointments to traditional work hours.
 - c. Keep deliveries to a minimum.
 - (1) Order supplies in bulk.
 - (2) Get a post office box.
 2. Schedule your appointments carefully.
 - a. Restrict customers to one person at a time.
 - b. Promise no sounds will begin before 8 a.m. or go beyond 10 p.m.
 3. Make an extra effort to make your business an advantage for them.
 - a. Invite them in.
 - b. Offer to send a fax for them in a pinch.
 - c. Give deep discounts on your products.
 - d. Someone who is around during the day to "keep an eye on the neighborhood" can offer a safety advantage.
- IV. Zoning officials discover or learn about home-based businesses in many ways.
 1. Unhappy neighbors complain about increased traffic or cars parked in front of their homes. Someone may use it to fuel an existing feud.
 2. Utilities and businesses that provide commercial grade installations must report their activity to the same local governmental offices that issue permits.

3. An unhappy customer casually tells someone who works in one of those offices, who then investigates.
4. Some community employees scan local newspaper advertisements for local addresses and phone numbers and investigate.

Prepared by Jacqueline LaMuth, Ohio State University Extension, 1997

HANDOUT 2

GENERAL INFORMATION ABOUT PERMITS AND VARIANCES

I. Kinds of permits

Use Permit may allow...

- Use of your home as an office.
- Avoidance of a public hearing.
- Uses other than those permitted.

Special Permit authorizes...

- a permitted use until a regular permit or conditional certificate is issued.

Conditional Use Permit may not depend on real community need for the proposed use.

An Area Variance involves structural or lot restrictions for a specific piece of property.

- May relax specific requirements for road or street frontage.
- May relax requirements for specified setbacks from streets or roads.

2. What is a variance? It is a waiver of the enforcement of a regulation granted by a local zoning board with jurisdiction.

Zoning boards generally do not like to allow exceptions to the rules. It is important to present a solid case that justifies such action. A variance is more likely to be granted if you can show...

- the activity of your proposed business is comparable to a business activity that is already permitted.
- you have no other way to earn a living.
- there would be no harm done to the neighborhood or larger community.

In addition to all county and city regulations, a local homeowners' or neighborhood association, an area commission, and deed restrictions can complicate your efforts. If you plan to buy or build a house with the intention of operating a business there, ask specifically about any limitations that could affect your plans. If there are potential problems, get a waiver as a condition of completing any real estate deal. Do this before closing.

Prepared by Jacqueline LaMuth, Ohio State University Extension, 1997

HANDOUT 3

DECISION CONSIDERATIONS

Most local boards of zoning, boards of zoning appeals, and planning commissions make decisions about zoning variances using the following criteria. They have wide discretion in their decision making. They...

- Consider each application on its own merits.
 - Do not consider applicant's personally created hardship.
 - Consider only factors specifically mentioned in the enabling statutes.
1. How will the proposed business affect the character of the neighborhood where it will be situated?
 2. How will the proposed variant use alter the character or use of surrounding properties or affect existing zoning?
 3. What will be the general effects of the proposed use upon the health, safety, morals, and welfare of the community?

A court may nullify a decision if it finds the decision to be unreasonable under any circumstances or an abusive use of board powers.

Appeals officials must examine any practical difficulties that may exist.

1. Can the property have any practical use without the variance?
2. Will the neighborhood atmosphere be altered substantially?
3. Will adjoining properties suffer a substantial loss as a result of a variance?
4. Will the variance adversely affect delivery of water, sewer, etc. to other properties?
5. Was the property purchased with knowledge of the zoning restriction?
6. Can the owner's predicament be corrected through some method other than a variance?
7. Is the intent of the zoning requirement observed?
8. Has substantial justice been done by granting the variance?

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HANDOUT 4

BASIC REQUIREMENTS FOR HOME-BASED BUSINESSES

There may be only one home-based business in the dwelling that is used as the operator's private residence. A home-based business may employ only members of the family in the dwelling and no more than one outside resident employee.

A home based business must:

- Comply with all local, state, and federal statutes, charter and/or regulations pertinent to the activity pursued.
- Receive permission from the Board of Zoning and Building Appeals before beginning and must receive a permit for such purposes issued by the building inspector.
- Be incidental to and subordinate to the use of the premises and dwelling for residential purposes and in total shall not use space in more than the equivalent of 25 percent of the floor area of the living area of the dwelling building.
- Obtain permission from the Board of Zoning and Building Appeals and obtain the proper permits to operate from the building inspector. The permit fee is approximately \$50; renewal is usually around \$25.
- Allow the building inspector and/or his representative to enter and inspect the premises on which the home occupation is conducted at reasonable hours from time to time to determine whether the applicant or permittee is in compliance with the regulations.
- Comply with all regulations and restrictions.

Noncompliance and Violations

- If noncompliance is discovered, the permittee shall be ordered to comply. If the permittee fails to comply with the order of the board within five days, the permittee's permit may be immediately revoked by the building inspector.
- Violations of any regulations, laws, or orders may be fined not more than \$500 for each such offense. Officials may consider each day during or on which a violation occurs to be a separate offense.
- **Most organized communities will have similar regulations. Check locally to know how yours may be similar or different.**

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HANDOUT 5

LOCAL COSTS OF A HOME BASED BUSINESS: POSITIVE OR NEGATIVE IMPACT?

If you are moving to a neighborhood with the intention of setting up a home-based business, ask specific questions about any limitations that could affect your plans. If you're uncertain about certain details, delay any irreversible decisions until you find the answers in writing. A formal condition of completing any real estate deal might be obtaining a needed written waiver or variance. Learn what kinds of costs may affect you and how much each will cost to set up your business. Investigate:

Total fees. Home occupation permits and business licenses can range from \$25 to \$650. A business license fee may be based on a percent of your annual gross income or it may be a flat fee. A flat fee is less paperwork and usually less expensive. Communities differ in the way they see a new businesses. Some see a business as a detriment and make permits a hurdle for the business and a source of revenue for the community. Other communities consider a new business to be a positive addition and offer encouragement by making it affordable to operate.

Zoning Board Requirements. One board may require you to submit everything from feasibility reports and photographs to traffic studies, while others will require you to do very little.

Local Taxes. These vary from place to place. Some communities don't have local taxes. Some tax only businesses that make more than \$10,000 annually.

Available Services. What services will you need? What kind are available locally? Check into services such as the post office, printers, overnight delivery service, computer technical support.

Crime patterns. What kinds of security will you have to have? Is it available and what will it cost? How does law enforcement view and respond to such calls?

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