

**HOME-BASED ENTERPRISE IN OREGON:
IMPROVING LOCAL REGULATION OF
AN IMPORTANT ECONOMIC ASSET**

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Both the policy orientation of the report and any errors remaining are, of course, the sole responsibility of the author.

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HOME-BASED ENTERPRISE IN OREGON: IMPROVING LOCAL REGULATION OF AN IMPORTANT ECONOMIC ASSET

I. INTRODUCTION

Small scale businesses run by moms, pops and sometimes the kids have always been a gateway of opportunity for Americans with good ideas, a willingness to work hard and not much capital. Many of these businesses--especially now in the computer era--began in livingrooms and kitchens; many have gone on to become major enterprises, while others have remained at home to provide a steady livelihood based on low-overhead costs and a competitive tailoring of products and services to local (and sometimes not so local) markets.

Home-based enterprise is an important source of opportunity and upward mobility for Americans, and especially for low-income Americans. It adds a potentially substantial economic base to neighborhoods and synergy to economic development efforts. In order to maintain the viability of this option for individual and community productivity, a periodic review of state and local regulations is called for to rationalize the system and remove unnecessary barriers.

Seventeen jurisdictions in northwest Oregon were surveyed as part of this project. Data was collected on the regulation of home occupations, business license requirements,

and taxation. The most noteworthy overall conclusion to be reached from the survey was that in most jurisdictions it was impossible to know from reading the local ordinances the types of activities which were regulated and those which were not. In many cases city staff were unable to articulate the distinctions and operated on an ad hoc basis.

Beyond the problem of vagueness in determining coverage, is the question of whether the regulatory apparatus is well suited to the achievement of some clearly articulated governmental goals. In only a few jurisdictions had recent thought been given specifically to the "how" and the "why" of regulating home enterprises. Reasoned explanations of why the laws are what they are were largely unavailable.

Finally, in the survey interviews many jurisdictions noted that they did not regularly enforce their business license or home occupation permit requirements, but rather only charged the fees and required the hearings for those who came in and asked, or in cases where there was some particular reason to act. Vague laws selectively enforced are a pitfall for the unwary and a source of anxiety for all those in non-compliance, especially when the non-compliance becomes long term. Such laws create a class of minor criminals out of law-abiding citizens; operators of legitimate home businesses are often afraid of being "discovered," instead of being able to take pride in their business success, act as role models for the young, and participate fully and openly

in the business life of the community.

The result of this study is a proposal for a model home occupation ordinance and related reforms for use by Oregon cities and counties. The need for improvement arises out of two factors: the conceptual weakness of the current regulatory structure generally, and the need for a positive response to changing conditions and new opportunities.

The "model ordinance" proposed here is designed to be implemented on a voluntary basis at the local level. Many of the jurisdictions surveyed for this project are already aware of drafting deficiencies in their ordinances and a certain lack of conceptual foundation in their over-the-counter administration of home occupation permits and business licenses and would find a model ordinance and related suggestions helpful.

The proposed ordinance is designed to accomplish the following purposes:

- o Rationalize and make explicit the home occupation and business license system;
- o Encourage the development of positive and neighborhood friendly home occupations based on telecommuting and computer enterprise;
- o Explicitly distinguish between home occupations which are largely invisible in the neighborhood and those which have a greater impact.

In addition to the model ordinance and parallel rationalization of the business license system, this proposal discusses and suggests improvements in other problem areas

facing home occupations including utility tariffs and personal property taxes.

II. THE CURRENT STRUCTURE OF REGULATION¹

Cities and charter counties have the power to permit and condition home occupations under their basic grants of power from the state. Non-charter counties were given a similar general grant of power in ORS 203.035 (as limited by ORS 215.448, specifically dealing with home occupations).

Virtually all counties and cities permit home occupations under certain conditions. Many counties and cities provide for the issuance of business licenses for some or all businesses carried on within their boundaries, including home occupation businesses.

In addition to permits and licenses, taxes enter the picture as well. The City of Portland, Multnomah County and Tri-Met all levy the equivalents of income taxes on businesses doing business within their jurisdictions. For both Portland and Multnomah County, the tax falls on all businesses with a gross income of over \$15,000 from all sources from all jurisdictions. But if the total is less than \$15,000 the business need not file.

¹ Though it may have a significant impact on home occupations which constitute "public accommodations," the Americans With Disabilities Act of 1990 (Public Law 101-336) is beyond the scope of this study.

Personal property taxes are also a disincentive to the home business entrepreneur. Personal property "held exclusively for personal use" is exempt from property taxation under ORS 307.190. However, as soon as the home business entrepreneur uses any personal property for business use it becomes business property for the purposes of personal property tax assessment. Moreover, even if the property reverts to purely personal use it arguably remains business property subject to the tax.² On the bright side, ORS 308.250(2) exempts businesses with less than \$3,000 in personal property from liability, but not from the responsibility of filing.³

Though no one apparently checks, it is likely that very few home occupation business owners file these returns. Many are probably unaware of whether they qualify as "businesses"; others are unaware of the need to file, but many others are ignoring their obligations and need to be brought back into the system (or the system amended).

III. REGULATORY BACKGROUND AND TECHNOLOGICAL CHANGE

² See DOR circular 150-303-661, *Personal Property Assessment and Taxation*, November 1993: "Taxable personal property includes machinery, equipment, furniture, etc., *used previously* or presently in a business." (Emphasis added). Lois Colson of DOR was of the opinion that this section must refer to business property held in storage as the broader reading of the language would be unreasonable.

³ Calculated on the basis of fair market value and not original cost.

A. Regulatory Background

Labor, health and environmental abuses rampant in American cities in the 19th and early 20th centuries led to zoning separations of residential and employment activities.⁴

The federal government encouraged this process in the 1920s:

"The authority to regulate the use of land was studied by a United States Department of Commerce committee of planners, lawyers, architects, and others. The Secretary of Commerce, Herbert Hoover, sought to assemble two model acts for states to review and pass, if they so wished. The two acts assembled by the committee were the Standard State Zoning Enabling Act, which allowed cities to establish 'plan commissions' and regulate use of land, and the Standard City Enabling Act, which allowed cities to adopt a 'zoning plan,' a 'master plan,' or a 'municipal plan.'

These model acts were forwarded to state legislatures and used as the basis of city zoning legislation by 45 states, while the model planning legislation was used by approximately 25 states."⁵

In Oregon the legislature first authorized *cities* to adopt zoning ordinances in 1919.

This initial act was struck down by the courts in 1923, but was reauthorized the same year, and upheld by the Oregon Supreme Court in 1925 in *Kroner v. City of Portland*,

⁴ See, S.J. Makielski, *The Politics of Zoning: The New York Experience* NY: Columbia UP, 1966 and Richard F. Babcock, *The Zoning Game: Municipal Practices and Policies* Madison: University of Wisconsin Press, nd.

⁵ Oregon State Bar, *Land Use*, Lake Oswego: OSB, 1994, p.1-3.

116 Or 141 (1925).⁶ It was not until 1947, however, that *counties* were authorized to adopt plans and zoning ordinances in compliance with those plans.⁷

Simultaneously, there was a strong regulatory emphasis on getting work out of the home in order to make it easier to bring working conditions for adults and children up to minimum standards. In Oregon, child labor protections are codified at ORS 653.305 et seq. It is noteworthy that ORS 653.365 exempts parents employing their own children from the age/occupation limitations that apply to all other employers.⁸ Work in the home involving children of parents running the business poses special problems for wage and hour enforcement by Oregon's Bureau of Labor and Industries due to the difficulty of distinguishing between labor and "chores."

Home occupations engaged in interstate commerce (for example, by use of the Internet) or making in excess of \$500,000 gross revenues per year are subject to the federal Fair Labor Standards Act (FLSA).⁹ Under the act, children are generally covered

⁶ Ibid, p.1-3.

⁷ Ibid, p.1-4.

⁸ ORS 653.365.

⁹ U.S. Department of Labor, *Regulations, Part 530: Employment of Homeworkers in Certain Industries*, 29 CFR Part 530 (Revised May 1986).

unless they are the children of the sole owners of the business, when they are exempted from many (but not all) protective provisions.¹⁰ Also of interest are the prohibition of home work in seven product areas--all in the needle trades--under the FLSA.¹¹

Notwithstanding the fundamental separation of uses principle inherent in zoning, even from the beginning zoning laws allowed certain "home occupations" in residential zones. Typically the dividing line between occupations which were allowed and which were not ran between occupations which were "customary" or "professional" and those which were not "customary" or "professional." Yet a regulatory scheme based on such nonperformance based criteria is only tenuously related to legitimate zoning concerns about maintaining the residential character of the neighborhood, including peace and quiet, traffic control, etc.

"These classifications may be seen as arbitrary and unrelated to justifiable zoning concerns. Under the typical legislative scheme, for example, a hairdresser can be denied a permit to open a shop at home, while next door, a music teacher would be granted a permit to conduct music classes in his

¹⁰ U.S. Department of Labor, *Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act*, Wage and Hour Division Bulletin WH-1330 (August 1990).

¹¹ U.S. Department of Labor, *Regulations, Part 530: Employment of Homeworkers in Certain Industries*, 29 CFR Part 530 (Revised May 1986).

or her home."¹²

The difference between the two has nothing to do with whether one is noisier than the other or generates more traffic. The teaching of music is seen as being more "cultural" (and therefore acceptable) and the hair dresser as more commercial (and therefore not acceptable).

"Similarly, an insurance salesperson will be denied a permit to open an office in some communities, but a neighboring lawyer will be granted a permit because he or she is a member of a learned profession. The 'customary' and 'professional' criteria are widely used by local governments despite their apparent irrelevance to legitimate zoning concerns, and the courts have upheld these criteria without hesitation."¹³

Section IV below presents the results of the survey conducted for this study on criteria in use.

B. Technology and Opportunity

In the nearly 100 years from the turn of the century until now, changing

¹² Thomas E. Roberts, "The Regulation of Home Occupations Under Zoning Ordinances--Some Constitutional Consideration" 56 *Temple Law Quarterly* 49, 50 (1983).

¹³ *Ibid*, 50.

conditions, the fuller development of independent regulatory checks on many of these abuses (for example, the environmental laws), new technology in the form of the personal computer, the fax machine, and fiber optic communications, as well as the need to confront new problems, all suggest a re-evaluation of the role of home-based enterprise.

There are a variety of institutional barriers to the development of home-based enterprise in Oregon. Much of home-based industry is currently underground, and much of it is constrained and discouraged by the following six factors¹⁴:

- o City business license requirements;
- o Home occupation permit requirements;
- o Adverse public utility tariff provisions;
- o Fear of additional personal property tax impacts;
- o Accounting and regulatory burdens associated with workers compensation, unemployment insurance, health insurance, and the lack of availability of general business insurance;
- o Substantial application fees for various permits, problems with past lack of compliance, and new and unintelligible paperwork requirements.

The result is that economies of interaction between home-based enterprises are

¹⁴ A significant part of the problem is lack of knowledge on the part of existing or prospective home business owners as to the actual costs and the amount of time involved in getting into compliance with the various requirements.

largely undeveloped, since making the home-based enterprise known to other home-based entrepreneurs in the traditional way would be likely to make the enterprise known to various regulatory authorities.

This outcome may no longer be in society's best interest, since the benefits from the full development of clean and quiet home businesses has a wide array of substantial benefits for society. These include:

- o **Overhead Cost Reduction** For business activities which would otherwise have to be conducted elsewhere (transportation costs), in other premises (capital costs), with the need for parking, phones, utilities, etc. (operating costs), and a good deal of unproductive dead time getting back and forth, home-based activities have the potential for substantially reducing costs, increasing profitability, and creating livelihoods.

There are also potential societal benefits. These include:

- o **Reduction in Traffic Congestion, Air Pollution, Public Transit** Substantially expanding employment opportunities in residential neighborhoods would reduce the public and private costs of traffic congestion, air pollution, and the need for public transit.
- o **Welfare Reform** One of the major stumbling blocks to welfare reform is that child care often costs more than the mother would make in a job away from home; transport to the job site is expensive or non-existent; and a good deal of time and non-transportation expense has to be expended in getting back and forth to work. Home-based enterprise could reduce some of these costs.
- o **Care for Elderly and Disabled** Home-based enterprise would facilitate cost reduction in the care of the elderly and disabled. Having a responsible

adult at home, even if largely occupied in business pursuits, would permit home care for the elderly and disabled to a much greater degree.

- o **Latchkey Kids and Teenagers** Adults at home mean fewer latchkey kids, and it would significantly increase the amount of adult supervision in the neighborhood during those periods of the day when teenagers are not in school.
- o **Providing Skills for the Young** Home-based enterprise provides the opportunity for conveying the economic skills of the parents to the young. Children are exposed to the skills and discipline of earning a living which, if not abused, can't help but be a valuable synergism to school based education.
- o **Charitable and Volunteer Activities** The encouragement of home-based enterprise, to the degree it is successful, would re-create daytime economic activity in neighborhoods and bedroom suburbs. With a significant number of the most productive age bracket of residents in the neighborhood during the day and interacting, neighborhood life, charitable, volunteer, and non-profit activities, would benefit. Neighborhood revitalization would ensue from everyone's interest in developing the symbiosis.
- o **Inclusionary Zoning Facilitates Age-Integrated Neighborhoods** The provision of additional services in the neighborhood increases the effective mobility of mobility-limited senior citizens and others, thereby expanding independent living opportunities.¹⁵
- o **Economic Development** More wage earners earning wages in the neighborhood provide business opportunities in the area for others and also

¹⁵ See, for example, Roger Colton, "Independence and Mobility for the Aged: Community Access and Living in Place: A Proposal." Boston: FSC, June 1996; and California Coalition for Rural Housing Project: *Creating Affordable Communities*, Sacramento: CCRHP, November 1994.

stem the flow of consumer and business dollars out of the neighborhood, a benefit of particular concern in distressed neighborhoods.

In the next section current practice with respect to business licenses and home occupation permits is reviewed in a sample of thirteen cities and four counties. Section V presents a model home occupation ordinance along with suggestions for improving business license regulation, and section VI recommends changes to the personal property tax rules and briefly discusses utility tariffs.

IV. SURVEY OF JURISDICTIONS

A. Overview

As part of the work on this project data was collected from thirteen cities and four counties on their home occupation and business license practices. Four general conclusions with respect to home occupations can be reached from the survey results:

- o The definition of a home occupation is often insufficient to inform the prospective businessperson as to what sorts of business activities require a permit and which do not;
- o In many jurisdictions the determination of which home "occupations" require a home occupation permit and which not appears to be left to the discretion of the staff at the counter;
- o There does not appear to be any guiding concept of the type of activity

- o which should or should not be required to have a home occupation permit;
- o The home occupation permitting process is costly and burdensome in some jurisdictions.

The conclusions with respect to business license requirements parallel the home occupation conclusions; if anything, however, the practice in some smaller cities with respect to business licenses is even less rational in concept and practice than is the case for home occupations.

- o In many jurisdictions it is impossible to determine from the definitions provided in the local ordinance which types of home "business" activities require a business license and which do not;
- o In many jurisdictions the determination of which home "businesses" require a business license and which do not appears to be left to the discretion of the staff at the counter;
- o There does not appear to be any reasonable concept guiding the type of activities which should or should not be required to have a business license.

B. Survey Results

The following table presents an overview of the jurisdictions surveyed. Most jurisdictions have business license requirements that comprehend most home occupations and virtually all computer/telecommunications-based home businesses. Four of the seventeen jurisdictions set formal performance standards, but don't require home

occupations to apply for permits. Five more jurisdictions have two part permitting systems, where home occupations which have negligible impacts on neighbors are not required to apply for a permit. All jurisdictions appear to have passive enforcement programs which are called into play only when neighbors complain.

A review of local ordinances and interviews with local planning and finance office staff show that a wide degree of interpretational latitude is exercised by individual officials. In several cases the ordinances in question are seriously misdrawn, while in a number of others--especially those dealing with business licenses--the definitions of "business" are so broad as to encompass activities which are clearly not meant to be encompassed.

Detailed descriptions of the situation in each jurisdiction are presented IN Table 1 below.

C. Jurisdictional Detail

Albany Albany requires a business license for only one or two specific industries including, and perhaps limited to, taxis and private investigators. In comparison to this liberality in terms of business licenses, the scope of the home occupation element of the zoning ordinance is surprisingly encompassing:

TABLE 1

SURVEY OF CITIES AND COUNTIES

Jurisdiction	Home Occupation Permit Required?	Business License Required?	Business "Income Tax" Imposed?
Albany	Yes	No	No
Beaverton	2-Part System	Yes	Fee Only
Clatskanie	Yes	Yes	Fee Only
Columbia City	2-Part System	2-Part System	Fee Only
Corvallis	No	No	No
Forest Grove	Yes	Yes	Fee Only
Hillsboro	No	Yes	Fee Only
Portland	2-Part System	Yes	Yes
Rainier	Yes	Yes	Fee Only
Scappoose	2-Part System	Yes	Fee Only
St. Helens	Yes	Yes	Fee Only
Vernonia	2-Part System	Yes	Fee Only
Woodburn	No	Yes	Fee Only
Benton County	Yes	No	No
Columbia County	Yes	No	No
Linn County	2-Part System	No	No
Multnomah County	No	Yes	Yes

"HOME OCCUPATIONS

3.090 Purpose The home occupation provisions recognize the needs of many persons who are engaged in small scale business ventures *or personal hobbies, whether conducted for profit or not*, which could not be sustained if it were necessary to lease commercial quarters, or because the nature of the activity would make it impractical to expand to full scale enterprise." (Emphasis added).

From the language of the ordinance it appears that weekly gatherings for bridge, folk singing, or any other hobby activity even if non-profit are counted as "home occupations."

Beaverton Beaverton has a very broad definition of "business" in its business license ordinance:

"Business -- An enterprise, establishment, store, shop, activity, profession or undertaking of any nature conducted, either directly or indirectly, for private profit or benefit, including the holding out of Premises for Rent." Beaverton Code §7.01.015.

§7.01.020(A) sets the geographic scope of the tax [sic]:

7.01.020 Imposition of Tax

A. No person shall do business within the city without a current, valid City business license."

The language here is broader than the City could possibly intend. It would encompass, for example, someone writing a novel in their livingroom, a teenager babysitting a neighbor's child, a Portland-based attorney tending to a client in Beaverton, or an out-of-state book distributor supplying books by mail to Beaverton books stores.

The fee itself varies with the number of employees and has to be renewed annually.

Beaverton's zoning ordinance defines "home occupation" as:

"5.44 **Home Occupation.** A lawful nonresidential income-producing use or activity conducted in or on the premises of a lot zoned and used for residential purposes by the permanent residents thereof, said nonresidential use or activity being secondary to the use of the dwelling for dwelling purposes." Beaverton Zoning Ordinance §5.44.

And while this definition seems overly broad (teenage babysitter, novel writer, etc.) it is counterbalanced by the two tier permitting provisions found at Beaverton Zoning Ordinance (BZO) §75.3:

"Under normal circumstances the following uses and activities will usually be found to be allowed without securing a permit: Family Day Care Provider or Group Homes, offices uses such as for bookkeepers, accountants and sales representatives, dress making, cake decorating, and

other domestic arts, arts and crafts production."

The zoning ordinance then goes on to detail standards for home occupations of both the permitted and exempt-from-permitting types. This seems to be a productive approach. All home occupations are required to "secure and maintain" a city business license. BZO 75.8(D).

Clatskanie Clatskanie requires both a business license and a home occupation permit. "Business" does not appear to be a defined term in City's ordinances. The business license fee is \$35 per year for a business with a fixed location within the city, and \$50 for a business without a fixed location within the city. However, how the city's ordinance applies to, for example, one time door to door solicitors versus solicitors by telephone; out-of-town truck drivers making deliveries in Clatskanie; Portland lawyers with clients in Clatskanie, is not addressed in the ordinance.

The home occupation permit is a conditional use under the zoning ordinance. The application fee is \$250, and the process involves hearings before both the city planning commission and city council.

The city reports that it is currently in the process of revising its ordinances.

Columbia City Columbia City requires a business license for "businesses." The

fee is \$40 per year for businesses with 1-5 employees, with \$10 off for local businesses.

A conditional use permit is required for home occupations. This involves a one time fee of \$200, with annual reviews. Staff gave the impression that all home occupations were required to go through the conditional use process; yet when pressed, they were of the opinion that they would not require activities to obtain a permit that did not involve sales within the city limits or which involved housecleaning or lawn maintenance even if there were sales within the city. The decision rule which rationalizes these distinctions is not apparent.

Corvallis Corvallis' approach has much to recommend it. Its zoning ordinance sets forth standards for home occupations, but a home occupation permit is not required, nor does the city require a business license. Since enforcement is complaint- driven in all jurisdictions in any event, it is consistent to dispense with the requirement to obtain a home occupation permit, and to rely on the standards in the ordinance if the need for enforcement becomes apparent later.

Forest Grove Forest Grove has a strange ordinance. The city does not require a business license per se. The city does, however, require that all home occupation applicants obtain a "business occupancy permit," a sort of combination business license

and home occupation permit. The strangeness in Forest Grove's approach comes not in this useful combination of what are in other jurisdictions two separate application processes, but in the peculiar detail in which they specify certain limitations on home occupations:

9.841 **OPERATIONAL STANDARDS.** * * *

- (1) Any product produced on-site for sale must be hand manufactured or grown using only hand tools or domestic mechanical equipment. Such domestic mechanical equipment shall not exceed approximately two horsepower per piece of mechanical equipment and shall not exceed a total of approximately six horsepower or a single kiln not to exceed approximately eight kilowatts or the equivalent in a gas fired fixture."

One wonders whether "domestic" refers to machinery manufactured in the United States or machinery typically found in a home. In either case, would the production of reports or studies (i.e. products) produced on Japanese-made high resolution lazer printers of a sort not usually found in the home be grounds for the revocation of the permit?

On the positive side, the cost of the permit is \$55 and it's good for ten years.

Hillsboro Hillsboro was a pleasure to survey. The City Recorder is very sharp and she and the city attorney are aware of the intricacies of defining a business for the purposes of the business license. The city requires that all businesses operating within

the city obtain a business license.

"Except as provided herein, any person operating or carrying on any trade, shop, business, profession or calling of a business nature in the city, not otherwise classified in this chapter * * * shall obtain a license and pay the required annual fee * * * . Hillsboro Code §5.04.030(A).

The scope of this provision is too broad to be taken literally. A good discussion with city staff produced the table (Table 2, below) of yeses and no's notwithstanding this broad language.

Hillsboro's approach to home occupations is progressive. It sets forth home occupation standards in the zoning ordinance (sections 3(20) and 7(4)) but does not require a permit. Should complaints arise, enforcement is available in the usual way.

Portland Portland has an interesting business license and tax scheme. If the business grosses more than \$15,000 per annum from operations anywhere (i.e. not just in Portland), then to operate in Portland the business has to have a business license. The definition of business is tied to IRS schedules C and SE; IRS definitions control. The fee is essentially an income tax in that it is graduated by net business income, the rate being 2.2% of the adjusted net income of the business or a minimum of \$100.

The city has a two tier approach to home occupations. A Type A home occupation,

"is one where the residents use their home as a place of work; however, no employees or customers come to the site. Examples include artists, crafts people, writers, and consultants. Type A home occupations also provide an opportunity for a home to be used as a business address but not as a place of work." Portland Planning and Zoning Code §33.203.020(A).

TABLE 2 CITY OF HILLSBORO BUSINESS LICENSES	
Activity	License Required?
Out-of-town lawyer with a local client	No
Out-of-town lawyer for the city	Yes
In person salespeople	Yes
Telephone salespeople	No
Teenage babysitter	No
Adult babysitter	Yes
Distributor selling books to local bookstore	No
Distributor selling books to local residents by mail	Maybe
Local novel writer for non-local sale	Maybe

All other home occupations in Portland are Type B. Type A home occupations don't require a permit. PZC §33.020.030(A). Type B home occupations do require a

permit. The city's rationale for requiring a permit is to ensure:

- o That the applicant is aware of the provisions of this chapter which govern accessory home occupations;
- o That the City has all information necessary to evaluate whether the proposal initially meets or continues to meet code regulations; and
- o That the distribution and location of Type B home occupations can be documented. PZC §33.203.060(A).

This rationale seems plausible, especially for a metropolitan area where population densities are much higher.

Rainier The city requires a business license which runs \$35 per year plus \$6 for each additional employee. Home occupation permits are required for some activities, though not others; the rationale for the differences in application of the ordinance were not clear.

So, for instance, while "industrial" activities require permits, babysitters and similar activities do not. Novelists don't if their publisher is elsewhere, though any variety of consultant does, even if he or she (like the novelist) has no local clients. Craft makers, on the other hand, are like novelists: they have to have a permit if they sell their goods locally, but not if they don't.

Scappoose The City requires a business license of all home businesses. The rate is \$45 per year, increasing by \$5 per employee for all employees over two.

On the planning side, home occupations are divided into two classifications. Type I home occupations meet the following standards:

"A Type I home occupation shall exhibit no evidence that a business is being conducted from the premises. A Type I home occupation shall not permit:

1. Exterior signs which identify the property as a business location;
2. Clients or customers to visit the premises for any reason;
3. Exterior storage of materials." Scappoose Land Use and Development Code §17.142.020(C).

Type II home occupations are all others. Type I home occupations don't require a permit. Type II home occupations do require a permit.

St. Helens St. Helens is another community with an overly broad definition of "business" in its business license ordinance.

"'business' means professions, trades, occupations, shops and all and every kind of calling carried on for profit or livelihood . . ." Ordinance 1392 §1(2).

The fee is \$35 plus \$6 for each employee beyond the first, collected annually.

On the home occupation side, St. Helens outdoes itself in overbreadth. "Home Occupation" is defined as:

"any lawful activity commonly carried on within a dwelling by a member or members of a family, no employee or other person being engaged in the same, and in which said activity is secondary to the use of the dwelling for living purposes." St. Helens Zoning Ordinance §1.080(34).

Thus in St. Helens *any lawful activity . . . secondary to the use of the dwelling* constitutes a home occupation for zoning purposes. Having friends over for a neighborhood association meeting, a bridge game, or to watch a football game--depending on what "secondary" is taken to mean--may all require that the homeowner or renter obtain the necessary conditional use permit if he or she can. The application fee is \$100, and the process involves notice and hearing before the city planning commission.

Vernonia Vernonia appears to require a business license and home occupation permit only for those home occupations with sales within the city. The conceptual basis for using local sales as the dividing line for business licensing (and even less so for home occupation permitting) is not apparent.¹⁶

¹⁶ Would a major manufacturer and employer in the community not have to have a business license if it had no local sales?

Woodburn Woodburn does not require a home occupation permit at all. If the home business meets the standards set forth in the zoning ordinance, then it is allowed outright; if the standards are not met, then the use is not allowed.

All home occupations have to have business licenses, however. These run \$35 for the first year and \$25 for each year thereafter.

Benton County Benton County requires a permit for home occupations. The theory behind the requirement is to control the commercialization of residential neighborhoods. Staff's view of who has to obtain a permit was that those whose activities did not tend to commercialize the neighborhood (e.g. a novel writer or a computer/telecommunications professional) were outside the practical scope of the permitting requirement.

Benton County does not have a business license requirement for home occupations.

Columbia County Columbia County does not require home occupations to have a business license. The County amended the home occupation language in its zoning ordinance noting that:

"Telecommuting is becoming an efficient means to coordinate a work force. It

lessens commuting time and the energy spent meeting in a communal office building. An amendment to the zoning ordinance to allow more types of home occupation may also promote the goal of energy conservation." Ordinance No. 95-09 §4(8).

Linn County Linn County home occupation definition is remarkably encompassing:

"A home occupation shall be defined as any activity incidental to the residential use of the property that is conducted in a manner that does not give an outward appearance or manifest any characteristics of a business." Linn County Zoning Ordinance §20.3

Thus, as with the city of St. Helens, having friends over for a neighborhood association meeting, a bridge game, or to watch a football game, are all activities that appear to require the resident to acquire a home occupation permit. The permit is for one year, costs \$200 and has to be renewed annually. Linn County planners, however, report that, practically speaking, the county has a two tier system with "invisible" home occupations being effectively excused from the permit requirement.

Linn County has no business license requirement.

Multnomah County Multnomah County does not require a home occupation permit, though home occupations have to meet standards set forth in the county's zoning

ordinance. The county does have a business license requirement limited to businesses grossing over \$15,000 from all sources.¹⁷

V. HOME OCCUPATIONS AND BUSINESS LICENSES: A PROPOSAL FOR IMPROVEMENT

A. Analysis of Survey Results

Certain conclusions can be reached from the survey:

- o The best conceptual basis for the regulation of home occupations is to control the "commercialization" of residential neighborhoods.
- o High density metropolitan neighborhoods are more likely to be vulnerable to the impacts of commercialization than low density rural neighborhoods.
- o A tighter regulatory system might be justified for high density urban areas than for low density rural areas.
- o Home occupations which are virtually invisible and pose no threat of neighborhood commercialization provide the least justification for active permit/hearing and notice regulation.
- o Absent some compelling local need to the contrary, allowing "invisible" home occupations outright with control through performance standards in the zoning ordinance and complaint driven enforcement appears to be adequate.
- o Visible but low-impact home occupations may also apparently be excused from permitting without substantial negative results, as long as standards exist and an

¹⁷ The rate is 1.45% on adjusted net income.

active enforcement mechanism is available.

- o Six out of seventeen jurisdictions surveyed do not require business licenses for home occupations.
- o Business license requirements may be justified on the basis of revenue generation, as a number of them explicitly are in this survey. The alternate justification is that the jurisdiction has a need to regulate home occupations and does this through the business license. Since the regulatory issues are adequately handled through the land use process, there appears to be only a very limited rationale for requiring home occupations, and especially invisible home occupations, to maintain these licenses.
- o The definitions of "business" in virtually all the ordinances reviewed (the exceptions being Portland and Multnomah County) are all so over broad that there is a substantial gulf between the de jure scope of the law and its practical application, especially with respect to small home occupation enterprises.

B. Model Ordinance for Home Occupations

A model ordinance for home occupations should have the following provisions:

1. A clear statement setting forth the rationale for the regulation of home occupations;
2. A statement that home occupations are permitted outright in residential zones;
3. A list of performance standards protecting the neighborhood from "commercialization."
4. An effective enforcement mechanism.

The Hillsboro ordinance is a good example of a very simple ordinance of this

sort.¹⁸

The Scappoose ordinance, while nominally a two tier ordinance, is effectively a single tier no permit ordinance.¹⁹ Its presentation is well organized, and it has strong (perhaps even a little severe) language defining the characteristics of the no-impact home occupation. It could certainly serve as a basis for a model ordinance.

Alternatively, for jurisdictions facing more serious concerns with commercialization of residential neighborhoods, a two tier approach, with the no- or low-impact tier not requiring a permit, would be reasonable. Good models for such an approach are the Portland and Beaverton ordinances.²⁰

C. Rationalizing Business Licenses for Home Occupations

The key to the business license issue is a determination of the purpose of the requirement. If the purpose is to raise revenue, then the Portland/Multnomah County approach of exempting businesses grossing less than a certain amount makes sense. In

¹⁸ Though there is room for elaboration of the performance standards set forth in §3(20).

¹⁹ Scappoose Zoning Ordinance §17.142 et seq.

²⁰ Portland's found at Planning and Zoning Chapter 33.203 et seq., and Beaverton's found at Section 75 of the Beaverton Zoning Ordinance.

the Portland area the amount is \$15,000.

On the other hand, the amount of the annual license fee in most jurisdictions is small (\$25 to \$50). This cannot do much more than cover the cost of collecting and accounting for the fee; and when the paperwork and effort on the part of the home business person is counted in, the net benefit to society must in most cases be very small, if not negative.

If, on the other hand, the rationale for requiring the business license is regulatory, regulation via the business license is redundant with the home occupation regulation. There is no apparent need for two overlapping regulatory systems.

Finally, five of our seventeen jurisdictions²¹ don't have business license requirements for home occupations at all, and apparently have not encountered any serious adverse effects.

In sum, absent the intent to impose a business income tax like that in Portland and Multnomah County, home occupations should be exempt from business license requirements.²²

²¹ Six if Columbia City's two part system is counted.

²² More work needs to be done on business license and local income taxes in general (i.e. not just in the home occupation context). It is conceivable the way many local

VI. PERSONAL PROPERTY TAXES AND UTILITY TARIFFS

A. Personal Property Taxes

The moment a person decides to engage in a home occupation, the property used even occasionally or partially in the business is subject to Oregon's personal property tax.

The business owner then has to file a separate personal property tax return in each county where the business has any personal property. There is no *de minimis* provision in the act; any amount of personal property triggers the filing provision.

The impact of the act is softened to a certain extent, however, by ORS 308.190 which provides that if the amount of property involved is less than \$3,000, while the taxpayer has to make the filing, he or she will be excused from paying any tax. In addition, and also helpful, ORS 308.250(3) provides that once the county assessor has determined that the amount of personal property is less than \$3,000 in any particular year,

ordinances are written, for example, that a firm conducting a telephone survey like the one conducted here could be required to have a business license and pay local fees and taxes in each jurisdiction. The movement away from property taxes has fueled a movement toward other types of local fees and taxes which may well be much worse in terms of being a hindrance to reasonable business operations, especially in cases where local operations are *de minimis*. Adequate funding for local government is vital to business as well as residents, but there are more and less reasonable ways of generating these revenues.

in subsequent years the taxpayer need only certify that the property is still worth less than \$3,000 to be excused from a detailed filing.

The legislature has chosen \$3,000 as the trigger level for the obligation to pay the tax. While \$3,000 is probably adequate to exempt many home businesses, there are probably many businesses with computer and telecommunications related hardware in the \$3,000 to \$7,000 range which would not be exempt, but for which the tax required would be negligible relative to the effort involved in filing and processing the return.

Assuming property tax rates in the order of \$15 per thousand²³, the revenues involved are less than \$100 per business for a business with \$7,000 in personal property, and less than \$50 for a business with \$3,000 in personal property. When offset by the labor cost and paperwork at both the business and the assessor ends of the process, the state might find it reasonable to raise the trigger level from \$3,000 to \$7,000 for home occupations.²⁴

²³ Lower in rural areas, higher where the exempt bonded amounts are large.

²⁴ The legislature raised the floor from \$2,000 to \$3,000 in HB 2443 (1993). The Legislative Revenue Office did an analysis of the fiscal impacts of changing the limit from \$2,000 to \$3,000, \$5,000 and \$10,000 at the time and will provide the study if it is still available.

B. Business versus Residential Telephone Rates

Monthly business telephone rates in Oregon are approximately twice residential rates.²⁵ The difference between residence and business service is that the residential rate is only for service to a residence, and the directory listing has to be residential. The fact that the line is used for home business purposes is irrelevant.²⁶

There is a good deal of anxiety among home business users with residential lines over whether they may be receiving residential service illicitly. Moreover, the inability to receive a business listing in the directory reduces the synergy among various home businesses, while also making it more difficult for potential clients to identify home business suppliers.

It is probably premature to make recommendations for changes in this area, given the recent passage of the federal Telecommunications Act and parallel changes now being considered at the state level. The likely increase in the number of local service providers may well resolve the problem in the near future.

²⁵ U.S. West residential rates are \$16.30 per months with business rates at \$30.87.

²⁶ U.S. West Communications Oregon P.U.C. Tariff Sheet #25 (Advice 1602) June 23, 1995.

VII. CONCLUSIONS

With the rapid development of decentralized computer, telecommunications, and information technologies, the opportunity for the creation of home-based high technology-low capital businesses is rapidly expanding. Such businesses would bring with them a variety of benefits. These include:

- o **Overhead Cost Reduction** For business activities which would otherwise have to be conducted elsewhere (transportation costs), in other premises (capital costs), with the need for parking, phones, utilities, etc. (operating costs), and a good deal of unproductive dead time getting back and forth, home-based activities have the potential for substantially reducing costs, increasing profitability, and creating livelihoods.
- o **Reduction in Traffic Congestion, Air Pollution, Public Transit** Substantially expanding employment opportunities in residential neighborhoods would reduce the public and private costs of traffic congestion, air pollution, and the need for public transit.
- o **Welfare Reform** One of the major stumbling blocks to welfare reform is that child care often costs more than the mother would make in a job away from home; transport to the job site is expensive or non-existent; and a good deal of time and non-transportation expense has to be expended in getting back and forth to work. Home-based enterprise could reduce some of these costs.
- o **Care for Elderly and Disabled** Home-based enterprise would facilitate cost reduction in the care of the elderly and disabled. Having a responsible adult at home, even if largely occupied in business pursuits, would permit home care for the elderly and disabled to a much greater degree.
- o **Latchkey Kids and Teenagers** Adults at home mean fewer latchkey kids,

and it would significantly increase the amount of adult supervision in the neighborhood during those periods of the day when teenagers are not in school.

- o **Providing Skills for the Young** Home-based enterprise provides the opportunity for conveying the economic skills of the parents to the young. Children are exposed to the skills and discipline of earning a living which, if not abused, can't help but be a valuable synergism to school based education.
- o **Charitable and Volunteer Activities** The encouragement of home-based enterprise to the degree it is successful, would re-create daytime economic activity in neighborhoods and bedroom suburbs. With a significant number of the most productive age bracket of residents in the neighborhood during the day and interacting, neighborhood life, charitable, volunteer, and non-profit activities, would benefit. Neighborhood revitalization would ensue from everyone's interest in developing the symbiosis.
- o **Inclusionary Zoning Facilitates Age-Integrated Neighborhoods** The provision of additional services in the neighborhood increases the effective mobility of mobility-limited senior citizens and others, thereby expanding independent living opportunities.²⁷
- o **Economic Development** More wage earners earning wages in the neighborhood provide business opportunities in the area for others and also stem the flow of consumer and business dollars out of the neighborhood, a benefit of particular concern in distressed neighborhoods.

The purpose of this study was to determine if there are unnecessary regulatory

²⁷ See, for example, Roger Colton, "Independence and Mobility for the Aged: Community Access and Living in Place: A Proposal." Boston: FSC, June 1996; and California Coalition for Rural Housing Project: *Creating Affordable Communities*, Sacramento: CCRHP, November 1994.

barriers to the development of this industry. Based on a systematic survey of seventeen jurisdictions in central and north central Oregon, some rural some metropolitan, some larger cities and some small towns, the conclusion was reached that the current system of regulating home occupations through conditional use permits and business licenses was probably excessive in most jurisdictions and excessive and irrational in others.

The following recommendations were made:

1. Permitting and licensing of home occupations are not necessary to cope with the minor neighborhood problems associated with home occupations under current conditions in most jurisdictions. Performance standards set forth in zoning ordinances along with complaint-based enforcement procedures would be adequate.
2. Alternatively, two-tier approaches to home occupations should be considered. The first tier would be for home occupations with no- or low-impacts where no permits would be required. The second tier where permits would be required would only comprehend those home occupations with significant or substantial neighborhood impacts.
3. Business licenses should not be required for home occupations, since as a system of regulation for the home occupation they are redundant, unnecessary, and produce negligible, if not negative, net benefits, while as a revenue generation device the costs of generating the revenue are large relative to the revenue generated in most jurisdictions.²⁸

²⁸ Portland, Multnomah County and Tri-Met may well be exceptions to this broad conclusion, since their business license requirements are tied into income taxes clearly meant to be serious revenue generators.

4. The personal property tax limit (ORS 308.190) as applied to home occupations could reasonably be raised to \$7,000 from its current level of \$3,000.²⁹
5. No proposal was made with respect to telecommunications tariffs, since forces set in motion by the recent passage of the federal Telecommunications Act may well resolve the problem.

In addition to these recommendations, one other is important. There needs to be an effort made at the local jurisdiction level to provide education to current and potential home business people on the various aspects of governmental relations which affect the viability of their businesses. Regulation could be substantially improved along the lines suggested above, but business people also have to take the time to understand the system and participate in its improvement.

²⁹ This is a tentative conclusion pending the receipt of the state's fiscal impact study done for HB 2443.

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