

REGULATORY REFORM

Getting Out of Your Business

Cities nationwide are making it a crime to work from home.

◆ BY CHRISTINA SANDEFUR

Kim O'Neil ran a thriving medical billing business in Chandler, AZ. But that business became a nightmare when local officials discovered she was operating it out of her home.

Her firm, KMB Medical Billing, originally had its own office. But when O'Neil's father became ill, she moved it into her house so she could care for him and keep an eye on her two children. Her business had no signs, no commercial equipment, and she did not sell goods or store inventory. No customers came to her home, so she was not causing any noise, traffic, or parking issues. And though she did employ workers, they did not work out of her house.

Most observers would have never noticed that a business was operating in her home. Nevertheless, when city officials learned about the arrangement, they initiated months of tedious back-and-forth with O'Neil, with ever-increasing demands and legal threats. First, they told her she had seven days to apply for a special-use permit or face legal action, even though no one had previously told her she needed the city's permission to work from home. Then they said she needed to construct a commercial parking lot on her property, even though no clients or employees would ever use it. They even demanded she attend monthly meetings with the city.

Eventually, she gave up and rented some office space. The ordeal, she said, was "one of the most stressful experiences of my life."

O'Neil's business helped doctors and patients and provided flexible employment for her and her employees. Rather than praising her for such entrepreneurship, city officials punished her—not because she was causing problems, but simply because she ran a business from her home instead of an office.

THE GROWTH OF HOME-BASED BUSINESSES

In recent years, the internet, social media, and smartphones have given entrepreneurs unprecedented freedom to run businesses

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from their homes cheaply and easily. The home-based option gives stay-at-home parents, the handicapped, and others who find it difficult to leave the house new options to earn money for their families. Lawyers, psychologists, furniture repairmen, and data entry technicians are just some of the professionals who can work from their homes. Others make money selling items online. In fact, according to the U.S. Census Bureau, more than half of the businesses surveyed in 2012 were operated primarily from a home.

Home-based businesses also grow into larger enterprises, including some of the biggest companies in America today. Amazon, Apple, Disney, Harley-Davidson, Hewlett-Packard, Google, Mattel, Microsoft, and many other major corporations began in peoples' homes and garages. But they might never have come into existence if they had faced today's growing local restrictions on home-based businesses.

STIFLING ENTREPRENEURSHIP

In a survey of local zoning ordinances published last year, M. Nolan Gray, an expert in city planning who is affiliated with Rutgers University, and Olivia Gonzalez, research associate for the Mercatus Center at George Mason University, found that the per-worker costs of complying with regulations are higher for small businesses than larger businesses. That puts many people who work from home out of work or prevents them from getting their businesses off the ground in the first place. People who want to work from home are often unaware of zoning requirements and other restrictions impeding their work until city officials impose stiff penalties or force them to cease operating. Others operate their home-based businesses underground—thereby risking serious civil and even criminal penalties—because the regulations are too confusing or severe.

According to Gray and Gonzalez, officials sometimes try to craft reasonable solutions but nevertheless end up thwarting



home-based businesses. One approach is for cities to explicitly permit specified types of businesses in residential areas. But at best, this approach can only result in allowing *existing* types of businesses to continue. Government officials cannot possibly predict the innovations that entrepreneurs will make, so such lists quickly become obsolete.

Cities also restrict the number of employees and clients who can visit a home-based business. In Nashville, it is illegal to serve a customer in one's home regardless of the business, meaning that people who unobtrusively cut hair, teach violin lessons, or tutor schoolchildren are outlaws if they do so from home rather than a traditional office. Portland, OR allows up to eight clients to visit a home-based business each day, but only if the homeowner gets a permit and passes a home inspection. In San Francisco, it's legal to have a group of friends over to watch a movie, participate in a book club, or even sew a quilt, but it's against the law to invite

the same people over for business purposes. Surprisingly, officials sometimes prohibit home-based businesses from employing non-resident employees who work *off-site*.

These arbitrary, one-size-fits-all restrictions fail to recognize that the typical home-based business is a quiet, responsibly run operation that neighbors never even notice. Forcing those businesses to comply with outmoded zoning, licensing, and permit requirements deprives people of economic opportunity and punishes responsible citizens. It also empowers meddlesome neighbors to divert limited city resources away from addressing pressing issues, distracting the police from solving genuine crimes.

That is precisely what happened to Angie Hall of Phoenix. Hall left her lucrative yet hectic 16-year corporate career to start a business teaching yoga and meditation at a local studio. Some clients expressed a desire to practice in a quiet space outside of the commercial studio setting, so she decided to construct a

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quaint studio in her backyard where she could offer small, more intimate gatherings of just a couple of people at a time—no more than a dinner party.

Hall had owned her home for 11 years and during that time had always been a kind and tidy neighbor. For advice on the studio, she consulted with a contractor who lived next door; he had recently finished building a home office in his own backyard and he initially expressed an interest in building her studio himself. Then she consulted the city code, even though she knew that other residents on her street operated businesses out of their homes without a permit. Her neighbors were not doing anything dangerous or bothering anyone, so she did not complain. However, she wanted to follow the rules.

She got a building permit for her backyard studio and disclosed her intentions to offer yoga there. She also applied for a business permit and a permit allowing increased traffic, even though she did not think her business would bring extra traffic to the neighborhood. That's when Hall's dream became a nightmare.

After she decided to use a different contractor, the neighbor who originally offered to build the studio decided he did not want another business in the area. He began campaigning against her request for a permit.

A coalition of neighbors began spying on Hall, looking for excuses to object at city council meetings where her permit application would be considered. They photographed cars that parked in her driveway or near her home, as well as guests who entered the house. One neighbor began eavesdropping on her conversations through the fence, stalking her social media accounts, and printing out posts regarding the studio.

Angie invested her life savings into the construction of her studio, but when she finally finished, it became clear she might not be able to use it. Unable to move forward with her business, she was forced to hire a lawyer at \$500 an hour.

At the zoning hearing, she and her lawyer offered a compromise: in exchange for a business permit, she would submit to additional hearings before the city's zoning board to prove her business was not having an ill effect on the neighborhood. She would only allow three cars to be at her house at any time, and all would park in her driveway, mitigating any traffic concerns. Finally, though she has no plans to move, she would surrender her business permit if she ever sold her house.

Those good-faith efforts were in vain. At the hearing, residents were rowdy, yelling and speaking out of turn. It didn't matter that Hall and her students offered to teach free community classes, do street clean up, and ride bikes to their appointments instead of coming to classes in cars. Client testimonials, letters of her good character, and her lawyer's best pleas did nothing.

After months of harassment and repeated city inspections (both announced and unannounced), it became clear that the organized campaign against her home-based business would ruin her chances of obtaining a permit. And because she had disclosed her intentions, the neighbors would continue to file complaints anytime they suspected she was conducting business from her home. Emotionally and financially exhausted, she withdrew her request and gave up.

Had Hall followed the examples of her neighbors and ignored the law, she could have been living her dream today. Her small, private yoga instruction firm had no observable effect on the neighborhood, so neighbors likely would have never known it existed. But because she tried to abide by the law, she was forced to undergo repeated humiliation and harassment—to be dragged

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before the city as if she were a criminal and forced to justify her actions—even though her work had never bothered anyone. Her life was turned upside down because she followed the rules.

City permit requirements for home-based businesses might have been created with good intentions, but they're often hijacked by “not-in-my-backyard” (NIMBY) neighbors and exploited to transform private squabbles between neighbors into public disputes involving the government. That results in government dictating what people may do within the confines of their own homes.

A STATE-BASED SOLUTION

Every year, Lee Sepanek's Christmas display brings joy to Phoenix residents who visit to enjoy the glistening decorations and sip the hot chocolate he serves them. But not last year. Thanks to local bureaucrats, he was forced to cancel the show.

The trouble started during the summer of 2017 when the city warned him he was violating its Mobile Food Vending Ordinance, even though he was not operating any kind of “mobile” facility and was not engaged in vending. Sepanek does not charge for the cocoa—he just asks for donations. But the city said its rules are broad enough to prohibit even giving away cocoa from one's driveway.

When Sepanek asked the city what he could do to keep the show going, officials told him he “would need to find a licensed commissary kitchen as a ‘base’ to store, clean and prep” his cocoa and that he would have to get a “special event/seasonal permit,” requiring fees and onsite inspections. City officers also

complained that he was selling Christmas ornaments, which, they said, violates Phoenix's rules against having a "home occupation."

After local news reported Sepanek's story, the city indicated it might back down. But by then it was too late; he could not get the lights up in time for Christmas.

Phoenix's Grinch-like attitude might seem like a small thing, but it's part of the same problem that doomed O'Neil's medical billing and Hall's yoga instruction businesses: outmoded local ordinances that forbid home-based businesses and in the process violate private property rights and hamper economic opportunity.

Cities that shut down home-based businesses often complain about traffic or neighborhood parking, but there are already rules on the books that address such concerns. Even more common is the often-unspoken assumption that the presence of a commercial transaction transforms an innocent activity into a business that government must oversee. This makes no sense. If it is legally and morally unobjectionable to do one's own income taxes at the kitchen table, there is no reason that an accountant should be barred from doing someone else's taxes in her home office so long as she follows the rules of the profession. If a mother can teach her daughter to play the violin in her living room, it makes no sense for the government to penalize her for teaching someone else's daughter in the same living room for money. Yet local governments typically draw the line at the exchange of money: cooking a meal for a guest in one's kitchen is viewed as falling within the almost sacred right of deciding what to do in the privacy of one's home, but cooking a meal for a guest *for money* is treated as suspicious in the absence of government supervision.

That's not to say there are no legitimate grounds for regulating home-based businesses. Local governments should have power to prevent traffic problems, noise, threats to public safety, and nuisances. But existing ordinances already address those concerns. And local regulations of home-based businesses are often based on assumptions about the marketplace that are now growing obsolete—and are rarely tailored to address specific concerns. Instead, they're more often written in broad terms, essentially banning all home businesses on the theory that they *might* lead to problems. And that approach is increasingly stifling the sharing economy.

Some efforts have been made to liberalize local restrictions on harmless home-based businesses. But even those efforts have faced such strong NIMBY opposition that many cities have refused to budge. As a result, some states are taking matters into their own hands, working to create fairer, more uniform rules that give blanket permission to engage in specific home-based enterprises. Colorado recently passed a "cottage food law" allowing people to sell food prepared in small quantities in their homes. Alaska, California, Illinois, and Georgia have similar laws. California also prohibits cities from banning home daycare services. But overall, few states have adopted comprehensive protections for home-based businesses.

This year, the Arizona legislature considered one of the most comprehensive reforms yet: the Home-Based Business Fairness

Act, drafted by the Goldwater Institute and the Arizona Free Enterprise Club. The legislation would put an end to the patchwork of bureaucracy and restrictions that block home-based entrepreneurship. Under the bill, cities could not require home-based businesses to obtain a costly, time-consuming home occupation license or permit unless there was actual evidence that a business would cause disruption to the residential area. It would require that homes be primarily used as residences, so there would be no risk of shopping centers cropping up in residential neighborhoods. But it also provides that if a business has no harmful effect on the community—meaning it does not generate excess parking or traffic, or cause noise or other disturbances, and is not visible from the street—it could operate without government obstruction.

This would safeguard families with home-based businesses from lengthy, uncertain, and expensive permitting or rezoning processes that are not designed to mitigate a nuisance but are aimed at a homeowner simply because she works from home rather than a traditional office. The bill would leave local governments to focus on mitigating nuisances through building codes; traffic, parking, and noise ordinances; and other health and safety regulations. Most importantly, homeowners would not have to get a bureaucrat's permission to run a business that is not causing neighborhood disruption.

Unfortunately, thanks to intense NIMBY opposition, the legislation failed.

LOCAL CONTROL, OUT OF CONTROL

Several Arizona cities vehemently opposed the Home-Based Business Fairness Act, incensed about what they perceived as a loss of their power and arguing that home-based business regulation is a matter of "local control." To kill the bill, city officials resorted to fear tactics, raising a number of nonsensical objections and outright falsehoods. They argued that home-based businesses would generate noise, traffic and parking congestion, and other nuisances. Yet the bill expressly addressed those concerns, leaving cities with the same power they already had to enforce existing nuisance rules, fire and building codes, and traffic restrictions. The bill was also narrowly targeted to protect only businesses that did not "generate on-street parking" or create a "substantial increase in traffic."

City bureaucrats nevertheless protested that the bill would make it difficult for them to maintain the residential character of neighborhoods and could lead to an increase in businesses like dog boarding, auto repair facilities, and dental offices—none of which were true, given that the bill allowed cities to ensure home-based businesses were *secondary* to a property's use as a home. Nor would the bill have altered any existing laws relating to professional licensing, taxes, or public health and safety standards. In fact, that was the whole point: the bill would have instructed cities to focus on *harm to the neighborhood*, not on inoffensive activities going on in a home.

But the most disturbing argument raised at meetings about the Arizona bill came when city officials argued that their enforcement

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powers would be curtailed because the legislation would make it harder for them to enter and inspect homes. If the bill passed, some claimed, city governments would not have an accounting of the activities people were conducting in their homes. But city officials have no business intruding in people's private homes. State and federal constitutions provide robust privacy protections against such busybody monitoring. Indeed, even the federal Occupational Safety and Health Administration backed down from its decision to conduct inspections of people's home offices after widespread outrage that such a move would intrude on individual privacy. If homeowners are causing problems for their neighbors, cities can investigate under the nuisance powers they already possess—and those powers should be enforced the same across the board regardless of whether someone is working from home. But opponents of the bill were quite clear: existing prohibitions on home businesses give them a unique advantage to demand the disclosure of private information—and they were unwilling to give that up.

CONCLUSION

City bureaucrats often threaten home-based businesses in the name of "local control." But while local control is a tool that allows communities to make decisions within the proper scope of their authority, it should not be used as a weapon against individual

rights. When local control becomes destructive and oppressive, then states have a duty to step in and protect people's rights. Arizona's Home-Based Business Fairness bill did not seek to eliminate cities' powers; it simply sought to end local abuses by establishing an important presumption of freedom: if a home-based business has no harmful effect on a residential neighborhood, a homeowner should be allowed to operate without first seeking permission.

Most neighborhoods already have many home-based businesses that operate in secret without disturbing anyone, and those practices deserve protection. Responsible home-based business owners should not be dragged through expensive, tedious, often futile permitting processes that give neighbors a heckler's veto over what goes on in the privacy of one's home.

The good news is that despite its initial failure in Arizona, the Home-Based Business Fairness Act can serve as a nationwide model giving policymakers the tools they need to strike a fair balance between property rights and public protection from genuine nuisances. States should standardize and modernize their cities' overly broad and often outmoded regulations. That way, policymakers can refocus local resources where they belong: on addressing *actual* disruptions while embracing the new economy and empowering people to pursue the American Dream—whether they do so from a corporate office or their kitchen table. R



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