

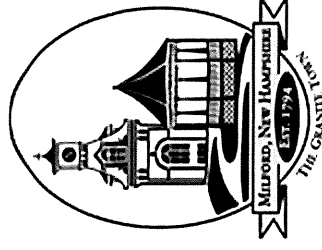
# TOWN OF MILFORD

Office of Community Development  
Planning • Zoning • Building Safety • Code Enforcement • Health  
Economic Development • Active Projects  
Robin R. Lunn.

Assistant Town Planner and Zoning Administrator

## Administrative Review

**Date:** January 29, 2018  
**To:** Zoning Board of Adjustment, members and alternates  
**From:** Robin R Lunn, Planning & Zoning Administrator  
**Subject:** Review of Home Occupation Regulations



Please find attached a set of documents that give a range of regulations for **Home Occupations** or **Home Businesses**. As I have reviewed the various options and considered what we face here in Milford, I suggest we look to create a regulation that has three tiers of oversight. All would need to be clearly secondary to the residential use on the property and operated by a resident. Beyond that there would be ways to vet each operation based on intensity. I suggest the following:

1. **Home Occupation** – an accessory use located and conducted so that the average neighbor, under normal circumstances, would not be aware of its existence other than a sign as permitted under the Sign Ordinance and a single branded vehicle used by the owner for use in the HO. Types of occupations that would qualify for a Home Occupation Permit – tradespeople, artists, tutors, tailors, accountants, lawyers, engineers, realtors, healing practitioners, architects, IT professionals, not-for-profit organizations, bakers, candy makers
  - a. **Administrative Review and Approval.** Criteria should include:
    - i. Only residents as employees, personnel or volunteers
    - ii. Conducted entirely within the residence or accessory structure
    - iii. No evidence of HO except a sign of not more than 4 sq. ft.
    - iv. Must be renewed every 2 years
    - v. Not more than 5 clients or deliveries per day
    - vi. Not more than 500 square feet dedicated to the occupation
    - vii. NO commercial vehicles

Town Hall – 1 Union Square – Milford, NH 03055-4240 – (603) 249-0620 – FAX (603) 673-2273  
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2. **Home Business** – an accessory use for gainful employment involving the creation, provision, or sale of services and/or goods where a limited number of persons, in addition to the resident occupants, may be employed. Types of businesses that would qualify for a Home Business are – single chair beauty/barber shops, small repair shops, groomers, day care operations

a. **Special Exception required.** Criteria should include:

- i. No more than 2 non-resident employees at the site
- ii. Conducted entirely within the dwelling or accessory structure
- iii. Not more than 25% of the combined floor area of all structures on the property
- iv. Retail sales of goods incidental to Home Business are allowed
- v. Not more than 16 additional round trips per day
- vi. No deliveries by vehicles with more than two axles

3. **Home Industry** – an accessory use that has a manufacturing component and/or may involve the storage of equipment and materials outside. Types of businesses that would qualify for a Home Industry are – brewers, landscapers, contractors where storage or manufacturing is included

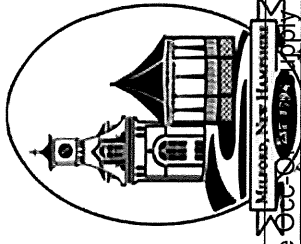
a. **Conditional Use Permit?** *See Peterborough standard and language*

- i. Approval based on performance criteria
- ii. Limited to larger lots?
- iii. Percentage of lot coverage?
- iv. Number of employees?
- v. Other conditions?

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# TOWN OF MILFORD

**Office of Community Development**  
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## Assistant Town Planner and Zoning Administrator

|         |                                    |          |                     |            |    |   |           |
|---------|------------------------------------|----------|---------------------|------------|----|---|-----------|
| 5-10    | Yeardon, Daryl                     | 41/81    | 336 Mason Rd        | 3/4/2010   | SE | Home Occ-FFL                                  | Approved  |
| 13-10   | Margarit, James                    | 48/48-25 | 43 Reserve Way      | 7/1/2010   | SE | Home Occ-Small Baking Biz; former owner       | Approved  |
| 27-09   | Lewis, Russell & Lara              | 46/27    | 516 Osgood Rd       | 09/17/09   | SE | Home Occ-FFL                                  | Approved  |
| 01-09   | Andronacco, Louis                  | 24/26    | 86 West Street      | 01/15/09   | SE | Home Occ-fire sprinkler biz                   | Denied    |
| 19-10   | Gagnon, Duane                      | 29/57    | 41 George St        | 9/2/2010   | SE | Home Occ-motorcycle repair shop; former owner | Withdrawn |
| 6-11    | Daniels, Loreen                    | 38/60    | 127 Whitten Rd      | 04/21/11   | SE | Home Occ-alterations and crafts               | Approved  |
| 2012-03 | Thomas, Terry                      | 53/84    | 295 Federal Hill Rd | 04/05/12   | SE | Home Occ-photography studio                   | Approved  |
| 28-08   | Shari Salem                        | 6/23     | 765 North River Rd  | 11/06/08   | SE | Home Occ-lapsed                               | Approved  |
| 2013-17 | Nelson, Toni & Thomas              | 52/35    | 140 Cornstock Dr    | 10/03/13   | SE | Home Occ-Pet Grooming                         | Denied    |
| 2015-02 | Donovan, Denise & Pittsley, Gordon | 29/70    | 69 Union St         | 02/05/15   | SE | Home Occ-business; former owner               | Granted   |
| 2015-03 | Rheaume, Jennifer                  | 53/35-21 | 23 Settlement Lane  | 03/05/15   | SE | Home Occ-family daycare                       | Granted   |
| 2015-14 | Merrifield, Tammy & Craig          | 30/33    | 366 Nashua St       | 08/20/15   | SE | Home Occ-hair salon                           | Granted   |
| 2016-27 | Shari Bean                         | 23-Jun   | 765 North River Rd  | 12/1/2016  | SE | Home Occ-puppy boarding                       | Granted   |
| 2017-05 | Courtemanche, Darren               | 30/70    | 20 Prospect         | 3/16/2017  | SE | Home Occ-FFL                                  | Withdrawn |
| 2017-08 | Verstraete, Carla                  | 37/168   | 157 Westchester     | 4/6/2017   | SE | Home Occ-home daycare                         | Granted   |
| 2017-21 | John Brady                         | 22/64    | 108 Amherst Street  | 9/7/2017   | SE | Home Occ-Clock shop                           | Granted   |
| 2017-27 | Don Claxton                        | 53/48    | 32 Heritage Way     | 12/07/2017 | SE | Home Occ-office for Champion Paving           | Granted   |

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## **Town of Milford, NH**

**Home Occupation:** Any use conducted entirely within a dwelling or an accessory building which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no outside display or storage, nor emission of dust, noise, fumes, vibration or smoke beyond the lot line (See Article X, Para. 10.02.3).

### **10.02.0 SPECIAL EXCEPTIONS**

#### **10.02.1**

The Board of Adjustment may in appropriate cases and subject to appropriate conditions and safeguards as determined by the Board, grant permits for such special exceptions as allowed in the various zoning districts as set forth in Article II. The Board may refer all applications for special exceptions to the Planning Board for its review and recommendations prior to holding public hearing on the application. The Board of Adjustment, in acting on an application for a special exception shall take into consideration the following conditions: (1992)

- A. The proposed use shall be similar to those permitted in the district.
- B. The specific site is an appropriate location for the proposed use.
- C. The use as developed will not adversely affect the adjacent area.
- D. There will be no nuisance or serious hazard to vehicles or pedestrians.
- E. Adequate appropriate facilities will be provided for the proper operation of the proposed use.

#### **10.02.2**

The Board of Adjustment shall act upon an application for a special exception in the same manner as prescribed in Section 10.01.1 of this article.

#### **10.02.3 HOME OCCUPATIONS**

A. In all cases involving home occupations, the Board of Adjustment in addition to the criteria contained herein shall consider the following requirements:

1. The person conducting the home occupation shall reside in the dwelling unit, and there shall be no more than one (1) non-resident person employed in connection with such occupation.
2. There shall be no evidence outside the dwelling, except permitted signs and required off-street parking, that the dwelling contains a home occupation.
3. The home occupation shall not exceed 25% of the combined gross floor area of the existing home and any accessory structures, or 1,000 SF, whichever is less. (2016)
4. Accessory finished goods may be provided for sale in conjunction with the home occupation, sold and stored in allowed home occupation space only. (2008)
5. The home occupation and the conduct thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value of other residential property in the neighborhood.

B. Any special exceptions issued hereunder shall automatically terminate when the applicant no longer resides in the dwelling unit.

C. Prior to commencement of a Home Occupation, the homeowner shall make application for a permit to the Community Development Office, submit to a Code Compliance Inspection specific to the location or area of the Home Occupation. (2012)





*Peterborough, NH***§ 245-24. Home-Based Businesses [Amended 5/13/14]****A. General Provisions that apply to all Home-Based Businesses.**

1. There are three categories of businesses: Home Occupations, Professional Uses, and Home Industries. All categories are subject to the requirements listed below, in addition to the specific requirements contained herein for each individual category of use.
  - a. The activity must be operated by residents of the property.
  - b. The activity must be clearly incidental and secondary to the primary use of the premises as a residence.
  - c. The activity must not change the character of the premises or surrounding neighborhood. There shall be no window displays or other features not normally associated with residential use.
  - d. Parking that is necessary for all employed residents, employees, and customers must be accommodated off-street, and new parking areas must be screened from the view of abutters and from public ways (streets or pedestrian ways) utilizing plantings, fencing, and/or topography. When possible, parking areas shall be located at the side or rear of the residence or accessory buildings.
  - e. Proof of compliance with all applicable federal, state, and/or local environmental controls is required, as well as any other applicable local zoning regulations.
  - f. When the business use will necessitate the construction of new buildings, building additions, or parking areas, the applicant shall seek Site Plan Approval from the Planning Board in conformance with Chapter 233.
  - g. One sign associated with the Home-Based Business is allowed and shall not exceed six (6) square feet in size and may not be placed in windows.
  - h. Retail sales are limited to the sale of goods that are produced on-site, and by appointment only.
2. Exemption: The following use is considered to be exempt from the provisions of this section:
  - a. A home office that is used only by the resident(s) who conduct business by mail or electronic communication that involves no traffic to the property from customers/clients or deliveries.

**B. Home Occupations** include but are not limited to tradespeople, art studios, individual tutoring, hair dressing, dressmaking/tailoring, baking or other food preparation. Home Occupations are permitted in all districts, subject to the following provisions, in addition to §245-24A:

1. The use may only employ the residents of the property.
2. The use shall have a maximum of 4 client visits per day, assuming one vehicle per client visit. No group classes or activities are allowed.
3. The activity must be conducted entirely within the residence or an accessory building. There shall be no exterior display, and no variation from the residential character of the premises. Tradespeople are permitted to have not more than 500 square feet of exterior storage of tools, equipment, and materials, provided that the storage area is screened from the right of way and abutters by fencing or year-round vegetation, and meet building setbacks for the property.
4. Commercial vehicles are prohibited.
5. The Home Occupation may not occupy more than 25% of the floor area of the building, but in no case may it exceed 500 square feet.

6. Any resident wishing to establish a Home Occupation shall submit a request on the form provided by the Planning Board's designee (Code Enforcement Officer) for review. If the Code Enforcement Officer determines that the proposed business is in compliance with the regulations listed above, then he/she shall approve the application stating that the proposed Home Occupation is in compliance with this section and does not require approval under §245-24 C or D.
- C. **Professional Uses** include but are not limited to physicians, attorneys, engineers, accountants, realtors, professional instructors, Home Day Care, or other recognized or State licensed professions. Professional Uses are permitted in all zoning districts except the Family District by Conditional Use Permit of the Planning Board, subject to the following provisions, in addition to §245-24A:
1. No more than four (4) people, including the resident(s), may be employed on the premises.
  2. The activity must be conducted entirely within the residence or an accessory building. There shall be no exterior display of goods or products, no exterior storage of materials or equipment, and no other variation from the residential character of the premises.
  3. The Professional Use shall not generate traffic that is inconsistent with or generates significantly more traffic than is occurring on the road leading to the premises, either in quantity or type.
  4. The Professional Use may not occupy more than 50% of the floor area of the building.
  5. The Professional Use shall not necessitate more than four parking spaces for clients, patients, non-resident employees, or other business related demands.
  6. Commercial vehicles are prohibited.
- D. **Home Industries** include but are not limited to building contractors and construction trades. Home industries are permitted only in the Rural District by Conditional Use Permit of the Planning Board subject to the following provisions, in addition to §245-24A:
1. No more than six (6) people, including the resident(s), may be employed on the premises.
  2. The Home Industry may be conducted in part outdoors, but all such activities, equipment, and storage shall be permanently screened from the view of abutters and from public ways by buffers such as year round vegetation, fences, and/or topography.
  3. No more than one quarter (25%) of the lot area, exclusive of areas covered by buildings, shall be used for the Home Industry, including outdoor storage or parking.
  4. The Planning Board must determine that access to the premises by all vehicles that are anticipated to commonly serve the use will do so without adversely affecting safety in the vicinity, whether those vehicles are based on the premises or elsewhere.
  5. Commercial vehicles may be permitted provided that the vehicles do not adversely affect the character of the neighborhood, as determined by the Planning Board.
- E. **Conditional Use Permits.** Subject to the provisions of RSA 674:21, II, the Planning Board is hereby authorized to issue Conditional Use Permits for Professional Uses and Home Industries. In the granting of any Permit, the Board may attach reasonable conditions, or waive or modify any of the requirements of this section if specific circumstances relative to the proposal indicate that the waiver will properly carry out the spirit and intent of this section.

**5130. Home Occupation.** No regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation that is customary in residential areas and that does not change the character thereof, including but not limited to: sewing, crafts, or an office for work performed off-site. Home Occupations shall comply with the following performance standards:

- a. The use must be conducted entirely within the dwelling or accessory structure thereto.
- b. The use must be carried on by the residents of the dwelling unit.
- c. The use must be clearly secondary to the dwelling use of such residence and not change or have any impact on the residential character of the dwelling or surrounding neighborhood.
- d. The use must not change the character of the neighborhood, and in connection with which there is no display, no outside storage of equipment and no commodity physically sold on the premises.
- e. One wall sign of one sq. ft. without illumination is permitted.

**5135. Home Business.** A Home Business may be operated within the Dwelling or accessory structure thereto, and shall in no case occupy more than 40% of the floor area of the Dwelling, including but not limited to: manufacture of goods for sale off the premises, a single-chair barber shop, beauty salon or massage therapy, a fix-it or print service or a studio. A Home Business may erect a ground or wall sign of four square feet. In all districts where permitted, the use shall comply with the following performance standards, however, the underlying intent is for such businesses to avoid or minimize physical disturbances:

- a. The use must be clearly secondary to the dwelling use of such residence and not significantly change the residential character of the dwelling or surrounding neighborhood.
- b. The residence must be inhabited by the owner of the Home Business, and no more than two (2) non-residents, in addition to the residents, may be engaged or associated with the use.
- c. The use shall not generate more than 25 additional round trips per day.
- d. The on-site parking associated with the use must be to the rear or side of the structure.
- e. The use shall not require unenclosed structures or outside storage.
- f. The use shall emit no air pollution or noise pollution.
- g. The use shall have no deliveries by vehicles with more than two axles.
- h. Retail sales are not permitted as part of a Home Business, with the exception of the sale of goods incidental to the Home Business.

**Watertown Zoning Ordinance**  
Amended October 26, 2010, Printed April 12, 2011

**Home Occupation vs. Home Office**

**SECTION 2.35 HOME OCCUPATION**

A business, profession, occupation or sale of articles produced on the premises where sold, conducted within a residential building or accessory structure for gain or support by one or more residents of the dwelling which:

- (a) Is incidental and secondary to the residential use of the building;
- (b) does not change the essential residential character of the use and requires no exterior alterations or accessory buildings which are not customary with residential use;
- (c) is carried on solely by the residents of the dwelling except that no more than 2 non-residential employees may be allowed;
- (d) is confined to no more than twenty-five percent (25%) of the total floor area of the dwelling;
- (e) is not visible from any other residential structure, does not store outside of the dwelling any equipment or materials used in the home occupation;
- (f) does not produce any offensive noise, odor, smoke, dust, heat, glare, excessive traffic or other objectionable effects;
- (g) does not increase the average daily automobile trips generated by the residence in which the home occupation is located;
- (h) the conducting of a clinic, convalescent home, nursing home, restaurant, guest house, animal hospital, commercial kennel, dancing or musical instruction in groups, barbershop, beauty salon, licensed day care centers, massage or muscular therapist shall not be deemed to be home occupations.

**SECTION 2.36 HOME OFFICE**

A business, profession or occupation conducted within a residential building or accessory structure for gain or support by residents of the dwelling that conforms to the definition and requirements of a Home Occupation, except having no employees, no deliveries, and no customers that visit the site.

**SECTION 5.02 TABLE OF ACCESSORY USE REGULATIONS**

|   | Accessory Use Only           | S-6 | S-10 | CR | SC | T  | R.75 | R1.2 | NB | L<br>B | CB | I-1 | I-2 | I-3 | PSCD | OSC |
|---|------------------------------|-----|------|----|----|----|------|------|----|--------|----|-----|-----|-----|------|-----|
| d | Home Occupation <sup>1</sup> | SP  | SP   | SP | SP | SP | SP   | SP   | SP | S<br>P | SP | SP  | SP  | SP  | SP   | N   |
| e | Home Office                  | Y   | Y    | Y  | Y  | Y  | Y    | Y    | Y  | Y      | Y  | Y   | Y   | Y   | Y    | N   |

**SECTION 6.01 REQUIRED OFF-STREET PARKING SPACES**

- (b) The minimum number of off-street parking spaces required for particular uses of land (hereinafter called "required off-street parking spaces") is set forth in the following table:

Accessory home occupations

1 per 2 rooms used for a home occupation

<sup>1</sup> The Special Permit requirement is issued by the Zoning Board of Appeals

TOWN OF TEMPLE, NH - ZONING ORDINANCE  
(As amended through March 18, 2017)

Section 11 (2010) Home Business

**A. Home Business I:**

A **Home Business I** will be permitted in all zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out only by residents of the premises and involve a service provided by or product produced by those residents.
2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior floor space and in no case more than 2000 square feet.
3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.
4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), increases in traffic or in parking requirements, or as a result of other nuisances.
5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.
6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment. One business related vehicle may be stored on site without required screening.
7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

**B. Home Business II:**

A **Home Business II** will be permitted in the Village and Rural/Agricultural zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out by residents of the premises and not more than three on-premise employees who are not residents.
2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior space and in no case more than 2000 square feet.
3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.
4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), excessive increases in traffic or in parking requirements, or as a result of other nuisances.



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AMERICAN SOCIETY OF PLANNING OFFICIALS

1313 EAST 60th STREET — CHICAGO 37, ILLINOIS

Information Report No. 54

September, 1953

## ZONING REGULATION OF HOME OCCUPATIONS\*

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

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

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

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

\*Copyright, American Society of Planning Officials, September, 1953.

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

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

## I. THE BASIS FOR REGULATION

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

B. Must Be Incidental. Of even greater importance is the requirement that the occupation be clearly incidental to the use of the premises as a residence. Obviously, a residential district is established in a zoned community to protect and encourage the use of the land in that district for residential purposes. To be permissible, any other use must prove that its existence in the district will not be contrary to the spirit and intent of the ordinance. One aspect of this proof is the demonstration that the non-residential use is not the primary use of the property, but is merely incidental to the residence. Some persons may find it desirable or necessary to carry on an occupation in the home, either as a supplement to a regular occupation or because the home is the most practical



place in which to operate. This practice has been recognized and is generally allowed so long as the occupation does not become a large scale enterprise - one that would be harmful to the residential character of the neighborhood and would violate the purpose of zoning.

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

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

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

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

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\*C. A. Rathkopf, The Law of Zoning and Planning. New York: The Grosby Press, 1949 (second edition), pp. 58-63. E. M. Bassett, Zoning: The Laws, Administration, and Court Decisions During The First Twenty Years. New York: The Russell Sage Foundation, 1940. pp. 100-102. E. C. Yokley, Zoning Law and Practice. Charlottesville, Virginia: The Michie Company, 1948, pp. 86-87. Legal cases illustrating various aspects of this point are presented in Part IV following.

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

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

## II. CONTENT OF THE REGULATIONS

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

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

- |                                    |                        |
|------------------------------------|------------------------|
| A) Occupations permitted           | F) Employment          |
| B) Differential regulation by zone | G) Accessory buildings |
| C) Transitional zoning             | H) Sale of goods       |
| D) Area occupied                   | I) Display             |
| E) Equipment used                  | J) General regulations |
|                                    | K) Permits             |

A. Occupations Permitted. About one-third of the ordinances do not name any occupations as being permitted or prohibited; in these cases reliance is placed on the effectiveness of the other specifications in the regulations, discussed below.

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

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

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

| <u>Occupation</u> | <u>Specifically Permitted in:</u>                                     | <u>Specifically Prohibited in:</u>   |
|-------------------|---|--|
| Barber Shop       | Geneseo, Illinois<br>Des Moines, Iowa (R-3, R-4);<br>Alfred, New York | Mesa, Arizona; South Pasadena, California; Des Moines, Iowa (R-1, R-2); St. Louis, Missouri; Greenville, South Carolina; Chicago Heights, Illinois; Kalamazoo, Michigan; Princeton, New Jersey; Alcoa, Tennessee; Jackson, Mississippi; Colorado Springs, Colorado; Niagara Falls, New York; Cortland, New York. |
| Beauty Parlor     | Des Moines, Iowa (R-3, R-4)<br>Oakland, California                    | Des Moines, Iowa (R-1, R-2); Greenville, South Carolina; Chicago Heights, Illinois; Alcoa, Tennessee; Kalamazoo, Michigan; South Pasadena, California; Mesa, Arizona; Niagara Falls, New York; Cortland, New York; Jackson, Mississippi; Colorado Springs, Colorado; St. Louis, Missouri; Princeton, New         |

| <u>Occupation</u>         | <u>Specifically Permitted in:</u>   | <u>Specifically Prohibited in:</u>   |
|---------------------------|---|--|
| Cosmetologist             | Sacramento County, California.  | South Pasadena, California.  |
| Dance School, Studio      | Sacramento County, California.  | Kalamazoo, Michigan; Chicago Heights, Illinois.  |
| Hairdresser               | Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.                  | South Pasadena, California.  |
| Manicuring                | Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.                  | South Pasadena, California.  |
| Music teaching            | Oakland, California; Alfred, New York.  | St. Louis, Missouri; Kalamazoo, Michigan.  |
| Real Estate Broker Agency | Albion, Michigan; Sacramento County, California; Pima County, Arizona; Niagara Falls, N. Y. | St. Louis, Missouri; Mesa, Arizona; Princeton, New Jersey; Chicago Heights, Illinois; Kalamazoo, Michigan. |

Some of the listings of permitted and prohibited occupations are quite unusual, which may be explained in terms of unusual existing conditions. For example, Fulton County, Georgia (1946), and Marietta, Georgia (1951) forbid

clairvoyance, fortune telling, experimentation that involves the use of chemicals or matter or energy that may create or cause to be created noises, noxious odors, or hazards that will endanger the health, safety or welfare of the community.

And Geneseo, Illinois (1948) permits

repairing furniture, sharpening lawn mowers, doing carpentering work, repairing radios, headquarters for plumbing, furnace or painting work, weaving, dressmaking, baking, or otherwise preparing food, preparing remedies, selling or taking orders for merchandise, selling produce raised on the premises, barber shops or similar minor operations. Photography and such other home industries similar to those above enumerated as may be permitted by the Board of Appeals.

B. Differential Regulation By Zone. While most communities allow all home occupation in all residence districts, this is not always the case. Residential areas are not all alike, and zoning ordinances treat them differently with respect to such factors as lot size, setbacks, yard requirements, building heights, population densities. So with home occupations. To the extent that home occupations represent a more intensive use of the land, they may be considered more or less undesirable in different residential districts. Various ordinances permit home occupations in some, but not all, residence districts. Others establish distinctions among different types of home occupations, allowing some only in certain zones. Examples of refinements of this sort are presented in the following table. (For comparability, when referring to residence zones an abbreviation is used: the symbol "1,3-5/5," for example, means that the occupation in question is permitted in the first, third, fourth and fifth of the five residence districts of that community. In a number of cases "rural" or "agricultural" zones are included in the tabulation where there are provisions concerning home occupations in the regulations for those zones.)

| <u>Ordinance</u>                       | <u>Provision</u>   |
|--|--|
| Mesa, Arizona (1949) .....             | In zones 1-3/3 professional offices are allowed, and in zones 2,3/3 other customary home occupations.  |
| Los Angeles, California (1952).....    | Allows "home occupations," offices of physicians, dentists, and ministers in zones 1-3/9. Customary incidental uses including non-principal home offices of physicians, dentists, and ministers are permitted in zones 5-9/9. In these same zones "home occupations" and the principal offices (conducted in the dwelling) of physicians and dentists are permitted as transitional uses adjacent to commercial or industrial zones. |
| Sacramento County, California (1950).. | Limits the conduct of "home occupations" to zones 4-7/7. In zones 6,7/7 professional offices are also allowed as home occupations.   |
| Colorado Springs, Colorado (1951)..... | In zones 1,4-6/7 there are permitted "customary home occupations" and offices of resident professionals. The same occupations, plus beauty shops conducted in residences are permitted in zones 1,5,6/7. In zone 7/7 only "customary home occupations" and beauty operators are permitted.   |

Ordinance

Provision

|   |   |
|---|---|
| Enfield, Connecticut (1948).....                          | In both of its two residence districts there are permitted offices of professional residents, including surgery, library or laboratory. No other type of home occupation is mentioned in the ordinance.   |
| Des Moines, Iowa (1953).....                              | In zones 1-4/4 professional offices in the home are permitted. "Customary home occupations" are permitted in 2-4/4. In zones 3,4/4 beauty and barber shops <del>are permitted as home occu-</del><br>pations.   |
| Lexington & Fayette County, Kentucky..<br>(Proposed 1953) | Offices of resident professional persons and "customary incidental home occupa-<br>tions" are permitted in zone 1/6. In zones 2-6/6 professionals are allowed, when authorized by the Board of Adjust-<br>ment. In zones 3-6/6 "customary in-<br>cidental home occupations" are also al-<br>lowed when authorized by the Board. |
| Baltimore County, Maryland (1948)....                     | In zones 1-4/4 "professional offices" and other "home occupations" are allowed. In addition, in zones 2-4/4 "tearooms" are permitted as home occupations.   |
| Pittsfield, Massachusetts (1953).....                     | Professional offices are allowed in dwellings in all six zones, with "custom-<br>ary home occupations" also being al-<br>lowed in zones 2-6/6.  |
| Wayne, Michigan (1952).....                               | "Customary home occupations" are al-<br>lowed in all five residence districts. Professional offices in dwellings are also permitted in zone 5/5.  |
| Lucas County (townships), Ohio.....<br>(Proposed 1948)    | "Home occupations" and the non-<br>principal home offices of physicians, surgeons, dentists, ministers, etc., are permitted in zones 1-5/5. The principal office, in his dwelling, of a physician, surgeon or dentist, is permitted in zones 2-5/5 as transitional uses on lots abut-<br>ting commercial or industrial zones.   |

Differential regulation by residence zone is also expressed in other ways. As is noted occasionally, some of the other points of regulation are varied by residence district. By way of illustration, Florence, Alabama (1943) limits a home occupation to 25 per cent of the floor area of the dwelling in its "R-A" districts, but allows the use of 50 per cent in the "R-B" districts. Anaheim, California (1951) allows the use of name plates which are 64 square inches in area in the first three residence districts, and 2 square feet in the last two zones. In Kalamazoo, Michigan (proposed 1952), a professional man with his office in his dwelling can employ two non-residents in the first residence district, three in the second, and four in the third.

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

C. Transitional Zoning. The ordinances of a few communities exhibit a further refinement, making certain home occupations transitional uses in some of the residence districts. This is illustrated by the following quotation from the zoning ordinance of Los Angeles, California (1952). In the residence zones "R1" One-Family through "R5" Multiple Dwelling, there are permitted

home occupations, or principal offices of physicians or dentists, as transitional uses, on lots having a side lot line adjoining a lot in a commercial or industrial zone, provided that:

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

. . . . .

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

Similar provisions are found in the ordinances of some other places. Long Beach, California (1951) is somewhat more explicit on one point, in requiring that the professional office be "...located in the residence used as the private dwelling place of such professional person." And Palm Springs, California (proposed 1953) elaborates on the necessity of maintaining the residential character of the premises and requires that "the parking of automobiles caused by such use does not unduly interfere with the public use of adjoining streets or alleys."

The strip devoted to these transitional uses is of different depth in different ordinances. In Long Beach and in San Fernando, California (1952), the transitional use may not extend more than fifty feet from the boundary of the less restricted zone. This limit is 100 feet in Richmond, California (1949) and in the townships of Lucas County, Ohio (proposed 1948). In Palm Springs the lot on which the transitional use is conducted cannot extend more than 100 feet from the less restricted zone.

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

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

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

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

1) No mechanical equipment allowed:

Jackson, Mississippi (1950)  
Providence, Rhode Island (1952)  
Alcoa, Tennessee (1952)



2) Only normal domestic or household equipment allowed:

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

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

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

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

4) Specific power limitations placed on permitted equipment:

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

These power limitations are set forth without a stated requirement that the equipment be of common domestic or household types.

F. Employment. The operator of a successful home occupation will occasionally be tempted to increase the efficiency and profit of the enterprise by hiring a secretary or assistant, or two or three. Over one-half of the ordinances studied forbid the employment of any person other than a member of the immediate family residing on the premises. Sacramento County, California (1950) even limits employment to two resident occupants of the dwelling. The function of such limitations is to prevent the occupation from growing to the point that it is no longer properly incidental in character and hence becoming a threat to the residential nature of the neighborhood.

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

1) One employee:

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

2) Two employees:

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

G. Accessory Buildings. It is typical to require that a home occupation be conducted entirely within the main building used as the dwelling. This, again, acts to insure that the size of the operation will not become too large. It also may be intended to reduce the chances of the occupation becoming annoying or harmful to the neighbors and detrimental to the residential character of the area. Most of the ordinances studied allowed no use of accessory buildings. However, a few did;

Pima County, Arizona (1952) - detached home workshop of not more than 200 square feet in area  
Geneseo, Illinois (1948)  
Hempstead, New York (1945)  
New York, New York (Proposed 1950)  
Lima, Ohio (1948)  
Bristol, Virginia (1952) - accessory building, with written approval of the Board of Zoning Appeals

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

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

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

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

Among the ordinances which prohibit signs in connection with home occupations are those of the following communities:

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

Regulation of permitted signs is illustrated by the following restrictions:

1) Maximum Size

One-half square foot:

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

One square foot:

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

One and one-half square feet:

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

Two square feet:

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

Over two square feet, and other:

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

## 2) Lighting

Unlighted:

Denver, Colorado (1948)  
Bensenville, Illinois (1950)  
Waverly, Iowa (1952)

Lexington & Fayette County, Kentucky (Proposed 1953) - except  
in "R-3" and "R-4"

Montgomery County, Maryland (1950)

Muskegon, Michigan (1952)

St. Clair Shores, Michigan (1951)

Kansas City, Missouri (1951)

Alfred, New York (1948)

Hamilton, Ontario (1950)

Henderson, Tennessee (Proposed, no date)

Appleton, Wisconsin (Proposed 1951)

Eau Claire, Wisconsin (1952)

Indirect lighting:

Des Moines, Iowa (1953)

Salt Lake County, Utah (1952)

Other or unspecified lighting:

Sacramento County, California (1950)

South Pasadena, California (1951)

Lexington & Fayette County, Kentucky (Proposed 1953) - "non-  
flashing" lights in "R-3" and "R-4"

Providence, Rhode Island (1951)

3) Location

On the dwelling:

South Pasadena, California (1951)

Denver, Colorado (1948)

St. Clair Shores, Michigan (1951)

Charlotte, North Carolina (1951)

Eau Claire, Wisconsin (1952)

Flat against the wall of the dwelling:

Sacramento County, California (1950)

Des Moines, Iowa (1953)

Lexington & Fayette County, Kentucky (Proposed 1953)

Muskegon, Michigan (1952)

Hamilton, Ontario (1950)

Charlottesville, Virginia (1949)

#### 4) Content

Name of professional occupant:

Denver, Colorado (1948)

Name and occupation of the occupant:

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

Name, occupation and office hours of the occupant:

South Pasadena, California (1951)

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

Another general provision favored by some localities is written with the apparent intention of assuring the incidental nature of the occupation. Any enterprise with extensive or unusual physical requirements would be hampered by application of the clause: "such home occupation shall not require internal or external alterations, or involve construction features not customary in dwellings." This, or similar wording, appears in the ordinance of Waverly, Iowa (1952); Lexington & Fayette County, Kentucky (Proposed 1953); Grand Rapids, Michigan (1951); Muskegon, Michigan (1952); Lima, Ohio (1948); Appleton, Wisconsin (1951).

K. Permits. Finally, the establishment of a home occupation in some places is further regulated by the requirement that a permit first be obtained. This has the effect of placing each case before some body authorized to issue the permit (usually the board of zoning appeals). The result is that it is the judgment of the reviewing body and not the wording of the ordinance itself which will determine in many cases the occupations that will be allowed. Ordinances requiring prior approval in this manner include:

| <u>City</u>                                    | <u>Body Issuing Permit</u> | <u>Home Occupations Requiring Permit</u>                               |
|--|----------------------------|--|
| Lynwood, Calif.(1951)                          | 1                          | Unspecified; presumably all  |
| Sacramento County, Calif. (1950)               | Planning Comm.             | All  |
| Geneseo, Ill. (1948)                           | Board of Appeals           | Photography and "others"   |
| Waterloo, Iowa (no date)                       | City Council <sup>2</sup>  | All  |
| Waverly, Iowa (1952)                           | City Council <sup>2</sup>  | All  |
| Lexington & Fayette County, Ky.(Proposed 1953) | Board of Adjustment        | "Professions" <sup>3</sup> , "customary home occupations" <sup>4</sup> |
| Wayne, Mich. (1952)                            | Board of Appeals           | All <sup>5</sup>   |
| Eau Claire, Wis.(1952)                         | Board of Appeals           | "Professional uses"  |

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

### III. LEGAL DECISIONS ON HOME OCCUPATIONS

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

#### ACCOUNTANT - exclusion upheld

Kort v. City of Los Angeles, District Court of Appeals, Second District, California June and August 1942, 127 P. 2d. 66. (9 NL 35)



BARBERSHOP - NOT a home occupation

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

BEAUTY SHOP - NOT a home occupation

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

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

DANCING SCHOOL - permitted

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

- NOT a home occupation

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

DENTAL OFFICE - exclusion upheld

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

DENTAL OFFICE FOR RENT ADDED TO PHYSICIAN'S OFFICE -

permit held illegal

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

DRESSMAKER - persons not members of the family cannot be employed

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

INSURANCE BROKER - agent - prohibited

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

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

LAWYER - permitted; SIGN- exclusion upheld

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

NURSING HOME - exclusion upheld

Building Commissioner of Brookline v. McManus, 263 Mass. 270, 160 N.E. 887.

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

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

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

Red Acres Imp. Club, Inc., et al., v. Burkhalter et al., Supreme Court of Tennessee, July 27, 1951, 241 S.W. 2d 921. (4 ZD 7)

- exclusion upheld

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

PROFESSIONAL OFFICE - exclusion upheld

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

REAL ESTATE BROKER - NOT a home occupation

Pennock v. Fuller, 2 N.W. 176.

Jones v. Robertson, 180 P. 2d 929 .

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

Village of Riverside v. Kuhne, Appellate Court of Illinois. First District. November 16, 1948, 82 N.E. 2d 500. (1 ZD 14)

RESTAURANT - NOT a home occupation

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

SALE OF FISH AND BAIT - NOT a home occupation

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

UNDERTAKING ESTABLISHMENT OR FUNERAL DIRECTOR -

- exclusion upheld, or funeral director NOT a home occupation

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

Ahern v. Nudelman, 374 Ill. 237, 29 N.E. 2d 268.

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

McCord v. E. Bond and Condon Co., 175 Ga. 667, 165 S.W. 500.

Building Commissioner of Brookline v. McManus, 263 Mass. 270, 160 N.E. 887.

Phillips v. Board of Appeals, 257 Mass. 446, 175 N.E. 479.

Ullrich v. State, 186 Maryland 353, 46 A. 2d 637, 165 A.L.R. 1107.

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

#### IV. CONCLUSIONS

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

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

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

We seem, therefore, to have reached a fork in the road. One way leads down the classical path of custom and incidentalness. The other departs from custom, retains incidentalness, and takes on specification (and perhaps even performance) criteria. For each community, a decision on the path to be followed rests on its answer to a constant, fundamental question: what is the proper use of land in a residential district? Shall it be wholly and exclusively residential, or shall non-residential uses compatible with dwellings be permitted? If non-residential uses are permitted, what basis for their authorization shall be used? Shall any use (including even manufacturing perhaps) be permitted so long as it is not in any way harmful to a residential environment, and so long as it is in harmony with the comprehensive plan, or shall non-residential uses be limited to those that are functionally related to dwellings and which need the same kind of environment, such as churches, schools, and hospitals?

Although it is true that most communities determine principles of use-segregation when the zoning ordinance is written up and adopted, it is equally true that in zoning law as in other law, the process of amendment and interpretation can and often does modify basic intentions. The basic zoning ordinance is especially vulnerable to mutation in the area of variances and special exceptions. Nonconforming uses and customary home occupations are less obvious but equally susceptible areas where the basic purposes of the zoning ordinance may be compromised unless the primary zoning plan is kept consciously in mind.

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

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

Persons who favor what may be termed the technological approach to zoning may deplore the inconsistencies of a policy which permits one occupation because it has been long established and prohibits another occupation no less objectionable because it has not been long established. Although this argument has obvious merit, it does not strike at the fundamental basis of the body of law surrounding home occupations. It does not, in other words, have anything to do with the role of usage and custom and the legal sanction given to it by the zoning ordinance and the support granted by judicial decisions. Abandonment of the force of custom in the matter of home occupations changes the whole conception of home occupations. However, because of tendencies in this direction, some of the possible advantages of relying upon objective standards in the choice of home occupations will be discussed in the following section.

#### B. Classification of Home Occupations on the Basis of Objective Standards.

A characteristic of modern zoning ordinances is the increasing use of objective standards to replace the vague notations of earlier ordinances. Courts have encouraged this by the negative act of striking down many zoning provisions for having insufficient standards to guide the action of the building commissioner or board of adjustment.

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

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

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

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