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## Entrepreneurship in The Emerald City: Regulations Cloud the Sparkle of Small Businesses

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*By*  
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*Institute for Justice Washington Chapter*

A joint publication of Washington Policy Center and the Institute for Justice and part of the  
**Small Business Project**, providing a voice for small business in Washington state.

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### I. Introduction

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Washington's history is intertwined with economic opportunity and entrepreneurship. But the business climate of today does not match the rich history of opportunity enjoyed by our frontier forefathers. Today, economic liberty is under attack in the Evergreen State.

Since the earliest settlers arrived, Washington has attracted people with an entrepreneurial spirit. The state's location along the Pacific Rim makes it ideally situated for business, with companies such as Boeing, Microsoft, and Amazon.com calling Washington home. Following in the footsteps of these successful large corporations, thousands of ambitious entrepreneurs start new businesses in Washington every year. As a result, Washington boasts one of the highest business start-up rates in the nation.<sup>3</sup> These new businesses typically fall into the category of small businesses. According to the Small Business Administration, the more than 195,000 small businesses in Washington make up 98 percent of all businesses in the state and employ 1.2 million employees; or more than 55 of the total workforce.<sup>4</sup>

Many of these businesses are owned and run by immigrants. According to the most recent census, over 10 percent of Washingtonians were foreign born.<sup>5</sup> Between 1991 and 2000, 9 million people entered the country at a rate of 3.4 percent per year - the highest number in history, and the highest rate in any decade since the 1930s. Immigration rates continue to rise despite the events of September 11<sup>th</sup> and the subsequent economic downturn.<sup>6</sup> Unlike times past, immigration patterns no longer seem to track the health of the U.S. economy.

The Center for Immigration Studies reports that 30 percent of foreign-born people living in the United States do not possess even a high school diploma, nearly 18 percent live below the poverty rate, and almost 25 percent are currently receiving government support.<sup>7</sup> Yet immigrants to the United States become entrepreneurs at about the same rate as native citizens, demonstrating that the American Dream is alive even in a population facing unique disadvantages.<sup>8</sup>

New groups of Americans are throwing their hats into the small business ring in increasing numbers. Since 1998, the percentage of women-owned privately held firms in Washington has risen from 27.5 to 33.8 percent (or 106,768 businesses).<sup>9</sup> Minority small business ownership is also growing. In 2001, minorities owned nearly 10 percent of total firms in the state (or 42,900 businesses).<sup>10</sup> The Census reports that minority-owned businesses grew more than four times as fast as U.S. firms overall between 1992 and 1997. A recent survey found that blacks were 50 percent more likely and Latinos 20 percent more likely than whites to be planning or in the process of starting a new business.<sup>11</sup>

Seeking to foster this entrepreneurial spirit, the framers of the Washington Constitution included provisions designed to protect economic liberty. In Washington, “No person shall be deprived of . . . property . . . .” Our privileges or immunities clause provides, “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” This provision reflects the framers’ concern of undue political influence exercised by those with large concentrations of wealth, which was feared more than majoritarian oppression. The Washington Constitution also instructs, “Monopolies and trusts shall never be allowed in this state . . . .” While these provisions clearly were designed to protect the unalienable right to acquire property and pursue economic freedom, such provisions have yet to be realized to their true and intended potential. Additionally, Washington courts have recognized that “[t]he right to hold specific private employment and follow a chosen profession free from *unreasonable* government interference is a fundamental right which comes within the liberty and property concepts of the Fifth Amendment.”<sup>12</sup>

Despite these constitutional provisions designed to protect economic liberty, entrepreneurship is being strangled in Washington State. Standing between entrepreneurs and their dreams of economic success are innumerable state, county, and municipal regulations. The state’s administrative code currently totals over 34,000 pages.<sup>13</sup> A single business owner with no employees must conform to 35 sets of regulations enacted by local, state, and federal agencies.<sup>14</sup> If a business owner decides to hire even one employee, the business must then conform to 58 sets of regulations promulgated by 28 governmental agencies.<sup>15</sup> This staggering amount of regulatory red tape amounts to more than 100,000 regulatory requirements to which a small business owner must adhere in order to legally run a business in Seattle.

This study examines the effects of regulation on entry into several occupations in Washington State and, specifically, the greater Seattle area. The study looks at regulations enacted by the state legislature, King County, and the Seattle city government. The occupations examined are taxicab and for-hire vehicle transportation, cosmetology, street vending, home-based business, and day care. These particular occupations are selected because they are most readily accessible to aspiring entrepreneurs - including many immigrants, women and minorities - who may not have the formal education, money, or experience to start a large business.

Specifically, this study describes how government regulations at state, county and municipal levels impede the ability of would-be entrepreneurs to enter their chosen occupations. It does not, however, attempt to provide an exhaustive discussion of every regulatory burden facing small businesses in Washington State.

This study recognizes the state's interest in promulgating rules and regulations that will protect the health and safety of Washington citizens. For instance, Washington lawmakers have an important interest in creating health safety standards for food vendors or cosmetologists. However, this study attempts to identify those regulations and rules that inflict arbitrary or excessive restraints on the freedom of enterprise. When regulations lose a meaningful relationship to the interests of health and safety and thwart legitimate enterprises, they simply serve to impose, at best, unnecessary burdens on small businesses and entry-level entrepreneurs and, at worst, protect entrenched monopolies from competition to the harm of entrepreneurs and consumers alike.

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## **II. Washington: A Closer Look**

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The quest for economic opportunity in Washington is often a long and confusing one. Entrepreneurs must first look to the Revised Code of Washington ("RCW") and the Washington Administrative Code ("WAC") for detailed restrictions and regulations governing their industries. Many entrepreneurs must also comply with a second level of regulations imposed at the county level. Finally, even when entrepreneurs fulfill all necessary requirements at the state and county level, they often must satisfy yet additional regulations set forth by city municipal codes. Thus, only when a prospective entrepreneur has traversed through these three levels of government regulation can he or she actually attempt to achieve economic success.

The voluminous rules and regulations that stand in the way of free enterprise in Washington violate the tradition of entrepreneurship created by the first settlers more than 150 years ago. The current economic climate in Washington recently prompted a senior Boeing executive to stand before the Rotary Club of Seattle and exclaim that Washington is not competitive with other states in terms of business atmosphere.<sup>16</sup> If the effect of unfriendly regulations in Washington has so frustrated large businesses such as Boeing, one can only imagine the effect such regulations have on small businesses that possess little capital or political clout to challenge the obstacles standing in the way of free enterprise.

### Case Study: Blazing Bagels

One such small business is Blazing Bagels, a Redmond-based company owned by entrepreneur Dennis Ballen. As a small-business owner, Ballen did not have the capital to advertise his new business on television or radio. Instead, he hired an employee to stand beside a busy street near his shop and wear a sign that read, "Fresh Bagels-Now Open." Ballen relied on this sign for his livelihood, as Blazing Bagels is tucked away and hard to locate. Ballen's inventive strategy worked - his \$9 an hour investment in advertising yielded \$200 more per day in counter sales and attracted new wholesale accounts.

Unfortunately, Ballen's ingenuity and effort were all for naught. Citing an ordinance banning all but a few types of portable commercial signs, a City of Redmond official arbitrarily ordered him to cease and desist displaying his sign or risk penalties of up to a \$5,000 fine and a year in jail. Ballen felt he had no choice but to comply. His sign-holding employee was forced to find other work, and Blazing Bagels' business suffered.

Characteristic of his entrepreneurial spirit, Ballen was not about to go down without a fight. He filed a lawsuit against the City of Redmond. With the help of the Institute for Justice Washington Chapter, Ballen argued that the commercial sign ban constituted an unlawful restriction on commercial free speech because it banned signs based on content—prohibiting bagel signs while allowing political, celebration and real estate signs. A federal court recently agreed with Ballen, ruling that the Redmond ordinance is unconstitutional.<sup>17</sup> As a result, Ballen's employee is now back on the street and his business is once again thriving.



The City of Redmond's now-defunct sign ordinance is a perfect example of an unnecessary roadblock standing in the way of aspiring entrepreneurs in Washington. In the name of aesthetics, the city attempted to prevent Ballen and other small business owners from advertising and engaging in free enterprise. As this study details, such irrational regulations are rampant throughout the state, hampering aspiring entrepreneurs in their pursuit of economic freedom.

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### III. Seattle For-Hire Vehicle Industry

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Driving a cab offers a good way to make a living - with the median expected salary for a typical taxi driver in Seattle at \$28,968 per year.<sup>18</sup> Because cab driving requires little education or training, it has long provided immigrants and other minorities with the opportunity to earn an honest living and support their families. In fact, approximately 80 percent of all for-hire drivers in Seattle were born outside the United States and speak English as a second language.<sup>19</sup>

Taxicabs are an essential service in any city, and especially vital to tourism and other industries. Yet the restrictive regulatory systems enacted by the City of Seattle and King County make it increasingly difficult and expensive for those who wish to enter or have already entered the for-hire driving business.

#### Case Study: "Cab Elvis"

Dave Groh drives a cab for one of Seattle's large taxicab companies. Following the attacks of September 11, 2001, Groh wanted to do something to put a smile on the face of his passengers, so he started wearing an Elvis Presley jumpsuit on certain occasions.<sup>20</sup> Groh got such positive responses from his customers that he soon made the suit a permanent part of his work, becoming an expert on the rock superstar and doing impersonations.

The fun might have been over for Groh and his passengers when the City cracked down in May 2003, ticketing Groh for non-compliance with the mandatory taxi driver dress code and ordering him to stop wearing the costume. But the man who had become popularly known as “Cab Elvis” fought back, and retained his right to be creative. On December 8, 2003, the Seattle City Council approved a regulation that would allow the city’s taxicab drivers to wear costumes of well-known characters, as long as the costumes do not hide facial characteristics and cover the body in compliance with existing dress code rules.

Despite endless bureaucratic tinkering by the city and county (including numerous ordinances and an “Ad Hoc Taxi Committee” that studied the taxi industry for four years before compiling a report), Seattle taxi service has long been notoriously poor. Several years ago, the City of Seattle commissioned a peer review that reported what the city’s taxi passengers already know—Seattle’s taxi service is terrible.<sup>21</sup> Not only does Seattle have a serious dearth of available taxis (making street hailing of the kind regularly practiced in other major cities nearly impossible), the service is so poor—with rude, dirty, discriminating drivers and “rates on the high end”—that the commissioned interviewers were “consistently told that taxi service is a critical negative factor in luring tourists, businesses, and conventions to Seattle.” “These problems,” the authors of the report warned, “are more than the typical problems cited in many U.S. cities about taxi service.”<sup>22</sup>

Although Dave Groh won his fight against irrational over-regulation, unnecessary barriers hinder too many prospective and existing taxicab drivers from entering an industry that would benefit considerably from healthy competition. The activity of downtown Seattle, coupled with the city’s proximity to Seattle-Tacoma International Airport (“SeaTac”), should provide drivers with the opportunity to create a profitable business. Unfortunately, the monopolistic practices of the SeaTac International Taxicab Association (“STITA”), excessive regulations, and ceilings on taxicab licenses needlessly damage the hopes of these prospective entrepreneurs.

### Case Study: Sea-Tac Monopoly

Population growth in the Seattle Metro area has brought with it worries about two of Seattle’s most reviled foes—air pollution and traffic congestion. You would think that because of Seattle residents’ notorious dedication to eliminating both, local governments would be passing ordinances that *reduce* pollution and traffic. Yet the city and county governments purposely created and adhere to a monopoly that actually does the opposite. Every day on Interstate-5 between Seattle and Sea-Tac Airport, nonsensical taxicab regulations actively contribute to both.

Eight licensed taxicab associations in Seattle and King County share the 842 legally allowed vehicle licenses.<sup>23</sup> STITA is the largest of these associations, with 166 of these licenses and a monopoly on all business originating from the airport.<sup>24</sup> The problem is that all of STITA’s licenses are from the county—its cabs cannot service Seattle. This means that although only STITA cabs may pick up passengers at the airport and drop them off in the city, STITA cabs may not pick up passengers in the city before returning to the airport. The reverse is also true—although cabs with city licenses can take passengers from Seattle to the airport, they must return to Seattle without passengers because only STITA cabs are allowed to pick up from the airport. The ridiculous result of these regulations is approximately 650,000 empty trips to and

from Sea-Tac Airport (about 10,000,000 “empty miles”) *per year*.<sup>25</sup> This is detrimental not only to the taxi drivers who must pay for gas even when they do not have a passenger in the cab, but also for the community, clogging overburdened roadways and polluting the environment.

When STITA first signed its contract with the Port of Seattle in 1989, Port officials justified the monopolistic practice by claiming that the driver and vehicle standards of other taxicab associations were too low to meet its requirements. Over the last ten years, however, Seattle has vigorously raised its taxicab standards and some experts claim that city standards now exceed those of the Port of Seattle. Despite the absence of justification for the STITA monopoly and its significant ill effects, Port officials still refuse to dismantle the STITA monopoly and open its taxicab contract to competitive bidding.

Even though STITA licenses are technically available to the public, because of the lack of competition at Sea-Tac, such a license costs a prospective driver about \$200,000 on the open market—a prohibitive sum for entry-level entrepreneurs. Meanwhile, thanks to lucrative long-haul fares from the airport and a steady stream of customers, STITA drivers enjoy a much easier path to economic success than their competitors. As a direct result of the regulations in place, city and county drivers are placed at a definite disadvantage in relation to STITA drivers.

The Port of Seattle should dismantle the STITA monopoly and open its Sea-Tac contract for taxicab service to competitive bidding. Assuming the need for a rationing system exists, Port officials should consider following a model agreement of the City of Los Angeles and Los Angeles International Airport (“LAX”). There, the city’s 2,300 licensed taxicabs service LAX on a rotation system, whereby different companies service the airport depending on the day of the week. Airports in New York and Washington, D.C. have emulated this system with much success.

### Regulatory Barriers

While driving a taxicab in a thriving, bustling city like Seattle should simply require knowledge of the city, a safe and insured vehicle, driver background check, and a willing spirit, both Seattle and King County require much more. Seattle and King County impose a daunting list of requirements for an entry-level entrepreneur wishing to take advantage of the taxicab or for-hire vehicle transportation market.

The costs of entering the taxicab market are often too burdensome for low-income individuals who wish to start a new business. And the fact that so many for-hire and taxicab drivers speak English as a second language only adds to the difficulty many potential drivers experience in their attempts to pass examinations and verify that they have fulfilled the required steps to gain legal entry into the market, even if they are fully qualified.<sup>26</sup> These were but some of the concerns prompting Seattle taxicab drivers to picket city hall in 1998 demanding relief from the regulations facing their industry.<sup>27</sup>

**Seattle and King County impose a daunting list of requirements for an entry-level entrepreneur ...**

Would-be taxicab drivers must navigate an expensive and challenging regulatory process to obtain the necessary approval to conduct what should be a simple business of operating a

taxicab or for-hire vehicle within the City of Seattle.<sup>28</sup> Some of the regulatory barriers erected by the City of Seattle include:

- City for-hire driver's license (\$135)
- City for-hire vehicle license (\$240)
- Driver's insurance
- Commercial vehicle insurance
- Vehicle inspection (\$50/year)
- Week-long training course, including three eight-hour rides
- Physician's certification (\$23-225)<sup>29</sup>
- Oral examination
- Written examination
- English-language proficiency examination (oral and comprehension)
- City-approved uniform
- Vehicle no more than seven years old (\$6,775)<sup>30</sup>
- Affiliation with licensed taxicab association that carries at least 15 cabs

A taxicab or for-hire vehicle driver wishing to operate in the greater King County area faces similar regulatory barriers to those operating exclusively in Seattle, but such drivers are prohibited from doing business inside city limits. The following regulations are applicable to individuals wishing to operate taxicabs or for-hire vehicles in unincorporated King County:<sup>31</sup>

- County for-hire driver's license (\$140)
- County for-hire vehicle license (\$240)
- Medical certification (\$23-235)<sup>32</sup>
- Two-day training program
- County-approved uniform
- Written examination
- Vehicle insurance
- Vehicle with county-appointed color scheme
- Vehicle must meet rigorous safety standards

What do these extensive regulations actually accomplish? They certainly do not weed out many potentially unskilled applicants. In 2002, King County and the City of Seattle denied only 1.5 percent of all license applicants.<sup>33</sup> Instead, these regulations simply work to discourage those potential drivers who may not be able to afford to comply with so many standards.

### Licensing Ceilings

In 2002, King County processed 2,256 for-hire driver applications, a record number. In Seattle and King County, there are approximately 2.6 for-hire drivers for each licensed taxicab. But despite the large number of willing entrepreneurs, both the city and the county have capped the number of for-hire vehicle licenses permitted to operate in their respective jurisdictions. The City of Seattle, for example, requires that the total number of taxicab licenses in effect at any one time not exceed the number in effect as of December 31, 1990.<sup>34</sup> However, since that time, the Seattle area's population has grown by 19.7 percent, or 584,432. City regulators have failed to address this population increase, meaning there are fewer taxicabs to go around. As a result of these ceilings, Seattle licenses only 645 taxicabs, 306 of which cover both the city and King



County. Further, Seattle does not authorize more than 200 for-hire licenses at any one time.<sup>35</sup> Meanwhile, King County licenses 501 vehicles, according to a 1991 King County ordinance that imposed a permanent moratorium on the issuance of new taxicab licenses.<sup>36</sup>

As a result of the arbitrarily imposed limitations on taxicab and for-hire vehicle licenses, more and more drivers are forced to lease their vehicles, which on average costs between \$55 and \$70 each day.<sup>37</sup> The median rate per mile for taxicabs in King County for the years 1992-2002 was \$1.80 per mile.<sup>38</sup> At this rate, a driver would have to transport passengers for 40 miles per day just to pay rental on the taxicab.

Additionally, as many potential for-hire drivers cannot purchase a vehicle license from the county, drivers must instead purchase a license from a previous owner. Due to the scarcity of these licenses and speculation, vehicle licenses fetch approximately \$150,000 on the open market, according to some taxi-industry experts.<sup>39</sup> At over five times the average annual salary that driving a taxi in Seattle yields, this price is well outside the means of most entry-level entrepreneurs hoping to drive a taxicab to earn an honest living. It is no wonder, then, that the Seattle taxi industry cannot attract the high-quality taxi service that it so desperately needs.

### Jitneys and Limousines

One Seattle politician estimates that if the city and county lifted the arbitrary limitations on the number of for-hire vehicle licenses issued, most rides throughout King County could cost as little as two dollars and take only thirty minutes as opposed to up to three hours.<sup>40</sup> With alternative and cheaper forms of transportation such as jitneys, which are private, often unregulated for-hire vehicles that cover routes that taxicabs do not, Seattle and King County residents would enjoy quick and inexpensive service. But Seattle issues only 200 for-hire vehicle licenses for vehicles other than taxicabs, severely limiting the legal market for alternative forms of for-hire transportation.<sup>41</sup>

**Seattle, King County, and the Port of Seattle should eliminate the duplicative regulations and monopolistic practices that currently burden the taxicab market.**

Limousines offer another alternative to taxi service. The Washington State Department of Licensing (“DOL”) governs the limousine industry.<sup>42</sup> While the regulations that govern limousine operations in Seattle or King County are less stringent than those imposed on taxicabs and for-hire vehicles, they are overly burdensome as well.<sup>43</sup> These regulations include:

- Master application business license (\$15)
- Business license for each additional location (\$40)
- Vehicle certificate (\$15)
- Driver training course
- Written examination
- Medical examination (\$25-235)
- Must operate from main office
- May only service customers on a prearranged basis

Because the state regulates limousine carriers, the regulatory scheme has been a source of conflict between limousine carriers and taxicabs in Seattle and King County. Although it is illegal for limousine drivers to solicit passengers, drivers of midsize luxury cars used as taxicabs

have been known to offer doormen and bellhops tips to steer customers their way.<sup>44</sup> Cab drivers, meanwhile, are either unwilling or unable to compete with the less-regulated luxury-vehicle drivers. And because the city does not regulate limousine drivers, there is usually no way to curb the practice of limousine drivers soliciting passengers within the city.

As a result, limousine drivers reap the benefits of this regulatory gap and are able to essentially operate as taxis within the City of Seattle. Meanwhile, taxicab and for-hire vehicle drivers must comply with city and county regulations that serve as roadblocks on the path to economic success and constitute barriers to industry in this lucrative industry. The solution to the conflict between limousine carriers and taxicabs is not greater regulation; rather, Seattle, King County, and the Port of Seattle should eliminate the duplicative regulations and monopolistic practices that currently burden the taxicab market and open the market to allow consumers to decide which service best meets their transportation needs.

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## IV. Cosmetology

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African-Americans have recently carved out a niche in the natural hair care industry with a form of hairstyling called African hairbraiding. Thousands of hairbraiders practice the art of braiding, twisting, and weaving natural and synthetic hair into intricate designs and patterns. Because African hairbraiding uses no chemicals or artificial enhancements, it is a safe and natural means of styling hair. Further, this form of hairstyling is a form of art and cultural expression.

Unfortunately, significant barriers stand in the way of those who wish to practice the art of African hairbraiding. In Washington, any person that so much as *styles* hair for compensation must secure a cosmetology or barbering license. However, the long and expensive licensing process has little, if anything, to do with the skills an African hairbraider must possess to successfully operate a hairbraiding business. The state licensing process simply serves to deter would-be hairbraiders, effectively forcing the industry underground where it operates without any oversight at all.

### African Hairbraiding Licensing Requirements

The Washington State Department of Licensing (DOL) regulates the field of cosmetology in the interest of “public health, safety, and welfare.” As a result, any person who wishes to cut, style, trim, arrange, or dress hair in Washington must comply with the DOL’s one-size-fits-all cosmetology regulations.<sup>45</sup> Recently, the Washington Cosmetology, Barbering, Esthetics, and Manicuring Advisory Board issued a statement making it illegal for any person who does not possess a cosmetology or barbering license to practice the art of African hairbraiding.

To acquire a cosmetology license in Washington, a potential licensee must complete and graduate from a 1,600-hour course in cosmetology. A barbering license requires 1,000 hours of training. State regulations set forth the minimum instruction guidelines for training required before a student is eligible to take the license examination for the professions of cosmetology, barbering, manicuring, and esthetics.<sup>46</sup> Not surprisingly, the coursework has virtually no application to the art of African hairbraiding.

Subjects studied to obtain a cosmetology license include the theory of the practice of cosmetology, manicuring, and esthetics, as well as training in the cutting and trimming of head, ear and nose hair, shampooing, scalp and hair analysis, permanent waving, straightening, coloring, and bleaching, and the proper use and storage of chemical products. The problem is, after completing all of this coursework plus mandatory written and performance examinations, an African hairbraider will never pick up a pair of scissors or a nail file or a bottle of hair colorant again. And she will not have added a single fact to her knowledge of braiding hair.

The practical effect of the law is this—those who have already spent years learning and practicing a form of art must endure hundreds of hours of literally pointless training before they can legally practice what they have been doing for decades. The state should specifically exempt African braiders from this regulatory regime, following the lead of several states across the country.<sup>47</sup> Unfortunately, the state has not done so. As a result, African hair braiders are forced to spend more than one year in full-time training at an *average* cost of \$7,500 (plus lost income and missed opportunity costs) in order to acquire a state-mandated cosmetology license that has no applicability to their profession.<sup>48</sup>

**A cosmetology license costs an average \$7,500 plus one year of full time training, all to acquire a license that has no applicability to the African hair braiding profession.**

Washington State is not alone in requiring these courses for hairbraiders. There are no exceptions for “braiders” in the laws of North Carolina, Massachusetts, or New York, which require 1,500, 1,000 and 900 training hours respectively.

### Home-Based Salon Regulations

To a great extent, the art of African hairbraiding is a business of sole proprietors and small shops, often practiced in private homes and apartments. It is not uncommon for prominent hairbraiders to work out of their homes. Often, braiders are recent immigrants and women coming off welfare who can only work out of the home. An expert from the International Braiders Network has observed, “The industry is so underground. This is a cottage industry done in our homes, on our stoops, in our kitchens.”<sup>49</sup>

The multitude of state and municipal regulations applicable to home-based salons simply serve to further deter hard-working entrepreneurs from legally earning an honest living.<sup>50</sup> Among other things, the state requires:

- A Washington State salon business license
- That the salon, including its separate outside entrance, be completely separated from the living quarters of the residence
- Adequate toilet facilities within or adjacent to the salon
- That the property meet all city and county zoning codes
- Property must meet all applicable fire codes
- \$100,000+ liability insurance

In addition to the above, anyone wishing to operate a home-based salon must comply with City of Seattle regulations that place tight restrictions on growth and advertising.<sup>51</sup> A city business license is required, and the owner may not:

- Post or advertise regular business hours

- Include an address on advertising materials
- Place a sign (or anything else that evidences the salon) on the outside of the property
- Conduct business outside the principle residential structure
- Make any exterior alteration to the residential structure to accommodate the salon
- Store salon materials in any exterior structure (such as a garage or shed)
- Receive more than one delivery daily Monday – Friday
- Receive any deliveries on weekends or federal holidays

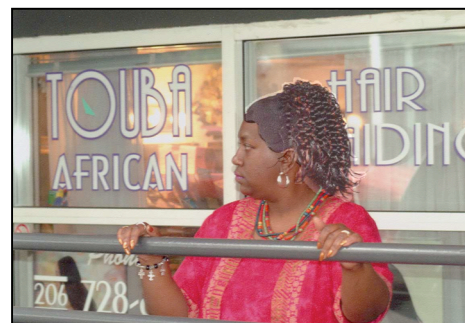
These regulations—many of them unnecessary and unduly restrictive—discourage entrepreneurs and encourage non-compliance. The layers of governmental red tape should be eliminated in favor of a system of simple inspections of the sanitation of the premises.

### Retail Salon Regulations

Although operating a home salon requires compliance with a long list of regulations, operating a salon *outside* the home may demand compliance with even more requirements, including zoning regulations. For example, pursuant to the city code, a prospective salon owner must first acquire a master use permit for the salon.<sup>52</sup> The would-be salon owner must ensure that the salon is located in a zone or location where such a land use is allowed, including commercial, industrial, and multifamily zones. The salon owner must then navigate a lengthy application and design process, which takes months and costs as much as \$2,600 to secure the right to open and operate a salon.<sup>53</sup>

### Case Study: Touba African Hair Braiding

Benta Diaw is the owner and operator of Touba African Hairbraiding, located in the trendy Belltown neighborhood of Seattle. A visit to her salon reveals Benta's African roots: a carved wooden giraffe stands in the corner, the salon's brochures are trimmed with yellow, red, and green, and Benta herself greets visitors swathed in vivid lime-colored cloth, with silver bangles on her wrists. Benta's nine-year-old daughter, Futa, sits quietly in the corner, practicing braids on a mannequin head.



This is no ordinary beauty salon. The only hairdressing tools in sight are a sink for washing hair, a barber chair, a selection of hair extensions hanging neatly on the wall, and a few combs lying on the counter in front of the mirror. The smell is different, too. Instead of the pungent scent of nail and hair chemicals that pervade most salons, Touba smells faintly of soap, with a hint of spicy incense wafting from the burning stick that freshens the air in the bathroom.

Benta Diaw learned to braid hair twenty years ago in her native Senegal, Africa, in the same way her ancestors have for thousands of years—from her mother and her now-104-year-old grandmother. When Benta immigrated to the United States from Senegal in 1996, it seemed natural to capitalize on the skills she brought with her to serve the burgeoning natural hair care market. Two years later, she was an American citizen and the owner of her own small business.

Benta has been able to earn a living for herself, her two children, and her family back in Africa (including her mother and grandmother) by braiding hair for up to twelve hours a day.

Unfortunately, a group of bureaucrats in Olympia has decided that the ancient art of African hairbraiding is no longer safe unless it is performed by a licensed cosmetologist or barber. Benta has a salon license and a City of Seattle business license, but she is not a licensed cosmetologist or barber. The state's interpretation leaves practitioners like Benta Diaw with only two options - quit earning a living for over a year to attend expensive cosmetology school or operate illegally. Benta will benefit little from undergoing 1,600 hours of needless "training" that will teach her how to perform pedicures and trim nose hair, but will not teach her anything about African hairbraiding.

Although Benta knows of the training requirements, she believes they are unreasonable, arbitrary, and does not see compliance as a viable option. The application of the cosmetology regulations to African hairbraiders like Benta simply serves to place unnecessary burdens on aspiring entrepreneurs. Until our government focuses on measuring proficiency, rather than requiring needless government-mandated "training" that does not ensure proficiency of the skills actually performed, immigrants like Benta will be made outlaws because they are simply trying to earn an honest living.

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## **V. Home-Based Businesses**

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Salons are not the only heavily regulated home-based businesses. The City of Seattle unnecessarily burdens all would-be entrepreneurs hoping to open and operate a business from home. The city bans any home business that employs more than one individual. If a business receives more than one delivery per day, it is illegal. In addition, if there is any evidence of the business from the exterior of the home, it does not conform to city standards.

Zoning and nuisance laws are important for maintaining the character of a community, but many of the restrictions imposed by the City of Seattle place unreasonable burdens on business for little or no public benefit. Many of the restrictions the city imposes upon home-based entrepreneurs simply serve as barriers between these individuals and the economic success they hope to achieve.

### Regulatory Barriers

Seattle's Department of Design, Construction, and Land Use does not require an entrepreneur to obtain a permit to operate a business from home so long as the business activity conforms to the city's land-use code provisions.<sup>54</sup> Even if it does meet these provisions, however, the city still imposes a long list of requirements that tell property owners what they can say about their business, where they can conduct it, and what it has to look like.<sup>55</sup> *In addition to* the restrictions placed on salons, other home-based businesses:

- Must be "clearly incidental" to the use of the property as a dwelling
- Must be conducted so that odor, dust, light and glare, electrical interference, and other similar impacts are not detectable at or beyond boundaries of the property
- May not cause or increase on-street parking congestion or cause a "substantial increase"

- in traffic through residential areas
- Must limit their use of business-related vehicles to two passenger vehicles, vans, or similar vehicles

The regulations described above create an impeding regulatory thicket standing between entrepreneurs and their hopes of economic success. These regulations are so restrictive that home-based business owners are often prohibited from engaging in activities that their neighbors enjoy the freedom to pursue regularly.

For example, a neighbor may own and utilize as many vehicles as he or she wishes, while a home-based business owner is restricted to two vehicles. A neighbor may receive several daily home deliveries of packages, groceries, or other goods, while a home-based business owner is limited to just one delivery. Moreover, as many of these regulations involve subjective standards, entrepreneurs are left to the mercy of city regulators and in constant danger of violating the code.

Most critically, these regulations constitute an unreasonable burden on low-income and minority entrepreneurs, which leads to the potential abuse of selective enforcement. Often, accountants, fashion designers, and business consultants work out of their home and are ignored by city regulators.

### Bed and Breakfast Establishments

According to the Washington State Office of Economic Development, visitors to Washington staying in commercial accommodations such as hotels, motels, bed and breakfasts, and resorts, spent \$4.4 billion in 2003—including \$1.5 billion on accommodations, which accounted for almost half of all spending at visitor destinations in the state.<sup>56</sup> In 2003, travel spending generated an estimated \$25 million in local tax revenue. Room taxes alone raised about \$83.5 million for state, local, and county governments.

Bed and breakfasts are an increasingly important part of the travel industry.<sup>57</sup> In 1980, only 1,000 such establishments existed in the entire country, serving one million guests annually. By 2001, there were 29,000 serving 55 million. Throughout the country, bed and breakfast owners have not only contributed to the tourism industry, but have also helped to preserve the history, traditions and culture of their regions by renovating more historical buildings than any other industry segment, and (unlike transient hotel managers) their small business owners/operators have become active participants in local communities.

One would think that the government would want to foster such a valuable industry. Yet for entrepreneurs dreaming of operating a bed and breakfast, the regulatory burdens often turn this dream into a nightmare.

A separate chapter of the Seattle Municipal Code governs the operation of bed and breakfast establishments in Seattle.<sup>58</sup> It requires that the owner of the dwelling in which the bed and breakfast is located operate the bed and breakfast. Further, the property owner must reside in the structure in which the bed and breakfast is located. Not surprisingly, the city does not require owners of large hotels in Seattle to reside in their hotel structures.

The bed and breakfast must be operated within the principal structure of a dwelling that requires no structural alterations to accommodate the bed and breakfast use. There must be no evidence of the bed and breakfast from the exterior of the structure and no more than two individuals who reside outside the dwelling may be employed in the operation of the bed and breakfast. Most importantly, the city prohibits all bed and breakfast establishments that have more than three rooms or suites available to guests (unless a bed and breakfast was continuously operated as such since April 1, 1987).

The City of Seattle is not a welcome guest in the homes of entrepreneurs seeking to own and operate a bed and breakfast establishment. The city and its visitors would be best served by relaxed regulations in this popular and growing industry.

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## **VI. Street Vending**

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Brian Loo is one of a dying breed in Seattle: he is a sidewalk vendor. Thanks to the city's onerous vending code, Loo is one of only 20 vendors who hold permits to work Seattle's public streets, even though there is no codified limit on the number of vending permits allowed by the city.<sup>59</sup> Loo is forced to pay the same licensing fee as restaurants and pays expensive premiums for a mandatory insurance policy. Further, Loo is forever subject to the will of whoever owns the property where he conducts business. At any time, Loo could be forced to relocate and risk losing clients and income. But while Loo has survived the regulations that so severely impede entrepreneurial efforts, his industry is in effect closed to new entrepreneurs.

The City of Seattle has created a regulatory structure that severely burdens the ability of entrepreneurs to make a living by selling food or other types of merchandise on city sidewalks. Would-be vendors must spend thousands of dollars just to gain entry into the market and then must adhere to unreasonably strict rules to comply with the city's health codes. And so Seattle's heavy-handed regulations leave many entrepreneurs out in the rain, prohibited from selling anything on city streets.

### Barriers to Entry

Potential vendors must first complete a mandatory application for a master business license from the state, which costs \$15. Any person wishing to conduct business within the City of Seattle must also secure a city business license, which currently costs \$80. However, being licensed to do business does not give a prospective vendor free rein to peddle food or merchandise. If the vendor wishes to work from a mobile cart on public streets, the vendor must apply for a street-vending permit issued by the Seattle Department of Transportation.<sup>60</sup> Such a vending permit costs \$68 and carries with it a long list of requirements. In addition, the city requires street vendors to:

- Obtain written permission from the business or building owner adjacent to the vending cart
- Limit the size of the cart to 5' x 5' x 3'
- Carry at least \$1,000,000 in liability insurance
- Produce a drawing demonstrating where cart will be parked

- Obtain written approval from the Seattle-King County Department of Health (food and beverage vendors only)
- Obtain a permit from the city Fire Marshall (propane/combustible fuel users only)
- Remain at least 200 feet from floral shops (floral carts only)

Once the prospective sidewalk vendor obtains a street-vending permit, the vendor must submit a plan of operation to the Department of Health (together with a \$277 non-refundable plan review fee) and comply with a host of additional requirements.<sup>61</sup> After he has submitted a satisfactory plan for the cart, he must obtain annual approval from the Department of Health, which costs \$185—or as much as vendors generally pay for insurance premiums.<sup>62</sup>

### Regulatory Restrictions

After a potential vendor receives the necessary permits to begin operating, another long list of regulations requires compliance in order to satisfy additional city regulations.<sup>63</sup> The default rule in Seattle is that it is unlawful to display for sale to the public or sell goods, wares, merchandise or services in a public place. Vending and display in public places are permitted only in the following circumstances: (1) the activity exercises a civil liberty or constitutional right, (2) the activity implements a right or privilege granted by state law, a license authorized by ordinance, or a franchise granted by the city, (3) the activity occurs in an area under permit that contemplates such an activity, (4) the seller is a “mobile food-service unit” making sales of food or refreshments on a regular basis within a district or on a route in compliance with the Food Code and rules of the Public Health Department, or (5) the seller has received a permit for such vending or display.

### Location, Location, Location

Assuming a vendor qualifies for one of the above exemptions and is permitted to operate, the vendor must next comply with numerous regulations that impact the location available to operate in Seattle. As previously noted, a vendor must obtain the written approval of a storeowner before placing a cart on the sidewalk in front of a store. Flower vendors cannot operate within 200 feet of a floral shop without the storeowner’s permission. And no street vendor may do business within 200 feet of a public school or public park without permission of the Seattle School District or the Superintendent of Parks and Recreation, respectively.<sup>64</sup>

Mobile vendors, those who either sell goods on foot or with a mobile cart, are prohibited from conducting business along the waterfront on Elliot Bay and the downtown streets near the waterfront,<sup>65</sup> which is one of the busiest areas of the city. Further, if *any* event is scheduled at Safeco Field, a vendor may not sell goods on the date of the event in the neighborhood directly west of the stadium.<sup>66</sup> To operate a vending cart in any other area around Safeco Field or Seahawks Stadium, a vendor must obtain a special permit at a cost of \$121 per month during baseball season and \$18 a month during football season. While these regulations alone may seem sufficiently exacting, the Seattle City Council recently considered an ordinance that would virtually ban mobile vending in the area around Safeco Field and the Seahawks’ Qwest Field.<sup>67</sup>

### Health Restrictions

Although street vendors are severely restricted by limited locations available to conduct their enterprise, the greatest barriers standing in the way of a successful vending business come



from the performance standards imposed by the city and the Department of Health. “Mobile food-service units” must be licensed by the Department of Health and must satisfy the King County Food Code. The Food Code requires that food must be heated to certain temperatures and prepared in certain manners.<sup>68</sup> Additional requirements include:

- Food & beverage service workers permits for all servers
- “Food Safety Basics for Working Healthy” course, study guide & test
- Off-site approved commissary or base of operations for food, equipment, cart and utensil storage & equipment cleaning, accessible throughout the day
- On-site three-compartment sink supplied with 35 gallons of hot and cold running water to wash and sanitize utensils and equipment
- Department of Health-approved water source and system design of water supply
- Toilet facilities available and accessible within 200 feet of cart
- Submission of exact route or location to the Department of Health

The above requirements apply to vendors who sell “potentially hazardous foods” other than hot dogs, espresso, and beverages.<sup>69</sup> According to the Food Code, “potentially hazardous foods” includes any meat products and foods such as potato products, cooked rice, or cut melons. Therefore, those who wish to sell various ethnic dishes to the public most likely must fulfill each of the above requirements if they wish to run a legal business. Vendors who wish to run a less-regulated gauntlet of requirements may still operate a mobile food cart, but may only sell hot dogs, espresso, or popcorn and non-hazardous beverages. As a result of these regulations, very few street vendors operate on the streets of Seattle and those who do operate usually only sell hot dogs or espresso.<sup>70</sup> Further, all street vendors, because they must obtain permission from store owners and have access to restrooms and a commissary often must pay fees to secure this required access, further increasing the cost of entering this field.

An entrepreneur with culinary talents who wishes to sell homemade food in Seattle may not prepare that food in the home unless the site has been approved by the Department of Health.<sup>71</sup> The approval process is long and expensive, and the kitchen must meet all of the regulations established by the Department of Health. Some of the regulations include ensuring that there are a certain number of sinks in the kitchen and that lighting and construction features are of a certain quality. If a homeowner’s kitchen does not meet the standards required by the Department of Health, the homeowner must search out an approved commissary or invest in improvements to meet the necessary standards. Each of these options carries with it an added and unnecessary cost of compliance.

#### Case Study: Immigrant Entrepreneurs

“Give me your tired, your poor,” a billboard in Seattle trumpets against a vibrant painting of working immigrants, “your huddled masses yearning to be free.” Beneath the sign, dozens of immigrant workers congregate, smoking, chatting in Spanish with one another and passersby, and soliciting work from approaching drivers. Another smaller sign advertises workers for hire. It lists the type of work these men will do, including general labor, moving, roofing, driving, painting, yard work, landscaping, light carpentry, restaurant help, masonry, janitorial duties, and demolition.

Nearby is a festive trailer adorned with colorful lettering and a tiny, grubby window through which a young Spanish-speaking man (and a person who appears to be his mother) dispense authentic Mexican fare. Everything at the taco stand is cheap—tacos are \$4 and burritos (handmade tortillas filled with your choice of chicken, pork, beef, tongue, or brain) are \$3. The trailer appears at 6:30 every morning and leaves each afternoon at 2:00. It caters mostly to Mexican workers, but sometimes employees of businesses in the neighborhood are attracted by the low prices and tasty food.

The young man and his mother speak no English, so they can't say whether they are complying with the numerous state, city, and county regulations imposed on food vendors. From the looks of it, however, they are not. The trailer is about twenty feet long—far larger than the 5' x 5' x 3' technically allowed. No licenses are displayed, and there are no public toilets in sight. There may be a three-compartment sink with 35 gallons of hot and cold running water inside the trailer, and they theoretically could have prepared their “potentially hazardous food” in a kitchen approved by the Department of Health, but it seems unlikely from appearances.



If enough native Seattleites eat at the taco trailer and someone gets sick, the government might crack down on the trailer for non-compliance. But until then, the laws on the books don't mean much to the Hispanic workers who patronize the taco stand or its owners trying to survive. They may not even know such laws exist. The trailer is providing a valuable service, offering high-quality, inexpensive food to workers who would not likely be able to afford much else in the area. Moreover, the trailer offers the type of multi-ethnic experience that makes America what it is. If the taco trailer tried to comply with all of the regulations—or the government decided to enforce its complex rules—it would likely be gone.

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## VII. Childcare

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Before daycare was the tightly regulated industry it is today, childcare was often an informal affair. Stay-at-home minders of their own children could take in additional children from the neighborhood, the church or the extended family. In exchange for a bit of extra money to cover household expenses, the informal childcare provider could give parents a reasonable price and some piece of mind, treating the additional children just like family.

Today, such a system is illegal. Even if a mother has been watching her own children for a decade, she could not watch more than six children total—including her own—without a year or more of professional childcare experience. She would also have to obtain a license, pay annual fees, prove that she has experience, and complete hours of training.

Washington enacted these rules with the worthy goal of protecting children, and certainly, some regulation is desirable. While in theory these requirements sound reasonable, the reality is that most women who start childcare businesses cannot afford to meet all of the

requirements. As a result, potentially high quality childcare providers do not enter the industry and unqualified providers do so illegally.

The effect of these rules has been to cut supply just when childcare providers are needed most. In Washington, more than 50,000 children are enrolled in King County's 650 childcare centers and 1,540 family childcare facilities.<sup>72</sup> The increased demand for childcare services in Washington has been fueled by welfare reform and the swelling ranks of working women.<sup>73</sup>

**As a result of government regulations, potentially high quality childcare providers do not enter the industry and unqualified providers do so illegally.**

Despite the increased pressure for childcare slots, many providers are choosing to leave the industry. Childcare providers complain that their business is plagued by low wages, high staff turnover, and the subjective enforcement of vague regulations by state licensors. All of this is driving up the cost of childcare.<sup>74</sup> From 1998 to 2000, the average price of service for childcare centers in the state (after inflation) increased by six to seven percent. King County daycare is the most expensive in the state. The state bears a significant portion of the financial burden, with about a quarter of children in daycare subsidized by the Washington State Department of Social and Health Services ("DSHS") in 2000. The numbers are higher for some minority providers, with 73 percent of children cared for by Hispanic providers and 63 percent by African-American providers being subsidized by the state.<sup>75</sup>

Even supporters of regulation agree that the current system does not do enough to accomplish its stated goal of improving the safety and quality of licensed childcare in Washington.<sup>76</sup> By over-regulating on behalf of parents and children, Washington has created a crisis in the area perhaps most crucial to women entrepreneurs of childbearing age.

### Family Childcare

Two types of licensed childcare services exist in Washington: family childcare providers and traditional childcare centers. The first, family childcare, refers to care provided to no more than 12 children in the home.<sup>77</sup> There are a number of advantages to family childcare over traditional childcare centers. Family childcare providers often charge lower rates and provide more personal and specialized care than traditional childcare centers.<sup>78</sup>

Despite the benefits to parents and children, however, many family childcare providers are closing up shop. Between 1996 and 2001, the number of licensed family homes in King County fell by 36 percent.<sup>79</sup> The state reports that this decline has been driven by both a decline in the number of new providers entering the business and an increase in the proportion of providers leaving the business. There has also been a shift from family homes to childcare centers—while 39 percent of children in licensed care attended licensed family homes in 1992, only 29 percent of those children attended family home daycare in 2000.<sup>80</sup>

Considering the low wages and mounting regulations facing childcare providers, it is not surprising to learn of the alarming trend that an increasing number of providers are "going underground" and caring for children without the required licenses. It seems obvious that Washington can best protect our children by revamping its ineffective regulatory system to make it more realistic for families to care for other families—in compliance with the law.

### Physical Regulations and Restrictions

After obtaining both state and city business licenses, a prospective family childcare provider must pay a \$24 annual fee upon application.<sup>81</sup> The regulations applicable to facilities for family childcare providers certainly cannot be characterized as child's play.<sup>82</sup> The area in which the business is run must:

- Pass inspection by a Department of Social and Health Services ("DSHS") officer
- Be the actual residence of the provider
- Provide a minimum of 35 square feet of usable floor space per child
- Be located on the first floor of the home
- Maintain an exit door within 150 feet of any point in the home
- Comply with all applicable home business regulations

Not only does the government regulate the structure in which a family childcare provider operates, regulations also limit the number of children a family childcare provider may accommodate. A family childcare provider with:

- no experience and working alone may care for no more than 6 children, only 2 of which may be under the age of 2
- one year of experience and working alone may care for up to 10 children between the ages of 5 and 11 or may care for up to 8 children between the ages of 2 and 11, but none of those children may be under the age of 2
- one year of experience and an assistant may care for 9 children under the age of 11, 4 of which may be 2 years of age or younger
- two or more years of experience and early childhood education may care for 10 children under the age of 11, but none may be under the age of 2
- two or more years of experience and early childhood education working with an assistant may care for 12 children, 4 of which may be under the age of 2.

As if caring for children is not challenging enough, even the savviest businessperson would have a difficult time making sense of these restrictions.

### Training Requirements

Unfortunately, the regulations do not stop there. Even after DSHS accepts a potential provider's application, a whole host of training requirements must be met. For example, the provider must complete 20 hours of basic training within six months of initial licensure.<sup>83</sup> The basic training course is designed to be completed in several sessions and must be approved by the state training and registry system. The cost of the basic training course ranges from \$100 to \$130 and may only be waived if the licensee has completed 12 or more college quarter credits in early childhood education or child development or has an associate's degree in similar areas.

Licensed childcare providers must also complete ten hours of continuing training each year.<sup>84</sup> The continuing education training must be based on "Washington State Core Competency Areas" and includes courses such as, "What Kids Need to Thrive," "Nurturing Pathways for Babies," "Teacher Made Games" and "All About Booster Seats." The yearly cost of the annual ten-hour training ranges from \$35 to \$100. As a result of these training requirements, a family childcare provider must pay close to \$200 to acquire all required licenses and training.

### Childcare Centers

Childcare centers that operate in a commercial facility, church, or other building must be licensed by the state. The facility is considered a center if care is provided outside the licensee's home and provides care for a group of children either full-time or on a regularly scheduled part-time basis.<sup>85</sup>

Child Care Resources, a non-profit agency that serves to educate parents and providers about the childcare industry in Washington, cautions those who wish to open and operate a childcare center that the licensing process is "more complicated and costly than Family Child Care and requires a great deal of time and planning." The group advises that the licensing process could take up to one year and must meet local zoning, fire, and health department regulations as well as childcare licensing requirements.

### Licensing and Training Requirements.

Like family childcare providers, entrepreneurs who wish to operate childcare centers are subjected to a burdensome licensing and training process.<sup>86</sup> Some of these requirements include:

- Childcare center license (\$48 for 12 children, plus \$4 per additional child)
- Applicant, licensee, and director orientation
- Numerous educational and other requirements for licensees/directors, including 45 hours of early childhood education and a minimum age requirement (21)
- 20 hours of basic training for center directors and/or program directors (who must work at the center for at least 20 hours per week), or an associate's degree in early childhood education
- 20 hours of basic training plus minimum age requirement (18) for any lead childcare staff person

Including the cost of training classes and basic licensure, a would-be provider must initially pay over \$250 just to begin the process of opening a childcare center. This cost, of course, does not take into account the time or lost opportunity costs for a potential childcare center provider.

### Physical Regulations and Restrictions

In addition, prospective childcare center providers in the City of Seattle must satisfy a thoroughly daunting list of requirements that govern the physical structure of the childcare facility.<sup>87</sup> Seattle childcare centers must have:

- Master use permit
- Building permit
- City of Seattle business license
- Occupancy and use permits (often required if the existing building was not previously used as a childcare center)
- Kitchen, janitor's sink, break rooms for staff, storage facilities, and an administrator's office on site, plus at least 35 square feet of space per child
- Compliance with energy and mechanical requirements
- Compliance with restrictive zoning laws *or* conditional use permit, which requires a

lengthy and expensive application and design process that takes months to complete, and costs up to \$2,600

Like family childcare centers, the state also regulates staff to child ratios for group activities in childcare centers, which do not depend on education and experience.<sup>88</sup> For example:

- For children up to the age of 11 months, a staff to child ratio of 1 to 4 is required, with a maximum of 8 children
- For children 12 to 29 months in age, a maximum of 14 children are allowed, with a staff to child ratio of 1 to 7
- The center may accommodate a maximum of 20 children ranging in age from 30 months to 5 years, with a ratio of 1 staff member to every 10 children
- The maximum number of children over the age of 5 allowed at a childcare center is 30, with a staff to child ratio of 1 to 15
- If the center accommodates children of different age groups, the provider must implement staff to child ratios applicable to the youngest age group

By even the most elementary of standards, the regulations described above constitute a cumulatively heavy and ultimately onerous load on those simply wishing to provide good care for children in Washington State.

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## **VIII. Conclusion**

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Washington State, and the City of Seattle specifically, are fertile areas for the growth of small business and entry-level entrepreneurship. Seattle is home to an educated, diverse, and business-savvy group of people, who possess the skill and willingness to make their businesses work to their personal benefit, as well as to the benefit of the entire community. But city and state regulators have placed significant barriers between these would-be successful entrepreneurs and their dreams. The regulatory structure strangles small businesses, driving up the cost of entering the market and thereby increasing costs to consumers. As many small business owners have cautioned, unless the city and the state perform audits of the regulations to which they cling, more and more small businesses will fail. Soon, would-be entrepreneurs will look elsewhere to start their businesses and Seattle's economy will be left behind. We offer the foregoing observations and the following recommendations in the spirit of matching Washington's history of economic opportunity and entrepreneurship with its regulatory reality.

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## **IX. Recommendations**

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1. Review all laws and regulations that impede entrepreneurship. This study only skims the vast array of business regulations, rules and restrictions the government imposes on its citizens. The state and City of Seattle should examine all laws and regulations that restrict entry into businesses and occupations. The appropriate regulatory touchstone should be whether the restriction is reasonably necessary and narrowly tailored to fulfill legitimate public health and safety objectives. Any rules that do not meet this standard should be rescinded or re-written.

2. Streamline business-licensing process. State and local business-licensing processes are confusing and the layers of red tape are unmanageable. The state and city should determine whether the cost and bureaucracy involved in business licensing is justified. If so, the duplication between state and local processes should be eliminated, administrative burdens should be eliminated or simplified, and fees should be tailored to the costs imposed on the community by the business. Fees should be eliminated for small start-up businesses.

3. Deregulate for-hire vehicle industry. The vibrant Puget Sound area should provide for a prosperous taxicab and for-hire vehicle industry, but far too few individuals are privileged enough to enjoy the business opportunity. This will be the case as long as city, county, and Port of Seattle officials are allowed to determine the structure of the taxicab and for-hire vehicle market. Far too much red tape chokes the efforts of would-be taxicab and for-hire drivers and arbitrary limits on taxicab and for-hire vehicle licenses in Seattle and King County prohibit entry into the industry. The monopolistic practices of the Port of Seattle create inefficiency and high costs at Sea-Tac, burdening consumers and benefiting only a select few taxicab drivers. Only when these barriers are removed will local entrepreneurs and consumers enjoy the taxicab and for-hire vehicle market they deserve.

4. Cosmetology. The state's regulation of the cosmetology industry severely impedes the ability of African hairbraiders to practice their craft. Very little, if any, of the training required to receive a state-mandated cosmetology license involves the art of African hairbraiding. As a result, the regulations simply serve to place unnecessary burdens on would-be entrepreneurs. The fact that hairbraiders must spend over one year and thousands of dollars to learn skills that will not translate to their practice demonstrates the urgent need for reform. The state should also focus on measuring proficiency, rather than requiring needless government-mandated "training" that does not ensure proficiency of the skills actually performed. Real-world experience is often far superior to formal training.

5. Ease regulations on home-based businesses. The city should legitimize home-based businesses and ease onerous regulations. Regulations such as those that forbid property owners from making structural alterations to accommodate a home-based business do not serve any public health or safety justification. The city should permit improvements to be made to dwellings to better accommodate a home-based business and should permit businesses to be conducted in a secondary building such as a garage, workshop, or shed. Additionally, the city should remove restrictions limiting home-based entrepreneurs from employing as many individuals as necessary to properly run a thriving business. The city would only benefit from such relaxed regulations, as a thriving home-based business economy increases employment opportunities for Seattle residents and improves the health of Seattle's local economy.

6. Relax street vending regulations. The city's regulation of street vendors should be relaxed to allow entrepreneurship while protecting public health and safety. Specifically, the

city should eliminate the requirement that vendors submit operation plans to the Department of Health. The cost to obtain approval of a vending cart should also be reduced. Finally, the city should reduce restrictions on vendors who wish to sell more than simply hot dogs, espresso, and beverages.

7. Simplify training and zoning requirements for childcare providers. Clearly, the city and state have a strong interest in protecting children once they enter childcare programs. However, some of the applicable regulations are altogether unnecessary and only serve to deter would-be entrepreneurs from succeeding in the field of childcare. For example, the education requirements that the state imposes do not serve to protect children, but rather serve to limit entry into the field. Common sense, patience, and caring are more important qualifications for individuals who will care for children than an associate's degree. Further, lengthy zoning processes only serve to deter legitimate childcare providers from entering the industry. City and state officials should make the zoning process for childcare centers less rigorous.

We believe these recommendations will help achieve the appropriate balance between public health and safety and the right to earn an honest living. We sincerely wish the people of the State of Washington and Seattle continued prosperity and increased opportunities.



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## About the Author

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**Jeanette M. Petersen** joined the Institute for Justice Washington Chapter (IJ-WA) as staff attorney in January 2003. Prior to joining IJ, Jeanette clerked for Judge David Armstrong of the Washington State Court of Appeals, Division II, Justice Richard Sanders of the Washington State Supreme Court, and Judge Ronald Gould of the United States Court of Appeals for the Ninth Circuit. Following her clerkships, Jeanette practiced with Wilson Sonsini Goodrich & Rosati, P.C. in Kirkland, Washington.

Jeanette received her law degree from the University of Washington School of Law in 1998, graduating with honors and Order of the Coif. She received her bachelor's degree in Political Science from the University of Washington in 1994, graduating cum laude and Phi Beta Kappa. Jeanette is a member of the Washington State Bar Association and is president of the Puget Sound Lawyers Chapter of the Federalist Society.

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- <sup>1</sup> Tremendous thanks to Adam Tait, a law clerk for IJ-WA in 2003-2004 and currently a law student at Gonzaga University, for his meticulous research and assistance in preparing this study. Thanks are also extended to IJ-WA staff attorney Charity Osborn.
- <sup>2</sup> For more information about Washington Policy Center's Small Business Project visit [www.washingtonpolicy.org](http://www.washingtonpolicy.org).
- <sup>3</sup> *2003 Statewide Small Business Conference: Small Business Policy Overview* (visited July 19, 2004) <http://www.washingtonpolicy.org/SmallBusiness/SBCPolicyOverview2003.html>.
- <sup>4</sup> *2002 Small Business Profile: WASHINGTON* (visited July 19, 2004) <http://www.sba.gov/advo/stats/profiles/02wa.pdf>.
- <sup>5</sup> *Washington Quick Facts* (visited July 19, 2004) [quickfacts.census.gov/qfd/states/53000.html](http://quickfacts.census.gov/qfd/states/53000.html).
- <sup>6</sup> Steven A. Camarota, *Immigrants in the United States – 2002* (visited July 19, 2004) <http://www.cis.org/articles/2002/back1302.html>.
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.*
- <sup>9</sup> *1997 Revenues for Women-Owned Business Show Continued Growth, Census Bureau Reports* (visited July 19, 2004) <http://www.census.gov/Press-Release/www/2001/cb01-61.html>. See also *Women-Owned Businesses in Washington, 2004: A Fact Sheet* (visited July 19, 2004) <http://www.nfwbo.org/USStateFacts/Washington.pdf>.
- <sup>10</sup> *Minority-Owned Firms Grow Four Times Faster Than National Average, Census Bureau Reports* (visited July 19, 2004) <http://www.census.gov/Press-Release/www/2001/cb01-115.html>.
- <sup>11</sup> Grace Aduroja, *Minorities Pursuing American Dream*, Chi. Trib., Dec. 9, 2002, Business Section at 1.
- <sup>12</sup> *Plumbers and Steamfitters Union Local 598 v. Washington Pub. Power Supply Sys.*, 44 Wn. App. 906, 915, 724 P.2d 1030 (1986); *Duranceau v. City of Tacoma*, 27 Wn. App. 777, 780, 620 P.2d 533 (1980).
- <sup>13</sup> Eric Montague, *The Small Business Climate in Washington State* (March 2002) <http://www.washingtonpolicy.org/SmallBusiness/PBMontagueSmallBusinessClimate.html>.
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.*
- <sup>16</sup> David Bowermaster, *Mulally has Chilling Words on State's Business Climate*, Seattle Times, Oct. 9, 2003 at A1.
- <sup>17</sup> The City of Redmond appealed the decision to the 9<sup>th</sup> Circuit Court of Appeals on July 14, 2004.
- <sup>18</sup> *Salary Wizard* (visited July 13, 2004) <http://swz.salary.com>.
- <sup>19</sup> *King County Taxicab Annual Report*, 15 (visited July 19, 2004) <http://www.metrokc.gov/lars/business/images/txexsum.pdf>.
- <sup>20</sup> Bob Young, *Cab Elvis to City Council: "A-thank You Verrah Much,"* Seattle Times, Dec. 9, 2003 at A1.
- <sup>21</sup> Sandi Avants, Gorman Gilbert, and Barbara Lupro, *Seattle Taxicab Regulation* (visited cached site July 19, 2004) <http://www.taxi-l.org/seat0396.htm>.
- <sup>22</sup> *Id.*
- <sup>23</sup> *King County Taxicab Report, supra*, at 13. See also <http://www.ci.seattle.wa.us/consumeraffairs/fstaxi.htm> (as of May 2003, there were 339 city-only taxicab or for-hire vehicle licenses, 306 city-county vehicle licenses, and 197 county-only vehicle licenses in use in Seattle and King County).
- <sup>24</sup> Peter Lewis, *Cabs to, from Airport go 20 Million Miles – Empty,* Seattle Times, July 8, 2001 at A1.
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.*
- <sup>27</sup> Jack Broom and Charles E. Brown, *In Protest, Cabbies Play Hard to Get – Taxi Drivers Complain Seattle's Regulations Favor Town Cars, Limos*, Seattle Times, Sept. 16, 1998, at B1.
- <sup>28</sup> See Seattle Mun. Code § 6.310 (2004).
- <sup>29</sup> Rates are based on the Community Health Centers of King County sliding scale, which charges a minimum of \$23 (for those living at or below the national poverty level of \$1,570 per month for a family of four) and a maximum of \$225 (for those families of four earning \$3,143 per month or more) for a standard employment physical.
- <sup>30</sup> Kelley Blue Book retail value of a 1997 Ford Crown Victoria 4-Door Sedan. According to the King County Records, Elections and Licensing Service Division, the average age of vehicles used as taxicabs in 1995 (before the current regulation was in place) was 10 years. In 2003, after the current law was phased in, the average vehicle age was 6.5 years. Kelley Blue Book retail value of a 10-year-old Ford Crown Victoria 4-Door Sedan is \$4,580, so the taxicab age requirement alone added approximately \$220 to the cost of entry into the cab-driving profession.
- <sup>31</sup> See King County Code § 6.64 (2004).
- <sup>32</sup> See note 25, *supra*.
- <sup>33</sup> *King County Taxicab Report, supra*, at 13.
- <sup>34</sup> Seattle Mun. Code § 6.310.500 (2004).

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- <sup>35</sup> Seattle Mun. Code § 6.310.500 (2004).
- <sup>36</sup> *King County, supra*, at 13.
- <sup>37</sup> Lisa Heyamoto, *What This Job Pays – Taxi Driver*, Seattle Times, Sept. 1, 2002, at I3.
- <sup>38</sup> *King County Taxicab Report, supra*, at 13.
- <sup>39</sup> Lewis, *supra*.
- <sup>40</sup> Jeff Jared, *Transportation Monopolies Take Passengers For a Ride*, Seattle Post-Intelligencer, Apr. 13, 2002, at B3.
- <sup>41</sup> Jitneys are small private buses carrying passengers over a regular route on a flexible schedule. See *Merriam-Webster Online* (last visited July 21, 2004) <<http://www.webster.com/cgi-bin/dictionary?book=Dictionary&va=jitney>>.
- <sup>42</sup> See Wash. Rev. Code § 46.72A (2002).
- <sup>43</sup> See Wash. Rev. Code § 46.72A (2002).
- <sup>44</sup> Nina Shapiro, *Hard-Pressed Immigrant Cabbies Complain that Luxury-Coach Drivers are Squeezing them Out — by Bribing Doormen and Breaking the Rules,*” Seattle Weekly, Mar. 5-11, 1998.
- <sup>45</sup> See Wash. Rev. Code § 18.16 (2002).
- <sup>46</sup> See Wash. Admin. Code § 308-20 (2003).
- <sup>47</sup> A handful of states, including Washington, D.C., Maryland, Michigan, New York, Tennessee, Florida, California, and, most recently, Arizona, have exempted African hairbraiding from the general cosmetology regulatory regime. See D.C. Code §§ 2-421(17) and (19) and 2-432(a); Md. Bus. Occ. & Prof. Code § 5-101(k)(2)(iii); Mich. Comp. L. Ann. § 339.1203a(3); N.Y. Gen. Bus. Law § 400(5); Tenn. Code Ann. § 62-4-102(a)(14)-(15); Fla. Stat. Ann. § 477.0132; Ariz. Stat. Ann. \_\_\_\_; Cal. Bus. & Prof. Code \_\_\_\_\_. [Note: the laws in Arizona and California have not yet been changed. See ARS 32-501 (invalidated; new bill signed by governor on April 16, 2004) & CBP 7316 (still includes braiding, but new legislation is pending)].
- <sup>48</sup> See <<http://www.a2zcolleges.com/Beauty/wa.html>> (listing cosmetology schools in Washington State, with cosmetology training courses ranging from 1,600 – 1,800 hours of course work at costs varying from \$3,500 to \$11,000).
- <sup>49</sup> Patricia Reynolds, *Homespun Hair: Kitchen Salons Hold the Key*, Boston Globe, Oct. 25, 1995, Living Section at 71.
- <sup>50</sup> See Wash. Rev. Code § 18.16.175 (2002).
- <sup>51</sup> See Seattle Mun. Code § 23.44.050 (2004).
- <sup>52</sup> Seattle Mun. Code § 23.76.006 (2004).
- <sup>53</sup> *2003 Fee Subtitle*, 13 (visited July 19, 2004) <[http://www.ci.seattle.wa.us/DCLU/about/2003\\_Fee\\_Subtitle.PDF](http://www.ci.seattle.wa.us/DCLU/about/2003_Fee_Subtitle.PDF)>.
- <sup>54</sup> *Business in Your Home: Home Occupations Allowed in Residential Zones – Client Assistance Memo 236*, 1 (visited July 19, 2004) <<http://www.ci.seattle.wa.us/dclu/Publications/cam/cam236.pdf>>.
- <sup>55</sup> See Seattle Mun. Code § 23.44.050 (2004).
- <sup>56</sup> *Executive Summary* (visited July 19, 2004) <<http://www.deanrunyan.com/impactsWAstate.html>>.
- <sup>57</sup> *B&B Industry Facts & Figures* (visited July 19, 2004) <<http://www.bedandbreakfast.com/about/pressFaq.aspx>>.
- <sup>58</sup> See Seattle Mun. Code 23.44.051 (2004).
- <sup>59</sup> Paul Freeman, *Sidewalk Vendors Few and Far Between*, Puget Sound Bus. J., Oct. 19, 1998.
- <sup>60</sup> See *Street Use Vending Permits* (visited July 19, 2004) <[http://www.ci.seattle.wa.us/transportation/stuse\\_vend.htm](http://www.ci.seattle.wa.us/transportation/stuse_vend.htm)>.
- <sup>61</sup> *Plan Review Process for Mobile Food Service Operation*, 2 (visited July 19, 2004) <<http://www.metrokc.gov/health/foodsfty/mobilefoodplan.pdf>>.
- <sup>62</sup> Freeman, *supra*.
- <sup>63</sup> See Seattle Mun. Code § 15.17.005 (2004).
- <sup>64</sup> Seattle Mun. Code § 15.17.100 (2004).
- <sup>65</sup> Seattle Mun. Code § 15.17.010 (2004).
- <sup>66</sup> Seattle Mun. Code § 15.17.050 (2004).
- <sup>67</sup> See *City Council to Vote on Bill on Mobile Stadium Vendors* (visited July 19, 2004) <[seattletimes.nwsources.com/html/localnews/2001312027\\_dige30m.html](http://seattletimes.nwsources.com/html/localnews/2001312027_dige30m.html)>.
- <sup>68</sup> See King County Food Code § 5.34 (2004).
- <sup>69</sup> King County Food Code § 5.34 and 5.04.470 (2004).
- <sup>70</sup> Freeman, *supra*.
- <sup>71</sup> See *Plan Review for Mobile Food Service Operation, supra*.
- <sup>72</sup> Ruth Schubert and Heath Foster, *Who’s Minding Day Care?*, Seattle Post-Intelligencer, June 24, 2002 at A4.

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- <sup>73</sup> *Access to Child Care for Low-Income Working Families* (visited July 19, 2004) <<http://www.acf.hhs.gov/programs/ccb/research/ccreport/ccreport.htm>>. (In “1996, three out of four mothers with children between six and seventeen were in the labor force, compared to one in four in 1965. Two-thirds of mothers with children under six now work”).
- <sup>74</sup> *Id.*
- <sup>75</sup> *Id.*
- <sup>76</sup> Ruth Schubert, *Other States Have Made Big Strides*, Seattle Post-Intelligencer, June 24, 2002 at A8.
- <sup>77</sup> See *Getting Licensed to do Family Child Care in your Home* (visited July 19, 2004) <<http://www.childcare.org/providers/becoming-provider-home-care.htm>>.
- <sup>78</sup> Ruth Schubert, *Job Marked by Low Pay, Long Hours*, Seattle Post-Intelligencer, June 24, 2002, at A3.
- <sup>79</sup> *Licensed Child Care in Washington State: 2000* (visited July 19, 2004) <<http://www1.dshs.wa.gov/rda/research/7/102.shtm>>.
- <sup>80</sup> *Id.*
- <sup>81</sup> Wash. Admin. Code § 388-155-070(1)(c)(i) (2003)
- <sup>82</sup> See *Getting Licensed to do Family Child Care*, *supra*.
- <sup>83</sup> See *Training and Workshops* (visited July 19, 2004) <<http://www.childcare.org/providers/training.htm>>.
- See also Wash. Admin. Code § 388-155-180 (2003)
- <sup>84</sup> *Id.*
- <sup>85</sup> See *Getting Licensed to do Family Child Care*, *supra*.
- <sup>86</sup> Wash. Admin. Code § 388-150-070 (2003).
- <sup>87</sup> *Regulations Governing Child Care Centers – Client Assistance Memo 108*, 1 (visited July 19, 2004) <<http://www.cityofseattle.net/dclu/publications/cam/cam108.pdf>>.
- <sup>88</sup> Wash. Admin. Code 388-150-190.