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Burdensome Barriers: How Excessive Regulations Impede Entrepreneurship in Arizona

by Timothy D. Keller, Staff Attorney, Institute for Justice, Arizona Chapter

EXECUTIVE SUMMARY

In Arizona, occupational licensing requirements and regulations stifle competition, diminish quality of service, and drive up prices. Thousands of laws restrict entry into occupations for people wishing to become cosmetologists, barbers, African hairbraiders, taxicab drivers, and street vendors. State agencies and occupational licensing boards act as gatekeepers, restricting competition and ensnaring entrepreneurs in thick layers of red tape.

Arizona municipalities also create burdensome barriers. If a Phoenix business owner wants to remodel or change the use of an existing structure, the city requires him to pay \$630 to meet with its Development Services Department. Then the applicant must ensure the proper application is filed, which costs at least \$1,200. Once final site approval is granted, an applicant must obtain several other permits and pay applicable fees. In Tucson, would-be entrepreneurs must navigate a 17-step process that the city's own Small Business Commission has described as "seemingly never-ending." And those are just two small tips on the regulatory iceberg floating in the way of Arizona entrepreneurs.

Although regulatory boards and commissions are frequently defended on the grounds of alleged health or safety concerns, the principal effect of many occupational licensing schemes is to promote the vested interests of those already engaged in regulated professions, creating government-sanctioned cartels. To the extent that regulation adds marginal protections for consumers, those protections come at a significant price in lost productivity and lost economic dynamism. When government regulation is necessary, regulations should be highly circumscribed, easily understandable, and narrowly tailored to achieve legitimate goals such as preventing fraud.

Arizona's elected officials have a duty to protect economic liberty and an obligation to allow for a dynamic economy. If set free from burdensome and needless regulations, Arizona entrepreneurs would find it easier to open new businesses. Among their ranks would be hundreds of low-income and minority entrepreneurs who would be climbing the first rung on the proverbial economic ladder.

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Introduction

This report on barriers to entrepreneurship has been conducted as a part of the Institute for Justice Arizona Chapter's ongoing examination of economic liberty as a fundamental American right.¹ Arizona's general entrepreneurial climate is discussed first, followed by an examination of the common hurdles entrepreneurs face when seeking to open businesses in Phoenix and Tucson – cities chosen because of their large populations and geographic locations. This study could not begin to discuss in detail the processes required for opening businesses of every kind. Instead, it outlines the most common procedures required of all businesses prior to opening.

The report then looks at specific barriers erected for selected occupations by the State of Arizona, Maricopa and Pima counties, and the cities of Phoenix and Tucson, and focuses on entry-level businesses and occupations, such as taxi cabs, sidewalk vendors, and child care, because they typically require relatively little capital and no formal training, thus providing market access to the economically disadvantaged.

Many of the obstacles to free enterprise are invisible to consumers. Literally thousands of laws restrict entry into occupations such as cosmetology, hairstyling, African hairbraiding, taxicab

driving, and street vending. In Arizona, “a license is needed to operate almost any type of business.”² Most regulatory schemes are ostensibly enacted to protect public health and safety, but in reality they do little more than keep out potential competitors.

All too often our “Land of Opportunity” is a place where regulations block competition, diminish quality of service, and drive up prices. Indeed, as many as 1 in 10 occupations suffers from a government-imposed cartel.³ The historical, political and economic forces that have created this anti-competitive regime are varied and complex, but constitutional jurisprudence has played a major role. Although the course of constitutional jurisprudence cannot be summarized easily, one U.S. Supreme Court decision stands out as emblematic of the American judiciary's frequently lackluster defense of economic liberty: *The Slaughter-House Cases*.⁴

In a 5-4 decision sanctioning a government-imposed monopoly, the Supreme Court effectually repealed the portion of the Fourteenth Amendment mandating, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”⁵ One of the most important “privileges or immunities” that the Fourteenth Amendment's architects attempted to protect was the

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right of individuals to engage in the business or occupation of their choosing. Individuals are not truly free without this right.⁶ Thus, it is essential to undo the effects of harmful legislative regulation and restore meaningful judicial protection of our constitutional right to earn an honest living.

Today, entrepreneurs are shackled by unnecessary regulation and licensing requirements. If set free, many would rush to open new businesses. Among their ranks would be hundreds of low-income and minority entrepreneurs who would be climbing the first rung on the proverbial economic ladder. A recent report by the World Bank validates these claims, finding a direct link between poverty and overregulated business environments, and demonstrating that the world's poorest countries have the highest levels of business regulation.⁷ The authors found that the heavier the regulation, the more inefficiency existed in public institutions, manifested in longer delays, higher costs, higher unemployment, and corruption, with no corresponding increase in quality of goods or services.⁸ Although it is unclear what level of government regulation of business is optimal, the World Bank study declares it is possible to regulate in good fashion and suggests that only two procedures are necessary for business entry: 1) registering for statistical purposes, and 2) registering for tax and social security.⁹ As a general rule, this report suggests that regulations should be highly circumscribed, easily understandable, and narrowly tailored to achieve legitimate goals such as

preventing fraud.¹⁰

Arizona's Entrepreneurial Climate

Arizona is highly urbanized, with more than 75 percent of its population living in an incorporated city or town, and urbanization tends to breed overregulation.¹¹ The Small Business Survival Committee's 2003 index ranked Arizona as the 18th friendliest state to entrepreneurs.¹² Arizona fared better in a recent study titled *Economic Freedom of North America*, which took into account the size of government, taxation, and even occupational licensing, ranking Arizona as the 9th most economically free state.¹³ The Arizona Department of Commerce estimates the total number of businesses in Arizona, including home-based businesses, at approximately 665,000.¹⁴ It also estimates that 98 percent of those businesses are "small," having fewer than 100 employees. According to the U.S. Small Business Administration's Office of Advocacy, which defines small businesses as those with fewer than 500 employees, small businesses employ nearly 50 percent of Arizona's 1.8 million workers and are one of the state's most important sources of new jobs. More than 13 percent of businesses in Arizona are minority owned.¹⁵ Moreover, there are nearly 300,000 home-based businesses statewide.¹⁶

A 2002 study released by the Small Business Survival Committee ranked Arizona 20th for its cost and ease of

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conducting a small business, taking into account government-imposed costs such as business, personal property, and sales taxes.¹⁷ Kevin McCarthy, president of the Arizona Tax Research Association, said he was surprised Arizona did so well, noting that Arizona’s tax scheme forces business owners to “pay property taxes at two and one-half times what homeowners pay.”¹⁸ As a recent Goldwater Institute publication explained, “although tax rates in the state do not discriminate by property use, assessment values do, with business property assessed at 2.5 times that of private homes.” Not surprisingly, the Goldwater Institute calls for elimination of the property classification system and the adoption of a uniform assessment ratio.¹⁹

The Arizona state government has adopted a large number of regulations that erect unnecessary barriers to market entry, increase consumer costs, and, in some instances, unconstitutionally bar manufacturers direct market access. A good example of that kind of barrier is Arizona’s ban on the direct shipment of out-of-state wines to consumers, which the Institute for Justice is challenging in Federal District Court.²⁰ Arizona also forbids car manufacturers from selling automobiles directly to consumers.²¹ Those laws do nothing more than protect wholesalers and dealerships while impairing access to consumers and driving up costs.²²

In addition to those restrictive laws, Arizona requires that a licenses for a large number of business activities.²³ To

its credit, the Department of Commerce does try to help would-be entrepreneurs by offering a one-stop-shopping center online.²⁴ The Department’s virtual representative offers a step-by-step business checklist to help would-be entrepreneurs determine which of several state agencies might regulate the business, as well as to help navigate the city, town, and county licensing processes.²⁵

Numerous state agencies and boards exist to enforce the state’s occupational licensing laws. A complete list of state regulatory boards is attached as an appendix, but a representative sample includes:

- Acupuncture, Board of Examiners
- Board of Barbers
- Board of Behavioral Health Examiners
- Board of Chiropractic Examiners
- Board of Cosmetology
- Board of Dispensing Opticians
- Board of Funeral Directors and Embalmers
- Board of Optometry
- Board of Physical Therapy
- Board of Private Postsecondary Education
- Board of Psychologist Examiners
- Veterinary Medical Examining Board

State regulation of industries is largely redundant in a civil society, whose regulatory forces include consumer choice, consumer watchdog organizations, insurer risk assessment, and tort law. To the limited extent that

state regulation adds marginal protections for consumers, that protection comes at a significant price in terms of lost productivity and economic dynamism. Many of Arizona's regulatory boards could be combined or eliminated entirely in favor of regulation by the institutions of civil society.²⁶ While those boards or commissions are frequently defended on the grounds of alleged health or safety concerns, the principal effect of occupational licensing schemes is to promote the vested interests of those already engaged in regulated professions and to create government-sanctioned cartels.

The government's thirst for increased regulation appears insatiable. During the 2003 legislative session, Arizona's legislators created yet another regulatory body: the Arizona Board of Massage Therapy.²⁷ The statute authorizing this new agency requires an applicant for a massage therapy license to take 500 classroom hours of education at a state-approved school, pay a \$250 license fee, and pass an exam administered by either a national certification board approved by the agency or an agency-administered exam.²⁸ While the board's proponents claim it is necessary to protect public health and safety, they provide no credible evidence of consumer harm.²⁹ Not surprisingly, proponents of the statute tended primarily to be those with a vested interest in protecting themselves from competition. For example, massage therapy schools pushed for increased hours for certification, with some preferring 700 to the 500 hours now

required.³⁰ Additional hours mean more tuition and increased profits for those schools.

Many of the state's licensing schemes may be legally challengeable. In the past, the Arizona Supreme Court has shown itself capable of protecting the right to earn an honest living by conducting a searching inquiry into government regulation. For example, the Court struck down photography licensing and practice requirements as unconstitutional,³¹ and also struck down a statute fixing prices in the barbering industry.³² The Court struck down those schemes because there was no rational basis for such restrictions and because they served to establish and support monopolies in those industries. In no uncertain terms, the Court declared, "It will not prosper the community or other lines of business or trade to limit the number of those who may engage in the business. . . The police power, broad and comprehensive as it is, may not be used to prevent a person from. . . the right to earn a living."³³

Phoenix by the Numbers

When asked to relocate to Phoenix to pastor a church, it is rumored that one man of the faith declined, offering three reasons: June, July, and August. But in spite of the 100-plus degree summers, Phoenix's overall moderate climate helps make it the nation's eighth fastest-growing city.³⁴ It is the sixth-largest city in the United States, by

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population, and is well on its way to taking over the number five spot.³⁵ With luck, it won't have the nation's fastest-growing regulatory regime.

Minorities own approximately 11 percent of all businesses in the Phoenix metropolitan area.³⁶ That number is up from recent years. However, because minorities constitute one-third of Maricopa County's population, many minority-business advocates call for reforms to improve conditions for minority entrepreneurs.³⁷ Former Governor Jane Hull's small business advocate, Nereyda Lopez-Brown, pointed out that many minorities are mired in the complex regulatory process as they go from one agency to another simply trying to figure out which business permits or licenses are required.³⁸

In addition to having to visit various offices at city hall, would-be entrepreneurs wanting to open any kind of business in Phoenix must first open their wallets. The first stop would likely be the Phoenix Planning Department to ensure that the planned uses of their land do not violate the city's zoning code. If the uses violate the code, those would-be entrepreneurs can attempt to change the zoning for their property through what the city itself describes as a "lengthy and costly process."³⁹ A zoning change costs an applicant \$2,790, plus \$295 per acre for up to 40 acres, \$150 per acre for 41 to 100 acres, or \$49 per acre for 100 or more acres.⁴⁰

If business owners want to erect a new building, or remodel or change the

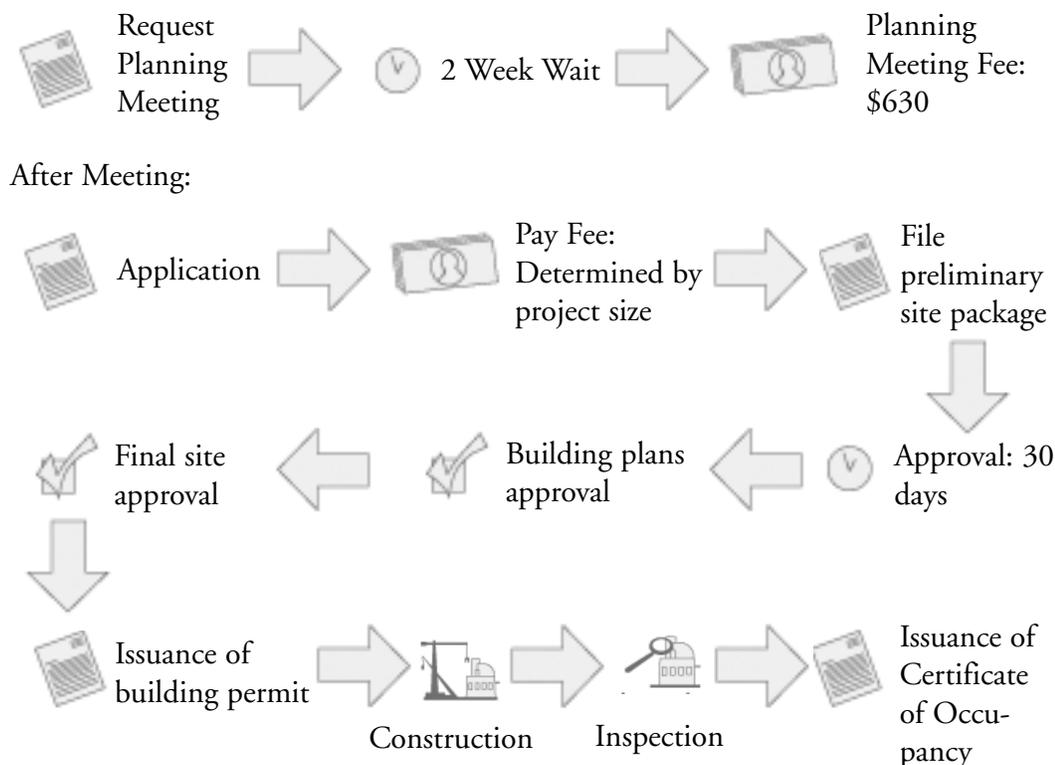
use of an existing structure, they must follow a lengthy process, outlined in Figure 1. They must begin by scheduling a meeting with the city's Development Services Department.⁴¹ The meeting itself costs the prospective applicant \$630,⁴² and the meeting usually occurs about two weeks after it is requested.⁴³ After the meeting, the would-be entrepreneur must fill out an application and pay a fee, which is determined at the pre-application meeting and based on the size of the project. The fee is based on a complex equation involving proposed use and complexity, with the base fee running anywhere from \$1,200 for parking areas to \$5,200 for commercial projects, with additional costs per acre and surcharges for things such as "environmentally sensitive lands impact."⁴⁴ The applicant then files a preliminary site package, and may receive approval within 30 days.⁴⁵ After that, the business owner must have his or her building plans approved. The next step is final site approval, followed by the issuance of a building permit. Construction is followed by an inspection and the issuance of a Certificate of Occupancy.⁴⁶

Businesses must pay a sewer fee and a water fee to the city.⁴⁷ A new development (i.e., a new building on previously undeveloped land) must pay a "development impact fee" and a "water resources acquisition fee."⁴⁸

If Phoenix entrepreneurs want to put up signs, they need permits, which means paying additional fees to the city.⁴⁹ There is a \$55 application fee, plus

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Figure 1. City of Phoenix Building/Remodeling Approval Process



If Phoenix entrepreneurs want to put up signs, they need permits, which means paying additional fees to the city. There is a \$55 application fee, a ground sign fee of \$115, and a billboard permit of \$365. Businesses must also pay for the city to review their site designs, at a cost of \$120 per hour.

a \$60 permit fee for wall, window, directional, construction, or real estate signs.⁵⁰ A permit for a ground sign costs \$115, and a billboard permit costs \$365.⁵¹ In addition, businesses must pay for the city to review their site designs, at a cost of \$120 per hour, and to review the structural engineering of their signs, also at a cost of \$120 per hour (with a minimum of two hours). If the sign is electric, the owner must pay another \$120 for its inspection, plus \$120 per sign for electrical component inspections.⁵²

An interesting anecdote concerning electric signs and the zoning code involves Phoenix barber Gary Bruce. It

seems that Bruce's rotating barber pole was the target of city zoning officials because he did not have the proper permit to plug in the pole.⁵³ The permit application process, including public hearings and inspections, could have cost him as much as \$1,400. When Phoenix mayor Skip Rimsza, a customer of over 20 years, sat down for his routine hair cut, Bruce explained his problem. Having a friend in a high place paid off for Bruce. The Phoenix City Council voted to exclude three-foot-tall poles from the particular zoning regulation. Unfortunately, most small business owners are not so well-connected.

Any person entering the following

businesses must pay the city a \$16 licensing fee:⁵⁴

- Advertising
- Construction contracting
- Jet fuel sales
- Manufactured building sales
- Timbering
- Mining
- Publishing/periodicals distribution
- Rental occupancy
- Hotels
- Restaurants and bars
- Retail sales
- Telecommunication services
- Transporting for hire
- Utility services
- Wastewater removal services

The city requires special permits and fees to establish any of the following businesses:

- Alarm agent and alarm business (\$70 to \$200 permit fee, \$10 to \$20 annual fee, and the owner must pay the cost of a criminal background check)⁵⁵
- Amusements (fee varies depending on the type)⁵⁶
- Auctioneering (\$85 permit fee, \$30 annual fee)⁵⁷
- Auction houses (\$230 permit fee, \$30 annual fee)⁵⁸
- Scrap metal dealers (\$230 permit fee, \$30 annual fee)⁵⁹
- Second-hand dealers (\$230 permit fee, \$30 annual fee)⁶⁰
- Curb painters (\$45 permit fee, \$30 annual fee)⁶¹
- Massage establishments (\$335 application fee, \$30 annual fee)⁶²

- Massage practitioners (\$125 application fee, \$30 annual fee)⁶³
- Swap meet operators (\$230 application fee, \$175 annual fee)⁶⁴
- Liquor sales (\$940 application fee)⁶⁵

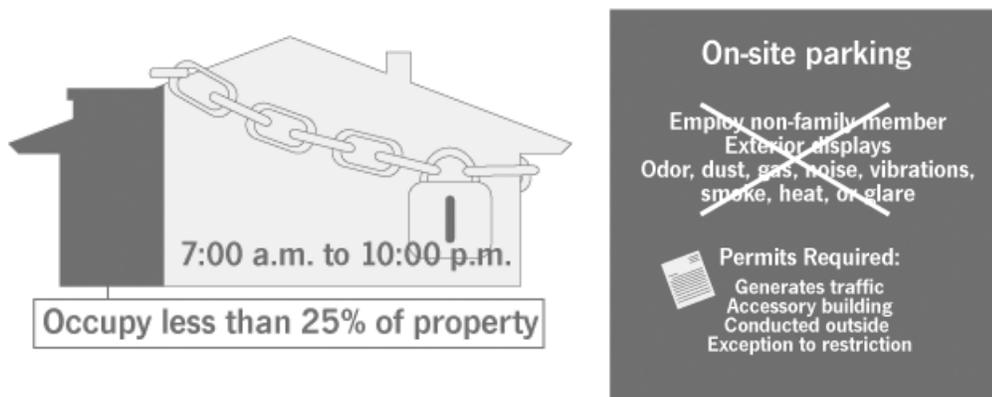
Businesses that want to serve food, including street and sidewalk vendors, also have to deal with Maricopa County. Before building or significantly modifying a food establishment, the owner must have detailed plans for the project approved by the Maricopa County Health Department.⁶⁶ Plan review fees range from \$65 for pushcart operators to \$700 for larger restaurants.⁶⁷ A permit is required for a food establishment to operate.⁶⁸ Any food establishment that also sells alcohol for on-premise consumption must provide separate bathrooms for men and women.⁶⁹ Individuals operating food establishments must be Certified Food Protection Managers, meaning that they have been through an accredited food safety program or can correctly answer a county inspector's questions about various food safety matters.⁷⁰

Home-Based Businesses in Phoenix

Phoenix entrepreneurs are quite limited in their ability to operate businesses out of their homes. A business within a home cannot employ non-family members living in the home.⁷¹ A home business cannot have any exterior displays or emit any odor, dust, gas, noise, vibrations, smoke, heat, or glare beyond the property.⁷² It can operate only from 7:00 a.m. to 10:00 p.m.⁷³

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Figure 2. City of Phoenix Restrictions on Home-Based Businesses



Such a business cannot use any mechanical equipment except that which would ordinarily be used for domestic, hobby, office, or household purposes.⁷⁴ Home-based businesses must provide on-site parking.⁷⁵ A permit from the city is required if: (1) the business generates traffic from individuals who do not live in the home, (2) business is conducted in an accessory building, (3) the business is conducted as an outside use, or (4) the business would require an exception to the restriction on odor, dust, gas, etc.⁷⁶ Certain businesses cannot be operated on residential property at all, including barbershops, beauty parlors, commercial stables, veterinary offices, dog grooming businesses, massage parlors, restaurants, veterinary hospitals, and commercial kennels.⁷⁷

A home-based business cannot occupy more than 25 percent of a residential property.⁷⁸ Such floor restrictions are arbitrary and do nothing to promote aesthetics or safety. At least

one Phoenix couple is likely in violation of the space requirements. Jeff and Amy are in the enterprising business of supporting their family of four by selling items at online auction sites. The two spend their weekends searching garage sales looking for items that fit the old proverb “one man’s junk is another man’s treasure.” They have converted their living room into a mini-shipping facility and photography studio, where they take pictures of the items they post on the Internet. They have also converted space in their home for warehousing the many videos, books, golf clubs, collectibles, and other goods that are waiting a turn on the auction block. From the outside looking in, the residence is completely quiet. Trips to the post office or private shipping company are the only visible signs of the business. Neighbors simply have no idea there is a business operating inside the home. Yet inside there is a thriving home-based Internet business that allows the couple to make a comfortable living while raising two children.

A home-based business cannot occupy more than 25 percent of a residential property. Such floor restrictions are arbitrary and do nothing to promote aesthetics or safety.

Recommendations

Phoenix needs to simplify the process of starting a small business. Eliminating unnecessary zoning requirements would be a good place to start. For instance, would-be entrepreneurs should not be required to navigate a lengthy and costly process just to receive a zoning change. The presumption should be that a variation will be granted unless the proposed use is a nuisance or would endanger the health or safety of neighborhood residents. Phoenix should also ease restrictions on home-based businesses, especially the limit on floor space.

The fees imposed during the rezoning and licensing process also should be lower for entrepreneurs. If the process of starting a business is streamlined, the city will not have to impose as many fees. For example, fees to the planning department to request a meeting on a zoning variance are unnecessary and only add to the cost and delay of starting a business. Once new businesses open, the increased revenue will offset any losses that result from lower fees.

Also, Phoenix should conduct a top-to-bottom review of its current restrictions on business advertising, including signage restrictions. Any restriction not related directly to the health and safety of the community should be eliminated. Finally, any duplicate licensing fees involving activities already regulated by the state or county should be eliminated. That

includes licenses such as those for liquor and massage establishments, which are already regulated and licensed by the state.

Tucson by the Numbers

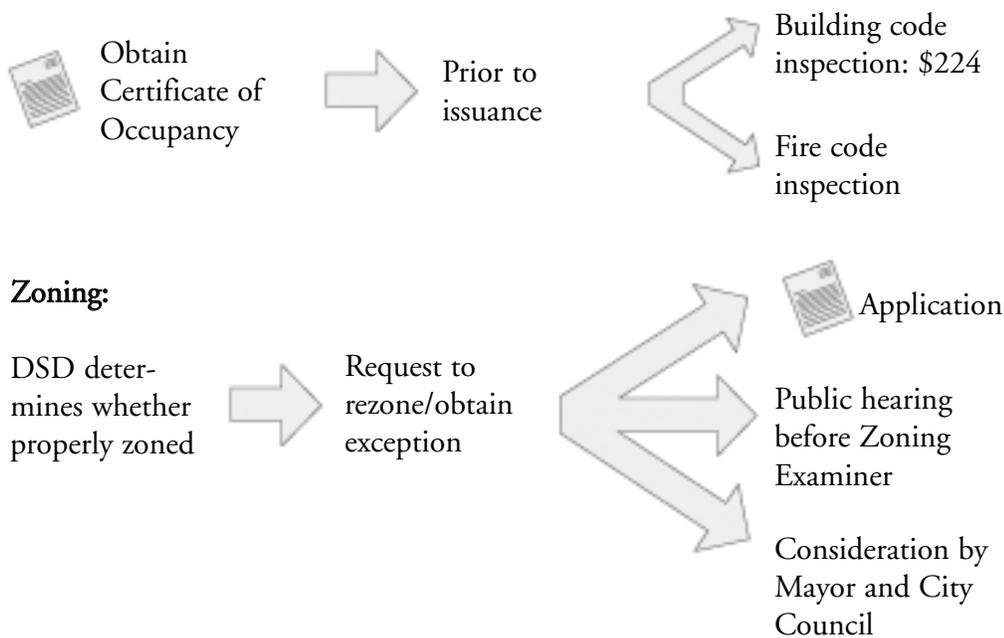
The City of Tucson's Small Business Commission (SBC), a part of the city's Office of Economic Development, operates a website designed to inform small businesses of current and proposed city policies.⁷⁹ Perhaps the most helpful aspect of the SBC's site is its "Guide to Operating a Business in the City of Tucson."⁸⁰ The guide includes a 17-step "checklist" to assist entrepreneurs in obtaining a business license. The SBC explains that the guide was prepared to assist "City of Tucson business license applicants in successfully completing the *seemingly never-ending* – but necessary – steps in the business-licensing process."⁸¹ Obtaining a business license involves a tedious process that forces would-be entrepreneurs to navigate multiple layers of government with sometimes overlapping jurisdictions.

Miles of Red Tape

The SBC is not kidding when it says that the steps to opening a new business seem never-ending. The morass of regulations and agencies a prospective businessperson must wade through could easily dissuade even the most tenacious entrepreneur. The most likely first stop for a new business is Tucson's Development Services Department to

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Figure 3. Tucson Development Services Department



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obtain a certificate of occupancy, which is required of all commercial spaces. There is no charge for a certificate of occupancy.⁸² The DSD will first help the entrepreneur determine if his or her desired business location has the proper zoning.⁸³ Requests to rezone an area and requests that a special exception be made to accommodate a new business require an application to DSD's rezoning section and a public hearing before the zoning examiner. All rezoning requests and certain special exception requests also require approval by the mayor and city council. Once proper zoning has been obtained, the new business may also have to make improvements and provide additional parking, paving, and landscaping.⁸⁴

Another hurdle to obtaining a certificate is a sign code review. Businesses planning to use a sign to advertise must obtain a sign permit from DSD before erecting, reinstalling, altering, changing the copy, repairing, or relocating a sign.⁸⁵ A sign permit is also required to use banners, pennants, balloons, or portable signs.⁸⁶ An on-site sign permit costs \$13 per year plus 12 cents per square foot for all signs on the premises.⁸⁷ Off-site sign permits are \$26 per year plus 18 cents per square foot.⁸⁸ Prior to DSD issuing a Certificate of Occupancy, a new business must pass a building code inspection. A full building code inspection costs \$224.⁸⁹ The business owner must also schedule a fire code inspection with the Tucson Fire Department.

Special licenses and/or fees are required for the following businesses:

- Adult care homes (\$50 annual license fee)⁹⁰
- Auction houses (\$50 license application fee and posting of a \$5,000 bond)⁹¹
- Youth dance halls (\$25 daily or \$100/annual fee)⁹²
- Drive-in restaurants (\$5 license application fee)⁹³
- Fortune tellers (\$100 license application fee)⁹⁴
- Massage establishments (\$50 license application fee)⁹⁵
- Massage therapists (\$25 license application fee)⁹⁶
- Pawnbrokers⁹⁷
- Swap meet operators (one-time \$24 occupational license tax)⁹⁸

A Tucson business wishing to serve liquor must obtain a license from the Arizona Department of Liquor Licenses and Control, and a Liquor Business License from the city's Business License Section.

Businesses that involve food preparation must jump through additional hoops to obtain a food establishment operating license from the Pima County Health Department. The Health Department publishes a 35-page “do-it-yourself” manual, available over the Internet, to guide entrepreneurs through the process of starting a food business.⁹⁹ Food businesses must go through a Plan Review Process that can cost anywhere from \$53 to \$382 and take up to 90 days.¹⁰⁰ An applicant must complete a plan review packet and follow the guidelines established by the Pima County Health Department and the State of Arizona Food Code, as well as consult the Food and Drug Administration’s *Plan Review Guide*, which discusses design aspects for food

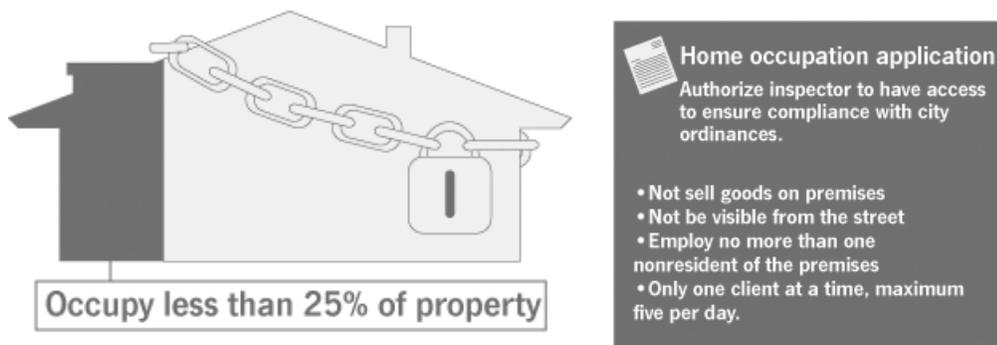
establishments and is used by the Pima Health Department when evaluating plans for food establishments. A business wishing to serve liquor must obtain a license from the Arizona Department of Liquor Licenses and Control, and a Liquor Business License from the city’s Business License Section.¹⁰¹

Depending on a host of issues, businesses may also need to contact the Pima County Recorder’s Office, the Pima County Assessors office, the Tucson Fire Department Fire Prevention Division, the State Compensation Fund, and/or the Arizona Department of Revenue. A business will most likely need to obtain a Business Privilege license so that tax on retail sales can be passed on to customers and, last but not least, the business will need to obtain a Business License from the Business Licensing Section of the City of Tucson.¹⁰² The one-time fee for the business privilege license is \$10.¹⁰³ Businesses not subject to sales tax, such as barbers and accountants, must obtain an occupational tax license. The quarterly fee, which ranges from \$24 to \$186, is based on the number of employees in the business.¹⁰⁴

Home-Based Businesses in Tucson

Home-based businesses are permitted in Tucson, but are subject to numerous restrictive laws. To operate a business from home, one must complete a home occupation application.¹⁰⁵ Home-based business must: (1) be secondary to the residential use of the dwelling; (2) be conducted in a manner

Figure 4. Tucson Restrictions on Home-Based Businesses



that is “compatible” with the character of the neighborhood; (3) occupy no more than 25 percent of the dwelling; (4) not sell goods on the premises; (5) not be visible from the street, with the exception of a single one-square-foot sign; (6) employ no more than one nonresident on the premises; and (7) have only one client at a time, with a cap of five clients per day.¹⁰⁶ Those desiring to operate a home-based business must, as part of the application for a home occupation license, authorize the zoning or building inspector to have access to the home “at reasonable times” for inspection to ensure compliance with city ordinances.¹⁰⁷ Tucson prohibits automotive service or repair businesses, hair salons, or medical services as home-based businesses.

Recommendations

Tucson must revisit its small business regulations. First, the number of steps necessary before successfully

opening a business is daunting even to the most sophisticated business people. Therefore, Tucson should review its 17-step process and eliminate duplicative or unnecessary procedures. For example, in obtaining a zoning variance, an entrepreneur must first submit an application to DSD, then undergo a public hearing with a zoning examiner, and then wait while the mayor and city council consider the application. This three-step process is both burdensome and costly to would-be entrepreneurs.

Tucson should relax its floor space restrictions for home-based businesses and consider allowing more than one nonresident employee to work on the premises of a home business. The city should also increase, or entirely do away with, the cap on customers who may visit a home-based business. While increased patronage may create logistical problems in otherwise residential areas, increased employment and added sales tax revenues offset this concern.

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Case Study: Vehicles for Hire

Arizona's taxicab market is, generally speaking, free from unreasonable regulation. Currently, the state imposes only several fees and an insurance requirement on cab owners, but that could change. A growing number of critics are urging the legislature to adopt new rules governing taxi operation and licensure.¹⁰⁸ The problem, critics charge, is that there are uninsured taxicabs operating without proper credentials.¹⁰⁹ This concern is validated by the fact that Arizona's Motor Vehicle Division has registered 2,170 taxis, while the Department of Weights and Measures records 2,270 registered taxi timing devices.¹¹⁰ Fortunately, the proposals currently on the table to address this problem do not appear overly burdensome. The MVD and Weights and Measures are reportedly "drafting legislation that would require a taxi operator to show proof of commercial licensing and insurance before the agency issues a registration for a timing device."¹¹¹ This proposal avoids one of the most objectionable vehicle-licensing schemes: a board with the power to limit entry into the market.

Assuming the Arizona taxi market remains free from onerous regulation, there is only one serious obstacle standing in the way of low-income entrepreneurs: a Phoenix ordinance that allows the city's Aviation Department to restrict taxicab service at Sky Harbor International Airport by granting a monopoly to a privileged few companies.¹¹² This hurts both would-be

taxicab operators and consumers.

Arizona Law

The State of Arizona places relatively few barriers in the way of those who wish to enter the taxicab business. Still, would-be cab operators must jump through a number of small hoops: they must pay a commercial registration fee (\$4), an annual gross weight fee (\$7.50), and an annual "light motor vehicle" fee (\$64).¹¹³ In addition, the state requires that taxicab drivers buy insurance, with minimum coverage of \$300,000, and uninsured motorist coverage of \$300,000.¹¹⁴ Other drivers are not subject to those insurance requirements. Those costs are in addition to the costs imposed on anyone who wants to drive a car in Arizona, including registration (\$8), certificate of title (\$4), license plates (\$5), and a driver's license (\$10).¹¹⁵

Phoenix

At first glance, Phoenix appears to place little in the way of individuals who want to enter the city's taxicab market. However, a city ordinance allows the aviation director to restrict the number of taxicab and limousine companies that may service Sky Harbor International Airport. This hidden barrier allows only a privileged few access to a significant portion of the money to be made in the city's vehicle-for-hire business, while it tramples on the economic liberty of would-be entrepreneurs who lack political privilege.¹¹⁶ Given the peculiarities of the Phoenix taxicab market and the nature of the taxicab

A Phoenix city ordinance allows the aviation director to restrict the number of taxicab and limousine companies that may service Sky Harbor International Airport. This hidden barrier allows only a privileged few access to a significant portion of the money to be made in the city's vehicle-for-hire business.

business, this particular barrier hits taxicabs without airport permits particularly hard.

Not surprisingly, given Phoenix's low population density and intense summers, casual travel by taxicab is uncommon in Phoenix – one cannot simply stand on a street corner and expect to be able to hail a cab.¹¹⁷ But there are a few places where people are more likely to want a cab and accordingly more likely to find one: the most obvious of these is Sky Harbor. Any Phoenix taxicab can drop passengers off at the airport as long as the cab keeps moving and does not pick anyone else up. But for pickups, a city ordinance allows the city's aviation director to limit cab service at the airport to an "efficient" number of companies.¹¹⁸

At the present time, only three companies are permitted to make airport pickups: AAA Taxicab Service, All State Cab Company, and Discount Cab. Those companies have four-year contracts, which began on August 5, 2000, and end on August 4, 2004, with the city having the sole option to renew the contracts for an additional four years. According to the airport's ground transportation coordinator, Lindsay Woodard, this means that "in essence, no other taxicab company can operate at the airport."¹¹⁹ Indeed, phone calls to the city's other cab companies reveal that they are not permitted to make airport pickups.

According to airport parking supervisor Tracey Rivas, the purposes

behind limiting the number of companies are "quality control" and "efficiency." She says that it is easier for customers to make complaints or find lost items if the airport is dealing with a limited number of companies. Rivas further suggests that business is so minimal at the airport, post-9/11, that to allow any more taxicabs to make pickups would be economic "suicide" for all involved.¹²⁰

Airport administrators have forgotten a basic economic principle: if there were no restrictions, Phoenix cab companies would send as many cabs to the airport as it would be profitable to send. The only parties it might be "suicide" for are the monopolists, who would then be forced to compete fairly with independent cab drivers and other companies.

As for Rivas' other concern, in the absence of restrictions, quality is controlled by consumers, who would decide how much quality they want and then pay for it. The airport could easily take steps to ensure quality control without granting particular companies a monopoly, by requiring that any cab making airport pickups obtain a permit, which would be granted to any operator who met certain basic quality and safety specifications.¹²¹ If the Aviation Department insists on overseeing taxicab complaints and lost-and-found items (although the rest of the city manages to function without any such oversight), it could also require, as a condition for receiving a permit, that cab companies participate in a collective

The airport could easily take steps to ensure quality control without granting particular companies a monopoly, by requiring that any cab making airport pickups obtain a permit, which would be granted to any operator who met certain basic quality and safety specifications.

clearinghouse for lost-and-found items and complaints. That way, airport customers would still be assured service of acceptable quality while taxicab drivers would be free to do business.

In August 2000, the City of Phoenix issued a request for proposals (RFP) soliciting new bidders for airport taxi service. The proposed effective date for any contracts ultimately signed pursuant to the RFP was February 1, 2001, for a period ending January 31, 2005. If any proposals had been accepted, this would have increased competition at the airport. A group of independent taxicab owners joined to form the Independent Drivers Association, in an effort to gain access to the airport, but the airport insisted that any successful bidder meet extremely onerous conditions, including requirements that:

- all of the vehicles be brand new (model year 2000);
- 10 percent of the fleet consist of “disabled accessible taxicab vans”;
- all taxicabs be Ford Crown Victorias, Toyota Camrys, “or equivalent”; and,
- all taxicabs be “Compressed Natural Gas/Original Equipment Manufactured,” meaning that the cars must not only run on compressed natural gas (instead of the same gasoline conventional cars run on), but also must be *originally manufactured* to do so.¹²²

The city further demanded that:

- all taxicab service operators have at

least one year of experience operating a taxicab service of at least 30 cabs or that all taxicab drivers in an association have at least one year of experience;¹²³

- the cab association and its members prove their “financial stability”;
- the cab association show that its members will be able to earn a “livable wage” working at the airport;¹²⁴ and,
- all taxicab drivers conform to a specific dress code, in addition to the dress code requirements already imposed by the Phoenix Aviation Ground Transportation Manual.¹²⁵

The natural gas requirement is particularly burdensome. The large companies already operating at the airport had the financial ability to contract for entire fleets of natural gas-powered cars, including the disabled accessible vans. Similarly, to require those cab drivers who have been kept out of the airport’s taxicab market by the city’s anti-competitive laws to prove their financial stability in advance unfairly favors already-established cab companies over would-be entrepreneurs. Because they could not meet all of the airport’s demands, the Independent Drivers Association was denied a contract to serve the airport. That group has been succeeded by the Arizona Airport Flyers, a group of cab owners that says it can come closer to meeting the airport’s stringent demands. But now the airport says it is no longer seeking proposals, even though it has not awarded a single contract to a new

The airport insisted that any successful bidder meet extremely onerous conditions, including requirements that: all vehicles be brand new; 10 percent of the fleet consist of “disabled accessible taxicab vans;” and all taxicabs be originally manufactured to run on compressed natural gas.

taxicab company since it rejected the Independent Drivers Association's application.

In addition to a contract, ground transportation providers at the airport must also obtain a permit.¹²⁶ This entails filling out a form that includes, among other things, certification of automobile liability insurance, including an endorsement that names the City of Phoenix and its officers, officials, agents, employees, and volunteers as "additional insureds" and an indemnification agreement in favor of the City of Phoenix.¹²⁷

In addition to obtaining a permit from the aviation director, taxicab and limousine operators who have contracts must pay a \$200 annual fee, plus "such other fees for temporary or daily use vehicle permits as [the aviation director] deems necessary for the safe, efficient and orderly operation of the airports."¹²⁸ Taxi operators must also collect a \$1 surcharge for each trip generated from the airport.¹²⁹

The city imposes fare restrictions on cabs leaving the airport. A taxicab carload fare may not exceed \$5 for the first mile and \$1.50 for each additional mile. Owners may additionally assess a traffic delay charge in accordance with the cab's service contract, at a rate not to exceed \$18 per hour, plus the \$1 airport surcharge recoument.¹³⁰

The city imposes an even harsher monopoly on van services at the airport. The number of "time-scheduled van

services" allowed to operate at the airport is limited, by city ordinance, to *just a single provider*.¹³¹ The anointed van operator is subject to the same permit, identification card, operating privilege, and decal requirements as other commercial ground transportation vehicles.¹³² Vans are subject to an annual fee of \$1,000.¹³³

Operating a taxicab in Phoenix, anywhere other than the airport, is relatively easy. The regulations are appropriate to protect consumers from fraud: cabs must state their fares on the outside, provide the names and business addresses of the owner and the operator on the inside, take the most direct route available unless the passenger requests otherwise, and have accurate meters. Those rules protect consumers, while allowing the laws of supply and demand to operate freely, giving consumers the quality and quantity of taxicab services they want. Such simple rules should be sufficient to take care of consumers at the airport as well, without granting anyone monopoly privileges or unfairly excluding those without political power or privilege. Sadly, such legitimate regulations are frequently buried under a mountain of unnecessary and harmful regulations.

Tucson

Tucson places only minor obstacles in the way of those who want to start and operate taxicab businesses. Taxicabs must display their rates on their exterior in letters at least one inch high in a color that contrasts with the background,

Phoenix imposes an even harsher monopoly on van services at the airport. The number of "time-scheduled van services" allowed to operate at the airport is limited, by city ordinance, to just a single provider.

The Tucson Airport Authority restricts the number of taxicabs in relation to passenger traffic. The authority has determined that the “optimal” number of taxis to satisfy passenger demand is 32 cabs.

along with the cab company’s name in letters at least two inches high.¹³⁴ The fare must also be displayed and readily visible on the interior, along with a photo I.D. card, a statement that the cab owner has complied with state insurance requirements, and the address and phone number of the cab company.¹³⁵ Cabs must be equipped with a functional two-way radio, operational on a 24-hour basis, and they must have accurate meters, charge no more than is displayed on the meter, and take the most direct route available.¹³⁶ Like all Tucson businesses, taxicab companies may be subject to an occupational license tax. The quarterly tax is \$24 for firms with zero to 10 employees, \$48 for 11 to 35 employees, \$123 for 36 to 100 employees, and \$186 for more than 100 employees.¹³⁷

Taxicab service at Tucson International Airport is controlled by the Tucson Airport Authority, a nonprofit “quasi-government organization” made up of 115 community volunteers, a nine-person board, and about 300 employees.¹³⁸ The authority receives no local tax dollars, instead funding its operations from revenues generated by activities such as parking, airline landing fees, fuel sales, and concessions. Through October 31, 2003, the authority contracted with four taxicab companies: AAA Airport Taxi, Allstate Cab, Independent Cab, and Yellow Cab.¹³⁹ On November 1, 2003, the number of cab companies contracted to provide pick-up service at the airport was reduced to three.¹⁴⁰

According to Jacqueline Mann, ground transportation coordinator, the Airport Authority restricts the number of taxicabs in relation to passenger traffic. The authority has determined that the “optimal” number of taxis to satisfy passenger demand is 32 cabs. The authority recently issued an RFP soliciting bids to provide airport pick-up service, with new contracts effective November 1, 2003, through October 21, 2007, with the possibility of a one-year extension. Only four companies responded to the RFP and the three selected will be the sole providers for taxicab pick-up services for the Tucson International Airport. The proposals were evaluated using a point system based on factors such as the age, size, and mileage of vehicles (required to be less than 15,000 miles), as well as the number of vehicles the company could provide. The authority’s familiarity with the cab company and the company’s expertise and financial condition were also factors. An independent cab driver could have submitted a proposal in response to the RFP and been accepted as long as the driver met minimum requirements. The authority’s overriding concern is to reach the magic number of 32 cabs.

In addition to limiting the number of taxicabs and providers, the Airport Authority also restricts the rates airport taxicab companies can charge passengers. Officially, the authority does not control rates, but “taxicab fares are established through a proposal process and operators are obligated to honor the rates published.”¹⁴¹ These rates are

currently \$4.50 per flag drop, \$1.50 for each additional mile, and \$18.00 per hour of waiting time. The authority also requires that taxi service providers meet certain standards of operation pursuant to the authority's rules and regulations.¹⁴²

Case Study: Street and Sidewalk Vendors

In many cities across the country vending is an ideal business for entrepreneurs because start-up costs are usually quite low. However, the City of Phoenix imposes substantial restrictions on vending, especially in public parks. Tucson's regulations are fairly reasonable and provide a better model than Phoenix's. Phoenix simply goes too far in granting monopoly privileges to park vendors and, with one narrow exception, banning sidewalk vending altogether, thereby destroying opportunities for both entrepreneurs and consumers.

In addition to dealing with the city restrictions discussed below, vendors wishing to sell food in Maricopa County must obtain a county permit. "Permits require that food be prepackaged or cooked in a commercial or public kitchen that can be inspected."¹⁴³ The county is serious about enforcing its permitting requirements. Five mobile unit inspectors are kept busy searching the streets of the nation's fourth most populous county for illicit sidewalk vendors.¹⁴⁴ Enforcement often affects

Hispanics.

Jessica Lemus is the co-owner of Big Dog's Fun Spot, a permitted hot dog cart in Mesa that was recently issued a warning for selling nachos not prepared in accordance with county regulations.¹⁴⁵ According to Lemus, "We try to play the right way, yet we're the ones that get targeted." The county is also busting men like Bautista Calisto Emiliano, who was stopped while selling corn-on-the-cob out of a grocery cart.¹⁴⁶ Emiliano told the officer dispatched to arrest him that he is simply trying to earn a living so he can pay back the debt owed for coming from Mexico to the United States. According to a spokesperson for Chicanos Por La Causa in Phoenix, most peddlers are new to the country and are simply trying to make ends meet.¹⁴⁷ To ease the burden on recent immigrants and help meet the robust demand for the type of homemade fare offered by peddlers, it would make more sense for Maricopa County to consider offering permits for food prepared inside residential homes by applying similar inspection requirements as commercial and public kitchens. However, the Arizona Department of Health Services prohibits the sale of "food prepared in a private home."¹⁴⁸ Sadly, unless both the state and county change their regulations, the cat-and-mouse game will go on, and individuals like Emiliano will be arrested for doing nothing more than try to earn an honest day's wage.

Phoenix

Street vendors, such as ice cream

Phoenix goes too far in granting monopoly privileges to park vendors and, with one narrow exception, banning sidewalk vending altogether, thereby destroying opportunities for both entrepreneurs and consumers.

trucks, are subject to several fees and restrictions in Phoenix, while sidewalk vendors – hot dog stands and the like – cannot operate in Phoenix at all, except in the downtown area, and then only under limited circumstances.¹⁴⁹

Street vendors

All Phoenix street vendors must have and display a license from the city.¹⁵⁰ The license application fee is \$130, and there is an annual license fee of \$30.¹⁵¹ A license is denied only to those who have submitted a fraudulent application, violated city laws on street or sidewalk vending within the past year, been convicted of a felony within the past five years, had their street vendor licenses revoked within the past year, employed persons who have lost their vendor licenses in the past year, or employed persons in connection with the street or sidewalk vending business who did not have the required license.¹⁵²

A street vendor cannot remain in one place for more than an hour in any eight-hour period, and cannot sell within 600 feet of a school from 7:00 a.m. to 4:30 p.m.¹⁵³ Street vending is prohibited entirely downtown, in public parks, or on a street abutting a public park within 150 feet of a “lawfully established park concession.”¹⁵⁴ Such park concessions are operated only by those who have contracts with the Parks and Recreation Board, and only they are permitted to sell anything in public parks, other than certain types of printed material that can be sold by anyone.¹⁵⁵

Ice cream trucks in residential areas are subject to several safety requirements and cannot sell after 7:00 p.m., except at sporting events, where they may sell until 9:00 p.m. Ice cream trucks are not permitted to sell anything other than food items and toys.¹⁵⁶

Mobile food vendors

In fall 2000, Hispanic mobile food vendors clashed with neighborhood activists and city hall.¹⁵⁷ The vendors cater to an almost exclusively Hispanic clientele, selling Sonoran-style hot dogs, tacos, tamales, and Mexican sodas. Men like Hernán Rivera can earn anywhere from \$400 to \$3,000 a week running operations like his “Nogales Hog Dogs” stand. The hot dog stand was a second job for Rivera so that he could support his young family, and he hoped it would be a first step toward owning his own restaurant. He almost did not get his opportunity. The neighbors complained that the vendors were open all night, often playing loud music.¹⁵⁸ City officials originally moved to shut down the vendors, but a “compromise” in the form of a licensing scheme was adopted after the vendors picketed city hall.¹⁵⁹ Now, vendors must pay a nonrefundable \$120 application fee and \$30 per year for a mobile vendor license.¹⁶⁰ Vendors must also be photographed and fingerprinted.¹⁶¹ They are prevented from operating between the hours of 2:00 a.m. and 6:00 a.m. and from using “bells, chimes, microphones, loudspeakers, or amplified music” as part of a mobile vending operation.¹⁶²

Too often, regulators choose to use a sledgehammer when the precision of a scalpel is more appropriate. Why set up unnecessary licensing schemes when enforcement of existing statutes can remedy the perceived problems?

A better solution would have been to fine individuals for violating noise ordinances, rather than assuming all vendors were in violation. That would have ensured a lower barrier to entry while quieting down the most egregious offenders. Too often, regulators choose to use a sledgehammer when the precision of a scalpel is more appropriate. Why set up unnecessary licensing schemes when enforcement of existing statutes can remedy the perceived problems?

Since the ordinance went into effect, vendors have pooled their resources and put money down toward the purchase of a two-acre lot at the corner of 27th Avenue and Van Buren, where they operate a grocery store and park their vehicles. Vendors who want to park on the lot pay an \$85 monthly fee, which is in many instances cheaper than the fees vendors used to pay to park in private lots. Each morning, the mobile vendors pull out of the lot and spread out across Phoenix to sell specialty food items.¹⁶³

While the conflict between Phoenix and its street vendors appears to be resolved, Maricopa County recently conducted a “sweep to catch mobile food vendors who lack proper permits or equipment.”¹⁶⁴ The county’s Environmental Services Department unleashed approximately 50 inspectors to search for vendors offering homemade food in violation of county regulations. Due to the popularity of the foodstuffs offered by mobile food vendors, the county (and as noted above, the state) should consider employing its

resources more effectively by allowing homemade food to be sold. The truth is that consumers are not as helpless as government presumes and inspections of home ovens could easily be arranged in a manner similar to those of commercial ovens.

Sidewalk Vendors

Sidewalk vending is entirely prohibited in Phoenix, except with some restrictions in the downtown area.¹⁶⁵ Downtown sidewalk vendors are only permitted to sell food items.¹⁶⁶ Vending carts may not be placed within 50 feet of any building’s premises if the building’s owner or lessee objects.¹⁶⁷ Nor may a vending cart be parked or placed within 150 feet of any building premise selling the same commodity.¹⁶⁸ Sidewalk vendors must also have and display licenses from the city, and are subject to the same application procedures and fees as street vendors. A sidewalk vendor’s license is denied under the same circumstances that a street vendor’s license is denied.¹⁶⁹

Park concession contracts are awarded on the basis of competitive bidding, after the Parks and Recreation Board makes an RFP to parties who have asked to be placed on a list of potential applicants. Evaluation criteria include degree of experience in successfully providing similar services at similar facilities, proposers’ financial capability to successfully perform the services required, the degree to which the proposal would be financially beneficial to the Parks and Recreation

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Board, and the degree to which proposers' operations plans meet the standards of quality, price, and service desired by the board.¹⁷⁰ All applicants must meet the city's affirmative action requirements.¹⁷¹

Phoenix is serious about cracking down on illegal park vendors. Since January 2003, nearly a dozen vendors have been cited by Phoenix park rangers for illegal peddling.¹⁷² Such vendors "specialize in everything from frozen fruit bars to Native American jewelry." City officials recognize that such vendors are simply trying to earn an honest living but insist that "they just can't do it in the park."¹⁷³ If it is litter that the city fears, it should fine scofflaws rather than prohibit vending.

Tucson

Phoenix should learn from Tucson, which imposes minimal restrictions on street and sidewalk vendors and provides an example of how free and open competition benefits entrepreneurs and consumers alike. Because it is so easy to obtain a vending permit in Tucson, the number of ice cream truck owners and sidewalk pushcart vendors has increased. As a result of increased competition, vendors have been lowering their prices and increasing their variety, offering items such as the popular Mexican *paletas*.¹⁷⁴

Still, Tucson requires a permit to vend in a public park. Vendors of "potentially hazardous" prepackaged foods or any non-prepackaged foods

must also obtain health permits from the Pima County Health Department.¹⁷⁵ Concessionaires not regularly licensed are subject to fees: a vendor selling on a regular basis must pay \$160 per month to sell in a regional park or \$80 per month to sell in a district park. Vendors at special events must pay \$20 per day.¹⁷⁶

Tucson limits the amount of sound that street vendors can make. It is unlawful to make sound in excess of 70 decibels measured at a distance of 50 feet from a pushcart, bicycle, or other vending vehicle. It is also unlawful for vendors to make noise while their pushcarts, bicycles, or vehicles are not in motion, or between the hours of 1:00 p.m. and 3:00 p.m., and 9:00 p.m. and 10:00 a.m.¹⁷⁷

Phoenix should look to Tucson as an example of how minor, reasonable restrictions on street and sidewalk vending can protect consumers while allowing entrepreneurs to earn an honest living serving the people in their neighborhoods.

Case Study: Cosmetology

In 1996, Arizona's Board of Cosmetology placed a new host of absurd barriers in the way of those who would like to enter the cosmetology business, regulating anyone who wants to earn money by cutting, washing, styling, straightening, or otherwise servicing people's hair.¹⁷⁸

Phoenix should learn from Tucson, which imposes minimal restrictions on street and sidewalk vendors and provides an example of how free and open competition benefits entrepreneurs and consumers alike.

Perhaps worst among the regulations is a requirement that anyone who so much as *styles* hair for money must have a cosmetology license. Acquiring a cosmetology license entails taking hundreds of hours of classes on subjects unrelated to styling, including facials, makeup, massage, manicures, pedicures, “light therapy,” and more. “Styling” includes African hairbraiding, even though African hairstyling typically involves no chemicals or anything else that would pose a potential danger to consumers. Such extreme requirements for hairbraiders and others similarly engaged in harmless occupations offer consumers no additional protection. Instead, they benefit cosmetology schools and protect those who already have cosmetology licenses, at the expense of low-income would-be hairstylists who can scarcely afford the extra training (which typically costs around \$10,000 for the required 1,600 hours).¹⁷⁹

A would-be hairbraider is not only required to take 230 hours of classes in “hairstyling, pressing, thermal curling, and waving,” which generally involve no instruction on African hairbraiding, but must also take:

- 230 hours on “chemical hair restructuring, including permanent waving and chemical hair relaxing, specifically thioglycolate and sodium hydroxide”;
- 230 hours of “hair coloring, including tinting and bleaching”;
- 230 hours of haircutting;

- 200 hours of Arizona cosmetology laws and rules;
- 100 hours of facials and makeup, “including massage and physical and chemical depilatories”;
- 100 hours of massage;
- 75 hours of manicuring, pedicuring, sculpture nails, extension, wraps, overlays, and “related services”;
- 50 hours of shampooing, conditioning, re-conditioning, rinse application, and chemical removal;
- 50 hours of disinfection procedures;
- 40 hours of the student’s “creative preference”;
- 35 hours on salesmanship, ethics, and salon management;
- 20 hours of scalp treatment and brushing; and,
- 10 hours of “electricity and light therapy as related to the practice of cosmetology.”

The law requires that students be trained in “all hair and skin types,” regardless of the type of work they plan to do in their careers.¹⁸⁰

Most of those requirements have no relevance at all to African hairbraiding. They are a waste of time for braiders such as Arizona native Essence Farmer.¹⁸¹ For the past three years, Farmer has been working as a braider in Maryland salons and barber shops, with a primarily male client base. Braiders are not required to obtain cosmetology licenses in Maryland.¹⁸² Prior to moving to Maryland to attend Prince George’s

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Community College, Farmer braided hair for five to six clients per week from her parents' Phoenix-area home. Now, having recently moved back to Arizona, Essence hopes to open her own natural hair salon in downtown Phoenix. She wants to offer braiding and locking services and to hire additional braiders but says that paying thousands of dollars to a cosmetology school "is not an option." Attending cosmetology school would be a waste of time for Farmer because she already knows everything she needs to know to do her job and does not intend to do anything cosmetology-related outside of her narrow specialty. Nevertheless, braiders like Farmer are forced to expend large sums of money to spend 1,600 hours of their lives in cosmetology school sitting through lectures on subjects that bear virtually no relation to what they will be doing in their occupation.

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Individuals interested in opening cosmetology schools face barriers of their own. Despite the fact that there was already an accreditation process for cosmetology schools,¹⁸³ the State Board of Cosmetology adopted a laundry list of its own requirements in 1996 – essentially adopting its own accreditation process. The board's requirements include a mandate of one "area of instruction" for every 20 students, a requirement that every student have at least "2 cubic feet of individual locked area with a different locking device for each enrolled student," and requirements about the types and amounts of equipment that must be on hand in the school, from the

required number of hair dryers to such items as a "receptacle large enough to completely immerse both feet, for each 20 cosmetology students in attendance during practical instruction."¹⁸⁴

As if these arduous and often arbitrary restrictions were not sufficient to keep would-be entrepreneurs from entering the business, the Arizona Board of Cosmetology decided in May 2003 to increase the fees exacted in the licensing process for salons and schools.¹⁸⁵ The board explained that it is purchasing an e-licensing system that, rather than making the licensing process easier, will "require constant monitoring by an Outside and Professional Network Engineer" and will therefore require increased funds. Curiously, although the board's written notice of the rule changes contains a section for studies and other "supporting material" on which the board relied for its "evaluation or justification" for the new rules, the board's response states that there were none.¹⁸⁶ In addition, the section which provides for a "showing of good cause why the rule is necessary to promote a statewide interest" is filled out with "not applicable."¹⁸⁷ The board admits that "small businesses, including individual licensees, will bear the brunt of the fee increases," but the board apparently justifies this by pointing to other boards, such as the Arizona Barber Board, which impose even more oppressive licensing fees.¹⁸⁸ The fee changes are too numerous to list individually, but involve dramatic increases. For example, the new cosmetology examination requirements have doubled in number and nearly

tripled in cost. The previous rule provided for one examination at a fee of \$33, while the revised rule provides for both a written and a practical examination at a combined fee of \$100. The fee for the “personal license” has gone from an initial cost of \$27 to \$40, and the renewal fee has increased from \$18 to \$30. The various fees required for the salon or school license, the “Board administered educational classes,” the review of examination, and other requirements have shot upward in a similar fashion.

The story of Russell and Kristine Blatchford’s struggle to open an in-home, one-chair beauty salon is worth examination. In order to realize their dream, which would not be permissible under most city restrictions on home-based businesses, the Blatchfords purchased a home in an unincorporated portion of Maricopa County.¹⁸⁹ To the county’s credit, the Blatchfords were granted a special-use permit to open their salon. However, in an attempt to force the Blatchfords out of business, several residents have started a drive to ask the Town of Gilbert to annex the land to put it under the town’s jurisdiction. Gilbert’s zoning code prohibits salons as home-based businesses. According to the town’s attorney, if the Blatchfords’ property is annexed the decision over whether to allow the business to continue will depend in part on the ability to demonstrate “a significant investment in the business.”

As long as hairbraiders and other

stylists take basic health and safety precautions, they should be free to use their skills to earn a productive living without suffering needless and expensive regulations. The Arizona Board of Cosmetology should stop protecting the special interests of cosmetology schools and those who are already cosmetologists and start protecting consumers and would-be entrepreneurs. They should exempt hairbraiders from cosmetology licensing requirements altogether and honestly evaluate whether cosmetology licensing is actually in the public interest.

Case Study: Child Care

While the state has a strong interest in protecting the health and safety of children entrusted to the care of others, it is essential to avoid overregulation of child care. Small and informal child care businesses are ideal for entrepreneurs outside the economic mainstream, and convenient, affordable child care is a prerequisite for many parents to be able to work. Government should take all possible steps to encourage child care businesses and to draft regulations to avoid expensive or obstructive requirements.

Child care regulation in Arizona takes place primarily at the state level, though Tucson places additional burdens on home-based day care centers.¹⁹⁰ Arizona’s child care regulations cover the entire spectrum, from the rational to the absurd. While the

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state of Arizona does not regulate child care facilities that provide service to less than five children for payment or compensation, the state has numerous regulations that make it difficult for larger private providers to offer affordable child care to the most disadvantaged segments of Arizona's population.¹⁹¹ Child care businesses providing service to five children or more are subdivided into two categories, "Child Care Group Homes" and "Child Care Facilities," each regulated by the State Department of Health Services. Repealing many of the paternalistic and burdensome regulations governing group homes and care facilities would allow regulated child care providers to compete on a more level playing field with unregulated providers without jeopardizing children's health or safety. Increased competition would greatly benefit consumers by giving them more options, and would help ensure that prices for child care services are reasonable.

To its credit, Arizona's Department of Economic Security administers the Arizona Child Care Resource and Referral Network (CCR&R), a program designed to foster greater child care services in response to unmet demand.¹⁹² Where there is a disparity between supply and demand, CCR&R seeks to stimulate the development of needed child care resources. Ironically, regulation is the likely cause of unmet demand: in an unregulated environment, supply would correct itself and no "stimulation" would be necessary.

Child Care Group Homes

The state defines a "child care group home" as a child care service provided in a residential home for at least 5 children, but no more than 10, up to 12 years of age.¹⁹³ The City of Tucson applies the same definition to classify a day care operation as a home-based business.¹⁹⁴ The state does not count the provider's own children for purposes of the "5 to 10" range, but no more than 15 children may be present at any given time.¹⁹⁵ A provider of group home child care must obtain a license from Health Services and pay a \$30 application fee.¹⁹⁶ A certificate issued by Health Services is valid for three years and is renewable along with a renewal fee of \$30.¹⁹⁷

Many parents and group home providers do not object to regulations requiring background checks, health and safety inspections, and minimum insurance requirements. In fact, some providers like the idea of licensing as a means of distinguishing themselves from unlicensed providers. But licensing can be a double-edged sword, as Chandler group home provider Teresa Bagdol discovered. Teresa had experience operating both in-home and commercial day care centers in California and Texas and hoped to obtain a state license as a means of assuring parents of her qualifications – even though she cares for only four children and is not required to have a license. But as soon as she applied for a state license, Teresa learned that she would first need to obtain a use permit from the City of

Chandler. Then local bureaucrats decided that her house was not her home and recommended denial of the use permit.¹⁹⁸

Teresa's situation requires some explanation. She offers in-home child care to a small number of children because she believes it is best for the children. She says that she wants to be "like extended family to the children in [her] care," and feels that "kids thrive when they feel like they get to stay at home rather than spend their days in an institution." She also does not want the stress of hiring and supervising additional staff. In pursuit of her vision of child care Teresa and her husband Frank searched for the perfect two-story home to provide adequate space for the kids in their care but were unable to find a suitable two-story building. When they got the chance to purchase a second (one-story) house right next door to their original home, they did so, and spent several months renovating the place. As Teresa describes the concept of the "dual homes," one house is her family's "downstairs," while the other house serves as her family's "upstairs." The second house is where Teresa cares for the children, with the bedrooms dedicated to nap and play areas, but it is also where the family cooks and eats all of its meals. It is the only one of the two homes with a washer and dryer, and the Bagdols frequently entertain in the second home on weekends.

Chandler bureaucrats decided that the second home was not being used as residential property, and recommended

denial of a use permit (technically required only when a permit holder cares for five or more children). The city also served the Bagdols a cease and desist order for operating a commercial child care center for four children, but suspended enforcement of the cease and desist order after Teresa signed an affidavit attesting that the house where she conducted her child care business was also her home. The Institute for Justice intervened shortly thereafter and invited each of the members of the Chandler City Council to visit Teresa's house so they could see for themselves the Bagdol's unique living arrangement.¹⁹⁹ Finally, under threat of litigation from the Institute for Justice, the City Council approved the use permit. However, the experience left Teresa shaken, and she now has no desire to seek state licensing.

To apply for a group home license, a prospective provider must be at least 21 years old, have a high school diploma or equivalent, and be certified in child care first aid and infant/child cardiopulmonary resuscitation through a course approved by Health Services.²⁰⁰ An applicant must never have been arrested for or charged with a number of particular offenses involving moral turpitude and child abuse.²⁰¹ An applicant must also attend a Health Services orientation program for child care group homes.²⁰²

Group home providers are required to carry a minimum of \$100,000 general liability insurance covering the enrolled children.²⁰³ No other business may be

Child care regulation in Arizona takes place primarily at the state level, though Tucson places additional burdens on home-based day care centers. Arizona's child care regulations cover the entire spectrum, from the rational to the absurd.

The level of detail in the regulation of group homes is beyond what is necessary to provide a safe and nurturing environment for children. Health Services should engage in a wholesale review of its regulations, with the goal of eliminating well-meaning but unnecessary regulations.

conducted in the facility or grounds designated for use by enrolled children during hours of operation.²⁰⁴

Applicants must provide written references from persons attesting to their good character.²⁰⁵ Applicants must also provide Health Services with fingerprint registration for all adult residents.²⁰⁶ One adult personnel member is required to be present when caring for 1 to 5 children, and two must be present for 6 to 10 children. When more than 10 children are present, three personnel members must be present. The third personnel member may be 16 or 17 years old if directly supervised by the provider.²⁰⁷

The requirements for personnel working in group home facilities are in many respects more rigorous than those for providers. All personnel working in a home must be at least 18 years old and have a high school diploma or its equivalent.²⁰⁸ Personnel must not be awaiting trial and must not have been convicted or admitted by plea to any criminal offense regarding children, such as sexual abuse of a minor, incest, felony child abuse, or murder.²⁰⁹ All personnel must be familiar with the statutes and rules governing group homes and with their facilities' policies and procedures.²¹⁰ Personnel must also have the physical and emotional health necessary to perform the required duties and responsibilities and must attend nine hours of child care training each year.²¹¹ Personnel are prohibited from using tobacco products, alcohol, or drugs while providing care for the children.²¹²

Tucson allows only one full-time, nonresident employee in a home-based day care facility.²¹³

A group home applicant must submit to Health Services a floor plan of the proposed facility, with dimensions, a site plan of the surrounding grounds and outdoor activity areas, a notarized statement that the applicant has the financial resources to maintain and operate the facility, and copies of violation-free fire, sanitation, and gas inspections. All records of inspections must be kept and maintained in the facility.²¹⁵

Group day care homes are required to provide at least 30 square feet of indoor open floor space for each child in their facilities, not including kitchens, family bedrooms, bathrooms, laundry rooms, shop areas, or garages.²¹⁶ Group homes must maintain room temperatures between 68 and 82 degrees Fahrenheit.²¹⁷ A group home must have "available" an outdoor activity area that provides 80 square feet of activity space for each child, includes shaded areas large enough to accommodate every child playing in the area, is accessible by a "safe" route, is easily accessible to indoor activity areas and bathrooms, provides play equipment in good repair, is arranged to eliminate hazards and minimize conflicts with other activities, and has both hard surfaces and grass. The regulations for outdoor activity areas also detail the minimum number of feet from which play equipment must be surrounded by grass or other resilient surfaces.²¹⁸ Finally, an outside play area

must be “totally enclosed by a secure fence” at least four feet high and equipped with a self-closing latch that remains unlocked during business hours.²¹⁹ Nearly all of those regulations should be repealed, and the provisions should be amended so that homes accessible to public parks and community green belts could qualify as child care group homes.

A group home licensee must also provide educational and recreational activities suitable for children, prepare a discipline and guidance plan, prepare a nutritional meal plan, submit to an annual sanitation inspection, and meet additional child transportation requirements. Transportation requirements include written permission from parents prior to transporting enrolled children, certain vehicle safety standards, and standards of conduct for vehicle operators.²²⁰ The level of detail in the regulation of group homes is beyond what is necessary to provide a safe and nurturing environment for children. Health Services should engage in a wholesale review of its regulations, with the goal of eliminating well-meaning but unnecessary regulations.

Child Care Facilities

A “child care facility” is defined as a facility in which commercial child care is regularly provided for five or more children not related to the proprietor.²²¹ As with a child care group home, a child care facility must obtain a license from Health Services.²²² The application and renewal fee is \$150.²²³ A license is valid

for three years and must indicate the number and age limitations of the children and the classification of services that the facility will provide.²²⁴ The license application must be submitted with fingerprint clearance cards for the applicant and all personnel, and the applicant must not have been arrested or charged for the same offenses that apply for group home providers.²²⁵

Certain entities are exempt from the statutes and regulations governing child care facilities. Those include homes of parents or blood relatives, religious institutions conducting nurseries in conjunction with religious services, units of the public school system, private schools, facilities providing specific subjects such as dancing, drama, music, self-defense, or religion, facilities offering only recreational instructional activities for children who can come and go at their own volition, and any of the Arizona state schools for the deaf and blind.²²⁶ However, private schools offering child care services beyond regular school hours or to children not regularly enrolled in their programs are subject to the child care facility regulations.²²⁷

An applicant for a child care facility license must be at least 18 years old, complete at least four hours of Health Services-provided training, and comply with all state statutes and regulations.²²⁸ An applicant must also fill out, sign, and have notarized a registration form containing the applicant’s name, birth date, home address, and telephone number, and must indicate whether he is awaiting trial, or has been convicted of

It is easy to see the irony in the fact that none of these credentials is necessary, or required by law, for a person to become a parent.

certain crimes.²²⁹

A licensee must appoint a “facility director,” who is required to be at least 21 years old.²³⁰ The director must submit to Health Services proof of one of the following: a high school diploma or equivalent and six hours or more in childhood, child development, or related classes in an accredited college or university; or 60 hours of actual instruction, provided at conferences, seminars, lectures, or workshops. The director must also submit proof of having 24 months of child care experience; an N.A.C. (National Administrators Credential), C.D.A. (Child Development Associate Credential), C.C.P. (Certified Child Care Professional Credential), or a C.P.C. (Certified Professional in Childcare) credential for at least 18 months of child care experience; a minimum of 24 credit hours from an accredited college or university, including six hours of child-related courses and 18 months of child care experience; an associate’s degree from an accredited college or university in areas of childhood, or related field; and six months of child care experience, a bachelor’s degree from an accredited college or university in areas of childhood or related field, and three months of child care experience.²³¹

It is easy to see the irony in the fact that none of these credentials is necessary, or required by law, for a person to become a parent. While the state has a legitimate interest in protecting the health and safety of children, there is no reason why care

facility directors should be required to attend classroom instruction. Qualified directors could be cultivated through apprenticeships, as the skills necessary to care for children can be, and usually are, learned through experience.

The facility director must designate, in writing, an individual who can act on behalf of the director in the director’s absence. The designee must also be at least 21 years old and possess nearly identical credentials as a facility director, with the number of credits and amount of experience dropping slightly in each of the several categories.²³² Facility staff members designated “teacher-caregivers” must also meet certain requirements: they must be at least 18 years old; have a high school diploma or equivalent and six months of child care experience; N.A.C. C.D.A., C.C.P., or C.P.C. credentialing; or have an associate’s or bachelor’s degree from an accredited college or university in a child-related area.²³³

Facility staff members designated “assistant teacher-caregivers” must be at least 16 years old and be either a current and continuously enrolled high school student or equivalent, have a high school diploma or equivalent, be enrolled with a STRIVE²³⁴ program, or be enrolled in a vocational rehabilitation program.²³⁵ Student aides must provide to the licensee proof of high school enrollment, STRIVE program participation, or participating in a child development program.²³⁶ Volunteers must simply be 16 years old.²³⁷

While the state has a legitimate interest in protecting the health and safety of children, there is no reason why care facility directors should be required to attend classroom instruction. Qualified directors could be cultivated through apprenticeships

A child care facility must maintain the following staff-to-children ratios: for infants, one adult for every 5 children or two adults for every 11 children; for one year-olds, one adult for every 6 children or two for every 13; for two year-olds, one adult for every 8 children; for three year-olds, one adult for every 13 children; for four year-olds, one adult for every 15 children; for five year-olds, one adult for every 20 children; and for school-age children, one adult for every 20 children.²³⁸

Additionally, child care facilities must comply with a laundry list of regulations involving diaper changing, general nutrition, food service and handling, discipline and guidance, sleeping materials and equipment, cleaning and sanitation, pets and animals, accident and emergency procedures, illness and medication, and transportation standards.²³⁹

Although many of those regulations are well-intentioned and designed to protect the health and safety of children, the state should closely scrutinize its child care facility policies. Regulating minutiae yields only marginal benefits but does serious harm to child care providers and consumers. Costs imposed on existing providers are passed on to parents as inflated prices, and turn away many would-be providers.

Child care facilities must also comply with all local building, fire, and zoning codes. A child care facility may not be a manufactured home.²⁴⁰ Any child care facility must have at least 35

square feet of indoor activity space for each infant or one-year-old child, at least 25 square feet for a child not an infant, or over one year, and 35 square feet if one year-olds are in the same area with older children.²⁴¹ The state also requires that child care facilities provide an on-premises outdoor activity area.²⁴² The state could ease its indoor space requirements without adversely affecting safety or the learning environment, and it should not require on-premise outdoor areas if a provider can demonstrate it has access to a park or playground.

How to Fix Arizona's Child Care Regulations

The *East Valley Tribune* recently published a year-long series of articles examining what young children need in order to become healthy kindergartners. One aspect of the story was an exploration into child care facilities. The *Tribune* reported that nearly 500 regulated child care facilities across Arizona did not receive their annual inspections.²⁴³ The reason, according to the *Tribune*, is that the state's 28 inspectors spend the vast majority of their time investigating complaints rather than conducting routine inspections.²⁴⁴ Over half of all complaints are dismissed outright, and most of the violations concern "too few staff, substandard equipment and inadequate programs for children."²⁴⁵ Arizona could address those complaints through limited regulations stipulating that providers clearly present what they have to offer to potential consumers.

Regulating minutiae yields only marginal benefits but does serious harm to child care providers and consumers. Costs imposed on existing providers are passed on to parents as inflated prices, and turn away many would-be providers.

Although inspectors may be well-intentioned and diligent, the state will never be able to hire enough inspectors to adequately police child care facilities. But parents visit their child care facilities at least twice a day, several days a week, and have a personal stake in their children's well-being.

The best and most reliable method of alleviating problems in child care is to spur new entrants into the market by easing the regulations on child care providers. While the drafters of Arizona's child care regulations have sought to protect children to the utmost degree, the result is a Byzantine labyrinth of requirements that discourage many talented and qualified individuals from opening up child care businesses. It is essential that legislators and Health Services officials work together to eliminate regulations that provide insignificant health and safety.

Recommendations

Arizona's legislature, judiciary, and elected officials at all levels have a constitutional duty to protect economic liberty. But governments at all levels have trapped Arizona businesses in a morass of burdensome and confusing regulations. Many state, county, and city regulations do little to protect consumers, while reducing productivity and discouraging would-be entrepreneurs from starting a business.

Arizona should re-examine its

existing occupational licensing system, with the goal of eliminating or combining many of its licensing boards. The governor's regulatory review board, which is generally the final stop in the administrative rule-making process, could begin the process with a thorough analysis of the costs and benefits of current regulations. Each of Arizona's licensing boards should engage in a comprehensive inventory of its functions and requirements. The Cosmetology Board, for example, should immediately exempt African hairbraiders from its regulations and evaluate whether the 1996 regulations have actually done anything to protect consumers. And the Department of Health Services should consider eliminating many of the regulations currently thrust upon child care group homes and child care facilities.

Phoenix and Tucson should consider taking immediate action to simplify the process of opening a small business. Tucson should not need this reminder. The Tucson Small Business Commission made a compelling case for reform when it pointed out that opening a business requires jumping through a "seemingly never-ending" series of city-created hoops. Both cities should ease restrictions placed on home-based businesses, particularly limits on the amount of floor space that may be occupied by in-home businesses, as well as easing restrictions on employing persons not living in the home. Phoenix needs to eliminate or reduce the fees required to start new businesses, particularly for entrepreneurs wishing to

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build, remodel or alter the use of existing structures.

Phoenix and Tucson also need to reform regulations on specific industries and services. For instance, the prohibition of sidewalk vendors outside Phoenix's downtown should be eliminated. Also, restrictions on taxicabs imposed by the City of Phoenix and the Tucson Airport Authority should be eliminated. Replacing those restrictions with a simple registration scheme could protect consumers without harming independent cab drivers.

Arizona officials should work to reduce barriers to entrepreneurship and competitive enterprise. When government regulation is necessary, regulations should be highly circumscribed, easily understandable, and narrowly tailored to achieve legitimate goals such as preventing fraud. Otherwise, Arizona should set entrepreneurs free from burdensome and needless regulations, making it easier for them to open new businesses and manage existing ones. Among the ranks of Arizona entrepreneurs would be hundreds of low-income and minority citizens who would be climbing the first rung on America's economic ladder.

APPENDIX – State Agencies and Boards

Board of Examiners - Acupuncture	Naturopathic Physicians Board of
Board of Accountancy	Medical Examiners
Department of Agriculture	Arizona State Board of Nursing
Board of Appraisal	Nursing Care Institution
Banking Department	Administrators and Assisted Living
Board of Barbers	Facility
Board of Behavioral Health Examiners	Board of Examiners of Managers
Boxing Commission	Board of Dispensing Opticians
Department of Building and Fire Safety	Board of Optometry
Board of Chiropractic Examiners	Board of Osteopathic Examiners in
Registrar of Contractors	Medicine and Surgery
Corporation Commission	State Parks Board
Board of Cosmetology	Board of Pharmacy
Board of Dental Examiners	Board of Physical Therapy
Department of Economic Security	Joint Board on the Regulation of
State Board of Education	Physician Assistants
Department of Environmental Quality	Board of Podiatry Examiners
Board of Funeral Directors and	Board of Private Postsecondary
Embalmers	Education
Game and Fish Department	Board of Psychologist Examiners
Arizona Geological Survey	Department of Public Safety
Board of Homeopathic Medical	Arizona Department of Racing
Examiners	Radiation Regulatory Agency
Industrial Commission of Arizona	Department of Real Estate
Arizona Industries for the Blind	Board of Respiratory Care Examiners
Department of Insurance	Department of Revenue
Department of Liquor Licenses and	State Parks Board
Control	Structural Pest Control Commission
Lottery	Board of Technical Registration
Board of Medical Examiners	Department of Transportation
Medical Radiological Technology Board	Veterinary Medical Examining Board
of Examiners	Department of Water Resources
Mine Inspector	Department of Weights and Measures

NOTES

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1. In 1997, the Institute for Justice conducted similar studies of seven U.S. cities: Baltimore, Boston, Charlotte, Detroit, New York, San Antonio, and San Diego. With the launch of IJ's state chapter initiative, each new chapter will conduct an entrepreneurship study of a city or cities within the state's borders, in the hopes that the study will provide a litigation blueprint as well as offer helpful advice to local politicians and small business leaders about reducing regulatory burdens on small business.

2. Eileen Brill Wagner, "Location & Regulations," *Entrepreneur's Edge 2003* (The Business Journal, 2003), 19.

3. Chip Mellor, "Uncork freedom, close the lid on cartels," *East Valley Tribune*, May 3, 2002.

4. 83 U.S. 36 (1872). It is IJ's long-range objective to overturn *The Slaughter-House Cases*. However, given that lower courts are bound by Supreme Court precedent, it is IJ's short-term goal to "dismantle" the effects of the case

through strategic litigation arguing "mainstream" legal theories grounded in the equal protection and due process clauses of the Fourteenth Amendment.

5. For a detailed discussion of the history of the Fourteenth Amendment see Clint Bolick, *Unfinished Business: A Civil Rights Strategy for America's Third Century* (Pacific Research Institute for Public Policy, 1990), 47-60.

6. Notwithstanding *The Slaughter-House Cases*, the U.S. Supreme Court has declared that "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." *Truax v. Raich*, 239 U.S. 33, 41 (1915). The Ninth Circuit U.S. Court of Appeals, the circuit having jurisdiction over Arizona, has similarly said that "the due process clause protects a liberty or property interest in pursuing the 'common occupations or professions of life.'" *Benigni v. City of Hemet*, 879 F.2d 473, 478 (9th Cir. 1988) (citing *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957)). The Arizona Supreme Court has also recognized the right to earn an honest living: *Schillerstrom v. Arizona*, 180 Ariz. 468, 471 (App. 1994) ("[T]he practice of a profession is a right, not just a privilege"); *Application of Levine*, 97 Ariz. 88, 91 (1964) ("[O]ne may not be excluded by state action from a business, profession, or occupation in a manner or for reasons which contravene the due process clause").

7. Doing Business in 2004: *Understanding Regulations* (Washington, D.C.: World Bank and Oxford University Press, 2004). <http://www.sba.gov/advo/stats/profiles/02az.pdf>.
8. *Ibid.*, xiv.
9. *Ibid.*, xv.
10. For a full discussion on dismantling the modern regulatory state, see Richard A. Epstein, *Simple Rules for a Complex World* (Cambridge: Harvard University Press, 1997).
11. Dan A. Cathron, "Local Government in Arizona," *Politics and Public Policy in Arizona*, (Westport, CT: Praeger, 1993), 55.
12. Small Business Survival Committee, "Small Business Survival Index 2003: Ranking the Policy Environment for Entrepreneurship across the Nation," www.sbsc.org.
13. Amela Karabegovic, Fred McMahon and Dexter Samida, *Economic Freedom of North America* (Vancouver, B.C.: Fraser Institute, 2002).
14. Arizona Department of Commerce, "Number of Businesses in Arizona," May 2002. <http://www.azcommerce.com/pdf/smallbus/Number%20of%20Businesses%20in%20Arizona%20050602%20FINAL.pdf>.
15. U.S. Small Business Administration, Office of Advocacy, "2002 Small Business Profile: ARIZONA," <http://www.sba.gov/advo/stats/profiles/02az.pdf>.
16. Yvette Armendariz, "At-home Businesses Up," *Arizona Republic*, Sept. 30, 2002.
17. Michelle Swafford, "Arizona Ranks 20th for Small Business," *East Valley Tribune*, July 30, 2002.
18. *Ibid.*
19. "42 Ideas for a Free and Prosperous Arizona," Goldwater Institute Policy Report no. 177, Goldwater Institute, January 24, 2003, 36-7, <http://www.goldwaterinstitute.org/article.php/223.html>.
20. Geri Koepfel, "Suit challenges state's wine shipping rules: Group seeks ability to buy out-of-state," *East Valley Tribune*, October 8, 2003. The Institute for Justice, which filed a case in Federal District Court in Arizona, has successfully challenged similar restrictions on direct shipment of wine in New York. See *Swedenburg v. Kelly*, 232 F. Supp. 2d 135 (S.D.N.Y. 2002). For more information on Arizona's wine regulations, see Mark Brnovich, "Trading Grapes: The Case for Direct Wine Shipping in Arizona, Goldwater Institute Policy Report no. 184, Goldwater Institute, November 18, 2003, <http://www.goldwaterinstitute.org/article.php/369.html>.
21. *Ariz. Rev. Stat.* § 28-4460.
22. The Goldwater Institute reported

that restrictions on auto sales drive up the price of a car anywhere from one to four percent. See “42 Ideas,” 12-14.

23. Arizona Department of Revenue, “Guide to Arizona Licensing Requirements,” <http://www.revenue.state.az.us/609/licensingguide.htm#PROFESSION>.

24. Arizona Department of Revenue, “Arizona Business Connection,” <http://www.commerce.state.az.us/webapps/SmallBusVR/intro.asp>.

25. Ibid.

26. A good argument for the elimination of the Board of Barber Examiners, Board of Cosmetology, Board of Dispensing Opticians, and other state agencies, can be found at “42 Ideas,” 15-18. A more thorough examination of the costs and benefits of state regulation can be found in *Public Goods and Market Failures: A Critical Examination*, by Tyler Cowen, ed. (New Brunswick, NJ.: Transaction Publishers, 1991). See also Yesmin Yilmaz, “Private Regulation: A Real Alternative for Regulatory Reform,” Cato Institute Policy Analysis, April 20, 1998, <http://www.cato.org/pubs/pas/pa303.pdf>; and “Health and Safety Policy,” *Cato Handbook for Congress: 108th Congress*, <http://www.cato.org/pubs/handbook/hb108/hb108-35.pdf>.

27. See <http://massagetherapy.az.gov>.

28. *2003 Arizona Session Laws*, ch. 202 (adopting *Ariz. Rev. Stat.* § 32-4222

(B)(1), *Ariz. Rev. Stat.* § 32-4227(A), and *Ariz. Rev. Stat.* § 32-4222 (B)(2)).

29. L. Romero, “Massage therapists may face new rules; legislature considers bill,” *Arizona Republic*, April 16, 2003. In fact, the most substantial “harm” asserted was the threat of prostitution. But the law already prohibits prostitution, so enforcement of current laws, not a licensing scheme, is the appropriate course of action.

30. Ibid.

31. In *Buehman v. Orville*, 57 Ariz. 363, 376 (1941), the Court declared that “[A] statute allowing one class of persons to engage in what is presumptively a legitimate business, while denying such right to others, must be based upon some principle which may reasonably promote the public health, safety or welfare”

32. In *Edwards v. State Board of Barber Examiners*, 72 Ariz. 108, 114 (1951), the Court noted that “individual liberties can be sacrificed only upon a clear showing of a benefit to the public commensurate with the loss of individual rights.”

33. *Buehman*, 57 Ariz. at 372.

34. U.S. Census Bureau, “Table 5: Metropolitan Areas Ranked by Percent Population Change: 1990-2000.” See Romana Smith, “Phoenix Gaining, but Philly’s Still 5th Largest,” *Philadelphia Daily News*, July 10, 2003.

35. U.S. Census Bureau, County and City Data Book: 2000 (13th ed.), 642, 644.
36. Yvette Armendariz, “Minority-Owned Business Up,” *Arizona Republic*, August 28, 2002.
37. *Ibid.*
38. *Ibid.*
39. City of Phoenix, “Operating a Business in the City of Phoenix,” <http://phoenix.gov/BUSINESS/opbusiness.html>.
40. *Phoenix, Arizona, Zoning Code Appendix A.*
41. *Phoenix, Arizona, Zoning Code § 507.*
42. *Phoenix, Arizona, Code Appendix A.2 § 11.*
43. City of Phoenix, “Development Services Dept. Major Commercial Overview,” <http://www.ci.phoenix.az.us/DEVELOP/overview.pdf>.
44. <http://phoenix.gov/DEVPRO/sitplnfe.pdf>.
45. *Ibid.*
46. *Phoenix, Arizona, Zoning Code § 507.*
47. *Phoenix, Arizona, Code §§ 19B-2, 19D-2.*
48. *Phoenix, Arizona, Code §§ 29-30.*
49. *Phoenix, Arizona, Zoning Code § 705.*
50. *Phoenix, Arizona, Code Appendix A.2 § 71 and § 81.*
51. *Phoenix, Arizona, Code Appendix A.2 § 81.*
52. *Phoenix, Arizona, Code Appendix A.2 § 81.*
53. Yvonne Wingett, “High-Placed Pal Helps Businessman Keep Barber Pole,” *Arizona Republic*, May 27, 2002.
54. *Phoenix, Arizona, Code § 14-300.*
55. *Phoenix, Arizona, Code § 10-72.*
56. *Phoenix, Arizona, Code §§ 7-8, 7-13*
57. *Phoenix, Arizona, Code §§ 19-3, 19-5.*
58. *Phoenix, Arizona, Code §§ 19-3, 19-5.*
59. *Phoenix, Arizona, Code §§ 19-3, 19-5.*
60. *Phoenix, Arizona, Code §§ 19-3, 19-5.*
61. *Phoenix, Arizona, Code §§ 31-112, 31-114.*
62. *Phoenix, Arizona, Code §§ 10-19, 10-25.1.*

63. *Phoenix, Arizona, Code* §§ 10-19, 10-25.1.
64. *Phoenix, Arizona, Code* §§ 10-34, 10-36.
65. *Phoenix, Arizona, Code* § 6-5. A state liquor license must also be obtained. The state's application fee is \$100 and the actual license fee ranges from \$100 to \$2000 depending on the type of business seeking the license. Bar, Beer and Wine Bar, or Liquor Store licenses must be purchased from an independent broker, as those licenses are limited by quota and have been "sold out." According to one web site (www.therestaurantbrokers.com/pages/inform/liquor.htm) one Internet broker was selling a license in Tucson for \$7,000 and one in Phoenix for \$12,000. A transfer fee must also be paid to the Arizona Department of Liquor License and Control.
66. *Maricopa County Health Code*, Chapter VIII, § 1(2).
67. Maricopa County, "Plan Review Fees & Permit Schedule," <http://www.maricopa.gov/envsvc/envhlth/PLANS/planfee.asp> (accessed June 13, 2003).
68. *Maricopa County, Arizona, Health Code*, Chapter VIII, § 1(3).
69. *Maricopa County, Arizona, Health Code*, Chapter VIII, § 1(8)(j).
70. *Maricopa County, Arizona, Health Code*, Chapter VIII, § 2 (1)(2).
71. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(a).
72. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(b) and (c).
73. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(d).
74. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(e).
75. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(g).
76. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(h).
77. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(i).
78. *Phoenix, Arizona, Zoning Code* § 608(C)(9)(f).
79. http://www.ci.tucson.az.us/oed/Site_Map/Business_Resources/City_of_Tucson_SBC/city_of_tucson_sbc.html.
80. Ibid.
81. Ibid (emphasis added).
82. http://www.ci.tucson.az.us/dsd/Certificate_of_Occupancy/certificate_of_occupancy.html.
83. The city also has a clickable grid map available online at <http://www.ci.tucson.az.us/planning/zonemaps.htm> to provide would-be entrepreneurs with the zoning of and the permitted uses in the area.

84. City of Tucson, "Guide to Operating a Business in the City of Tucson," http://www.cityoftucson.org/oed/Site_Map/Business_Resources/City_of_Tucson_Guide_to_Operat/city_of_tucson_guide_to_operat.html.
85. *Tucson, Arizona, Code* § 3-27.
86. Ibid.
87. Ibid.
88. Ibid.
89. http://www.ci.tucson.az.us/dsd/Certificate_of_Occupancy/certificate_of_occupancy.html.
90. *Tucson, Arizona, Code* § 7-223.
91. *Tucson, Arizona, Code* § 7-3.
92. *Tucson, Arizona, Code* § 7-351, 353.
93. *Tucson, Arizona, Code* § 7-164.
94. *Tucson, Arizona, Code* § 7-64.
95. *Tucson, Arizona, Code* § 7-134.
96. *Tucson, Arizona, Code* § 7-134.
97. *Tucson, Arizona, Code* § 19-28(109).
98. *Tucson, Arizona, Code* § 7-202.1.
99. http://www.pimahealth.org/chfs/diy_plan_review.pdf.
100. Ibid.
101. An overview of the liquor licensing procedure is available at <http://www.azll.com/overview.htm>.
102. City of Tucson, "Business License Process for the City of Tucson," http://www.ci.tucson.az.us/oed/Business_Resources/New_Business_Guide/new_business_guide.html.
103. City of Tucson, "Guide to Operating a Business in the City of Tucson," http://www.cityoftucson.org/oed/Site_Map/Business_Resources/City_of_Tucson_Guide_to_Operat/city_of_tucson_guide_to_operat.html.
104. Ibid.
105. City of Tucson, Office of Economic Development, "Guide to Operating a Business in the City of Tucson," http://www.cityoftucson.org/oed/Site_Map/Business_Resources/City_of_Tucson_Guide_to_Operat/city_of_tucson_guide_to_operat.html.
106. *Tucson, Arizona, Land Use Code* § 3(5)(7)(2).
107. <http://www.ci.tucson.az.us/planning/homeocc.pdf>.
108. Nena Baker, "Taxi Industry In State Unchecked, Uninsured," *Arizona Republic*, December 16, 2002.
109. Ibid.
110. Ibid.
111. Ibid.

112. See *Phoenix City Code* § 4-82.
113. *Ariz. Rev. Stat.* §§ 28-5433, 28-5492.
114. *Ariz. Rev. Stat.* § 28-4033.
115. *Ariz. Rev. Stat.* §§ 28-2003, 28-3002.
116. *Phoenix, Arizona, Code* § 4-82.
117. This is not to suggest that Phoenix has an inadequate taxi market; given its low population density, the supply of taxis in Phoenix may be adequate to meet consumer demand.
118. *Ibid.*
119. Lindsay Woodard (ground transportation coordinator, Phoenix Sky Harbor International Airport), telephone interview with the author on June 21, 2002.
120. Tracey Rivas (parking supervisor, former land side operations manager, Sky Harbor International Airport), telephone interview with the author on July 2, 2002.
121. A permit process is already in place for ground transportation providers and is discussed elsewhere in detail.
122. City of Phoenix Aviation Department, "Request for Proposals for Taxicab Association," 1 (August 2000). A quick Internet search revealed that the cost of a Ford Crown Victoria originally manufactured to run on compressed natural gas was \$31,140, while the same Ford Crown Victoria originally manufactured to run on regular gasoline would cost \$24,345, <http://autos.yahoo.com>.
123. *Ibid.*, 4.
124. *Ibid.*, E-3.
125. *Ibid.*, K-5, K-6.
126. *Phoenix, Arizona, Code* § 4-70.
127. *Ibid.*
128. *Phoenix, Arizona, Code* § 4-78.
129. *Phoenix, Arizona, Code* § 4-83(A).
130. *Ibid.*
131. *Phoenix, Arizona, Code* § 4-84(C).
132. *Phoenix, Arizona, Code* §§ 4-68, 4-69, 4-70, 4-84.
133. *Phoenix, Arizona, Code* § 4-78.
134. *Tucson, Arizona, Code* § 20-303.
135. *Tucson, Arizona, Code* § 20-304.
136. *Tucson, Arizona, Code* §§ 20-305, 20-306, 20-307.
137. *Tucson, Arizona, Code* §19-41.
138. http://www.tucsonairport.org/taa/html/taa_who.html. The Authority receives no local tax dollars and is funded by revenues from parking, space

- rentals, land leases, fuel sales, airline landing fees, and concessions.
139. http://www.tucsonairport.org/html/tia_ground_taxi.html.
140. Jacqueline Mann (ground transportation coordinator, Tucson Airport Authority), interview with the author, September 24, 2003. (Independent Cab will no longer be contracted to provide pick-up service).
141. http://www.tucsonairport.org/html/tia_ground_taxi.html.
142. Ibid.
143. Jennifer Ryan, “Illegal food sellers targeted: County officers strive to keep all vendors in line,” *East Valley Tribune*, March 31, 2002.
144. Ibid.
145. Ibid.
146. Ibid.
147. Ibid.
148. See *Arizona Administrative Code* § R9-8-107 (incorporating by reference section 3-2, specifically subpart 3-201.11, of the U.S. Food and Drug Administration’s *Food Code*: 1999).
149. *Phoenix, Arizona, Code* §§ 31-22 - 31-32.
150. *Phoenix, Arizona, Code* § 31-26.
151. *Phoenix, Arizona, Code* § 31-30.
152. *Phoenix, Arizona, Code* § 31-32.
153. *Phoenix, Arizona, Code* § 31-24.
154. *Phoenix, Arizona, Code* § 31-24.
155. *Phoenix, Arizona, Code* § 24-40.
156. *Phoenix, Arizona, Code* §§ 31-24.1, 31-24.2.
157. Edward Lebow, “Taco Hell; Mexican Food Vendors Circle Wagons As Community Activists Fume over Neighborhood Blight,” *Phoenix New Times*, September 28, 2000.
158. Ibid.
159. “Phoenix Street Vendors May Face New Restrictions,” *Associated Press*, Feb. 17, 2000; Elvia Diaz, “Mobile food thriving in Phoenix: Vendors got organized after dispute with City,” *Arizona Republic*, Sept. 16, 2002.
160. *Phoenix, Arizona, Code* § 10-162.
161. *Phoenix, Arizona, Code* § 10-163(A)(23), (24).
162. *Phoenix, Arizona, Code* § 10-166(B)(2), (5).
163. Elvia Diaz, “Mobile food thriving in Phoenix:”
164. Christina Leonard, “Food vendors target of sweep,” *Arizona Republic*, April 5, 2003.

165. *Phoenix, Arizona, Code* § 31-25.
166. *Phoenix, Arizona, Code* § 31-27.
167. *Phoenix, Arizona, Code* § 31-27.
168. *Phoenix, Arizona, Code* §§ 31-26, 31-29.
169. *Phoenix, Arizona, Code* §§ 31-26, 31-29, 31-30.
170. City of Phoenix Parks and Recreation Board, "Request for Proposals, Paddleboat and Canoe Rental Concession, Encanto Park," March 26, 1999.
171. The city should repeal affirmative action requirements, which do little to help those outside of the economic mainstream while tending to bestow entitlements on those with the greatest skill and resources. See Clint Bolick, *The Affirmative Action Fraud* (Washington: Cato Institute, 1996) 4-5, 133 (Only "the removal of barriers to opportunity that prevent individuals from controlling their destinies" will achieve the goals of affirmative action). For a broader discussion of the principles of empowerment as it relates to economic liberty, see Clint Bolick, *Transformation: The Promise and Politics of Empowerment* (Institute for Contemporary Studies, 1998) 68-93.
172. Yvonne Wingett, "Phoenix Targeting Illegal Vendors," *Arizona Republic*, July 28, 2003.
173. *Ibid.*
174. Ernesto Portillo Jr., "Ice Cream Traffic Heats Up; Truck Owners, Walkers Vie for Business," *Arizona Daily Star*, August 10, 2002, B1.
175. *Tucson, Arizona, Code* § 21-4(b).
176. *Tucson, Arizona, Code* § 21-4(c).
177. *Tucson, Arizona, Code* § 16-31(i).
178. *Ariz. Rev. Stat.* § 32-501.
179. See for example, http://www.universities.com/Schools/A/Arizona_Academy_Of_Beauty.asp; http://www.universities.com/Schools/C/Carsten_Institute_Of_Hair_And_Beauty.asp; and http://www.universities.com/Schools/A/Allure_Career_College_Of_Beauty_Scottsdale.asp.
180. *Arizona Administrative Code* § R4-10-304 (2002).
181. The author spoke with Essence Farmer on October 14, 2003.
182. MD Code, Business Occupations & Professions, § 5-101(k)(2)(iii).
183. The National Accrediting Commission of Cosmetology Arts and Sciences (www.naccas.org) is a nonprofit corporation recognized by the U.S. Department of Education as a national accrediting agency for cosmetology schools. The accreditation process includes site visits and curriculum reviews to ensure compliance with the commission's adopted standards. Schools are re-evaluated at least once

every five years.

184. *Arizona Administrative Code* § R4-10-203 and § R4-10-206.

185. Board of Cosmetology, *Notice of Final Rulemaking* no. 6 (effective May 6, 2003), 2.

186. *Ibid.*, no. 7.

187. *Ibid.*, no. 8.

188. *Ibid.*, no. 9.

189. Brian Powell, “E.V. Neighbors Split over Idea of Annexation,” *East Valley Tribune*, April 4, 2003.

190. *Tucson, Arizona, Land Use Code* Section 3.5.7.3. Tucson’s restriction on the amount of floor area devoted to a home-based business does not apply to day care use. Section 3.5.7.3(E). Additionally, outdoor activity and equipment are permitted for home-based day care centers so long as they are screened by a five-foot fence, wall, or hedge where the property adjoins certain more restrictive zoning areas. Section 3.5.7.3(F).

191. Unregulated providers may have two of their own children in the home for a maximum of six children. Arizona Department of Economic Security, “Arizona Child Care Resource and Referral,” <http://arizonachildcare.org/a-law.htm>.

192. For more information about the program, visit <http://arizonachild>

care.org. Funding for Arizona’s CCR&R program comes from the Federal Child Care and Development Block Grant.

193. *Ariz. Rev. Stat.* §§ 36-897(1), 36-897.02(B).

194. *Tucson, Arizona, Land Use Code* Section 3.5.7.3(B).

195. *Ariz. Rev. Stat.* § 36-897.02(C), (E).

196. *Ariz. Rev. Stat.* § 36-897.01(A), (C).

197. *Ariz. Rev. Stat.* § 36-897.01 (E).

198. Angela D. Wagner, “Splitting Houses and Hairs? Chandler: Setup Fails Definition of In-Home Day Care,” *East Valley Tribune*, August 19, 2003.

199. Angela D. Wagner, “Chandler Couple Get Legal Help in Flap over Day Care: Attorney Urges Tour of Homes before Decision,” *East Valley Tribune*, August 27, 2003.

200. *Arizona Administrative Code* § R9-5-801(A)(1-3).

201. Pursuant to *Ariz. Rev. Stat.* § 36-897.01(K), (L) an applicant must not have been arrested for or charged with an offense listed in A.R.S. section 41-1758.03(B) or (F). Offenses listed in section 41-1758.03(B) and (F) include: sexual abuse of a minor or a vulnerable adult, incest, first or second degree murder, kidnapping, sexual assault, sexual exploitation of a minor or a

- vulnerable adult, commercial sexual exploitation of a minor or vulnerable adult, felony offenses involving sale, distribution, transportation of dangerous drugs or narcotics, robbery, child prostitution, child abuse, sexual conduct with a minor, molestation of a minor, aggravated assault, dangerous crimes against children, exploitation of minors involving drug offenses, felony offenses involving contribution to the delinquency of a minor, and neglect or abuse of a vulnerable adult.
202. *Arizona Administrative Code* § R9-5-801(A)(4).
203. *Arizona Administrative Code* § R9-5-808.
204. *Arizona Administrative Code* § R9-5-809.
205. *Arizona Administrative Code* § R9-5-801(B)(12).
206. *Arizona Administrative Code* § R9-5-703(A).
207. *Arizona Administrative Code* § R9-5-803.
208. *Arizona Administrative Code* § R9-5-802(A).
209. *Ariz. Rev. Stat.* § 36-883.02(C)(1).
210. *Arizona Administrative Code* § R9-5-802(B)(1).
211. *Arizona Administrative Code* § R9-5-802(B)(2), (6).
212. *Arizona Administrative Code* § R9-5-802(B)(3).
213. *Tucson, Arizona, Land Use Code* 3.5.7.3(C).
214. *Arizona Administrative Code* § R9-5-701.
215. *Arizona Administrative Code* § R9-5-804.
216. *Arizona Administrative Code* § R9-5-1001(A).
217. *Arizona Administrative Code* § R9-5-1001(B).
218. *Arizona Administrative Code* § R9-5-1001(D)(1)-(7).
219. *Arizona Administrative Code* § R9-5-1001(D)(8).
220. *Arizona Administrative Code* § R-9-901, § R9-5-909, § R9-5-910, § R9-5-1004(A), and § R9-5-912.
221. *Ariz. Rev. Stat.* § 36-881(3).
222. *Ariz. Rev. Stat.* § 36-882(A).
223. *Ariz. Rev. Stat.* § 36-882(F).
224. *Ariz. Rev. Stat.* § 36-882(G).
225. Pursuant to *Ariz. Rev. Stat.* § 36-883.02(A), (C)(1), child care facility applicants must not have been arrested for or charged with an offense listed in *Ariz. Rev. Stat.* § 41-1758.03(B) or (F).

226. *Ariz. Rev. Stat.* § 36-884.
227. *Ariz. Rev. Stat.* § 36-884(4).
228. *Arizona Administrative Code* § R9-5-201(A)(1), (5).
229. *Arizona Administrative Code* § R9-5-201(A)(5). Applicants must not be awaiting trial or have been convicted of a crime described in *Ariz. Rev. Stat.* § 41-1758.03(B) or (F).
230. *Arizona Administrative Code* § R9-5-301.
231. *Arizona Administrative Code* § R9-5-401(A)(1)(a)-(e).
232. *Arizona Administrative Code* § R9-5-301(A).
233. *Arizona Administrative Code* § R9-5-401(2).
234. STRIVE stands for Students Together Rising in Vocational Education. The State Board of Education is authorized to execute the powers and duties of vocational education pursuant to *Ariz. Rev. Stat.* § 15-203(A)(24).
235. *Arizona Administrative Code* § R9-5-401(3).
236. *Arizona Administrative Code* § R9-5-401(4). Acceptable programs include “an educational, curriculum-based course in child development, parenting, or guidance counseling, or a vocational educational or occupational development program.”
237. *Arizona Administrative Code* § R9-5-401(5).
238. *Arizona Administrative Code* § R9-5-404(A).
239. *Arizona Administrative Code* §§ R9-5-502 - R9-5-518.
240. *Arizona Administrative Code* § R9-5-601.
241. *Arizona Administrative Code* § R9-5-603(A), (B) (When computing indoor space, the following are to be excluded: room space occupied by teacher/caregivers’ desks, file cabinets, storage cabinets, hand-washing sinks for use by staff, rooms used to isolate one child from the other children, storage rooms, stairs, entryways, hallways, kitchens and bathrooms.)
242. *Arizona Administrative Code* § R9-5-603(C).
243. Mary K. Reinhart, “Day Care Roulette: Lax Oversight at Facilities Puts Kids at Risk,” *East Valley Tribune*, September 29, 2002.
244. Ibid.
245. Ibid.

The Goldwater Institute was established in 1988 as an independent, nonpartisan research and educational organization dedicated to the study of public policy in Arizona. Through research papers, commentaries, policy briefings and events, Goldwater scholars advance public policies based on the principles championed by the late Senator Barry Goldwater during his years of public service – limited government, economic freedom and individual responsibility. Consistent with a belief in limited government, the Goldwater Institute neither seeks nor accepts government funds and relies on voluntary contributions to fund its work.

