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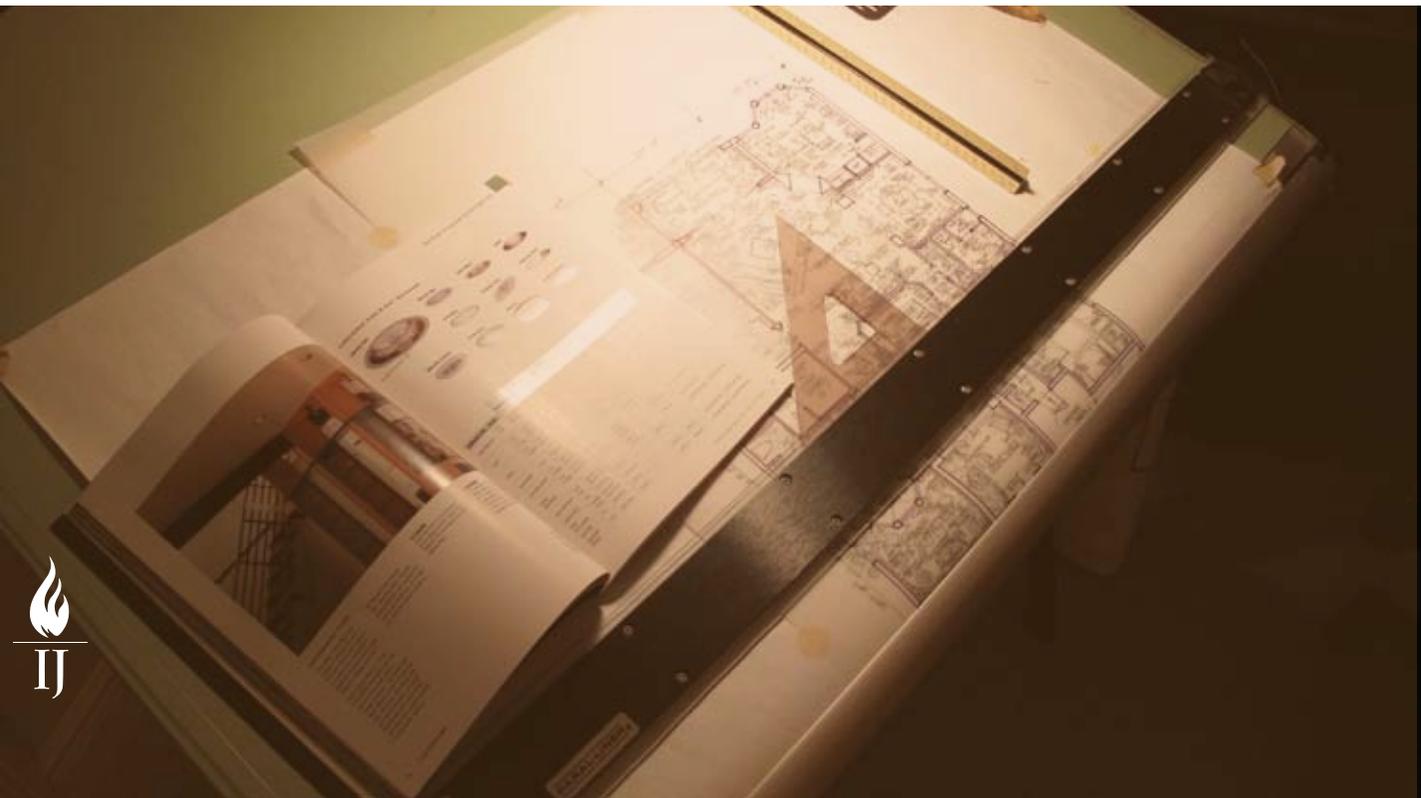
November 2010  
Written by  
PAUL SHERMAN



# Miami's Vice

## Overregulating Entrepreneurs

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### **Cover Photos**

**Top**—Requirements for Miamians who want to cut or perm hair are expensive—1,200 hours of school at a cost of \$10,000 or else risk jail time.

**Bottom**—It is a crime to make drawings showing the placement of furniture without first completing six years of combined education and apprenticeship and also passing a national licensing exam.

# Miami's Vice

## Overregulating Entrepreneurs

**by Paul Sherman, Staff Attorney**  
**Institute for Justice**  
**November 2010**

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## Executive Summary

To the millions of tourists who flock there each year, Miami is a tropical paradise. But, for thousands of entrepreneurs, life in Miami is anything but sunny. Although these are difficult economic times for entrepreneurs everywhere, times are especially tough in the Magic City. One survey of the 50 most populous cities in the United States recently placed Miami dead last in terms of job prospects, with nine people unemployed for every job posting.<sup>1</sup> And unemployment in Florida, although down from its peak, is still hovering at almost 12 percent.<sup>2</sup> In times like these, the government should not be standing in the way of people who just want to earn an honest living. But that is exactly what it is doing with the complex web

of regulations, red tape and bureaucracy faced by Miami entrepreneurs.

The burdens on Miami entrepreneurs fall into two broad categories. First, many entrepreneurs are subject to occupation- or industry-specific regulations. These range from taxes and permit requirements to full-blown occupational-licensing regimes, under which entering even common occupations—such as cosmetology or interior design—can take years of arbitrary education and cost thousands of dollars. Second, Miami entrepreneurs must comply with paperwork and red tape that is complicated, expensive and time-consuming. Because these processes often leave unbridled discretion in the hands of bureaucrats to delay or deny the permits necessary to start a small business, they have bred a culture of corruption in which routine permits can be held up for months unless the right palms are greased. In either case, the result is the same—frustration for entrepreneurs, fewer choices for consumers and less economic growth at a time when South Florida desperately needs it.



**One survey of the 50 most populous cities in the United States recently placed Miami dead last in terms of job prospects, with nine people unemployed for every job posting.**

### *Occupational licensing*

Among the barriers to entry Miami entrepreneurs face are:

- Government-supported monopolies—Despite Miami’s abysmal public transportation system and a growing demand for private alternatives, entry into the transportation industry is heavily restricted and practically impossible for small entrepreneurs.
- Prohibitively expensive taxes—The business taxes required just to peddle flowers in Miami cost more than \$500 *every year*.
- Overly restrictive zoning laws—All home-based entrepreneurs, even artists and freelance writers, are required to get permission from the zoning board before opening their business, even if they don’t have employees or customers coming to the house.
- Expensive educational requirements for common occupations—Miamians who want to cut or perm hair must attend 1,200 hours of school at a cost of \$10,000 or more, or else risk jail time.
- Absurd licensing requirements—Florida is one of only three states in the country that licenses interior designers. It’s a crime to make drawings showing the placement of furniture without first completing six years of combined education and apprenticeship and also passing a national licensing exam.

### Red Tape

Among the permitting nightmares faced by Miami entrepreneurs:

- Outrageous delays—It can take up to one year to get the permits required to open a business, during which the aspiring entrepreneur is paying rent but forbidden to operate his or her business.
- Endless permits—Business owners in historic districts must wait months for approval of even minor cosmetic alterations to their property.
- Adding insult to injury—A failing business cannot even have a going-out-of-business sale without first getting government permission and then complying with daily reporting requirements.

Despite all these problems, there are a few bright spots. In a small number of areas the state has taken steps to streamline entry into common occupations and remove overregulation. The city, county and state can learn from these examples and build on them to expand opportunities for entrepreneurs in the future.

**Unfortunately, entrepreneurs are largely unable to take advantage of these increased opportunities because entry into both the jitney and taxi markets is virtually impossible.**

### Burdensome Regulations

More and more often, entrepreneurs require a license from the government in order to earn an honest living in the occupation of their choosing. Fifty years ago, only five percent of the population worked in licensed occupations. Today, that number has skyrocketed to almost 30 percent.<sup>3</sup> This explosive growth has been driven by industry insiders who view licensing as a way to gain prestige and, more importantly, shut out their competitors. But occupational-licensing schemes are far from the only regulations that burden entry into specific occupations—even when the government does not require entrepreneurs to meet specific qualifications, it may still restrict entry through high fees or burdensome paperwork. In either case, the result is that in industry after industry entrepreneurs are prevented from earning an honest living and consumers are forced to pay higher prices for fewer choices.<sup>4</sup>

### Transportation

Public transportation in Miami has been called a “disaster.”<sup>5</sup> Indeed, Miami’s “skimpy public transit system . . . services only 3% of commuters daily,” leading *Forbes* magazine to declare the city the third worst in the country for commuters.<sup>6</sup> And with recent reductions in routes, fewer buses are going fewer places, which has increased the demand for private transportation in the form of taxis and jitneys. Unfortunately, entrepreneurs are largely unable to take advantage of these increased opportunities because entry into both the jitney and taxi markets is virtually impossible.

### Jitneys

As reported recently in the *Miami Herald*, “Miami has long had a deep Caribbean influence, and the jitney service is a reflection of it.”<sup>7</sup> A “jitney” is a shared van that runs along a fixed route, like a bus, but can pick up and drop off passengers anywhere along that route, like a taxi. The name derives from early-20th-century slang for a five-cent piece, which was at one time the standard fare.<sup>8</sup> Although jitneys no longer cost a nickel to ride—Miami’s jitneys charge



*Jitney vans have long been an ideal startup business for aspiring entrepreneurs.*

\$1.50—they are still an affordable and convenient means of transportation.

Because they do not require a great deal of financial capital or education, jitneys are an ideal startup business for aspiring entrepreneurs, as was accidentally demonstrated in 1989 when it was discovered that the Florida legislature had “created a legal loophole that permitted competitive, unregulated services like jitneys.”<sup>9</sup> The loophole was created by a 1981 bill that “barred local governments from regulating intercity transportation services.”<sup>10</sup> Within months of this loophole being discovered by enterprising drivers, “over 20 jitney firms had emerged to serve the accidentally created market.”<sup>11</sup> These firms prospered, attracting 43,000 to 49,000 passengers per weekday, “about 20 percent as much as the public transit system.”<sup>12</sup>

The new jitney companies flourished because they were good at what they did. According to one report on the industry, “After a week of jitney and transit riding, two reporters from the Miami Herald found jitneys to be far superior in terms of service frequency, speed, and ‘friendliness.’”<sup>13</sup> The jitneys were also profitable, averaging a 40-cent profit per passenger compared to the subsidized Metrobus’ loss of more than a dollar per passenger. Surprisingly, most of the jitney customers were not switching over from public transportation. According to a report from the Reason Foundation, “[O]nly about 23 percent of the jitneys’ ridership represent[ed] diversion from the bus system.”<sup>14</sup>

The explosion of jitney service in Miami was a textbook example of the dynamism of free markets. Left to their own devices, entrepreneurs rushed to satisfy Miamians’ transportation needs. Before long, as the Reason report noted, “The jitneys were considered such a vital part of Miami’s transportation system that the Federal Emergency Management Agency contracted with up to 350 jitneys to provide emergency transportation services following Hurricane Andrew in 1992.”<sup>15</sup>

Unfortunately, the success of the deregulated jitney market was also its undoing. In response to lobbying by the jitneys’ competitors in the taxi industry and public transit, the state legislature returned control of the jitney market to the counties, and Miami-Dade County ended the unregulated jitney market in 1991.<sup>16</sup> The nonprofit Independence Institute reported, “The reason for ending jitney service was political. The government simply did not feel comfortable allowing the private sector to compete against a public sector monopoly bus system.”<sup>17</sup>

Since then, the jitney market has stagnated. There are currently 13 carriers licensed to provide jitney service in Miami-Dade County, the same number as a decade ago.<sup>18</sup> Others can apply, but it takes three to six months just to get the application considered.<sup>19</sup> Even more problematic, applicants find themselves pitted against their future competitors, both public and private. In order to be granted permission to operate a jitney service, applicants must demonstrate that their services will not “adversely affect the existing transportation structure.”<sup>20</sup> Think about that for a moment: the applicant is required to demonstrate to the government that they will not compete against existing service providers. Applicants must also get approval for a proposed route, which may not overlap more than 30 percent with any existing public-transit route. Again, government power is used to prevent one business from competing against another more politically powerful enterprise. According to an official interviewed for this report, this requirement is a major hurdle; most existing jitney routes have been grandfathered in and would not be able to meet this requirement today. Additionally, if passengers in a given area are already being picked up on average every 29 minutes, it

is presumed that additional service is not in the “public interest.”<sup>21</sup> Finally, any “interested party” in the ground-transportation industry has the right to object to any application to provide additional jitney service. But asking established transportation providers whether Miami needs more jitneys is like asking Burger King whether Miami needs another McDonald’s. The results are predictable: Established jitney companies, taxi drivers or the transit union invariably protest new entrants, and licenses are almost never granted.

Father Eduardo Alvarez, the pastor at Gesu Church, the oldest Catholic Church in Miami, has seen firsthand the harm caused by the lack of inexpensive, reliable transportation in Miami. Because the elderly disproportionately rely on buses, which run infrequently, he often sees his elderly parishioners anxiously checking their watches so they can be certain not to miss their ride home. He thinks that a more-robust jitney market would allow these parishioners to relax and enjoy their religious services, confident that they won’t be forced to wait an hour or more for a bus in the sweltering Miami heat. Miami’s stagnant jitney market also harms the poor. A survey conducted during the heyday of Florida’s experiment with unlicensed jitney markets found that 78 percent of Miami’s jitney riders earned below \$20,000 per year.<sup>22</sup>

Florida’s unintentional experiment with jitney deregulation proves that there is a solution to Miami-Dade’s public-transportation nightmare: The government needs to get out of the way. Although the county certainly has an interest in ensuring that jitney vans are safe and that drivers are qualified and insured, the government has no interest in preventing the entry of safe vehicles and drivers into the transportation market. Doing so doesn’t just harm drivers trying to earn an honest living, it also harms those who rely on their services.



*If the county wants to improve transportation services while simultaneously assisting some of its poorest and hardest-working residents, it should limit regulations on taxicabs to those designed to protect public health and safety, abandon the medallion system and let the market determine the optimal number of taxis.*

## Taxis

Entry into the Miami taxi market is severely restricted by the city’s medallion system of taxicab licensing. Although Miami-Dade County has a population of more than 2.5 million residents, there are only 2,089 medallions, meaning that there is approximately one cab for every 1,200 people in the county. By comparison, New York City’s heavily regulated taxi market has more than twice as many cabs per resident as Miami-Dade County does.

Because of the scarcity of medallions, most drivers are forced to lease their medallions from other people, paying them as much as \$350 per week.<sup>23</sup> That is more than \$18,000 per year just for the opportunity to drive a taxi on the streets of Miami, a shocking amount when one considers that, after these expenses, a taxi driver may take home only between \$300 and \$350 for 84 hours of work.<sup>24</sup>

Additional medallions are issued by lottery. These lotteries are not held on any scheduled basis, but rather are held only when specially approved by the Miami-Dade Board of County Commissioners. This has resulted in the entrenched taxi industry lobbying heavily against holding lotteries. According to an official interviewed for this report, the county has not held a lottery to issue unrestricted medallions in nearly three years and does not plan on doing so anytime soon.<sup>25</sup>

When the county does hold lotteries, all entrants are required to pay a nonrefundable entrance fee and an investigative/processing fee.<sup>26</sup> During the 2006 lottery, these fees were \$100 and \$170, respectively.<sup>27</sup> Additionally, only those who have held a chauffeur’s license for five years preceding the lottery are eligible to win.<sup>28</sup> Drivers may be eligible for multiple lotteries based on the number of years driven, the areas they intend to drive in, and whether they are honorably discharged veterans. Drivers are permitted to enter multiple lotteries, but must pay the \$100 fee for

each lottery entered. So, for example, a military veteran with 20 years of experience driving in South Miami-Dade would be eligible for four different lotteries, and would have to pay \$570 total to enter all of them. Drivers lucky enough to be selected in the medallion lottery must front \$25,000 within 120 days of being selected.<sup>29</sup> But compared to the lease rates or the cost of the secondary market, that is a bargain.

For drivers who don’t win the lottery, the cost of buying an existing medallion on the secondary market is prohibitive—medallions can sell for \$200,000 or more.<sup>30</sup> According to a 2007 report on Miami’s taxi riders, to shoulder this cost, “Drivers have to borrow funds on an informal secondary financial market with 10% or more interest rate.”<sup>31</sup> On top of this, any sale of a medallion must be approved by the county, and sales will only be approved if the purchaser has held a chauffeur’s license for five years preceding the sale.<sup>32</sup> The end result of this system is that, despite an increasing demand for alternatives to public transportation, new drivers cannot easily enter the market and existing drivers are kept poor by the artificially high cost of leasing their right to work.

The government-created artificial scarcity caused by the medallion system does nothing but enrich a handful of medallion holders at the

expense of both drivers and the riding public. If the county wants to improve transportation services while simultaneously assisting some of its poorest and hardest-working residents, it should deregulate its taxi market by abandoning the medallion system and letting the market determine the optimal number of taxis.

### Street Vending

For some, street vending is a first step up the economic ladder. For others, like Marcelo Segundo, it is a low-overhead means of supplementing their other income. Marcelo epitomizes entrepreneurship and believes, “There’s nothing like owning your own business.”<sup>33</sup> He appreciates the freedom of being his own boss. So, after years of working successfully as a welder, he wanted to branch out into a second business: selling flowers.

Drawing on his unique talents, Marcelo built his cart from scratch, welding it onto a jet-ski trailer that he bought used for \$200. Altogether, the material for his cart and the flowers he needed to start his business cost about \$1,100. But stationary vendors like Marcelo, who pays a local business owner a percentage of his flower sales in exchange for a parking space in which to set up his cart, are required to obtain a license called a “business-tax receipt” from the city. Marcelo had to pay \$439 for his city business-tax receipt—more than 25 percent of the total start-up cost of his business—before he could sell a single flower. This fee is the same

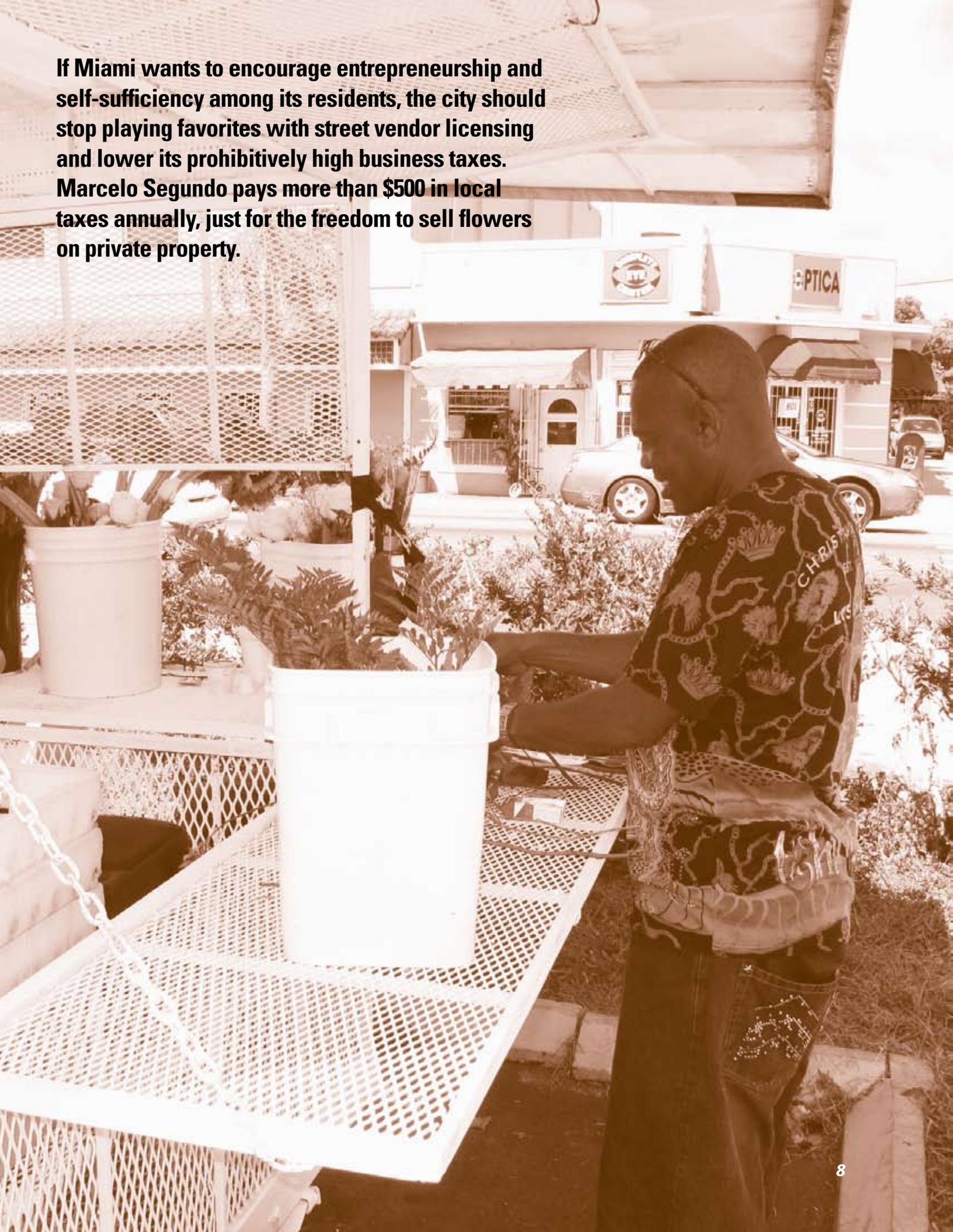
whether the vendor operates on private property, as Marcelo does, or whether the vendor operates on public property.

In addition to getting a business-tax receipt from the city of Miami, Marcelo was also required to get one from Miami-Dade County.<sup>34</sup> This cost another \$60.<sup>35</sup> Both business-tax receipts are good for only one year, and the city’s fees have subsequently been raised to \$473, which means that Marcelo must pay more than \$500 in taxes annually just for the freedom to sell flowers on private property. Not all peddlers, however, are required to pay this much. In fact, Miami’s local business tax for peddlers varies wildly depending on the product sold. If Marcelo sold fruit instead of flowers, the business tax would have been only \$99; if he sold rubber balloons, it would have been only \$16.<sup>36</sup> Indeed, only one category of peddlers is required to pay more for the right to do business in Miami—wholesale food peddlers pay \$630 per year.<sup>37</sup> But outrageous taxes are only a small part of the challenges street vendors face. Indeed, in some ways, Marcelo is one of the lucky vendors—for vendors who want to sell in downtown Miami, starting a business is even more difficult.

Vending in downtown Miami is strictly limited to food and flowers; other merchandise is not permitted. There is also a cap on the number of vendors. While the law permits as many as 75 vendors in the downtown area,<sup>38</sup> the actual numbers are much lower because the city is not required to issue all 75 licenses. Instead, each year, the Downtown Development Authority holds a lottery to distribute however many licenses it believes are appropriate. For the 2008-2009 lottery, that amounted to only 28 licenses. Making matters worse, a new lottery is held to reapportion the licenses every year, which means that even if you are lucky enough to operate as a street vendor in one year, there is no guarantee that you will be allowed to do so the following year. And even if a vendor does win the lottery two years in a row, they are not permitted to vend from the same location two years in a row.<sup>39</sup> That means a vendor can’t really invest in or develop her business. She might not be in business at all next year, and even if she is, she will probably be far away from the loyal customers of the previous year.

Although there is no fee to enter the lottery, doing so is not easy. Just to submit an entry in the 2008-2009 lottery, an aspiring vendor was required to already have obtained:

**If Miami wants to encourage entrepreneurship and self-sufficiency among its residents, the city should stop playing favorites with street vendor licensing and lower its prohibitively high business taxes. Marcelo Segundo pays more than \$500 in local taxes annually, just for the freedom to sell flowers on private property.**



- An occupational license from the City of Miami;
- An occupational license from Miami-Dade County;
- A license from the Florida Department of Business and Professional Regulation if the vendor intends to sell prepared foods like hot dogs (\$347 + \$50 application fee); or a license from the Florida Department of Agriculture if the vendor intends to sell only pre-packaged food or fruit (\$300 + \$10 epidemiology fee); or a license from the City of Miami if the vendor intends to sell confections like gum, cookies or candy (\$61);
- State and local tax certificates;
- A certification from the Department of Revenue that all taxes have been paid;
- A current DMV registration and plate number of the cart;
- A “Cart Certification Form” signed by three different bureaucrats from three different departments;
- Insurance coverage of at least \$500,000 “for bodily injury, and property damage respectively per occurrence.”<sup>40</sup>

Because entry into the lottery is no guarantee of success, it is entirely possible for a vendor to acquire a cart

and all of the required licenses and then not be permitted to sell her goods in downtown Miami. Those vendors who do win the lottery must pay \$20, \$50 or \$100 per month in rent, depending on the location they vend from.<sup>41</sup>

If Miami wants to encourage entrepreneurship and self-sufficiency among its residents, the city should stop playing favorites with street vendor licensing and lower its prohibitively high business taxes. If balloon sellers need only pay \$16 for the “privilege” of doing business in Miami, there is no good reason why flower sellers like Marcelo should have to pay almost 30 times that amount. The city should also eliminate the artificial cap on vending in the downtown area, which makes it impossible for vendors to start and maintain a stable business. Regulations should be limited to those that genuinely protect the public’s health and safety, rather than those that are purposefully designed to limit economic opportunity.

### *Home-Based Businesses*

For many aspiring entrepreneurs, a home-based business is the perfect way to start climbing the economic ladder. But like everything in Miami, starting a home business requires paperwork. Before entrepreneurs may open a home business, they must first apply for a Class II Special Permit.<sup>42</sup> Failure to obtain this permit before opening a home business is punishable by a \$500 fine and up to 60 days in jail.

The process of getting a home-based business approved can take up to two months and is by no means easy. One attorney who has been through the process described it as a “horrible, horrible experience. I would never do it again.” Among other things, the process involved acquiring the original building plans for her condominium, taking photos of both the exterior of the building and her home office, and sending certified letters to neighbors and local homeowners associations to give them the opportunity to object to her home law practice, even though she never sees clients at her home. According to this entrepreneur, mailing the letters alone cost nearly \$150. Her complaints were echoed by Cristina Maria Lloyd, owner of OuttaSpace, Inc. As a professional organizer, Cristina can usually accomplish



The Coral Gate neighborhood has been declared a “Neighborhood Conservation District,” where all home-based businesses are banned.

paperwork on “autopilot,” but even she found the process bewildering. And if lawyers and professional organizers find the process of starting a home-based business daunting, just imagine how everyone else must feel.

In addition to the sheer burden of applying for a home-based business, the city also severely limits the types of permissible home businesses and the manner in which they can be run. First, home occupations are strictly limited to “[a]rchitect, artist, broker, consultant, dressmaker, draftsman, engineer, interior decorator, lawyer, manufacturer’s agent, notary public, teacher (excluding band instrument, and group instruction), and other similar occupations.”<sup>43</sup> A home business also may not be conducted by more than two people, even if all of them live on the premises.<sup>44</sup> Other restrictions include prohibitions on any visible changes to the home as a result of the business, any traffic greater than what would be normally expected in the neighborhood, or the use of any equipment that “creates noise, vibration, glare, fumes, or odors detectable to the normal senses off the lot.”<sup>45</sup>

Miami’s regulations of home-based businesses are wildly out of proportion to any government interest. Why should an artist who paints in a home studio, or a freelance writer who types in a home office, have to obtain *any* permission from the government before practicing their chosen occupation? These occupations have absolutely no potential to interfere with anyone else’s enjoyment of their own property. Indeed, they are unlikely to be noticed at all. Similarly, the limit on the number of people who may work in any given home-based business is needlessly restrictive. If more than two people are permitted to live in a house, there is absolutely no reason why more than two people should not be allowed to work there.

On top of these highly restrictive regulations, the city of Miami claims the power to create “Neighborhood

Conservation Districts” in which all home-based businesses are prohibited. The city used this power in 2003 to create the Coral Gate Neighborhood Conservation Overlay District.<sup>46</sup> The Coral Gate neighborhood, which is northeast of Coral Gables, covers 463 single-family homes, the residents of which are entirely prohibited from running home-based businesses.<sup>47</sup> The law creating the district states that it is designed to prevent “inappropriate commercial intrusion that may disrupt the quality of this well-maintained and stable neighborhood.”<sup>48</sup> But there is no reason to believe that allowing artists, interior decorators, dressmakers or lawyers (among many other occupations) to work from home would disrupt the neighborhood at all. Indeed, because of the other restrictions in Miami’s zoning code, it is not clear how a home business *could* disrupt the neighborhood. And if home-based businesses are not interfering with neighboring property owners’ enjoyment of their property, the city has no business imposing burdensome regulations on them.

Home-based businesses can make tremendous contributions to the economy. Some of the most successful companies in America were started in

garages. Nobody can say for certain where the next Apple or Google or Hewlett-Packard will be founded, but we do know that—as long as Miami's zoning code remains in effect—it is unlikely to be in Miami.

### Photography

Miami's natural beauty makes it an ideal backdrop for commercial photography. But before anyone can take pictures for commercial purposes on any beach or public park, they must first receive a "commercial photographic permit" from the city manager.<sup>49</sup> "Commercial purposes" is defined broadly to include "purposes other than pleasure; that is, for profit or as a profession."<sup>50</sup>

Although Miami certainly has an interest in ensuring that photo shoots do not interfere with traffic, or unreasonably interfere with the public's enjoyment of the city's parks and beaches, its blanket permit requirement for all commercial photo shoots goes too far. By comparison, the city of Miami Beach, which is no less picturesque than Miami, only requires photographers to secure a permit before taking pictures or filming "when city services are required or when productions may have an impact on traffic/residents/city services."<sup>51</sup> This is a commonsense limitation on the law that Miami could easily adopt.

### Interior Design

Florida is one of only three states in the nation that licenses the practice of interior design. First passed in 1994, Florida's interior design law makes it a crime for anyone but a licensed interior designer to practice interior design in a commercial setting.<sup>52</sup> Becoming a licensed interior designer is no easy feat—applicants must have six years of combined education and experience, including a degree in interior design from an accredited institution and an apprenticeship under another licensed interior designer, and they must pass a national certifying exam.<sup>53</sup> Until recently, unlicensed designers—who are legally allowed to perform residential interior design—were even prohibited from advertising their services, accurately, as "interior design" or any "words to that effect."<sup>54</sup>

Florida's interior design law is a classic example of industry cartelization by a special interest group. Starting in the late 1980s, the American Society of Interior Designers began lobbying aggressively for laws that would limit their competition. They succeeded first in securing passage of a "title act" in 1988, which regulated who could advertise themselves as "interior designers." On the heels of this success, they pushed for and succeeded in getting enacted a "practice act" in 1992, which severely restricts who may practice interior design in Florida. The practice act's requirements are so stringent that a significant number of interior designers practicing at the time the law was adopted could not meet them, so the law included a "grandfather" provision which exempted established designers from the requirements of the law—a demonstration in and of itself of the worthlessness and senselessness of the new law. As a result, numerous licensed interior designers lack any of the qualifications required to receive licensure today. In an industry that should rely on referrals from satisfied customers rather than a government-issued license, the law



creates an entirely unnecessary burden to entering this trade.

The grandfather provision was no help to Addie Smith, though. Addie had been a practicing interior designer since graduating from college in 1982. During that time she gained extensive experience working on both residential and commercial projects, including design work for the Wachovia Financial Center, Miami's second-tallest building. Unfortunately for Addie, she had moved out of Florida when the practice act was adopted. As a result, she missed her opportunity to be grandfathered in. Indeed, Addie didn't even know about the practice act until she moved back to Florida and tried to reestablish her business. Shortly thereafter she received a cease-and-desist letter from the private law firm that enforces Florida's interior design law ordering her to stop advertising herself as an interior designer and to refrain from offering commercial interior design services.

Addie had to spend more than \$1,000 having her website redesigned and her business cards reprinted to come into compliance with the law. But that is small change compared to the amount she has lost in design fees, which Addie estimates to be at least \$100,000. She lost one lucrative contract when a potential client who wanted to hire her for both a residential and a commercial project found out that she could legally perform only the residential work and that he would have to hire a second designer. She has also lost the opportunity to develop new residential clients through her commercial work, a common way she had found residential clients in the past.

Florida's interior design law doesn't just affect interior designers like Addie. Its sweepingly broad language makes it a crime for anyone but a licensed interior designer to make any drawing "relating to nonstructural interior elements of a building or structure."<sup>55</sup> As a result, people like business consultants and commercial office furniture dealers—indeed, anyone who has a reason to draw the placement of table or chairs in a nonresidential space—are

potentially subject to \$1,000 in fines and up to a year in jail.

There is a reason that 47 states do not regulate the practice of interior design: The trade poses no plausible risk to the public and so government regulation is completely unnecessary. Proponents of interior design licensing have never been able to produce evidence that the unlicensed practice of interior design has ever resulted in harm to anyone.<sup>56</sup> Instead, the law is a textbook example of a special-interest group using legislative power to shut out their competitors. If it is not first struck down as unconstitutional, Florida's legislature can and should repeal this absurd law.

### Barbering

Jonathan Mena<sup>57</sup> is a 28-year-old barber who runs his own salon. Jonathan started cutting hair in Honduras when he was only 12, learning the trade from his father and older brother. With 16 years of experience under his belt, he is good at what he does and his customers like his work. But every time Jonathan picks up his scissors he is breaking the law, risking fines and even jail time, because he does not have the required state license to cut hair.

Under Florida law, all barbers who have not already been licensed

in another state for at least one year must complete 1,200 hours of education at an approved barber school and pass a state-licensing exam before they are legally permitted to work.<sup>58</sup> Even individuals who perform no chemical services—like perming and waving—must complete 1,200 hours of education to qualify as “restricted barbers.”<sup>59</sup> Cutting hair without a valid license is a second-degree misdemeanor punishable by a \$500 fine or even 60 days in jail.<sup>60</sup>

Attending barber school is not cheap. Jonathan, who attended school but has not taken the licensing exam, paid \$10,000. This is a substantial barrier to entry, particularly when one considers the annual salary for barbers in Florida ranges from a high of \$42,770 to a low of \$14,810.<sup>61</sup> And for Jonathan, it was a barrier that made him into a criminal—because his most marketable skill was barbering, Jonathan put himself through school by performing unlicensed haircuts.

These licensing requirements are particularly burdensome for

immigrants like Jonathan, who come from countries with less regulation. When he came to the United States at age 18, Jonathan had already been cutting hair for six years. But none of that experience mattered in Florida because Jonathan had never been licensed anywhere. Despite his practical experience, Jonathan was still required to attend an expensive barber school that taught him nothing he didn't already know.

Oddly, although the state claims that these regulations are “necessary in the interest of public health, safety, and welfare,”<sup>62</sup> Florida does not require barbers to demonstrate any actual proficiency at barbering. Effective October 1, 2009, Florida abolished its practical examination for barbers.<sup>63</sup> On the one hand, the elimination of this additional barrier to entry is a positive development. On the other hand, licensing barbers on the basis of a multiple-choice test with 100 questions—only 30 of which relate to safety, sanitation and sterilization—seriously undermines the supposed rationale for requiring 1,200 hours of education at a cost of thousands of dollars. Instead, it reveals these regulations for what they really are: protection from competition and guaranteed income for the cosmetology-school lobby.

Instead of saddling would-be barbers with thousands of dollars in educational debt, the public would be equally well-served by simply requiring that barbers pass a basic sanitation test and hold a modest amount of insurance. This would greatly lower the barrier to entry and allow barbers to sink or swim based on their talent and the satisfaction of their customers.



*Licensed cosmetologist Kattie Cabrera thinks Florida's licensing regime does little to benefit consumers.*

## Cosmetology

Cosmetology—which includes hair styling, manicures, pedicures, facials and hair removal—is regulated much like barbering. Just like barbers, aspiring cosmetologists must attend 1,200 hours of school and pass a multiple choice exam.<sup>64</sup> Cosmetologists in Florida also earn salaries similar to those earned by barbers, between \$13,880 and \$39,070.<sup>65</sup> And, just like barbers, many cosmetologists find Florida's barriers to entry insurmountable.

Cosmetologist Enzo Church,<sup>66</sup> like barber Jonathan Mena, learned his trade by doing. Enzo began styling hair when he was 15. Before long, he was offering \$5 haircuts to his neighbors for the opportunity to practice. Now 28, he has 13 years of experience and clients who are uniformly happy with his work. Enzo thinks that client satisfaction is the ultimate test of whether a cosmetologist is good or not, and that the free market is a sufficient check on bad cosmetologists.

Also like Jonathan, Enzo is not licensed by the state to practice his chosen occupation. Enzo has chosen not to get licensed not just because of the expense and hassle, but also because he resents the state regulating what he sees as a fundamentally creative occupation. “How can you license an art?” he asked. As a result, every time Enzo picks up a blowdryer or a brush, he risks fines and jail time.<sup>67</sup>

Does it make sense to treat talented but unlicensed cosmetologists like Enzo as criminals? Kattie Cabrera does not think so. Kattie is a cosmetologist who spent a year and a half and \$12,000 to become licensed. But she doesn't think that education is what makes her a good cosmetologist, or that it

necessarily makes her any better than an unlicensed cosmetologist. Indeed, in her experience, cosmetology schools care a lot more about collecting tuition from as many students as possible—often in the form of government financial aid—than they do about providing a good education. As a result, she says, there are plenty of licensed cosmetologists who aren't as skilled as unlicensed cosmetologists who learned their trade through practice or apprenticeship.

Kattie is also bothered by the fact that cosmetologists must attend 1,200 hours of school when the state does not require any practical demonstration of skill to become licensed. Much like barbering, aspiring cosmetologists who have met the educational requirements need only take a multiple choice test consisting of 130 questions, only 22 of which concern “general safety and sanitation procedures.”<sup>68</sup> Because Kattie learned all of the material on the test within her first 300 hours of cosmetology school, it does not make sense to her that she had to spend thousands of dollars and an additional 900 hours in class merely to qualify to take the licensure exam.



**There are plenty of licensed cosmetologists who aren't as skilled as unlicensed cosmetologists who learned their trade through practice or apprenticeship.**

As with barbers, Florida could regulate cosmetologists without requiring full-blown licensure. A test focusing on sanitation and the safe use of chemicals, along with a modest insurance requirement, would be sufficient to satisfy the state's interest in protecting public health and safety. Nor would this approach be unprecedented—indeed, Florida has some experience with deregulation of cosmetology services. In 1994, Florida exempted hairbraiders from the state's cosmetology laws.<sup>69</sup> Under the revised law, hairbraiders need only pay a \$25 registration fee and take a two-day, 16-hour sanitation course.<sup>70</sup> Florida's success with the deregulation of hairbraiding demonstrates that market forces can ensure the quality of cosmetology services. This is not surprising. As Enzo succinctly put it, "If someone gave you a bad haircut, would you go back to them?"

### *Teeth Whitening*

Teeth-whitening services are an increasingly common sight at shopping malls and salons. Typically these businesses sell their customers a teeth-whitening product and then provide their customers with a place to use the product and instruction on how to apply the product to their own teeth. These services have become popular not only because of the convenience they offer, but also for their price—teeth-whitening kiosks typically charge less than half as much as dentists do for similar services.

Because these businesses can undersell dentists, it is no surprise that dental boards across the country have begun cracking down on them.<sup>71</sup> And Florida's Dental Board is no exception. In the last several years, it has begun sending cease-and-desist letters to teeth-whitening businesses, accusing them of practicing dentistry without a license.

Whether or not teeth whitening technically falls within Florida's broad definition of dentistry,<sup>72</sup> granting dentists a monopoly on these services makes no sense. The FDA regulates teeth-whitening products as cosmetics, which means that anyone, even a child, can purchase these products in any commercially available concentration and apply them to their own teeth without any supervision or instruction. It is simply not plausible to believe that teeth whitening poses a special risk when instructions are provided orally,

as opposed to written on the side of a box of Crest Whitestrips, or when the whitening is performed in a salon—the cleanliness of which is regulated by the state<sup>73</sup>—as opposed to being performed in someone's home. In any event, whatever risks teeth whitening may present, these risks can be addressed without requiring entrepreneurs to have eight years of higher education before than can legally offer these services. Florida should follow the lead of the Ohio State Dental Board, which has taken a hands-off approach, allowing non-dentists to continue offering teeth-whitening services "so long as the consumer applies the whitening material to their own teeth, and no one else places their hands in the consumer's mouth."<sup>74</sup>

### *Massage*

In Florida, anyone can give a backrub for free. But if you want to soothe aching muscles for compensation—whether with a simple shoulder rub or with deep-tissue massage—you must be a licensed massage therapist. Practicing without a license is a first-degree misdemeanor, punishable by up to a \$1,000 fine or one year in jail.<sup>75</sup>

Becoming a licensed massage therapist in Florida requires 500 hours of education, which must be completed at a rate no greater than 30 hours per week.<sup>76</sup> As a result, the required education takes more than four months to complete. And this education is expensive—one school in the Miami area contacted for this

report quoted \$8,700 for tuition, with a total cost of almost \$9,500 when books and fees were added in.

It is possible to avoid this tuition by apprenticing under a licensed massage therapist, but this is not an attractive option for most people. Florida law requires that any apprenticeship last at least 12 months and comprise 1,668 hours of instruction and experience—more than three times the amount required for individuals who attend massage school.<sup>77</sup> This disparity is not surprising—licensure requirements are often pushed by school owners who want a guaranteed income stream from student tuition, and liberal apprenticeship policies undermine that goal.

Licensing massage is not necessary to protect the public. Injuries from massage are extremely rare. One review of published articles over a 38-year period found only 11 reported cases of injuries.<sup>78</sup> In 2000, the International Massage Association, which provides insurance for massage practitioners, reported that with more than 30,000 members, it averaged about one claim per month.<sup>79</sup> And most of these claims were not even related to the practice of massage. Instead, they were general liability claims, like trips and falls.<sup>80</sup> Further evidence that injuries are rare can be found in the low insurance premiums for massage therapists, which range between \$65 and \$149 per year.<sup>81</sup> To put those premiums in perspective, in 2005 the average malpractice insurance premium for physical therapists was more than twice as much at \$348, while a 2003 report by the U.S. General Accounting Office found that the average annual premium for general surgeons in Dade

County in 2002 was \$174,300, more than 1,000 times higher.<sup>82</sup>

Because massage is generally safe, it is not surprising that a number of states, including Alaska, Idaho, Kansas, Minnesota, Oklahoma, Vermont and Wyoming, do not license the practice of massage. Florida should follow these states and replace its licensure regime with a modest insurance requirement. Alternatively, Florida should liberalize its apprenticeship requirements to make apprenticeship a more feasible means of entering the occupation without incurring thousands of dollars in educational expenses.

### *Fish Pedicures*

Not pedicures for fish, but rather pedicures *by* fish. As unusual as it sounds, this procedure involves tiny carp that painlessly remove dead skin from the customer's feet. But, proving that no service is too trivial to escape the attention of state bureaucrats, Florida has preemptively prohibited spas and salons from offering this increasingly popular service.<sup>83</sup>

Florida's prohibition of this service is a symptom of a larger problem with government regulation: Rather than looking at whether anyone had ever been harmed by the procedure, or working with salon owners to minimize whatever risk the state was concerned might exist, the government simply banned the practice. And while banning this one practice may have a relatively small effect on the economy, the cumulative effect of government's predilection toward banning new or unusual services is a drag on the economy that stifles entrepreneurship and harms consumers.

### *Red Tape*

In addition to the regulations that apply to the specific occupations discussed above, Miami entrepreneurs must also deal with a tremendous amount of government red tape. Beyond simply adding to the cost of doing business, this red tape places tremendous power in the hands of bureaucrats to determine who will be allowed to open a business. In turn, this unchecked power has bred a culture of corruption.



It took Miami artist Marta Ismail more than six months to get government permission to add a simple awning to her gallery.

### General Permitting Delays

The most widespread complaint among entrepreneurs interviewed for this report was dealing with all of the paperwork necessary to legally open their business. One owner of a local dry cleaner reported waiting nearly one year to receive a certificate of use and occupancy for her business. Throughout that entire time, she and her business partners had to pay rent on their commercial space, but were forbidden from actually running their business to earn money for the rent.

Diana Ruiz, who owns a Cuban café in downtown Miami, reported dealing with similar delays when she first purchased her property. It took her a year to get a certificate of use and occupancy for her restaurant, which had already been operating as a restaurant for years before she purchased it. And the city’s permitting officials were no help. As Diana found out, “They pass you from desk to desk.”

One entrepreneur, who had started several businesses, reported that he dealt with the long delays for permits by ignoring them. Rather than endure the interminable wait to receive official approval from the city, he would simply open his business and begin operating. On those occasions when he got caught, he would pay a fine, but he saw it as simply the cost of getting a business up and running in Miami.

Several entrepreneurs interviewed for this report also complained about the inspections necessary to get the required permits. The wait for inspections was long, and more than one person commented that inspectors make clear that the process can only be speeded up with bribes.

### Historical Zoning

Visitors to Miami often make their way to 8th Street, known locally as *Calle Ocho*, which runs through historic Little Havana. But Little Havana’s historic character comes with a price for local businesses, which must get government permission for even minor alterations to the face of their buildings.<sup>84</sup> And like all permitting in Miami, getting permission takes a long time.

Marta Ismail, an artist who runs her own gallery on *Calle Ocho*, learned just how long it can take when she wanted to install an awning over her front door to better display her gallery’s name and to provide some welcome shade from the brutal Miami sun. So Marta got her paperwork in order and then waited. And waited. And waited. It was not until seven months later that Marta finally got permission to add the awning to her building. Other business owners along *Calle Ocho* described similar delays for minor cosmetic changes. Noted one frustrated business owner, “You want to change the paint, you need a license for that. You want to change the window, you need a license for that.”

The problem with these delays is not just that they interfere with the rights of business owners to maintain their property. Even more troubling is that giving bureaucrats unfettered discretion to grant or deny permits



Little Havana's historic character comes with a price for local businesses, which must get government permission for even minor alterations to the face of their buildings. Marta Ismail waited seven months for the city to grant permission for an awning outside her gallery.

breeds a culture of corruption. Several of those interviewed for this report stated that permits could be obtained substantially faster, but only for the right price. “Things move quicker if you pay,” noted one.

### *Going-Out-of-Business Sales*

Starting a small business is a risky endeavor. About 30 percent of small businesses fail within the first two years, and nearly 50 percent fail within the first four years.<sup>85</sup> But in Florida, entrepreneurs who roll the dice on starting a small business and lose are subject to a final layer of unnecessary bureaucracy—under state law, no business may conduct a “going out of business” sale without first getting permission from the government.<sup>86</sup> To get permission, the business owner must file an application with the tax collector and pay a nonrefundable \$50 fee.<sup>87</sup> As part of the application process, the business owner must provide an itemized list of *all* of the goods to be sold. If the application is granted, the business owner may advertise the sale, but must be careful to include a precisely worded disclaimer.<sup>88</sup> The business owner must also maintain a list of all remaining stock, updated daily and available for inspection by the sheriff during business hours.<sup>89</sup>

It is not clear what benefits Florida’s “going-out-of-business” law is supposed to produce. If the state is concerned that business owners are deceptively advertising going-out-of-business sales when they are, in fact, not going out of business, that activity is already illegal under Florida’s misleading-advertising law.<sup>90</sup> Nor is it clear that even a falsely advertised “going out of business” sale harms anyone—if a customer is satisfied that he’s found a good deal, it shouldn’t really matter whether the business is actually going out of business. But while the law’s benefits are questionable, its burdens are

quite clear—violating any portion of law, even by truthfully advertising a going-out-of-business sale without first getting permission, is a class two misdemeanor punishable by up to 60 days in jail or a \$500 fine.<sup>91</sup>

Florida’s “going out of business law” is an unfair trap for unwary business owners who would not imagine they have to get the state’s permission before selling off their stock and closing up shop—a final, unnecessary insult on top of the injury of losing a cherished business.

### *Bright Spots*

Despite the burdens that affect so many entrepreneurs in the Miami area, there are a few bright spots. In a small number of areas, Florida has taken important steps toward making it easier to enter the job market. Florida has also experimented with innovative ways of reducing the regulatory burdens on entrepreneurs.

#### *Hair Braiding, Hair Wrapping & Body Wrapping*

Beginning in the mid-1990s, Florida began exempting a handful of aesthetic practices from the state’s burdensome cosmetology regime.

The state started with hair braiding in 1994, and then expanded the exemption to include hair wrapping in 1998 and body wrapping in 1999.<sup>92</sup> Under the revised laws, hair braiders are only required to register with the state, pay a \$25 fee, and take a 16-hour, two-day course covering “5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.”<sup>93</sup> Hair wrappers—who decorate hair by wrapping it with colored thread or material—must also register and pay a \$25 fee, and need only take a one-

day, six-hour course.<sup>94</sup> Finally, body wrappers—who apply “herbal wraps for the purposes of cleansing and beautifying the skin”<sup>95</sup>—must register, pay a \$25 fee, and take a similar two-day, 12-hour course.<sup>96</sup>

These commonsense exemptions make entry into these safe fields much less expensive. According to the Florida Department of Business and Professional Regulation, in Miami there are 191 active, currently licensed hair braiders, 152 hair wrappers and a remarkable 843 body wrappers.<sup>97</sup> And the benefits of easy entry into these fields do not merely accrue to individual entrepreneurs, but also to the individuals they employ and the community more generally.<sup>98</sup> Florida should use its experience with deregulating these practices as a model for future legislative changes. Within any licensed occupation, there are undoubtedly practices that may be performed safely without requiring full-blown licensure. Where that is the case, those practices should be exempted and subject to only minimal regulation.

### *Traffic Schools*

In the mid-1990s, Florida deregulated its traffic schools. Although schools are required to teach from an approved curriculum, they are not subject to inspection or other regulation by the state. As a result, the industry has flourished. According to a report in the *St. Petersburg Times*, “In the early 1980s, there was only one traffic school available in Florida, run by the National Safety Council.”<sup>99</sup> But between

**Florida should use its experience with deregulating these practices as a model for future legislative changes. Within any licensed occupation, there are undoubtedly practices that may be performed safely without requiring full-blown licensure.**



*Florida's Sunset Commission eliminated licensing for watchmakers and clockmakers, shorthand reporters, sanitarians, and yacht and ship brokers.*

1994—the year the industry was deregulated—and 2003, the number jumped to 215. Today, the Yellow Pages lists 48 traffic schools in Miami alone. This explosion of new schools is attributable in part to the low start-up cost. As one St. Petersburg-area entrepreneur described it, “You can operate these things with very low overhead: Just rent a room in a motel and hold the class there . . . Especially if you don’t have your own classroom. You could even operate out of your house.”<sup>100</sup>

Along with this increase in the number of schools has come innovation in methods of teaching, with schools now offering online and video courses, and even comedy traffic courses. Competition has also driven down prices. In short, by deregulating the traffic-school business, Florida has created new opportunities for entrepreneurs to offer more, better and cheaper services to Florida consumers.

### **Sunset Review**

In response to growing concerns about government bureaucracy, the Florida Legislature in 1976 enacted a “Sunset Law” that required that all legislation regulating entry into professions and occupations be subject to periodic review and reauthorization.<sup>101</sup> Such legislation was also required to contain an expiration date so that agencies that were not reauthorized would automatically expire after no more than six years.<sup>102</sup> Florida’s Sunset Law was initially successful—within two years of its creation, Florida’s sunset commission eliminated licensing for watchmakers and clockmakers,

shorthand reporters, sanitarians, and yacht and ship brokers.<sup>103</sup>

Unfortunately, in 1991 the Florida Legislature passed legislation that repealed the Sunset Law effective April 5, 1993.<sup>104</sup> But in 2006, the Florida Legislature restored sunset review with the passage of the Florida Government Accountability Act.<sup>105</sup> Under the new law, the Department of Business and Professional Regulations, which oversees all occupational licensing in Florida, is set for review by July 1, 2016, and every ten years thereafter.<sup>106</sup> The Joint Sunset Committee that oversees this review process should closely scrutinize Florida’s occupational licensing and recommend the elimination of licensure for safe, common occupations like barbering, cosmetology, interior design and massage.

## Recommendations

Miamians have a strong spirit of entrepreneurship. Many of them came to this country specifically to fulfill their dreams of a better, more self-sufficient life. One recent survey of the 15 largest metropolitan centers in the United States ranked Miami fifth in terms of entrepreneurial activity.<sup>107</sup> This entrepreneurial drive is a tremendous natural resource that is waiting to be unleashed. But to unleash this potential and improve the lot of Miami's entrepreneurs, significant changes need to occur at the city, county and state level:

### City Level

- The city should lower its prohibitively high taxes for street vendors and eliminate artificial vending caps in downtown Miami. At a minimum, the city should issue vending licenses up to the legal maximum, rather than restricting vending more than the law requires.
- Miami must dramatically reduce the red tape associated with opening and operating a business. Time-consuming and expensive zoning and permitting requirements are not in anyone's interest.
- The city should eliminate corruption from the permitting process by setting clear standards for granting or denying permits, making the process more transparent, and imposing time limits on bureaucratic decisions. Without the power to arbitrarily delay or deny permits,

the opportunity for bureaucrats to extract bribes from business owners will be greatly reduced.

- Home-based occupations that do not cause neighborhood disruption should be totally deregulated, even in neighborhood conservation districts.
- The city's absurdly low two-person cap on workers in home-based businesses should be raised or eliminated. If a home can safely accommodate more than two residents, it can accommodate more than two workers.
- Miami should adopt commonsense reforms to its photography-licensing ordinance by eliminating the license requirement for photo shoots that do not use city services or interfere with traffic or pedestrians.

### County Level

- Miami-Dade County should reform its abysmal transportation industry by eliminating artificial barriers to entry.
- The taxicab medallion system should be scrapped. Entrepreneurial drivers and their customers—not government officials—should determine how many cabs should be on Miami's streets. At a minimum, the number of medallions should be greatly increased, with new medallions issued annually, not at the whim of existing medallion-holders.

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- The county should allow free entry into the jitney market (requiring only those regulations specifically designed to protect the public's health and safety, such as requiring a valid driver's license, insurance, etc.) and remove restrictions designed to protect incumbents from competition. Jitneys put people to work and take people to work. History shows that Miami's jitney market will flourish if it is left free to do so.

### *State Level*

- Florida's legislature should eliminate licensing for safe, common occupations like interior design, barbering, cosmetology and massage, which does nothing but insulate established businesses from competition and provide a steady but ill-gotten income stream for politically influential schools that train individuals in these trades.
- Florida should follow the Ohio State Dental Board's lead and allow non-dentists to offer teeth-whitening services.
- The legislature should limit occupational regulations to the protection of public health and safety, and allow customer satisfaction to determine success or failure in the market. Most comprehensive licensing regimes—like barbering, cosmetology and massage—could be replaced with limited requirements for insurance coverage and training in sanitation and safety.
- Where deregulation of a licensed profession is not feasible, the legislature should create alternative means of qualifying for entry into the occupation, so that entrepreneurs like Jonathan Mena, who are already proficient, can bypass redundant educational requirements.
- State officials should remain tolerant of innovation in the market. If there is no evidence that an emerging business has caused harm elsewhere—as is the case with fish pedicures—then that business should be left alone until there is reason to believe that it raises genuine health or safety concerns.
- The state should eliminate the permit requirement for going-out-of-business sales. When an entrepreneur's business is failing, the last thing he or she needs to deal with is more red tape. Concerns about false advertising are adequately addressed by other provisions of Florida law.
- The Joint Sunset Committee should aggressively apply sunset review to eliminate unnecessary occupational licensing.

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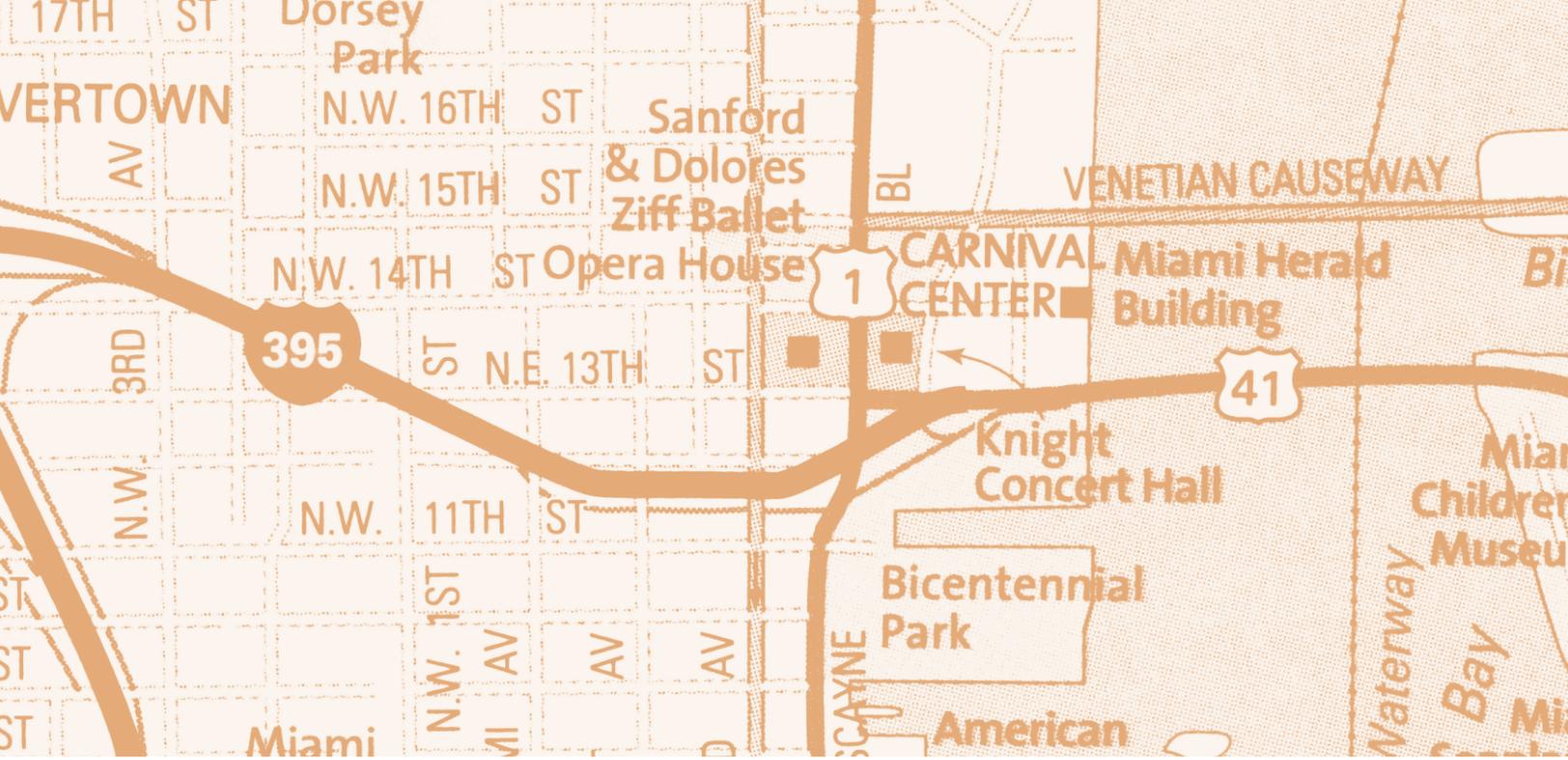
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