

# Home-Based Business and Occupation Act

August 16, 2020

To allow and promote home-based businesses, this model builds on the longstanding practice in zoning laws of allowing home occupations as an accessory use in residential homes.

## Section \_\_\_\_\_. Home-based occupations.

- (a) An ordinance adopted under this (zoning enabling act)<sup>1</sup> shall provide<sup>2</sup> for the use<sup>3</sup> of a residential home or accessory structure,<sup>4</sup> by a resident of the home or accessory structure,<sup>5</sup> for a home occupation.<sup>6</sup>
- (b) Inside the home or accessory structure,<sup>7</sup> a zoning or other ordinance may not:
  - (1) Prohibit a home occupation from serving clients by appointment;<sup>8</sup>
  - (2) Prohibit two or fewer nonresident employees from working at the home occupation;<sup>9</sup>
  - (3) Prohibit or require structural modifications for a home occupation;<sup>10</sup>
  - (4) Restrict the amount of floorspace a home occupation may use;<sup>11</sup> or
  - (5) Restrict storage or the use of equipment that do not produce effects outside the home or accessory structure.<sup>12</sup>
- (c) Outside the home or accessory structure,<sup>13</sup> a (municipal government)<sup>14</sup> retains all power under (grant of power)<sup>15</sup> to regulate external effects<sup>16</sup> that may accompany a home occupation under this section.
- (d) (Optional)<sup>17</sup> A zoning ordinance shall treat all home occupations equally, except that a zoning ordinance may disfavor or prohibit the following as home occupations:
  - (1) (*Adult-oriented businesses*)<sup>18</sup> as regulated by (*state law*).<sup>19</sup>
  - (2) (*Repeat as desired.*)<sup>20</sup>

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<sup>1</sup> (*zoning enabling act*): replace with “article,” “chapter,” or appropriate subdivision. This model’s language should be adapted to the zoning enabling act in each state.

<sup>2</sup> “*shall provide*”: subsection (a) codifies the established, near-universal custom of allowing home occupations as an accessory use in a residential dwelling. **Go to page 4 below for links to city codes.** By using the phrase “shall provide,” the model recognizes that municipal governments need flexibility to set the definitions, enforcement, and procedures in their own zoning ordinances.

<sup>3</sup> “*for the use*”: almost every municipal zoning ordinance already permits home occupations as an “accessory use,” which is the usual term for activities incidental or secondary to the primary use. To keep the model simple, and to respect the custom established by municipal governments, the only word recommended here is “use.”

<sup>4</sup> “*residential home or accessory structure*”: the Constitution strongly protects people inside their homes. “Residential” zoning is an established concept that state law need not define any further. The phrase “home or accessory structure” may be adapted if state law already defines or uses similar terms. The model avoids definitions because municipal governments need flexibility to set their own definitions.

<sup>5</sup> “*by a resident of the home or accessory structure*”: prohibits the replacement of residential homes by commercial interests foreign to the neighborhood. “Resident” includes both owner occupants and renters. Relatedly, this model does not affect private covenant restrictions or lease agreements, which are better left to contract and common law.

<sup>6</sup> “*home occupation*”: customary term for home-based business, almost universally defined and classified by municipal ordinances as an accessory use permitted by right. To minimize legal confusion, the term “home based business” is not recommended as legislative text.

<sup>7</sup> *Inside the home*: subsection (b) affirms residents’ civil rights inside their homes.

<sup>8</sup> “*serving clients by appointment*”: the government should not concern itself with a resident’s reason for inviting a known visitor inside the home. If needed, however, this clause can be modified to allow municipal hours limitations by appending the phrase “between (*open*) and (*close*).”

<sup>9</sup> “*two or fewer nonresident employees*”: for the same reason, the government should not distinguish between clients and employees inside the home—but the practice is ubiquitous. This clause accommodates municipal restrictions on more than two nonresident employees inside the home.

<sup>10</sup> “*structural modifications*”: inside the home, any structural modification that is legal under the municipal building code should be legal no matter the purpose. As part of subsection (b), this clause does not preempt municipal restrictions on *external* modifications.

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<sup>11</sup> *“amount of floorspace”*: too frequently, municipal ordinances restrict the use of indoor floorspace as a bad proxy for regulating large businesses. Floorspace restrictions, especially as a percentage of home size, impose an unfair burden on residents of small homes for no benefit. Residency requirements, like the one in subsection (a), already disincentivize large businesses without policing inside the home.

<sup>12</sup> *“storage or use of equipment”*: likewise, restricting equipment by weight, type, cost, or other attribute is a bad proxy for regulating external effects. Equipment restrictions have arbitrary results. Under many equipment restrictions, a music teacher’s piano—or a cutting edge 3-D printer—will break the law if it is too heavy, too “mechanical,” or too expensive. The only reason to restrict a home occupation’s equipment is if the equipment creates effects outside the home.

<sup>13</sup> *Outside the home*: subsection (c) recognizes that the purpose of residential zoning is to regulate external effects that could harm the neighborhood.

<sup>14</sup> (*municipal government*): replace with state-law term for local legislative body.

<sup>15</sup> (*grant of power*): reference to the grant of power in standard enabling act “promoting health, safety, morals, or the general welfare of the community.” Adapt by citing the corresponding state law provision.

<sup>16</sup> *“external effects”*: by citing the codified grant of power, it should not be necessary to enumerate any of the nuisances that zoning ordinances may already regulate under state law. The word “external” reinforces the model’s distinction between conduct inside the home, with which the government should almost never interfere, and externalities outside the home such as noise, pollution, and parking, which the government may reasonably regulate in the public interest.

<sup>17</sup> *Use discrimination*: without subsection (d), the model implicitly lets municipal governments continue to discriminate between different home occupations. The Institute for Justice opposes this practice and will litigate to end it if necessary. Much of modern vice regulation, however, is implemented through discriminatory land use regulation. If express authority for such regulation is sought, subsection (d) grants it for listed vice businesses while ending use discrimination in other instances.

<sup>18</sup> (*Adult-oriented businesses*): commonly prohibited home occupation.

<sup>19</sup> (*state law*): exceptions to the general rule of equal treatment should be linked to existing state law provisions, which may obviate the need to discriminate against the use as a home occupation.

<sup>20</sup> (*Repeat as desired*): self-explanatory. Other commonly prohibited home occupations—which should be restricted without use discrimination if possible—include retail alcohol sales and auto repair.

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Subsection (a) codifies the established, near-universal custom of allowing home occupations as an accessory use in a residential dwelling

[Atlanta, Ga., Code § 16-29.001\(17\)](#)

[Birmingham, Ala., Code § 3A-1-138\(c\)](#)

[Boise, Idaho, Code § 11-06-07.4.C](#)

[Boston, Mass., Zoning Code § 2A-1](#)

[Cleveland, Ohio, Code § 337.23\(a\)](#)

[Detroit, Mich., Code § 50-12-481](#)

[Indianapolis, Ind., Code § 743-306\(L\)](#)

[Jacksonville, Fla., Code § 656.401\(n\)](#)

[Minneapolis, Minn., Code § 535.440](#)

[New Orleans, La., Zoning Ordinance § 21.6.R](#)

[New York, N.Y., Zoning Resolution § 12-10](#)

[Newark, N.J., Code § 41:4-6-6](#)

[Philadelphia, Pa. Code § 14-604\(10\)](#)

[Phoenix, Ariz., Zoning Ordinance § 608\(E\)\(3\)](#)

[Pittsburgh, Pa., Code § 912.05](#)

[Raleigh, N.C., Unified Dev. Ordinance § 6.7.3\(D\)](#)

[San Antonio, Tex., Unified Dev. Code § 35-378](#)

[San Francisco, Cal., Planning Code § 204.1](#)

[Seattle, Wash., Code § 23.42.050](#)

[St. Louis, Mo., Code § 26.80.060](#)

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