



Board of City Commissioners

Support Testimony for Ordinance 6583 of the City Code of Ordinances

July 23rd, 2024

Mayor Schmitz and Members of the Commission,

Thank you for the opportunity to submit public comment on Ordinance 6583 of the City Code of Ordinances related to home occupations and model homes. My name is Ellen Hamlett, and I am an Activism Associate at the Institute for Justice (IJ). IJ is a national nonprofit organization that has been advocating for entrepreneurs for over 30 years. Over the last six years at IJ advocating for entrepreneurs, many of whom operate out of their homes, I have become an expert on how local policies impact small businesses.

We were alerted to this proposal by some home-based business owners in Bismarck who asked us to review the ordinance and make suggestions for improvement based on our expertise on best practices for home-based business laws. On May 15th, we submitted public comment on the first public draft of the proposed ordinance and proposed amendments that would make the ordinance stronger. On June 26th, I spoke at the Planning and Zoning Commission meeting in support of the amended ordinance.

We applaud the Planning and Zoning Commission for taking proactive steps to expand and clarify the home-based business law in Bismarck. If passed, this ordinance will create opportunities for home-based businesses to thrive. Based on our review of home-based business ordinances across the country and their real-world impact on entrepreneurs, we believe this ordinance will ensure that home-based entrepreneurs have flexibility and economic opportunity while still ensuring public safety.

Allowing additional “outside” employees

In May, we recommended increasing the number of allowed non-resident employees for both major and minor home-based businesses. Because there are many situations in which a home-based business may require extra labor than the originally proposed ordinance allowed, we suggested raising the number of allowed outside employees for “minor home occupations” to at least one, and for “major home occupations” to three. We applaud the Planning and Zoning Commission for taking this recommendation seriously and implementing it in the new draft.

This will allow for more flexibility for home-based entrepreneurs to hire people who may only want to work part time, such as high school students or mothers who want to be home when their children get back from school. When cities limit the number of employees a business can have, they limit the amount of job opportunities that may exist.

Cities across the country vary in the number of non-resident employees they allow home-based businesses to have. For example, Indianapolis allows up to two non-resident employees to work in a business owner’s primary dwelling unit. Seattle also allows up to two and Boston allows up to



three in some zoning districts.ⁱ Bismarck could become a leader in the region by allowing up to three employees for “major” home occupations.

Additionally, most of the concerns around home-based businesses are related to noise and traffic congestion. However, existing rules that apply to an entire neighborhood may be enough to assuage those concerns. For example, *Title 8: Health and Sanitation, Chapter 8:10 Noises* of Bismarck’s city code lays out rules for lawful versus unlawful noise and consequences for violating this section. And if the limit on employees is intended to assuage a home-based business’s impact on parking availability, language could be added to the code to require off-street parking be provided for non-resident employees.

Thus, there is no need to prohibit non-resident employees in case they lead to congestion or noise, as there are already laws on the books to protect the interest of the neighborhood, without imposing a one-size-fits-all approach to regulating a small business. As my colleague, Jennifer McDonald, wrote in a report on a survey of nearly 2,000 home-based entrepreneurs across the country:

Such generally applicable rules make additional regulations on home-based businesses redundant—and counterproductive. Because a remedy already exists, such regulations serve as solutions in search of problems and only hinder hardworking entrepreneurs. Moreover, because most cities enforce home-based business regulations on a complaint basis, owners have every incentive to ensure their businesses do not disturb neighbors. These incentives, paired with existing regulations that apply to everyone, should be enough to protect neighborhoods from serious disruption from home-based businesses.ⁱⁱ

Increased floor space allowed for Home Occupations

While not the focus of the suggestions we made in May, we also appreciate the increase in the floor space allowed for “Minor Home Occupations.” By increasing the floor space allowed for “Minor Home Occupations” from 25% to 50%, the Zoning Department will allow home entrepreneurs to have the flexibility they need to thrive.

Conclusion:

Home-based businesses are the unseen backbone of the American economy. According to the most recent census data, the United States was home to more than 15 million home-based businesses, representing about half of small businesses in the country.ⁱⁱⁱ In fact, home-based businesses make up about a quarter of small businesses that have employees, making home-based business a job generator and an economic engine. This is especially true for women, who make up a disproportionately large number of home-based business owners, as they have reported it is easier to care for children while adding to their household income.^{iv} For nontraditional entrepreneurs, getting started from home is a safe, non-capital-intensive way to get their business off the ground and start earning income. This option is especially important given that research suggests women and minorities tend to find it more difficult to secure traditional loans or venture capital.^{viii} For some, running their business from their home may be their only option.



Some of the country's largest businesses were started from home. Famous examples include Google, Microsoft, Apple, and Disney. If the home-based business regulations looked different in the cities where these companies started, the world could be a very different place. Setting entrepreneurs up for success – regardless of where they operate – is of paramount importance. City regulations should never be the reason why the next Apple or Google does not get off the ground.

We applaud the steps Bismarck is taking to create a regulatory framework that gives home-based entrepreneurs the ability to thrive. Please reach out if you have any questions or concerns.

Thank you for your consideration,

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ⁱ McDonald, J. (2022). *ENTREPRENEUR FROM HOME How Home-Based Businesses Provide Flexibility and Opportunity—and How Cities Can Get Out of Their Way*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2022/01/entrepreneur-from-home.pdf> at page 32.

ⁱⁱ *Id.* At p. 34.

ⁱⁱⁱ U.S. Small Business Administration Office of Advocacy. (2020). *Frequently asked questions*. <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>; U.S. Census Bureau. (2012). *2012 survey of business owners*. <https://www.census.gov/data/developers/data-sets/businessowners.html>.

^{iv} McDonald, 2022, at p. 11.