



Zoning for Opportunity: A Survey of Home-Based-Business Regulations

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Authors:

Olivia Gonzalez^a

Nolan Gray^b

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^a Olivia Gonzalez is a Ph.D. student in economics at George Mason University and a Mercatus Center Frédéric Bastiat Fellow.

^b Nolan Gray is a Research Fellow at the Mercatus Center at George Mason University.

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Introduction

Home-based businesses (HBBs) constitute an increasingly important part of the American entrepreneurial ecosystem. With the rise of information technology and the increasing decentralization of work, more and more Americans are choosing to run small businesses out of their homes.¹ The benefits of an HBB run the gamut from providing economic opportunity to traditionally marginalized groups (such as stay-at-home parents and those with mobility-related disabilities) to acting as incubators for titans of the modern economy (Disney, Apple, and Amazon all started out as HBBs).²

This large and growing role of HBBs is not reflected in the average American zoning ordinance. On the contrary, many contemporary ordinances continue to reflect biases against HBBs, enforcing strict standards and requiring costly permits. All of this puts undue regulatory burdens on those entrepreneurs least equipped to handle them, driving many HBBs underground. This has generated a wave of reforms designed by cities and states alike to make it easier to start and operate an HBB in jurisdictions as politically different as Arizona and California.

This paper examines this phenomenon in four parts. First, we survey the research to understand who starts HBBs, the types of industries that HBBs are in, and the unique benefits of and challenges faced by HBBs. Second, we explore the history of HBB regulations up to the current day and draw on recent research to paint a picture of the degree to which current HBB regulations are needlessly onerous. Third, we discuss the current reform movements, from the emerging Arizona standard for “no impact” HBBs to the nationwide push toward reform in common HBBs such as cottage foods and daycares. Finally, we close by charting next steps for reform, including both a framework for thinking about HBBs and actionable reforms for local and state policy makers.

HBBs: What We Know

Researchers Colin M. Mason, Sara Carter, and Stephen Tagg define HBBs as businesses that are registered or based at the residential address of the owner.³ This includes both businesses where most of the activity is based inside the residence and businesses in which large portions of activity take place at external sites, as in the agricultural sector, or at client or customer residences, as in financial services.⁴

The very nature of HBBs makes them difficult to measure, but estimates suggest that their impact is far from small. The broader category of small businesses—a category of which HBBs are a subset—punches above its weight economically, having created approximately 64 percent of all new jobs in the United States between 1993 and 2011.⁵ Based off of surveys of business in the UK, Reuschke and Domecka suspect that many small businesses start off based in a residence.⁶

According to research conducted by the Small Business Administration in 1992, HBBs made up just over half of all firms and 10 percent of total receipts in the U.S. economy.⁷ As of 2012, approximately 9 million firms appeared to operate primarily at a residence. This impact has only grown: Other calculations

1 Joanne Pratt, *The Impact of Location on Net Income: A Comparison of Homebased and Non-homebased Sole Proprietors* (Washington, DC: Small Business Administration, 1993); Census Survey of Business Owners (2012), <https://planning-org-uploaded-media.s3.amazonaws.com/document/Division-Economic-Development-News-2017-08.pdf>.

2 Vivian Giant, “6 Incredible Companies That Started in a Garage,” *American Express*, June 2, 2014.

3 Colin M. Mason, Sara Carter, and Stephen Tagg, “Invisible Businesses: The Characteristics of Home-Based Businesses in the United Kingdom,” *Regional Studies* 39, no. 2 (2011): 183–219.

4 Darja Reuschke and Markieta Domecka, “Policy Brief on Home-Based Businesses,” OECD SME and Entrepreneurship Papers No. 11, OECD Publishing, Paris, 2018, https://www.oecd-ilibrary.org/industry-and-services/policy-brief-on-home-based-businesses_abfe755f-en.

5 Small Business Administration, *Small Business GDP: Update 2002–2010* (2012).

6 Reuschke and Domecka, “Policy Brief,” 14.

7 Pratt, *Myths and Realities*.

show that the number of HBBs in the United States grew from 16.37 to 27.63 million between 1992 and 2012.⁸ More recently, Kane and Clark find that HBBs represented nearly one in six businesses in 2014.⁹

Reasons for Running an HBB

The biggest reason that many entrepreneurs, and business owners more broadly, choose to locate their business within their home is the lower associated operating costs.¹⁰ Costs for HBBs are lower when compared to the alternative of operating out of a dedicated commercial space since operators need not take on additional rent payments or taxes. This decreases the pressure to generate an immediate financial return.

Another major consideration is that running a business from home makes it easier to manage one's professional and family responsibilities.¹¹ Home-based work offers a level of flexibility that ultimately improves work-life balance and quality of life.¹² This effect is most pronounced among vulnerable populations.

Added flexibility, for example, is a major reason why HBB operators are so often individuals who face unique family obligations or economic hardships.¹³ Cases abound of women able to better meet the demands of motherhood while also providing financially for their family through an HBB.¹⁴ This partly explains why working from home appears to be more common among self-employed women than self-employed men. This is so at least in the UK; other research suggests a similar trend in other developed countries as well.¹⁵ Although family responsibilities can be just as important for men, research has shown that home-based work—or self-employment—more often offers a path for women to become economically independent.¹⁶

Some researchers argue that the attractiveness of home-based work comes down to other quality-of-life considerations. Of the entrepreneurial characteristics that Risselada and Schutjens identify, they find that when an individual performs caring tasks (e.g., caretaking for a senior relative), he or she is more likely to operate a home-based business.¹⁷ They found this result even when controlling for firm size and neighborhood features.

It is precisely the lower cost associated with the start-up phase of a business that creates more opportunities for disadvantaged and marginalized groups. HBBs help to level the playing field in this regard, allowing even capital-poor households to pursue entrepreneurial activities that would not otherwise be accessible.¹⁸ One study found that when compared to other small business owners, HBB owners were more likely to have been economically inactive immediately before starting their business.¹⁹ This means many HBB owners often start off either unemployed, retired, disabled, recovering from an illness, or returning to work after maternity or paternity leave.

This effect makes the accessibility of HBBs even more vital during economic downturns. If large employers are pressured to lay off employees, the option to start an HBB can offer a fast and low-cost avenue for

8 M. Nolan Gray and Olivia Gonzalez, "Making Room for Home-Based Businesses: A Survey of 12 Zoning Ordinances," *American Planning Association Economic Development Division News & Views* August (2017): 1–7.

9 Kevin Kane and William A. V. Clark, "Mapping the Landscape of Urban Work: Home-Based Businesses and the Built Environment," *Environment and Planning A: Economy and Space* (2018).

10 Reuschke and Domecka, "Policy Brief."

11 Ibid.

12 K. Loscocco and S. R. Bird, "Gendered Paths: Why Women Lag behind Men in Small Business Success," *Work and Occupations* 39, no. 2 (2012): 183–219.

13 Ibid.

14 C. Ekinsmyth, "Mothers' Business, Work/Life and the Politics of 'Mumpreneurship,'" *Gender, Place, and Culture* 21 (2014): 1230–48.

15 Reuschke and Domecka, "Policy Brief"; Elizabeth Walker and Beverly Webster, "Gender Issues in Home-Based Businesses," *Women in Management Review* 19 (2004): 7–8.

16 Walker and Webster, "Gender Issues."

17 Anne Risselada and Veronique Schutjens, "Firm Location Choice in the New Economy: Exploring the Role of Entrepreneurial Work-Lifestyles of Neighborhood Entrepreneurs in the Business Location Decision," *Exploring the Entrepreneurial Society* (2017): 142–54.

18 Reuschke and Domecka, "Policy Brief."

19 C. Mason, S. Carter, and S. Tagg, "Invisible Businesses: The Characteristics of Home-Based Businesses in the United Kingdom," *Regional Studies* 39, no. 2 (2011): 183–219.

employees to get back on their feet until the market improves. In a survey by Enterprise Nation, researchers found that unsatisfying or insecure work and unemployment were the third most important motive for starting an HBB in the UK.²⁰

Home-business ownership is not always a back-up plan, however. Residents often start their HBBs on the side to supplement pre-existing income, while others jump in full time in search of a new career.²¹ Whether because of involuntary unemployment or a newfound inspiration to pivot professionally, running a business from home provides residents with the option to take their fate into their own hands.²²

The Economic Benefits of HBBs

Beyond the benefits to budding entrepreneurs, HBBs also offer certain underappreciated benefits to their communities. Ultimately, HBBs help to strengthen local economies.²³ HBBs come in every shape and size. With the flexibility of working from home comes the latitude for each owner to define what their business means to them. In their 2018 OECD report, Reuschke and Domecka summarize what this means for their contribution to growth as well:

Operating from home does not mean that these businesses are insignificant. Many are important actors in local economies and some trade nationally and internationally. While some home-based businesses display growth potential, many home-based entrepreneurs seek to remain small in order to maintain the home location.²⁴

For the HBB owners that do have a desire to grow, their potential is quite large. In the UK, the only area for which such surveys have been conducted, as many as 60 percent of HBB entrepreneurs have expressed a desire to grow their business.²⁵ Houston and Reuschke find that over half of surveyed home businesses in 2004 had grown to employ ten or more staff by 2008, typically either relocating or hiring remote employees along the way.²⁶ Eleven percent employed more than fifty employees four years later. Researchers also found that HBBs in 2004 were just as likely as businesses located in dedicated commercial premises to “make the transition from being a non-employer to an employer between 2004 and 2009.”²⁷

Although comparable surveys have not been conducted within the United States, the implications apply here as well. HBBs in the United States can and often do outgrow the attics, basements, and spare rooms that host them, occasionally to spectacular results. Amazon and the Walt Disney Company had humble beginnings based in their owners’ homes. Now employing 647,500 people, and generating \$265.47 billion in revenue, Amazon in particular is having no small impact upon the U.S. economy.²⁸

20 Enterprise Nation, “Home Business Report” (2014), [https://static.guim.co.uk/ni/1414079504761/Home-Business-Survey-\(1\).pdf](https://static.guim.co.uk/ni/1414079504761/Home-Business-Survey-(1).pdf); Reuschke and Domecka, “Policy Brief”; Enterprise Nation, “Home Business Report.”

21 Diane Cook, “Homework: Corporate Downsizing Makes Home-Based Businesses the New Trend,” *Delaware Business Review* (1996).

22 J. H. Pratt, *The Impact of Location on Net Income: A Comparison of Homebased and Non-homebased Sole Proprietors* (Washington, DC: Small Business Administration Office of Advocacy, 2006).

23 D. Reuschke, C. Mason, S. Syrett, and M. van Ham, “Connecting Entrepreneurship with Neighbourhoods and Homes,” in *Entrepreneurship in Cities: Neighborhoods, Households and Homes*, eds. C. Mason, D. Reuschke, S. Syrett, and M. van Ham, 1–16 (Cheltenham: Edward Elgar, 2015); D. Reuschke, C. Mason, M. van Ham, and S. Syrett, “Integrating Entrepreneurship with Urban and Neighbourhood Studies: Lessons for Future Research,” in *Entrepreneurship in Cities: Neighborhoods, Households and Homes*, eds. C. Mason, D. Reuschke, S. Syrett, and M. van Ham, 273–85 (Cheltenham: Edward Elgar, 2015); F. Hollis, *Beyond Live/Work: The Architecture of Home-Based Work* (Abingdon: Routledge, 2015); W. Steenbeek and V. Schutjens, “The Willingness to Intervene in Problematic Neighbourhood Situations: A Comparison of Local Entrepreneurs and (Un) employed Residents,” *Tijdschrift voor economische en sociale geografie* 105, no. 3 (2014): 349–67; R. Huggins and P. Thompson, “Entrepreneurship and Community Culture: A Place-Based Study of Their Interdependency,” *Entrepreneurship Research Journal* 2, no. 1 (2012): 1–34; Ekinsmyth, “Mothers’ Business.”

24 Reuschke and Domecka “Policy Brief,” 5.

25 Mason, Carter, and Tagg, “Invisible Businesses.”

26 D. Houston and D. Reuschke, “City Economies and Microbusiness Growth,” *Urban Studies* (2017): 1–19.

27 Reuschke and Domecka “Policy Brief,” 15; Houston and Reuschke, “City Economies.”

28 Amazon’s Yahoo Finance profile, accessed November 3, 2019. <https://finance.yahoo.com/quote/AMZN?p=AMZN>.

Many states and cities devote much of their scarce resources to securing large companies already formed, as with the recent bidding war for Amazon HQ2.²⁹ In a race to lure Amazon's second headquarters, New York and Virginia offered the company benefit packages that ultimately won Amazon over. Virginia's package, for example, included subsidies and other incentives worth \$845 million over fifteen years.³⁰ Although policy makers may feel politically incentivized to offer these large and targeted economic development packages, research suggests that they are not worth the cost for a myriad of public choice reasons.³¹

Instead of spending money to subsidize fully formed Amazons, policy makers can very cheaply create a regulatory environment that fosters future Amazons. As the route to secure already-formed Amazons through subsidies and tax breaks is very costly, localities would be better off working to help develop their small businesses. Re-evaluating a regulatory environment hostile to HBB formation and growth offers one such avenue.

One way to assess the vitality of HBBs is by calculating their economic multiplier, or the number of dollars of additional output one dollar of new output can help generate. Rowe, Haynes, and Stafford demonstrate how the HBB service industry in Iowa generated \$408.7 million in 1988 and generated an additional \$0.9458 of output for each of the original dollars spent.³² This means that the multiplier for service-industry businesses in Iowa was 1.9458. Multiplying the sales by the multiplier shows that HBBs contributed a total of \$795 million of economic activity, which includes both the direct and indirect results of HBB activity. By looking at the direct and indirect effects, as measured by an economic multiplier, we can learn a lot about how much an industry contributes to the local economy.

Imagine how this might work with a common HBB: a daycare. A woman starting a daycare service within her home can employ an assistant to help take care of children in the neighborhood while their parents go to work. An accessible daycare may help parents cut down on how far they must travel to drop off their children. It may also help to lower prices by economizing on floor space. The time and money parents in turn save can be used for savings or purchasing other goods and services for their family. At the same time, the HBB owner and her assistant both have a new income source that they can use to save or purchase new goods or services in the local economy. Similar examples could be worked out for other common HBBs.

Building on multipliers calculated by the US Department of Commerce, Rowe, Haynes, and Stafford calculate how much of total economic activity HBBs contribute to each state.³³ They find that HBBs directly and indirectly contribute 3.5 percent of total gross sales, 4.6 percent of total earnings, and 6.7 percent of total employment for local economies.³⁴ This varied by state and industry, but the takeaway is clear: HBBs help produce more than what they explicitly contribute to the economy. In fact, these findings convinced the authors of the study that HBBs are often more than just a holding position for employees hoping to get a job elsewhere someday; on the contrary, HBBs can be significant entrepreneurial incubators.

Not every home-based business will be the next Amazon, but the possibility of any growth depends on the feasibility of surmounting the hurdles they encounter. If regulations succeed in restricting the high growth potential of HBBs, many of the benefits detailed in this section are less likely to materialize. In the next section, we briefly summarize the most significant barriers to HBBs before turning to their history. Before we turn to this issue, we must first make the case for why HBB regulations matter.

29 Nick Wingfield and Patricia Cohen, "Amazon Plans Second Headquarters, Opening a Bidding War among Cities," *New York Times*, September 7, 2017, <https://www.nytimes.com/2017/09/07/technology/amazon-headquarters-north-america.html>.

30 Michael Farren and Anne Philpot, "What Could States and Municipalities Have Done with That Amazon HQ2 Money?" *Bridge*, December 6, 2018.

31 Matthew Mitchell, Michael Farren, Jeremy Horpedahl, and Olivia Gonzalez, "The Economics of a Targeted Economic Development Subsidy," Mercatus Center Research Paper, Mercatus Center at George Mason University (2019).

32 Barbara Rowe, George Haynes, and Kathryn Stafford, "The Contribution of Home-Based Business Income to Rural and Urban Economies," *Family Business Review* (1999).

33 *Ibid.* Their study highlights HBBs in Hawaii, Iowa, Missouri, Michigan, Ohio, Pennsylvania, New York, Utah, and Vermont.

34 Rowe, Haynes, and Stafford, "Contribution."

The Disproportionate Cost of Regulation

Reuschke and Domecka identify the main barriers to HBB formation and growth, including difficulty accessing business support infrastructure and networks, business finance, lack of access to high-speed internet, and restrictive zoning and housing regulations.³⁵ Other barriers include homeowner associations, taxes, and licensing fees.³⁶ These are all barriers that businesses of any kind have to face, but HBBs do so to an even greater degree.³⁷

The reason for special concern about zoning restrictions is their potentially disproportionate effect on HBBs. As small businesses, their relative costs of complying with regulations are consistently higher when compared to larger businesses that have to face the same compliance measures.³⁸ Regulations impose high fixed costs that HBBs are less equipped to handle.³⁹ As we identified previously, regulations can require firms to spend more time trying to interpret rules and filing paperwork, as well as spend more money on paying regulatory fees or hiring legal assistants.⁴⁰ Because of this, regulations can prevent HBBs from forming, drive existing companies underground, or inhibit HBB growth. Worse yet, many zoning ordinances prohibit home-based work outright. This further “contributes to the general invisibility of the sector and makes it difficult to enact policies that facilitate and strengthen entrepreneurship.”⁴¹

These barriers have a direct effect on HBB owners and their livelihood.⁴² Some HBB owners—particularly those of means—are able to research what rules apply to them and pay the corresponding fees when possible. Others, however, are frequently unaware of zoning requirements until they are asked by zoning officials to become compliant or cease operations. Regulatory requirements can vary, and where they are more stringent and inconsistently enforced, business owners often operate underground. For these reasons, the zoning restrictions facing HBBs deserve special attention from policy makers.

History of HBB Regulation

As a commercial activity in otherwise-residential zones, HBBs have been an object of contention since the inception of American zoning in the early twentieth century. HBBs, originally referred to as “home occupations,” were tolerated by early land-use planners under a first-generation regulatory framework that restricted them to occupations that were “customarily” performed in the home, incidental to the residential use, and not a business.⁴³

The shortcomings of this stop-gap regulatory framework quickly became apparent. As zoning grew in complexity, professional planning organizations set out to develop a second-generation regulatory framework incorporating both the traditional “customary” standard and new performance standards regulating business operations. Yet the continuous evolution of the nature of work—driven by rapid technological change in the late twentieth century—and growing confusion about this mixed standard gave rise to calls for a third-generation regulatory framework among land-use planners and business groups alike. The

35 Reuschke and Domecka, “Policy Brief.”

36 Sidney Kess, James R. Grimaldi, and James A. J. Revels, “Starting a Business from Home: Legal, Tax, and Financial Concerns,” *CPA Journal* (June 2017).

37 The main focus of our paper is on how the last category of Reuschke and Domecka’s report—restrictive zoning regulations—can either hinder or facilitate HBB growth. It’s important for cities and states to know that they have a choice when it comes to whether these regulations become a barrier to HBBs. For a more in-depth look at the other barriers listed, see Reuschke and Domecka, “Policy Brief.”

38 Henry B. R. Beale, “Home-Based Business and Government Regulation” (Washington, DC: US Small Business Association, 2004), 72–90..

39 Peter T. Calcagno and Russell S. Sobel, “Regulatory Costs on Entrepreneurship and Establishment Size,” *Small Business Economics* 42 (2014): 541.

40 Gray and Gonzalez, “Making Room.”

41 Reuschke and Domecka, “Policy Brief”; F. Holliss, “Designing for Home-Based Work: Lessons from Two English Villages,” *Architecture and Culture* 5, no. 1 (2017): 21–39.

42 Arlene Mackanic, “Know the Rules,” *Black Enterprise* (2004); Marshall McKnight, “Home-Based Companies under Siege,” *NJBIZ* (2003); Eben Ingle, “Teachers Are Not Criminals: The Stokes Zoning Case,” *American Music Teacher* (2002); Mary Vizard, “Home-Business Outlaws,” *Home Office Computing* (1993).

43 Edward M. Bassett and Katherine B. McNamara, *Zoning: The Laws, Administration and Court Decisions during the First Twenty Years* (New York: Russell Sage Foundation, 1940).

following section maps out the evolution of each of these frameworks, exploring both their historical basis and inevitable shortcomings in order to contextualize the tangle of HBB regulations enforced in many US cities today.

Yielding to Custom: The First-Generation Regulatory Framework

While home-based work is seen as the exception today, it was in fact the norm for much of human history. Prior to the twentieth century, most nonagricultural work took place in the home: manufacturing centered on cottage industries, retailers and artisans lived above storefronts or workshops, and professionals operated out of home offices.⁴⁴ Although important primary uses such as ports, government offices, and natural resources made clustering essential, workers typically responded by co-locating and both living in and hosting commercial operations on a single lot. Indeed, this norm shaped the traditional American Main Street, with shopkeepers living above storefronts.

Three major elements of the budding Industrial Revolution reversed this historical norm, particularly for manufacturing and retail. First, the rise of large corporations in the post-Civil War period led to the increasing centralization of work in industrial-scale office buildings, factories, and warehouses. As Jane Jacobs notes in her study of Manchester (England), the benefits of said centralization could be a mixed blessing; while productivity initially skyrocketed in cities with heavily concentrated industry, these local economies often proved to be less resilient.⁴⁵

Second, the gradual improvement of transportation technology, beginning with the omnibus in the 1820s, allowed for the concentration and segregation of work.⁴⁶ Once bound by the limits of a comfortable walking commute, a middle-class worker could now feasibly leave a central business district to go to an exclusively residential neighborhood at the end of the workday. Innovations in urban rail transit expedited these trends in the early twentieth century.

While the concentrating effects of economic centralization and the segregating effects of transportation have moderated with time, a third element persists: culture. Enabled by organizational and technological innovation, more and more households came to see the separation of work and life as a morally superior arrangement, with commercial activity characterized as having a corrupting influence among cultural elites.⁴⁷

Although macro trends gradually phased out many forms of HBBs, such as home manufacturing and retailing, many traditional HBBs survived this shift, including certain services and small crafts. This posed a unique challenge as zoning came online in the 1910s and '20s. Unlike earlier forms of land-use regulation, which sought to mitigate negative externalities or segregate certain noxious land uses, Euclidean zoning reflected the emerging cultural preference for total use segregation and expressly sought to separate all residential and commercial activities.

Where do otherwise socially acceptable HBBs fit into this equation? To resolve this puzzle, early land-use planners developed the concept of a “home occupation.” As defined by zoning framer Edward M. Bassett, permissible home occupations had to meet the following three conditions. First, they had to be customary, meaning that only occupations that traditionally took place in the home were to be permitted.⁴⁸ To enforce this standard, first-generation ordinances often explicitly list permitted occupations. Second, they had to be incidental to the residential use. Home occupations must not take precedence over the lot’s primary use as a home.

Finally, a home occupation “must not be a business.” As this may be confusing to the modern reader, this final condition deserves further elaboration. Bassett and early planning colleagues principally sought to

44 Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1987).

45 Jane Jacobs, *The Economy of Cities* (New York: Random House, 1969), 86–96.

46 Jason M. Barr, *Building the Skyline: The Birth and Growth of Manhattan's Skyscrapers* (New York: Oxford University Press, 2018), 10–11.

47 Robert Fishman, *Bourgeois Utopias: The Rise and Fall of Suburbia* (New York: Basic Books, 2008).

48 Bassett and McNamara, *Zoning*, 100.

restrict major commercial uses in residential neighborhoods.⁴⁹ Yet undesirable back-office functions and small workshops may often be indistinguishable from traditional HBBs such as law offices or dressmaking. Thus, early land-use planners turned to two novel classifications characterized as distinct from businesses: customary home occupations (such as tutoring or laundering) and home professions (such as law or medical offices).

On the one hand, this first-generation regulatory framework likely achieved the goals of the early zoning framers. Itemized lists of permitted HBBs, combined with vague general standards, allowed early land-use planners to carve out a legal space for customary home occupations—particularly those accepted among cultural and economic elites—without opening the floodgates to commercial activity in residential areas. Indeed, the first-generation framework accomplished this goal without the need for discretionary actions such as special permits or licensing, which risk overburdening HBB operators. Yet as the US economy continued to change, a regulatory framework expressly designed as a kludge to allow for 1920s preferences would increasingly present challenges. Beginning in the postwar period, the search for a new framework began.

Mixing Standards: The Second-Generation Regulatory Framework

As early as 1953, planners at the American Society of Planning Officials (APSO)—a precursor to the American Planning Association (APA)—identified two major problems with the first-generation regulatory framework. First, the standards were vague.⁵⁰ What occupations qualify as customary? At what point is an occupation no longer incidental? What distinguishes an occupation or a profession from a business? The framework made decisions seem arbitrary and unpredictable, leaving residents unclear as to whether their occupation was legal, in turn requiring regular court intervention.

Second, the first-generation regulations were simultaneously too strong in some places and too weak in others. On the former, explicit lists of permitted occupations started out too restrictive and aged poorly. This left many ordinances explicitly allowing antiquated professions (such as clock or piano repair) while leaving emerging HBBs (such as home daycares) illegal. Worse yet, a near total lack of externality regulation left neighbors with few protections in the face of bothersome HBBs. First-generation ordinances rarely addressed issues like noise, hours of operation, or traffic generation. If the use qualified as customary, incidental, and not a business, few additional rules applied, beyond recourse to a nuisance suit. Bassett and McNamara are slightly obtuse on this point: “There seems to be no demand for more specific rules.”⁵¹

Needless to say, more specific rules eventually were in demand. According to an APSO survey of postwar zoning ordinances, more and more municipalities had started to tinker with how to regulate HBBs. Lists of permitted and prohibited occupations—a mainstay of the first-generation framework—were rarely scrapped and occasionally expanded.

On top of that, second-generation ordinances added two new features: performance standards and permits. Where the first-generation ordinances itemized permissible occupations and left the rest open to interpretation, second-generation ordinances added regulations covering everything from hours of operation to off-site employees to signs and exterior modifications. To ensure compliance with these rules, second-generation ordinances also often required that HBBs pursue special permits and licenses, typically administered in a discretionary fashion.

As with the first-generation regulatory framework, the second-generation framework likely achieved the desired results of its framers. For the planners and aggrieved neighbors, a complex set of standards would regulate all HBB activity, typically enforced by permits requiring annual review.

⁴⁹ Ibid., 101.

⁵⁰ Zoning Regulations for Home Occupations, Planning Advisory Service (Chicago, IL: American Society of Planning Officials, 1953).

⁵¹ Bassett and McNamara, *Zoning*.

Yet this new regulatory framework also came with substantial drawbacks, as the APSO report identifies: For HBBs, compliance became more difficult, with many run-of-the-mill businesses remaining off the lists of permitted occupations while an additional layer of restrictive regulation and permitting increased burdens on permitted occupations. For courts, the casual mixing of the customary and performance standards only caused confusion. If performance is what matters, why prohibit noncustomary occupations that had no impact on neighbors, such as insurance brokers?⁵² If custom is what matters, why institute performance standards that make customary operations functionally illegal, such as physician's offices?⁵³

Like the first-generation regulatory framework, the second-generation regulatory framework was a kludge, a slow accumulation of responses to specific complaints and concerns. Laying performance standards atop an inherited customary standard resulted in a generation of confused and overly restrictive ordinances. On top of that, mounting technological and cultural change left second-generation ordinances increasingly untenable. Kludges can only survive for so long.

Toward a Third-Generation Regulatory Framework?

As it did with so many other spheres of American life in the late 1990s and early 2000s, the rise of personal computers and the internet disrupted HBB regulation. With service-based remote work on the rise and more and more households running computer-based businesses that were anything but customary, lists of permitted customary home occupations increasingly became out of date. Professions that had once required face-to-face interaction and had thus been left off of lists of permitted HBBs—such as stock and real estate brokerage—could now be done from home, strictly over the internet. Activities historically prohibited under performance standards—such as retailing—could now be done online, completely unbeknownst to neighbors.

Mounting change in the nature of work gave rise to a new wave of scholarship on HBB regulation in the early 2000s. In a manner similar to the causes of the 1950s wave of criticism discussed above, this new generation of work would in turn give rise to an emerging third generation of HBB ordinances. In a 2000 report for the APA characterizing second-generation ordinances as “neither sensible, useful, nor enforceable,” urban planner Charles Wunder calls for a new regulatory approach tailored to accommodate the rise of computer-based HBBs.⁵⁴ Taking the critique a step further, legal academic Nicole Steele Garnett calls for a top-to-bottom shift from the mixed second-generation framework toward a framework exclusively focused on how HBBs affect neighbors.⁵⁵ This paradigm shift received some official sanction from the Small Business Administration in a 2004 report, which criticizes many second-generation performance standards—such as prohibitions on off-site employees—as unnecessary barriers to an emerging source of entrepreneurial activity.⁵⁶

This contemporary work can be interpreted as a search for a new framework for HBB regulation, a framework that recognizes the often-arbitrary and outmoded nature of the first-generation customary standards and the overly restrictive effect of second-generation performance standards. In its stead, the emerging contemporary framework aspires to regulate HBBs strictly based on the measurable impacts they may have on neighbors. As discussed below, uptake of this new regulatory standard has been slow, likely because it involves quantifying certain fuzzy standards while relinquishing other controls altogether. Yet the third-generation framework is supported by two unceasing trends: the ongoing digitalization of work and entrepreneurship and a growing recognition of the importance of home-based work. The computer-based HBBs are coming. Will our ordinances keep up?

52 *Otis v. Evans* 259 Appellate Division 957, 20 N.Y.S. 2d 426.

53 *Red Acres Imp. Club, Inc., et al., v. Burkhalter et al.*, Supreme Court of Tennessee, July 27, 1951, 241 S.W. 2d 921. (4 ZD 7).

54 Charles Wunder, *Regulating Home-Based Businesses in the Twenty-First Century* (Washington, DC: American Planning Association, 2000).

55 Nicole Stelle Garnett, “On Castles and Commerce: Zoning Law and the Home-Based Business Dilemma,” *William & Mary Law Review* 42 (2001): 1191.

56 Beale, “Home-Based Businesses.”

How Do Cities Regulate HBBs Today?

Given the mounting complexity and restrictiveness of HBB ordinances, widespread noncompliance increasingly seems to be the norm. While data on types of HBBs are limited, a cursory view on Google Maps of a residential area in any US city will usually reveal dozens of illegal HBBs. A quick survey of the suburban residential neighborhood that one of the authors grew up in reveals a medley of businesses that reflect the contemporary HBB landscape: a software developer, an advertising firm, an African hair braider, and an artisanal candlemaker. Although all of these uses likely impose no externalities upon neighborhoods, all are illegal under current zoning, putting operators at substantial legal and financial risk. To what extent are zoning ordinances evolving to accommodate this changing reality?

In a recent survey of zoning ordinances, we looked at whether and to what extent contemporary HBB regulations have moved toward this third-generation standard.⁵⁷ Randomly selecting major cities from regions across the country, we assessed twelve cities on the basis of fourteen standard features of HBB ordinances. Many of these features can be characterized as holdovers from the first-generation framework, such as the enduring requirement that HBBs be customary and the lists of permitted occupations. Other features can be understood as second-generation additions, including permit requirements and various performance standards. This study also looked for lists of expressly prohibited occupations and general nuisance restrictions, but these can be interpreted as compatible with a third-generation framework, given their general focus on mitigating the impact that certain HBBs have on neighbors.

According to our survey, most cities remain squarely within the second-generation framework: they allow only listed customary occupations that are subject to detailed performance standards. Eight of the cities surveyed fell within this category. Charlotte, North Carolina, is a good example of the prevailing second-generation framework: “customary” language permeates the text, though the list of permitted occupations ranges from graphic design to millinery. These rules are supplemented by an assortment of performance standards. Some of these rules are reasonable. For example, a general prohibition on noise or odor generation is narrowly tailored to protect neighbors. But many others are either too vague (such as a prohibition on equipment “not normally part of a household”), too strict (such as prohibitions on all non-resident employees), or unenforceable (such as the rule that HBBs must not take up more than a specified percentage of a home’s floor area).⁵⁸

In addition to complying with these rules, all HBBs in Charlotte must also seek a permit with a fee of \$145. While on the high end—HBB permits in Louisville and Milwaukee cost \$25 and \$50, respectively—this fee is not an anomaly: an HBB conducting online retail faces an upfront registration fee of \$150 in Las Vegas, with recurring annual fees based on revenues and further costs to the extent that it forces operators to keep sophisticated financial records.⁵⁹ Between strict compliance standards and a costly fee, the incentive for HBB operators to remain underground is strong in cities such as Charlotte.

Two of the ordinances surveyed could be characterized as remaining within the first-generation framework. Boston, Massachusetts offers an illustrative example: elements of the original “customary, incidental, not a business” framework remain on the books, and an anachronistic list of example permitted uses includes professions such as sewing. Any kind of “trading in merchandise” is broadly prohibited. At the same time, performance standards are lax: a small “professional announcement sign” is permitted, off-site employees and customer visits are permitted in certain circumstances, and there is no general restriction

⁵⁷ Gray and Gonzalez, “Making Room.”

⁵⁸ Charlotte Zoning Ordinance, Chapter 12, Section 12.408 (2007), accessed June 24, 2019, <https://charlottenc.gov/planning/Rezoning/Pages/Zoning%20Ordinance.aspx>.

⁵⁹ Las Vegas Nevada Gov, “Business Licenses,” accessed June 24, 2019, <https://www.lasvegasnevada.gov/Business/Business-Licenses>.

on nuisance behavior.⁶⁰ Nonetheless, certain conventional, second-generation performance standards have slipped in, such as a cap on floor area and restrictions on the use of machinery.

Only two of the ordinances surveyed could be characterized as third generation. A useful example of what might be considered a “best practice” ordinance can be found in San Diego, California. The last vestiges of the first-generation framework, including “customary” language and lists of permitted uses, are gone. Likewise, many often-criticized second-generation performance standards have been removed: there are no difficult-to-enforce floor-area standards, nor are there prohibitions on mechanical equipment or accessory structures. One nonresident employee and one customer are allowed on the site at a time, and a general prohibition on nuisance-generating activity protects neighbors. HBBs that conform with these standards are not required to pursue any additional permit or license. HBBs that require additional permissions or may impose potential costs on neighbors must seek special permit.⁶¹

In contrast to Charlotte, San Diego’s liberal performance standards and lack of a costly permit provide operators of innocuous HBBs with a strong incentive to operate openly and in full compliance with zoning. HBBs that do not have a measurable impact on neighbors enjoy legal status without needing to worry about running afoul of excessive or complicated rules. For growing HBBs or those with potential impacts, the option to pursue a special permit adds appropriate flexibility to the system, treating operators on a case-by-case basis subject to meaningful standards. In all cases, neighbors are duly protected: the performance standards that San Diego does enforce are strictly tailored to prevent nuisances, and any HBB that seeks to bypass these standards must earn the approval of the City Planning Commission and be subject to its findings and a public hearing. This third-generation framework puts San Diego in a strong position to grow as the nature of work continues to evolve.

Current Efforts at HBB Regulatory Reform

Despite a growing consensus within the planning literature and despite model cities such as San Diego, the shift toward a third generation of ordinances that focus on clear impacts has been slow going. As discussed above, most cities continue to enforce a second-generation framework, emphasizing out-of-date customary standards and overly strict performance standards. This is not a surprise: municipal policy makers, who traditionally enjoy wide latitude in zoning, may be loath to relinquish inherited powers, and the political will to act can be weak where risk-averse homeowners constitute the most powerful political group.⁶²

To bypass this problem, many HBB reformers have turned to state governments for reform. We examine two such efforts in the following section: First, we examine what we refer to as the Arizona standard, which defines a category of “no impact” HBBs, allowed as-of-right, and places parameters on how municipalities may regulate them. While such a proposal narrowly failed in the 2018 Arizona state legislature, it provides a workable framework for state-level reforms that is sure to come back in future iterations. Second, we explore the raft of profession-specific reforms that states such as California and Colorado have adopted to ease restrictions on specific HBBs, such as daycares and cottage foods. Though short of the broad reforms called for by the literature, these reforms have helped to ease barriers to important and often-controversial varieties of HBBs.

No-Impact HBBs and the Arizona Standard

In early 2018, Arizona legislators came close to adopting the most sweeping reforms to HBB regulation since the adoption of the first comprehensive zoning ordinance just over a hundred years earlier. Yet the

60 Boston Zoning Code, Article 2019.10, Section 10-2 (2019), accessed June 24, 2019, https://library.municode.com/ma/boston/codes/redevelopment_authority?nodeId=ART10ACUS.

61 San Diego Municipal Code, Chapter 12, Article 6 (1997), accessed June 24, 2019, <https://www.sandiego.gov/sites/default/files/pc-16-061-attachment12.pdf>.

62 William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Cambridge, MA: Harvard University Press, 2005).

reforms set out in SB1387 were quite modest: the state would designate a category of “no impact” HBBs, which were permitted to operate without having to seek a special permit or license.⁶³ To qualify as “no impact,” HBBs would be held to the following standards:

- No more than three nonresident employees may be on site at once.
- No more than three clients may be on site at once.
- The HBB must not generate any on-street parking or result in a substantial increase in traffic.
- The HBB must operate exclusively within the residential dwelling.
- The HBB cannot be visible from the street.
- The HBB must be compatible with residential uses.
- The HBB must remain a secondary use to the site’s primary (residential) use.
- The HBB must operate in compliance with all city and county health and safety regulations.⁶⁴

Two features of the Arizona standard stand out: First, it dispenses altogether with the customary standard and many of the strict performance standards that weigh down HBBs under the second-generation framework. Total prohibitions on nonresident employees are gone, for example, as are strict floor-area standards. Second, those performance standards preserved are easily measurable and enforceable. Vague customary standards and unenforceable performance standards are gone, ensuring that HBB operators and regulators alike can be certain about what is and is not compliant.

All HBBs remain subject to standard municipal health-and-safety, building-code, and nuisance regulation. But to mitigate impacts that are often most upsetting to neighbors, the Arizona standard also forbids any measurable impact by the HBB on on-street parking or traffic. The open-ended “compatible with neighboring residential” standard is designed to prevent historically undesirable business such as veterinary clinics and auto body shops. While this standard is potentially open to abuse owing to vagueness, the introduction of state oversight acts as a valuable and currently nonexistent check on this risk. Most objectionable forms of HBB, such as those that incorporate narcotics or adult uses, are prohibited outright.

Profession-Specific Reforms

Another approach to reforming the regulation of HBBs is through the treatment of profession-specific regulations. Reforming regulations specific to an industry one at a time, though time consuming, may be superior to failing to reform any area. Here we highlight the features of two prominent profession-specific HBB reforms: food preparation in Colorado and daycare facilities in California.

Enacted in March 2012, the Cottage Food Act in Colorado allows certain types of food to be sold directly to consumers without licensing or inspections.⁶⁵ Under the act, most baked goods can be sold out of home kitchens. Sales of foods that must be refrigerated, such as cheeses, pastries, or custards, are not permitted under the law; the foods must instead be prepared in commercial kitchens. For similar reasons, meat sales are not permitted. All HBB owners operating under this act are considered cottage-food producers and face some restrictions.

First, cottage-food producers in Colorado are prohibited from supplying restaurants or grocery stores and face strict labeling requirements. They must provide disclaimers indicating that the food they are selling was produced in a home kitchen. Additionally, cottage-food producers cannot generate net revenue of more than \$10,000 per product and cannot sell more than 250 dozen eggs per month. Expanding beyond

63 Arizona Senate, Fifty-Third Legislature. Second Regular Session, Senate Bill 1387 (2018), accessed June 29, 2019, <https://www.azleg.gov/legtext/53leg/2R/bills/SB1387H.htm>.

64 Arizona Free Enterprise Club and the Goldwater Institute, *Home-Based Business Fairness Act* (Phoenix, AZ: 2018).

65 The act was subsequently amended in 2013, 2015, and 2016.

either of these limits would require registering as a food manufacturer or becoming a licensed retail food establishment.

According to research by the Pew Charitable Trusts, every state except New Jersey now allows HBBs to make and sell certain nonhazardous foods.⁶⁶ Cottage-food laws such as the one in Colorado vary considerably in structure, however. Oklahoma, for instance, only allows baked goods as cottage foods, meaning that most food products are off the table for home producers, and sales may only occur out of the home.⁶⁷ Colorado's law is more inclusive since it allows its permitted foods to be sold at farmers' markets as well. Delaware is an example of a state with a more restrictive approach: it has cottage-food laws, but they largely only allow farmers to make cottage foods from home. Maine, North Dakota, Utah, and Wyoming have enacted what are called "food freedom" laws that exempt HBBs from regulations that apply to grocery stores, restaurants, and other food establishments.

Discussions about cottage-food laws can quickly escalate to debates about regulatory details and to concerns about food safety. What exact foods should be permitted? Should foods sold at farmers' markets be frozen? These are important questions, as there are major safety considerations in play. But fewer and fewer states are enforcing a regulatory default of outright prohibition on selling food made within the home.

Individuals making and selling food from their home are often only selling to neighbors in their community. Even when HBB-produced food is sold at farmers' markets, a large degree of market discipline faces operators, in that a poor product can result in strong and immediate reputational repercussions. Additionally, as long as the labeling is clear, consumers will know where their food is coming from and can make their own decisions on the relative risks. Cottage-food laws such as Colorado's can help better align the risks and opportunities associated with home-based food production and allow for more diversity in the provision of food.

Another profession-specific regulatory area covers the provision of child care services within the home. Recently, in 2018, California passed the California Child Day Care Act, which comprehensively established a statewide system for licensing child care.⁶⁸ As part of policy makers' efforts to ensure a supply of affordable and high-quality licensed child care, the act preempts local zoning, building, and fire codes that conflict with its provisions. It requires that small child care facilities must "be considered a residential use of property for the purposes of all local ordinances."⁶⁹ As a result, the act prohibits localities from implementing business-license requirements or imposing restrictive zoning requirements on small child care homes.

The key distinction is that the act largely protects small, home-based child care facilities. Under the act, local governments are still allowed to regulate large home-based child care facilities, but only under the guidelines of the legislation. The difference between the two types of daycare is that small facilities usually have only one adult child care provider who is living in the licensed home, possibly has one assistant, and can enroll approximately six to eight children. Large daycares, on the other hand, tend to have two adult providers and one assistant and enroll approximately twelve to fourteen children.

Basic health and safety regulations covering daycare facilities remain as robust as ever. After all, all daycares still have to be licensed by the California Department of Social Services Community Care Licensing Division. The California Child Care Facilities Act merely helps to ensure that daycares are treated like other businesses when it comes to local licensing and zoning requirements. Particularly for small daycare facilities, local governments cannot apply any restrictions that are not also applied to all other single-family residences. Despite the slight difference in what is permitted in the regulation of small versus large

66 Marsha Mercer, "As Home-Cooked Cottage-Food Industry Grows, States Work to Keep Up," Pew Charitable Trusts, 2019, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/19/as-home-cooked-cottage-food-industry-grows-states-work-to-keep-up>.

67 Harvard Law School, Food Law and Policy Clinic, "Cottage Food Laws in the United States" (2018), <https://www.chlpi.org/flpc-releases-cottage-food-laws-united-states-report/>.

68 Cal. Health & Safety Code §§ 1596.70.

69 Cal. Health & Safety Code § 1597.45 (b). See Cal. Health & Safety Code § 1597.45 (a).

daycares, the act crucially does not allow cities or counties to prohibit daycares in single-family dwellings, regardless of home size.

The ultimate goal of this California legislation was to address the lack of child care availability by encouraging the establishment of family child care homes. As the law just passed last year, it is too soon to know exactly how the California law is impacting daycare provision and costs, but it is likely that by simplifying the regulatory process, it will increase access to more affordable child care options. This is important for operators and consumers alike, as HBB child care is often cheaper relative to more conventional options.⁷⁰ Data from California indicate that annual cost of child care was \$2,976 lower when offered within the home than in conventional daycare centers.⁷¹

Three commonalities can be observed in the experiences of Arizona, Colorado, and California. First, small operations are generally exempted from the conventional regulatory system, which is often designed for large operators. While in Arizona these limits on size are de facto, in Colorado these limits on size are de jure. Second, discretion and vagueness are removed to the greatest extent possible. In Arizona, as in California, ensuring that regulations are narrowly tailored is ensured through an added level of state review. Third, standards are preserved to deal with the genuine potential harm that an HBB might cause. The Arizona standard allows for some continued regulation of parking and traffic, while the Colorado and California initiatives remain appropriately strict on issues of health and safety. This addresses the true impacts of the HBBs in question, without resorting to the blanket prohibitions and opaque standards that have historically characterized HBB regulation.

Recommendations for Policy Makers

How Should Policy Makers Think about Home-Based Businesses?

One of the biggest problems with the regulation of HBBs currently is the inconsistent and vague nature of many rules and the uncertainty that this introduces. As Reuschke and Domecka write in their policy brief, there is uncertainty in many areas about whether permission is needed to use parts of the home for business purposes.⁷² In the most stringent cases, zoning ordinances are “more often written in broad terms, essentially banning all home businesses on the theory that they might lead to problems.”⁷³ The uncertainty that this creates for HBBs is detrimental to entrepreneurship.

Writing regulations in fear of something that may someday happen is often inspired by what is known as the precautionary principle. This policy disposition, as economist Adam Thierer describes it, focuses on risk minimization and requires entrepreneurs and business owners to seek approvals before they develop any new goods or services, inspired by the sentiment that it is “better to be safe than sorry.”⁷⁴ Regulation inspired by the precautionary principle impacts not only HBBs, but businesses in many other regulatory areas. It ultimately stifles opportunities for experimentation and entrepreneurialism.

We recommend that policy makers consider the alternative policy disposition called permissionless innovation. As Adam Thierer writes, the concept “refers to the notion that experimentation with new technologies and business models should be permitted by default. Unless a compelling case can be made that a

70 *HuffPost*, February 17, 2016, https://www.huffpost.com/entry/4-secret-alternatives-to_b_9253798.

71 “Annual Cost of Child Care, by Age Group and Facility Type,” KidsData.org, <https://www.kidsdata.org/topic/1849/child-care-cost-age-facility/table#fmt=2358&doc=347,1763,331,348,336,171,321,345,357,332,324,369,358,362,360,337,327,364,356,217,353,328,354,323,352,320,339,334,365,343,330,367,344,355,366,368,265,349,361,4,273,59,370,326,333,322,341,338,350,342,329,325,359,351,363,340,335,2,127&tf=88&ch=984,985,222,223&sortColumnId=0&sortType=asc>. The average annual cost of child care provided by child care centers between 2009 and 2016 was \$11,083. The same average for child care provided in the home was \$8,107.

72 Reuschke and Domecka, “Policy Brief,” 23.

73 Christina Sandefur, “Getting Out of Your Business: Cities Nationwide Are Making It a Crime to Work from Home,” *Regulation* 2018–2019 (Winter 2018–19): 16–20.

74 Adam Thierer, “Embracing a Culture of Permissionless Innovation,” Cato Institute (2014), <https://www.cato.org/publications/cato-online-forum/embracing-culture-permissionless-innovation>.

new invention or business model will bring serious harm to individuals, innovation should be allowed to continue unabated and problems, if they develop at all, can be addressed later.⁷⁵

For the best case study on why permissionless innovation is important, consider the explosive growth of the internet and information technology sectors since the 1990s. The fact that none of the entrepreneurs in these industries had to ask for permission based on out-of-date standards to develop these new technologies allowed them to innovate more easily and provide opportunities for others to follow. Had the precautionary principle been the default regulatory position, the culture required for taking risks may have not developed.

A permissionless-innovation approach is especially important with HBBs, for as the nature of work evolves, notions of work-life balance will change and new opportunities will come into focus. But many zoning ordinances continue to reflect the precautionary principle as they prohibit HBBs altogether in fear that they might cause some ill-defined harm. This prevents many residents from partaking in no-impact, income-generating commerce that could improve their well-being. If planners instead embrace permissionless innovation, they can help foster a culture of innovation that can unlock long-term growth opportunities.

Embracing a permissionless-innovation policy disposition does not prevent planners from addressing serious concerns. It merely switches the burden of proof. Instead of HBB owners having to navigate a complicated process to try to prove to planners that they are worthy of existence, under a permissionless-innovation approach, planners are asked to explain why ongoing trial-and-error experimentation with a new business model should be disallowed.⁷⁶

Permissionless innovation is especially important given the information problems facing urban planners. To be able to anticipate each and every potential harm that could result from an HBB would mean accessing an impossible amount of information. Asking planners to try to predict just how HBB owners will innovate and to then try to preemptively regulate based off of these predictions is asking too much.

As Nobel laureate F. A. Hayek has written, planners face informational constraints that limit their ability to anticipate how the economy will respond to the needs and wants of consumers.⁷⁷ Any ordinance trying to regulate the minute details of the economy will end up falling behind, as we saw with the outdated occupation lists in many first-generation zoning ordinances. Instead, by allowing permissionless innovation, planners are able to create a more conducive regulatory environment for the fast-paced nature of technology and work. This disposition can thus serve as a helpful guiding principle for regulatory reform.

Actionable Policy Recommendations

We join the broader literature in recommending that municipalities move away from the second-generation regulatory framework and toward a third-generation framework. States and localities interested in being leaders in making their zoning ordinances suitable for HBB growth should consider the following recommendations. The specific recommendations listed below would each move cities closer to a regulatory environment amenable to home-based entrepreneurship while addressing the meaningful concerns that neighbors may have.

Phase out “customary” language. As documented above, the traditional “customary” standard for permissible HBBs has aged poorly, as have explicit lists of permitted HBBs. While occasionally updating these lists may work as a short-term fix, the more sustainable long-term regulatory solution is for policy makers to phase out the customary standard altogether and shift toward regulating the measurable impacts of HBBs.

75 Ibid.; Adam Thierer, “Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom” (Arlington, VA: Mercatus Center at George Mason University 2014).

76 Thierer, “Embracing a Culture.”

77 F. A. Hayek, “The Use of Knowledge in Society,” *American Economic Review* (1945).

Tie all performance standards to measurable health, safety, and welfare impacts. Current HBB ordinances enforce performance standards that are to varying degrees too vague, too strict, or unenforceable. The prevailing vagueness and lack of enforceability leaves the legality of many HBBs up to the whims of enforcement officers while the excessive strictness needlessly criminalizes many harmless HBB activities, forcing HBB operators to either cease operations or go underground. Enforcement of these rules is thus often arbitrary and complaint-based, with enforcement actions resulting in undesirable invasions of homeowner privacy. Policy makers should critically evaluate all performance standards for their ability to address serious, measurable impacts.

Create a permit-free “no impact” category of HBB. The vast majority of HBB activities are not only harmless but produce many underappreciated social benefits. Municipal ordinances should reflect this by demarcating a no-impact category of HBB, which would not be subject to undue licensing or permitting. To the extent that states can define this category and preempt over-regulation at the local level, this preemption is appropriate.

Offer flexible review and permitting for unconventional HBBs. Many desirable HBBs may at times run afoul of standard “no impact” rules. This is especially the case with HBBs that start small but grow over time. In many cases, these impacts can and should be mediated by a prudent agreement between HBB operators, city planners, and neighbors. Policy makers should offer a permit to allow such impactful HBBs on a predictable and public basis.

Develop profession-specific regulations that work for HBBs. Many HBBs are small, informal operations that deserve to be treated differently from large, incorporated businesses. This is especially true of important professions such as child care and food preparation, which both have a long history of taking place within the home but come with serious health and safety considerations. In such cases, policy makers, preferably at the state level, should develop profession-specific HBB regulations that address important risks without making compliance overly burdensome.

Conclusion

The economic benefits of HBBs, both to households and communities at large, are numerous and meaningful. The regulatory questions surrounding them are complicated and important, spanning a century of planning theory. Both the benefits and the complications give policy makers reason to take the question of HBBs seriously. But at the end of the day, the impetus to act on this issue should start with a human perspective. HBBs reflect the best of what the economy has to offer, providing individuals of all backgrounds with the opportunity to chart their own path, serve their neighbors, and innovate in ways that can reshape the entire economy. Our land-use regulations should acknowledge this by making space for the humble HBB.