

MARCH 2023



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WISCONSIN: A BROKEN HOME FOR HOME-BASED BUSINESSES



Introduction



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POLICY INTERN

The COVID-19 pandemic has brought lasting changes to the world's economy. While much of this change has not been positive, one side effect has been massive shifts in the U.S. labor market, with record numbers of people quitting their jobs. According to the Bureau of Labor Statistics, nearly 30% of the workforce voluntarily left their jobs in 2021—and these high numbers have continued into 2022.¹ This “Great Resignation” has led to a boom in entrepreneurship, with many workers taking control of their destinies and starting their own businesses. In 2021, there were nearly 5.4 million new business formations, an increase of 23% over 2020 and 50% over 2019.² Moreover, home-based businesses are disproportionately operated by women and minorities relative to the population.³

Parallel to the rise of working from home, many of these new businesses are opening right in entrepreneurs' own living spaces. Growth on e-commerce platforms like Amazon, Etsy, Shopify, and Facebook Marketplace has offered opportunities for business owners to broaden their potential customer base and sales. These businesses are surprisingly varied in their industry: survey data shows that a considerable

number of in-home businesses operate in fields as different as retail, IT, food service, entertainment, and childcare.⁴ While some entrepreneurs treat these businesses as ways to supplement their income, many may grow into successful, full-time employers. Case in point, nearly half of home-based business operators have plans for business expansion.⁵ In fact, many of the most successful businesses on the planet began their operations at home, including Amazon, Microsoft, Disney, Apple, and Google.⁶ According to the Small Business Administration, there are approximately 32.5 million small businesses in the U.S.,⁷ with about half of those being home-based.⁸ Another study showed that about 69% of small businesses get started in the home.⁹ One estimate states that home businesses, in the national aggregate, generate nearly \$500 billion in revenue each year.¹⁰

Even so, communities across the nation, and specifically in Wisconsin, have instituted lengthy lists of regulations that create barriers to people starting in-home businesses. Of course, rules preventing the operation of industrial or heavy commercial equipment that produces excessive negative externalities, such as noise or pollution, in a residential area make sense. That would not only disturb the peace, but have material negative effects on neighboring properties. However, as we will show, many of the rules on the books are arbitrary and unnecessarily burdensome. If 69% of small businesses start at home, and local governments across Wisconsin want to attract business, then they ought to enable entrepreneurs to start home-businesses—not regulate them out of existence.

METHODOLOGY

To demonstrate the barriers that home-based businesses face across Wisconsin, WILL created a ranking system that gauges the relative burden of regulations on home-based businesses in the state's 20 most populous municipalities.* These rankings were calculated by analyzing the restrictions placed on home businesses by each of these cities' complex zoning codes. The aim of this brief is to highlight the harms of overly burdensome regulations on home-based businesses, and to advocate for specific solutions that would help these small businesses, all while minimizing negative externalities on residential communities.

As we will show, many regulations on home-based businesses artificially stymie economic growth in cities and the state at large—and may even infringe on the constitutional rights of residents to full use of their property. If Wisconsin desires greater prosperity and freedom, then enacting reforms that protect the rights of individuals to conduct business from their homes would be a great start.

* Technically, 19 of them are "cities," and one is a "village," which are legally different in Wisconsin. For brevity, though, this report will often just refer to all 20 as "cities."



The Ranking System: How It Works

WILL created the Wisconsin In-Home Business Regulatory Ranking, seen in Table 1 below, based on the requirements that Wisconsin's 20 largest cities impose on in-home businesses. In order to determine the rankings, we first compiled each city's code of ordinances pertaining to the regulation of in-home businesses. WILL used this information to create 18 specific factors by which to rank the cities. These factors represent relatively common regulations placed on in-home businesses. A detailed appendix explaining each common regulation noted by our ranking system can be found at the end of this report. An interactive dashboard displaying which regulations exist in each city is also available on our website.

WILL then summarized the 18 factors, based on severity, to give each city a final score. Eleven factors typically added one point against a city's score, as they were considered "ordinary

regulations." Five factors, that we considered "overstep" regulations, typically counted for two points, while the last two types of regulation counted for three points, as they were considered "egregious regulations." This added up to a 27-point total for our scale. The greater the number of regulatory marks a city receives, the more unreasonable and constricting their regulations on home-based businesses are.

We say "typically" for "ordinary" and "overstep" regulations because occasionally one city's version of a common type of regulation was significantly more or less burdensome than the norm for that type, and so moved up or down the scale depending on the severity of that regulation. For example, one frequent "overstep" regulation is the prohibition of employing people who are not residents of the home. However, Wausau allows one non-resident to be employed, and Oshkosh allows one non-family member

Oppressive Regulations for Home-Based Businesses in Wisconsin's 20 Most Populous Municipalities



to be employed, so their scores only receive one point for that regulation (instead of the usual two). On the other hand, Janesville’s noise ordinance requires home-based businesses produce “no noise,” which is more of an overstep than requiring businesses to create no noise *irregular to a residential area*, which is the more usual version of that kind of regulation. Therefore, that counted for two points against Janesville, rather than just one.

Additionally, some individual cities had especially egregious regulations that were unique to them. These counted for three points each, just like the two common regulations considered “egregious regulations,” and were added to the city’s score out of 27 points. For instance, Sheboygan first received 13 out of 27 points for the regulations the city imposes on home-based businesses. But

because the city has four additional egregious regulations unique to Sheboygan, WILL added 12 penalty points to the city’s initial score of 13, for a final score of 25.

The 11 common “ordinary regulations,” which counted for one point each against cities, include:

- Limiting the amount of floor space a home business can devote to its business activities
- Mandating that all business activity occur in the primary residence rather than an accessory structure (e.g., a garage or shed)
- Noise ordinances requiring businesses refrain from creating sounds irregular to a residential area
- Banning the outdoor storage of materials

Table 1.
Wisconsin In-Home Business Regulatory Ranking By City

According to these rankings, La Crosse has the least restrictive regulations for in-home businesses, while Sheboygan has the most restrictive regulations.

City	Regulatory Marks (Out of 27)
La Crosse	6
Wauwatosa	9
Brookfield, Racine	10
Fond du Lac, Milwaukee	11
Waukesha	12
Madison	13
Menomonee Falls	14
Janesville, Wausau	16
Greenfield	18
West Allis	19
Green Bay, Eau Claire	20
New Berlin	21
Oshkosh	22
Appleton, Kenosha	24
Sheboygan	25



- Banning hazardous materials
- Instituting off-street parking requirements or work vehicle prohibitions
- Commanding that the business not change the “character” of the residential area
- Requiring that all deliveries be customary to residential purposes
- Banning the use of signs
- Requiring an application or permit to legally run a home business
- Requiring that a city government review and approve one’s business

It is important to stress that by using the word “ordinary” to describe the regulations listed above, we are not dismissing their harmfulness to home-based businesses. They are simply the kinds of regulations that cities most ordinarily include in their codes and that do not present a particularly crippling burden. For instance, a

regulation that the business must occur in the residence rather than in an accessory building (without perhaps additional permitting) occurs in 50% of the cities we examined, but is considered less restrictive than the mandate that any and all employees be residents of the home, which appeared in that form (i.e. without allowing one exempted employee, like Wausau and Oshkosh do) in 60% of the cities we looked at—therefore, the accessory building regulation earns a city one point, while the employee residence regulation typically earns a city two.

The five common “overstep regulations,” which typically count for two points against cities, include the aforementioned requirement that any employees of the home business also be residents of the home, as well as regulations that limit the number of people on the premises at one time, enumerate the hours of the day that the home-business is allowed to operate (e.g., 8:00 a.m. to 8:00 p.m.), enumerate the types of businesses that are permitted to operate out

of a home (whether implemented as a list of businesses that cannot be run from home, or as a list of businesses that are the only ones permitted), and charge fees to legally operate a home business (fees generally range between \$25 and \$300).

The two common “egregious regulations,” which counted for three points against cities, are requirements that products sold by the home business be manufactured on the premises and a ban on keeping inventory on the home’s premises. These were considered the most egregious of the common regulations because they severely restrict the ability to conduct any sort of goods-based business from the home.

Regulations that were especially egregious and unique to the city they were in were identified in Madison, Kenosha, Racine, Appleton, Oshkosh, Eau Claire, Janesville, West Allis, and Sheboygan. (Those nine cities thus received penalty points.) Those regulations are as follows:

- **Madison:** Samples may be kept, but not sold, on the premises.
- **Kenosha:** A certificate of compliance is required to operate an in-home business.
- **Racine:** 1: If an applicant is a tenant, they must have written evidence of the property owner’s approval of their business. 2: With their application they must include plot plan/survey of lot showing residence, floor plan showing size of home business, floor plan showing storage for home business, delineated parking area, and sign details including size and location.
- **Appleton:** All doors and windows of the attached/detached garage shall be kept

closed at all times during the hours of operation, except when entering or exiting.

- **Oshkosh:** 1. Retail or wholesale uses shall be conducted entirely by Internet, mail, and/or off site. 2. A site plan must be included in the application.
- **Eau Claire:** The home occupation does not involve group meetings or a private school with attendance that exceeds five persons except otherwise permitted by the commission upon such conditions that the commission deems necessary.
- **Janesville:** While office[s] of a “salesman, sales representative, or manufacturer’s representative” are allowed at home businesses, these salesmen are not allowed to “make transactions on the premises.”
- **West Allis:** 1. “Home-based business must not utilize a shipping service from the dwelling unit.” 2. “Five inspections must be conducted before the permit is issued: building, electrical, plumbing, health, and fire inspections.”
- **Sheboygan:** 1. Extensive zoning map requirements 2. A land use map is required 3. A written description of special use “describing the type of activities, buildings, and structures proposed for the subject property and their general locations” is required 4. A site plan is required (9 pages detailing what specifically is required).



How Do Regulations Affect In-Home Businesses?

We sought to examine the real-life implications of these regulations through open-records requests to the 20 cities examined in this report. Specifically, we asked for the number of home occupation applications, and all documentation on enforcement actions taken against home occupations, since the beginning of 2021. The results were mixed. Some communities indicated that they did not keep records for home occupations, some suggested that they had not conducted any enforcement of regulations on home-based businesses during this time frame, and some provided specific permit denials or other enforcement actions. These actions ranged from violations for keeping commercial gardening equipment in a visible area (typical of our violation records from Madison) to outright permit denials and commands not to engage in the activity of one's business (for example, this happened to a dog groomer in West Allis).

WILL examined dozens of records from multiple cities that tell similar stories. Many of these records were nondescript, and therefore difficult to report on in a significant manner. What these various records indicate, on the whole, is that Wisconsin's 20 largest cities engage in spotty, unreliable, and often unreasonable enforcement of zoning codes against in-home businesses. This results in a less-than-hospitable environment for home businesses and in uncertainty for would-be entrepreneurs trying to get their businesses started.

At the start of this report, an aspect we were excited for was to tell the stories of in-home businesses that have either been shut down by a city or had reached some sort of agreement by which they were able to operate their business legally. We reached out to a number of business owners, some whom we found through open records requests and others we found separately,

asking for their stories. We called, emailed and messaged on social media platforms, but were unable to find even one business that was willing to share their story with us.

This is likely indicative of the climate that home based businesses are dealing with. For instance, if they previously ran into trouble with a city, but eventually came to an agreement, then why rock the boat by talking about it? And if they are still hoping to negotiate something with the city in order to run their business above board, why risk jeopardizing it? This underscores the bottom line of this report which is that home businesses should not operate in fear of their municipality and its outrageous regulations.

Given the lack of responses, the best we were able to do was piece together a rough history of events surrounding the story of a flower shop in Oshkosh. From what we observed, this business was not disturbing their neighborhood in any truly noticeable way. Nevertheless, they were told to shut down because they were in violation of the city's in-home business regulations.

OSHKOSH FLOWER SHOP

WILL uncovered a formerly home-based business run by a local man in Oshkosh, Wisconsin, that had to shut down for violating the city's home-based business regulations. Through social media, we were able to discover that this home business operated at least as far back as 2019. Photos obtained through open records show that the proprietor had set up the first floor of his home as a Christmas store during the holiday season. Every room had merchandise displayed, from

stocking stuffers to ornaments. In warmer months, this home-business owner made a floral shop of his home. According to the violation notice this home-business owner eventually received, he violated one of Oshkosh's egregious regulations that "items shall not be sold or offered for sale on the premises." The city's "required action" went as far as to say "all sales occurring on premises are not permitted . . . includ[ing] indoor and curbside sales."

The store's proprietor was first served a notice on January 19, 2021, and was ordered to comply by January 26, 2021. The records show that he was served a similar notice again on February 2, 2021, which required him to comply by February 10, 2021. WILL also obtained an email that the city sent to this home-business owner on February 12, 2021, explaining that if he rezoned his home, its primary purpose would still be residential, and, therefore, he needed to open a store in a building zoned for merchandise sales if he wanted to continue operating his business.

A few months later, we read in Oshkosh's newspaper (the *Oshkosh Northwestern*) about a new flower shop that opened in late May 2021.¹¹ The article explains that the proprietor had decades of experience working with florals and had previously run a flower shop out of his home.

So, why didn't this business owner start with a brick-and-mortar building? Evidently, he had a preference for operating the business out of his home,¹² and likely reaped many benefits that other prospective home entrepreneurs would like to enjoy too. Unfortunately, WILL was unable to get in touch with the owner to confirm specifics, but we could speculate that the likely upsides could have included: not having to pay the enormous overhead for a store front, not needing to spend time and gas money commuting, enjoying an extra "local" brand,

cultivating a loyal following in Oshkosh, and having the time needed to ascertain his merchandise and clientele through trial and error without needing to front the money to open a retail space. Specifics like how much merchandise should be kept in stock, when a community's peak shopping hours are, and how seasonal different goods are, could all be learned through experience while operating the business with minimal overhead out of his home—this same information would have been far riskier to learn while operating a brick-and-mortar business for which one must pay rent and utilities.

FURTHER EXAMPLES OF WISCONSIN ZONING ENFORCEMENT AGAINST HOME-BASED BUSINESSES

- **West Allis:** A resident was denied an in-home business permit for her dog-washing business. The city said that such a business is only "allowed in any of our commercial or industrial zoning districts."
- **Kenosha:** A resident who was operating a bounce house rental business out of her home was ordered to shutter her operation. The zoning notice simply states that zoning regulations do not allow "that type of business use on this site."
- **Madison:** A resident violated zoning laws by posting a sign for their window/gutter cleaning business.
- **Madison:** A resident was in violation for running a construction business out of their home.
- **Waukesha:** A resident parked a vehicle for

his snow-removal business in his driveway and was therefore in violation of zoning law.

- **Menomonee Falls:** A resident was ordered to cease operating his landscaping business from home, which includes removing landscaping equipment and vehicles.
- **Menomonee Falls:** A resident was ordered to cease their dog breeding and selling business.
- **Fond du Lac:** A resident applied for a home-occupation permit for her re-upholstery business and was denied because “a home occupation cannot generate vehicular traffic beyond that common to a one-family dwelling. Also, retail sales are prohibited at one-family dwellings.”
- **Wausau:** A business was shut down for selling goods out of its garage because garage or estate sales were forbidden to exceed 4 days in duration and could not be held more than four times in a 12-month period, or twice in a 30-day period.

IMPACT ON WISCONSIN

The above examples give a taste of how the livelihoods of small-business owners can be arbitrarily shut down or inhibited by a city government with zoning laws that overstep their bounds. And in addition to enterprises that get shut down, there’s no way to know how many small businesses are never started at all due to burdensome regulations like these. After all, for entrepreneurs who are just seeking to start a small “side hustle,” it’s usually not feasible to rent out an entire commercial space. For all these reasons, people should be allowed to run such businesses from home.

This is not a regime Wisconsinites should be complacent with. As a Midwestern state, Wisconsin does not have the benefit of a large number of young professionals flocking to work in our cities and create economic growth, as many coastal and Sunbelt states do.¹³ Nor do we experience a great deal of population growth each year.¹⁴ In fact, according to research conducted by the Kauffman Foundation, Wisconsin ranked 47th among the states plus D.C. for its rate of new entrepreneurs and 42nd in its early-stage entrepreneurship index.¹⁵ It follows that it would be particularly beneficial to Wisconsin to encourage economic growth by whatever means are readily available. By overregulating home-based businesses, which is where many entrepreneurs get their start, cities artificially limit Wisconsin’s economic power.

Moreover, there’s something of an inherent rights issue with many of the common regulations on home-based businesses. From what source does a city government legitimately derive the power to tell citizens they can only conduct business in their home at certain hours of the day, that only so many clients can be in their home at one time, or that items they seek to sell cannot be stored in their private residence? Such power utilized by the state impedes the ability of citizens to earn a living. WILL has argued in the past that the Wisconsin Constitution, pursuant to Article I, Section I, implies an inherent right to earn a living.¹⁶ The sorts of intrusive, overburdensome regulations promulgated by cities, detailed in this report, deny that right, which is deeply rooted in the history and traditions of our state and our country. Both federal and state governments are designed to protect self-government and individual rights. They should not now cede such important ground to city governments overstepping their authority.

A woman with curly hair is shown in profile, looking down at a laptop. In the background, a young child is sitting on a couch, looking at a tablet. The scene is set in a bright, modern home environment. A dark blue diagonal shape is overlaid on the bottom left corner, containing the title text.

The Reality of Zoning Regulation Enforcement

Before we begin proposing solutions to the problem of arbitrary regulations on home businesses, it's important to note two points about how these regulations are actually enforced. First, we should note that many people can, and do, get away with violating regulations with no real consequences. Second, we acknowledge that enforcing zoning laws, realistically, is not the top priority of most cities. Nevertheless, overburdensome regulations remain materially problematic, as we now explain.

On the first point, that many people get away with violating regulations—this is true, insofar as many people successfully run a quiet business out of their home that conflicts with their city's regulations while no one notifies local authorities. However, this is no good argument for maintaining the status quo in cities with burdensome regulations. A home-business owner should not be made to worry constantly that their livelihood is in jeopardy from a city government that could spring into action against them at any moment. If they are conducting a legitimate business, home-business owners should not feel the need to conduct any of their dealings in secret to avoid reprisal from neighborhood busybodies and/or an overreaching city government.

On the second point, that most city governments are not policing zoning laws or home-business regulations as strictly as they might—this is perhaps the case, but this is not as much a relief to home-business owners as it might sound. Lack of consistent enforcement may make it easier to run a home business that violates questionable municipal codes, but it also means chronic uncertainty as well as the discretionary targeting of home businesses by city governments. If the in-home-business regulations of a city

are not enforced consistently, they cannot be enforced equally, which means they can only be enforced discriminatorily. This puts vulnerable people at greater risk of being targeted by a city government. And, if we take the "inconsistency of enforcement" point to its extreme, and say that some cities may not be enforcing these regulations against home-business owners *at all*, we come to a logical conclusion that supports WILL's policy recommendation: repeal overburdensome regulations altogether.

Putting aside those home-based businesses that evade licensure procedures in their city, one more heavy reality is that according to a survey conducted by the Institute for Justice, 61% of home-business owners must wait over two months for regulatory approval for their business to operate.¹⁷ This alone is a sufficiently large and unnecessary barrier to justify action to remove hurdles facing home-based businesses via regulatory reform. Wisconsinites seeking to start their own businesses from home deserve a better process to engage in the legal commerce of their own goods and services.



Policy Solutions

At this point, it is clear that Wisconsin's 20 largest cities each have zoning codes that cause major problems for home-based businesses—some cities having more issues than others. In order to solve these problems, WILL proposes three different routes to reform. These solutions are: (1) a statewide preemption bill that the Wisconsin legislature could pass to protect the individual rights of Wisconsinites, (2) a decentralized campaign by which citizens of Wisconsin's cities petition their municipal governments to remove restrictions on home-based businesses, and (3) transitioning to a mostly court-based, common law nuisance model for enforcement against home-based businesses to address any real problems for neighborhoods. All three of these solutions can, and should, be pursued simultaneously.

STATEWIDE PREEMPTION BILL

The simplest and most effective method for resolving the issues discussed in this report would be for the Wisconsin legislature to pass a bill that preempts certain restrictions on home-

based businesses. This would mean voting for a resolution in which the state of Wisconsin creates a standard for home-based business regulation, which, among its provisions, would prevent cities from creating stricter regulations than those found in the statewide standard. The Goldwater Institute has written model legislation for a preemption bill aiding the operation of home-based businesses.¹⁸

It has always been the purview of state governments to protect the individual rights of citizens against encroachments by other entities, including those of over-zealous city governments. The right of Wisconsin residents to earn a living, and their right to property, are threatened by cities with overburdensome home-based business regulations. It therefore follows that the state may act to defend those rights. Moreover, the economic activity in one city reflects upon the whole state, not just that city. The state has a compelling interest in encouraging home-based businesses to prosper across the entire state and in preventing cities from hampering their growth.

Several states have already enacted or attempted to enact statewide preemption bills in order to protect home-based businesses in their



states from over-regulatory cities. Among them are Florida,¹⁹ Iowa,²⁰ Missouri,²¹ Mississippi,²² and Oklahoma.²³ Florida, Iowa, and Missouri successfully signed their legislation into law in 2021, 2022, and 2022, respectively. Unfortunately, Mississippi's and Oklahoma's bills passed in one house of their bicameral legislatures only to have their bills die in committee in the other house (both in 2021). Ohio²⁴ and West Virginia²⁵ both appear to have home-based business protection bills actively working their way through their respective legislatures at the time this report was published.

Florida's home-based business bill is perhaps the gold standard. The bill establishes that cities cannot regulate home-based businesses any differently than they would a business in a commercial district, except for six low-impact exceptions—such as, the business must be secondary to the use of the dwelling as a residence, home-businesses must comply with local ordinances concerning nuisance, and health and safety standards. Aside from the six low-impact regulations in Florida's preemption bill, the legislation states that “local governments may not enact or enforce any ordinance, regulation, or policy or take any action to license or otherwise regulate a home-based business.”

This affords home-business owners in Florida all the same rights and privileges of normal home owners and normal business owners. Wisconsin's legislature would do well to enact similar legislation, thereby resolving this issue statewide.

CITY-BASED ADVOCACY

If the state legislature proves an unworkable means by which to defend home-based small business owners, supporters of economic freedoms and property rights aren't out of options. Mayors and city councils across the state of Wisconsin are elected, and can make and remove restrictions in and from their city codes. There have been successful measures of this sort taken in the largest and smallest of communities in other states. For instance, Nashville, Tennessee, successfully campaigned to, essentially, make home-based businesses legal in the city.²⁶ At the other end of the spectrum, in the tiny village of Tyrone Township, Michigan, residents successfully petitioned their Board of Trustees to loosen restrictions on in-home businesses.²⁷



Local communities supportive of business opportunity can band together and petition their municipal governments for the removal of overburdensome home-based business regulations from their city codes. New candidates can run for city office against incumbents unwilling to work for the repeal of these codes. Concerned citizens in Wisconsin interested in learning about the specific provisions of municipal codes that regulate home-based businesses in their city are welcome to contact WILL for more information.

COURTS & COMMON LAW NUISANCE

This recommendation is less about reform, and more about soothing concerns some may have about the dangers of repealing several regulations on home-based businesses. To be clear, WILL does not advocate for the removal of all conceivable regulations on home-based businesses—if you want to turn your residence into a factory for firework production, or into a full-blown car-repair shop, WILL isn't proposing a right to that. Restrictions on home-based businesses that prevent people from housing hazardous materials, thereby creating public health threats, or which clearly alter the character of the surrounding residential area, should be kept in place. Florida's aforementioned state preemption bill, which WILL supports, does exactly that.

But what about smaller concerns? What if your neighbor runs a business out of their home that creates unreasonable traffic nearby, or has so many clients each day that your yard is

constantly trampled by their clients? Are there any protections for you if home-based business regulations are loosened?

The answer to that question is yes. Under common law, both public and private nuisances are grounds to bring a suit against the person causing a nuisance that harms you. Nuisance suits can be settled in court for money damages or by an injunction to force the offender to cease all nuisance-creating activity. While this may sound like an arduous process, it is the best solution for balancing the property rights of home-business owners with the interests of neighbors who may be harmed by business owners causing unreasonable nuisances. Balancing the equities in such cases is exactly why we have courts in the first place.

In sum, citizens should not fear the repeal or loosening of regulations on home-based businesses, because there are still mechanisms to protect neighborhood environments. Common law nuisance suits, and continued regulation against unreasonable or dangerous activity by home-businesses, will be sufficient to protect communities while also making room for unobtrusive and non-hazardous home-based businesses.

Conclusion

With more home-based businesses than ever emerging as a result of the pandemic, now is the perfect time for Wisconsinites to make changes to the business landscape in their own municipalities and to petition their government to make changes at the state level. All three solutions we offered in this report ought to be tried simultaneously. The ultimate hope is that the Wisconsin legislature enacts a statewide preemption bill, thereby making Wisconsin a state open to businesses of any size and caliber. If the preemption is passed, this would make city-based advocacy less crucial. However, we say that the solutions should be advanced in concert so municipalities open their codes to in-home businesses even if the statewide effort is unsuccessful.

Operating a business out of one's home saves on many overhead costs, which is essential when an entrepreneur is looking to try out an innovative idea or supplement income with a modest side hustle. Wisconsin shouldn't regulate these entrepreneurs out of the state, and should instead enact policies that would make Wisconsin a welcoming home for new ideas to grow, and for residents to have the freedom to realize their dreams.

Appendix

Descriptions of Common Regulations

EGREGIOUS REGULATIONS

Production and Sale Regulations (3 points)

"...No article is sold or offered for sale except such as may be produced by members of the immediate family residing on the premises..." (City of La Crosse, § 115(1)). This kind of provision is one of the most damaging a home-business can have imposed on them by a city government. It essentially means that no item can be sold by a home business which is not manufactured by the home-business owner or their immediate family members. This severely limits the types of business an in-home business owner can conduct. Any home-business that requires the delivery of the product they sell to their home is effectively outlawed by this regulation. Nine of Wisconsin's twenty largest cities have this form of regulation on the books.

Inventory Regulations (3 points)

"...No substantial amount of stock in trade is kept or commodities sold..." (City of Racine Municipal Code, § 114(1)). Another of the most egregious regulations a city can promulgate is one against the ability to keep and sell what cities refer to as "stock and trade"—but we call inventory—on the premises of an in-home business. Like the previous regulation, this effectively kills all sorts of business types. If one cannot keep and sell stock at their home, the in-home business cannot successfully or feasibly engage in any business that involves the sale of goods. This restriction is beyond the pale, and should not be in the municipal codes of any city. Yet, six of the twenty cities have this type of regulation.

OVERSTEP REGULATIONS

Enumerated Businesses Regulations (2 points)

"The following businesses are not permissible home occupations: retail sales or rental shop, personal [care] services... automotive repair [or] sales... animal grooming... professional health care office/clinic, limousine, taxi and/or bus service, automotive towing and/or wrecking service..." (City of Fond du Lac Municipal Code, § 720-37). The foregoing was an example of a particular type of regulation that is very common across Wisconsin's cities: the enumeration of businesses that either can or cannot be run out of one's home. While the enumerated businesses in these regulations are often understandably stated as either allowed or disallowed, it is troublesome to enumerate businesses at all that one may or may not operate from their home. Such provisions only make it easier for a city to rules-lawyer their way into penalizing a business that may slide into a disfavored category. Alternatively, some of the listed businesses are not reasonably categorized as disallowed. For instance, why can't someone rent items from their home in Fond du Lac? Twelve of Wisconsin's twenty largest cities have this form of regulation.

Fees (2 points)

Whether explicitly in their municipal codes or not, many cities charge a fee for the privilege of running a business out of one's own home, whether that fee be for application processing or to purchase a permit. These fees range from

\$25 to \$300, according to the data we gathered. The problem with such fees is facially obvious—it is egregious for a city to charge someone for using their own property in a particular way. A city government should have no authority whatsoever to make a private citizen pay fees in order to run a private business from their home. Worse, it's unclear what this fee could possibly cover the cost of—it appears little more than a way for a city government to extort money from its citizens. Half of the twenty Wisconsin cities we looked into charge in-home businesses for the right to exist.

Employment Regulations (2 points)

"Only members of the immediate family residing in the dwelling unit shall be employed on the premises..." (City of Janesville Code of Ordinances, § 42-275). One of the most common regulations on in-home businesses in Wisconsin's cities is the restriction of who can work for you at your home. Most of Wisconsin's fifteen largest cities do not allow anyone who is not a resident of the home, or the immediate family member of someone who lives in the home, to work at the in-home occupation. This is intolerable, because it should not be up to local government to decide how many people one can employ to work at their business. Such regulations stymie the chances of success for small businesses starting from the home. Fifteen of Wisconsin's twenty largest cities have this regulation, in varying forms.

Client Capacity Regulations (2 points)

"No more than two clients shall be seen at any given time..." (City of Oshkosh Municipal Codes, § 30-86(E)). Though not adopted by a majority

of the fifteen Wisconsin cities we reviewed, several cities list in their codes a restriction on the number of clients a home-based business may have in their home at any one time, and/or a maximum number of clients that can be seen across a day, or a requirement that clients be seen only by appointment. This restriction is particularly deleterious to an in-home business, and violative of basic rights, because it restricts the ability of business owners to successfully ply their trade, and egregiously restricts how many people a homeowner can have on their property. Eight of Wisconsin's twenty largest cities have regulations consistent with this form of restriction.

Singled out for their particularly ghastly version of this regulation, is the City of Racine, which, in its definition of home occupations, states that the business will not "involve dealing directly with consumers on the premises" (City of Racine Municipal Code, § 114(1)). In other words, the maximum number of clients a home business can have on the premises of the property at one

time is zero. This cripples, in an unacceptable fashion, the ability of in-home business owners to succeed in Racine.

Business Hours Regulations (2 points)

"There shall be no business visits and/or nonresident worker arrivals or departures allowed before 8:00 a.m. or after 8:00 p.m. ..." (City of Appleton Municipal Code, § 23-45). Restrictions which enumerate acceptable hours for business activity are characteristic of government planning attempting to regulate and qualify all aspects of what a citizen may legally do. People, and as a consequence, their businesses, are not amenable to being treated like machines programmed to behave within certain parameters, nor should they be. It is unjustifiable for a city government to control when home-business owners may or may not have clients over at their homes. Seven of the twenty largest cities have time constraints on business activity.



ORDINARY REGULATIONS

Floor-space Regulations (1 point)

"No more than twenty-five percent of the floor area of one story of the dwelling may [be] devoted to [the home occupation]..." (City of Madison Code of Ordinances, Subchapter 28J: § 28.151). A particularly outrageous restriction several home-businesses in Wisconsin face is the requirement that the operations of such a business take up only a certain percentage of the residence. This percentage is often limited to only twenty-five or thirty percent of one's home. It appears to us bizarre, and perhaps unlawful, for a city government to dictate the precise usage of one's internal, unviewable, private property. This restriction is on the books in fifteen of Wisconsin's twenty largest cities.

In the City of Sheboygan, there is a ridiculous set of requirements associated with this restriction. In order to receive a home occupancy permit, in-home business owners must provide the city with a map of their property detailing how they plan to allocate floor space in their home, as well as a written description describing, "in reasonable detail," how their land is currently used, how this use will change according to their business, what hours their business will operate, what potential nuisances their business could create, and several other similar details. The barrier to entry to the creation of a lawful home business in Sheboygan is therefore extremely high, and egregiously so.

Accessory Structure Regulations (1 point)

**"No home occupation shall be located in or conducted in an accessory structure..."* (City of

Waukesha Municipal Code Book, § 22.58(5)). This regulation is similar to the previous one in that it sees a city government dictating to home-business owners how they must use their property, in a very particular manner. All cities with this requirement do not allow home businesses to be conducted within any building except the principal residence (e.g., a detached garage, a shed, etc.). This regulation harms home occupancy owners by not allowing them to separate the conduction of their business from their primary dwelling while still keeping their business on their property. Half of Wisconsin's twenty largest cities mandate this restriction. It is worth noting that Appleton, alone among the ten cities with this type of regulation, does allow an alternative permit for use of an accessory structure for a home-based business.

Noise Regulations (1 point)

"The occupation or activity does not produce offensive noise..." (City of Fond du Lac Municipal Code, § 720-37). Among all the regulations cities typically have in their municipal codes, this one is perhaps one of the more reasonable. It is perfectly sensible to demand that one's home occupation does not create an irregular or offensive noise nuisance in a residential area. Twelve of the twenty Wisconsin cities analyzed in this report include such an ordinance. However, noise ordinances can go too far, and can be used to arbitrarily target a business on specious grounds.

In the City of Janesville, pursuant to § 42-275(a) of Janesville's Code of Ordinances, the relevant restriction requires home occupations produce "no noise." This is ludicrous, as it provides grounds for the city to take enforcement actions

against a home-business owner if any noise whatsoever, even noise typical of a residential area, is produced as a consequence of the home occupation. This restriction is overly general and ought, therefore, to be changed.

Exterior Storage Regulations (1 point)

"There shall be no exterior storage of equipment or supplies associated with the home-based occupation..." (City of Green Bay Codes & Ordinances, § 44-1587). Another regulation most cities apply to in-home businesses is a prohibition against outdoor storage of equipment associated with the business. This is reasonable under some circumstances, however, as written, most city ordinances apply this rule in a blanket manner that is overly restrictive. Outdoor item storage, if well organized and secure, and not offensive to the character of a residential area, should not be prohibited. Such kinds of storage should not be lumped in with restrictions against truly disorganized, unsecured, offensive storage of materials in plain view in an exterior area. Fourteen of twenty cities reviewed for this report have these restrictions.

Safety Regulations (1 point)

"Will not create greater risk of disease, fire, explosion, or other hazard than that which is common to a residential neighborhood..." (City of Kenosha Zoning Ordinance, §3.03(G)(3)). One of the rare, wholly understandable, and in-fact, advisable, regulations on in-home businesses are restrictions concerning clear health hazards, such as explosives, fire-risks, dangerous chemicals, or disease-spreading materials. Though this regulation is perhaps the only common regulation

that cities include in their ordinances which they should include, surprisingly, only six of Wisconsin's twenty largest cities have a restriction of this type on the books. Given how much more common unnecessary and/or egregious regulations there are than this type of regulation, which protects a real interest in public health and safety, one has grounds to wonder at how poor the judgment of city legislators is on this matter.

Parking Regulations (1 point)

"...The required off-street parking area provided for the principal use shall not be reduced or made unusable by the home-based occupation..." (City of Green Bay Codes & Ordinances, § 44-1587(h)). This sort of regulation on parking and traffic is one of the broadest and most varied across the several cities we examined. Parking restrictions may appear reasonable at first, but become less reasonable when one considers that no such restrictions apply to other activities, such as house parties, or other large gatherings at the home, that are likely to generate more parking or traffic interference than a small business. There are fourteen cities of the twenty in this report that promulgate a regulation of this kind.

Worth mentioning, the language of Eau Claire's parking restrictions on in-home businesses states "no more than one vehicle will be used in the home occupation, said vehicle being no larger than a three-quarter ton pick-up or panel truck" (City of Eau Claire Code of Ordinances, Title 18.35.050(M)). This is an example of one of the most intolerable forms of parking regulations for in-home businesses in Wisconsin, as it hampers the ability of home business owners to own and operate a work vehicle that would be particularly useful to their business. This sort

of restriction counted as an extra point against a city on the basis of parking regulations, but applies only to Eau Claire and Green Bay.

Incidental Usage Regulations (1 point)

"The home occupation must be accessory and secondary to the use of a dwelling unit for residential purposes, and the home occupation may not change the residential character of the residential building or adversely affect the character of the surrounding neighborhood..." (City of Wauwatosa Code of Ordinances, Title 24.10.020). The regulation that the home-business one runs must be "accessory," "secondary," or "incidental" to the use of one's home, and not change the "character" of the residential area, is another one of the rare regulations that makes sense. This language is, perhaps, uncomfortably broad and vague, but it essentially means that home-businesses cannot conduct, primarily, activity that belongs squarely in industrial, commercial, agricultural, or other districts, as a consequence of its tendency to change, in-fact, the disposition of the residential area into something more akin to another type of district. This is reasonable, because an in-home occupation should not conduct, say, industrial manufacturing, or grow crops. Fifteen of Wisconsin's twenty largest cities apply this regulation to home-businesses.

Shipping Regulations (1 point)

"The business may not utilize a shipping service from the dwelling unit..." (City of West Allis Municipal Code, § 19.37(2)). Returning to less justifiable restrictions, multiple Wisconsin cities require that home-based businesses not engage in any sort of shipping behavior that would

be irregular in a neighborhood. While one can imagine the necessity of preventing multiple semi-truck deliveries to a home-business owner's residence several times daily, most cities with this type of regulation construct them in a manner that would restrict business activity that any other home-owner could conduct lawfully. There is nothing that prevents a citizen from having Amazon, or another shipping service, deliver packages at a dozen separate times per day, seven days per week. And yet, if an in-home business owner conducts organized shipping activity from their home, cities that apply this regulation can penalize these business owners for such activity. This is unnecessarily prejudicial toward home-business owners. Six of the twenty Wisconsin cities we studied have a regulation of this breed.

Signage Regulations (1 point)

"No signs relating to the home occupation shall be permitted..." (City of Milwaukee Code of Ordinances, § 295-505(3)(c)). Though not a particularly common regulation, some cities do not allow in-home business owners to have any signage outside their home to indicate the location of their home-business. While it is perfectly sensible to prevent the use of egregiously large or visually garish signage, which several cities do, and we do not penalize them for this. The cities falling under this regulation take a blanket approach, outlawing the usage of any signs whatsoever. This is troublesome, because a small, nondescript, or otherwise unassuming sign would aid an in-home business owner in showing clients to the correct location to conduct business with them. Further, such signage is legal for other purposes in most residential areas in Wisconsin, such as

for political advocacy, indication of home-security devices, requests for no solicitation, etc. There is, in fact, some reason to believe that the outlawing by city governments of home-occupation-related signage constitutes a free speech violation. Six out of twenty cities in Wisconsin we investigated have this regulation in their codes.

Applications & Permits (1 point)

Similar to fees for home occupations, the requirement of a city that home-based-business operators fill out an application and/or obtain a permit, is an unnecessary intrusion into one's liberty to conduct a business from their home. Such activity should not require the approval or direct oversight of one's local government. Fifteen of Wisconsin's twenty largest cities require an application and/or permit to legally operate a business from the home.

Permit Approval Procedure (1 point)

As one may expect, if you have to fill out a permit or application, some governmental body has to review, and then accept/grant or reject such applications and permits. Therefore, all fifteen of the cities that have these applications and/or permits require government approval of them. However, some forms of government review and rejection/approval are worse than others. Ten of these fifteen cities simply have a local governmental department approve or deny the application or permit—a relatively painless and ministerial process. Alternatively, five of the fifteen cities have these permits reviewed by a board of planning commissioners made up of appointed and/or elected officials. Such rule by committee oversteps because it subjects one's business to the opinions of a board of

people who will have no particular expertise to evaluate one's specific business. The process is therefore arbitrary, and may be arduous if such a committee requires a hearing at which the business owner is required to be present, and at which individuals who claim to be affected by your business may also be present. Either way, this type of governmental approval is a clear example of overreach by city governments.



Endnotes

- 1 <https://www.bls.gov/jlt/2021revisionq.txt> <https://www.bls.gov/news.release/jolts.nr0.htm>
- 2 https://www.census.gov/econ/currentdata/dbsearch?program=BFS&startYear=2004&endYear=2022&categories=TOTAL&dataType=BA_BA&geoLevel=US&adjusted=1¬Adjusted=1&errorData=0
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- 26 <https://fox17.com/news/local/nashville-council-passes-ordinance-to-allow-businesses-be-run-out-of-homes>
- 27 <https://www.whmi.com/news/article/tyrone-home-occupation-ordinance-amendment>



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