

Stateline

Pandemic Prompts Officials to Relax Rules on Home Businesses

STATELINE ARTICLE

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Kasi Hartsoch stirs chili in her home while preparing food for her home-based business in Gillette, Wyo. The pandemic pushed many places to relax rules for home-based businesses.

Mike Moore / Gillette News Record via The Associated Press

It took 16 years, a local election and a global pandemic for Jonathan Holtfreter to secure his right to teach tuba in peace.

The retired music teacher, a resident of Ann Arbor, Michigan, had for decades supplemented his public school salary by teaching private lessons at a nearby music store or in his home's soundproofed basement.

But since 2005—when a neighbor complained that the home lessons and the parked cars they invited violated Ann Arbor's city code—Holtfreter has tiptoed around his business, booking fewer lessons than he otherwise could and exhorting students not to park where the neighbors might see them.

He had little hope of changing the rules: The side hustles of middle-aged music teachers weren't a matter of much political urgency or importance in Ann Arbor—at least not until COVID-19 forced millions of Americans to turn to home-based work.

More than a year into the pandemic-induced downturn, Ann Arbor relaxed its city ordinance in early September to allow in-home enterprises to welcome more clients. In recent months, cities and states across the country have taken similar steps. Their goal is to change zoning codes, food safety rules and other regulations to allow a new class of micro-entrepreneurs to launch and operate businesses.

“People were just trying to hustle during the pandemic,” said Ann Arbor City Council member Linh Song, a Democrat who championed Holtfreter’s cause after her election in 2020.

“We had people teaching yoga classes from home, doing metal-working from home, baking—we have a lady who makes pies and a bunch of ladies making cupcakes,” she said. “We’re hoping it’ll help folks feel more supported because it’s going to be another difficult year.”

The issue has galvanized politicians and advocates across the political spectrum, uniting progressives such as Song with pro-business conservatives and free-market libertarians. Since the start of 2020, at least a dozen cities and counties, including Seattle and Chicago, have considered bills designed to ease zoning and permitting rules for home businesses.

Every state allows some type of home-based, or “cottage,” food production, and this year at least 16 states passed legislation that further relaxes food safety, licensing and permitting rules for those producers. Another 10 states are considering it.

Bill supporters argue that many of these regulations are outdated or burdensome, and that they fall hardest on women and people of color, who head a large portion of what are known as nonemployer firms.

But while that argument has gained traction in many parts of the country, moves to further deregulate home businesses also have drawn the ire of some neighboring homeowners, existing companies and even public health professionals, who have voiced particular concern over increasingly permissive food safety laws.

“There are threats to it, there are issues here,” said Doug Farquhar, the director of government affairs at the National Environmental Health Association, a professional organization whose membership includes food safety inspectors. “Don’t just blindly assume there are no problems, because problems exist.”

Decades-Old Rules

Like all business leaders, home-based entrepreneurs face a host of federal, state and local regulations. They pay income and sales taxes, subject to some exemptions. Many businesses—for instance, home salons, tattoo parlors and bakers—also must be licensed and permitted by their state or municipal government.

The largest volume of regulations, however, appear in municipal zoning codes, said Joshua Windham, a staff attorney at the libertarian Institute for Justice, which, among other issues, advocates against home business restrictions.

Zoning codes can specify the types of businesses allowed in homes or ban them all together. Many municipalities, such as Ann Arbor, also limit the number of customers or employees that can visit a home business, the amount of stock and types of equipment stored on-site, the portion of the home devoted to commercial activity, and the visibility of advertising, such as outdoor signs.

Many of these regulations date back decades, Windham said, and are enforced only after a neighbor complains. But that threat can be enough to intimidate small-business owners such as Holtfreter, some of whom had to work out of their homes during the pandemic.

Americans filed more than 4.3 million new business applications in 2020, an increase of nearly 25% from the year before, according to the U.S. Census Bureau. That surge has been particularly pronounced among small, sole-proprietor operations that often serve as a stopgap or extra source of income, the economist John C. Haltiwanger, a professor at the University of Maryland-College Park, has found.

Federal statistics show that such businesses are more likely to be helmed by women or people of color—the populations that have faced the worst economic fallout from COVID-19. Women, for instance, run nearly 42% of nonemployer firms, and Black and Hispanic entrepreneurs lead about 12% and 14%, respectively. A [2019 paper](#) published in the journal *Food Policy* also found that cottage food producers were most likely to be women with low incomes.

Those types of statistics helped motivate officials in Nashville, Tennessee, to lift some long-standing prohibitions on home businesses in summer 2020, said Jeff Syracuse, a member of the nonpartisan Metropolitan Council.

“It was not a reaction to the pandemic,” he said. “But the pandemic certainly bolstered the argument to expand the home occupation permit, because of the situation folks were in.”

Balancing Rights

Nashville has become one of the more high-profile battlegrounds for home business regulations, thanks in part to an ongoing lawsuit filed in 2017 by the Institute for Justice on behalf of a home-based hairstylist and music producer. Prior to the 2020 rule change, which passed 25-14, the city banned virtually anyone working in a “home occupation” from seeing clients on-site.

For the past decade, Syracuse said, Nashville council members have argued about relaxing those rules, seeking to balance the rights of small entrepreneurs against the concerns of

neighbors who felt the potential increase in traffic and noise would disturb the community.

Similar debates have flared across the country. In Fairfax County, Virginia, for instance, which in March voted to overhaul its county zoning ordinance, community groups opposed a change to make it easier for home businesses to get permitted. An increase in home businesses, critics argued unsuccessfully, would increase light pollution, noise and traffic.

In Everett, Washington, an ongoing effort to green-light more types of home-based businesses, including retail stores, has drawn objections from council members and residents concerned that an undesirable enterprise, such as a liquor store or gun shop, could move in next door.

“No guns, absolutely no guns,” one resident said during a Sept. 1 Everett City Council meeting [streamed on YouTube](#). “I feel like my constitutional rights are kind of at risk here.” The council has yet to vote on the measure.

Efforts to deregulate small food businesses have faced different types of opposition. In Maine, the state Federation of Farmers’ Markets fought recent legislation that would have opened them to unlicensed, home-based food producers. The change could have threatened the integrity of farmers markets, said Mark Guzzi, a farmer outside the town of Orono who chairs the federation’s board.

In Illinois, a similar legislative effort to allow small producers to sell their wares online also encountered criticism from county health departments, which said internet sales could increase the risk of foodborne illness.

After lawmakers amended the bill to address those concerns, however, it passed both chambers of the Illinois legislature in a rare unanimous vote. State Sen. David Koehler, a Democrat and one of the bill’s sponsors, said the bill earned the support of both pro-business, anti-regulation Republicans and Democrats who saw the measure as a means of bolstering the local food movement. It also helped that farmers markets closed for much of the 2020 season, highlighting the need for online sales.

“There’s just a lot of regulations, and I understand it is to protect the public,” Koehler said. “But we tried to abide by what we thought were safe, proper food standards, that weren’t ridiculous to the point of putting somebody out of business.”

Training Business Owners

Striking that sort of balance can prove challenging, however—and in some states, there are concerns that recent efforts to relax home business rules have gone too far. In late June,

Florida Gov. Ron DeSantis, a Republican, signed into law a bill that prevents municipalities from placing a wide range of zoning restrictions on home-based businesses, including limits to their hours of operation.

In a debate on the floor of the Florida House, the bill's sponsor, GOP Rep. Mike Giallombardo, argued that cities had other policy tools for dealing with issues such as noise or traffic. But the legislation drew sharp rebukes from local politicians on both sides of the aisle, as well as the Florida League of Cities, which petitioned DeSantis to veto it.

"The neighbor next door to a home-based business has a right to enjoy their private property quietly and enjoy living in a residential neighborhood, just as much as their neighbor has a right to operate a home-based business," said David Cruz, the legislative counsel for the League of Cities. "There's a common-sense approach to balancing those needs ... and we felt that this [legislation] went too far to one side, to the detriment of other homeowners in the area."

Farquhar, of the National Environmental Health Association, said he has grown concerned about a flurry of "home kitchen" bills across the country: measures that allow people to operate restaurants from their homes, often with little oversight. Expansive statutes in Utah and Wyoming, known as food freedom laws, have allowed cottage food producers to sell a range of foods—including some high-risk and perishable items, such as soft cheeses and egg products—without inspection. Advocates of the laws point out that few foodborne illness outbreaks have been traced to cottage food items.

But Farquhar's organization has redoubled its efforts to engage state and local policymakers in light of the recent laws.

"I don't think we can prohibit people from selling out of their kitchens," he said. "But we can encourage them to get trained and licensed."

For Syracuse, the Nashville council member, any regulation of home-based businesses will necessarily involve compromise. Nashville's new home occupation rules allow musicians, hairstylists and others to see clients in their homes—but only during certain hours, and only with a permit. The legislation also will come up for review in three years, a concession to opponents who wanted a chance to study its effects on residential neighborhoods.

At a time when the costs of owning a business continue to climb, however, and when so many people are still out of work, doing nothing wasn't an option for anyone, Syracuse said.

“We have a lot of neighbors who are struggling to afford to live, and a lot of areas where the rent for small businesses has gotten very expensive,” he added. “So, we needed pragmatic, sensitive legislation to help address that.”

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