

# Zoning for Home Based Business

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## The Big Questions

- What is a home based business?
- What are the issues related to home based businesses?
- Do statutes and/or covenants apply?
- How should they be regulated?
- How can regulations be enforced?



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## Additionally What You'll Learn

- Whether licensing is a good idea
- Whether there are constitutional issues
- Importance of home based businesses
- Economic development strategies



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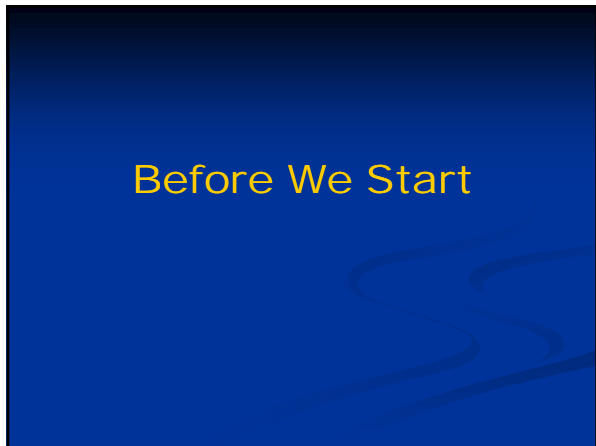
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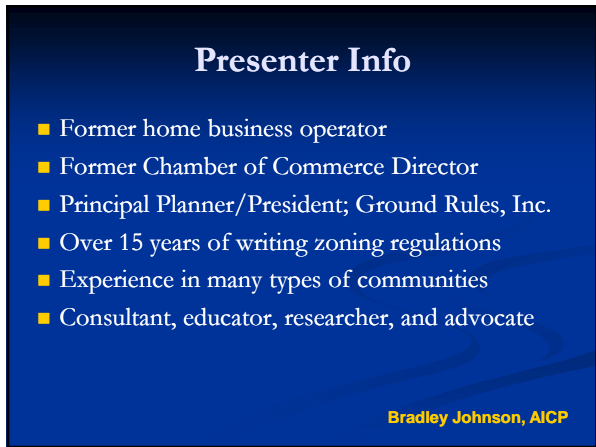
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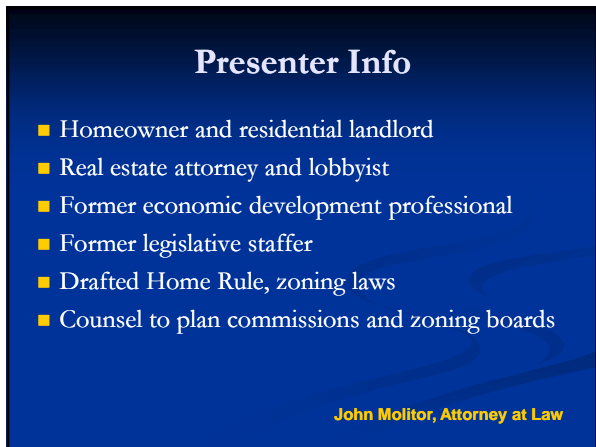
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## Ease of Start-up



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## Propaganda



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## Other Reasons

- Websites promoting women and minority owned businesses
- Dip in the economy
- High unemployment rate
- Outsourcing practices
- Television shows



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## What is a Home Business?

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## Common Definitions

- A home business is a small business that operates from the business owner's home office. (Wikipedia)
- A business whose primary office is in the owner's home. The business can be any size or any type as long as the office itself is located in a home. (Entrepreneur Magazine)

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## Sample Zoning Definition

- An occupation which provides a service as an accessory use within a single-family dwelling performed by one or more of its residents. Such occupations may include services performed by an accountant, architect, appraiser, dentist, medical practitioner, engineer, insurance agent, land surveyor, lawyer, planner, realtor, or hairdresser. (The Zoning Dictionary)

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### Problem with Definitions?

- A. "Business"
  - What if they don't have a tax ID number?
- B. "Occupation"
  - What if its not their primary income?
- C. "Home"
  - What if an accessory building is used?
  - What about multiple-family dwellings?

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### What about...

- Telecommuters
- No tax ID number
- Trade haircut for firewood
- Limited Liability Company; DBA
- Host of Arbonne, Mary Kay, or Tupperware Party
- Swimming lessons
- Author
- Inventor
- Bee keeper

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### ~Preferred Definition

- Home Based Business: The **utilization** of a **single-family residential dwelling, accessory building, and/or property**, or a **multiple-family residential dwelling unit** to **provide a service, produce a product, sell merchandise** or **otherwise en\_g in an activit**, for the **pursuit of remuneration**; excluding the sale of the property and its improvements, garage sales, and infrequent sale of personal merchandise consistent with use of the property solely as a residence.

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### Key Points

- Don't try to define specific uses
- Broad verses narrow
- Include multiple-family units
- Pursuit of remuneration
- Exemption for common, non-“Business” transactions

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### What does a Home Business Look Like?

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### Which of these Homes has a Home Business?



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### Inside



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### Alternatives



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### Noticeable Home Businesses



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## Noticeable Home Businesses



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## What are the Issues?

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## Benefits of Home Businesses

- Incubators of great businesses
- Initial competitive advantage
- Additional cash flow
- Based on our history/roots
- Local economic vitality
- Desired lifestyle
- American dream



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### Potential Impacts

- Depreciation of Property Values
- Longer Times on Market
- Reduced Enjoyment of Property
- Decisions to not Invest Further
- Aesthetic Deterioration
- Noise Disturbance
- Additional Vehicular Traffic
- Loss of Safety or Sense of Safety
- Angry Neighbors



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### Greatest Threats/Challenges

- Escalation
- Unwillingness to move to commercial or industrial districts
- Enforcement, monitoring
- Traffic generation not appropriate for residential or rural areas
- Structural alteration

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### Case Law Snippets

- “After complaints regarding traffic increase...”
- “Home owner started to remove and sell top soil from his residence...”
- “A number of adjacent property owners objected to the proposal and submitted a jointly signed letter in opposition.”
- Car restoration business was granted variance; neighboring property owners sued.
- Hand painted clothing business ordered to stop using non-resident employees.

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## Case Law Snippets

- Home owner operates excavation business for 20 years, storing construction equipment on property...raises concern of new neighbors.
- Amish family seeks to use portable sawmills on property to supplement their income and support their 13 children.



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## Case Law Snippets

- Archery repair business also displayed and sold merchandise. The town tried to close the operation. The court decided that the town had previously interpreted home business to include sale of Mary Kay products and musical instruments.



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## Specific Issues

- Signs in residential or rural areas



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### Specific Issues



■ Deliveries

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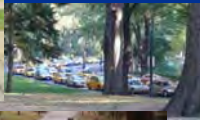
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### Specific Issues



■ Increased Traffic



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### Specific Issues



■ Parking



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## Specific Issues



- Work vehicles parked in driveways

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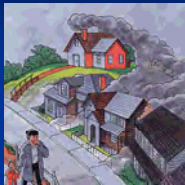
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## Specific Issues



- Environment and public health



- Site Clutter

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## When it gets Ugly



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## When it gets Really Ugly



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## What Laws and Regulations Apply

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## Constitutions

- U.S. - 'Takings' Clause
- Indiana
  - 'Due Course of Law'
  - 'Takings' Clause
  - Police Power

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## State Statutes/Regulations

- Home Rule
- State licensing and related regulations
- State preemption
- Limitation on ordinances
- Caps and fines (\$2,500 - \$7,500)

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## Licensing

**APPLY FOR/RENEW YOUR BUSINESS LICENSE**  
 Persons doing business within the Town are required to register and obtain a license. Both of these are the Highland Business and Professional License. Registration and a business license are required for all persons doing business within the Town limits including peddling, door-to-door and other out-of-home profit organizations, those who have home occupations and those who lease or rent real estate.  
 Beginning December 1, 2009 the Office of the Clerk-Treasurer will be accepting applications for your 2010 Business License. Keep in mind that your 2009 license expires December 31, 2009. The fee is \$2,500 before March 1, 2009 or \$3,000 on and after March 1, 2009.  
 Complete the Business License Application and submit it along with the appropriate fee to the Office of the Clerk-Treasurer, Town Hall, 2255 Ridge Road, Highland, Indiana. Make checks payable to the Town of Highland.

### About Business Licenses in Indiana

The Indiana Secretary of State Business Services Division is responsible for all business filings, including corporations, limited liability companies, and trademarks. An online search is available where searches can be performed to obtain business records, such as Certificates of Good Standing. Searches can be performed by business name.

- Specific businesses (barber, fireworks, massage)
- Fictitious name

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## Covenants

- Platted neighborhoods primarily
  - Case-by-case
  - Restrict accessory structures
  - Restrict signs
  - Etc.
- Typically not rural areas
- Typically not historical or older neighborhoods
- BZA has no authority

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## Comprehensive Plan

- Not regulatory
- Give guidance
- Note economic development strategies

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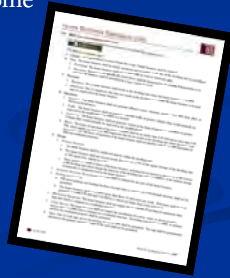
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## Local Zoning Ordinance

- Maximum number of employees
- Alteration to exterior of home
- Limits on upsizing utilities
- Use of accessory structures
- Limit of space used for business
- Signs
- Limits on visitors
- Limits on types of uses



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## Ordinance Processes

- Differs significantly from community to community
- By-right (i.e. permitted use)
- Administrative approval
- Special exception (BZA hearing)
- Rezoning (i.e. plan com. hearing and legislative act)



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# Enforcement

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## Enforcement

- Enforcement as a common nuisance
- Local request to remedy
- Bring action to local court to:
  - invoke a legal, equitable or special remedy
  - enforce a condition, covenant or commitment
  - request a prohibitory or permanent injunction to restrain
  - request a mandatory injunction to remove a structure
  - invoke a fine for violations
- Impose a fine for violations (local)
- Any remedy or actions set forth in Indiana Code, common law, or other applicable State regulations



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## Inspection

- Unpopular to inspect inside of a home
- Sense of invasion of privacy
- Even harder in areas with strong property rights values



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## Using the BZA

- Appeal to BZA
- Conditions on Special Exception
  - Limits on permit
  - Annual re\_ortin\_

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## Advice to Communities

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## Licensing Advice

- Don't require a local business license for all home based businesses
  - It's a futile pursuit
  - Criminalizes good people
- If requiring a local business license for home businesses, it should only apply to home businesses that have specific impacts (e.g. signs, employees)



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## Zoning Advice

- Focus on regulating impacts, not uses
- Create categories of home businesses
- Regulate each category unique to their potential impacts
  - Type 1: Define those that are benign and permit by right
  - Type 2: Require special exception or conditional use permit
  - Type 3: Require renewable permit or rezoning
- Agricultural districts should not be default industrial zones



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## Economic Development Advice

- Encourage home based businesses that have no impact
- Have an economic development strategy to support evolution to business or industrial districts
- Agricultural districts should not be default industrial zones



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## A Few War Stories

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## From the Trenches



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## Zoning for Home Based Business

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