

MONTEREY COUNTY PLANNING COMMISSION

Meeting: April 10, 2013	Time: 9:00 A.M.	Agenda Item No.: 3 and 4
Project Description: Inland ordinance amending Title 21 (Monterey County Zoning Ordinance, Inland Areas) and coastal ordinance amending Title 20 (Monterey County Coastal Implementation Plan, Part 1, Zoning Ordinance) in order to incorporate Cottage Food Operation provisions into County zoning ordinances to conform to changes in State law (<i>AB 1616, The California Homemade Food Act</i>).		
Project Location: County-wide		APN: County-wide
Planning File Number: REF120083 (Inland) and REF130010 (Coastal)		Owner: N/A
Planning Area: County-wide		Flagged and staked: No
Zoning Designation: : N/A		
CEQA Action: Categorically Exempt per Sections 15301-Existing Facilities and 15305- Minor Alterations in Land Use Limitations		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the following resolutions recommending that the Board of Supervisors take the following actions:

REF120083-Inland Ordinance

- 1) Find the project categorically exempt per Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations); and
- 2) Adopt the ordinance (**Exhibit B, Attachment 1**) amending Title 21 (Monterey County Zoning Ordinance, Inland Areas) in order to incorporate Cottage Food Operation provisions into the Monterey County Code to conform to changes in State law.

REF130010- Coastal Ordinance

- 1) Find the project categorically exempt per Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations); and
- 2) Adopt the ordinance (**Exhibit C, Attachment 1**) amending Title 20 (Monterey County Coastal Implementation Plan, Part 1, Zoning Ordinance) in order to incorporate Cottage Food Operation provisions into the Monterey County Code to conform to changes in State law; and
- 3) Direct staff to transmit the proposed ordinance to the California Coastal Commission for review and certification.

PROJECT OVERVIEW:

In 2012, the State of California adopted legislation known as *The California Homemade Food Act – AB 1616* (see **Exhibit D**), which became effective on January 1, 2013, requiring that cities and counties allow persons to prepare and package certain types of non-perishable foods from their home and allow the sale of such foods from their home or/and from other locations (i.e. farmers' market, restaurants). These types of operations are called *Cottage Food Operations*.

The intent of the legislature was to encourage small business development, provide healthy and fresh food choices particularly in low income and rural communities, support community-based

food production and not subject home-based food production to the same food safety requirements as other commercial food producers.

Regulatory agencies directly involved with Cottage Food Operations at a local level are the County Environmental Health Bureau and the Resource Management Agency (RMA)-Planning Department in the following manner:

- *Environmental Health Bureau-* The law makes County health departments responsible for ensuring compliance with the established food safety standards, which include the requirement of obtaining health agency approval to operate a Cottage Food Operation. AB 1616 classifies cottage food operations in two categories, “Class A” and “Class B” and establishes different approval procedures for each category. See additional discussion on health requirements in **Exhibit A**.
- *RMA-Planning Department-* With regards to zoning regulations, the law, Government Code section 51035(a), states that cities and counties shall not prohibit a cottage food operation in any residential dwelling, but shall do one of the following:
 - 1) Classify a cottage food operation “as a permitted use of residential property for zoning purposes” that is allowed by right in a residence. (No zoning permit requirement.)
 - 2) Establish a “nondiscretionary permit” process that makes the Zoning Administrator the appropriate authority to grant zoning permits for cottage food operations conducted from a residence without a public hearing. The local ordinance may include “reasonable standards, restrictions, and requirements” addressing spacing and concentration, traffic control, parking, and noise control relating to those homes.” This permit is to be issued upon certification without a public hearing.
 - 3) Establish a discretionary permit process (i.e. Use Permit) with “reasonable standards” as noted in item #2 above.

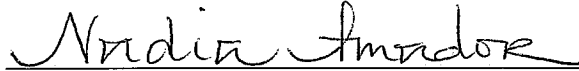
Staff is recommending following option 2 above by amending Title 20 (coastal zoning ordinance) and Title 21 (inland zoning ordinance) to incorporate cottage food operation regulations under the County’s current Home Occupation regulations. The County’s zoning currently allows home occupations, subject to specific standards (see **Exhibit F**). The proposed cottage food ordinances essentially mirror the home occupation regulations, with a few exceptions as noted later in this report. From staff’s perspective, Option 2 strikes a balance between encouraging cottage food operations by not requiring a Use Permit, but requiring a nondiscretionary permit to provide an appropriate level of regulatory oversight to ensure that the operations do not compromise the integrity of the homes and neighborhoods where the cottage food operation is conducted. The County can establish a fee for the nondiscretionary permit, that does not exceed the costs of the review and permit process. Staff will be proposing that the Board of Supervisors adopt a fee of approximately \$200 to cover staff’s time for the processing of such permits.

See **Exhibit A** for additional discussion.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this ordinance:

- Environmental Health Bureau
- County Counsel

/S/ PROJECT PLANNER NAME



Nadia Amador, Associate Planner
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April 3, 2013

cc: Front Counter Copy; Planning Commission; Fire Protection District Representative; RMA-Public Works Department; RMA-Building Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Jacqueline Onciano, Planning Services Manager; Nadia Amador, Project Planner; The Open Monterey Project; LandWatch; All LUACs; Planning Files REF120083 (Inland) and REF130010 (Coastal).

Attachments:	Exhibit A	Discussion
	Exhibit B	Draft Resolution for Inland Ordinance (REF120083) with Attachment 1- Draft Ordinance (redline)
	Exhibit C	Draft Resolution for Coastal Ordinance (REF130010) with Attachment 1- Draft Ordinance (redline)
	Exhibit D	Assembly Bill 1616, The California Homemade Food Act
	Exhibit E	Legislative Counsel Bureau on Cottage Food Operations, letter dated January 2, 2013
	Exhibit F	Regulations for Home Occupations, MCC 21.64.090

This report was reviewed by Jacqueline R. Onciano, Planning Services Manager, Long Range Planning Team.

Exhibit A

Discussion

EXHIBIT A DISCUSSION

Background:

Purpose of AB 1616-

In September 2012, Governor Brown signed Assembly Bill 1616 into law. The legislation exempts a “cottage food operation” as defined in California Government Code Section 113400, from certain provisions of local zoning regulations and State law which govern food sales, safety and preparation. The intent of the legislature was to help address the following challenges and opportunities:

- Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneur development through microenterprises that help supplement household incomes, prevent poverty and hunger and strengthen local economies.
- Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and therefore, these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.
- To join 32 other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare and sell foods that are not potentially hazardous.

Effective Date and Most Noteworthy Operational Requirements of AB 1616-

The law went into effect on January 1, 2013 and creates a new category of food production called *Cottage Food Operation* (CFO). Unlike other types of commercial food facilities, CFO's are operated out of a home kitchen. AB 1616 creates a new set of health regulations that were not previously covered under the California Retail Food Code.

The most significant AB 1616 operational requirements to qualify as a “cottage food operation” include the following:

- The cottage food business operator conducts the business in the operator's private home.
- No more than one full-time equivalent employee is permitted, not including family or household members.
- The use must be conducted within the kitchen, except for adjacent storage areas.
- Food sales from the residence must be allowed.
- There are two types of health classifications for cottage food operations: “Class A” allowing direct to consumer sales, and “Class B” allowing indirect sales (such as to restaurants, stores) of packaged food to retailers.
- Class A operations requires a “registration” process with the local health agency; in the case of Monterey County, this would be the Environmental Health Bureau.
- Class B operations requires a “permit” process with the local health agency; in the case of Monterey County, this would be the Environmental Health Bureau.
- Gross annual sales are limited to \$35,000 for 2013, \$45,000 for 2014, and \$50,000 for 2015 and thereafter.

- A cottage food operation in a residence does not constitute a change of occupancy for purposes of the State Uniform Building Standards Code and local building or fire codes and the cottage food operation must be considered a residence under applicable building codes.
- Local agencies may recover costs of permitting such uses, but fees must be reasonable.

List of Cottage Food Categories-

State law defines a CFO as an enterprise at a private home where low-risk food products are prepared and/or packaged for sell to consumers. A private home means a dwelling, including an apartment or any other type of residential dwelling unit. Low-risk foods are those that do not require refrigeration to keep them safe from bacterial growth. The California Department of Public Health has established and will maintain a list of approved cottage food categories on their website. Currently the list includes the following foods:

- Baked goods without cream, custard or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas
- Candy, such as brittle and toffee; Chocolate-covered nonperishable foods, such as nuts and dried fruit; Dried fruit; Dried pasta; Dry baking mixes; Fruit pies, fruit empanadas, and fruit tamales
- Granola, cereals and trail mixes; Herb blends and dried mole paste; Honey and sweet sorghum syrup
- Jams, jellies, preserves and fruit butter; Nut mixes and nut butters; Popcorn
- Vinegar and mustard; Roasted coffee and dried tea
- Waffle cones and pizzelles

AB 1616 and Local Zoning Regulations-

As previously discussed, State law (Government Code section 51035(a)) requires local zoning ordinances to make specified provisions for cottage food operations and provides local zoning government three options to choose from:

- 1) Classify a cottage food operation “as a permitted use of residential property for zoning purposes” that is allowed by right in a residence. (No zoning permit requirement.)
- 2) Establish a “nondiscretionary permit” process that makes the Zoning Administrator the appropriate authority to grant zoning permits for cottage food operations conducted from a residence without a public hearing. The local ordinance may include “reasonable standards, restrictions, and requirements” addressing spacing and concentration, traffic control, parking, and noise control relating to those homes.” This permit is to be issued upon certification without a public hearing.
- 3) Establish a discretionary permit process (i.e. Use Permit) with “reasonable standards” as noted in item #2 above.

Analysis:

Staff Recommends Option 2- Nondiscretionary Permit with Reasonable Standards-

AB 1616 has caused concern among cities and counties because of the unknown outcomes that cottage food operations may bring to residential areas. There has also been uncertainty about the zoning regulations cities and counties may impose under the “reasonable standard” clause offered by AB 1616. Such were the questions raised by cities and counties that recently the Legislative Counsel (see **Exhibit E**) opined that cities and counties could not prohibit direct sales

from residences and could only condition permits on those topic listed specifically in Government Code section 51035(a), which allows cities and counties to make “reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking and noise control.”

While AB 1616 may allow for the implementation of reasonable zoning standards, it is also critical that the County refer back to the intent of AB 1616 in that the legislature encourages these operations, particularly in low income and rural communities.

Based on the intent of the law and the perimeters that the law has given counties, staff is recommending that CFOs be classified as a permitted use of residential property under AB 1616’s option #2, with established reasonable standards. Staff recommends adoption of a proposed inland ordinance (**Exhibit B**) and coastal ordinance (**Exhibit C**), where a cottage food operation would be considered a type of home occupation. Currently, the County has established criteria for home occupations (**Exhibit F**). A home occupation is described as a business of limited scale and impact that may be established in residences. The regulations for home occupations are very similar to the regulations that may be imposed to cottage food operations in that the purpose of the regulations is to not compromise the integrity of the homes and neighborhoods from which these limited scale businesses are being conducted from. Staff proposes that the home occupation regulations have a subcategory of regulations for cottage food operations. Some of the proposed regulations for cottage food operations will be explained further in this report.

Staff believes that option 2, consisting of establishing a nondiscretionary planning permit for cottage food operations subject to prescribed regulations, has a balance between ensuring that the cottage food operation permits are easy to obtain and that these have an appropriate level of regulatory oversight.

AB 1616’s options 1 and 3 could be implemented as well, but staff is not recommending these options be pursued. Option 1 would allow these businesses by right with no permitting process by the RMA- Planning Department and with no zoning standards. Under option 1, the cottage food operation would commence as soon as the County’s Environmental Health Bureau requirements were met. In this situation, the RMA-Planning Department’s involvement in rectifying any land-use complaints about the operation would be very limited, as there would be no established zoning regulations. On the other hand, if the cottage food operation is required to have a planning permit subject to prescribed reasonable land use restrictions (i.e. option 2), these serve as a project-specific guide for the operation and the cottage food operation planning permit may be revoked by the Planning Department, should the operator fail to comply with the terms of the cottage food operation permit.

With option 3, a public hearing would be required for the issuance of a discretionary permit to conduct a cottage food operation. Although this process would allow for a more public disclosure of the proposed cottage food operation, it would require public hearings which would be considerably more expensive and require additional county staff time and resources. Costs would be incurred for newspaper and mailed notices, staff report preparation, CEQA determinations, hearing attendance and post hearing activities, such as condition compliance. Currently a public hearing land use application has a fee ranging from \$1,076.08 (Design Approval requiring a public hearing) to \$9,080.82 (Coastal Development Permit).

Specific Cottage Food Operation Standards-

Under options 2 and 3, AB 1616 allows cities and counties to prescribe “reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking and noise control.” As previously discussed, staff chose to follow option 2, because it is the best compromise between encouraging cottage food operations by allowing them as an accessory use to dwelling units, with a nondiscretionary planning permit a nominal fee and reasonable standards that allows for oversight. The following are the most noteworthy proposed cottage food regulations with staff’s explanation, as outlined in the inland and coastal draft ordinances **(Exhibits B and C)**:

- The application for a Cottage Food Operation Planning Permit shall be filed in writing on a form prescribed by the Resource Management Agency-Planning Department, and all applicable fees shall be paid at the time of filing. Only a cottage food operator, defined as an individual who conducts the cottage food operation from his or her private dwelling unit and is the owner of the cottage food operation, is eligible to obtain a Cottage Food Operation Planning Permit. The Cottage Food Operation Planning Permit is not transferable to another cottage food operator, is not transferable to another site, and does not run with the land.
 - Explanation: The County’s Environmental Health Bureau issues Class A registrations and Class B permits to the Cottage Food Operator (an individual). Therefore, the Planning Department’s “Cottage Food Operation Planning Permit” described in this regulation should not be transferable to another individual, another site and should not run with the land.
- In order to minimize traffic levels and parking shortages, the cottage food operation shall employ no more than one (1) full-time equivalent cottage food employee, as defined by the California Health and Safety Code Section 113758(b)(1), not including household or family members of the cottage food operation who reside on site.
 - Explanation: AB 1616 allows that no more than one full-time equivalent employee may be employed in the cottage food operation, not including family or household members. It is not clear if the exclusion of “family members” meant those family members residing in the same residence as the cottage food operator or family members in general, not necessarily residing in the same residence as the cottage food operator. If the latter is left for interpretation, staff recognized that this may rise to a level where a cottage food operation may have family members that do not reside with the cottage food operator be part of the operation without being classified as the “one-time equivalent employee” and in addition the cottage food operation may have a non-family member, not residing on site as the one (1) full-time equivalent employee. If this situation surfaces, traffic and parking issues may arise. In an effort to avoid these situations, this regulation clarifies that only those family members that reside on-site are excluded from the cottage food operation’s one (1) full-time equivalent employee.
- No direct customer sales or deliveries shall occur between the hours of 8:00 p.m. and 7:00 a.m.
 - Explanation: This regulation is an effort to reduce traffic and noise impacts in the evenings and during the night.

- The cottage food operation shall be conducted within the kitchen of the subject dwelling unit, except that attached rooms within the dwelling unit including an attached garage may be used for storage. If storage space for the cottage food operation is proposed to occupy a portion of a garage, the garage shall retain sufficient clearance area for parking.
 - Explanation: This regulation is an effort to reduce parking shortage as a result of a cottage food operation expanding its storage to the attached garage and occupying space, preventing residential vehicle(s) from parking inside the garage.
- Cottage food operations shall be prohibited from providing seating, restaurant-style operations, or any sit-down facilities for the consumption of the cottage food operations' products on the premises where such product was produced and/or packaged.
 - Explanation: The cottage food operation shall not include dining. The purpose for a customer visit to the residence is to purchase the food products. Congregations of customers that would dine on the premises may raise parking, building, fire and accessibility issues.

Approach to Concentration and Parking-

The proposed cottage food operation regulations are silent in respect to spacing and parking requirements. This was intentional, as staff believes that requiring spacing between cottage food operations and requiring parking for customers and/or the employee may result in prohibiting these operations, especially in areas of higher densities. Staff believes that the legislative intent was to facilitate such operations, particularly in low income and rural communities. In certain high and medium density low income communities, added parking and spacing requirements may be prohibitive; however, the law allows the County to regulate based on traffic, noise, parking and spacing, so this is a policy decision.

Corrections to Title 20 and Title 21:

In the process of drafting the proposed cottage food operation ordinances, staff found errors in both Title 20 (coastal zoning text) and Title 21 (inland zoning text) that are being corrected in the proposed ordinances. The corrections are as follows:

- In Title 20, correcting the definition number for “Cottage Industry”. Currently the definition number is 20.06.200 and this number is duplicated with another term under the “Definitions” chapter of Title 20. Staff proposes to renumber the definition number for “Cottage Industry” to 20.06.220. (See “Section 5” of **Exhibit C, Attachment 1**)
- In both Title 20 and 21, “Regulations for Home Occupations” under Sections 21.64.090.C.1. and 20.64.090.C.1., adding the word “lessons” after the words “ceramic” and “music” to ensure consistency with the definition of Home Occupation which states that a home occupation provides a service rather than a good. (See “Section 6” of **Exhibit B, Attachment 1** for Inland; and see “Section 7” of **Exhibit C, Attachment 1** for Coastal)

Environmental Review:

The proposed code amendments are categorically exempt per Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply because the draft ordinances would establish regulations and a permitting process for cottage food operations to be conducted within existing dwelling units as an accessory use of the

residence. Because the cottage food operation would take place in existing homes and are operated primarily by the homes' residents, impacts such as traffic, parking and noise are minimal.

Conclusion:

Staff recommends that the Planning Commission recommend to the Board of Supervisors adoption of the inland ordinance attached as **Exhibit B, Attachment 1** and the coastal ordinance attached as **Exhibit C, Attachment 1**.

Exhibit B

Draft Resolution for Inland Ordinance (REF120083)

**Exhibit B
(Draft Resolution, Inland Ordinance)**

**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No.

Resolution of the Monterey County Planning)
Commission recommending that the Board of)
Supervisors adopt a resolution with the)
following actions:)
1) Find the project Categorical Exempt)
per Sections 15301 (Existing)
Facilities) and 15305 (Minor)
Alterations in Land Use Limitations);)
and)
2) Adopt the ordinance amending Title 21)
(Monterey County Zoning Ordinance)
Inland Areas) in order to incorporate)
Cottage Food Operation provisions)
into the Monterey County Code.)
[REF120083, Cottage Food Operation)
Ordinance (AB 1616), Inland Amendments,)
County-wide])

The proposed ordinance (REF120083) amending the Monterey County Code, Title 21 (Zoning Ordinance, Inland Areas) in order to incorporate Cottage Food Operation provisions into County zoning to conform to changes in State law (AB 1616, The California Homemade Food Act), came on for public hearing before the Monterey County Planning Commission on March 27, 2013 and on April 10, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

RECITALS

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as “cottage food operations” from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and

therefore these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, authorizes local agencies to establish a nondiscretionary permit process for cottage food operations and prescribe reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control for cottage food operations.

D. The proposed ordinance, attached hereto as Attachment 1 and incorporated herein by reference, amends Title 21 of the Monterey County Code to implement and comply with Government Code section 51035(a), and establish standards, restrictions, and requirements necessary to minimize traffic levels and parking shortages and control noise that could otherwise occur in residential neighborhoods as a result of cottage food operations.

E. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply to the proposed zoning ordinance text amendment because the draft ordinances would establish a permitting process for cottage food operations to be conducted within existing dwelling units as an accessory use of already-existing residences.

F. A public hearing on the proposed ordinance was duly noticed for March 27, 2013 in the Monterey County Weekly at least ten days prior to the hearing. On March 27, the Planning Commission continued the hearing to April 10, 2013. On April 10, 2013 the Monterey County Planning Commission conducted a public hearing on the draft ordinance.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors:

- a. Find that the proposed ordinance is Categorically Exempt from CEQA per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations); and
- b. Adopt the ordinance, attached hereto as Attachment 1, amending Title 21 (Inland Zoning Ordinance) in order to incorporate Cottage Food Operation provisions into County zoning to conform to changes in State law (AB 1616, The California Homemade Food Act).

PASSED AND ADOPTED on this tenth day of April, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Mike Novo, Secretary

**Attachment 1
to Exhibit B**

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING
TITLE 21 (INLAND ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE
RELATING TO COTTAGE FOOD OPERATIONS.**

County Counsel Summary

This ordinance amends Title 21(Inland Zoning) of the Monterey County Code to establish reasonable standards and a permit process for cottage food operations in conformance with recently enacted state law. The ordinance defines cottage food operations and treats such operations as a type of home occupation subject to certain standards. The ordinance requires cottage food operations to obtain a non-discretionary Cottage Food Operation Planning Permit and designates the Zoning Administrator as the appropriate authority to issue the permit without a public hearing.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as “cottage food operations” from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and therefore these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, authorizes local agencies to establish a nondiscretionary permit process for cottage food operations and prescribe reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control for cottage food operations. The standards, restrictions, and requirements enacted by this ordinance are necessary to minimize traffic levels and parking shortages and control noise that could otherwise occur in residential neighborhoods as a result of cottage food operations.

D. This ordinance is categorically exempt per Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply to the

** Titles in [brackets] inserted for context only, will not be included in final ordinance.

proposed zoning ordinance text amendment because the draft ordinances would establish a permitting process for cottage food operations to be conducted within existing dwelling units as an accessory use of already-existing residences.

[21.04- Zoning Administrator]**

SECTION 2. Subsection “F” of Section 21.04.030 of the Monterey County Code is renumbered as subsection “G” of Section 21.04.030.

SECTION 3. A new subsection “F” of Section 21.04.030 is added to the Monterey County Code to read as follows:

F. The Zoning Administrator shall have the authority to decide applications for Cottage Food Operation Planning Permit pursuant to Section 21.64.090.E of this Title.

[21.06- Definitions]**

SECTION 4. Section 21.06.215 is added to the Monterey County Code to read as follows:

21.06.215 Cottage food operation.

“Cottage food operation” means an enterprise within the registered or permitted area of a dwelling unit, as registered or permitted by the Monterey County’s Environmental Health Bureau, where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products, as defined by California Health and Safety Code Section 113758, are prepared and packaged for direct, indirect, or direct and indirect sale to consumers.

[21.06- Definitions]**

SECTION 5. Section 21.06.650 of the Monterey County Code is amended as follows:

21.06.650 Home occupation.

“Home occupation” means a business conducted in a residential area conducted by the residents of the property;. “Home occupation” includes a cottage food operation, as defined in Section 21.06.215. †The main product of a home occupation is which is a service rather than goods., except in the case of a cottage food operation.

[21.64- Special Regulations]**

SECTION 6. Section 21.64.090 of the Monterey County Code is amended to read as follows:

21.64.090- Regulations for home occupations.

- A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which businesses of limited scale and impact may be established in residences.
- B. Applicability: The provisions of this Section are applicable in all areas of the County.

** Titles in [brackets] inserted for context only, will not be included in final ordinance.

- C. Regulations: Home occupations may be conducted in any zoning district which allows residential use.
1. Home occupations are limited to those occupations using facilities, equipment and materials normally found in the home and within accessory structures, including but not limited to typing, seamstress or tailoring, computerized data processing, ceramics lessons, music lessons and instrument lessons, ~~and~~ lawn mower repair, and cottage food operations which do not interfere with the use or appearance of the home as a residence or the aesthetic character of the district.
 2. No persons other than the resident and immediate family residing on the site may be employed in the home occupation-, except that a cottage food operation may allow up to one (1) full-time equivalent cottage food employee who does not reside on the site per Section 21.64.090.E.3.
 3. All facets of the home occupation must be contained in the residence or inside structures on-site that are otherwise considered to be accessory structures to a residence, except that a cottage food operation must be conducted entirely within the dwelling unit per Section 21.64.090.E.6.
 4. There shall be no production of noxious or toxic odors or fumes, nor increase in numbers or duration of noise or traffic levels above those of ordinary residential use; nor use, storage, or disposal of materials of a nature or quantity not ordinarily found in residential neighborhoods, which have the potential to endanger the health, safety or peaceful enjoyment of their property or neighborhood residence, or to constitute a hazard to their environment.
 5. There shall be no advertising for the home occupation allowed on the property.
- D. Modification to the provisions of Section 21.64.090 C. of this Chapter Section 21.64.090 may be considered by an Administrative Permit-, except in the case of a cottage food operation for which no exceptions to these requirements may be granted.
- E. Cottage food operations.
A cottage food operation shall be a permitted home occupation, provided it complies with all applicable provisions of State law, meets the requirements of subsection A through C of Section 21.64.090 above, and meets the following specific requirements for cottage food operations:
1. No cottage food operation shall be allowed without a Cottage Food Operation Planning Permit. The appropriate authority to consider a Cottage Food Operation Planning Permit shall be the Zoning Administrator, who shall grant the permit upon certification that all requirements for cottage food operations are met. The Cottage Food Operation Planning Permit shall be a nondiscretionary permit for which no public hearing shall be held.
 2. The application for a Cottage Food Operation Planning Permit shall be filed in writing on a form prescribed by the Resource Management Agency-Planning Department, and all applicable fees shall be paid at the time of filing. Only a cottage food operator, defined as an individual who conducts the cottage food operation from his or her private dwelling unit and is the owner of the cottage food operation, is eligible to obtain a Cottage Food Operation Planning Permit. The Cottage Food Operation Planning Permit is not transferable to another cottage food operator, is not transferable to another site, and does not run with the land.

3. In order to minimize traffic levels and parking shortages, the cottage food operation shall employ no more than one (1) full-time equivalent cottage food employee, as defined by the California Health and Safety Code Section 113758(b)(1), not including household or immediate family members of the cottage food operation who reside on site.
4. The cottage food operation shall be registered or permitted by the Monterey County Environmental Health Bureau in accordance with Section 114365 of the California Health and Safety Code requirements.
5. No direct customer sales or deliveries shall occur between the hours of 8:00 p.m. and 7:00 a.m.
6. The cottage food operation shall be conducted within the kitchen of the subject dwelling unit, except that attached rooms within the dwelling unit including an attached garage may be used for storage. If storage space for the cottage food operation is proposed to occupy a portion of a garage, the garage shall retain sufficient clearance area for parking.
7. Cottage food operations shall be prohibited from providing seating, restaurant-style operations, or any sit-down facilities for the consumption of the cottage food operations' products on the premises where such product was produced and/or packaged.
8. Gross annual sales shall not exceed the dollar amounts specified in California Health and Safety Code Section 113758.
9. Where one or more of the conditions of the Cottage Food Operation Planning Permit have not been, or are not being complied with, or when a Cottage Food Operation Planning Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the Zoning Administrator may revoke or modify the Cottage Food Operation Planning Permit following public hearing pursuant to Chapter 21.78 of this Title.
10. No exceptions to the cottage food operation regulations shall be granted for individual applications.

SECTION 7. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. EFFECTIVE DATE.

This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ___ day of _____, 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

FERNANDO ARMENTA, CHAIR
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel

Exhibit C

Draft Resolution for Coastal Ordinance (REF130010)

Exhibit C
(Draft Resolution, Coastal Ordinance)

Before the Planning Commission in and for the
County of Monterey, State of California

Resolution No.

Resolution of the Monterey County Planning)
Commission recommending that the Board of)
Supervisors adopt a resolution with the)
following actions:)
1) Find the project categorically exempt)
per Sections 15301 (Existing)
Facilities) and 15305 (Minor)
Alterations in Land Use Limitations);)
and)
2) Adopt a resolution of intent to adopt)
the ordinance amending Monterey)
County Coastal Implementation Plan,)
Part 1 (Title 20 of the Monterey)
County Code) in order to incorporate)
Cottage Food Operation provisions;)
and)
3) Direct staff to transmit the proposed)
ordinance to the California Coastal)
Commission for review and)
certification.)
[REF130010, Cottage Food Operation)
Ordinance (AB 1616), Coastal Amendments,)
County-wide])

The proposed ordinance (REF130010) amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 of the Monterey County Code) in order to incorporate Cottage Food Operation provisions into County zoning to conform to changes in State law (AB 1616, The California Homemade Food Act), came on for public hearing before the Monterey County Planning Commission on March 27, 2013 and on April 10, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

RECITALS

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as “cottage food operations” from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and therefore these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, authorizes local agencies to establish a nondiscretionary permit process for cottage food operations and prescribe reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control for cottage food operations.

D. The proposed ordinance, attached hereto as Attachment 1 and incorporated herein by reference, amends Title 20 of the Monterey County Code to implement and comply with Government Code section 51035(a), and establish standards, restrictions, and requirements necessary to minimize traffic levels and parking shortages and control noise that could otherwise occur in residential neighborhoods as a result of cottage food operations.

E. Monterey County has adopted and the California Coastal Commission has certified a Local Coastal Program pursuant to the California Coastal Act of 1976 that contains land use and development regulations for the coastal areas of the County. The Local Coastal Program includes the Monterey County Coastal Implementation Plan, which is Title 20 of the Monterey County Code. This ordinance amends the Monterey Coastal Implementation Plan and will require certification by the California Coastal Commission. Resource Management Agency-Planning Department staff has reviewed the proposed amendments and determined they are consistent with the certified Land Use Plans and Local Coastal Program. These amendments are intended to be carried out in a manner fully in conformity with the California Coastal Act.

F. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply to the proposed zoning ordinance text amendment because the draft ordinances would establish a permitting process for cottage food operations to be conducted within existing dwelling units as an accessory use of already-existing residences.

G. A public hearing on the proposed ordinance was duly noticed for March 27, 2013 in the Monterey County Weekly at least ten days prior to the hearing. On March 27, the Planning Commission continued the hearing to April 10, 2013. On April 10, 2013 the Monterey County Planning Commission conducted a public hearing on the draft ordinance.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors:

- a. Find that the proposed ordinance is categorically exempt from CEQA per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations); and
- b. Adopt a resolution of intent to adopt the ordinance, attached hereto as Attachment 1, amending the Monterey County Coastal Implementation Plan (Title 20 of the Monterey County Code) in order to incorporate Cottage Food Operation provisions into County zoning to conform to changes in State law (AB 1616, The California Homemade Food Act); and
- c. Direct staff to transmit the proposed ordinance to the California Coastal Commission for review and certification.

PASSED AND ADOPTED on this tenth day of April, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Mike Novo, Secretary

**Attachment 1
to Exhibit C**

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING
TITLE 20 (COASTAL ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE
RELATING TO COTTAGE FOOD OPERATIONS.**

County Counsel Summary

This ordinance amends Monterey County Coastal Implementation Plan (Title 20 of the Monterey County Code) to establish reasonable standards and a permit process for cottage food operations in conformance with recently enacted state law. The ordinance defines cottage food operations and treats such operations as a type of home occupation subject to certain standards. The ordinance requires cottage food operations to obtain a non-discretionary Cottage Food Operation Planning Permit and designates the Zoning Administrator as the appropriate authority to issue the permit without a public hearing.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as “cottage food operations” from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and therefore these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, authorizes local agencies to establish a nondiscretionary permit process for cottage food operations and prescribe reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control for cottage food operations. The standards, restrictions, and requirements enacted by this ordinance are necessary to minimize traffic levels and parking shortages and control noise that could otherwise occur in residential neighborhoods as a result of cottage food operations.

D. This ordinance is categorically exempt per Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply to the proposed zoning ordinance text amendment because the draft ordinances would establish a permitting process for cottage food operations to be conducted within existing dwelling units as an accessory use of already-existing residences.

[20.04- Zoning Administrator]**

SECTION 2. Subsection “F” of Section 20.04.030 of the Monterey County Code is renumbered as subsection “G” of Section 20.04.030.

SECTION 3. A new subsection “F” of Section 20.04.030 is added to the Monterey County Code to read as follows:

F. The Zoning Administrator shall have the authority to decide applications for Cottage Food Operation Planning Permit pursuant to Section 20.64.090.E of this Title.

[20.06- Definitions]**

SECTION 4. Section 20.06.215 is added to the Monterey County Code to read as follows:

20.06.215 COTTAGE FOOD OPERATION.

Cottage food operation means an enterprise within the registered or permitted area of a dwelling unit, as registered or permitted by the Monterey County’s Environmental Health Bureau, where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products, as defined by California Health and Safety Code Section 113758, are prepared and packaged for direct, indirect, or direct and indirect sale to consumers.

[20.06- Definitions]**

SECTION 5. Section 20.06.200 of the Monterey County Code defining the term “COTTAGE INDUSTRY” is renumbered as Section 20.06.220.

[20.06- Definitions]**

SECTION 6. Section 20.06.650 of the Monterey County Code is amended as follows:

20.06.650 HOME OCCUPATION.

Home occupation means a business conducted in a residential area conducted by the residents of the property. Home occupation includes a cottage food operation, as defined in Section 21.06.215. †The main product of a home occupation is which is a service rather than goods, except in the case of a cottage food operation.

[20.64- Special Regulations]**

SECTION 7. Section 20.64.090 of the Monterey County Code is amended to read as follows:

** Titles in [brackets] inserted for context only, will not be included in final ordinance.

20.64.090- REGULATIONS FOR HOME OCCUPATIONS.

- A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which businesses of limited scale and impact may be established in residences.
- B. Applicability: The provisions of this Section are applicable in all areas of the County.
- C. Regulations: Home occupations may be conducted in any zoning district which allows residential use.
 - 1. Home occupations are limited to those occupations using facilities, equipment and materials normally found in the home and within accessory structures, including but not limited to typing, seamstress or tailoring, computerized data processing, ceramics lessons, music lessons and instrument lessons, ~~and~~ lawn mower repair, and cottage food operations which do not interfere with the use or appearance of the home as a residence or the aesthetic character of the district.
 - 2. No persons other than the resident and immediate family residing on the site may be employed in the home occupation, except that a cottage food operation may allow up to one (1) full-time equivalent cottage food employee who does not reside on the site per Section 20.64.090.E.3.
 - 3. All facets of the home occupation must be contained in the residence or inside structures on-site that are otherwise considered to be accessory structures to a residence, except that a cottage food operation must be conducted entirely within the dwelling unit per Section 20.64.090.E.6.
 - 4. There shall be no production of noxious or toxic odors or fumes, nor increase in numbers or duration of noise or traffic levels above those of ordinary residential use; nor use, storage, or disposal of materials of a nature or quantity not ordinarily found in residential neighborhoods, which have the potential to endanger the health, safety or peaceful enjoyment of their property or neighborhood residence, or to constitute a hazard to their environment.
 - 5. There shall be no advertising for the home occupation allowed on the property.
- D. Modification to the provisions of Section 20.64.090.C. of ~~this Chapter~~ Section 20.64.090 may be considered by a Coastal Administrative Permit, except in the case of a cottage food operation for which no exceptions to these requirements may be granted.
- E. Cottage food operations.
A cottage food operation shall be a permitted home occupation, provided it complies with all applicable provisions of State law, meets the requirements of subsection A

through C of Section 20.64.090 above, and meets the following specific requirements for cottage food operations:

1. No cottage food operation shall be allowed without a Cottage Food Operation Planning Permit. The appropriate authority to consider a Cottage Food Operation Planning Permit shall be the Zoning Administrator, who shall grant the permit upon certification that all requirements for cottage food operations are met. The Cottage Food Operation Planning Permit shall be a nondiscretionary permit for which no public hearing shall be held.
2. The application for a Cottage Food Operation Planning Permit shall be filed in writing on a form prescribed by the Resource Management Agency-Planning Department, and all applicable fees shall be paid at the time of filing. Only a cottage food operator, defined as an individual who conducts the cottage food operation from his or her private dwelling unit and is the owner of the cottage food operation, is eligible to obtain a Cottage Food Operation Planning Permit. The Cottage Food Operation Planning Permit is not transferable to another cottage food operator, is not transferable to another site, and does not run with the land.
3. In order to minimize traffic levels and parking shortages, the cottage food operation shall employ no more than one (1) full-time equivalent cottage food employee, as defined by the California Health and Safety Code Section 113758(b)(1), not including household or immediate family members of the cottage food operation who reside on site.
4. The cottage food operation shall be registered or permitted by the Monterey County Environmental Health Bureau in accordance with Section 114365 of the California Health and Safety Code requirements.
5. No direct customer sales or deliveries shall occur between the hours of 8:00 p.m. and 7:00 a.m.
6. The cottage food operation shall be conducted within the kitchen of the subject dwelling unit, except that attached rooms within the dwelling unit including an attached garage may be used for storage. If storage space for the cottage food operation is proposed to occupy a portion of a garage, the garage shall retain sufficient clearance area for parking.
7. Cottage food operations shall be prohibited from providing seating, restaurant-style operations, or any sit-down facilities for the consumption of the cottage food operations' products on the premises where such product was produced and/or packaged.
8. Gross annual sales shall not exceed the dollar amounts specified in California Health and Safety Code Section 113758.
9. Where one or more of the conditions of the Cottage Food Operation Planning Permit have not been, or are not being complied with, or when a Cottage Food Operation Planning Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the Zoning Administrator may revoke or modify the Cottage Food Operation Planning Permit following public hearing pursuant to Chapter 20.84 of this Title.
10. No exceptions to the cottage food operation regulations shall be granted for individual applications.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 9. EFFECTIVE DATE.

This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ___ day of _____, 2013, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

 FERNANDO ARMENTA, CHAIR
 Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By _____
Deputy

<p>APPROVED AS TO FORM:</p> <p>Wendy S. Strimling Senior Deputy County Counsel</p>
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Exhibit D

AB 1616- The California Homemade Food Act



AB-1616 Food safety: cottage food operations. (2011-2012)

Assembly Bill No. 1616**CHAPTER 415**

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Small businesses have played an important role in helping slow economies recover and prosper as an engine of job creation. During the 1990s, small businesses created the majority of new jobs and now account for 65 percent of United States employment.

(b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.

(1) Two-thirds of American adults and nearly one-third of children and teens are obese or overweight, placing them at risk for developing chronic diseases such as diabetes, heart disease, and cancer.

(2) One in every nine California children, one in three teens, and over half of adults are already overweight or obese. This epidemic affects virtually all Californians.

(3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

(c) For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.

(d) There is a growing movement in California to support community-based food production, sometimes referred to as "cottage food," "artisanal food," "slow food," "locally based food," or "urban agriculture" movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.

(e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.

(f) At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.1. Cottage Food Operations

51035. (a) A city, county, or city and county shall not prohibit a cottage food operation, as defined in Section 113758 of the Health and Safety Code, in any residential dwellings, but shall do one of the following:

(1) Classify a cottage food operation as a permitted use of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any cottage food operation to apply for a permit to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the cottage food operation complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.

SEC. 3. Section 109947 of the Health and Safety Code is amended to read:

109947. "Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, a cottage food operation that is registered or has a permit pursuant to Section 114365, or any facility exclusively storing, handling, or processing dried beans.

SEC. 4. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470, 110471, 110485, 114365, 114365.6, 111130, and 113717, and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, licensing, inspection, enforcement, and other provisions of Article 12 (commencing with Section 111070) relating to water, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5, and to carry out and implement the provisions of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104).

SEC. 5. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

113758. (a) "Cottage food operation" means an enterprise that has not more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. In 2013, the enterprise shall not have more than thirty-five thousand dollar (\$35,000) in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty-five thousand dollars (\$45,000) in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator.

(2) "Cottage food operator" means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) "Cottage food products" means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) "Direct sale" means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers' markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

(5) "Indirect sale" means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

(6) "Private home" means a dwelling, including an apartment or other leased space, where individuals reside.

(7) "Registered or permitted area" means the portion of a private home that contains the private home's kitchen used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, and attached rooms within the home that are used exclusively for storage.

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
- (2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.
- (b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:
 - (1) Public and private school cafeterias.
 - (2) Restricted food service facilities.
 - (3) Licensed health care facilities.
 - (4) Commissaries.
 - (5) Mobile food facilities.
 - (6) Mobile support units.
 - (7) Temporary food facilities.
 - (8) Vending machines.
 - (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
 - (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
- (c) "Food facility" does not include any of the following:
 - (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
 - (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
 - (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
 - (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
 - (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
 - (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
 - (7) A commercial food processing plant as defined in Section 111955.
 - (8) A child day care facility, as defined in Section 1596.750.
 - (9) A community care facility, as defined in Section 1502.
 - (10) A residential care facility for the elderly, as defined in Section 1569.2.
 - (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.
 - (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a

charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) "Permit" means the document issued by the enforcement agency that authorizes a person to operate a food facility or cottage food operation.

(b) "Registration" shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.5. Cottage Food Operations

114365. (a) (1) (A) A "Class A" cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local enforcement agency. The self-certification checklist shall verify that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.

(iii) Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.

(v) All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.

(vi) Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.

(B) (i) The department shall post the requirements described in subparagraph (A) on its Internet Web site.

(ii) The local enforcement agency shall issue a registration number to a "Class A" cottage food operation that meets the requirements of subparagraph (A).

(C) (i) Except as provided in (ii), a "Class A" cottage food operation shall not be subject to initial or routine inspections.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated this chapter.

(iii) Access under this subparagraph is limited to the registered area and solely for the purpose of enforcing or administering this chapter.

(iv) A local enforcement agency may seek recovery from a "Class A" cottage food operation of an amount that does not exceed the local enforcement agency's reasonable costs of inspecting the "Class A" cottage food operation for compliance with this chapter, if the "Class A" cottage food operation is found to be in violation of this chapter.

(2) (A) A "Class B" cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A "Class B" cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed "Class B" cottage food operation and its method of operation conform to this chapter.

(C) Except as provided in this subparagraph, a "Class B" cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(i) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.

(ii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.

(D) (i) A "Class B" cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the "Class B" cottage food operation is permitted.

(ii) A county may agree to allow a "Class B" cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except that a cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes all of the following:

- (1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.
- (2) The washing, sanitizing, and drying of hands and arms.
- (3) Water used as an ingredient.

(d) A person who prepares or packages cottage food products shall complete a food processor course instructed by the department to protect the public health within three months of becoming registered. The course shall not exceed four hours in length. The department shall work with the local enforcement agency to ensure that cottage food operators are properly notified of the location, date, and time of the classes offered.

(e) A cottage food operation shall properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

- (1) The words "Made in a Home Kitchen" in 12-point type on the cottage food product's primary display panel.
- (2) The name commonly used for the food product or an adequately descriptive name.
- (3) The name of the cottage food operation which produced the cottage food product.
- (4) The registration or permit number of the "Class A" or "Class B" cottage food operation, respectively, which produced the cottage food product and, in the case of a "Class B" cottage food operation, the name of the county of the local enforcement agency that issued the permit number.
- (5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation. A cottage food product shall not be potentially hazardous food, as defined in Section 113871.

(b) This list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:

- (1) Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.
- (2) Candy, such as brittle and toffee.
- (3) Chocolate-covered nonperishable foods, such as nuts and dried fruit.
- (4) Dried fruit.
- (5) Dried pasta.
- (6) Dry baking mixes.
- (7) Fruit pies, fruit empanadas, and fruit tamales.
- (8) Granola, cereals, and trail mixes.
- (9) Herb blends and dried mole paste.
- (10) Honey and sweet sorghum syrup.
- (11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.
- (12) Nut mixes and nut butters.
- (13) Popcorn.
- (14) Vinegar and mustard.
- (15) Roasted coffee and dried tea.

(16) Waffle cones and pizelles.

(c) (1) The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list. Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

114365.6. (a) The State Public Health Officer shall provide technical assistance, and develop, maintain, and deliver commodity-specific training related to the safe processing and packaging of cottage food products to local enforcement agencies.

(b) Local enforcement agencies may collect a surcharge fee in addition to any permit fees collected for "Class B" cottage food operations. The surcharge fee shall not exceed the reasonable costs that the department incurs through the administration of the training described in subdivision (a) to protect the public health. The surcharge fees collected shall be transmitted to the department in a manner established by the department to be deposited in the Food Safety Fund. The department shall use the surcharge fees only to develop and deliver the training described in subdivision (a) to local enforcement agency personnel on an ongoing basis.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15. Section 114405 of the Health and Safety Code is amended to read:

114405. (a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility or cottage food operation for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility or cottage food operation for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility or cottage food operation is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permit holder. If the permit holder fails to comply, the local enforcement officer shall issue to the permit holder a notice setting forth the acts or omissions with which the permit holder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked. A written request for a hearing shall be made by the permit holder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permit holder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permit holder a notice setting forth the acts or omissions with which the permit holder is charged, specifying the pertinent code section, and informing the permit holder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permit holder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Exhibit E

Legislative Counsel Bureau on Cottage Food Operations

Exhibit E
Page 1 of 7 Pages



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A TRADITION OF TRUSTED LEGAL SERVICE
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Honorable Mike Gatto
Room 2114, State Capitol

COTTAGE FOOD OPERATIONS - #1301208

Dear Mr. Gatto:

You asked several questions relating to the effect of chapter 415 of the Statutes of 2012 (chapter 415) on the ability of a city¹ or county² to regulate, and the responsibility of a city or county toward, a cottage food operation. We will briefly describe how the production of food was regulated in California prior to the enactment of chapter 415 and then separately discuss each of the questions asked.

BACKGROUND

Generally, the production of food is regulated by two statutory provisions: the Sherman Food, Drug, and Cosmetic Law³ (the Sherman Law) and the California Retail Food Code⁴ (the Retail Food Code). The Sherman Law regulates, among other things, the sale of any food, which includes the manufacture, production, processing, packing, exhibition, offer, possession, or holding of any food for sale.⁵ Similarly, the Retail Food Code regulates the manufacture, processing, distribution, and sale of food by a food facility.⁶ The State Department of Public Health generally regulates both the Sherman Law⁷ and the Retail Food

¹ We express no opinion on the applicability of chapter 415 to charter cities.

² For purposes of this opinion, references to a "city or county" shall include a city, county, or city and county.

³ Health and Safety Code, division 104, part 5 (§ 109875 et seq.).

⁴ Health and Safety Code, division 104, part 7 (§ 113700 et seq.).

⁵ Health and Safety Code section 110030.

⁶ Health and Safety Code sections 113705 and 113980.

⁷ Health and Safety Code sections 109910 and 110045.

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Code,⁸ but local enforcement agencies have the primary responsibility for enforcing the Retail Food Code.⁹

Under the Retail Food Code, food has to be stored, prepared, packaged, served, vended, or provided at a food facility in order for the food to be sold at retail.¹⁰ A private home is not included in the Retail Food Code definition of a food facility. Accordingly, prior to the enactment of chapter 415, because food prepared in a private home was not prepared at a food facility, that food could not be sold at retail.¹¹

Chapter 415 was enacted in order to encourage the growth of community-based food production, including cottage food operations, by allowing foods prepared in a private home to be sold as homemade foods to the public.¹² Chapter 415 exempts cottage food operations from the provisions of the Sherman Law¹³ and the Retail Food Code,¹⁴ and defines a cottage food operation as an enterprise operated in a registered or permitted private home that prepares or packages nonpotentially hazardous food¹⁵ for sale to the consumer.¹⁶ Under chapter 415, a cottage food operation may sell its food either directly to the consumer as a Class A cottage food operation¹⁷ or both directly and indirectly to the consumer as a Class B cottage food operation.¹⁸ In order to qualify as a cottage food operation, the enterprise must also comply with certain gross annual sales and employment limitations.¹⁹

Government Code section 51035, as added by chapter 415, requires a city or county to allow cottage food operations and to either classify a cottage food operation as an authorized use of property zoned as residential or issue permits to engage in a cottage food

⁸ Health and Safety Code sections 113707 and 113763.

⁹ Health and Safety Code section 113713.

¹⁰ Health and Safety Code section 113789.

¹¹ Health and Safety Code section 113789, subdivision (c)(2).

¹² Senate Committee on Health, Report on Assembly Bill No. 1616 (2011-2012 Reg. Sess.) as amended May 3, 2012, page 4.

¹³ Health and Safety Code sections 109947 and 110460.

¹⁴ Health and Safety Code section 113789, subdivision (c)(2). Under chapter 415, a cottage food operation is generally exempt from the Retail Food Code but is still required to comply with specified standards relating to hand washing, vermin and animals, and other issues relating to hygiene and safety. (Health & Saf. Code, § 114365.2.)

¹⁵ Health and Safety Code section 114365.5 establishes a list of nonpotentially hazardous foods. The State Public Health Officer may add to or delete foods from that list by complying with certain notice requirements. (Health & Saf. Code, § 114365.5, subd. (c).)

¹⁶ Health and Safety Code section 113758.

¹⁷ Health and Safety Code section 113758, subdivisions (a)(1) and (b)(4).

¹⁸ Health and Safety Code section 113758, subdivisions (a)(2) and (b)(5).

¹⁹ Health and Safety Code section 113758, subdivision (a).

operation.²⁰ If a city or county issues permits to engage in a cottage food operation, then the cottage food operation must comply with local ordinances prescribing “reasonable standards, restrictions, and requirements” that relate to “spacing and concentration, traffic control, parking, and noise control relating to those homes.”²¹

In addition to the regulations described above that apply to cottage food permits, all cottage food operations must comply with certain health and safety standards. A Class A cottage food operation must be registered with the local enforcement agency and complete a self-certification checklist that verifies that the cottage food operation meets certain requirements relating to the health and safety of the food prepared.²² But the local enforcement agency has no authority to verify that the cottage food operation has met those requirements unless the agency receives a complaint related to adulterated or unsafe food or a violation of specified laws.²³ On the other hand, a Class B cottage food operation is required to obtain a permit from the local enforcement agency and, as a part of the permitting process, to undergo an initial inspection of the premises.²⁴ The local enforcement agency may also inspect the premises no more than annually, or more often if it receives a complaint related to adulterated or unsafe food or a violation of specified laws.²⁵

QUESTIONS PRESENTED

1. May a city or county prohibit a cottage food operation from selling products directly to the consumer from a private home?

A statute should be interpreted in accordance with its ordinary and usual meaning.²⁶ Chapter 415 expressly requires a city or county to allow a cottage food operation by either classifying it as a permitted use of property zoned as residential or providing a permitting process for cottage food operations.²⁷ Moreover, a cottage food operation is specifically authorized to sell its products directly to the consumer.²⁸ Accordingly, it is our opinion that, under the plain language of chapter 415, a city or county cannot prohibit a

²⁰ Government Code section 5035, subdivision (a).

²¹ Government Code section 5035, subdivision (a)(2) and (3).

²² Health and Safety Code section 114365.

²³ Health and Safety Code section 114365, subdivision (a)(1)(C).

²⁴ Health and Safety Code section 114365, subdivision (a)(2).

²⁵ Health and Safety Code section 114365, subdivision (a)(2)(C).

²⁶ *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707.

²⁷ Government Code section 5035, subdivision (a).

²⁸ Health and Safety Code section 113758, subdivisions (a) and (b)(4).

Exhibit E
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cottage food operation from selling its products directly to the consumer out of a private home.²⁹

2. May a city or county condition the granting of a permit to run a cottage food operation on the potential traffic impacts on the neighborhood caused by the cottage food operation?

If a city or county does not classify cottage food operations as an authorized use of property zoned as residential, then Government Code section 51035 requires the city or county to grant a permit to operate a cottage food operation to a cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes.³⁰ Traffic control is specifically listed as one of the types of local ordinances with which cottage food operations must comply as a condition of a permit to operate. Because the plain language of the statute requires an operator of a cottage food operation to comply with reasonable local traffic control ordinances as a condition of his or permit for a cottage food operation, it is our opinion that a city or county may condition the grant of a permit to run a cottage food operation on compliance with reasonable standards relating to traffic control set by the city or county by local ordinance.

3. May a city or county condition the grant of a permit to run a cottage food operation on other topics not listed in Government Code section 51035?

Under the doctrine of "expressio unius est exclusio alterius," the expression of one thing in a statute ordinarily implies the exclusion of other things.³¹ Pursuant to that doctrine, if a statute grants a person a specific power, it is presumed that the statute prohibits the person from exercising any other power not specified.³² It follows that, by authorizing a city or county to condition the grant of a permit only on specified grounds, the Legislature is prohibiting that city or county from regulating a cottage food operation on any other grounds. If the Legislature had intended to make the list nonexhaustive, it could have done so by simply adding in the word "including" or the phrase "including, but not limited to."³³ Indeed, the Legislature used the word "include" in several other places in chapter 415 to

²⁹ Government Code section 51035, subdivision (a)(2) and (3).

³⁰ Government Code section 51035, subdivision (a)(2) and (3).

³¹ *In re J.W.* (2002) 29 Cal.4th 200, 209; see also Sutherland Statutes and Statutory Construction (7th ed. 2007), Vol. 2A, § 47:23, pages 398-421.

³² *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196; *Kaplan v. Superior Court* (1989) 216 Cal.App.3d 1354, 1359-1360.

³³ Sutherland Statutes and Statutory Construction, *supra*, § 47:23, page 417 (the word "include" is generally used to create a non-exhaustive list).

create nonexhaustive lists.³⁴ The Legislature's decision not to do so in this instance demonstrates that the Legislature intended to create an exhaustive list of the topics that a city or county may regulate.³⁵ Thus, in our view, the list in Government Code section 51035 is exhaustive, and a city or county may condition a permit to operate a cottage food operation only on compliance with local ordinances pertaining to spacing and concentration, traffic control, parking, and noise control relating to those homes.

It is, therefore, our opinion that a city or county may not condition the grant of a cottage food operation permit on any topics not listed in Government Code section 51035.

4. May a city or county use an existing study on what constitutes a reasonable amount to charge for a permit fee to fulfill the requirement in Government Code section 51035 that the city or county provide a fee verification statement?

A city or county may charge fees to an applicant for a permit to operate a cottage food operation.³⁶ The fees cannot exceed the costs to the city or county of the review and permit process.³⁷ The applicant may request, and the city or county shall provide, a written breakdown of a verification of the fees.³⁸ The phrase "verification of fees" is not defined, but the term "verify" generally means to "establish the truth, accuracy, or reality of."³⁹ Under that definition, a city or county must establish that the amount of fees charged by the city or county is accurate.⁴⁰ A city or county is not limited with respect to the type of information that may be employed to meet that requirement. If an existing fee study provides the information accurately, then we see no reason why a city or county could not use it.

³⁴ Government Code section 51035, subdivision (b)(1); Health and Safety Code, sections 113758, subdivision (b)(3) and (6), 113789, subdivision (b)(2), and 114365, subdivision (a)(1).

³⁵ See *In re Ethan C.* (2012) 53 Cal.4th 610, 638, "[w]hen language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful."

³⁶ Government Code section 51035, subdivision (a)(3).

³⁷ Government Code section 51035, subdivision (b).

³⁸ Government Code section 51035, subdivisions (a)(3) and (b)(2).

³⁹ Webster's 10th Collegiate Dictionary (1995) page 1312. When attempting to ascertain the ordinary, usual meaning of a word, it is appropriate to refer to the dictionary definition of that word. (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122.)

⁴⁰ This duty is consistent with the general requirement that a city or county that charges a fee must prove by a preponderance of the evidence that the fee is reasonable. (Cal. Const., art. XIII C, § 1.)

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Therefore, it is our opinion that a city or county may verify the cottage food operation permit fee using any information that would establish that the fee is reasonable, including an existing fee study.

5. Must a city or county provide to an applicant for a cottage food operation permit a list of all permits, fees, and fee verifications required by other public agencies?

If requested by an applicant, a city or county must provide "a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies."⁴¹ Additionally, a city or county, if requested by an applicant, must "provide information about the anticipated length of time for reviewing and processing the permit application"⁴² and must provide a verification of the fees paid by the applicant to that city or county.⁴³ Accordingly, based on a plain reading of the statute, a city or county must, if requested, provide information to an applicant with regard to all fees and permits required by that city or county and must also provide a verification of fees paid to that city or county. In addition, a city or county is required to provide information about other permits that may be required by other public agencies. However, a city or county is not required to provide a list of fees that may be required by other public agencies or to provide a verification of fees required by other public agencies.

⁴¹ Government code section 51035, subdivision (b)(1).

⁴² Government Code section 51035, subdivision (b)(1), emphasis added.

⁴³ Government Code section 51035.

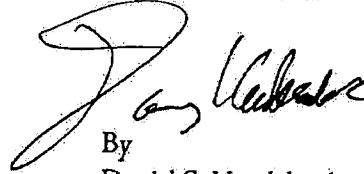
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Consequently, it is our opinion that a city or county must provide to an applicant who is applying for a permit to operate cottage food operation information relating to all permits that may be required by other public agencies but is not required to provide information relating to any fees that are required by other public agencies.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
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DSV:sjk

Exhibit F

Existing Regulations for Home Occupations (MCC 21.64.090)

21.64.090 - Regulations for home occupations.

A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which business limited scale and impact may be established in residences.

B. Applicability: The provisions of this Section are applicable in all areas of the County.

C. Regulations: Home occupations may be conducted in any zoning district which allows residential use.

1. Home occupations are limited to those occupations using facilities, equipment and materials normally found in the home and within accessory structures, including but not limited to typing, seamstress or tailoring, computerized data processing, ceramics, music and instrument lessons, and lawn mower repair which do not interfere with the use or appearance of the home as a residence or the aesthetic character of the district.

2. No persons other than the resident and immediate family residing on site may be employed in the home occupation.

3. All facets of the home occupation must be contained in the residence or inside structures on-site that are otherwise considered to be accessory structures to a residence.

4. There shall be no production of noxious or toxic odors or fumes, nor increase in numbers or duration of noise or traffic levels above those of ordinary residential use; nor use, storage, or disposal of materials of a nature or quantity not ordinarily found in residential neighborhoods, which have the potential to endanger the health, safety, or peaceful enjoyment of their property or neighborhood residence, or to constitute a hazard their environment.

5. There shall be no advertising for the home occupation allowed on the property.

D. Modification to the provisions of Section 21.64.090C of this Chapter may be considered by an Administrative Permit.