



LAND USE SERVICES DEPARTMENT PLANNING STAFF REPORT



HEARING DATE: April 3, 2014

AGENDA ITEM NO: 3

Project Description:

Applicant: Land Use Services Department
Proposal: Development Code Amendment to revise Title 8 of the County Code (Development Code) relative to home occupations.
JCS: P201300608
Community: Countywide
Location: Countywide
Staff: Jim Squire

Background

The County Land Use Services Department has an on-going program of identifying errors within the County Development Code, General Plan, and other documents prepared by the department, and then formulating clarifications or corrections to address those issues. These suggestions are very valuable in improving these governing documents, making them more readable, functional, and complete. Through this program, staff has identified a section of the Development Code relative to home occupations that needs correction to comply with state law.

On January 1, 2013, Assembly Bill (AB) 1616 became effective which amended the California Government Code and the California Health and Safety Code relative to cottage food operations. This bill defines “cottage foods” as foods that are “non-potentially hazardous.” These are foods that do not require refrigeration to keep them safe from bacterial growth that could make people sick. The California Department of Public Health has established a list of approved cottage food categories on their website and has implemented a process by which new foods can be added or removed from the list.

This bill declared a registered/permitted cottage food operation within a private home to be exempt from the provisions of the California Retail Food Code [Part 7 of the California Health and Safety Code]. The bill also excluded cottage food operations from the requirements for specified food processing establishments and from the Food, Drug and Cosmetics laws of the Health and Safety Code. This bill requires a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and subjects a cottage food operations to inspections under specified circumstances. The bill requires a food facility that serves a cottage food product without packaging or labeling to identify it as homemade.

The current provisions of the Development Code prohibit food preparation and food sales as a home occupation. With the adoption of AB 1616, this prohibition needs to be rescinded.

FINDINGS:

1. The proposed amendment is consistent with the General Plan and any applicable community plan or specific plan because the Development Code implements the General Plan and these changes simply makes the Code consistent with state law;

Action taken by the Planning Commission on this item may be appealed to the Board. Yes No
 Note: Recommendations to the Board of Supervisors are not appealable.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the County;
3. The proposed amendment is internally consistent with other applicable provisions of this Development Code; and
4. The proposed amendment is exempt from the requirements of CEQA pursuant to state CEQA Guidelines §15061(b)(3) in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

RECOMMENDATION: The Planning Commission recommends that the Board of Supervisors:

- A. ADOPT the proposed Development Code Amendment to revise Title 8 of the County Code (Development Code) relative to home occupations;
- B. ADOPT the findings as contained in the staff report;
- C. FILE the Notice of Exemption.

ATTACHMENTS:

1. [Proposed Development Code Changes](#)
2. [Can I Prepare Food at Home Flyer](#)
3. [How Do I Obtain a Cottage Food Health Permit/Registration](#)
4. [Cottage Food Operations FAQs](#)
5. [Approved Cottage Food List](#)
6. [Cottage Food Operator Training](#)

Proposed Development Code Changes

84.12.050 Prohibited Home Occupations

Except as provided in Section 84.12.060 (Allowed Home Occupations in Desert Region), the following uses are not incidental to or compatible with residential activities and shall not be allowed as home occupations:

- (a) Animal hospitals.
- (b) Motor vehicle and other vehicle repair (body or mechanical) to include the repair of engine, muffler or drive train components of the vehicle; upholstery; painting or storage.
- (c) Carpentry and cabinet making, not to include woodworking that results in the creation of small wood products or single pieces of furniture.
- ~~(d) Food preparation and food sales.~~
- (ed) Kennels or catteries.
- (fe) Massage parlors.
- (gf) Medical and dental offices, clinics, and medical laboratories.
- (hg) Repair shops or service establishments, except repair of small electrical appliances, cameras, or other similar items.
- (ih) Riding stables.
- (ji) Large scale upholstery service, not to include the reupholstering of separate, individual pieces of furniture or other objects.
- (kj) Welding and machining.
- (lk) Vermicomposting.
- (ml) Any other use determined by the Director that is not incidental to and/or compatible with residential activities.

Adopted Ordinance 4011 (2007)

84.12.060 Allowed Home Occupations in Desert Region

In the Desert Region only, the uses listed in Section 84.12.050 (Prohibited Home Occupations) may be allowed as a home occupation on parcels greater than two and one-half acres if approved by the Director. Applications for approval of Home Occupation Permits for the listed uses that are normally prohibited shall be considered by the Director on a case-by-case basis in the Desert Region.



Can I Prepare Food at Home?

Assembly Bill 1616 (Food Safety: Cottage Food Operations) was signed into California law with an effective date of **January 1, 2013**. This law establishes requirements for limited preparation and distribution of low-risk food products from a business at a private home otherwise known as a Cottage Food Operation (CFO). Revenue and employee limitations apply.

What is meant by “private home?”

“Private home” means a dwelling, including an apartment or other leased space, where individuals reside. A commercial kitchen is not required.

Is a CFO operator required to obtain a health permit?

Yes, all CFOs are required to obtain either a valid health permit or a registration from the Division of Environmental Health Services (DEHS), depending on the type of operation. Additional permits may be required if cottage foods are sold outside the CFO.

What type of health permit or registration do I need?

Yes, a health permit is required. Furthermore, health permits are non-transferable and must be renewed annually. There are two types of health permits for a CFO:

1. A “Class A” registration is required for “Direct sales” between a CFO operator and a consumer. The operator must complete and submit a self-certification checklist as required by DEHS. The current fee for a “Class A” health permit is \$162.00.
2. A “Class B” health permit is required for “Direct Sales” and “Indirect sales” where the consumer purchases cottage food products from a permitted third-party retailer. The current fee for a “Class B” health permit is \$183.00.

Will I be inspected by the Health Department?

For “Class A” CFOs, no initial or routine health inspections will be required.

For “Class B” CFOs, an initial inspection will be conducted by DEHS, followed by routine inspections conducted annually.

All CFOs will be inspected on the basis of a consumer complaint or if DEHS has reason to suspect that adulterated or otherwise unsafe food has been produced by the CFO.

What types of foods can be prepared in a CFO?

Only “non-potentially hazardous” foods are approved for preparation in a CFO. These foods do not support the rapid growth of bacteria while held at room temperature. A few examples include:

- Baked goods without cream, custard, or meat fillings, such as bread, biscuits, churros, cookies, pastries, and tortillas
- Honey and sweet sorghum syrup
- Jams, jellies, preserves, and fruit butter
- Candy, such as brittle and toffee
- Nut mixes and nut butters

Where can I sell my food?

Foods may be sold through transactions in person at the CFO. With an additional temporary food facility health permit, foods may be sold at approved temporary events or certified farmers’ markets (temporary food facility regulations will apply). Foods prepared in a “Class B” CFO may also be sold at other permitted food facilities.

What are the requirements for labeling the food?

Food that is prepared or packaged at a CFO must be labeled with:

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 CFO 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

“Class B” – In addition to the four requirements listed above, food from a “Class B” CFO must include the name of the county of the local enforcement agency that issued the permit number.



For additional information, contact DEHS at
1-800-442-2283 or visit us on the web at
www.sbcounty.gov/dehs





HOW DO I OBTAIN A COTTAGE FOOD HEALTH PERMIT/REGISTRATION?

DO I QUALIFY AS A COTTAGE FOOD OPERATION?

Before you apply for a health permit or registration as a Cottage Food Operation, please verify that you meet the requirements. These requirements can be viewed on our website at:

www.sbcounty.gov/dehs/Depts/EnvironmentalHealth/GeneralInformation/cottage_food_operations.aspx

If you meet the criteria, you are eligible to become a permitted/registered cottage food operation.

HOW DO I OBTAIN A HEALTH PERMIT/REGISTRATION FOR A COTTAGE FOOD OPERATION?

In order to obtain a registration ("Class A") or a health permit ("Class B") for a cottage food operation, you must complete the following steps:

- 1) Obtain approval from your city planning department. You must do this prior to submitting a health permit/registration application to our office. If you live outside the city limits in a county area, you must obtain approval from the County of San Bernardino, Land Use Services Department.
- 2) After you have obtained approval from your city planning department or Land Use Services, download a copy of the Application for Cottage Food Operations Registration/Health Permit from the Division of Environmental Health Services (DEHS) website at:

www.sbcounty.gov/dehs/Depts/EnvironmentalHealth/BusinessServices/applications.aspx

- 3) Complete this application along with the self-certification checklist.
- 4) Submit the application and self-certification checklist to our office (DEHS) in addition to the required fee. Please note, if you are using a private well for water, you will be required to submit the latest test results along with your application (see application form for details). You may submit your application and fee to one of our three locations listed below.

If you are applying for a "Class A" Cottage Food Operation Registration, the registration process is complete and you are allowed to prepare cottage food. You will **not** be inspected by our office unless we receive a complaint regarding food that was prepared in your kitchen.

If you are applying for a "Class B" Cottage Food Operation Permit, an inspector will arrange to meet you at your residence to inspect your cottage food kitchen and storage areas before you are allowed to prepare cottage food. Once the inspector verifies that your kitchen and storage areas meet the requirements, you will be given approval to prepare food. The health permitting process is complete. If the inspector determines that your kitchen does not meet the requirements for a cottage food operation, you will be required to make corrections before you are allowed to prepare cottage food. "Class B" Cottage Food Operations will be inspected annually unless our office receives a complaint regarding food that was prepared in your kitchen.

(continued on next page)

WHAT HAPPENS AFTER I AM ALLOWED TO PREPARE FOOD?

After you are allowed to prepare cottage food, you will be required to take a food processor course within 90 days. This course will be offered by the state. Although the course is currently not offered at any location, we will provide additional information as it becomes available.

THE HEALTH INSPECTOR IS COMING TO MY RESIDENCE, WHAT SHOULD I EXPECT?

The health inspector will visit your residence to ensure that your kitchen and food storage areas meet the requirements for a cottage food operation. If there is a problem, the inspector will tell you what the problem is and how you can correct it. You are welcome to ask the inspector additional questions during the inspection. In addition to verifying that your kitchen and storage areas meet the requirements, the inspector is there to provide education and information.



WHERE CAN I LEARN ADDITIONAL SAFE FOOD HANDLING PRACTICES?

If you wish to learn additional information regarding food safety, we encourage you to take our short course in food safety at <http://sbc.statefoodsafety.com>. Upon successful completion of the test at the end of this course, you will be able to print a food handler certificate. Although this certificate will not meet the requirement for the required food processor course offered by the state, you will be able to use the certificate to work at any food facility in the County of San Bernardino.

If you have additional questions, you are welcome to contact our office at any time (office hours are 8:00 AM to 5:00 PM, Monday through Friday). You can also visit us on the web at www.sbcounty.gov/dehs for additional information.

WHERE ARE THE DEHS OFFICE LOCATIONS?

- 385 N. Arrowhead Ave. 2nd Floor, San Bernardino, CA 92415-0160
- 15900 Smoke Tree St., Ste. 131, Hesperia, CA 92345
- 8575 Haven Ave., Ste. 130, Rancho Cucamonga, CA 91730

1-800-442-2283 or visit us on the web at
www.sbcounty.gov/dehs



**COUNTY OF SAN BERNARDINO
DEPARTMENT OF PUBLIC HEALTH
DIVISION OF ENVIRONMENTAL HEALTH SERVICES**

**AB 1616 – COTTAGE FOOD OPERATIONS
FREQUENTLY ASKED QUESTIONS**

1. When does the new law go into effect?

Assembly Bill 1616 – Cottage Food Operations was signed into law on September 21, 2012. The new law takes effect January 1, 2013.

2. What is a Cottage Food Operation (CFO)?

A CFO is an enterprise at a private home where low-risk food products are prepared or packaged for sale to consumers.

3. What is meant by “private home”?

“Private home” means a dwelling, including an apartment or other leased space, where individuals reside.

4. Are there limitations on the size of CFOs sales?

Yes. A CFO is restricted to the following gross annual sales amounts:

- \$35,000 or less in gross sales in 2013
- \$45,000 or less in gross sales in 2014
- \$50,000 or less in gross sales in 2015 and beyond

5. Can a CFO have employees?

A CFO can have one full-time equivalent employee (not counting family members or household members).

6. What cottage food categories are permitted at a CFO?

Only foods that are defined as “non-potentially hazardous” are approved for preparation by CFOs. These are foods that do not require refrigeration to keep them safe from bacterial growth that could make people sick. The California Department of Public Health will establish and maintain a list of approved cottage food categories on their website and will implement a process by which new foods can be added or removed from the list. Click the link below to view the list of approved foods: [California Department of Public Health – Cottage Food Operations](#)

7. What are the two classifications of CFOs?

- “Class A” CFOs are only allowed to engage in “direct sales” of cottage food.
- “Class B” CFOs may engage in both “direct sales” and “indirect sales” of cottage food.

8. What is meant by “Direct Sale” of cottage food?

“Direct Sale” means a transaction **within the state of California** between a CFO operator and a consumer, where the consumer purchases the cottage food product directly from the CFO. 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.

9. What is meant by “Indirect Sale” of cottage food?

“Indirect Sale” means an interaction between a CFO, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the CFO from a third-party retailer that holds a valid permit issued by the local environmental health agency in their jurisdiction. 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.

10. Do I need any special training or certification to prepare cottage foods?

A person who prepares or packages cottage food products must obtain Food Worker certification from the County of San Bernardino within three months of being registered or permitted. Online training must be taken at the following website: <http://sbc.statefoodsafety.com>.

11. Does a CFO need a permit to operate?

- Planning/Zoning:** All CFOs need to obtain approval from their local city or county planning department. The Cottage Food Bill gives planning departments several options to consider, so planning department requirements may vary between jurisdictions.
- Environmental Health:**
 - For “**Class A**” CFOs (direct sale only), a **registration** with DEHS and submission of a completed “Self-Certification Checklist” is required.
 - For “**Class B**” CFOs (direct and indirect sales), a **health permit** from DEHS is required.
- Registrations and permits are not transferable between:**
 - Persons
 - Locations
 - Type of food sold
 - Type of distribution

12. How much will the registration or permit cost the CFO?

- “**Class A**” CFO registration is currently \$162.00.
- “**Class B**” CFO permit is currently \$183.00.

13. Will my CFO Registration/Permit allow me to sell at other retail venues?

There may be health permits required to sell at other locations, such as Certified Farmer’s Markets or Swap Meets. Please check with DEHS for additional permit requirements.

14. How often will a CFO be inspected?

- “**Class A**” CFO kitchens and food storage areas (referenced in the law as the “registered or permitted area”) are not subject to initial or routine inspections.
- “**Class B**” CFO kitchens and food storage areas are inspected initially prior to permit issuance, and then annually thereafter.
- Class A and B (Other Inspections)** The local environmental health agency may access, for inspection purposes, the registered or permitted area 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 is found to be in violation of California food safety laws on cottage food operations.

15. What are the CFOs operational requirements?

All CFOs must comply with the following:

- No domestic activity in kitchen during cottage food preparation
- No infants, small children, or pets in kitchen during cottage food preparation
- Kitchen equipment and utensils kept clean and in good repair
- All food contact surfaces and utensils washed, rinsed, and sanitized before each use
- All food preparation and storage areas free of rodents and insects
- No smoking in kitchen area during preparation or processing of cottage food
- A person with a contagious illness shall refrain from working
- Proper hand-washing shall be completed prior to any food preparation or packaging
- Water used in the preparation of cottage food products must be potable. This includes:
 - Washing, rinsing, and sanitizing equipment used in food preparation.
 - Washing and sanitizing hands and arms.
 - Water used as an ingredient of cottage food.

16. Can a CFO sell cottage food outside the operator's county of residence?

CFOs can **only** sell cottage food outside their county of residence when the local environmental health agency of the outside county allows it.

17. Can I press apples and sell apple cider?

NO. There are no beverages included in the list of food products allowed to be produced in CFOs, so pressing apples to make and sell apple cider is not allowed under your CFO registration or permit.

18. What are my food labeling requirements?

All cottage food products must be properly labeled in compliance with the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). The label shall include:

- The words "Made in a Home Kitchen" in 12-point type
- The name commonly used for the food product
- Name of CFO which produced the food product
- The registration or permit number of the cottage food operation which produced the cottage food product and the name of the local enforcement agency that issued the number
- Product ingredients in descending order by weight

In a permitted food facility, cottage food products served without packaging or labeling shall be identified to the customer as homemade on the menu, menu board or other easily accessible location.



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LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTS



All labels of products from Cottage Food Operations (CFO) submitted for review must contain the information listed below. Labels missing any of the listed information will not be approved and will need to be resubmitted for review.

- ① Common name of the product.
- ② Name of Cottage Food Operation which produced the food that is registered or permitted with the local environmental health agency.
- ③ Physical address of Cottage Food Operation (street number, street name, city, state, zip code).
- ④ List of product ingredients in descending order by weight. If commercially made products are used as an ingredient, the ingredients of that product must also be listed (e.g. Chocolate chips [sugar, chocolate liquor, cocoa butter, butterfat]).
Note: The list of ingredients may be on a secondary label affixed to a different location on the product. All other information must be included on the primary label that is affixed to the top or front of the product.
- ⑤ A declaration on the label in plain language if the food contains any of the major food allergens allowed to be used as ingredients in Cottage Food Products such as milk, eggs, tree nuts, wheat, peanuts, or soybeans.
- ⑥ The net quantity (count, weight, or volume) of the food product. It must be stated in both English units (pounds) and Metric units (grams).
- ⑦ “Made in a Home Kitchen” or “Repackaged in a Home Kitchen” as applicable. This exact wording must be used, and must be printed in at least 12 point font.
Note: If labeled as “Repackaged in a Home Kitchen” then a description of any purchased whole ready-to-eat products not used as an ingredient must also be included on the label.

- ⑧ Registration or permit number issued by the Department of Environmental Health in the County where the Cottage Food Operator resides and operates.

Note: This number will be provided when the Cottage Food Application is approved. For label submittal purposes, a placeholder may be used.

- ⑨ Name of the county issuing the Cottage Food Registration or Permit

Note: The use of the following eleven terms are considered nutrient content health claims (nutritional value of a food): free, low, reduced, fewer, high, less, more, lean, extra lean, good source, and light. If the food label makes any nutrient content health claims, then a Nutrition Facts Panel must be incorporated into the label.

*For additional information, visit CDPH's Cottage Food webpage at:
www.cdph.ca.gov/programs/pages/fdbcottagefood.aspx*



COUNTY OF SAN BERNARDINO
Environmental Health Services
DEPARTMENT OF PUBLIC HEALTH

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Attachment #5

Approved Cottage Foods

Cottage food operations are allowed to produce certain non-potentially hazardous foods. These are foods that do not support the rapid growth of bacteria that would make people sick when held outside of refrigeration temperatures. The list of approved cottage food categories and their ethnic variations, which cottage food operations are allowed to produce, are listed below. The list will be maintained and updated by the California Department of Public Health (CDPH) on its Internet website as necessary.

CDPH may add to or delete food products from the approved products list. Notice of any change, reason for the change, the authority for the change, and the nature of the change to the approved food products list will be posted on the CDPH website and shall become effective thirty (30) days after the notice is posted.

Approved Food Products List (January 1, 2013):

- (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 fruits.
 - (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](#).
- *see below
- (12) Nut mixes and nut butters.
 - (13) Popcorn.,
 - (14) Vinegar and mustard.
 - (15) Roasted coffee and dried tea.
 - (16) Waffle cones and pizelles.

*Jams, jellies, preserves, and fruit butter: Cottage food operations which produce jams, jellies, preserves, and other related products must be sure that their products meet the legal established standards of identity requirements for those products as set forth in [21 CFR Part 150](#). The purpose of the regulation is to maintain the integrity of the food product to ensure consumers consistently get what they expect. The product name and ingredients listed on the label must be factual and comply with the legal definitions and standards of identity or the product may be considered misbranded. Products made with other ingredients that are not defined in 21 CFR 150 cannot be produced by cottage food operations. Addition of other ingredients or alteration of ingredient profiles changes the chemistry of the food, which can allow the growth of various bacteria and toxins under the right conditions. For example, addition of peppers (i.e. jalapeno pepper) to make pepper jelly is not supported by 21 CFR 150 and the addition of this low acid ingredient could cause the formation of botulism toxin in the product if the proper controls are not used.



Attachment #6

Cottage Food Operator Training

Any person who prepares or packages cottage food must complete a food processor course within three months of becoming registered or permitted and every three years during operation. The California Department of Public Health (CDPH) has identified training that you may take that will satisfy the training requirement specified in California Health and Safety Code section 114365.2(d).

Cottage food operators (CFOs), their employee, and any household member that is involved in the preparation or packaging of cottage foods may take one of the American National Standards Institute (ANSI) accredited food handler courses that are currently required for retail food facility food handlers. The courses are available on-line or via a classroom in a variety of languages for a minimal cost. After successfully completing the course, you will receive a food handler card or certificate, which you need to retain as proof that you completed the required training. You must present a copy of this card or certificate for each person involved in preparing cottage foods to your local enforcement agency upon their request, to verify that the training requirement has been completed. Additionally, CFO's and their employees must complete the accredited food handler course every three years during operation.

You can access a list of available food-handler training courses at the following website:

<https://www.ansica.org/wwwversion2/outside/ALLdirectoryListing.asp?menuID=212&prgID=228&status=4>

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