



City of San Leandro

Meeting Date: May 20, 2013

Staff Report

File Number: 13-228

Agenda Section: PUBLIC HEARINGS – CITY COUNCIL

Agenda Number: 3.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Proposed Amendments to the City of San Leandro Zoning Code to Implement New State Law AB1616, to Create Regulations for Cottage Food Operations by Adding a Definition for Cottage Food Operations in Article 3, Section 1-304; to Allow for Such Use in all Zoning Districts within a Residential Unit in Article 16 by Adding Section 4-1688 Cottage Food Operations; to Add Cottage Food Operations Parameters to the Administrative Exception Process in Article 5, Section 2-574; and, to Create a Parking Standard Whereby One Off-Street Employee Parking Space Is Required for a Cottage Food Operation in Article 17, Section 4-1704

SUMMARY AND RECOMMENDATIONS

Staff proposes amendments to the City Zoning Code related to Cottage Food Operations, a new use that would allow for limited commercial food preparation in residential dwellings, subject to licensing and regulation by the Alameda County Environmental Health Department and the City of San Leandro.

The proposed amendments make the following changes to the Zoning Code: Amends Article 3 Definitions, to create a definition of “Cottage Food Operations”; adds a new section to Article 16 Development Regulations, to create regulations for Cottage Food Operations that allow such use in all zoning districts within a residential unit; amends Article 5, Section 2-574 Administrative Exceptions, to add the option of an exception to the Cottage Food Operation parameters as an Administrative Exception process; and adds “Cottage Food Operations” to the parking requirement table in Article 17, Off-Street Parking and Loading Regulations, to create a parking standard whereby one off-street employee parking space is required for a Cottage Food Operation.

Staff recommends that the City Council take public testimony on the proposed amendments; adopt the CEQA findings for exemption; and adopt the proposed Zoning Code Amendments as recommended by the Planning Commission on April 18, 2013.

BACKGROUND

In September 2012, Governor Jerry Brown signed a new law by Assemblyman Mike Gatto (D-Los Angeles) - AB1616 - allowing Californians to make and sell certain non-hazardous foods out of their kitchens subject to the oversight of county health departments (for health code issues) and of local jurisdictions (for zoning permits and business licensing). The new law mandates that local jurisdictions allow residents to obtain a business license to operate a home-based food business known as a Cottage Food Operation.

In introducing the new bill, Assemblyman Gatto made the following Author's Statement regarding the need for legalized home-based food businesses:

AB 1616 was introduced after an article featuring a constituent's popular home bread-making business appeared in the Los Angeles Times in May 2011. A short time thereafter his business was shut down by the public health official because under current (editor's note: as of mid-2012) California law, a person may not use the kitchen in a private residence to produce any foods to be sold or traded for public consumption. The national movement to "homemade" foods and products - also known as "cottage foods", "artisanal foods", "slow foods" and products of "urban agriculture" - reflects a wish to increase the availability of healthier and locally processed foods for our communities. Such products typically include organic and natural ingredients that are less artificially refined or processed. Thirty-one states now have laws that permit the in-home production and distribution of homemade foods (for example, breads, tortillas, dry roasted nuts and legumes, granola, churros, jams, jellies and other products). During these difficult economic times, California should do everything possible to allow individuals to provide for their families and assist with our economic recovery, and home-based food production can allow micro-entrepreneurs to prosper during times of otherwise limited economic opportunity by meeting the desires of local consumers.

In December 2012, the Planning Division was notified by the Alameda County Environmental Health Department that the new State of California regulations would go into effect as of January 1, 2013, pursuant to AB1616. Details of the new State law are included in the attached California Conference of Directors of Environmental Health Fact Sheet on AB 1616 Cottage Food Operations.

Analysis

Prior to the adoption of AB1616, preparation of food in a home kitchen as a commercial business was not allowed under either State or local regulations. To provide for this new use, the City of San Leandro Zoning Code must be amended to include both a new definition of the Cottage Food Operation use, as well as create regulations for that use to function without undue impact to other residential dwellings in the city.

Cottage Food Operation Definition

In the revised State of California Health and Safety Code Section 113758, a Cottage Food Operation is defined as a home-based enterprise where low-risk food products are prepared or packaged for sale and consumption to consumers. (A “private home” is any dwelling, including apartment or other leased space where individuals reside.)

Examples of food categories allowed in Cottage Food Operations are:

- baked goods (without cream, custard or meat fillings);
- candy, such as brittle and toffee;
- chocolate-covered nuts or dried fruit;
- dried fruit;
- dry baking mixes;
- fruit pies, fruit empanadas and fruit tamales;
- granola, cereals, and trail mixes;
- honey and sweet sorghum (molasses) syrup;
- certain jams, jellies, preserves and fruit butters;
- nut mixes and nut butters;
- popcorn;
- vinegar and mustard;
- roasted coffee and dried tea; and
- waffle cones and pizzelles.

The Health and Safety Code also defines two types of Cottage Food Operations: Class A, which allows for direct sales to consumers, both at home or in open markets such as a farmers’ market; and Class B, which allows for both direct sales as well as indirect sales, such as through a market or other third-party.

Staff proposes to add a new definition to the Zoning Code, Article 3 Definitions, for Cottage Food Operations. The definition refers back to the State of California Health and Safety Code, to allow for any refinement in the parameters of food types to conform to current State law on the subject, as follows:

1-304 Cottage Food Operation. A home-based food enterprise that is operated by a resident, and that has not more than one full-time equivalent cottage food employee, not including an immediate 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 and/or indirect sale to consumers pursuant to this part. A cottage food operation includes both “Class A” and “Class B” cottage food operations, as defined in section 113758 of the Health and Safety Code. Cottage food operations are regulated under section 4-1688 of the San Leandro Zoning Code.

County health departments regulate and issue licenses to home-based kitchens for Cottage Food Operations. The Alameda County Environmental Health Department’s permitting process includes the prohibition of food preparation with children or pets in the kitchen. The permit also limits the types of products allowed on the list outlined above. The law allows one

additional employee, and does not consider family members employees. The Alameda County Cottage Food Operation application form and self-certification checklist are included as attachments to this report, for information only.

Regulations Governing Cottage Food Operations

AB1616 allows local jurisdictions to regulate a Cottage Food Operation solely on the basis of traffic, parking, spacing and concentration, and noise. Currently, the Zoning Code has a series of standards that regulate the use of a residential dwelling for a home-based business (Section 2-514 Home Occupation in R Districts), and for large day care uses (Section 2-516 Large Family Day Care Homes). Staff utilized a subset of these existing regulations, subsequently modified by the Planning Commission (shown in *italics*), to select parameters that could also be applied to Cottage Food Operations, as follows:

1. Spacing. No cottage food operation shall be located within *one hundred fifty (150)* feet of any other cottage food operation, as measured from the exterior lot lines *along the property frontages*.
2. On-Street Parking. No cottage food operation shall be located upon a lot having less than thirty-two (32) feet of legally permitted parking along the frontage of the lot.
3. Employee Parking and Customer Parking Circulation Plan. The driveway of a cottage food operation may be used to provide off-street parking required by Article 17 if such use will not obstruct a sidewalk or other public right-of-way.

The Applicant shall provide the Zoning Enforcement Official with a written plan for the administration of parking and traffic operations related to the proposed cottage food operation. This plan shall include controls for vehicle circulation, drop-off and pick-up of cottage food related products and parking for the employee so that parking, loading, unloading and turning movements are compatible with the residential environment in which the cottage food operation will be located.

4. Noise Control. The level of noise in connection with the operation of a cottage food operation shall not be persistently maintained at a level of fifty-five (55) decibels or greater, as measured from any point along or beyond the property line of the subject premises.
5. Traffic. A cottage food operation shall not create pedestrian, automobile, or truck traffic detrimental to property in the vicinity. All deliveries of materials related to a cottage food operation shall be by the U.S. Postal Service or similar carrier, or by means of vehicles customarily kept on the site by the permit holder or family members in trucks or vans of $\frac{3}{4}$ -ton or less in size.
6. Parking. A cottage food operation shall not result in a reduction or elimination of any required parking space. One off-street parking space

shall be provided for employees, per Article 17, Section 4-1704. Said employee parking may be uncovered and located in a driveway.

7. Vehicles. Any vehicle or vehicles used by the applicant in conjunction with the cottage food operation or with any related business activity shall be parked in a manner so as not to be visible from a public street. This limitation shall not apply to standard passenger vehicles or trucks and vans of 3/4-ton or less in size.

In discussion of these proposed Zoning Code amendments with the Board of Zoning Adjustments (BZA) at its April 4, 2013 meeting, certain BZA members were concerned about the potential parking impacts that a successful operation might have on a residential neighborhood, particularly in the single-family zoning districts (see attached excerpt from the draft minutes for the April 4, 2013 BZA meeting). As such, the parking requirements for Large Family Day Care were re-introduced into the above parameters for Cottage Food Operations. By including the provision for a minimum of 32 feet of on-street parking, the BZA supported the proposed amendments. The BZA also agreed that, should certain parameters prove too difficult to obtain, an administrative process be available to allow exceptions to these regulations.

At the public hearing on April 18, 2013, the Planning Commission recommended greater flexibility for these operations to start up, per the State's intent in AB1616. The Commission proposed the following modifications to the staff-proposed regulations: reduce the separation requirement from 300 feet to 150 feet (see above italicized text); and specify that the distance would be measured along the street frontage rather than a simple radius.

In addition, the Planning Commission recommended that caveats be allowed whenever there is ample parking on a site, such as a deep driveway at a single-family residence or numerous guest parking spaces at an apartment building, or whenever the applicant declares that no sales will be conducted on the home site. These caveats would waive both the 150-foot separation and on-street parking requirements without a formal Administrative Exception. The new regulations in Article 16 were amended thus:

- D. Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation where the permit applicant declares on the application form that the cottage food operation will not be making any customer sales directly from the dwelling or property.*

Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation that operates in a location where there are two or more on-site, off-street, dedicated parking spaces for guests.

With the above flexibility built in for any Cottage Food Operation that states on their Zoning Permit application that there will be no sales from the residence, the Planning Commission recommended that the regulations be presented to the City Council as modified.

A staff survey of Alameda County jurisdictions revealed that nearly all other cities and Alameda County are not imposing any separation requirement, except for Pleasanton which is specifying a 300-foot distance between Cottage Food Operations. Therefore, staff believes

that the Planning Commission proposal for the 150-foot separation with the relief of any separation rules and/or on-street parking area for those home-businesses that do not conduct sales from the site strikes a good balance between the flexibility sought by the Planning Commission and the protection of residential neighborhood character raised by the BZA.

Exceptions to Cottage Food Operation Regulations

Staff proposes that, in any circumstance where a particular parcel did not meet the above parameters, and where direct sales would be proposed from the home, an Administrative Exception would be provided, whereby the neighboring residents would have a chance to make public comment and the Zoning Enforcement Official would render an administrative decision, pursuant to Section 2-574, Administrative Exceptions.

The findings for the Administrative Exception include “a determination that such exception would not be detrimental to public health, safety or welfare and would not cause undue damage, hardship, nuisance or other detriment to persons or property in the vicinity.” Staff believes that the Administrative Exception process is suited to residential-based Cottage Food Operations proposals while continuing to regulate the impacts that may be associated with such a use that might generate vehicular traffic for home-based sales.

In order to accommodate the administrative process for an Administrative Exception, the Zoning Code Section 2-574 Administrative Exceptions are proposed to be modified to include exceptions to the Cottage Food parameters Numbers 1 through 7 above. Changes to this section are shown in Exhibit A of the Ordinance attached.

Parking

Finally, to accommodate a single employee, allowed under the new State Law for Cottage Food Operations, staff recommends adding the use “Cottage Food Operations” in the Zoning Code Section 4-1704, with the requirement of one off-street parking space. Changes to this section are shown in Exhibit A of the Ordinance attached.

Applicable General Plan Policies

Unlike other state-mandated uses such as large-family day care or residential congregate care, the 2002 update of the General Plan did not contemplate this newly defined Cottage Food Operation use. As such, no policies exist to specifically encourage this use. However, the following broad policies in the General Plan promote live-work situations, retail diversity and job opportunities:

- **Policy 3.08 Live-Work Development** - *Provide opportunities for “live-work” development...to provide a housing resource for artists, craftspersons, and persons working from home.*
- **Policy 8.02 Retail Diversity** - *Encourage a diverse range of commercial uses in the City, offering goods and services that fully meet the needs of San Leandro residents and businesses...*

- **Policy 12.03 Job Opportunities for Residents** - *Promote opportunities for San Leandro residents to find suitable employment within the community...*

The General Plan does contemplate that changes will occur within San Leandro neighborhoods and places a great deal of emphasis on maintaining a quality environment. The following policies support the regulations on Cottage Food Operations to minimize parking, traffic, spacing and concentration, and noise impacts.

- **Policy 1.05 Home Occupations** - *Restrict home occupations in residential neighborhoods to those that have no perceptible impacts on the neighborhood.*
- **Policy 1.11 Encroachment of Incompatible Uses** - *Protect residential neighborhoods from the encroachment of incompatible non-residential uses and disruptive traffic, to the extent possible. Zoning and design review should ensure that compatibility issues are fully addressed when non-residential development is proposed near or within residential areas.*

The proposed amendments to the Zoning Code would maintain San Leandro neighborhoods through regulations to the extent allowed by state law, while creating greater opportunities for San Leandro residents to engage in innovative new employment through home-based Cottage Food Operations.

Environmental Review

The proposed minor amendments to the Zoning Code are exempt from environmental review under Section 15061(b)(2 and 3) of the CEQA Guidelines as a minor amendment of the Zoning Code to provide for a Cottage Food Operations use in a residential dwelling unit because they will not have a significant effect on the environment and because future Cottage Food Operations uses would be exempt from CEQA review under Section 15301 Existing Facilities.

Board/Commission Review and Actions

At the Board of Zoning Adjustments (BZA) meeting on April 4, 2013, the BZA reviewed the changes and provided comments related to the separation parameters. Specifically, certain BZA members believed that the 300-foot distance was not sufficient, citing concerns about the potential parking impacts that a successful operation might have on a residential neighborhood, particularly within the single-family zoning districts (see attached excerpt from the draft minutes for the April 4 BZA meeting). The BZA signaled its support for the policy, with the inclusion of the minimum 32-foot parking area along the street frontage.

As discussed above, the Planning Commission reviewed the staff proposal and made certain modifications to clarify the Cottage Food Operations modifications and to allow for greater flexibility in the separation standards and minimum on-street parking for any Cottage Food Operation that did not intend to sell products at the home (see attached excerpt from the draft minutes for the April 18, 2013 Planning Commission meeting).

Summary of Public Outreach Efforts

Notification of the May 20, 2013 City Council and April 18, 2013 Planning Commission meetings included a legal ad in the Daily Review and posting of the meeting at City Hall a minimum of 72 hours in advance of the meeting dates. In addition, a courtesy notice was sent to all Neighborhood Associations listed on the City's roster. No public comments have been received as of the writing of this report.

Legal Analysis

The proposed Zoning Code amendments were analyzed by the City Attorney's office and found to be in conformance with the California Government Code as well as the local General Plan and Zoning Code.

ATTACHMENTS

- Attachment A: Excerpt of the Draft Minutes of the Planning Commission meeting of April 18, 2013
- Attachment B: Excerpt of the Draft Minutes of the Board of Zoning Adjustments meeting of April 4, 2013
- Attachment C: California Conference of Directors of Environmental Health Fact Sheet on AB1616 Cottage Food Operations
- Attachment D: Alameda County Department of Environmental Health Registration / Permitting Form
- Attachment E: Alameda County Department of Environmental Health Self-Certification Checklist

PREPARED BY: Sally Barros, Senior Planner, Community Development Department

Attachment A: Excerpt of the Draft Minutes from the April 18, 2013 Planning Commission Meeting

Item 7A: Public Hearings

Matter of **Proposed Amendments to the City of San Leandro Zoning Code** related to Cottage Food Operations (CFO) in Article 3, Section 1-304 ; Article 5, Section 2-574; Article 16, Section 4-1688; Article 17, Section 4-1704; to Create a definition of Cottage Food Operations; Create regulations for Cottage Food Operations to allow for such use in all zoning districts within a residential unit; Add Cottage Food Operation parameters to the Administrative Exception process; and Create a parking standard whereby one off-street employee parking space is required for a Cottage Food Operation (Barros)

Planner Barros explained that the proposed amendments had been reviewed by the Board of Zoning Adjustments at its April 4, 2013 meeting. AB 1616, introduced by Assemblyman Mike Gatto (D-Los Angeles) last fall, was signed into law in the Fall 2012, and went into effect on January 1, 2013, but cities weren't aware of it until December 2012. Only one person so far has sought permission to establish a Cottage Food Operation.

Planner Barros explained that the bill was intended to come to terms with trends that favor locally grown foods and healthier food preparation with fewer additives, and it allows preparation of certain foods, prohibiting others (such as meat- and cream-based fillings). She referred to lists of currently allowed foods in the Commissioners' agenda packets.

She said that San Leandro has basically taken material from the state law and Health and Safety Code (HSC) to spell out the City's definition of CFOs to ensure alignment with state law, but incorporates the list of foods by reference to the state code.

In contrast to San Leandro's home occupation permits, which do not allow client visits, she said that state law grants CFOs the right to have customers come to their homes to buy their products. They also have the right to employ one non-family member (in addition to family members who may work for the CFO).

Under the new law, local jurisdictions have regulatory authority over very few areas – spacing and concentration, parking, traffic and noise. San Leandro's regulations governing Large Family Day Care generally address those areas, and because those regulations have been vetted by the community, she said they've been used to guide development of parameters to apply to CFOs. The proposed amendments include:

Spacing: No CFO could be located within 300 feet of any other CFO (as measured from the exterior lot lines). Planner Barros said the BZA favored using the Administrative Exceptions process in some cases, thereby giving neighbors an opportunity to weigh in if applicants request exceptions.

On-Street Parking: No CFO could be located on a lot with less than 32 feet of legally permitted parking along the front of the home. Planner Barros said this regulation stemmed from the BZA, which discussed parking requirements at length. Some BZA members were quite concerned about changing the character of residential districts. She explained that the BZA also agreed to provide for an Administrative Exception to waive this requirement in locations where lots may be too narrow.

Employee and Customer Parking and Circulation Plan: The driveway of a CFO may be used for off-street parking (required by Article 17) if it doesn't obstruct a sidewalk or other public right-of-way (ROW). Planner Barros explained that this would essentially be a site plan that indicates locations of both employee and visitor onsite parking.

Noise Control: The level of noise could be no more than 55 decibels (as measured along or beyond the property line).

Traffic: CFOs could not create pedestrian or vehicular traffic detrimental to property in the vicinity or use delivery vans/trucks larger than 3/4 tons.

Parking: A CFO cannot reduce or eliminate any required parking space, and off-street parking would be required for employees. This could be in a driveway, Planner Barros said, and would not require a covered spot.

Vehicles: If used in conjunction with the CFO, no vehicles could be parked where they're visible from a public street unless they're standard passenger vehicles or trucks/vans smaller than 3/4 tons.

Commissioner Leung asked what would happen if two families within 300 feet of each other both applied for business licenses for CFOs, had no conflicts and met all other requirements. Planner Barros said that would be specifically the type of situation some BZA Members wanted to address, noting that some BZA Members wanted more – rather than less – space between CFOs. She verified that the Administrative Exception process would be applied in that scenario.

Commissioner Rennie asked what parts of San Leandro had lots too narrow to accommodate 32 feet of parking in front. Planner Barros said standard lots, particularly those built since the 1950s, are 50x100 feet wide. Most of the narrower lots are in the North Area, Estudillo Estates and the Broadmoor. She said that even some lots 40 feet wide might not have the 32 feet of parking space in front if they have 10-foot driveways. In response to a further question from Commissioner Rennie, she said 32 feet would accommodate two cars.

Commissioner Rennie asked whether there's concern that street parking would be scarce during the day in a residential neighborhood. Planner Barros explained that the rationale for the requirement is to avoid creating impacts on other neighbors. For instance, she said if a CFO does a good job of marketing a pie sale, maybe 10 customers could easily arrive in a short amount of time, and at least two spaces would be available for parking.

Commissioner Rennie asked whether selling directly from the home is the typical model for a CFO. Planner Barros said there's no typical model yet; the phenomenon is too new to have any data.

In terms of the 300-foot spacing requirement, **Commissioner Rennie** asked about the potential CFO impact on a neighborhood in comparison to a Large Family Day Care operation, given that the law imposes a ceiling on a CFO's annual revenue. Planner Barros said a Large Family Day Care can accommodate up to 14 children, yet it is not unlikely to have 14 children being delivered or picked up at about the same time. That was the reasoning behind requiring on-street parking and circulation plans for Large Family Day Care operations, she said, and the case with CFOs could be similar. She said certain CFOs could make such fabulous foods that people would be flocking to their homes. Some members of the BZA were concerned, she reiterated, that closer spacing could have the effect of change neighborhoods that are zoned for residential use into mixed-use commercial areas.

Commissioner Rennie requested clarification about the term "abutting" in the context of spacing requirements and notifications to abutting properties within 300 feet for Administrative Exceptions. He asked whether it meant a 300-foot radius that would even capture the block

behind a CFO property, or 300 feet along the ROW that services the property. For variances and conditional use permits (CUPs) that go to the BZA, Planner Barros replied, that the 300-foot radius would reach the next block. For adjacent property notification (for Administrative Exceptions), it includes the three properties across the street, three behind and two on either side.

Commissioner Rennie asked Ms. Faught whether San Leandro's ability to regulate CFOs in terms of concentration is flexible enough to apply only when the CFO proposes to have on-site sales.

Ms. Faught said there are Class A and Class B CFOs. Class A allows for direct sales only; Class B allows for direct and indirect sales. She said that an applicant could say they have no intention of doing direct sales but sell only at farmers' markets and holiday bazaars, and perhaps San Leandro could make a decision locally on that basis. According to the statute, she said we'd have to assume any CFO is engaged in direct sales, and regulating on the basis of that assumption would be reasonable.

So, **Commissioner Rennie** said, we could have a different spacing rule that would apply for CFOs that don't have direct sales off the property.

Ms. Faught said yes, she believes we could do that, and it gets to the heart of the BZA's concern.

Planner Barros said that she had not reached the part of her presentation that discusses the fees involved. Currently Class A and Class B permits from the County cost \$150 and \$225, respectively; those fees are expected to increase in July 2013. In San Leandro, the zoning permit is \$104, the business license has not yet been determined, and the Administrative Exception costs \$434.

In response to **Chair Collier**, Planner Barros said the fee is part of the City's cost-recovery effort, because of the work involved in developing mailing lists and the noticing involved.

Commissioner Hernandez asked about the enforcement of the rezoning. Planner Barros said the zoning permit for a business license is a one-time cost, and there's no follow-up enforcement or monitoring. The Director of Finance may revoke a business license if a business is doing something other than what it's licensed to do. If a CFO has sales exceeding the state allowance, it's under the County Health Department's jurisdiction. The sales ceiling also is included in San Leandro's proposed CFO definition, Planner Barros said, but the City isn't expecting to monitor receipts in any way.

Commissioner Leichner asked whether it might make sense to remove the language about gross receipts from the proposed zoning changes so we aren't somehow put in a position to enforce it if we should receive a complaint about a CFO exceeding its gross-receipts limit. Planner Barros said that she would favor doing that, and Ms. Faught agreed.

Ms. Faught said the definition should refer to the state statute. CFOs would still have to get their permits from the County. She said that to make it simpler, the definition could refer to the HSC section without including detail about the gross revenues. The first sentence would have to be reworked as well.

In response to **Commissioner Hernandez'** question about baking medical marijuana products, Planner Barros said that would not be allowed in San Leandro at this time.

Commissioner Hernandez also asked whether San Leandro would collect any taxes from CFOs. Planner Barros said that the state Board of Equalization would be the agency to collect any sales taxes due.

Commissioner Rennie asked about parking in relation to multi-family housing. For a four-plex, for example, he asked whether there's a requirement for visitor parking. Planner Barros said yes,

and that the requirement is based on bedroom count. Except in the Transit-Oriented Development (TOD) districts where parking requirements are lower, the Zoning Code requires 2.5 spaces for three-bedroom units in multi-family developments, and the half space goes to guest parking. Accordingly, a four-plex of three-bedroom units in a multi-family neighborhood would have two guest parking spaces. The requirement in multi-family developments is 2.25 parking spaces per two-bedroom unit and 1.5 spaces per one-bedroom unit. The fractional amounts in each instance are for guest parking.

Commissioner Leichner asked whether lease or Homeowners' Association prohibitions against CFOs would supersede state law. Planner Barros said yes, just as a home occupation business license cannot be issued to tenants without the landlord's signature on the application.

Commissioner Leichner asked what would happen in the case of a person who lives in an apartment complex and cannot fulfill the off-street parking requirement. Planner Barros said that staff would evaluate that on a case by case basis. The BZA has requested a follow-up report in a year to see how everything is working out in practice. Commissioner Leichner said that the spirit of the law seemed to want to help people in the direst economic straits.

Secretary Liao said that we also might expect adjustments in the state law that would address some of the issues the Commissioners are raising.

Ms. Faught said a possibility would be to build in an automatic approval for Class B CFOs that declare on their permits that they intend no direct sales, which would exempt them from parking and concentration conditions. In that way, she said, we could avoid imposing the Administrative Exception fee on those who could least afford it.

Commissioner Rennie said he was thinking that same way. Direct sales is apparently broader than onsite sales under the statute, he said, but if they won't be selling products to customers in their homes, the concentration, parking and frontage requirements for those CFOs ought to be eliminated.

In any event, **Commissioner Rennie** said that 300 feet is far too restrictive. It would cover the entire block in some areas, he said, and the one person in an apartment complex lucky enough to get a CFO first would be the only one permitted. If the purpose is to help people supplement their income, the balance of concerns doesn't seem to be in the right place, he said, adding that walking a few extra feet to get a parking space would be a fair tradeoff. He said that he agrees with Ms. Faught's suggestion to eliminate the parking, frontage and concentration requirements for applicants declares that they won't sell food on the premises. Multi-family housing that already has guest spaces included should also be exempted, he said.

For those that would engage in direct sales, **Commissioner Rennie** said 150 feet – about three lots in many neighborhoods – would be more reasonable.

Ms. Faught summarized the changes requested by Commissioner Rennie:

- CFOs declaring that they will not engage in onsite sales would be exempt from conditions on concentration and 32 feet of on-street parking in front
- Changing concentration from 300 to 150 feet spacing requirement
- Exempting CFOs in multi-family complexes exempt from onsite parking requirements if they can demonstrate two guest parking spaces are available

Commissioner Rennie agreed, except that the multi-family complex CFOs would be able to engage in onsite direct sales.

In terms of the circulation plan, **Commissioner Rennie** said the CFO applicants won't be developers or others who are accustomed to site plans. It may be a difficult requirement to meet from a practical standpoint. Planner Barros said that there have been no problem getting site plans from people who are operating businesses from their homes.

Commissioner Hernandez asked whether any dialogue regarding fire safety in CFOs in multi-family environments when this bill was developed. Planner Barros said she didn't believe so. The laws specifically states that they can be operated in apartments as well as homes. She said CFO kitchens must be up to code, but CFOs aren't required to have commercial kitchens.

Chair Collier invited public comments. There were none.

Commissioner Rennie asked if the spacing regulation could be made along a ROW so that it doesn't bleed over from one block to the next. Chair Collier agreed that back-to-back spacing considerations are unnecessary, and suggested that linear feet along the front made more sense than circumference.

Planner Barros suggested adding "as measured along the street frontage" to the spacing regulation.

Commissioner Rennie recapped the motion he proposed:

- To the extent that spacing applies, it should be 150 feet versus 300 feet, measured in linear feet along the frontage
- Spacing (Regulation C-1) and on-street parking (C-2) requirements would not apply to CFOs that either 1) declare they will not engage in sales on the premises or 2) are located in multi-family developments that have two or more guest parking spaces
- Gross revenue figures would be removed from the definition

Planner Barros said that City enforcement of the on-site sales prohibition would not be practical. The County allows sales from the home. **Ms. Faught** said that in the event of a complaint, we could potentially revoke the permit. Planner Barros said yes, but it would lead to considerable staff time.

Commissioner Rennie said he's sensitive to the issue of staff time, so requested some clarification about the staff time she'd anticipate. Planner Barros said it would take considerable effort to determine whether someone is actually selling product from the home. In the past, for example, staff have dealt with complaints about people selling flowers out of their garage. She personally drove by the home several times and never witnessed it, and the community compliance people also have checked and never witnessed it. She said we have to assume that CFOs will sell from their homes, which is what the law and the County certification allow. It does not say we can disallow selling from the home.

Commissioner Rennie said we aren't saying they cannot sell from their homes; we're saying if they want to sell from their homes, they cannot be located within a certain proximity to another CFO. Ms. Faught said she thought the proposal he made was acceptable from a legal viewpoint.

In the event of a complaint, **Commissioner Rennie** suggested something he has done in the past – ask the complaining party to take a picture, or take down license plate numbers, etc. Planner Barros said the complaining neighbor in the example she'd cited didn't want to go on record or provide evidence.

Planner Barros said that originally staff considered prohibiting signage in front of the home, but the state does not allow us to do that. Accordingly, these regulations include nothing about signage and relaxing the concentration requirement could mean signs posted at every other home.

Commissioner Rennie asked what the residential signage allotment is. Planner Barros said it's a total of 25 square feet for nonresidential uses in residential zoning. Chair Collier said signage for home occupation is not allowed. Planner Barros explained that this isn't a pure home occupation situation, which is why the staff is proposing a whole new section for CFOs in the Zoning Code. She said that Planning staff conferred about this, and at first borrowed signage restrictions from the home occupation rules before realizing that state law does not give us the authority to do that. A local agency is able to regulate only "spacing and concentration, traffic control, parking and noise control relating to those homes."

Commissioner Rennie said that according to the law, he thinks the CFOs are ancillary residential uses. Ms. Faught said he might be correct, but she didn't recall seeing that.

In the past, **Planner Barros** said, signage requirements in residential districts have been linked to non-residential uses in those districts, such as churches and day care operations.

Commissioner Rennie read from a list in the HSC (Government Code Section 51035) that local jurisdictions can "classify a CFO as a permitted use of residential property" and "CFOs shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes."

After a brief recess, **Commissioner Hernandez** requested a summary of the Planning Commission's recommendations.

Commissioner Rennie summarized again the changes he proposed (see above).

Commissioner Lechner pointed out that Regulation C-7 includes the term "home occupation," which he suggested should be changed to "CFO." Planner Barros thanked him for catching that.

Planner Barros said that staff would be taking the proposed Zoning Code amendments to the City Council (scheduled for the May 20, 2013 agenda), and the Planning Commission recommendations will be included along with BZA comments. While the BZA is not the recommending body, **Planner Barros** said, the BZA comments also will be relayed to the Council, because BZA members have substantial "on the ground" knowledge about uses, and most of the items they hear relate directly to zoning matters, CUPs, design reviews, etc. They hear often from residents in single-family neighborhoods about proposals for additions and other uses that affect them. She said that some of the BZA members favored spacing CFOs considerably more than 300 feet apart, even as much as 500 feet.

Commissioner Rennie said that 300 feet for noticing purposes doesn't seem to be a good basis for regulating a use. The use would be more appropriately regulated on the basis of its impact. He said that the Large Family Day Care operations have a lot of people showing up all at once to drop children off and pick them up, a burst of impact twice a day in terms of traffic. With the CFOs, he said, the situation is different, with people coming and going throughout the course of the day, but we don't know what to expect that traffic impact to be. Even so, he said by the very nature of the operation, the comparison to Large Family Day Care isn't appropriate. He said he is open to hearing a rationale for the 300-foot spacing requirement, but hasn't heard one yet.

In response to **Chair Collier**, Planner Barros affirmed that she's talking about 300 linear feet, covering both sides of the street along the front of the property, rather than a 300-foot radius around the property. Chair Collier noted that would be six lots.

Commissioner Rennie said he favors 150 feet.

Commissioner Hernandez asked whether the spacing issue could be decided on a case-by-case basis. Ms. Faught said the Zoning Code could omit spacing requirements altogether or use any number for which a rational basis could be established.

Commissioner Rennie said 300 feet does not have a rational basis because it's neither data driven nor based on the CFO use. It's based on the Large Family Day Care use.

Planner Barros said that on a practical level, it's difficult to operate with no rules, and in the case of CFOs, there's very little we're allowed to regulate in any case. Because CFOs are part of a movement that's growing, she added, it could expand considerably. She said staff took a cautious approach to this new territory, and looked at the Administrative Exceptions process as a way to address some of the issues that would come up.

Ms. Faught said that reducing the spacing to zero feet would not necessarily result in a need for case-by-case analysis. The CFO would simply be allowed provided it complied with other conditions. With spacing set at a particular number, on the other hand, she said that if an applicant were to be denied an application on that basis, the Zoning Administrator would then have an opportunity to examine that situation and permit it if he/she could make the finding that the CFO would not create adverse impacts, etc.

Secretary Liao said that the law, although probably imperfect, is already in effect, so the City is a bit behind the curve in terms of developing guidelines and setting up some standards.

Considering that CFOs are part of a growing movement, **Commissioner Hernandez** asked whether a survey of residents might give us a better gauge on the potential impact that could be considered when discussing the kinds of rules we should have.

Commissioner Rennie said that lots in some San Leandro neighborhoods have frontages of about 50 feet. Measuring 150 feet from the property line would go four houses down the block. He said to imagine living there, and think about the last time someone who lived four houses away did anything that affected you – cars parked up and down the street for a party or family gathering at that house. Further, he said that's on a weekend or evening, when people are more likely to be home, as opposed to weekdays when they're at work.

If you consider 300 feet versus 150 feet, **Commissioner Rennie** continued, it would take you seven houses down from the property line – if there are seven houses left on the block. He said in the situation of a Large Family Day Care operation, he can imagine 14 cars arriving within a 10-minute window, but with CFOs there would be no such window of intense activity. People would arrive over a period of, say, eight hours rather than 10 minutes. He said the impact on parking would be practically indiscernible.

Motion to forward to the City Council a recommendation to approve the resolution proposing Zoning Code amendments to add regulations /related to Cottage Food Operations in

Article 3, Section 1-304 Definitions

Article 5, Section 2-574 Administrative Exceptions

Article 16, Section 4-1688 Cottage Food Operations (new section)

Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required

with changes recommended by the Planning Commission to:

- 1) Omit language related to annual revenue amounts in Article 3, Section 1-304 Definitions***
- 2) Reduce spacing requirement to 150 linear feet along frontage ROW in Article 16, Section 4-1688 C-1***
- 3) Exempt CFO applicants who declare that they will not engage in sales on the premises from Article 16, Section 4-1688 C-1 (spacing) and C-2 (on-street parking)***
- 4) Exempt CFO applicants who demonstrate that the CFO residence is within a complex served by at least two dedicated onsite guest parking spaces from Article 16, Section 4-1688 C-1 and C-2***

Rennie/Hernandez: 6 Aye, 0 No, 1 Absent (Fitzsimons) – Approved

Attachment B: Excerpt of the Draft Minutes from the April 4, 2013 Board of Zoning Adjustments Meeting,

Item 7A: Miscellaneous

Information on proposed Zoning Code amendments to allow for Cottage Food Operations (CFO) in a Residential Dwelling in all Zoning Districts

Secretary Barros pointed out that the California Homemade Food Act, AB1616 took effect on January 1, 2013; however, staff became aware of it as late as December 2012 through Alameda County training. She explained that the law permits residents of private dwellings, which includes apartments, to prepare and sell certain foods and requires all jurisdictions to allow these Cottage Food Operations (CFOs), regulating them only in terms of:

- Spacing and concentration;
- Traffic control and parking; and
- Noise control.

Local jurisdictions may require CFOs to obtain business licenses and zoning approval. Permits would be issued by Alameda County. The self-certifying County permitting process would regulate the operation of the home kitchen, including the prohibition of food preparation with children and pets in the kitchen. CFO permits also limit the types products allowed, no meats, for example, and employee policy. The law allows one additional employee, and does not consider family members employees.

Planner Barros explained that the proposed amendment to the Zoning Code included with her staff report incorporates existing elements from various other sections of the Zoning Code, including regulations relating to Home Occupation and Large Family Daycare. The spacing and concentration provision would require at least 300 feet between CFOs, and one off-street employee parking space would be required for each CFO. She said that CFOs would not be allowed to use garages to meet this requirement, or to convert garages to kitchen use.

In response to member questions about signage, Planner Barros said that unless the CFO were to engage in sales of products from the home, signs probably would not be an issue. In any cases where signs are posted, she said, they would have to comply with provisions already in the Zoning Code.

Member Daly asked whether the spacing requirement would expose the City to any legal liability if one homeowner obtained a CFO permit that precluded someone else from doing the same thing. **Ms. Faught** said no, because the City has the right to regulate CFOs on spacing and concentration.

Member Daly stated that he actually would favor more space between CFOs rather than less – perhaps 500 feet instead of 300 feet, because he doesn't want to see neighborhoods transforming into mixed-use commercial districts.

Chair Houston stated that she didn't think the concentration requirement should be so restrictive as to prevent several neighboring homes from producing jams, cakes or cookies, particularly around the holidays.

Planner Barros clarified that holiday baking or jam making might not be affected by the CFO

regulations, as these pertain to those that chose to obtain a formalize a commercial business via a CFO permit and a business license.

Ms. Faught, noting that 32 other states have enabling legislation for CFOs on their books, described the background of AB1616, explaining that it grew out of a case where a local pizza maker wanted to legalize his growing home-based business and was framed in response to:

- The prevalence of obesity and growing incidence of obesity-related diseases
- A growing movement to connect food to local communities, small businesses and environmental sustainability by supporting urban agriculture and community-based production of so-called artisanal food products
- An interest in increasing opportunities for entrepreneur development through small businesses to strengthen local economies and help people supplement household incomes (without dealing with the expense and logistics involved in obtaining commercial kitchen space)

Member Palma noted that AB 1616 also responds to changing neighborhoods, which have evolved from the old bedroom-community model to becoming more interactive, reflecting increased interest in locally prepared and processed foods and in small home-based businesses.

Vice Chair Mendieta inquired about the inspection procedure. **Planner Barros** said the City's enforcement role would be confined to issues of noise, parking, traffic and concentration/spacing. **Member Palma** described the Alameda County Health Department situation, noting that as a practical matter inspections and enforcement would be limited due to staff constraints. In most cases, she said, enforcement would be complaint-driven.

Several BZA members expressed concern that CFOs might make existing parking problems even worse. In response to these concerns, Planner Barros suggested adopting a provision similar to what the current Zoning Code applies to Large Family Day Care operators. It requires a minimum 32 feet of lot frontage for on-street parking.

With the addition of the provision Planner Barros proposed, expressly noting that the requirement could be waived by via administrative exception, BZA members agreed that the CFO regulations discussed would be acceptable. Planner Barros said she would present their recommendation to the Planning Commission at its meeting on April 18, 2013.

In response the **Vice Chair Mendieta's** request, Planner Barros indicated that she would come back to report to the BZA after one year to advise how the regulations are working in practice and how many CFO permits have been issued.

In response to **Chair Houston**, Planner Barros said that so far only one resident has obtained a permit and license for a CFO, a man who apparently bakes cookies and decided he would rather sell them than keep giving them away.



California Conference
of Directors of
Environmental Health

CALIFORNIA HOMEMADE FOOD ACT

FREQUENTLY ASKED QUESTIONS

AB 1616 (GATTO) – COTTAGE FOOD OPERATIONS

1. When does the new law go into effect?

The new law becomes effective January 1, 2013. The law requires the California Department of Public Health to carry out certain tasks associated with implementation, and imposes certain responsibilities on local planning and environmental health jurisdictions. The California Conference of Directors of Environmental Health (CCDEH) is working with other stakeholders to ensure that the law is implemented in an orderly and effective manner. Further information regarding the status of implementation can be obtained from your local environmental health agency.

Note: The information in this FAQ handout is intended to provide a uniform statewide response to questions posed and will be updated as needed. The questions & answers were evaluated by the CCDEH Ad Hoc AB 1616 Implementation Workgroup. This information should not be construed as a legal interpretation.

AB1616 Chaptered Law: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_bill_20120921_chaptered.pdf

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 CFO’s sales?

- \$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 CFO’s. 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 establish a process by which new foods can be added to the list and other foods can be challenged and removed. The initial list included in the new law includes:

- 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 (These should be fruit products to assure that they are not potentially hazardous).
- 12) Nut mixes and nut butters
- 13) Popcorn
- 14) Vinegar and mustard
- 15) Roasted coffee and dried tea
- 16) Waffle cones and pizzelles

7. What are the two classifications of CFOs?

- Class A** CFO’s are only allowed to engage in “**direct sale**” of cottage food.
- Class B** CFO’s may engage in both “**direct sale**” and “**indirect sale**” of cottage food.

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

“Direct Sale” means a transaction 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 complete a food processor course instructed by the California Department of Public Health within three months of being registered or permitted.

11. Does a CFO need a permit to operate?

- Planning/Zoning:** All CFO’s need to obtain approval from their local city or county planning department. The Homemade Food Act gives planning departments several options to consider, so planning department requirements may vary between jurisdictions.
- Environmental Health:**
 - For “**Class A**” CFO’s (direct sale only), **registration** with the local enforcement agency and submission of a completed “self-certification checklist” approved by the local environmental health agency.
 - For “**Class B**” CFO’s (direct and indirect), a **permit** from the local environmental health agency is required.
- Other Requirements:** Check on other state or local requirements that may be applicable
- Registrations and permits are not transferable between:
 - Persons
 - Locations
 - Type of food sales [i.e., direct sales (Class A) vs. indirect sales (class B)]
 - Type of distribution

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

Each local jurisdiction will establish fees that are not to exceed the cost of providing the service. Additional fees may be charged for inspection and/or enforcement activities if the cottage food operation is found to be in violation of California food safety laws on cottage food operations.

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 your local enforcement agency 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 after that.
- ❑ **Class A or 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 CFO’s 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. Cottage food preparation activities include:
 - Washing, rinsing, and sanitizing of any equipment used in food preparation.
 - Washing and sanitizing hands and arms.
 - Water used as an ingredient of cottage food.

16. What would be 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.

ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH

**CALIFORNIA HOMEMADE FOOD ACT AB 1616 (GATTO)
REGISTRATION / PERMITTING FORM**

CFO Business Name:		Date:	
CFO Physical Address:	CFO City:	CFO ZIP:	
Owner Name:	Owner Phone:	Owner Cell:	
Mailing Address (if different):	Mailing City:	Mailing ZIP:	
Email Address:			
Website:			

1. Categories:

- "Class A" (Direct Sales Only) "Class B" (Direct & Indirect Sales)

2. Prohibited Items: Initial if you agree to abide by the following: _____

Foods containing **cream, custard, or meat fillings** are **potentially hazardous** and are **NOT ALLOWED**. Only foods that are defined as "non-potentially hazardous" are approved for preparation by a Cottage Food Operation (CFO). These are food items that do not require refrigeration to keep them safe from bacterial growth that could be a cause of food-borne illness.

3. "Class A" Self Certification Checklist:

- Checklist completed ("Class A" CFOs Only)

4. **Products:**

Please check ALL of the items you will be preparing and/or selling.

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Baked Goods | <input type="checkbox"/> Dried Pasta | <input type="checkbox"/> Honey | <input type="checkbox"/> Popcorn |
| <input type="checkbox"/> Candy | <input type="checkbox"/> Dry Baking Mixes | <input type="checkbox"/> Mustard | <input type="checkbox"/> Vinegar |
| <input type="checkbox"/> Churros | <input type="checkbox"/> Waffle Cones | <input type="checkbox"/> Tortillas | <input type="checkbox"/> Fruit Butter ** |
| <input type="checkbox"/> Dried Mole Paste | <input type="checkbox"/> Herb/Spice Blends | <input type="checkbox"/> Pizelles | <input type="checkbox"/> Jams/Jellies** |
| <input type="checkbox"/> Trail Mix | <input type="checkbox"/> Fruit Tamales/Pies | <input type="checkbox"/> Nuts/Nut Mixes | <input type="checkbox"/> Dried Fruit |
| <input type="checkbox"/> Fruit Empanadas | <input type="checkbox"/> Nut Butters | <input type="checkbox"/> Dried Tea | <input type="checkbox"/> Roasted Coffee |
| <input type="checkbox"/> Sweet Sorghum Syrup | <input type="checkbox"/> Granola/Cereals | <input type="checkbox"/> Chocolate Covered Nonperishable Food | |
| <input type="checkbox"/> Other: | | | |

**These items must comply with standards described in Part 150 of Title 21 of the Code of Federal Regulations <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCFR/CFRSearch.cfm?CFRPart=150>

Food descriptions:

5. **Product Labeling:**

Initial if you agree to abide by the following: _____

For a detailed description, see the CDPH document "[Labeling Requirements for Cottage Food Products](#)." 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 must include:

- The words "Made in a Home Kitchen" in 12-point type
- The name commonly used to describe the food product
- The name city, state and zip code of the cottage food operation which produced the cottage food product. If the firm is not listed in the current telephone directory then a street address must also be declared. (A contact phone number or email address is optional but may be helpful for consumers to contact your business.
- The registration or permit number of the cottage food operation which produced the cottage food product and in the case of "Class B" CFOs, the name of the county where the permit was issued.
- The ingredients of the food product, in descending order of predominance by weight, if the product contains two or more ingredients.

- The net quantity (count, weight, or volume) of the food product. It must be stated in both English (pound) units and metric units (grams).
- A declaration on the label in plain language if the food contains any of the eight major food allergens such as milk, eggs, fish, shellfish, tree nuts, wheat, peanuts, and soybeans. There are two approved methods prescribed by federal law for declaring the food sources of allergens in packaged foods: 1) in a separate summary statement immediately following or adjacent to the ingredient list, or 2) within the ingredient list.
- If the label makes approved nutrient content claims or health claims, the label must contain a “Nutrition Facts” statement on the information panel.
 - The use of the following eleven terms are considered nutrient content claims (nutritional value of a food): free, low, reduced, fewer, high, less, more, lean, extra lean, good source, and light. Specific requirements have been established for the use of these terms. Please refer to the [Cottage Food Labeling Guideline](#) for more details.
 - A health claim is a statement or message on the label that describes the relationship between a food component and a disease or health-related condition (e.g., sodium and hypertension, calcium and osteoporosis). Please refer to the [Cottage Food Labeling Guideline](#) for more details.
- Labels must be legible and in English (accurately translated information in another language may accompany it).
- Labels, wrappers, inks, adhesives, paper, and packaging materials that come into contact with the cottage food product by touching the product or penetrating the packaging must be food-grade (safe for food contact) and not contaminate the food.

Example:

<p>MADE IN A HOME KITCHEN Permit #: 12345 Issued in county: County name</p> <p>Chocolate Chip Cookies With Walnuts Sally Baker 123 Cottage Food Lane Anywhere, CA 90XXX</p> <p>Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.</p> <p>Contains: Wheat, eggs, milk, soy, walnuts</p> <p>Net Wt. 3 oz. (85.049g)</p>

Note: For the “Issued in County” – Identify the jurisdiction (city/county) where you are obtaining approval.

6. Water Source:

Please identify the water source to be used in Cottage Food Facility (Check one box)

<input type="checkbox"/> Name of Public Water System or Community Services District:
<input type="checkbox"/> If you use a <u>Private Water Supply</u> **, identify the source (well, spring, surface, etc.):
<u>Private Water Supply: Initial Water Quality Results</u> Check boxes below if initial water testing has been completed. All testing must be done at a State Certified Laboratory. Then either attach lab results or provide name of lab, date & results in space provided next to type of test. * (Testing Frequencies for Transient Non-Community Water Systems after initial testing)
<input type="checkbox"/> Bacteriological Test (<i>quarterly</i> *):
<input type="checkbox"/> Nitrate Test (<i>yearly</i> *):
<input type="checkbox"/> Nitrite (<i>every 3 years</i> *):

**Additional information may be required if food is prepared from a home with a private water supply – Check with local jurisdiction

7. Disposal of Waste:

Please check what type of treatment is used to dispose of waste

Public Sewer Service

Private Septic System

• In the event of septic system failure or plumbing problem, you are required to notify **Alameda County Department of Environmental Health** immediately.

8. Food Processor Course: Initial if you agree to abide by the following: _____

Within 3 months of being approved to operate by the Environmental Protection Division, please provide proof of completion of the required California Department of Public Health (CDPH) food processor course*.

Proof of completion may be faxed to our Department at **510-337-9432**.

* See CDPH Website for more information: <http://www.cdph.ca.gov/programs/Pages/fdbCottageFood.aspx>

9. Employee: Initial if you agree to abide by the following: _____

I understand that I may not have more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, working 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.

ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH

**COTTAGE FOOD OPERATIONS (CFOs – Class A)
SELF CERTIFICATION CHECKLIST**

The following requirements are outlined in the Cottage Food Operations (CFO) regulations and are provided as minimum standards of health and safety for the preparation of approved cottage foods in the home.

CFO Business Name:		CFO Owner Name:	
CFO Physical Address:		CFO City:	CFO ZIP:
Phone:	FA	PR	PE

Above bold boxes for office use only.

Facility Requirements:

Yes No

1. The CFO is located in a private dwelling where the CFO operator currently resides	<input type="checkbox"/>	<input type="checkbox"/>
2. All CFO food preparation will take place in the private kitchen within that home.	<input type="checkbox"/>	<input type="checkbox"/>
3. Additional storage used for the CFO will be within the home.	<input type="checkbox"/>	<input type="checkbox"/>
a. If YES, is the room used exclusively for storage?	<input type="checkbox"/>	<input type="checkbox"/>
b. Specify the room(s) that will be used for storage? _____		
4. Sleeping quarters are excluded from areas used for CFO food preparation or storage.	<input type="checkbox"/>	<input type="checkbox"/>

Zoning Requirements:

Yes No

5. I have complied with the applicable zoning requirements for the CFO.	<input type="checkbox"/>	<input type="checkbox"/>
6. I have attached documentation from the Planning office (If required)	<input type="checkbox"/>	<input type="checkbox"/>

Employee and Training Requirements:

Yes No

7. Have all persons preparing or packaging CFO products completed the CDPH food processor course?	<input type="checkbox"/>	<input type="checkbox"/>
a. If YES, copies of certificates are attached.	<input type="checkbox"/>	<input type="checkbox"/>
b. If NO, complete course within 3 months of CFO registration.	<input type="checkbox"/>	<input type="checkbox"/>
8. The CFO has no more than 1 full-time equivalent employee? (Immediate family or household members are not included.)	<input type="checkbox"/>	<input type="checkbox"/>

Sanitation Requirements:

Yes No

9. Kitchen equipment and utensils used to produce CFO products are clean and maintained in a good state of repair.	<input type="checkbox"/>	<input type="checkbox"/>
10. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any CFO products shall be washed, rinsed, and sanitized before each use.	<input type="checkbox"/>	<input type="checkbox"/>
11. All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.	<input type="checkbox"/>	<input type="checkbox"/>

Food Preparation Requirements (includes packaging and handling):

Yes No

12. Hand washing is required immediately prior to handling foods and after engaging in any activity that contaminates the hands such as after using the toilet, coughing or sneezing, eating or smoking.	<input type="checkbox"/>	<input type="checkbox"/>
13. Warm water, hand soap and clean towels are available for hand washing.	<input type="checkbox"/>	<input type="checkbox"/>
14. All food ingredients used in the CFO products are from an approved source.	<input type="checkbox"/>	<input type="checkbox"/>
15. Potable water shall be used for hand washing, ware washing and as an ingredient.	<input type="checkbox"/>	<input type="checkbox"/>
16. Is your water source a private water supply (well, spring, surface)?	<input type="checkbox"/>	<input type="checkbox"/>
a. If YES, have you completed testing for bacteria, nitrate & nitrite?	<input type="checkbox"/>	<input type="checkbox"/>
17. Is your water source a public water system or community services district?	<input type="checkbox"/>	<input type="checkbox"/>
a. If YES, what is the name of the system or district? _____		
<i>During the preparation, packaging or handling of CFO products:</i>	Yes	No
18. Domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning or guest entertainment are excluded from the kitchen.	<input type="checkbox"/>	<input type="checkbox"/>
19. Infants, small children (younger than 12 yr. old), or pets are excluded from the kitchen.	<input type="checkbox"/>	<input type="checkbox"/>
20. Smoking is excluded.	<input type="checkbox"/>	<input type="checkbox"/>
21. Any person with a contagious illness shall refrain from work in the CFO.	<input type="checkbox"/>	<input type="checkbox"/>

Labeling Requirements:

Yes No

22. A copy of the label has been submitted to this Department for review and approval.	<input type="checkbox"/>	<input type="checkbox"/>
23. I have attached a sample label.	<input type="checkbox"/>	<input type="checkbox"/>

By signing below you are certifying that you meet the requirements of the California Homemade Food Act, AB 1616 (Gatto), as it pertains to a "Class A" Cottage Food Operation. Prior to making any changes, I acknowledge that I must notify the Alameda County Department of Environmental Health Jurisdiction of any intended changes to the above statement.

Cottage Food Operator Checklist completed and submitted by:

Owner's Signature

Print Name

Date



City of San Leandro

Meeting Date: May 20, 2013

Ordinance

File Number: 13-229

Agenda Section: PUBLIC HEARINGS – CITY COUNCIL

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: PASS TO PRINT: An Ordinance Amending Article 3, Section 1-304 (Definitions); Amending Article 16 to Add Section 4-1688 (Cottage Food Operations); Amending Article 5, Section 2-574 (Administrative Exceptions); and Amending Article 17, Section 4-1704 (Off-Street Parking and Loading Spaces Required) of the San Leandro Zoning Code (approves regulations for Cottage Food Operations, a new use that would allow for limited commercial food preparation in residential dwellings, to comply with new State law AB1616)

WHEREAS, in 2002, the City of San Leandro adopted a new General Plan, which states that the City's Zoning Code regulations "strive to maintain a quality environment" in San Leandro's residential neighborhoods; and

WHEREAS, the City of San Leandro performs periodic reviews of the Zoning Code; and

WHEREAS, in September 2012, the State of California signed into law AB 1616, Cottage Food Operations, which allows for the operation of home-based commercial food preparation of baked goods, jams, honey and other products; AB 1616 became effective on January 1, 2013; and

WHEREAS, on April 4, 2013, the City of San Leandro Board of Zoning Adjustments met, reviewed, and commented on the proposed amendments to the Zoning Code pertaining to Cottage Food Operations, and such comments were provided to the Planning Commission; and

WHEREAS, on April 18, 2013, the Planning Commission met, reviewed, commented, and provided a recommendation to the City Council on the proposed amendments to the Zoning Code, all of which are provided to the City Council; and

WHEREAS, the Planning Commission reviewed the staff report and approved the findings that the proposed amendments to the Zoning Code are exempt from environmental review under Sections 15061(b)(2) and (3) of the CEQA Guidelines as a minor amendment of the Zoning Code to provide for Cottage Food Operations in a residential dwelling unit because they will not have a significant effect on the environment and because future Cottage Food Operations uses would be exempt from CEQA review under Section 15301(a), Existing Facilities; and

WHEREAS, the final General Plan and the Zoning Code are incorporated herein by reference, and are available for review at City Hall during normal business hours.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

Section 1. Incorporation. The recitals above are true and correct and incorporated herein by this reference.

SECTION 2. Findings for the Zoning Code Amendment. As required under state law, the City Council finds as follows:

a. The amendments pertaining to Cottage Food Operations in Article 3, Section 1-304 Definition; Article 5, Section 2-574 Administrative Exceptions; Article 16, Section 4-1688 Cottage Food Operations (new section); and Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required are in general agreement with General Plan Policies 3.08, 8.02 and 12.03, as further explained in the staff report associated with this ordinance .

b. The proposed Zoning Code amendments are internally consistent with the City's Zoning Ordinance. The amendments meet the requirements and standards of the Zoning Ordinance and the procedural requirements of Government Code section 65856 and 65867, and Article 27, "Amendments," as required by sections 5-2708 and 5-2712 of the Zoning Code

Section 3. Adoption of the Zoning Code Amendments. Based on the entirety of the record, as described above, Article 3, Section 1-304, Article 5, Section 2-574 and Article 17, Section 4-1704 are hereby amended, and Article 5, Section 4-1688 is hereby added to the Zoning Code as set forth in Exhibit A, attached hereto and incorporated into this Ordinance by this reference.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 5. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption in accordance with section 36933 of the Government Code of the state of California.

Exhibit A: Zoning Code Excerpts with Proposed Changes Relating to Cottage Food Operations

(Note: Additions are shown in **bold underline** and deletions in ~~strike-out~~; all other sections of the Code not amended or altered shall remain the same, and in full force and effect)

1-304 Cottage Food Operation. A home-based food enterprise that is operated by a resident, and that has not more than one full-time equivalent cottage food employee, not including an immediate 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 and/or indirect sale to consumers. The term "cottage food operation" shall have the same meaning as provided in section 113758 of the Health and Safety Code, as that section may be amended. Cottage food operations are regulated under section 4-1688 of the San Leandro Zoning Code.

4-1688 Cottage Food Operations

Cottage food operations are subject to the following regulations:

- A. Permitted Location. Cottage food operations shall be permitted in any dwelling in the City.**
- B. Required Permits. Any dwelling can be used for a cottage food operation when the Zoning Enforcement Official has granted a cottage food operation permit.**
- C. Cottage Food Operation Permit; Compliance with Standards. The Zoning Enforcement Official shall grant a permit for the cottage food operation only if after review of the application for such permit, inspection of the premises and any other necessary information, the Zoning Enforcement Official determines that the application complies with the following standards:**
 - 1. Spacing. No cottage food operation shall be located within one hundred fifty (150) feet of any other cottage food operation, as measured from the exterior lot lines along the property frontages.**
 - 2. On-Street Parking. No cottage food operation shall be located upon a lot having less than thirty-two (32) feet of legally permitted parking along the frontage of the lot.**

- 3. Employee Parking and Customer Parking Circulation Plan.**
The driveway of a cottage food operation may be used to provide off-street parking required by Article 17 if such use will not obstruct a sidewalk or other public right-of-way.

The Applicant shall provide the Zoning Enforcement Official with a written plan for the administration of parking and traffic operations related to the proposed cottage food operation. This plan shall include controls for vehicle circulation, drop-off and pick-up of cottage food related products and parking for the employee so that parking, loading, unloading and turning movements are compatible with the residential environment in which the cottage food operation will be located.

- 4. Noise Control.** **The level of noise in connection with the operation of a cottage food operation shall not be persistently maintained at a level of fifty-five (55) decibels or greater, as measured from any point along or beyond the property line of the subject premises.**

- 5. Traffic.** **A cottage food operation shall not create pedestrian, automobile, or truck traffic detrimental to property in the vicinity. All deliveries of materials related to a cottage food operation shall be by the U.S. Postal Service or similar carrier, or by means of vehicles customarily kept on the site by the permit holder or family members in trucks or vans of ¾-ton or less in size.**

- 6. Parking.** **A cottage food operation shall not result in a reduction or elimination of any required parking space. One off-street parking space shall be provided for employees, per Article 17, Section 4-1704. Said employee parking may be uncovered and located in a driveway.**

- 7. Vehicles.** **Any vehicle or vehicles used by the applicant in conjunction with the cottage food operation or with any related business activity shall be parked in a manner so as not to be visible from a public street. This limitation shall not apply to standard passenger vehicles or trucks and vans of ¾-ton or less in size.**

- 8. Required State Permits or Licenses.** **No permit issued pursuant to this Section shall become operative until copies of the Alameda County application/permitting form**

and City business license have been filed with the Zoning Enforcement Official.

9. Non-Transferable. A permit issued pursuant to this Section shall be non-transferable and shall not run with the land.

D. Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation where the permit applicant declares on the application form that the cottage food operation will not be making any customer sales directly from the dwelling or property.

Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation that operates in a location where there are two or more on-site, off-street, dedicated parking spaces for guests.

E. Administrative Exception Provision. The Zoning Enforcement Official may approve an Administrative Exception, per Section 2-574, if an applicant cannot meet the provisions of Section 4-1688, C.1 through 7.

F. Appeals. In accord with Article 22, "Use Permits, Variances, and Parking Exceptions," decisions of the Zoning Enforcement Official may be appealed to the Board of Zoning Adjustments by the applicant or by any interested party.

2-574 Administrative Exceptions

A. Standards for Which an Administrative Exception May be Approved.

The Zoning Enforcement Official may approve an Administrative Exception for the following:

1. An extension of the existing building line of a single-family residence, which legally projects into a required yard area of the applicable R District.
2. Exceptions to the maximum allowable height for Accessory Structures, up to a height not to exceed the maximum height allowed in the applicable R District.

3. Exceptions to the setback and relation to property line requirements for Accessory Structures, as prescribed for the applicable R District.
4. Exceptions to the Daylight Plane.
5. Exceptions to the provisions for Large Family Day Care Homes, per Section 2-516, C.1 through 5.
- 6. Exceptions to the provisions for cottage food operations, per Section 4-1688, C.1 through 7.**

- B. Application Requirements. Application for such approval shall be made to the Zoning Enforcement Official on a form prescribed by Planning staff, and shall be accompanied by a plot plan showing location and height of all structures on the premises subject to the application and on all abutting premises, and showing location, height and area of the proposal. Reduced copies of these plans shall also be provided. The Zoning Enforcement Official may require further information as is deemed appropriate to the application.
- C. Neighborhood Notification. The City shall notify abutting property owners in writing of the proposal. A copy of the reduced plan shall be included.
- D. Administrative Review:
1. Findings Necessary for Approval. The Zoning Enforcement Official may approve an Administrative Exception upon a determination that the proposal would not be detrimental to public health, safety or welfare and would not cause undue damage, hardship, nuisance or other detriment to persons or property in the vicinity. The Zoning Enforcement Official shall deny, approve or conditionally approve the application.
 2. Notice of Decision. The Zoning Enforcement Official shall notify by mail the applicant and all abutting property owners. Said notice shall contain a statement that the action taken will become final within fifteen (15) days from the date thereof unless appealed in writing to the Board of Zoning Adjustments. The action of the Zoning Enforcement Official shall be final unless an appeal is so filed.
- E. Appeals. Any person aggrieved with the action of the Zoning Enforcement Official may appeal such action to the Board of Zoning Adjustments, pursuant to the requirements of Article 28.

4-1704 (revisions to table)

Use Classification

Off-Street Parking Spaces

Cottage Food Operation

1 uncovered space per Employee