



# City of San Leandro

Meeting Date: June 3, 2013

## Ordinance

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**File Number:** 13-229

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.B.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** ADOPT: Ordinance No. 2013-006, 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 AB 1616)

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**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.

Introduced by Councilmember Prola on this 20th day of May, 2013, and passed to print by the following called vote:

Members of the Council:

AYES:	Councilmembers Cutter, Gregory, Lee, Prola, Reed, Souza; Mayor Cassidy	(7)
NOES:	None	(0)
ABSENT:	None	(0)

## 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**