

CALIFORNIA COASTAL COMMISSION

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Prepared January 17, 2014 (for February 13, 2014 Hearing)

To: Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Katie Butler, Coastal Planner

Subject: Monterey County LCP Amendment Number LCP-3-MCO-13-0226-1 Part B (Cottage Food Operations)

Proposed Amendment

Monterey County is proposing to amend its LCP to incorporate cottage food operation provisions to conform to changes in State law. The proposed changes would amend the home occupation regulations to include cottage food operations as a type of home occupation, which is currently an allowed use in residential areas. The proposed changes affect Sections 20.06 (Definitions) and 20.64.090 (Home Occupations). See Exhibit A for the proposed changes.

Minor LCP Amendment Determination

Pursuant to California Code of Regulations (CCR) Section 13555, the Executive Director may determine that a proposed LCP amendment is “minor.” CCR Section 13554 defines minor LCP amendments. Among other things, minor LCP amendments include:

CCR Section 13554(a). Changes in wording which make the use as designated in the zoning ordinances, zoning district maps or other implementing actions more specific and which do not change the kind, location, intensity, or density of use and which are found by the Executive Director of the Commission or the Commission to be consistent with the land use plan as certified by the Commission.

If the Executive Director determines that an amendment is minor, that determination must be reported to the Commission. If one-third of the appointed members of the Commission request that it be processed as a major LCP amendment, then the amendment shall be set for a future public hearing; if one-third of the appointed members of the Commission do not object to the minor LCP amendment determination, then the amendment is deemed approved, and it becomes a certified part of the LCP immediately (in this case, on February 13, 2014).

The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is minor.

The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, in 2012, and it became effective on January 1, 2013. This bill exempts home-based food businesses known as “cottage food operations” from many of the regulations that apply to traditional commercial food production and it required that cities and counties allow persons to prepare and package certain types of non-perishable foods from their home and allow the sale of such foods from their home and/or from other locations (i.e. farmer’s markets). The proposed amendment responds to

AB 1616 and classifies cottage food operations as a home occupation, which is a permitted use in residential areas. The proposed amendment maintains existing home occupation regulations except to add cottage food operations as a type of home occupation. The cottage food operations would be conducted within existing dwelling units as an accessory use and operated primarily by the homes' residents, and therefore is not expected to result in effects on parking, traffic, noise, or other coastal resources. Thus, the proposed amendment is consistent with the certified LCP and Coastal Act.

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. The County found that the proposed ordinance was categorically exempt under CEQA per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations) because the ordinance establishes a cottage food operation as a type of home occupation to be conducted within existing dwelling units as an accessory use of already-existing residences. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this minor LCP amendment determination, and any comments received on it, to the Coastal Commission at its February 13, 2014 meeting in Pismo Beach. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Katie Butler at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed minor LCP amendment determination, please do so by February 7, 2014.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on December 31, 2013. The amendment modifies only the LCP IP and the 60-day action deadline is March 1, 2014. Thus, unless the Commission votes to extend the action deadline (it may be extended by up to one year), the Commission has until March 1, 2014 to take a final action on this LCP amendment.

Exhibits:

Exhibit A: Proposed IP Amendment

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

County Counsel Summary

This ordinance amends the Monterey County Coastal Implementation Plan (Title 20 of the Monterey County Code) to classify "cottage food operations" as a permitted use of residential property for zoning purposes. The ordinance defines cottage food operations and treats such operations as a type of home occupation. These revisions update County zoning to comply with recently enacted state law governing cottage food operations. This ordinance also renumbers the definition of "cottage industry" and makes minor corrections to existing home occupation regulations.

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

SECTION 1. FINDINGS AND DECLARATIONS.

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

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

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

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

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

C. Government Code section 51035(a), enacted by AB 1616, provides that cities and counties shall not prohibit a cottage food operation in any residential dwellings, but shall do one of the following:

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

(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes; or

(3) Establish a discretionary permit process with "reasonable standards" as noted in item #2 above.

D. In accordance with Government Code section 51035(a), the County of Monterey is choosing the first approach, classifying cottage food operations as a permitted use of residential property for zoning purposes, and, accordingly, this ordinance amends the existing home occupation regulations to include cottage food operations as a type of home occupation.

E. This ordinance is categorically exempt under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations) because the ordinance establishes a cottage food operation as a type of home occupation to be conducted within existing dwelling units as an accessory use of already-existing residences.

SECTION 2. Section 20.06.215 is added to the Monterey County Code to read as follows:

20.06.215 COTTAGE FOOD OPERATION.

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

SECTION 3. Section 20.06.200 of the Monterey County Code defining the term "COTTAGE INDUSTRY" is renumbered as Section 20.06.220.

SECTION 4. Section 20.06.650 of the Monterey County Code is amended to read as follows:

20.06.650 HOME OCCUPATION.

Home occupation means a business conducted in a residential area conducted by the residents of the property; Home occupation includes a cottage food operation, as defined in Section 20.06.215. The main product of a home occupation is which is a service rather than goods, except in the case of a cottage food operation.

SECTION 5. Section 20.64.090 of the Monterey County Code is amended to read as follows:

20.64.090 REGULATIONS FOR HOME OCCUPATIONS.

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

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

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

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

2. No persons other than the resident and immediate family residing on site may be employed in the home occupation, except that a cottage food operation may allow up to one (1) full-time equivalent cottage food employee who does not reside on the site.

3. All facets of the home occupation must be contained in the ~~residence-dwelling unit~~ unit or inside structures on-site that are otherwise considered to be accessory structures to a residence, except that a cottage food operation must be conducted entirely within the dwelling unit as specified by state law.

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

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

D. Modification to the application of the provisions of Section 20.64.090, C, of this Chapter may be considered by a Coastal Administrative Permit, except in the case of a cottage food operation for which no exceptions to these requirements may be granted.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption by the Board of Supervisors or the day certification by the California Coastal Commission becomes final and effective, whichever occurs later.

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

AYES:
NOES:
ABSENT:
ABSTAIN:

FERNANDO ARMENTA, CHAIR
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel