

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

928



FROM: Department of Environmental Health

SUBMITTAL DATE:
December 18, 2012

SUBJECT: Riverside County Ordinance No. 916 Regulating Cottage Food Operations

RECOMMENDED MOTION: That the Board of Supervisors:

1. Introduce and set for public hearing Ordinance No. 916, an Ordinance of the County of Riverside Regulating Cottage Food Operations; and
2. Authorize the Clerk of the Board to place an advertisement for public hearing in the appropriate local publications; and
3. Upon the close of the public hearing, adopt Ordinance No. 916.

BACKGROUND: On September 21, 2012, AB 1616 was approved to create a defined set of standards for cottage food operations in California. AB 1616 becomes effective January 1, 2013. This ordinance designates the Riverside County Department of Environmental Health as the local enforcement agency and sets Riverside County's regulatory course as allowed under AB1616.

(Continued)

Steve Van Stockum

Steve Van Stockum, Director
Department of Environmental Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 00.00	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 00.00	Budget Adjustment:	No
	Annual Net County Cost:	\$ 00.00	For Fiscal Year:	12/13

SOURCE OF FUNDS: Department of Environmental Health budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Eric Stopner* DATE: 12/18/12
Departmental Concurrence
ERIC STOPNER

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: | **District:** | **Agenda Number:**

3.23

1 the following:

2 1. Class A cottage food operations may engage only in direct sales of cottage food
3 products from the cottage food operation or other direct sales venues such as
4 temporary events. A separate permit from the Department shall be required to operate
5 a temporary food facility at such events.

6 2. Class B cottage food operations may engage in both direct sales and indirect sales of
7 cottage food products such as a permitted third-party retail food facility.

8 B. Cottage food operator. An individual who owns and conducts a cottage food operation in
9 his or her private home.

10 C. Cottage food products. A specific list of not potentially hazardous foods approved by the
11 California Department of Public Health and posted on its Internet Web site. Typical food
12 items include baked goods without cream, custard, or meat fillings; candies; dried fruits
13 and pastas; fruit pies; cereals; herbs; honey; jams and jellies; nuts; popcorn; roasted coffees
14 and dried teas.

15 D. Department. Riverside County Department of Environmental Health

16 E. Enforcement officer. The Director of Environmental Health and his or her duly authorized
17 designees.

18 F. Registered or permitted area. A private home kitchen used for the preparation, packaging,
19 storage, or handling of cottage food products and related ingredients and/or equipment, and
20 attached rooms within the home that are used exclusively for storage. Garages and
21 enclosed patios are not included.

22
23 Section 5. INSPECTIONS. The Department shall inspect Class B cottage food
24 operations upon the initial application as well as on an annual basis using an inspection form provided by
25 the Department. Although Class A cottage food operations are not subject to initial or routine
26 inspections, the enforcement officer may access and inspect the registered area only if, on the basis of a
27 consumer complaint, there is reason to suspect that unsafe food has been produced or there is another
28 violation of this Ordinance. The Department may seek cost recovery, based on the hourly rate established

1 in the current version of Ordinance 640 if additional inspections are required to ensure compliance with
2 this Ordinance.

3
4 Section 6. OPERATING REQUIREMENTS. Consistent with the operational
5 requirements set forth in California Health and Safety Code Section 114365, et seq., a cottage food
6 operation shall comply with the following:

- 7 A. No cottage food preparation, packaging, or handling may occur concurrent with any other
8 domestic activities, including, but not limited to, family meal preparation, guest
9 entertaining or dishwashing.
- 10 B. No infants, small children, or pets may be in the registered or permitted area during the
11 preparation, packaging, or handling of any cottage food products.
- 12 C. Equipment and utensils used to produce cottage food products shall be clean and
13 maintained in a good state of repair.
- 14 D. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or
15 handling of any cottage food products shall be washed, rinsed, and sanitized before each
16 use.
- 17 E. All food preparation and food and equipment storage areas shall be maintained free of
18 rodents and insects.
- 19 F. No preparation, packaging, storage, or handling of cottage food products and related
20 ingredients and/or equipment shall occur outside of the registered or permitted area.
- 21 G. Smoking shall be prohibited in the registered or permitted area during the preparation,
22 packaging, storing, or handling of cottage food products and related ingredients and
23 equipment.
- 24 H. A person with a contagious illness shall refrain from work in the registered or permitted
25 area of the cottage food operation.
- 26 I. A person involved in the preparation or packaging of cottage food products shall keep his
27 or her hands and exposed portions of his or her arms clean and shall wash his or her hands
28 before any food preparation or packaging activity.

1 J. Water used during the preparation of cottage food products shall meet potable drinking
2 water standards.

3 K. A person who prepares or packages cottage food products shall complete a food processor
4 course instructed by the California Department of Public Health within three months of
5 becoming registered or permitted.

6 L. A cottage food operation shall properly package and label all cottage food products in
7 compliance with the Federal Food, Drug and Cosmetic Act (21 USC §343 et seq.).

8 Additional labeling requirements shall include:

- 9 1. The words "Made in a Home Kitchen"
- 10 2. A descriptive common product name
- 11 3. Name of the Cottage Food Operation
- 12 4. Registration or permit number
- 13 5. For Class B Cottage Food Operations, the name of the Department issuing the registration
14 or permit number must also be stated
- 15 6. A listing of all ingredients in descending order of predominance by weight.

16
17 Section 7. REGISTRATION AND PERMIT. No person shall conduct a cottage food
18 operation without holding a valid registration or permit issued by the Department. Application for a
19 registration or permit shall be made to the Department upon a form issued by the Department, and shall be
20 accompanied by a fee as listed below:

- | | | |
|----|---|----------|
| 21 | • Registration for Class A Cottage Food Operation | \$72.50 |
| 22 | • Permit for Class B Cottage Food Operation | \$290.00 |

23 The fees listed in this Section shall be valid until such time as Ordinance 640 is revised to incorporate
24 these new fees therein. Any annual permit or registration shall be valid for no more than one year from
25 the month of issue. The application shall not be deemed as completed unless accompanied with
26 documentation indicating that all applicable planning/zoning requirements have been met. Class A
27 cottage food operators shall complete and submit a self-certification checklist provided by the Department
28 at the time of application for registration. A registration or permit number shall be issued by the

1 Department after the enforcement officer has determined that the cottage food operation has conformed to
2 this Ordinance. If it can readily be determined by the Department, by checking the Internet Web site of a
3 neighboring County, that a Class B cottage food operation is currently permitted, then indirect sales of
4 those cottage food products may be allowed in Riverside County. A registration or permit is not
5 transferrable.

6
7 Section 8. ENFORCEMENT Notwithstanding the remedies set forth in California
8 Health and Safety Code Sections 114390, 114405, and 114409, the Department reserves the right to issue
9 Administrative Citations in accordance with Government Code Section 53069.4. An administrative
10 citation may be issued for any violation of this Ordinance. The following procedures shall govern the
11 imposition, enforcement, collection and administrative review of administrative citations and penalties.

12 A. Notice of Violation. If the violation is not corrected within the period stated in the notice of
13 violation, or if the violation creates an immediate danger to health or safety, an
14 administrative citation may be issued by the Enforcement Officer. The notice of violation
15 shall specify the manner in which the conditions of the Cottage Food Operation violate the
16 provisions of this Ordinance and the corrective actions required to correct the condition or
17 conduct. The notice shall also state that failure to come into compliance with this
18 Ordinance could subject the registrant or permittee of the Cottage Food Operation to
19 administrative and criminal penalties. The failure of the notice to set forth all required
20 contents shall not affect the validity of the proceedings.

21 B. Content of Citation. The administrative citation shall be issued on a form approved by
22 County Counsel and shall contain the information listed below. The failure of the citation
23 to set forth all required contents shall not affect the validity of the proceedings.

- 24 1. Date, location and approximate time the violation was observed.
- 25 2. The Ordinance section violated and a brief description of the violation.
- 26 3. The amount of the administrative penalty imposed for the violation.
- 27 4. The amount of the administrative penalty imposed for the violation.
- 28 4. Instructions for the payment of the penalty, the time period by which it shall be

1 paid, and the consequences of failure to pay the penalty within this time period.

2 5. Instructions on how to appeal the citation.

3 6. The signature of the Enforcement Officer.

4 C. Service of Citation.

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6 1. If the registrant or permittee who has violated the Ordinance is present at the scene
7 of the violation, the Enforcement Officer shall attempt to obtain their signature on
8 the administrative citation and shall deliver a copy of the administrative citation to
9 them.

10 2. If no one can be located at the property, then the administrative citation shall be
11 posted in a conspicuous place on or near the property and a copy mailed by
12 certified mail, return receipt requested to the registrant or permittee who has
13 violated the Ordinance. The citation shall be mailed to the property address and/or
14 the address listed for the Owner on the last County Equalized Assessment Roll.

15 3. The failure of any interested person to receive the citation shall not affect the
16 validity of the proceedings.

17 D. Administrative Penalties.

18 1. The penalties assessed for each violation shall not exceed the following amounts:

19 a. \$100.00 for a first violation;

20 b. \$200.00 for a second violation of the same Ordinance within one year; and

21 c. \$500.00 for each additional violation of the same Ordinance within one
22 year.

23
24 2. If the violation is not corrected, additional administrative citations may be issued
25 for the same violation. The amount of the penalty shall increase at the rate specified
26 above.

27 3. Payment of the penalty shall not excuse the failure to correct the violation nor shall
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1 it bar further enforcement action.

2 4. The penalties assessed shall be payable to the County of Riverside.

3 E. Administrative Appeal.

4 1. Notice of Appeal. The recipient of an administrative citation may appeal the
5 citation by filing a written notice of appeal with the Department. The written notice
6 of appeal must be filed within twenty (20) days of the service of the administrative
7 citation. Failure to file a written notice of appeal within this time period shall
8 constitute a waiver of the right to appeal the administrative citation. The notice of
9 appeal shall contain the following information:

- 10 a. A brief statement setting forth the appellant's interest in the proceedings;
11 b. A brief statement of the material facts which the appellant claims supports
12 his/her contention that no administrative penalty should be imposed or that
13 an administrative penalty of a different amount is warranted;
14 c. An address at which the appellant agrees notice of any additional
15 proceeding or an order relating to the imposition of the administrative
16 penalty may be received by mail.
17 d. The notice of appeal must be signed by the appellant.

18 2. Administrative Hearing. Upon a timely written request by the recipient of the
19 administrative citation, an administrative hearing shall be held as follows:

- 20 a. Notice of Hearing. Notice of the administrative hearing shall be given at
21 least ten (10) days before the hearing to the person requesting the hearing.
22 The notice may be delivered to the person or may be mailed to the address
23 listed in the notice of appeal.
24 b. Hearing Officer. The administrative hearing shall be held before the
25 Director. The hearing officer shall not be the Enforcement Officer who
26 issued the administrative citation or their immediate supervisor or
27 subordinate. The Director may contract with a qualified provider to conduct
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1 administrative hearings or to process administrative citations.

2 c. Conduct of the Hearing. Except as may be required by the hearing officer,
3 the Enforcement Officer who issued the administrative citation shall not
4 participate in the administrative hearing. The contents of the Enforcement
5 Officer's file in the case shall be admitted as prima facie evidence of the
6 facts stated therein. The hearing officer shall not be limited by the technical
7 rules of evidence. If the person requesting the appeal fails to appear at the
8 administrative hearing, the hearing officer shall make his or her
9 determination based on the information contained in the notice of appeal.

10 d. Hearing Officer's Decision. The hearing officer's decision following the
11 administrative hearing shall be delivered to the person requesting the
12 hearing personally or sent by mail. The hearing officer may allow payment
13 of the administrative penalty in installments, if the person provides evidence
14 satisfactory to the hearing officer of an inability to pay the penalty in full.
15 The hearing officer's decision shall contain instructions for obtaining
16 review of the decision by the superior court.

17 F. Review of Administrative Hearing Officer's Decision.

- 18 1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of
19 the hearing officer's decision, a person may contest that decision by filing an
20 appeal to be heard by the superior court. The fee for filing the notice of appeal is
21 twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the
22 filing fee within this period shall constitute a waiver of the right to an appeal and
23 the decision shall be deemed confirmed. A copy of the notice of appeal shall be
24 served in person or by first class mail upon the issuing agency by the contestant.
- 25 2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and
26 may be performed by traffic trial commissioners and other subordinate judicial
27 officials at the direction of the presiding judge of the court. The appeal shall be
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1 heard de novo, except that the contents of the issuing agency's file in the case shall
2 be received in evidence. A copy of the document or Instrument of the issuing
3 agency providing notice of the violation and imposition of the administrative
4 penalty shall be admitted into evidence as prima facie evidence of the facts stated
5 therein. The court shall request that the issuing agency's file on the case be
6 forwarded to the court, to be received within fifteen (15) days of the request.

7 3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of
8 the outcome of the appeal. If the court finds in favor of the contestant, the amount
9 of the fee shall be reimbursed to the contestant by the Department. Any deposit of
10 the fine or penalty shall be refunded by the issuing agency in accordance with the
11 judgment of the court. If the fine or penalty has not been deposited and the decision
12 of the court is against the contestant, the issuing agency may proceed to collect the
13 penalty pursuant to any manner provided by law.

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15 Section 9. CIVIL ACTIONS

16 A. Injunctive Relief and Abatement. Whenever, in the judgment of the Enforcement Officer,
17 any person is engaged in or about to engage in any act or practice which constitutes or will
18 constitute a violation of any provision of this Ordinance, or any rule, regulation, order,
19 Permit or conditions of approval issued thereunder, upon the request of the Enforcement
20 Officer, the County Counsel or District Attorney may commence proceedings for the
21 abatement, removal, correction and enjoinder thereof, and require the violator to pay civil
22 penalties and/or abatement costs.

23 B. Civil Remedies and Penalties. Any person, whether acting as principal, agent, employee,
24 Owner, lessor, lessee, tenant, occupant, operator, contractor or otherwise, who willfully
25 violates the provisions of this Ordinance or any rule, regulation, order or conditions of
26 approval issued thereunder, shall be liable for a civil penalty not to exceed \$1,000.00 for
27 each day or portion thereof, that the violation continues to exist. In determining the amount
28 of the civil penalty to impose, the court shall consider all relevant circumstances,

1 including, but not limited to, the extent of the harm caused by the conduct constituting a
2 violation, the nature and persistence of such conduct, the length of time over which the
3 conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or
4 individual, and any corrective action taken by the violator.

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6 Section 10. COSTS AND DAMAGES. Any person, whether acting as a principal,
7 agent, employee, Owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating
8 any provisions of this Ordinance or the rules, regulations, orders, Permits or conditions of approval issued
9 thereunder, shall be liable to the County of Riverside for costs of abatement and any damages suffered by
10 the County, its agents and agencies, as a result of such violations.

11
12 Section 11. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT
13 CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance,
14 attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or
15 special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable
16 attorneys' fees incurred by the County in the action or proceeding.

17
18 Section 12. REMEDIES AND PENALTIES. All remedies and penalties provided
19 for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder
20 shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor
21 prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of
22 which any violation of this Ordinance or the rules, regulations, orders, Permits or conditions of approval
23 issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and
24 distinct offense.

25
26 Section 13. SEVERABILITY. If any provision, clause, sentence or paragraph of this
27 Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity
28 shall not affect the other provisions or applications of the provisions of this Ordinance which can be given

1 effect without the invalid provision or application, and to this end, the provisions of this Ordinance are
2 hereby declared to be severable.

3 Section 14. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after
4 its adoption.

5
6 BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE CALIFORNIA

7 By: _____

8 Chairman


9
10 ATTEST:

11 CLERK OF THE BOARD:

12
13 By: _____
Deputy

14
15
16
17 (SEAL)

18
19 APPROVED AS TO FORM

20 By: 
ERIC STOPHER
21 Deputy County Counsel
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