

**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 Stopher* DATE: 12/18/12
Departmental Concurrence
ERIC STOPHER

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

Prev. Agn. Ref.:

District:

Agenda Number:

3-12

SUMMARY OF PROPOSED ORDINANCE NO. 916

AN ORDINANCE OF THE COUNTY OF RIVERSIDE
REGULATING COTTAGE FOOD OPERATIONS
AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE
SECTIONS 113758, 114365, 114390, 114405 AND 114409

This summary is presented pursuant to California Government Code Section 25124(b); a certified copy of the full text of Ordinance No. 916 may be examined at the Office of the Clerk of the Board of Supervisors of the County of Riverside located at 4080 Lemon Street, 1st Floor, Riverside, California.

Ordinance No. 916 establishes minimum standards that apply to cottage food operations, cottage food operators, and cottage food products. Cottage food, in general terms, is the in-home preparation of low-risk food for sale on a small scale, usually by one or two persons, that occurs in local communities. Ordinance 916 requires cottage food operations and cottage food operators to become registered or permitted and to maintain minimum sanitary conditions in the preparation of the food, including the preparation area, the preparation utensils, and the packaging of the foods. The purpose of Ordinance 916 is to ensure the safety of both the cottage food operators as well as the ultimate consumer of the cottage food to prevent harm.

Ordinance 916 is consistent with recently enacted state law based on the passage of AB 1616 that codified, and made legal, the preparation of cottage food in local communities. The major components of Ordinance No. 916 do the following:

Incorporate, by reference, and restates the statutory scheme resulting from the enactment of AB 1616, including definitions of cottage food operations, requirements of the two types of cottage food operations, the inspection authority of the Enforcement Officer, the license suspension procedures, and the procedures for the temporary closure of imminent health hazards.

Sets the registration and permit fees in order to obtain the approval required to operate a cottage food operation.

Contains the penalties for violations of the ordinance requirements, which include monetary administrative penalties, injunctive relief, abatement and/or other civil remedies.

- 1 A. Cottage Food Operation. An enterprise with gross annual sales limits set forth in
2 subdivision (a) of section 113758 of the Health and Safety Code , is operated by a Cottage
3 Food Operator and having not more than one full-time equivalent cottage food employee,
4 not including a family member or household member of the Cottage Food Operator, and
5 conducted within the Registered or Permitted Area of a private home where the Cottage
6 Food Operator resides and where Cottage Food Products are prepared or packaged for
7 direct, indirect, or direct and indirect sale to consumers pursuant to section 113758
8 subdivision (b), subsections (4) and (5) of the Health and Safety Code. A Cottage Food
9 Operation includes both of the following:
- 10 1. Class A cottage food operations may engage only in direct sales of cottage food products
11 from the cottage food operation or other direct sales venues such as temporary events. A
12 separate permit from the Department shall be required to operate a temporary food facility
13 at such events.
 - 14 2. Class B cottage food operations may engage in both direct sales and indirect sales of
15 cottage food products such as a permitted third-party retail food facility.
- 16 B. Cottage Food Operator. An individual who owns and conducts a Cottage Food Operation
17 in his or her private home.
- 18 C. Cottage Food Products. A specific list of not potentially hazardous foods approved by the
19 California Department of Public Health and posted on its Internet Web site and that are
20 prepared for sale in the kitchen of the Registered or Permitted Area of a Cottage Food
21 Operation. Typical food items include baked goods without cream, custard, or meat
22 fillings; candies; dried fruits and pastas; fruit pies; cereals; herbs; honey; jams and jellies;
23 nuts; popcorn; roasted coffees and dried teas.
- 24 D. Department. Riverside County Department of Environmental Health.
- 25 E. Enforcement Officer. The Director of Environmental Health and his or her duly authorized
26 designees.
- 27 F. Registered or Permitted Area. A private home kitchen described and authorized in the
28 permit or registration for the Cottage Food Operation and used for the preparation,

1 packaging, storage, or handling of Cottage Food Products and related ingredients and/or
2 equipment, and attached rooms within the home that are used exclusively for storage.
3 Detached accessory buildings, including garages and guest quarters, enclosed patios and
4 second units are not included as registered or permitted areas.

5
6 Section 5. INSPECTIONS. The Department shall inspect Class B Cottage Food
7 Operations upon the initial application as well as on an annual basis using an inspection form provided by
8 the Department. Although Class A Cottage Food Operations are not subject to initial or routine
9 inspections, the Enforcement Officer may access and inspect the Registered Area only if, on the basis of a
10 consumer complaint, there is reason to suspect that unsafe food has been produced or there is another
11 violation of this Ordinance. The Department may seek cost recovery, based on the hourly rate established
12 in the current version of Ordinance 640 if additional inspections are required to ensure compliance with
13 this Ordinance.

14
15 Section 6. OPERATING REQUIREMENTS. Consistent with the operational
16 requirements set forth in California Health and Safety Code Section 114365, et seq., a Cottage Food
17 Operation shall comply with the following:

- 18 A. No Cottage Food Product preparation, packaging, or handling may occur concurrent with
19 any other domestic activities, including, but not limited to, family meal preparation, guest
20 entertaining or dishwashing.
- 21 B. No infants, small children, or pets may be in the Registered or Permitted area during the
22 preparation, packaging, or handling of any Cottage Food Products.
- 23 C. Equipment and utensils used to produce Cottage Food Products shall be clean and
24 maintained in a good state of repair.
- 25 D. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or
26 handling of any Cottage Food Products shall be washed, rinsed, and sanitized before each
27 use.

- 1 E. All food preparation and food and equipment storage areas shall be maintained free of
2 rodents and insects.
- 3 F. No preparation, packaging, storage, or handling of Cottage Food Products and related
4 ingredients and/or equipment shall occur outside of the Registered or Permitted Area.
- 5 G. Smoking shall be prohibited in the Registered or Permitted Area during the preparation,
6 packaging, storing, or handling of Cottage Food Products and related ingredients and
7 equipment.
- 8 H. A person with a contagious illness shall refrain from work in the Registered or Permitted
9 Area of the Cottage Food Operation.
- 10 I. A person involved in the preparation or packaging of Cottage Food Products shall keep his
11 or her hands and exposed portions of his or her arms clean and shall wash his or her hands
12 before any food preparation or packaging activity.
- 13 J. Water used during the preparation of cottage food products shall meet potable drinking
14 water standards.
- 15 K. A person who prepares or packages Cottage Food Products shall complete a food processor
16 course instructed by the California Department of Public Health within three months of
17 becoming registered or permitted.
- 18 L. A Cottage Food Operation shall properly package and label all Cottage Food Products in
19 compliance with the Federal Food, Drug and Cosmetic Act (21 USC §343 et seq.).
20 Additional labeling requirements shall include:
- 21 1. The words "Made in a Home Kitchen"
 - 22 2. A descriptive common product name
 - 23 3. Name of the Cottage Food Operation
 - 24 4. Registration or permit number
 - 25 5. For Class B Cottage Food Operations, the name of the Department issuing the registration
26 or permit number must also be stated
 - 27 6. A listing of all ingredients in descending order of predominance by weight.
- 28

1 M. A cottage food operation shall comply with all standards, requirements and conditions as
2 set forth in Section 18.53 of Ordinance No. 348.

3
4 Section 7. REGISTRATION AND PERMIT. No person shall conduct a cottage food
5 operation without holding a valid registration or permit issued by the Department. Application for a
6 registration or permit shall be made to the Department upon a form issued by the Department, and shall be
7 accompanied by a fee as listed below:

- 8 • Registration for Class A Cottage Food Operation \$145.00
- 9 • Permit for Class B Cottage Food Operation \$290.00

10 The fees listed in this Section shall be valid until such time as Ordinance 640 is revised to incorporate
11 these new fees therein. Any annual permit or registration shall be valid for no more than one year from
12 the month of issue. The application shall not be deemed as completed unless accompanied with
13 documentation indicating that all applicable planning/zoning requirements have been met. Class A
14 Cottage Food Operators shall complete and submit a self-certification checklist provided by the
15 Department at the time of application for registration. A registration or permit number shall be issued by
16 the Department after the Enforcement Officer has determined that the Cottage Food Operation has
17 conformed to this Ordinance. If it can readily be determined by the Department, by checking the Internet
18 Web site of a neighboring County, that a Class B cottage food operation is currently permitted, then
19 indirect sales of those Cottage Food Products may be allowed in Riverside County. A registration or
20 permit is not transferrable.

21
22 Section 8. ENFORCEMENT Notwithstanding the remedies set forth in California
23 Health and Safety Code Sections 114390, 114405, and 114409, the Department reserves the right to issue
24 administrative citations in accordance with Government Code Section 53069.4. An administrative citation
25 may be issued for any violation of this Ordinance. The following procedures shall govern the imposition,
26 enforcement, collection and administrative review of administrative citations and penalties.

27 A. Notice of Violation. If the violation is not corrected within the period stated in the notice of
28 violation, or if the violation creates an immediate danger to health or safety, an

1 administrative citation may be issued by the Enforcement Officer. The notice of violation
2 shall specify the manner in which the conditions of the Cottage Food Operation violate the
3 provisions of this Ordinance and the corrective actions required to correct the condition or
4 conduct. The notice shall also state that failure to come into compliance with this
5 Ordinance could subject the registrant or permittee of the Cottage Food Operation to
6 administrative and criminal penalties. The failure of the notice to set forth all required
7 contents shall not affect the validity of the proceedings.

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

- 11 1. Date, location and approximate time the violation was observed.
- 12 2. The Ordinance section violated and a brief description of the violation.
- 13 3. The amount of the administrative penalty imposed for the violation.
- 14 4. Instructions for the payment of the penalty, the time period by which it shall be
15 paid, and the consequences of failure to pay the penalty within this time period.
- 16 5. Instructions on how to appeal the citation.
- 17 6. The signature of the Enforcement Officer.

18 C. Service of Citation.

- 19 1. If the registrant, permittee or other person who has violated the Ordinance is
20 present at the scene of the violation, the Enforcement Officer shall attempt to obtain
21 their signature on the administrative citation and shall deliver a copy of the
22 administrative citation to them.
- 23 2. If the registrant, permittee or other person who has violated the Ordinance cannot
24 be located at the property, then the administrative citation shall be posted in a
25 conspicuous place on or near the property and a copy mailed by certified mail,
26 return receipt requested to the registrant or permittee who has violated the
27 Ordinance. The citation shall be mailed to the property address and/or the address
28 listed for the owner on the last County Equalized Assessment Roll.

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

3 D. Administrative Penalties.

- 4 1. The penalties assessed for each violation shall not exceed the following amounts:
- 5 a. \$100.00 for a first violation;
 - 6 b. \$200.00 for a second violation of the same Ordinance within one year; and
 - 7 c. \$500.00 for each additional violation of the same Ordinance within one
8 year.
- 9 2. If the violation is not corrected, additional administrative citations may be issued
10 for the same violation. The amount of the penalty shall increase at the rate specified
11 above.
- 12 3. Payment of the penalty shall not excuse the failure to correct the violation nor shall
13 it bar further enforcement action.
- 14 4. The penalties assessed shall be payable to the County of Riverside.

15 E. Administrative Appeal.

- 16 1. Notice of Appeal. The recipient of an administrative citation may appeal the
17 citation by filing a written notice of appeal with the Department. The written notice
18 of appeal must be filed within twenty (20) days of the service of the administrative
19 citation. Failure to file a written notice of appeal within this time period shall
20 constitute a waiver of the right to appeal the administrative citation. The notice of
21 appeal shall contain the following information:
- 22 a. A brief statement setting forth the appellant's interest in the proceedings;
 - 23 b. A brief statement of the material facts which the appellant claims supports
24 his/her contention that no administrative penalty should be imposed or that
25 an administrative penalty of a different amount is warranted;
 - 26 c. An address at which the appellant agrees notice of any additional
27 proceeding or an order relating to the imposition of the administrative
28 penalty may be received by mail.

- 1 d. The notice of appeal must be signed by the appellant.
- 2 2. Administrative Hearing. Upon a timely written request by the recipient of the
- 3 administrative citation, an administrative hearing shall be held as follows:
- 4 a. Notice of Hearing. Notice of the administrative hearing shall be given at
- 5 least ten (10) days before the hearing to the person requesting the hearing.
- 6 The notice may be delivered to the person or may be mailed to the address
- 7 listed in the notice of appeal.
- 8 b. Hearing Officer. The administrative hearing shall be held before the Board
- 9 of Supervisors, the County Hearing Officer or the County Hearing Board.
- 10 The hearing officer shall not be the Enforcement Officer who issued the
- 11 administrative citation or their immediate supervisor or subordinate. The
- 12 Board of Supervisors, the County Hearing Officer or the County Hearing
- 13 Board may contract with a qualified provider to conduct administrative
- 14 hearings or to process administrative citations.
- 15 c. Conduct of the Hearing. Except as may be required by the hearing officer,
- 16 the Enforcement Officer who issued the administrative citation is not
- 17 required to participate in the administrative hearing. The contents of the
- 18 Enforcement Officer's file in the case shall be admitted as prima facie
- 19 evidence of the facts stated therein. The hearing officer shall not be limited
- 20 by the technical rules of evidence. If the person requesting the appeal fails
- 21 to appear at the administrative hearing, the hearing officer shall make his or
- 22 her determination based on the information contained in the notice of
- 23 appeal.
- 24 d. Hearing Officer's Decision. The hearing officer's decision following the
- 25 administrative hearing shall be delivered to the person requesting the
- 26 hearing personally or sent by mail. The hearing officer may allow payment
- 27 of the administrative penalty in installments, if the person provides evidence
- 28 satisfactory to the hearing officer of an inability to pay the penalty in full.

1 The hearing officer's decision shall contain instructions for obtaining
2 review of the decision by the superior court.

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

- 4 1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of
5 the hearing officer's decision, a person may contest that decision by filing an
6 appeal to be heard by the superior court. The fee for filing the notice of appeal is
7 twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the
8 filing fee within this period shall constitute a waiver of the right to an appeal and
9 the decision shall be deemed confirmed. A copy of the notice of appeal shall be
10 served in person or by first class mail upon the issuing agency by the contestant.
- 11 2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and
12 may be performed by traffic trial commissioners and other subordinate judicial
13 officials at the direction of the presiding judge of the court. The appeal shall be
14 heard de novo, except that the contents of the issuing agency's file in the case shall
15 be received in evidence. A copy of the document or Instrument of the issuing
16 agency providing notice of the violation and imposition of the administrative
17 penalty shall be admitted into evidence as prima facie evidence of the facts stated
18 therein. The court shall request that the issuing agency's file on the case be
19 forwarded to the court, to be received within fifteen (15) days of the request.
- 20 3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of
21 the outcome of the appeal. If the court finds in favor of the contestant, the amount
22 of the fee shall be reimbursed to the contestant by the Department. Any deposit of
23 the fine or penalty shall be refunded by the issuing agency in accordance with the
24 judgment of the court. If the fine or penalty has not been deposited and the decision
25 of the court is against the contestant, the issuing agency may proceed to collect the
26 penalty pursuant to any manner provided by law.

27 ///

28 ///

1 Section 9. NUISANCE DEFINED. Any Cottage Food Operation, whether
2 permitted or not pursuant to the procedures of this Ordinance, found in violation of this Ordinance is
3 hereby declared to be a public nuisance and dangerous to the health and safety of Riverside County.
4

5 Section 10. CIVIL ACTIONS

6 A. Injunctive Relief and Abatement. Whenever, in the judgment of the Enforcement Officer,
7 any person is engaged in or about to engage in any act or practice which constitutes or will
8 constitute a violation of any provision of this Ordinance, or any rule, regulation, order,
9 permit or conditions of approval issued thereunder, upon the request of the Enforcement
10 Officer, the County Counsel or District Attorney may commence proceedings for the
11 abatement, removal, correction and enjoinder thereof, and require the violator to pay civil
12 penalties and/or abatement costs.

13 B. Civil Remedies and Penalties. Any person, whether acting as principal, agent, employee,
14 Owner, lessor, lessee, tenant, occupant, operator, contractor or otherwise, who willfully
15 violates the provisions of this Ordinance or any rule, regulation, order or conditions of
16 approval issued thereunder, shall be liable for a civil penalty not to exceed \$1,000.00 for
17 each day or portion thereof, that the violation continues to exist. In determining the amount
18 of the civil penalty to impose, the court shall consider all relevant circumstances,
19 including, but not limited to, the extent of the harm caused by the conduct constituting a
20 violation, the nature and persistence of such conduct, the length of time over which the
21 conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or
22 individual, and any corrective action taken by the violator.
23

24 Section 11. COSTS AND DAMAGES. Any person, whether acting as a principal,
25 agent, employee, Owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating
26 any provisions of this Ordinance or the rules, regulations, orders, permits or conditions of approval issued
27 thereunder, shall be liable to the County of Riverside for costs of abatement and any damages suffered by
28 the County, its agents and agencies, as a result of such violations.

1 Section 12. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT

2 CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance,
3 attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or
4 special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable
5 attorneys' fees incurred by the County in the action or proceeding.

6
7 Section 13. REMEDIES AND PENALTIES. All remedies and penalties provided

8 for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder
9 shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor
10 prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of
11 which any violation of this Ordinance or the rules, regulations, orders, Permits or conditions of approval
12 issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and
13 distinct offense.

14
15 Section 14. SEVERABILITY. If any provision, clause, sentence or paragraph of this

16 Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity
17 shall not affect the other provisions or applications of the provisions of this Ordinance which can be given
18 effect without the invalid provision or application, and to this end, the provisions of this Ordinance are
19 hereby declared to be severable.

20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 15. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after

its adoption.

BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE CALIFORNIA

By: _____
Chairman

ATTEST:
CLERK OF THE BOARD:

By: _____
Deputy

(SEAL)

APPROVED AS TO FORM

By: _____
ERIC STOPHER
Deputy County Counsel