

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

807B



REVIEWED BY EXECUTIVE OFFICE

FROM: TLMA - Planning Department

SUBMITTAL DATE:
March 14, 2013

SUBJECT: Ordinance No. 348.4755, An Ordinance of the County of Riverside amending Ordinance No. 348 regarding Cottage Food Operations.

RECOMMENDED MOTION: That the Board of Supervisors:

1. **FIND ORDINANCE NO. 348.4755 EXEMPT** from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3); and
2. **ADOPT ORDINANCE NO. 348.4755** amending Ordinance No. 348 regarding Cottage Food Operations, at the close of the hearing as recommended by the Planning Commission.

BACKGROUND:

On February 20, 2013, the Planning Commission approved a recommendation that the Board of Supervisors adopt Ordinance No. 348.4755 regarding Cottage Food Operations.

Assembly Bill 1616 ("AB 1616") created a new category of food production called a "cottage food operation," which, unlike other types of commercial food facilities, can be operated out of a home kitchen. The law was effective January 1, 2013 and states that a County shall not prohibit a "cottage food operation" in any "residential dwellings."

Carolyn Syms Luna

 Carolyn Syms Luna
 Planning Director
 (continued on next page)

Initials:
CSL:lr

FORM APPROVED COUNTY COUNSEL
 BY: *Synthia M. Gunzel*
 SYNTHIA M. GUNZEL
 DATE: *3/14/13*
 Departmental Concurrence

DATE: *3/14/13*
 Tina Grande

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

ROED MAR19 13 PM 4:35

2013 MAR 19 AM 10:53

RECEIVED RIVERSIDE COUNTY
1100 UNIVERSITY AVENUE
RIVERSIDE, CA 92507

10-1

A "Cottage Food Operation" is an enterprise at a private home where low-risk food products are prepared or packaged for sale to customers. "Low-risk foods" are foods such as baked goods, candy, dried fruits and nuts, and other foods determined by the State. The Department of Environmental Health is responsible for regulating these operations and will be the primary point of contact for these Cottage Food Operations.

Under AB 1616 local jurisdictions cannot prohibit cottage food operations, and further, the law requires local jurisdictions to modify their zoning codes to (1) allow these operations by right, (2) grant a nondiscretionary permit under the zoning ordinance, or (3) require a conditional use permit. If a nondiscretionary permit or a conditional use permit is required for a cottage food operation, AB 1616 places additional requirements on local jurisdictions with regard to processing and fees for such permits. The Planning Department, after consultation with Code Enforcement and Environmental Health, recommends that the Board of Supervisors choose to allow Cottage Food Operations by right in residential homes subject to certain restrictions to maintain the residential character of the home and the neighborhood.

Ordinance No. 348.4755 is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty there is no possibility the amendment may have a significant effect on the environment. Ordinance No. 348.4755 is an amendment to add a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a cottage food operation in any primary, lawful residential dwelling unit in any zone in accordance with newly enacted state law. There is no specific development project connected with this ordinance amendment and it does not commit the County to any development. This ordinance amendment will not significantly change the use of a primary dwelling nor change the appearance of a primary dwelling; therefore, there is no impact to the environment because it only allows a cottage food operation wholly within a primary dwelling.

Ordinance No. 348.4755 was initiated by the Board of Supervisors on December 11, 2012 (agenda item 3.23).

On January 29, 2013, the Board of Supervisors adopted an ordinance regulating the health aspects of the Cottage Food Operations sponsored by the Department of Environmental Health. This ordinance is included in the staff report for reference.

**PLANNING COMMISSION
MINUTE ORDER
DATE: FEBRUARY 20, 2013**

I. AGENDA ITEM 3.1

ORDINANCE 348.4755 – Applicant: County of Riverside

II. PROJECT DESCRIPTION:

Proposed Ordinance No. 348.4755 is a zoning ordinance amendment that adds a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a Cottage Food Operation in any primary, lawful residential dwelling unit in any zone consistent with newly enacted state law and as required by State Assembly Bill 1616.

III. MEETING SUMMARY:

The following staff presented the subject proposal:

Project Planner: Larry Ross

IV. CONTROVERSIAL ISSUES:

None

V. PLANNING COMMISSION ACTION:

Motion by Chairman Petty, 2nd by Commissioner Sanchez

A vote of 5-0

RECOMMEND APPROVAL TO THE BOARD OF SUPERVISORS

CD

The entire discussion of this agenda item can be found on CD. For a copy of the CD, please contact Mary Stark, TLMA Commission Secretary, at (951) 955-7436 or email at mcstark@rctlma.org.

Agenda Item No.: **3.1**
Area Plan: Countywide
Supervisorial District: All Districts
Project Planner: Larry Ross
Planning Commission: February 20, 2013

Ordinance No. 348.4755
CEQA Exempt
Applicant: County of Riverside
Engineer/Representative: County of Riverside

COUNTY OF RIVERSIDE PLANNING DEPARTMENT STAFF REPORT

PROJECT DESCRIPTION:

Proposed Ordinance No. 348.4755 is a zoning ordinance amendment that adds a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a Cottage Food Operation in any primary, lawful residential dwelling unit in any zone consistent with newly enacted state law and as required by State Assembly Bill 1616, a copy attached.

BACKGROUND:

Assembly Bill 1616 ("AB 1616") created a new category of food production called a "Cottage Food Operation," which, unlike other types of commercial food facilities, can be operated out of a residential kitchen. The law was effective January 1, 2013 and states that a County shall not prohibit a "cottage food operation" in any "residential dwellings."

A "Cottage Food Operation" is an enterprise at a private residence where low-risk food products are prepared or packaged for sale to customers. "Low-risk foods" are foods such as baked goods, candy, dried fruits and nuts, and other foods determined by the State. The Department of Environmental Health is responsible for regulating these operations and will be the primary point of contact for these Cottage Food Operations.

Under AB1616, local jurisdictions cannot prohibit cottage food operations, and further, the law requires local jurisdictions to modify their zoning codes to (1) allow these operations by right, (2) grant a nondiscretionary permit under the zoning ordinance, or (3) require a conditional use permit. If a nondiscretionary permit or a conditional use permit is required for a cottage food operation, AB 1616 places additional requirements on local jurisdictions with regard to processing and fees for such permits. The Planning Department, after consultation with Code Enforcement and Environmental Health, recommends allowing Cottage Food Operations by right in residential homes subject to certain restrictions to maintain the residential character of the home and the neighborhood.

The intent of the attached cottage food operation ordinance amendment is to establish requirements and standards that would protect the public's health, safety and welfare.

The Department of Environmental Health brought an ordinance regulating the health aspects of Cottage Food Operations before the Board of Supervisors on January 29, 2013. This ordinance was approved on January 29, 2013 and is included in this staff report for reference.

RECOMMENDATIONS:

The Planning Commission Recommends to the Board of Supervisors to:

APPROVE ORDINANCE NO. 348.4755, based upon the findings and conclusions incorporated in the staff report.

FINDINGS:

1. The proposed amendment applies to all areas within the unincorporated area of Riverside County.
2. The ordinance amendment proposes to maintain the residential character and use of a primary dwelling while adding the provisions of the cottage food operation provisions and does not alter the existing consistency with General Plan Land Use Designations and General Plan Elements.
3. The proposed amendment adds a section to allow Cottage Food Operations in any primary dwelling, and does not modify specific zoning classifications.
4. The proposed amendment will modify Ordinance No. 348 to include development standards, regulations, and restrictions to ensure that the public's health, safety, and welfare are protected.
5. The Planning Department has found that in accordance with CEQA Guidelines Section 15061(b)(3), Ordinance No. 348.4755 does not have the potential for causing a significant effect on the environment. Section 15061 (b) 3 states that "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because this ordinance amendment does not create any reasonably foreseeable physical change in the environment. Ordinance No. 348.4755 is an amendment to add a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a cottage food operation in any primary, lawful residential dwelling unit in any zone in accordance with newly enacted state law. There is no specific development project connected with this ordinance amendment and it does not commit the County to any development. This ordinance amendment will not significantly change the use of a primary dwelling nor change the appearance of a primary dwelling; therefore, there is no impact to the environment because it only allows a cottage food operation wholly within a primary dwelling.

CONCLUSIONS:

1. The proposed ordinance amendment is in conformance with the Land Use Designations of the unincorporated areas of Riverside County and with all other elements of the Riverside County General Plan.
2. The proposed ordinance amendment is consistent with the zoning classifications of Ordinance No. 348, and with all other applicable provisions of Ordinance No. 348.
3. The public's health, safety, and general welfare are protected through this ordinance amendment.
4. The project will not have a significant effect on the environment.

INFORMATIONAL ITEMS:

1. As of this writing, no letters, in support or opposition have been received.
2. The project covers all properties and parcels within the unincorporated County of Riverside.

1 in all lawfully constructed and occupied one family, multiple family, factory built or
2 manufactured dwelling units in any zone. As used in subsection c. hereinafter, dwelling
3 unit is limited to one family, multiple family, factory built or manufactured dwelling units
4 as each are defined in this ordinance.

5 c. DEVELOPMENT STANDARDS. Cottage food operations shall be subject
6 to the following standards and requirements:

- 7 (1) A cottage food operation shall comply with all development
8 standards of the zone where the dwelling unit is located.
- 9 (2) A cottage food operation shall comply with all permitting or
10 licensing requirements of the County Department of Environmental
11 Health and is subject to Riverside County Ordinance No. 916.
- 12 (3) The site of the cottage food operation must be a principal residence
13 of a person engaged in and the owner of the cottage food operation.
- 14 (4) No more than one full-time equivalent cottage food employee may
15 engage in cottage food operation activities on the site of the cottage
16 food operation at any one time.
- 17 (5) A cottage food operation shall be incidental and accessory to the
18 principal residential use of a dwelling unit.
- 19 (6) There shall be no outside storage related to the cottage food
20 operation on the site.
- 21 (7) The cottage food operation activities shall be conducted entirely
22 within a primary dwelling unit.
- 23 (8) There shall be no outside activities or uses which indicate the
24 presence of a cottage food operation nor shall the cottage food
25 operation alter or disturb the area in which the dwelling unit is
26 located.
- 27 (9) The residential character of the exterior of the dwelling unit shall not
28

1 be changed.

2 (10) Notwithstanding subsection (9) hereinabove, no signs other than one
3 unlighted identification sign, not more than two square feet in area,
4 shall be erected on the premises in which the dwelling unit is located
5 and shall only be attached to the dwelling unit or placed in a window
6 the dwelling unit.

7 (11) Except for cottage food products that have been prepared for sale in
8 the kitchen of a cottage food operation, direct retail sales of any
9 other products at the site of the cottage food operation are
10 prohibited.

11 (12) A maximum of one customer vehicle may be parked at the site of a
12 cottage food operation at any given time. A maximum of two
13 customers may visit the site of a cottage food operation at any given
14 time.

15 (13) A maximum of one vehicle not larger than 10,000 pounds gross
16 vehicle weight rating, used in conjunction with a cottage food
17 operation, may be parked at the cottage food operation site.

18 (14) A cottage food operation shall not be conducted so it creates or
19 results in noise, glare, smoke, dust, vibration, fumes, odor, electrical
20 interference, radio interference, television interference, fire hazard,
21 significant vehicular or pedestrian traffic or any other hazard or
22 nuisance disruptive to reasonable use of surrounding properties.

23 (15) The use or storage of any flammable, combustible or toxic material
24 in conjunction with a cottage food operation shall be limited to
25 materials and quantities allowed for a residential use pursuant to
26 applicable law.

27 d. EXCEPTIONS. Cottage food operations shall not be permitted in any second unit,
28

1 guest quarter or accessory building in any zone.”

2 Section 3. This ordinance shall take effect thirty (30) days after its adoption.

3
4 BOARD OF SUPERVISORS OF THE COUNTY
5 OF RIVERSIDE, STATE OF CALIFORNIA

6 By: _____
7 Chairman, Board of Supervisors

8
9 ATTEST:
10 CLERK OF THE BOARD

11
12 By: _____
13 Deputy

14 (SEAL)

15
16 APPROVED AS TO FORM
17 January 30, 2013

18
19 By: Synthia M. Gunzel
20 SYNTHIA M. GUNZEL
21 Deputy County Counsel

22 SMG:mdk
23 01/07/13
24 G:\PROPERTY\MDUSEK\SMG\ORD NO 348 COTTAGE FOOD OPERATIONS 012913.DOCX
25
26
27
28

**Environmental Health's
Regulating Cottage
Food Operations
Ordinance No. 916**

1 ORDINANCE NO. 916

2
3 AN ORDINANCE OF THE COUNTY OF RIVERSIDE
4 REGULATING COTTAGE FOOD OPERATIONS AND
5 INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE
6 SECTIONS 113758, 114365, 114390, 114405 AND 114409

7 The Board of Supervisors of the County of Riverside ordains as follows:

8 Section 1. FINDINGS. The Board of Supervisors finds that small businesses play an
9 important role in helping economies recover and prosper. There is a growing movement to support
10 community-based food production and to connect safe food to local communities. Allowing and
11 regulating certain foods to be produced for the community locally in private homes encourages small
12 businesses, economic recovery and environmental sustainability.

13
14 Section 2. PURPOSE. The purpose of this Ordinance is to establish and regulate
15 Cottage Food Operations and to clarify local requirements relating to training, sanitation, preparation,
16 labeling, inspections, permissible types of sales and operations for a Cottage Food Operation.

17
18 Section 3. AUTHORITY. Assembly Bill 1616 was passed on September 21, 2012,
19 adding to and amending sections of the Government Code and Health and Safety Code, relating to food
20 safety. This ordinance is adopted in accordance with Assembly Bill 1616 and pursuant to the Board of
21 Supervisors' police powers as set forth under Article XI, section 7 of the California Constitution. This
22 Ordinance shall be administered and implemented by the Riverside County Department of Environmental
23 Health.

24
25 Section 4. DEFINITIONS. The definitions set forth in Health and Safety Code section
26 113758 are incorporated by reference in this ordinance. The following terms are consistent with
27 California Health and Safety Code Section 113758 and shall have the following meanings:

28 ///

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.

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

D. Administrative Penalties.

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

E. Administrative Appeal.

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

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**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

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Jeffries and duly carried, IT WAS ORDERED that the above ordinance is approved as introduced with waiver of reading and is set for public hearing January 29, 2013 at 9:30 a.m.

Ayes: Jeffries, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: January 8, 2013
xc: Environmental Health, COB

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*

COUNTY APPROVED COUNTY COUNSEL
 BY: *Eric Stopher*
 DATE: 12/18/12
 Department of Environmental Health

P. * Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

**Frequently Ask
Questions Assembly Bill
No. 1616**



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.

Assembly Bill No. 1616

Assembly Bill No. 1616

CHAPTER 415

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

- (a) Small businesses have played an important role in helping slow economies recover and prosper as an engine of job creation. During the 1990s, small businesses created the majority of new jobs and now account for 65 percent of United States employment.
- (b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.
 - (1) Two-thirds of American adults and nearly one-third of children and teens are obese or overweight, placing them at risk for developing chronic diseases such as diabetes, heart disease, and cancer.
 - (2) One in every nine California children, one in three teens, and over half of adults are already overweight or obese. This epidemic affects virtually all Californians.
 - (3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.
- (c) For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.
- (d) There is a growing movement in California to support community-based food production, sometimes referred to as “cottage food,” “artisanal food,” “slow food,” “locally based food,” or “urban agriculture” movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.
- (e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.
- (f) At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.
- (g) Even some bake sales are currently illegal in California.
- (h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2.

Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 4 of Title 5 of the Government Code, to read:

CHAPTER 6.1. Cottage Food Operations **51035.**

- (a) A city, county, or city and county shall not prohibit a cottage food operation, as defined in Section 113758 of the Health and Safety Code, 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. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.
 - (3) Require any cottage food operation to apply for a permit to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the cottage food operation complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration,

traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.

SEC. 3.

Section 109947 of the Health and Safety Code is amended to read:

109947.

"Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, a cottage food operation that is registered or has a permit pursuant to Section 114365, or any facility exclusively storing, handling, or processing dried beans.

SEC. 4.

Section 110050 of the Health and Safety Code is amended to read:

110050.

The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470, 110471, 110485, 114365, 114365.6, 111130, and 113717, and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, licensing, inspection, enforcement, and other provisions of Article 12 (commencing with Section 111070) relating to water, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5, and to carry out and implement the provisions of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104).

SEC. 5.

Section 110460 of the Health and Safety Code is amended to read:

110460.

No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6.

Section 111955 of the Health and Safety Code is amended to read:

111955.

“Food processing establishment,” as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. “Food processing establishment” shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7.

Section 113758 is added to the Health and Safety Code, to read:

113758.

(a) “Cottage food operation” means an enterprise that has not more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employee, not including a 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, indirect, or direct and indirect sale to consumers pursuant to this part. In 2013, the enterprise shall not have more than thirty-five thousand dollar (\$35,000) in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty-five thousand dollars (\$45,000) in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A “Class A” cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A “Class B” cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) “Cottage food employee” means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator.

(2) “Cottage food operator” means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) “Cottage food products” means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) “Direct sale” means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. 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.

(5) “Indirect sale” means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. 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.

(6) “Private home” means a dwelling, including an apartment or other leased space, where individuals reside.

(7) “Registered or permitted area” means the portion of a private home that contains the private home’s kitchen used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, and attached rooms within the home that are used exclusively for storage.

SEC. 8.

Section 113789 of the Health and Safety Code is amended to read:

113789.

(a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
- (2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities.
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

- (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
- (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
- (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
- (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
- (7) A commercial food processing plant as defined in Section 111955.
- (8) A child day care facility, as defined in Section 1596.750.
- (9) A community care facility, as defined in Section 1502.
- (10) A residential care facility for the elderly, as defined in Section 1569.2.
- (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15.

Section 114405 of the Health and Safety Code is amended to read:

114405.

(a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility or cottage food operation for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility or cottage food operation for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility or cottage food operation is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permitholder. If the permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16.

Section 114409 of the Health and Safety Code is amended to read:

114409.

(a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permitholder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17.

Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



RIVERSIDE COUNTY PLANNING DEPARTMENT

Carolyn Syms Luna
Director

NOTICE OF EXEMPTION

TO: Office of Planning and Research (OPR) P.O. Box 3044 Sacramento, CA 95812-3044
 County of Riverside County Clerk

FROM: Riverside County Planning Department
 4080 Lemon Street, 12th Floor P. O. Box 1409 Riverside, CA 92502-1409

38686 El Cerrito Road Palm Desert, CA 92201

Project Title/Case No.: Ordinance 348.4755 - adding Cottage Food Operations as required by State Assembly Bill 1616

Project Location: In the unincorporated area of Riverside County, more specifically located Countywide

Project Description: Ordinance No. 348.4755 is a zoning ordinance amendment that adds a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a cottage food operation in any primary, lawful residential dwelling unit in any zone consistent with newly enacted state law and as required by State Assembly Bill 1616.

Name of Public Agency Approving Project: Riverside County Planning Department

Project Sponsor: County of Riverside Planning Department

Exempt Status: (Check one)

- Ministerial (Sec. 21080(b)(1); 15268) Categorical Exemption (____)
- Declared Emergency (Sec. 21080(b)(3); 15269(a)) Statutory Exemption (____)
- Emergency Project (Sec. 21080(b)(4); 15269 (b)(c)) Other: Section 15061 (b) 3

Reasons why project is exempt: In accordance with CEQA Guidelines Section 15061(b)(3), Ordinance No. 348.4755 does not have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because this ordinance amendment does not create any reasonably foreseeable physical change in the environment. Ordinance No. 348.4755 is an amendment to add a definition for Cottage Food Operations in Ordinance No. 348 and would allow the establishment of a cottage food operation in any primary, lawful residential dwelling unit in any zone in accordance with newly enacted state law. There is no specific development project connected with this ordinance amendment and it does not commit the County to any development. This ordinance amendment will not significantly change the use of a primary dwelling nor change the appearance of a primary dwelling; therefore, there is no impact to the environment because it only allows a cottage food operation wholly within a primary dwelling.

Larry Ross 951-955-9294
County Contact Person *Phone Number*

Signature **Principal Planner** *Title* _____ *Date*

Date Received for Filing and Posting at OPR: _____

- FREE POSTING per Ca. Govt. Code 6103 and 27383

FOR COUNTY CLERK'S USE ONLY

