



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** A public hearing to consider introduction of an ordinance amending portions of Elk Grove Municipal Code Title 23 (Zoning) related to Cottage Food Operations / Home Occupations – City Initiated Ordinance

**MEETING DATE:** January 23, 2013

**PREPARED BY:** Sarah Kirchgessner, Planning Staff

**DEPARTMENT HEAD:** Taro Echiburú, Planning Director

**RECOMMENDED ACTION:**

The Planning Commission recommends (5-0) the following actions:

- 1) Adopt a Resolution of the City Council finding the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Section 15061 (b)(3), Title 14, Division 6, Chapter 3 (State CEQA Guidelines) (Attachment 1); and
- 2) Introduce and waive the full reading, by substitution of title only, an ordinance amending portions of Elk Grove Municipal Code Title 23 related to Cottage Food Operations / Home Occupations (Attachment 2).

**PLANNING COMMISSION MEETING:**

The Planning Commission conducted a public hearing on the proposed amendments to Title 23 on January 3, 2013. The Planning Commission staff report is included as Attachment 3. There was no public comment on

the project. The Planning Commission recommended City Council approval with a 5-0 vote.

## **BACKGROUND AND PROJECT DESCRIPTION**

A new State law (AB 1616 Cottage Food Operations), also known as the California Homemade Food Act, was signed into law by Governor Brown in September 2012. The law, which became effective on January 1, 2013, allows some types of low-risk food products to be prepared or packaged for sale (direct and indirect) to consumers at a private home (Attachments 4 and 5). Cottage Food Operations (CFOs) will be required to be registered with Sacramento County Environmental Health Division and complete a self-certification checklist approved by the County verifying that the cottage food operation conforms to the requirements of the California Health and Safety Code. These requirements include a smoke free operation area, washing and sanitation provisions, as well as restrictions on who may be in the home kitchen during preparation and handling of cottage food products. AB 1616 also requires homemade food producers to complete a food processor course, label their goods, and be subject to inspections from county health departments.

The CFO may have one full-time employee, not including a family member or other household member. Examples of low risk food products include baked goods without cream, custard, or other meat fillings, dried fruit, dried pasta, herb blends, jams and jellies, popcorn and nut mixes / butters. The gross annual sales for a CFO shall not be more than \$35,000 in 2013, \$45,000 in 2014, and \$50,000 in 2015 and each subsequent year thereafter.

The new law requires local governments to not prohibit cottage food operations (CFOs) and to do one of the following:

1. Classify the CFO as a permitted use of residential property;
2. Grant a nondiscretionary permit that complies with local ordinances prescribing reasonable standards concerning the following factors: spacing and concentration, traffic control, parking, and noise control; or
3. Require any CFO to apply for a permit to use a residence for its operation. The use permit shall be granted if the CFO complies with

local ordinance prescribing reasonable standards as discussed in #2 above.

Because the City's existing regulations are silent on homemade food production, the Planning Commission recommends that the City amend the Zoning Code in order to be consistent with the new law. The Planning Commission suggests that CFOs be classified as a permitted use of residential property (#1 above) through the City's home occupation provisions in order to satisfy the requirements of the new law as discussed below.

### **ANALYSIS:**

Proposed amendments to Title 23, Zoning, of the City's Municipal Code (hereinafter referred to as the Zoning Code) are provided in Attachment 2 and are summarized below.

The proposed amendments are specific to Chapter 23.82, Home Occupations, and would allow for cottage food operations, as defined by the California Health and Safety Code, to be permitted in residential neighborhoods and zoning districts through the City's home occupation provisions. The Planning Commission determined that CFOs are sufficiently similar to other commercial uses that are allowed within residential neighborhoods under the City's home occupation provisions.

Cottage Food Operations were added as a restricted home occupation, consistent with the requirements of the California Health and Safety Code and limited to one full time employee, not including a family member or household member of the cottage food operation. The development and operation standards were amended to allow products to be sold from the premises for cottage food operations.

In addition, on July 25, 2012, the City Council directed staff to modify the business licensing process in order to streamline the issuance of Business Licenses, thereby improving the business climate in the City of Elk Grove. The direction to streamline Business Licenses specifically entailed separating the regulatory reviews that had been required before issuing a Business License from the issuance of the license. In essence, the City would issue Business Licenses entrusting the business owner with the

responsibility to ensure they were aware of and were following any laws pertaining to the operation of their business.

Following the direction of the July 25 City Council meeting, staff began to implement the new Business License issuance process. The Planning and Building Departments no longer review and approve business licenses, including home occupation permits / licenses. Therefore, the proposed amendments include deleting the requirement for a home occupation “permit” and the associated zoning clearance / plan check, as well as the requirement for a business license consistent with Council direction. Home occupation regulations will be enforced by Code Enforcement with processes currently in place.

The City Council will consider an amendment to the Elk Grove Municipal Code that will bring the ordinances related to business license issuance into line with the practices in early 2013.

### **ENVIRONMENTAL ANALYSIS:**

CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies 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.”

The approval of these amendments does not approve any development project. The proposed amendment revises the home occupations provisions to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. The proposed amendments are zoning regulations, which do not approve any development project and do not result in a physical change in the environment.

Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. Therefore, these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

**FISCAL IMPACT:**

The proposed amendment does not impact the City's budget.

**ATTACHMENTS:**

1. Resolution for CEQA exemption
2. Draft Ordinance
3. January 3, 2013 Planning Commission Staff Report
4. Assembly Bill No. 1616
5. "California Homemade Food Act" Frequently Asked Questions

# ATTACHMENT 1

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE FINDING THE AMENDMENTS TO TITLE 23 OF THE ELK GROVE MUNICIPAL CODE RELATED TO COTTAGE FOOD OPERATIONS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

**WHEREAS**, the proposed changes would modify Chapter 23.82 Home Occupations of Title 23, Zoning of the Elk Grove Municipal Code related to cottage food operations and other permit requirements; and

**WHEREAS**, the proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines); and

**WHEREAS**, the approval of these amendments does not approve any development project.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Elk Grove finds the amendments to Title 23 of the Elk Grove Municipal Code exempt from California Environmental Quality Act (CEQA) review pursuant to Section 15183 of the CEQA Guidelines of Title 14 of the California Code of Regulations.

Finding: The proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines).

Evidence: CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies 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.”

The approval of these amendments does not approve any development project. The proposed amendment revises the home occupations provisions to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. The proposed amendments are zoning regulations, which do not approve any development project and do not result in a physical change in the environment.

Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. Therefore,

these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 23<sup>rd</sup> day of January 2013.

---

GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

---

JASON LINDGREN, CITY CLERK

---

JONATHAN P. HOBBS,  
CITY ATTORNEY

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING PORTIONS OF ELK GROVE MUNICIPAL CODE TITLE 23  
RELATED TO COTTAGE FOOD OPERATIONS / HOME OCCUPATIONS**

**WHEREAS**, the proposed changes would modify Chapter 23.82 Home Occupations of Title 23, Zoning of the Elk Grove Municipal Code related to cottage food operations and other permit requirements; and

**WHEREAS**, the proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines); and

**WHEREAS**, the approval of these amendments does not approve any development project.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority.

The purpose of this Ordinance is to amend the Elk Grove Municipal Code (EGMC) Title 23 (Zoning) to allow cottage food operations in residential neighborhoods and zoning districts through the City's Home Occupation provisions consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. Additionally, a new definition of "Cottage Food Operations" would be added.

Section 2: Findings.

**General Plan Consistency**

Finding: The proposed amendments to Title 23 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed amendments to Title 23 (Zoning) of the Elk Grove Municipal Code include minor amendments to Chapter 23.82 to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. These changes are consistent with General Plan policy ED-1, which strives to establish a balanced mix of commercial, office, and industrial businesses in the City to ensure a variety of employment and business opportunities. The amendments are also consistent with Policy ED-6 to promote policies, programs and services that support a diverse local economy providing a range of goods and services, support exiting local businesses, and that encourage new, independent business ventures.



## Section 3. Amendments to Chapter 23.82 – Home Occupations

EGMC Chapter 23.82 is amended as follows:

*Proposed language to be added is shown with underlines and language to be removed is shown with strikeouts.*

### **23.82.010 Purpose.**

The purpose of the home occupations provision is to allow limited commercial/office uses within a residential neighborhood or zoning district consistent with established criteria development and operational standards to ensure compatibility and to keep the integrity of the surrounding residential uses and character. ~~It will also~~ To this end, these regulations minimize noise, traffic nuisances, hazardous material usage, and other possible side effects of commercial uses being conducted in residential areas.

### **23.82.020 Definitions.**

Terms unique to this chapter are listed in EGMC Chapter 23.100 (General Definitions).

### **23.82.030 Permit requirements.**

~~Zoning clearance/plan check is required prior to operating any commercial/office related use within a residential neighborhood or zoning district, residential structure or accessory structure thereof within the City in accordance with the provisions of this chapter. The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The applicant must demonstrate they reside at the dwelling listed on the permit application.~~ Home occupations are permitted in designated zoning districts as described in Division III, Zoning Districts, Allowable Land Uses, and Development Standards, of this title. No special planning permit or entitlement, including zoning clearance/plan check, shall be required for home occupations. Home occupation owners shall acquire any applicable permit or license (e.g. County health permit, Chief's operating permit, etc.) as may be required for the specific operation by Federal, State, or local regulation.

### **23.82.040 Development and operational standards.**

~~Prior to the issuance of zoning clearance/plan check for a home occupation, the Planning Director shall find that the proposed home occupation is in compliance with the following criteria.~~ All home occupations shall comply with the following development and operational standards. In addition to the performance standards herein, EGMC Section 23.82.050 lists restricted uses and EGMC Section 23.82.060 lists specific prohibited uses.

#### **A. Storage and Display.**

1. Storage, operation or display of materials, goods, supplies or equipment related to the operation of a home occupation may not be located outside the residence.

2. On-site storage of hazardous materials associated with the home occupation shall be prohibited.

3. All activities of the home occupation, including storage of inventory or products and all other equipment, fixtures, office and work space may not exceed twenty (20%) percent of the total square footage of the dwelling unit. Total square footage shall include rooms used for residential and home occupation use.

4. Products produced as a function of the home occupation shall not be displayed in any manner that would make them visible from the exterior of the dwelling unit.

#### **B. Employees/Clients.**

1. Employees may be allowed as part of the home occupation permit; however, no more

than two (2) nonresidents may work from the residence or report to the home at any time.

2. The number of clients/customers that can be present at the residence shall be limited to one at any one time, and shall not exceed the maximum of eight (8) per day. Clients/customers shall be permitted at the home occupation business location only on weekdays from 7:00 a.m. to 8:00 p.m. and on weekends from 8:00 a.m. to 6:00 p.m.

C. Vehicles/Parking. In addition to the following standards, all parking associated with the home occupation shall comply with parking regulations in EGMC Section 23.58.040, General parking regulations.

1. Commercial vehicles as defined in EGMC Section 23.100.020 may not be parked or stored on any residential property or local residential street in conjunction with a home occupation. However, one (1) vehicle with a maximum one (1) ton capacity may be retained on site of a home occupation contingent upon the existence or establishment of an additional vehicle parking space located outside of the required front and street-side side yard setback area. Such parking space shall comply with residential parking provisions. Regardless of the number of home occupations at a residence, only two (2) additional vehicles (including nonresident employee and client vehicles) shall be present at any one time. Off-street parking shall be provided for all vehicles associated with the home occupation. Additionally, no trailer used for commercial, industrial, or agricultural purposes shall be parked or stored in any residential zone except for loading or unloading services.

2. There shall be no more than one (1) commercial delivery per day, during normal business hours of 8:00 a.m. to 6:00 p.m.

D. Signs. A sign no larger than two (2 ft<sup>2</sup>) square feet shall be allowed for the home occupation other than the address of the residence.

E. Nuisances. No activity that produces noise, smoke, odor, glare, electrical interference, vibrations, or junk and rubbish discernible beyond the site shall be allowed.

F. Sales. There shall be no products sold on the premises, except as provided by the California Health and Safety Code for cottage food operations.

~~G. Conditions. The Planning Director may impose additional conditions necessary to ensure that the home occupation does not substantially or materially change the residential character of the surrounding neighborhood. The Code Enforcement Department may impose additional conditions necessary to ensure that the home occupation does not substantially or materially change the residential character of the surrounding neighborhood.~~

~~H. Permit Issuance. An authorized signature of the Planning Director or the Director's designee on the completed home occupation permit application form shall signify issuance of the permit.~~

~~I. Business License Required. The home occupation may not begin operation until a business license has been obtained.~~

### **28.82.050 Restricted home occupations.**

The following specific home occupation uses shall be permitted, subject to further limitations as follows:

A. Beauty/barbershops limited to one (1) operator only.

B. Contractors and subcontractors offices are permitted as home occupations. However, the storage of vehicles, materials and equipment not normally associated with residential uses shall be prohibited, except as provided in the RD-1, RD-2, and AR-1 through AR-10 zones.

C. Furniture repair and restoration shall be limited to one occupant of the dwelling on a part-time basis, subject to approval of the Building Inspection Department and the Fire Marshal, as applicable. There shall be no pickup or delivery at the location by the public.

D. Shoe repair, on a part-time basis, providing that no more than eight (8) visitors a day either drop off or pick up such items. No sales of any kind are permitted. The use will not be conducted in such a fashion as to constitute either a public or private nuisance.

E. Dressmaking, sewing, tailoring, contract sewing (one (1) operator).

F. Cottage Food Operations, consistent with the requirements of the California Health and Safety Code and limited to one (1) full time employee, not including a family member or household member of the cottage food operation.

**23.82.060 Prohibited uses.**

The following uses are expressly prohibited as home occupations:

A. Ambulance service;

B. Ammunition reloading, including custom reloading;

C. Boarding house, bed and breakfast hotel, time share condominium;

D. Carpentry, cabinetmakers;

E. Ceramics (kiln of six (6 ft<sup>3</sup>) cubic feet or more);

F. Health salons, gyms, dance studios, aerobic exercise studios;

G. Medical, dental, chiropractic, or veterinary clinics;

H. Mortician, hearse service;

I. Palm reading, fortune telling;

J. Private clubs;

K. Repair, or reconditioning, of boats or recreation vehicles;

L. Restaurants or taverns;

M. Retail sale from site (except direct distribution, ~~and~~ artists' originals, and as provided by the California Health and Safety Code for Cottage food operations);

N. Storage, repair or reconditioning of major household appliances, including refrigerators, freezers, clothes washers and dryers, dishwashers, stoves, heating and air conditioning equipment;

O. Storage, repair or reconditioning of motorized vehicles or large equipment on site;

P. Tattoo service;

Q. Tow truck services;

R. Veterinary uses (including boarding);

S. Welding service (office only).

Section 4. Amendments to Chapter 23.100 – Nonconforming Uses, Buildings, and Structures

EGMC Section 23.100.020 is amended as follows:

*Proposed language to be added is shown with underlines and language to be removed is shown with strikeouts.*

**Section 23.100.020**

C. "C" Definitions

...

13. "Cottage Food Operation" means a Cottage food operation as defined in the California Health and Safety Code.

14. "Custom Home" means ...

Section 5: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil

liability for damages, except as otherwise imposed by law.

Section 6: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 7: Savings Clause.

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 8: Effective Date and Publication.

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

INTRODUCED:

ADOPTED:

EFFECTIVE:

\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_

## Planning Commission Staff Report

January 3, 2012



**Project:** Minor Amendments to Title 23 (Zoning) related Cottage Food Operations/Home Occupations - City Initiated Ordinance  
**Request:** Amend Chapter 23.82 of Title 23 of the Municipal Code  
**Location:** City-wide  
**Planners:** Sarah Kirchgessner, Senior Planner

### **Staff Recommendation**

Staff recommends that the Planning Commission review the proposed amendments to Title 23 (Zoning) of the Elk Grove Municipal Code and adopt a Resolution (Attachment A) recommending that the City Council:

1. Find the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines); and
2. Adopt an Ordinance amending Title 23 of City of Elk Grove Municipal Code as described in Attachment B.

### **Background and Project Description**

A new State law (AB 1616 Cottage Food Operations), also known as the California Homemade Food Act, was signed into law by Governor Brown in September 2012. The law, which becomes effective on January 1, 2013, will allow some types of low-risk food products to be prepared or packaged for sale (direct and indirect) to consumers at a private home (Attachments C and D). Cottage Food Operations (CFOs) will be required to be registered with Sacramento County Environmental Health Division and complete a self-certification checklist approved by the County verifying that the cottage food operation conforms to the requirements of the California Health and Safety Code. These requirements include a smoke free operation area, washing and sanitation provisions, as well as restrictions on who may be in the home kitchen during preparation and handling of cottage food products. AB 1616 also requires homemade food producers to complete a food processor course, label their goods, and be subject to inspections from county health departments.

The CFO may have one full-time employee, not including a family member or other household member. Examples of low risk food products include baked goods without cream, custard, or other mean fillings, dried fruit, dried pasta, herb blends, jams and jellies, popcorn and nut mixes/butters. The gross annual sales for a CFO shall not be more than \$35,000 in 2013, \$45,000 in 2014, and \$50,000 in 2015 and each subsequent year thereafter.

The new law requires local governments to not prohibit cottage food operations (CFOs) and do one of the following:

1. Classify the CFO as a permitted use of residential property;
2. Grant a nondiscretionary permit that complies with local ordinances prescribing reasonable standards concerning the following factors: spacing and concentration, traffic control, parking, and noise control; or

3. Require any CFO to apply for a permit to use a residence for its operation. The use permit shall be granted if the CRO complies with local ordinance prescribing reasonable standards as discussed in #2 above.

Because the City's existing regulations are silent on homemade food production, staff recommends that the City amend the Zoning Code in order to be consistent with the new law. Staff suggests that CFOs be classified as a permitted use of residential property (#1 above) through the City's home occupation provisions in order to satisfy the requirements of the new law as discussed below.

### **Analysis**

Proposed amendments to Title 23, Zoning, of the City's Municipal Code (hereinafter referred to as the Zoning Code) are provided in Attachment B and are summarized below.

The proposed amendments are specific to Chapter 23.82, Home Occupations, and would allow for cottage food operations, as defined by the California Health and Safety Code, to be permitted in residential neighborhoods and zoning districts through the City's home occupation provisions. Staff has determined that CFOs are sufficiently similar to other commercial uses that are allowed within residential neighborhoods under the City's home occupation provisions.

Cottage Food Operations were added as a restricted home occupation, consistent with the requirements of the California Health and Safety Code and limited to one full time employee, not including a family member or household member of the cottage food operation. The development and operation standards were amended to allow products to be sold from the premises for cottage food operations.

In addition, on July 25<sup>th</sup>, the City Council directed staff to modify the business licensing process in order to streamline the issuance of Business Licenses, thereby improving the business climate in the City of Elk Grove. The direction to streamline Business Licenses specifically entailed separating the regulatory reviews that had been required before issuing a Business License from the issuance of the license. In essence, the City would issue Business Licenses entrusting the business owner with the responsibility to ensure they were aware of and were following any laws pertaining to the operation of their business.

Following the direction of the July 25<sup>th</sup> City Council meeting, staff began to implement the new Business License issuance process. The Planning and Building Departments no longer review and approve business licenses, including home occupation permits/licenses. Therefore, the proposed amendments include deleting the requirement for a home occupation "permit" and the associated zoning clearance/plancheck as well as the requirement for a business license consistent with Council direction. Home occupation regulations will be enforced by Code Enforcement with processes currently in place.

The City Council will consider an amendment to the Elk Grove Municipal Code that will bring the ordinances related to business license issuance into line with the practices in January, 2013.

### **Environmental Analysis**

CEQA requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in

the environment.” Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies 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.”

The approval of these amendments does not approve any development project. The proposed amendment revises the home occupations provisions to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. The proposed amendments are zoning regulations, which do not approve any development project and do not result in a physical change in the environment.

Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. Therefore, these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

### **Recommended Motions**

Should the Planning Commission agree with staff’s recommendation, the following motion is suggested:

*“I move that the Planning Commission adopt a Resolution recommending that the City Council find the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Section 15061 (b)(3), Title 14, Division 6, Chapter 3 (State CEQA Guidelines).”*

*“I move that the Planning Commission adopt a Resolution recommending that the City Council adopt the proposed amendments to Title 23 provided in Attachment B, subject to the findings contained in the January 3, 2013 staff report.”*

### **Findings**

#### **California Environmental Quality Act (CEQA)**

Finding: The proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines).

Evidence: CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies 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.”

The approval of these amendments does not approve any development project. The proposed amendment revises the home occupations provisions to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. The proposed amendments are zoning regulations, which do not approve any development project and do not result in a physical change in the environment.

Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. Therefore, these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

### **General Plan Consistency**

Finding: The proposed amendments to Title 23 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed amendments to Title 23 (Zoning) of the Elk Grove Municipal Code include minor amendments to Chapter 23.82 to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. These changes are consistent with General Plan policy ED-1, which strives to establish a balanced mix of commercial, office, and industrial businesses in the City to ensure a variety of employment and business opportunities. The amendments are also consistent with Policy ED-6 to promote policies, programs and services that support a diverse local economy providing a range of goods and services, support exiting local businesses, and that encourage new, independent business ventures.

### **Attachments**

- A. Planning Commission Resolution
- B. Proposed Amendments to Title 23 (Zoning)
- C. Assembly Bill No. 1616
- D. "California Homemade Food Act" Frequently Asked Questions



**A RESOLUTION OF THE CITY OF ELK GROVE PLANNING COMMISSION  
RECOMMENDING THE CITY COUNCIL OF THE CITY OF ELK GROVE FIND THE PROPOSED  
AMENDMENTS EXEMPT FROM CEQA AND ADOPT AN ORDINANCE OF THE CITY  
COUNCIL OF THE CITY OF ELK GROVE AMENDING TITLE 23 OF THE CITY'S MUNICIPAL  
CODE RELATED TO COTTAGE FOOD OPERATIONS/HOME OCCUPATIONS**

**WHEREAS**, the proposed amendments would modify Chapter 23.82 Home Occupations of Title 23, Zoning of the Elk Grove Municipal Code related to cottage food operations and other permit requirements; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on January 3, 2013 as required by law to consider all of the information presented by staff and public testimony presented in writing and at the meeting.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Elk Grove hereby recommends that the City Council find the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines) Section 15061 (b)(3), and adopt an Ordinance of the City Council of the City of Elk Grove amending Title 23 (Zoning) of the Municipal Code of the City of Elk Grove provided in Attachment B of the January 3, 2013 Planning Commission staff report, incorporated herein by this reference.

**Findings**

**California Environmental Quality Act (CEQA)**

Finding: The proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines).

Evidence: CEQA requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies 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."

The approval of these amendments does not approve any development project. The proposed amendment revises the home occupations provisions to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. The proposed amendments are

zoning regulations, which do not approve any development project and do not result in a physical change in the environment.

Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. Therefore, these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

### **General Plan Consistency**

Finding: The proposed amendments to Title 23 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed amendments to Title 23 (Zoning) of the Elk Grove Municipal Code include minor amendments to Chapter 23.82 to allow cottage food operations in residential neighborhoods and zoning districts consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. These changes are consistent with General Plan policy ED-1, which strives to establish a balanced mix of commercial, office, and industrial businesses in the City to ensure a variety of employment and business opportunities. The amendments are also consistent with Policy ED-6 to promote policies, programs and services that support a diverse local economy providing a range of goods and services, support exiting local businesses, and that encourage new, independent business ventures.

The foregoing Resolution of the City of Elk Grove was passed and adopted by the Planning Commission on the 3<sup>rd</sup> day of January, 2013, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

**ATTEST:**

---

Sandy Kyles, PLANNING SECRETARY

---

Fedolia Harris, CHAIR of the  
PLANNING COMMISSION

*Deletions are shown in strikeout, additions are underlined.*

**Chapter 23.82 shall be amended as follows:**

**Chapter 23.82  
HOME OCCUPATIONS**

Sections:

- 23.82.010 Purpose.
- 23.82.020 Definitions.
- 23.82.030 Permit requirements.
- 23.82.040 Development and operational standards.
- 28.82.050 Restricted home occupations.
- 23.82.060 Prohibited uses.

**23.82.010 Purpose.**

The purpose of the home occupations provision is to allow limited commercial/office uses within a residential neighborhood or zoning district consistent with established ~~criteria~~ development and operational standards to ensure compatibility and to keep the integrity of the surrounding residential uses and character. ~~It will also~~ To this end, these regulations minimize noise, traffic nuisances, hazardous material usage, and other possible side effects of commercial uses being conducted in residential areas.

**23.82.020 Definitions.**

Terms unique to this chapter are listed in EGMC Chapter 23.100 (General Definitions).

**23.82.030 Permit requirements.**

~~Zoning clearance/plan check is required prior to operating any commercial/office related use within a residential neighborhood or zoning district, residential structure or accessory structure thereof within the City in accordance with the provisions of this chapter. The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The applicant must demonstrate they reside at the dwelling listed on the permit application. Home occupations are permitted in designated zoning districts as described in Division III, Zoning Districts, Allowable Land Uses, and Development Standards, of this title. No special planning permit or entitlement, including zoning clearance/plan check, shall be required for home occupations. Home occupation owners shall acquire any applicable permit or license (e.g. County health permit, Chief's operating permit, etc.) as may be required for the specific operation by Federal, State, or local regulation.~~

**23.82.040 Development and operational standards.**

~~Prior to the issuance of zoning clearance/plan check for a home occupation, the Planning Director shall find that the proposed home occupation is in compliance with the following criteria.~~ All home occupations shall comply with the following development and operational standards. In addition to the performance standards herein, EGMC Section 23.82.050 lists restricted uses and EGMC Section 23.82.060 lists specific prohibited uses.

A. Storage and Display.

1. Storage, operation or display of materials, goods, supplies or equipment related to the operation of a home occupation may not be located outside the residence.
2. On-site storage of hazardous materials associated with the home occupation shall be prohibited.

3. All activities of the home occupation, including storage of inventory or products and all other equipment, fixtures, office and work space may not exceed twenty (20%) percent of the total square footage of the dwelling unit. Total square footage shall include rooms used for residential and home occupation use.

4. Products produced as a function of the home occupation shall not be displayed in any manner that would make them visible from the exterior of the dwelling unit.

B. Employees/Clients.

1. Employees may be allowed as part of the home occupation permit; however, no more than two (2) nonresidents may work from the residence or report to the home at any time.

2. The number of clients/customers that can be present at the residence shall be limited to one at any one time, and shall not exceed the maximum of eight (8) per day. Clients/customers shall be permitted at the home occupation business location only on weekdays from 7:00 a.m. to 8:00 p.m. and on weekends from 8:00 a.m. to 6:00 p.m.

C. Vehicles/Parking. In addition to the following standards, all parking associated with the home occupation shall comply with parking regulations in EGMC Section 23.58.040, General parking regulations.

1. Commercial vehicles as defined in EGMC Section 23.100.020 may not be parked or stored on any residential property or local residential street in conjunction with a home occupation. However, one (1) vehicle with a maximum one (1) ton capacity may be retained on site of a home occupation contingent upon the existence or establishment of an additional vehicle parking space located outside of the required front and street-side side yard setback area. Such parking space shall comply with residential parking provisions. Regardless of the number of home occupations at a residence, only two (2) additional vehicles (including nonresident employee and client vehicles) shall be present at any one time. Off-street parking shall be provided for all vehicles associated with the home occupation. Additionally, no trailer used for commercial, industrial, or agricultural purposes shall be parked or stored in any residential zone except for loading or unloading services.

2. There shall be no more than one (1) commercial delivery per day, during normal business hours of 8:00 a.m. to 6:00 p.m.

D. Signs. A sign no larger than two (2 ft<sup>2</sup>) square feet shall be allowed for the home occupation other than the address of the residence.

E. Nuisances. No activity that produces noise, smoke, odor, glare, electrical interference, vibrations, or junk and rubbish discernible beyond the site shall be allowed.

F. Sales. There shall be no products sold on the premises, except as provided by the California Health and Safety Code for cottage food operations.

~~G. Conditions. The Planning Director may impose additional conditions necessary to ensure that the home occupation does not substantially or materially change the residential character of the surrounding neighborhood. The Code Enforcement Department may impose additional conditions necessary to ensure that the home occupation does not substantially or materially change the residential character of the surrounding neighborhood.~~

~~H. Permit Issuance. An authorized signature of the Planning Director or the Director's designee on the completed home occupation permit application form shall signify issuance of the permit.~~

~~I. Business License Required. The home occupation may not begin operation until a business license has been obtained.~~

**28.82.050 Restricted home occupations.**

The following specific home occupation uses shall be permitted, subject to further limitations as follows:

A. Beauty/barbershops limited to one (1) operator only.

B. Contractors and subcontractors offices are permitted as home occupations. However, the storage of vehicles, materials and equipment not normally associated with residential uses shall be prohibited, except as provided in the RD-1, RD-2, and AR-1 through AR-10 zones.

C. Furniture repair and restoration shall be limited to one occupant of the dwelling on a part-time basis, subject to approval of the Building Inspection Department and the Fire Marshal, as applicable. There shall be no pickup or delivery at the location by the public.

D. Shoe repair, on a part-time basis, providing that no more than eight (8) visitors a day either drop off or pick up such items. No sales of any kind are permitted. The use will not be conducted in such a fashion as to constitute either a public or private nuisance.

E. Dressmaking, sewing, tailoring, contract sewing (one (1) operator).

F. Cottage Food Operations, consistent with the requirements of the California Health and Safety Code and limited to one full time employee, not including a family member or household member of the cottage food operation.

#### **23.82.060 Prohibited uses.**

The following uses are expressly prohibited as home occupations:

A. Ambulance service;

B. Ammunition reloading, including custom reloading;

C. Boarding house, bed and breakfast hotel, time share condominium;

D. Carpentry, cabinetmakers;

E. Ceramics (kiln of six (6 ft<sup>3</sup>) cubic feet or more);

F. Health salons, gyms, dance studios, aerobic exercise studios;

G. Medical, dental, chiropractic, or veterinary clinics;

H. Mortician, hearse service;

I. Palm reading, fortune telling;

J. Private clubs;

K. Repair, or reconditioning, of boats or recreation vehicles;

L. Restaurants or taverns;

M. Retail sale from site (except direct distribution, ~~and~~ artists' originals, and as provided by the California Health and Safety Code for Cottage food operations);

N. Storage, repair or reconditioning of major household appliances, including refrigerators, freezers, clothes washers and dryers, dishwashers, stoves, heating and air conditioning equipment;

O. Storage, repair or reconditioning of motorized vehicles or large equipment on site;

P. Tattoo service;

Q. Tow truck services;

R. Veterinary uses (including boarding);

S. Welding service (office only).

***Section 23.100.020 shall be amended to add a definition of "Cottage Food Operation" and renumbered as follows:***

#### **Section 23.100.020**

C. "C" Definitions

...

13. "Cottage Food Operation" means a Cottage food operation as defined in the California Health and Safety Code.

14. "Custom Home" means ...



Development Services - Planning  
 8401 Laguna Palms Way • Elk Grove, California 95758  
 Tel: 916.478.2265 • Fax: 916.691.3175 • [www.elkgrovecity.org](http://www.elkgrovecity.org)

## City of Elk Grove Planning Commission Notice of Public Hearing

*Dated: December 21, 2012*

**NOTICE** is hereby given that on **January 3, 2013 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, the Planning Commission of the City of Elk Grove will hold a Public Hearing at the **Elk Grove City Hall, located at 8400 Laguna Palms Way, Elk Grove**, to consider the following applications.

**COTTAGE FOOD OPERATIONS/HOME OCCUPATIONS – CITY-INITIATED ORDINANCE**

**PROJECT DESCRIPTION:** The proposed City-initiated amendments to Title 23 (Zoning) of the Elk Grove Municipal Code would allow cottage food operations in residential neighborhoods and zoning districts through the City’s Home Occupation provisions consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. Additionally, a new definition of “Cottage Food Operations” would be added.

**LOCATION/APN:** Citywide

**ZONING:** N/A

**ENVIRONMENTAL:** The proposed amendments are not a “project” as defined by the California Environmental Quality Act under the General Rule exemption (Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations)

**PROJECT PLANNER:** Sarah Kirchgessner 916.478.3649

**NOTICE REGARDING APPEALS**

Pursuant to §23.14.060 of the Zoning Code, appeals of a final action by the Planning Director must be filed with the City Clerk no later than ten (10) calendar days after the day on which the final action was taken, along with the appropriate fee.

**NOTICE REGARDING CHALLENGES TO DECISIONS**

Pursuant to all applicable laws and regulations, including without limitation, California Government Code Section 65009 and/or California Public Resources Code Section 21177, if you wish to challenge in court any of the above decisions (regarding planning, zoning and/or environmental decisions), you may be limited to raising only those issues you or someone else raised at the public hearing(s) described in this notice/agenda, or in written correspondence delivered to the City at, or prior to, this public hearing.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call (916) 478-3620. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

For more information: Planning Commission Secretary (916) 478-3620 or [skyles@elkgrovecity.org](mailto:skyles@elkgrovecity.org)

**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 with  
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.

*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 1 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.
  - (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 8.5. 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, except as provided in paragraph (13) of subdivision (c).

(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.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) “Permit” means the document issued by the enforcement agency that authorizes a person to operate a food facility or cottage food operation.

(b) “Registration” shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

## CHAPTER 11.5. COTTAGE FOOD OPERATIONS

114365. (a) (1) (A) A “Class A” cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local enforcement agency. The self-certification checklist shall verify that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.

(iii) Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.

(v) All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.

(vi) Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.

(B) (i) The department shall post the requirements described in subparagraph (A) on its Internet Web site.

(ii) The local enforcement agency shall issue a registration number to a “Class A” cottage food operation that meets the requirements of subparagraph (A).

(C) (i) Except as provided in (ii), a “Class A” cottage food operation shall not be subject to initial or routine inspections.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency may access, for inspection purposes, the registered area of a private home 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 has violated this chapter.

(iii) Access under this subparagraph is limited to the registered area and solely for the purpose of enforcing or administering this chapter.

(iv) A local enforcement agency may seek recovery from a “Class A” cottage food operation of an amount that does not exceed the local enforcement agency’s reasonable costs of inspecting the “Class A” cottage food operation for compliance with this chapter, if the “Class A” cottage food operation is found to be in violation of this chapter.



(2) (A) A “Class B” cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A “Class B” cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed “Class B” cottage food operation and its method of operation conform to this chapter.

(C) Except as provided in this subparagraph, a “Class B” cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(i) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home 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 has violated this chapter.

(ii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.

(D) (i) A “Class B” cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the “Class B” cottage food operation is permitted.

(ii) A county may agree to allow a “Class B” cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except

that a cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes all of the following:

(1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.

(2) The washing, sanitizing, and drying of hands and arms.

(3) Water used as an ingredient.

(d) A person who prepares or packages cottage food products shall complete a food processor course instructed by the department to protect the public health within three months of becoming registered. The course shall not exceed four hours in length. The department shall work with the local enforcement agency to ensure that cottage food operators are properly notified of the location, date, and time of the classes offered.

(e) A cottage food operation shall properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

(1) The words “Made in a Home Kitchen” in 12-point type on the cottage food product’s primary display panel.

(2) The name commonly used for the food product or an adequately descriptive name.

(3) The name of the cottage food operation which produced the cottage food product.

(4) The registration or permit number of the “Class A” or “Class B” cottage food operation, respectively, which produced the cottage food product and, in the case of a “Class B” cottage food operation, the name of the county of the local enforcement agency that issued the permit number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation. A cottage food product shall not be potentially hazardous food, as defined in Section 113871.

(b) This list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:

(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.

(12) Nut mixes and nut butters.

(13) Popcorn.

(14) Vinegar and mustard.

(15) Roasted coffee and dried tea.

(16) Waffle cones and pizelles.

(c) (1) The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list. Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

114365.6. (a) The State Public Health Officer shall provide technical assistance, and develop, maintain, and deliver commodity-specific training related to the safe processing and packaging of cottage food products to local enforcement agencies.

(b) Local enforcement agencies may collect a surcharge fee in addition to any permit fees collected for "Class B" cottage food operations. The surcharge fee shall not exceed the reasonable costs that the department incurs through the administration of the training described in subdivision (a) to protect the public health. The surcharge fees collected shall be transmitted to the department in a manner established by the department to be deposited in the Food Safety Fund. The department shall use the surcharge fees only to develop and deliver the training described in subdivision (a) to local enforcement agency personnel on an ongoing basis.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(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.

O



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](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.



Incorporated July 1, 2000

8401 Laguna Palms Way  
Elk Grove, California 95758

CITY OF ELK GROVE

Telephone: (916) 683-7111  
Fax: (916) 627-4400  
www.elkgrovecity.org

## City of Elk Grove – City Council NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that on **Wednesday, January 23, 2013**, at the hour of **6:00 p.m.**, or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matter:

### **COTTAGE FOOD OPERATIONS/HOME OCCUPATIONS– CITY-INITIATED ORDINANCE**

The proposed City-initiated amendments to Title 23 (Zoning) of the Elk Grove Municipal Code would allow cottage food operations (which includes sales) in residential neighborhoods and zoning districts through the City's Home Occupation provisions consistent with the requirements of State law. In addition, the proposed amendment would delete the requirements for both a home occupation permit and business license consistent with Elk Grove City Council direction. Additionally, a new definition of "Cottage Food Operations" would be added.

LOCATION/APN: Citywide  
ZONING: N/A  
ENVIRONMENTAL: The proposed amendments are not a "project" as defined by the California Environmental Quality Act under the General Rule exemption (Section 15061 (b)(3), Title 14 of the California Code of Regulations)

Information or questions regarding this item should be referred to: Sarah Kirchgessner, (916) 478-3649; or to the office of Development Services – Planning, 8401 Laguna Palms Way, Elk Grove, CA, 95758. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the close of the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

**This meeting notice is provided pursuant to Section 23.14.040 of Title 23 of the Elk Grove Municipal Code.**

Dated/Published: January 11, 2013

JASON LINDGREN  
CITY CLERK, CITY OF ELK GROVE

#### ADA COMPLIANCE STATEMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.