

## STAFF REPORT

**DATE:** March 19, 2013

**TO:** City Council

**FROM:** Ken Hiatt, Director of Community Development & Sustainability  
Bob Wolcott, Principal Planner  
Tom Callinan, Building & Planning Technician

**SUBJECT:** PA #12-75, Zoning Ordinance Amendment #2-12; Update Home Occupations Ordinance to Allow Cottage Food Operations

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### **Recommendation**

Staff recommends that the City Council:

1. Determine that the proposed Zoning Ordinance Amendment is statutorily exempt from CEQA per section 15061(b)(3) as adoption of the ordinance will not have a significant effect on the environment; and
2. Introduce the proposed Zoning Ordinance Amendment to allow Cottage Food Operations (Attachment 1).

The Planning Commission also recommends the approval of the proposed Zoning Ordinance Amendment.

### **Project Summary**

Recently approved Assembly Bill No. 1616, the California Homemade Food Act, allows for Cottage Food Operations in residential districts effective January 1, 2013. A Cottage Food Operation (CFO) is an enterprise at a private home where low-risk foods are prepared or packaged for public consumption. Assembly Bill (AB) 1616 requires local jurisdictions to allow CFOs in residential dwellings.

Home businesses are currently permitted in Davis as an accessory use to a residence, subject to the provisions in the Home Occupations Ordinance, section 40.26.150. The Home Occupations Ordinance allows for home-based businesses that do not change the appearance or conditions of a residence or neighborhood. CFOs are home businesses and are therefore subject to this Ordinance. The existing ordinance contains specific criteria for home occupations, most of which is consistent with the provisions of AB 1616. The proposed zoning updates are to provide greater consistency between State and local laws related to CFOs.

### **Proposed Ordinance Amendment**

The proposed amendment would:

1. Allow CFOs to have direct sales from the home.
2. Exempt CFOs from the maximum allowable floor area of the home.
3. Exempt CFOs from restrictions on utilities and community facilities.

4. Adopt language consistent with AB 1616 for number of employees allowed in a home business.
5. Specify that parking shall meet residential norms.
6. Recognize permitted residential uses in non-residential zones.
7. Define “Cottage Food Operation” in the zoning ordinance.

#### **Fiscal Impact**

Potential changes in revenue related to sales tax and business license fees depending on the number of CFOs in the Davis community.

#### **Public Notice**

Notice for the City Council hearing was posted in the Davis Enterprise on March 7, 2012. Staff has not received any comments in response to the meeting notice.

#### **Environmental Analysis**

Staff and the City Attorney have determined that this ordinance amendment is exempt from CEQA pursuant to section 15061(b)(3) in that the ordinance amendment in question would not have a significant effect on the environment. This is primarily because traffic and parking are required to remain within the norm for a residential district or residential use. The CFO, as a home occupation, is required to be in keeping with the existing residential character of the dwelling and neighborhood. The purpose of the proposed ordinance amendment is to comply with AB 1616, which is partially intended to help reduce environmental impacts.

After the ordinance amendment takes effect, individual CFO home-occupation applications will undergo ministerial planning review, which is statutorily exempt from CEQA pursuant to section 15268(a), Ministerial Projects. Home-occupation applications are reviewed concurrent with business license applications subject to the criteria in the Home Occupations Ordinance.

#### **Project Description**

The proposed ordinance amendment is intended to ensure consistency between AB 1616 and the City of Davis Home Occupations Ordinance. AB 1616 states that the City may only prescribe reasonable standards for “**spacing and concentration, traffic control, parking, and noise control**” for homes with a CFO. The Home Occupations Ordinance contains several existing standards consistent with these subject areas. However, the Home Occupations Ordinance also contains standards that fall outside of what AB 1616 allows the City to regulate for CFOs. Therefore, the ordinance amendment would exempt CFOs from the following three requirements of the Home Occupations Ordinance (numbered as per the ordinance):

- (3) *No direct sales of products or merchandise from the home.*
- (7) *No more than twenty-five percent of the area of one floor of the residence to be used for such purposes.*
- (9) *There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.*

AB 1616 does not allow local government to impose requirements such as those listed above. However, the requirements above will remain in effect for all home businesses except CFOs. The definition of “home occupation” in the zoning ordinance ensures that a CFO will be limited to an “*accessory use of the residential dwelling unit*” and “*be clearly incidental and secondary to the primary use.*” (Attachment 5)

Three additional updates to the Home Occupations Ordinance are proposed to further ensure consistency with AB 1616 and to clarify the City’s requirements. Additional revisions are as follows:

- Alter requirement (1) that restricts the number of employees allowed for home businesses. The existing Home Occupations Ordinance allows for, “*one additional non-familial employee in addition to the resident family*”, whereas AB 1616 allows for, “*one full time equivalent employee, not including family members*”. The ordinance would be amended to adopt the language of AB 1616.
- Clarify requirement (4) to add that Home Occupations “*shall not generate ...**parking needs** beyond the normal to the residential district.*” AB 1616 allows the City to prescribe reasonable parking standards for CFOs. Staff proposes to include ‘parking needs’ in the ordinance as a point of clarification for home occupations.
- Specify that home occupations are not only allowed in residential districts but also in residential dwelling uses that occur in other zoning districts. This point of clarification occurs in the opening paragraph that explains the purpose of the Home Occupations Ordinance.

The revised language better articulates the intent of the requirements while increasing consistency with AB 1616. The proposed ordinance is attached in its entirety with the proposed revisions underscored. (Attachment 2)

Staff has also proposed adding a brief definition of “Cottage Food Operation” to the zoning definitions, section 40.01.010. The proposed definition reads as follows:

**Cottage food operation.** An enterprise at a private home where low-risk food products are prepared or packaged for sale to consumers, as defined in Section 113758 of the Health and Safety Code. Low-risk foods are defined as “non-potentially hazardous” in that they do not require refrigeration to keep them safe from bacterial growth that could make people sick. A list of approved cottage food categories is maintained on the California Department of Public Health’s website. (Attachment 3, page 2)

### **Background and Analysis**

Staff has been working with the City Attorney to assess the need for adopting new standards related to CFOs. As of January 1, 2013 AB 1616 limits the City’s authority over CFOs by mandating non-discretionary approval and allowing only certain reasonable standards to be adopted. Therefore, the City Attorney recommended exempting CFOs from particular home occupation standards deemed too restrictive pursuant to AB 1616. Staff believes that the

remaining standards in the Home Occupations Ordinance that would still apply to CFOs will be sufficient to mitigate potential zoning related concerns that arise.

The California Homemade Food Act represents a significant change for food industry regulations in California. However, the City will have a limited role in administering this new legislation in that Yolo County Environmental Health will be responsible for permitting and inspecting food establishments and facilities such as CFOs. The City primarily needs to bring its policies for home business into compliance as proposed in this report, and implement a zoning approval process for CFOs. Staff will continue to work in concert with the Environmental Health Department which has provided information regarding the new requirements, including those in the attached FAQ. (Attachment 3)

### **Administrative Procedure**

Zoning applications for home businesses are triggered via business license applications. Staff would utilize the existing zoning application forms and procedures to approve CFOs. Fees are required for business licenses but no additional fee is currently required to approve the zoning for a home business. The use of existing procedures will avoid the need for additional fees for CFOs. Planning staff will verify compliance with AB 1616 by requiring a Health permit number or registration number on the home business application form.

### **Consistency with General Plan Policies**

Cottage Food Operations are consistent with General Plan policies, including but not limited to, the following:

- Develop a broad range of services and businesses to meet the daily needs of Davis citizens for ... shopping. (Vision 7, Broad Range of Services and Businesses)
- Promote alternative transportation modes such as bicycling, walking... (Vision 8, Neighborhood-Oriented Transportation System)
- Increase walking and the use of non-polluting forms of transportation, including bicycles. (Goal MOB 3)
- Allow home occupations ...by right where appropriate provided that the home occupation is compatible with the surrounding neighborhoods and does not cause significant negative impacts on surrounding neighborhoods. (Policy LU A.4)
- Develop policies and regulations that allow home occupations..., provided they are compatible with surrounding neighborhoods and do not cause significant negative impacts. (Action LU 2.1j)

### **Planning Commission Recommendation**

On December 19, 2012, the Planning Commission voted 7-0 to recommend City Council approval of Zoning Ordinance Amendment #2-12, subject to minor edits from Commission members intended to improve the clarity of the ordinance. The Commission's suggestions have been incorporated in the Zoning Ordinance Amendment.

The Planning Commission suggested that the CEQA determination include Section 15268(a). Staff and the City Attorney have determined that Section 15061(b)(3), regarding projects with less than significant effects, applies to the Zoning Ordinance Amendment. Staff finds that the

suggested Section 15268(a), regarding ministerial projects, will apply to staff's review of individual CFO applications after the Ordinance Amendment takes effect.

**Conclusion**

The California Homemade Food Act is intended to provide opportunities for small businesses, jobs, economic growth, healthy food, and locally produced products. In view of that, the new law does not allow local governments to prohibit or over-regulate CFOs. Therefore, the City must allow Cottage Food Operations through a ministerial process. Staff believes that the proposed ordinance amendment accomplishes this objective while regulating CFOs to a reasonable extent pursuant to AB 1616. The City Attorney has reviewed the proposed changes and concurs that the proposed ordinance amendment meets the intent of the new state law.

Staff will monitor the application of this ordinance and any potential issues that arise. If necessary, staff will return to the Planning Commission and City Council to consider further policy and ordinance changes.

**Attachments**

1. Proposed Ordinance Amendment
2. Existing Home Occupations Ordinance with Proposed Amendments Underscored
3. California Homemade Food Act - FAQ
4. Assembly Bill 1616 Excerpts
5. Relevant Zoning Definitions, Including Proposed Definition of "Cottage Food Operation"

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS AMENDING SECTION 40.26.150 AND SECTION 40.10.010 OF THE CITY OF DAVIS MUNICIPAL CODE REGARDING HOME OCCUPATION USES**

WHEREAS, the City of Davis currently permits and regulates home occupation uses under Section 40.26.150 and as defined in Section 40.01.010 of the Davis Municipal Code; and

WHEREAS, the Legislature recently adopted AB 1616 regarding “cottage food operations”; and

WHEREAS, applicable to the City, AB 1616 requires the City to allow cottage food operation uses as a permitted use in residential zones and residential dwellings permitted in other zones, or with the issuance of a ministerial permit; and

WHEREAS, if the City requires cottage food operations to obtain a permit to operate, the City may only condition the issuance of that permit on “reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes”; and

WHEREAS, the City wishes to regulate cottage food operations through its home occupation permit scheme subject to the requirements of AB 1616; and

WHEREAS, the City Council wishes to ensure the City complies with AB 1616 by exempting cottage food operations from certain requirements of its home occupation ordinance; and

WHEREAS, the City Council expressly finds and determines that AB 1616 does not limit or otherwise affect the City’s ability to impose reasonable sign regulations on all uses within the City subject to established constitutional requirements; and

WHEREAS, as this ordinance will modify the permitted uses of property, the Planning Commission conducted a public hearing on December 19, 2012 to consider the ordinance and the City provided notice of all public hearings on the ordinance as required by law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 40.26.150 of the Davis Municipal Code is hereby amended to read in full as shown on Exhibit A, incorporated by this reference.

SECTION 2. Section 40.01.010 is hereby amended to add the following definition, incorporated by this reference: “**Cottage food operation.** An enterprise at a private home where low-risk food products are prepared or packaged for sale to consumers, as defined in Section 113758 of the Health and Safety Code. Low-risk foods are defined as “non-potentially hazardous” in that they do not require refrigeration to keep them safe from bacterial growth that

could make people sick. A list of approved cottage food categories is maintained on the California Department of Public Health’s website.”

SECTION 3. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

SECTION 4. The Mayor shall sign this Ordinance and the City Clerk shall cause the same or a summary of the same to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated in the City.

SECTION 5. This ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 6. As required by Section 40.36.070 of the Davis Municipal Code, the City Council hereby finds and determines that:

- (a) That the proposed ordinance is in general conformance with the City’s general plan.
- (b) That the public necessity, convenience and general welfare require the adoption of the proposed ordinance.
- (c) That the proposed Zoning Ordinance Amendment is exempt from CEQA per section 15061(b)(3) as adoption of the ordinance will not have a significant effect on the environment, and is categorically exempt per section 15301 as adoption of the ordinance is permitting an operation of a structure involving negligible expansion of use.

INTRODUCED on the \_\_\_ day of \_\_\_\_\_, 2013, and PASSED AND ADOPTED by the City Council of the City of Davis on the \_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

Joseph F. Krovoza  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk

## EXHIBIT A

### **40.26.150 Home occupations.**

The purpose of the home occupations provisions is to permit the conduct of a business in residential districts and residential uses in other districts, and is limited to those uses which may be conducted within a residential dwelling without in any way changing the appearance or conditions of the residence and neighborhood. (Also see definition per zoning ordinance, Section 40.01.010).

- (a) **Criteria.** The following criteria shall be employed by the community development and sustainability director to determine a valid home occupation.
- (1) No employment of help other than the members of the resident family or household and no more than one assisting full time equivalent employee. No more than one part-time employee from outside the household shall be working at any one time.
  - (2) No external use of material or equipment not recognized as being part of the normal practices in the residential district.
  - (3) No direct sales of products or merchandise from the home.
  - (4) The use shall not generate pedestrian or vehicular traffic or parking needs beyond the normal to the residential district.
  - (5) It shall not involve the use of commercial vehicles for delivery of materials to or from the premises.
  - (6) The home occupation shall not involve the use of advertising signs on the premises except that one nameplate (name/occupation only) is permitted not to exceed one-half square foot in area. The nameplate is to be located flat against the building wall only.
  - (7) No more than twenty-five percent of the area of one floor of the residence shall be used for such purposes.
  - (8) In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs or the emission of sounds, noises, or vibrations.
  - (9) There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.
  - (10) No storage or display of materials, goods, supplies or equipment related to the operation of a home occupation shall be visible from outside the premises.
  - (11) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates



visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

(12) Persons with demonstrated physical handicaps may be permitted special review by the planning commission. The applicant may request waiving of one or more, or a portion thereof, of the above requirements per Section 40.26.150(1) through (9). This special request shall be reviewed by the planning commission at a public hearing, involving the notification of property owners within one hundred feet of subject property. In reviewing the request, the planning commission shall consider any waivers based solely on the applicant's physical inability to function within the requirements of Section 40.26.150(1) through (9).

(13) In cases where the community development and sustainability director is undecided about the compatibility of the use with the neighborhood, the director may issue temporary approval for a specific time period. After the stated time period, the community development and sustainability director shall review this use, and the director shall consider adjacent property owner comments and any other information regarding the conduct and operation of the use. After such review, the community development and sustainability director may approve such use permanently but must notify originally surveyed property owners.

(14) A cottage food operation as defined in Section 113758 of the Health and Safety Code shall be a permitted home occupation provided it complies with all applicable provisions of this section and the Health and Safety Code, as it may be amended. Any applicant for a home occupation permit under this subsection shall demonstrate he or she operates a qualifying cottage food operation. Notwithstanding the foregoing, subsections (a)(3), (7) and (9) above shall not apply to a cottage food operation.

(b) **Exclusions.** The following uses are examples of those uses which are specifically prohibited:

- (1) Schools of any size or type;
- (2) Boarding or lodging house as defined in this chapter;
- (3) Antique shop;
- (4) Barber shop, beauty parlor (except hair cutting by appointment only and by not more than one of the occupants of the premises; provided, that not more than one hundred square feet is devoted to such use);
- (5) Funeral chapel or home, mortuaries;
- (6) Gift shop;
- (7) Medical or dental clinic or hospital, animal hospital or grooming facilities;
- (8) Day care centers or nursery schools;
- (9) Private clubs;
- (10) Restaurants;
- (11) Auto or motorcycle, boat or trailer, similar type repair shops;
- (12) Kennels;
- (13) Office of a health care provider when special mechanical equipment is required.

(c) **Application and procedure.** Application for a home occupation shall be made to the community development and sustainability department on a form provided by the community development and sustainability department, and shall be accompanied by the appropriate filing fee.

The decision of the community development and sustainability department shall be final unless an appeal is filed within fifteen days of the decision. Any appeal shall be reviewed by the planning commission.

(d) **Voiding of permit.** The community development and sustainability director may void any home occupation for noncompliance with the criteria set forth in this section.

(e) **Time limit.** All home occupations shall be valid for a period of two years from initial date of approval.

Request for a time extension shall be submitted to the community development and sustainability department in writing, accompanied by the appropriate fee and one month prior to expiration.

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Existing Home Occupations Ordinance with Proposed Amendments Underscored

**40.26.150 Home occupations.**

The purpose of the home occupations provisions is to permit the conduct of a business in the residential districts and residential uses in other districts, and is limited to those uses which may be conducted within a residential dwelling without in any way changing the appearance or conditions of the residence and neighborhood. (Also see definition per zoning ordinance, Section 40.01.010).

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(1) No employment of help other than the members of the resident family or household and no more than one assisting ~~non-familial~~ full time equivalent employee. No more than one part-time employee from outside the household shall be working at any one time.

(2) No external use of material or equipment not recognized as being part of the normal practices in the residential district.

(3) No direct sales of products or merchandise from the home.

(4) The use shall not generate pedestrian or vehicular traffic or parking needs beyond the normal to the residential district.

(5) It shall not involve the use of commercial vehicles for delivery of materials to or from the premises.

(6) The home occupation shall not involve the use of advertising signs on the premises except that one nameplate (name/occupation only) is permitted not to exceed one-half square foot in area. The nameplate is to be located flat against the building wall only.

(7) No more than twenty-five percent of the area of one floor of the residence shall be used for such purposes.

(8) In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs or the emission of sounds, noises, or vibrations.

(9) There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.

(10) No storage or display of materials, goods, supplies or equipment related to the operation of a home occupation shall be visible from outside the premises.

(11) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

(12) Persons with demonstrated physical handicaps may be permitted special review by the planning commission. The applicant may request waiving of one or more, or a portion thereof, of the above requirements per Section 40.26.150(1) through (9). This special request shall be reviewed by the planning commission at a public hearing, involving the notification of property owners within one hundred feet of subject property. In reviewing the request, the planning commission shall consider any waivers based solely on the applicant's physical inability to function within the requirements of Section 40.26.150(1) through (9).

(13) In cases where the community development and sustainability director is undecided about the compatibility of the use with the neighborhood, the director may issue temporary approval for a specific time period. After the stated time period, the community development and sustainability director shall review this use, and the director shall consider adjacent property owner comments and any other information regarding the conduct and operation of the use. After such review, the community development and sustainability director may approve such use permanently but must notify originally surveyed property owners.

(14) A cottage food operation as defined in Section 113758 of the Health and Safety Code shall be a permitted home occupation provided it complies with all applicable provisions of this section and the Health and Safety Code, as it may be amended. Any applicant for a home occupation permit under this subsection shall demonstrate he or she operates a qualifying cottage food operation. Notwithstanding the foregoing, subsections (a)(3), (7) and (9) above shall not apply to a cottage food operation.

(b) **Exclusions.** The following uses are examples of those uses which are specifically prohibited:

- (1) Schools of any size or type;
- (2) Boarding or lodging house as defined in this chapter;
- (3) Antique shop;
- (4) Barber shop, beauty parlor (except hair cutting by appointment only and by not more than one of the occupants of the premises; provided, that not more than one hundred square feet is devoted to such use);
- (5) Funeral chapel or home, mortuaries;
- (6) Gift shop;
- (7) Medical or dental clinic or hospital, animal hospital or grooming facilities;
- (8) Day care centers or nursery schools;
- (9) Private clubs;
- (10) Restaurants;
- (11) Auto or motorcycle, boat or trailer, similar type repair shops;
- (12) Kennels;
- (13) Office of a health care provider when special mechanical equipment is required.

(c) **Application and procedure.** Application for a home occupation shall be made to the community development and sustainability department on a form provided by the community development and sustainability department, and shall be accompanied by the appropriate filing fee.

The decision of the community development and sustainability department shall be final unless an appeal is filed within fifteen days of the decision. Any appeal shall be reviewed by the planning commission.

(d) **Voiding of permit.** The community development and sustainability director may void any home occupation for noncompliance with the criteria set forth in this section.

(e) **Time limit.** All home occupations shall be valid for a period of two years from initial date of approval.

Request for a time extension shall be submitted to the community development and sustainability department in writing, accompanied by the appropriate fee and one month prior to expiration.



# 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.



**Excerpts from Assembly Bill 1616**

**Section 51035 applies to the Planning Division:**

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.

**Section 113758 of the Health and Safety Code defines a Cottage Food Operation and the two levels of operations:**

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).

**Direct sales and indirect sales are also defined under sec 113758:**

(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.

**ZONING DEFINITIONS, SECTION 40.01.010**

Existing definitions are provided below for “Accessory use” and “Home occupation” as well as the proposed definition for “Cottage food operation”:

**Accessory use.** A use subordinate to the principal use on the same lot and serving a purpose customarily incidental to the principal use.

**Home occupation.** A home occupation is an accessory use of a residential dwelling unit which shall be conducted entirely within the dwelling. It shall be conducted by the inhabitants of the dwelling, and one non-familial employee, if desired. A home occupation shall be clearly incidental and secondary to the primary use of the residential dwelling, shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part, shall create no additional traffic or require additional parking space, and shall not have outdoor storage of materials, equipment or supplies visible from outside the premises other than materials, equipment and supplies necessary for domestic purposes.

**Cottage food operation.** An enterprise at a private home where low-risk food products are prepared or packaged for sale to consumers, as defined in Section 113758 of the Health and Safety Code. Low-risk foods are defined as “non-potentially hazardous” in that they do not require refrigeration to keep them safe from bacterial growth that could make people sick. A list of approved cottage food categories is maintained on the California Department of Public Health’s website.