

Attachment B: Excerpt of the Draft Minutes from the April 4, 2013 Board of Zoning Adjustments Meeting,

Item 7A: Miscellaneous

Information on proposed Zoning Code amendments to allow for Cottage Food Operations (CFO) in a Residential Dwelling in all Zoning Districts

Secretary Barros pointed out that the California Homemade Food Act, AB1616 took effect on January 1, 2013; however, staff became aware of it as late as December 2012 through Alameda County training. She explained that the law permits residents of private dwellings, which includes apartments, to prepare and sell certain foods and requires all jurisdictions to allow these Cottage Food Operations (CFOs), regulating them only in terms of:

- Spacing and concentration;
- Traffic control and parking; and
- Noise control.

Local jurisdictions may require CFOs to obtain business licenses and zoning approval. Permits would be issued by Alameda County. The self-certifying County permitting process would regulate the operation of the home kitchen, including the prohibition of food preparation with children and pets in the kitchen. CFO permits also limit the types products allowed, no meats, for example, and employee policy. The law allows one additional employee, and does not consider family members employees.

Planner Barros explained that the proposed amendment to the Zoning Code included with her staff report incorporates existing elements from various other sections of the Zoning Code, including regulations relating to Home Occupation and Large Family Daycare. The spacing and concentration provision would require at least 300 feet between CFOs, and one off-street employee parking space would be required for each CFO. She said that CFOs would not be allowed to use garages to meet this requirement, or to convert garages to kitchen use.

In response to member questions about signage, Planner Barros said that unless the CFO were to engage in sales of products from the home, signs probably would not be an issue. In any cases where signs are posted, she said, they would have to comply with provisions already in the Zoning Code.

Member Daly asked whether the spacing requirement would expose the City to any legal liability if one homeowner obtained a CFO permit that precluded someone else from doing the same thing. **Ms. Faught** said no, because the City has the right to regulate CFOs on spacing and concentration.

Member Daly stated that he actually would favor more space between CFOs rather than less – perhaps 500 feet instead of 300 feet, because he doesn't want to see neighborhoods transforming into mixed-use commercial districts.

Chair Houston stated that she didn't think the concentration requirement should be so restrictive as to prevent several neighboring homes from producing jams, cakes or cookies, particularly around the holidays.

Planner Barros clarified that holiday baking or jam making might not be affected by the CFO

regulations, as these pertain to those that chose to obtain a formalize a commercial business via a CFO permit and a business license.

Ms. Faught, noting that 32 other states have enabling legislation for CFOs on their books, described the background of AB1616, explaining that it grew out of a case where a local pizza maker wanted to legalize his growing home-based business and was framed in response to:

- The prevalence of obesity and growing incidence of obesity-related diseases
- A growing movement to connect food to local communities, small businesses and environmental sustainability by supporting urban agriculture and community-based production of so-called artisanal food products
- An interest in increasing opportunities for entrepreneur development through small businesses to strengthen local economies and help people supplement household incomes (without dealing with the expense and logistics involved in obtaining commercial kitchen space)

Member Palma noted that AB 1616 also responds to changing neighborhoods, which have evolved from the old bedroom-community model to becoming more interactive, reflecting increased interest in locally prepared and processed foods and in small home-based businesses.

Vice Chair Mendieta inquired about the inspection procedure. **Planner Barros** said the City's enforcement role would be confined to issues of noise, parking, traffic and concentration/spacing. **Member Palma** described the Alameda County Health Department situation, noting that as a practical matter inspections and enforcement would be limited due to staff constraints. In most cases, she said, enforcement would be complaint-driven.

Several BZA members expressed concern that CFOs might make existing parking problems even worse. In response to these concerns, Planner Barros suggested adopting a provision similar to what the current Zoning Code applies to Large Family Day Care operators. It requires a minimum 32 feet of lot frontage for on-street parking.

With the addition of the provision Planner Barros proposed, expressly noting that the requirement could be waived by via administrative exception, BZA members agreed that the CFO regulations discussed would be acceptable. Planner Barros said she would present their recommendation to the Planning Commission at its meeting on April 18, 2013.

In response the **Vice Chair Mendieta's** request, Planner Barros indicated that she would come back to report to the BZA after one year to advise how the regulations are working in practice and how many CFO permits have been issued.

In response to **Chair Houston**, Planner Barros said that so far only one resident has obtained a permit and license for a CFO, a man who apparently bakes cookies and decided he would rather sell them than keep giving them away.