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**Title:** Staff Report for Proposed Amendments to the City of San Leandro Zoning Code to Implement New State Law AB1616, to Create Regulations for Cottage Food Operations by Adding a Definition for Cottage Food Operations in Article 3, Section 1-304; to Allow for Such Use in all Zoning Districts within a Residential Unit in Article 16 by Adding Section 4-1688 Cottage Food Operations; to Add Cottage Food Operations Parameters to the Administrative Exception Process in Article 5, Section 2-574; and, to Create a Parking Standard Whereby One Off-Street Employee Parking Space Is Required for a Cottage Food Operation in Article 17, Section 4-1704

**Sponsors:** Cynthia Battenberg

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment A: Excerpt of the Draft Minutes of the Planning Commission meeting of April 18 2013, 2. Attachment B: Excerpt of the Draft Minutes of the Board of Zoning Adjustments meeting of April 4 2013, 3. Attachment C: California Conference of Directors of Environmental Health Fact Sheet on AB 1616, 4. Attachment D: Alameda County Department of Environmental Health Registration-Permitting Form, 5. Attachment E: Alameda County Department of Environmental Health Self-Certification Checklist, 6. PowerPoint 3A Public Hearing 2013 0520.pdf

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Staff Report for Proposed Amendments to the City of San Leandro Zoning Code to Implement New State Law AB1616, to Create Regulations for Cottage Food Operations by Adding a Definition for Cottage Food Operations in Article 3, Section 1-304; to Allow for Such Use in all Zoning Districts within a Residential Unit in Article 16 by Adding Section 4-1688 Cottage Food Operations; to Add Cottage Food Operations Parameters to the Administrative Exception Process in Article 5, Section 2-574; and, to Create a Parking Standard Whereby One Off-Street Employee Parking Space Is Required for a Cottage Food Operation in Article 17, Section 4-1704

**SUMMARY AND RECOMMENDATIONS**

Staff proposes amendments to the City Zoning Code related to Cottage Food Operations, a new use that would allow for limited commercial food preparation in residential dwellings, subject to licensing and regulation by the Alameda County Environmental Health Department and the City of San Leandro.

The proposed amendments make the following changes to the Zoning Code: Amends Article 3 Definitions, to create a definition of "Cottage Food Operations"; adds a new section to Article 16 Development Regulations, to create regulations for Cottage Food Operations that allow such use in all zoning districts within a residential unit; amends Article 5, Section 2-574 Administrative Exceptions, to add the option of an exception to the Cottage Food Operation parameters as an Administrative Exception process; and adds "Cottage Food Operations" to the parking requirement table in Article 17, Off-Street Parking and Loading Regulations, to create a parking standard whereby one off-street employee parking space is required for a Cottage Food Operation.

Staff recommends that the City Council take public testimony on the proposed amendments; adopt the CEQA findings for exemption; and adopt the proposed Zoning Code Amendments as recommended by the Planning Commission on April 18, 2013.

## BACKGROUND

In September 2012, Governor Jerry Brown signed a new law by Assemblyman Mike Gatto (D-Los Angeles) - AB1616 - allowing Californians to make and sell certain non-hazardous foods out of their kitchens subject to the oversight of county health departments (for health code issues) and of local jurisdictions (for zoning permits and business licensing). The new law mandates that local jurisdictions allow residents to obtain a business license to operate a home-based food business known as a Cottage Food Operation.

In introducing the new bill, Assemblyman Gatto made the following Author's Statement regarding the need for legalized home-based food businesses:

*AB 1616 was introduced after an article featuring a constituent's popular home bread-making business appeared in the Los Angeles Times in May 2011. A short time thereafter his business was shut down by the public health official because under current (editor's note: as of mid-2012) California law, a person may not use the kitchen in a private residence to produce any foods to be sold or traded for public consumption. The national movement to "homemade" foods and products - also known as "cottage foods", "artisanal foods", "slow foods" and products of "urban agriculture" - reflects a wish to increase the availability of healthier and locally processed foods for our communities. Such products typically include organic and natural ingredients that are less artificially refined or processed. Thirty-one states now have laws that permit the in-home production and distribution of homemade foods (for example, breads, tortillas, dry roasted nuts and legumes, granola, churros, jams, jellies and other products). During these difficult economic times, California should do everything possible to allow individuals to provide for their families and assist with our economic recovery, and home-based food production can allow micro-entrepreneurs to prosper during times of otherwise limited economic opportunity by meeting the desires of local consumers.*

In December 2012, the Planning Division was notified by the Alameda County Environmental Health Department that the new State of California regulations would go into effect as of January 1, 2013, pursuant to AB1616. Details of the new State law are included in the attached California Conference of Directors of Environmental Health Fact Sheet on AB1616 Cottage Food Operations.

## Analysis

Prior to the adoption of AB1616, preparation of food in a home kitchen as a commercial business was not allowed under either State or local regulations. To provide for this new use, the City of San Leandro Zoning Code must be amended to include both a new definition of the Cottage Food Operation use, as well as create regulations for that use to function without undue impact to other residential dwellings in the city.

### Cottage Food Operation Definition

In the revised State of California Health and Safety Code Section 113758, a Cottage Food Operation is defined as a home-based enterprise where low-risk food products are prepared or packaged for sale and consumption to consumers. (A "private home" is any dwelling, including apartment or other leased space where individuals reside.)

Examples of food categories allowed in Cottage Food Operations are:

- baked goods (without cream, custard or meat fillings);
- candy, such as brittle and toffee;
- chocolate-covered nuts or dried fruit;
- dried fruit;
- dry baking mixes;
- fruit pies, fruit empanadas and fruit tamales;
- granola, cereals, and trail mixes;
- honey and sweet sorghum (molasses) syrup;

- certain jams, jellies, preserves and fruit butters;
- nut mixes and nut butters;
- popcorn;
- vinegar and mustard;
- roasted coffee and dried tea; and
- waffle cones and pizzelles.

The Health and Safety Code also defines two types of Cottage Food Operations: Class A, which allows for direct sales to consumers, both at home or in open markets such as a farmers' market; and Class B, which allows for both direct sales as well as indirect sales, such as through a market or other third-party.

Staff proposes to add a new definition to the Zoning Code, Article 3 Definitions, for Cottage Food Operations. The definition refers back to the State of California Health and Safety Code, to allow for any refinement in the parameters of food types to conform to current State law on the subject, as follows:

1-304 Cottage Food Operation. A home-based food enterprise that is operated by a resident, and that has not more than one full-time equivalent cottage food employee, not including an immediate 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 and/or indirect sale to consumers pursuant to this part. A cottage food operation includes both "Class A" and "Class B" cottage food operations, as defined in section 113758 of the Health and Safety Code. Cottage food operations are regulated under section 4-1688 of the San Leandro Zoning Code.

County health departments regulate and issue licenses to home-based kitchens for Cottage Food Operations. The Alameda County Environmental Health Department's permitting process includes the prohibition of food preparation with children or pets in the kitchen. The permit also limits the types of products allowed on the list outlined above. The law allows one additional employee, and does not consider family members employees. The Alameda County Cottage Food Operation application form and self-certification checklist are included as attachments to this report, for information only.

#### Regulations Governing Cottage Food Operations

AB1616 allows local jurisdictions to regulate a Cottage Food Operation solely on the basis of traffic, parking, spacing and concentration, and noise. Currently, the Zoning Code has a series of standards that regulate the use of a residential dwelling for a home-based business (Section 2-514 Home Occupation in R Districts), and for large day care uses (Section 2-516 Large Family Day Care Homes). Staff utilized a subset of these existing regulations, subsequently modified by the Planning Commission (shown in *italics*), to select parameters that could also be applied to Cottage Food Operations, as follows:

1. Spacing. No cottage food operation shall be located within *one hundred fifty (150) feet* of any other cottage food operation, as measured from the exterior lot lines *along the property frontages*.
2. On-Street Parking. No cottage food operation shall be located upon a lot having less than thirty-two (32) feet of legally permitted parking along the frontage of the lot.
3. Employee Parking and Customer Parking Circulation Plan. The driveway of a cottage food operation may be used to provide off-street parking required by Article 17 if such use will not obstruct a sidewalk or other public right-of-way.

The Applicant shall provide the Zoning Enforcement Official with a written plan for the administration of parking and traffic operations related to the proposed cottage food operation. This plan shall include controls for vehicle circulation, drop-off and pick-up of cottage food related products and parking for the employee so that parking, loading, unloading and turning movements are compatible with the residential environment in which the cottage food operation will be located.

4. Noise Control. The level of noise in connection with the operation of a cottage food

operation shall not be persistently maintained at a level of fifty-five (55) decibels or greater, as measured from any point along or beyond the property line of the subject premises.

5. Traffic. A cottage food operation shall not create pedestrian, automobile, or truck traffic detrimental to property in the vicinity. All deliveries of materials related to a cottage food operation shall be by the U.S. Postal Service or similar carrier, or by means of vehicles customarily kept on the site by the permit holder or family members in trucks or vans of ¾-ton or less in size.

6. Parking. A cottage food operation shall not result in a reduction or elimination of any required parking space. One off-street parking space shall be provided for employees, per Article 17, Section 4-1704. Said employee parking may be uncovered and located in a driveway.

7. Vehicles. Any vehicle or vehicles used by the applicant in conjunction with the cottage food operation or with any related business activity shall be parked in a manner so as not to be visible from a public street. This limitation shall not apply to standard passenger vehicles or trucks and vans of ¾-ton or less in size.

In discussion of these proposed Zoning Code amendments with the Board of Zoning Adjustments (BZA) at its April 4, 2013 meeting, certain BZA members were concerned about the potential parking impacts that a successful operation might have on a residential neighborhood, particularly in the single-family zoning districts (see attached excerpt from the draft minutes for the April 4, 2013 BZA meeting). As such, the parking requirements for Large Family Day Care were re-introduced into the above parameters for Cottage Food Operations. By including the provision for a minimum of 32 feet of on-street parking, the BZA supported the proposed amendments. The BZA also agreed that, should certain parameters prove too difficult to obtain, an administrative process be available to allow exceptions to these regulations.

At the public hearing on April 18, 2013, the Planning Commission recommended greater flexibility for these operations to start up, per the State's intent in AB1616. The Commission proposed the following modifications to the staff-proposed regulations: reduce the separation requirement from 300 feet to 150 feet (see above italicized text); and specify that the distance would be measured along the street frontage rather than a simple radius.

In addition, the Planning Commission recommended that caveats be allowed whenever there is ample parking on a site, such as a deep driveway at a single-family residence or numerous guest parking spaces at an apartment building, or whenever the applicant declares that no sales will be conducted on the home site. These caveats would waive both the 150-foot separation and on-street parking requirements without a formal Administrative Exception. The new regulations in Article 16 were amended thus:

*D. Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation where the permit applicant declares on the application form that the cottage food operation will not be making any customer sales directly from the dwelling or property.*

*Notwithstanding the above, standards C.1 and C.2 will not apply to a cottage food operation that operates in a location where there are two or more on-site, off-street, dedicated parking spaces for guests.*

With the above flexibility built in for any Cottage Food Operation that states on their Zoning Permit application that there will be no sales from the residence, the Planning Commission recommended that the regulations be presented to the City Council as modified.

A staff survey of Alameda County jurisdictions revealed that nearly all other cities and Alameda County are not imposing any separation requirement, except for Pleasanton which is specifying a 300-foot distance between Cottage Food Operations. Therefore, staff believes that the Planning Commission proposal for the 150-foot separation with the relief of any separation rules and/or on-street parking area for those home-businesses that do not conduct sales from the site strikes a good balance between the flexibility sought by the Planning Commission and the protection of residential neighborhood character raised by the BZA.

#### Exceptions to Cottage Food Operation Regulations

Staff proposes that, in any circumstance where a particular parcel did not meet the above parameters, and where direct

sales would be proposed from the home, an Administrative Exception would be provided, whereby the neighboring residents would have a chance to make public comment and the Zoning Enforcement Official would render an administrative decision, pursuant to Section 2-574, Administrative Exceptions.

The findings for the Administrative Exception include “a determination that such exception would not be detrimental to public health, safety or welfare and would not cause undue damage, hardship, nuisance or other detriment to persons or property in the vicinity.” Staff believes that the Administrative Exception process is suited to residential-based Cottage Food Operations proposals while continuing to regulate the impacts that may be associated with such a use that might generate vehicular traffic for home-based sales.

In order to accommodate the administrative process for an Administrative Exception, the Zoning Code Section 2-574 Administrative Exceptions are proposed to be modified to include exceptions to the Cottage Food parameters Numbers 1 through 7 above. Changes to this section are shown in Exhibit A of the Ordinance attached.

### Parking

Finally, to accommodate a single employee, allowed under the new State Law for Cottage Food Operations, staff recommends adding the use “Cottage Food Operations” in the Zoning Code Section 4-1704, with the requirement of one off-street parking space. Changes to this section are shown in Exhibit A of the Ordinance attached.

### Applicable General Plan Policies

Unlike other state-mandated uses such as large-family day care or residential congregate care, the 2002 update of the General Plan did not contemplate this newly defined Cottage Food Operation use. As such, no policies exist to specifically encourage this use. However, the following broad policies in the General Plan promote live-work situations, retail diversity and job opportunities:

- **Policy 3.08 Live-Work Development** - *Provide opportunities for “live-work” development...to provide a housing resource for artists, craftspersons, and persons working from home.*
- **Policy 8.02 Retail Diversity** - *Encourage a diverse range of commercial uses in the City, offering goods and services that fully meet the needs of San Leandro residents and businesses...*
- **Policy 12.03 Job Opportunities for Residents** - *Promote opportunities for San Leandro residents to find suitable employment within the community...*

The General Plan does contemplate that changes will occur within San Leandro neighborhoods and places a great deal of emphasis on maintaining a quality environment. The following policies support the regulations on Cottage Food Operations to minimize parking, traffic, spacing and concentration, and noise impacts.

- **Policy 1.05 Home Occupations** - *Restrict home occupations in residential neighborhoods to those that have no perceptible impacts on the neighborhood.*
- **Policy 1.11 Encroachment of Incompatible Uses** - *Protect residential neighborhoods from the encroachment of incompatible non-residential uses and disruptive traffic, to the extent possible. Zoning and design review should ensure that compatibility issues are fully addressed when non-residential development is proposed near or within residential areas.*

The proposed amendments to the Zoning Code would maintain San Leandro neighborhoods through regulations to the extent allowed by state law, while creating greater opportunities for San Leandro residents to engage in innovative new employment through home-based Cottage Food Operations.

### Environmental Review

The proposed minor amendments to the Zoning Code are exempt from environmental review under Section 15061(b)(2 and 3) of the CEQA Guidelines as a minor amendment of the Zoning Code to provide for a Cottage Food Operations use in a residential dwelling unit because they will not have a significant effect on the environment and because future Cottage Food Operations uses would be exempt from CEQA review under Section 15301 Existing Facilities.

### **Board/Commission Review and Actions**

At the Board of Zoning Adjustments (BZA) meeting on April 4, 2013, the BZA reviewed the changes and provided comments related to the separation parameters. Specifically, certain BZA members believed that the 300-foot distance was not sufficient, citing concerns about the potential parking impacts that a successful operation might have on a residential neighborhood, particularly within the single-family zoning districts (see attached excerpt from the draft minutes for the April 4 BZA meeting). The BZA signaled its support for the policy, with the inclusion of the minimum 32-foot parking area along the street frontage.

As discussed above, the Planning Commission reviewed the staff proposal and made certain modifications to clarify the Cottage Food Operations modifications and to allow for greater flexibility in the separation standards and minimum on-street parking for any Cottage Food Operation that did not intend to sell products at the home (see attached excerpt from the draft minutes for the April 18, 2013 Planning Commission meeting).

### **Summary of Public Outreach Efforts**

Notification of the May 20, 2013 City Council and April 18, 2013 Planning Commission meetings included a legal ad in the Daily Review and posting of the meeting at City Hall a minimum of 72 hours in advance of the meeting dates. In addition, a courtesy notice was sent to all Neighborhood Associations listed on the City's roster. No public comments have been received as of the writing of this report.

### **Legal Analysis**

The proposed Zoning Code amendments were analyzed by the City Attorney's office and found to be in conformance with the California Government Code as well as the local General Plan and Zoning Code.

## **ATTACHMENTS**

- Attachment A: Excerpt of the Draft Minutes of the Planning Commission meeting of April 18, 2013
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