

Attachment C

Board of Supervisors Resolution of Intent No. 13-283

June 11, 2013

REF130010

Cottage Food Operations Ordinance

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Before the Board of Supervisors in and for the
County of Monterey, State of California

Resolution No. 13-283

- Resolution of the Monterey County Board of Supervisors to:)
- a. Find the project categorically exempt under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations);)
- b. Adopt a Resolution of Intent to adopt an ordinance amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 of the Monterey County Code) to classify Cottage Food Operations as a permitted use of residential property for zoning purposes;)
- c. Certify that the amendment is intended to be carried out in a manner fully in conformity with the Coastal Act; and)
- d. Direct staff to transmit the proposed ordinance to the California Coastal Commission for certification.)
- [REF130010, Cottage Food Operation Ordinance (AB 1616), Coastal Amendments, County-wide].....)

The proposed ordinance (REF130010) amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 of the Monterey County Code) to classify Cottage Food Operations as a permitted use of residential property for zoning purposes, came on for public hearing before the Board of Supervisors on June 11, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides the follows:

RECITALS

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as "cottage food operations" from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities which face limited opportunities to purchase healthy foods because of lack of transportation and therefore these residents may rely for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, provides that cities and counties shall not prohibit a cottage food operation 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. The permit issued shall be granted by the zoning administrator, upon the certification without a hearing; or

(3) Establish a discretionary permit process (i.e. Use Permit) with "reasonable standards" as noted in item #2 above.

D. In accordance with Government Code section 51035(a), the County of Monterey is choosing the first approach; the ordinance classifies a cottage food operation as a permitted use of residential property for zoning purposes and amends the existing home occupation regulations to include cottage food operations as a type of home occupation.

E. The ordinance also renumbers the definition of "cottage industry" and makes minor corrections to existing home occupation regulations.

F. Monterey County has a certified Local Coastal Program pursuant to the California Coastal Act of 1976 (Public Resources Code sections 30000 et seq.) that contains land use development regulations for the coastal areas of the County. The Local Coastal Program includes the Monterey County Coastal Implementation Plan, which is Title 20 of the Monterey County Code. This ordinance amends the Monterey Coastal Implementation Plan and will require certification by the California Coastal Commission. The proposed ordinance, which shows the proposed textual amendments via strikethrough and underline, is attached to this resolution as Exhibit -2 and incorporated herein by reference. The proposed ordinance in clean form is attached to this resolution as Exhibit -1 and incorporated herein by reference.

G. The Board finds that the ordinance is consistent with the certified Land Use Plans and the Coastal Act. The ordinance is intended to be carried out in a manner fully in conformity with the California Coastal Act.

H. Pursuant to the Coastal Act, the County may amend the certified Local Coastal Program, provided the County follows certain procedures. The procedures include: that the County's Planning Commission hold a notice public hearing and make a recommendation to the Board of Supervisors; that the Board of Supervisors hold a noticed public hearing, adopt a resolution of intent, and submit the proposed amendment to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review; and that the Board of Supervisors adopt the ordinance after the Coastal Commission takes action and confirms the action of the County. Accordingly, the ordinance will not go into effect until after subsequent formal adoption by the Board of Supervisors at a duly noticed public hearing, and it will not become operative until the California Coastal Commission's certification is final and effective.

I. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Sections 15301 and 15305 apply to the ordinance because the ordinance would establish a cottage food operation as a type of home occupation to be conducted within existing dwelling units as an accessory use of already-existing residences.

J. A public hearing on the proposed ordinance at the Planning Commission was duly noticed for March 27, 2013 in the Monterey County Weekly at least ten days prior to the hearing. On March 27, the Planning Commission continued the hearing to April 10, 2013. On April 10, 2013 the Monterey County Planning Commission conducted a public hearing on the draft ordinance and then continued the hearing to May 8, 2013 to allow for further revising of the draft ordinance. On May 8, 2013 the Monterey County Planning Commission recommended adoption of the ordinance on a vote of 9-0 with one minor change to the proposed corrections to the home occupation regulations, which change has been made in the attached ordinance.

K. On June 11, 2013, the Board of Supervisors conducted a public hearing on the proposed ordinance. Notice of the public hearing was published in the Monterey County Weekly at least ten days prior to the hearing.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Find the project categorically exempt under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations);
- b. Adopt a Resolution of Intent to adopt an ordinance, attached hereto as **Exhibit -1**, amending the Monterey County Coastal Implementation Plan, Part 1 (Title 20 of the Monterey County Code) to classify Cottage Food Operations as a permitted use of residential property for zoning purposes;
- c. Certify that the amendment is intended to be carried out in a manner fully in conformity with the Coastal Act; and
- d. Direct staff to transmit the proposed ordinance to the California Coastal Commission for certification.

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Calcagno, and carried this 11th day of June 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas and Parker


NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on June 11, 2013.

Dated: December 3, 2013
File Number: 13-0571

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By  Deputy

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Exhibit 1- to Resolution of Intent No. 13-283

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ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING
TITLE 20 (COASTAL ZONING) OF THE MONTEREY COUNTY CODE RELATING TO
COTTAGE FOOD OPERATIONS.

County Counsel Summary

This ordinance amends the Monterey County Coastal Implementation Plan (Title 20 of the Monterey County Code) to classify "cottage food operations" as a permitted use of residential property for zoning purposes. The ordinance defines cottage food operations and treats such operations as a type of home occupation. These revisions update County zoning to comply with recently enacted state law governing cottage food operations. This ordinance also renumbers the definition of "cottage industry" and makes minor corrections to existing home occupation regulations.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

A. The California State Legislature adopted Assembly Bill 1616 (AB 1616), the California Homemade Food Act, which became effective January 1, 2013, exempting home-based food businesses known as "cottage food operations" from many of the regulations that apply to traditional commercial food production by amending portions of the Health and Safety Code and Government Code.

B. The intent of the Legislature was to help address the following challenges and opportunities:

1. Create small businesses and help the economy recover and prosper by increasing the opportunities for entrepreneurial development through microenterprises that help supplement household incomes, prevent poverty and hunger, and strengthen local economies.

2. Support community-based food production (cottage foods) which may reduce obesity and obesity-related disease epidemics, especially in low income and rural communities in which residents may have limited opportunities to purchase healthy foods because of lack of transportation, which may result in residents relying for much of their shopping on fatty, processed foods sold at convenience markets and corner stores.

3. Join thirty-two other states that have passed laws that allow business entrepreneurs to use their home kitchens to prepare for-sale foods that are not potentially hazardous.

C. Government Code section 51035(a), enacted by AB 1616, provides that cities and counties shall not prohibit a cottage food operation 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; or

(3) Establish a discretionary permit process with "reasonable standards" as noted in item #2 above.

D. In accordance with Government Code section 51035(a), the County of Monterey is choosing the first approach, classifying cottage food operations as a permitted use of residential property for zoning purposes, and, accordingly, this ordinance amends the existing home occupation regulations to include cottage food operations as a type of home occupation.

E. This ordinance is categorically exempt under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations) because the ordinance establishes a cottage food operation as a type of home occupation to be conducted within existing dwelling units as an accessory use of already-existing residences.

SECTION 2. Section 20.06.215 is added to the Monterey County Code to read as follows:

20.06.215 COTTAGE FOOD OPERATION.

Cottage food operation means an enterprise that is registered or permitted by the Monterey County Environmental Health Bureau and is conducted within the registered or permitted area of a dwelling unit where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products, as defined by California Health and Safety Code Section 113758, are prepared and packaged for direct, indirect, or direct and indirect sale to consumers.

SECTION 3. Section 20.06.200 of the Monterey County Code defining the term "COTTAGE INDUSTRY" is renumbered as Section 20.06.220.

SECTION 4. Section 20.06.650 of the Monterey County Code is amended to read as follows:

20.06.650 HOME OCCUPATION.

Home occupation means a business conducted in a residential area conducted by the residents of the property. Home occupation includes a cottage food operation, as defined in Section 20.06.215. The main product of a home occupation is a service rather than goods, except in the case of a cottage food operation.

SECTION 5. Section 20.64.090 of the Monterey County Code is amended to read as follows:

20.64.090 REGULATIONS FOR HOME OCCUPATIONS.

A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which businesses of limited scale and impact may be established in residences.

B. Applicability: The provisions of this Section are applicable in all areas of the County.

C. Regulations: Home occupations may be conducted in any zoning district which allows residential use.

1. Home occupations are limited to those occupations using facilities, equipment and materials normally found in the home and within accessory structures, including but not limited to typing, seamstress or tailoring, computerized data processing, ceramics, music lessons and instrument lessons, lawn mower repair, and cottage food operations which do not interfere with the use or appearance of the home as a residence or the aesthetic character of the district.

2. No persons other than the resident and immediate family residing on site may be employed in the home occupation, except that a cottage food operation may allow up to one (1) full-time equivalent cottage food employee who does not reside on the site.

3. All facets of the home occupation must be contained in the dwelling unit or inside structures on-site that are otherwise considered to be accessory structures to a residence, except that a cottage food operation must be conducted entirely within the dwelling unit as specified by state law.

4. There shall be no production of noxious or toxic odors or fumes, nor increase in numbers or duration of noise or traffic levels above those of ordinary residential use; nor use, storage, or disposal of materials of a nature or quantity not ordinarily found in residential neighborhoods, which have the potential to endanger the health, safety or peaceful enjoyment of their property or neighborhood residence, or to constitute a hazard to their environment.

5. There shall be no advertising for the home occupation allowed on the property.

D. Modification to the application of the provisions of Section 20.64.090.C. of this Chapter may be considered by a Coastal Administrative Permit, except in the case of a cottage food operation for which no exceptions to these requirements may be granted.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption by the Board of Supervisors or the day certification by the California Coastal Commission becomes final and effective, whichever occurs later.

PASSED AND ADOPTED on this ___ day of _____, 2013, by the following
vote:

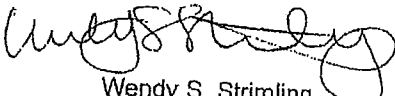
AYES:
NOES:
ABSENT:
ABSTAIN:

FERNANDO ARMENTA, CHAIR
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel