

TO: JAMES L. APP, CITY MANAGER
FROM: ED GALLAGHER, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CODE AMENDMENT 14-007 (HOME OCCUPATION REGULATIONS UPDATE)
DATE: NOVEMBER 18, 2014

Needs: For the City Council to consider an update to the home occupation regulations (Section 21.23.070), to implement AB 1616 (2012), which addresses "cottage foods operations" and to consider extending certain provisions allowed by AB 1616 to home occupations other than cottage food operations.

- Facts:
1. The City's current home occupation regulations allow such businesses as: "art studio; dress-making; teaching, with a musical or dancing instruction limited to a single pupil at a time; author; artist; musician; or similar use".
 2. The City's current home occupation regulations do not allow such businesses as: "animal hospital, automotive repair service, barbershop, beauty parlor, restaurant, tea room, tavern or similar use(s)".
 3. Additionally, the City's current home occupation regulations do not allow non-related employees, retail sales, or use of signs from/on the premises.
 4. AB 1616 allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens referred to as "cottage food operations" and to sell such foods directly to the public at the home where the cottage food operation is located. AB 1616 also permits one non-related, full-time equivalent employee to work at the premises at any time.
 5. The attached "Cottage Food Regulations" from AB 1616 shows that:
 - a. Cottage Food Operations require health permits from the County Health Department (referred to as the "local enforcement agency") (See Health and Safety Code Section 114365 on Page 3.);
 - b. The types of foods allowed to be produced are limited (See Health and Safety Code Section 114365(b) on Pages 5 and 6.);
 - c. Annual sales are limited to \$45,000 in 2014 and \$50,000 thereafter. (See Health and Safety Code Section 113758(a) on Page 2.)
 6. The proposed code amendment would not have a significant effect on the environment and, therefore, is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the State's Guidelines to Implement CEQA.
 7. At its meeting of October 23, 2014, the Planning Commission reviewed the proposed code amendment and unanimously recommended that it be approved by the City Council.

Analysis and

Conclusion: AB 1616 overrides the City's home occupation regulations' prohibitions about non-related employees and retail sales at homes of business owners. However, the City may limit the number of non-related employees to one and it may limit the number of retail customers to one at a time.

AB 1616 provides that the City may prescribe reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes. The City Attorney has advised that the City could continue to prohibit signs identifying a business and limit the number of retail customers to one at a time as a means of controlling traffic.

The City is not be required to allow other, non-cottage food operations types of home occupations to allow non-related employees or retail sales. The DRC did not favor allowing other, non-cottage food operations to have retail sales. However, it did express an opinion that allowing no more than one non-related employee might be beneficial to some home office businesses that provide services off-site (e.g. accountants, engineers). The attached ordinance proposes extending this provision to all types of allowable home occupations should the City wish to consider relaxing this requirement by one employee.

One of the most-common home occupations is a home office for services provided off-site (including on the internet). While this is not specifically listed among the permitted uses, it is generally equivalent to an author. The attached ordinance proposes replacing "author" with "offices for services provided off site (including on the internet).

The attached ordinance does not propose any changes to the list of non-permitted home occupation businesses.

Should any cottage food operation create a nuisance (e.g., odor or noise from the operation), the City can abate it under the Municipal Nuisance Code (Chapter 9.06).

POLICY

REFERENCE: AB 1616 (2012), Zoning Code Section 21.23.070

FISCAL

IMPACT: None.

OPTIONS:

After consideration of any public testimony, that the City Council consider the following options:

- a. Introduce for first reading the attached Ordinance Amending the Home Occupation Regulations and set December 2, 2014 as the date of adoption of said ordinance; or
- b. Amend, modify or reject the foregoing options.

ATTACHMENTS:

1. Proposed Ordinance Amending the Home Occupation Regulations
2. Cottage Food Regulations

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES AMENDING SECTION 21.23.070 OF THE MUNICIPAL CODE UPDATING HOME OCCUPATION REGULATIONS

WHEREAS, the City of El Paso de Robles currently permits and regulates home occupation uses under Section 21.23.070 of the Paso Robles Municipal Code;

WHEREAS, in 2012, the State Legislature adopted AB 1616 regarding "home cottage occupations";

WHEREAS, AB 1616 requires the City to allow "cottage food operations" as a permitted use from a dwelling unit but provides that the City may require a home occupation permit for such use;

WHEREAS, AB 1616 requires cottage food operations to obtain a permit from the "Local Enforcement Agency, which in San Luis Obispo County is the County Health Department; and

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

WHEREAS, AB 1616 provides that, in issuing a home occupation permit for cottage occupations 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";

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;

WHEREAS, the City Council also expressly finds and determines that AB 1616 does not limit or otherwise affect the City's ability to abate public nuisances and otherwise enforce the requirements of all City ordinances and other enactments; and

WHEREAS, as this Ordinance will modify the permitted uses of property, the Planning Commission conducted a public hearing on October 14, 2014 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 EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 21.23.070 of the Paso Robles Municipal Code is hereby revised in its entirety to read as set forth below:

21.23.070 - Home occupations.

Applications for home occupations shall be reviewed by the zoning administrator.

- (a) A home occupation is a profession or other occupation not otherwise permitted in the district, which is conducted by an accessory use ~~on~~ in a residential ~~plot~~ unit by one or more members

of the family residing on the premises and no more than one non-related full-time equivalent employee, with only one such employee working at the premises at any one time, and which in residential districts conforms to the following additional restrictions:

- (1) The profession or other occupation shall be carried on wholly within the main building or accessory building.
 - (2) Not more than one-half of the floor area of the ground floor of the principal building is used for the occupation.
 - (3) There shall be no exterior storage of materials and equipment, and no other exterior indication of such home occupation or variation from the residential character of the principal building.
 - (4) There shall be no retail sales on the premises except for "Cottage Food Operations" as defined by Section 113758 of the California Health and Safety Code for which no more than one client is allowed within the premises at a time.
 - ~~(5) In particular, a home occupation includes, but is not limited to: art studio; dress-making; teaching, with a musical or dancing instruction limited to a single pupil at a time; author; artist; musician; or similar use; but shall not include animal hospital, automotive repair service, barbershop, beauty parlor, restaurant, tea room, tavern or similar use.~~
 - (5)
 - (a) The following types of businesses are considered allowable as home occupations: home office for services provided or conducted outside of the home or on the internet; tutoring/teaching, including musical or dance instruction, provided that no more than one student is served at a time; "cottage food operations" as defined by Section 113758 of the California Health and Safety Code and subject to prior issuance of a permit for a cottage food operation from the County Health Department as required by Health and Safety Code Section 114365; art studio; tailor/dress-maker; or similar uses.
 - (b) The following types of businesses are not permitted as home occupations: animal hospital; automotive repair; small engine repair; barber or beauty shop; restaurant; tavern; wine-tasting; or similar uses.
 - (6) There shall be no signs identifying the business.
- (b) Exception for Hardship. The planning commission may grant an exception to the strict application of the above requirements when the applicant is able to show that there is a hardship upon the applicant which warrants such an exception. In such cases the applicant must prove that the activity for which the permit is requested is one that is light, clean, free from noise, and will have no adverse effect upon the residential character of the neighborhood. All such applications shall be granted by a use permit and shall be subject to annual review.

SECTION 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise

void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 4. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on November 18, 2014, and passed and adopted by the City Council of the City of El Paso de Robles on the 2nd day of December 2014 by the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Dennis Fansler, City Clerk

Cottage Food Operation Regulations from AB 1616

Government Code Section 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.

Cottage Food Operation Regulations from AB 1616

Health and Safety Code Section 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 within the state 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.

Cottage Food Operation Regulations from AB 1616

Health and Safety Code Section 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.

Cottage Food Operation Regulations from AB 1616

- (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.
 - (D) A "Class A" cottage food operation shall renew its registration annually.
 - (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.
 - (E) (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) (1) 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.
- (2) The registration or permit or an accurate copy thereof shall be retained by the operator onsite at the time of either direct or indirect cottage food sale.

Health and Safety Code Section 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, or in accordance with the local regulatory authority. A cottage food operation shall

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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 approved by the department and posted on the department's Internet Web site to protect the public health within three months of becoming registered and every three years during operation. 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" or "Repackaged in a Home Kitchen," as applicable, with a description of any purchased whole ready-to-eat product not used as an ingredient 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 the name of the county of the local enforcement agency that issued the permit or registration number.
 - (5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

Health and Safety Code Section 114365.5.

- (a) The department shall adopt and post on its Internet Web site a list of nonpotentially 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.

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- (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.

Health and Safety Code Section 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.

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- (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.