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A Commitment to Service

Agenda Date: 1/16/2013

Agenda Placement: 9C

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for Hillary Gitelman - Director
Planning, Building and Environmental Services

REPORT BY: John McDowell, Deputy Planning Director - 299-1354

SUBJECT: Cottage Food Operations Ordinance

RECOMMENDATION

COTTAGE FOOD OPERATIONS ZONING ORDINANCE TEXT AMENDMENT P12-00436-ORD

CEQA Status: The proposed ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 - Existing Facilities, Section 15305, Class 5 - Minor Alteration in Land Use Limitations, and by the General Rule, Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This proposed zoning ordinance text amendment would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings.

Request: County-sponsored Zoning Ordinance amendment to implement the requirements of State laws AB 1616 (cottage food operations) and AB 2297 (California retail food code) establishing an administrative permitting process and reasonable land use standards for cottage food operations to be conducted as an accessory use within existing dwelling units within unincorporated areas of Napa County, including compliance with the food safety standards of the County Environmental Health Officer as set forth in the California retail food code.

Ordinance Title: AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, ADDING NEW COUNTY CODE SECTION 18.08.195 AND 18.104.095, DEFINING AND ESTABLISHING REASONABLE STANDARDS FOR COTTAGE FOOD OPERATION PERMITS AND AMENDING COUNTY CODE SECTIONS 18.10.020, 18.126.030, AND 18.126.060 ENABLING ISSUANCE OF COTTAGE FOOD OPERATION ADMINISTRATIVE PERMITS

Staff Recommendation: Conduct public hearing and forward item to Board of Supervisors with recommendation for adoption.

Staff Contact: John McDowell, 299-1354 or john.mcdowell@countyofnapa.org

EXECUTIVE SUMMARY**Proposed Action:**

That the Planning Commission:

1. Recommend to the Board of Supervisors that the proposed ordinance is exempt from the California Environmental Quality Act pursuant to Section 15301, Class 1 - Existing Facilities, Section 15305, Class 5 - Minor Alteration in Land Use Limitations, and Section 15061(b)(3) - General Rule.
2. Recommend to the Board of Supervisors that the proposed ordinance is consistent with the Napa County General Plan for the reasons articulated in this staff report and that the Board adopt the proposed ordinance.

Discussion:

In recent years in both Napa County and California, there has been a growing movement toward locally sourced food production often referred to as “cottage foods,” “artisan foods,” “slow foods,” or “locally based foods.” Policy AG/LU-19 of the 2008 Napa County General Plan states; “The County recognizes that increasing local food production in Napa County and increasing local food purchases by County residents and institutions such as the jail, schools, and hospitals will contribute to greater food security, increase agricultural diversity, and create a reliable market for small-scale farmers.” Last year (2012), the State Assembly passed two bills mandating that local agencies allow cottage food operations to be conducted from residences. Attached is a proposed ordinance to establish an administrative permitting process allowing cottage food operations intended to comply with State law as well as follow the objectives and policies of the County General Plan. It is requested that the Commission conduct a public hearing and forward a recommendation to the Board of Supervisors to adopt the proposed ordinance.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The proposed ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 - Existing Facilities, Section 15305, Class 5 - Minor Alteration in Land Use Limitations, and by the General Rule, Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This proposed zoning ordinance text amendment would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings.

BACKGROUND AND DISCUSSION

Background:

In 2012, the State legislature enacted two new laws that require cities and counties to allow persons to prepare and package certain types of non-perishable foods from their homes, and allow the sale of such foods either from their homes or from other locations. The laws allow local agencies to establish a permitting process and to set 'reasonable standards' within certain State-prescribed parameters. These new laws, Assembly Bill (AB) 1616 (Gatto; Food safety: cottage food operations) and AB 2297 (Hayashi; California retail food code), went into effect January 1, 2013. Both bills are attached to this report.

AB 1616 states that local agencies must follow one of the following options in their ordinance enabling cottage food operations:

- 1) Classify cottage food operations as a permitted / allowed by right use in any residential dwelling.
- 2) Establish a zoning administrator, non-discretionary (ministerial) administrative permit process, which can include 'reasonable standards' addressing concentration of uses, traffic control, parking, noise control, etc.
- 3) Establish a quasi-discretionary use permit process with 'reasonable standards' as noted above.

The most noteworthy AB 1616 operational requirements include the following:

- The cottage food business operator must reside in the dwelling where the business is being conducted.
- No more than one full-time employee is permitted, not including family or household members.
- The use must be conducted within the kitchen except for adjacent storage areas.
- Food sales must be allowed from the residence.
- There are two classifications of cottage food operations: Class 'A' allowing direct to consumer sales, and Class 'B' allowing indirect sales (wholesale) of packaged food to retailers.
- Class A operations are only subject to a limited 'registration' process with the local health / food safety agency.
- Class B operations are subject to a streamlined 'permitting' process with the local health / food safety agency.
- Gross annual sales are limited to \$35,000 for 2013, \$45,000 for 2014, and \$50,000 for 2015 and thereafter.
- Local agencies may recover costs of permitting such uses, but fees must be reasonable.
- Local agency land use requirements must be reasonable.

Food and food products allowed by these laws include (but are not limited to):

- Baked goods without cream, custard, or meat fillings.
- Candy, such as brittle and toffee.
- Chocolate-covered nonperishable foods, such as nuts and dried fruit.
- Dried fruit.
- Dried pasta.
- Dry baking mixes.
- Fruit pies, fruit empanadas, and fruit tamales.
- Granola, cereals, and trail mixes.
- Herb blends and dried mole paste.
- Honey and sweet sorghum syrup.
- Jams, jellies, preserves, and fruit butter.

- Nut mixes and nut butters.
- Popcorn.
- Vinegar and mustard.
- Roasted coffee and dried tea.
- Waffle cones and pizelles.

Proposed Cottage Food Operation Permit Process:

As noted above, all local agencies are obligated to update their land use regulations to allow these cottage food operations through one of three specific permitting processes. Staff is recommending implementation of 'option 2' consisting of establishing an administrative permitting process with reasonable standards. For many years County zoning has allowed home occupation administrative permits for home based businesses. This proposed ordinance would essentially mirror those home occupation standards as well as the permitting process, with a few minor exceptions as noted later in this report. From Staff's perspective, the administrative permitting process strikes a balance between ensuring that cottage food operation permits are relatively easy to obtain with a commensurately small processing fee, while providing an appropriate level of regulatory oversight to ensure that such operations do not compromise the integrity of the homes and neighborhoods from which they are conducted, as well as ensuring that such uses do not negatively affect the unincorporated agricultural lands.

Both options 1 and 3 could be implemented as well but Staff is not recommending that they be pursued. Option 1 would allow these businesses by right with no permitting process, although reasonable standards could still be codified. This option would allow operations to commence as soon as health officer requirements were met, but with no land use permit, the County's tools for rectifying any complaints about the use would be reduced. By issuing administrative permits, the County has the ability to suspend or revoke the permit should the permittee prove unable to operate in a code compliant manner. This tool would not be available to the County for a by-right use, and the County would be forced to seek remedy through the more labor intensive nuisance abatement process or the courts. Administrative permits serve as a project-specific guide to neighbors and the permittee as to what is allowed and what isn't. Often times in the event of a complaint, Staff is able to put a neighbor in touch with the permittee and resolve the neighborhood issue with minimal Staff interaction simply by reiterating the terms of the permit.

Option 3 would entail a Planning Commission public hearing use permit process. Although the process is superior for soliciting neighbor feedback about a proposal, Commission hearings, and for that matter Zoning Administrator hearings, are considerably more expensive and require significant additional County time and resources to conduct. Costs are incurred for newspaper and mailed noticed, for staff report preparation, for CEQA determinations, hearing attendance, and post approval file close out. The proposed option 2 administrative permit process would have the same processing fee as a home occupation permit, which is presently \$159.67. Home occupation permits are generally issued within 1 to 3 days of submittal. Commission and Zoning Administrator level use permits generally take months to process and cost thousands of dollars. Lastly, Commission discretion on cottage food operation permits would be quite limited due to the mandates of State law, which raises a significant question as to what purpose a public hearing would serve for a use that the Commission or Zoning Administrator are obligated to approve if the application is demonstrated to meet standards.

Cottage Food Operation Standards:

Under existing regulations, food production has not been possible as a home occupation primarily because for-sale (commercial) foods have not previously been allowed within residential occupancies, not only from a zoning and general plan consistency standpoint, but also under the requirements of the building code, and health and safety code. The new State laws reconciles this issue by mandating that cottage food operations, with their modest gross annual sales limitations, be treated as accessory uses to residential (as opposed to being classified as a commercial use). Thus, commercial building and fire codes do not apply; zoning and general plan

consistency is achieved because the home business must be clearly subordinate to the use of the dwelling as a residence; and food safety laws have been revised such to provide for a less stringent registration or permitting process depending on the type of food sales that will occur.

Since these State laws went into effect January 1st, the County is obligated to accept and process cottage food operation approval in advance of the County implementing a cottage food operation ordinance. Under the present schedule, a cottage food operation ordinance should be adopted in February and become effective in March. Until such time the new ordinance goes into effect, the County will process cottage food operation permits under current County zoning laws, and thus a home occupation permit would be required. Staff is not anticipating a flood of new applications, but should any request be submitted, Staff will need to work with the applicant should the request conflict with existing home occupation standards, such as the prohibition on customers coming to the resident applicable to County home occupations. Any code conflict would only apply for a matter of weeks, at most, during this interim period before the new ordinance becomes effective.

Proposed text changes will result in the addition of two new code sections and amendment of three existing code sections summarized individually as follows:

- Addition of Section 18.08.195 - This section defines a cottage food operation as a business within an approved portion of the dwelling of the operator of the business, and subjects the use to the requirements of California Health and Safety Code.
- Amended Section 18.10.020.A - This section states which types of permits are actionable by the Zoning Administrator, and the amendment add cottage food operation permits to the list of permits.
- Addition of Section 18.104.095 - This new section contains the complete list of land use standards applicable solely to cottage food operation permits. This section of the code will be found immediately after the similar home occupation permit standards.
- Amended Section 18.126.030 - This section states the types of administrative permits, and is being amended to include cottage food operations decided by the Zoning Administrator.
- Amended Section 18.126.060 - This section states the processing requirements for administrative permits, and is being amended to enable cottage food operation administrative permits processed in the same manner as home occupations, except that the Zoning Administrator will approve the permit instead of the Planning Director.

Proposed Standards Discussion Points:

The initial concept for addressing cottage food operations in Napa County zoning was simply to add the use in as a home occupation permit. This proved infeasible due to how the legislation was written, which mandates that the decision maker would be the Zoning Administrator, and mandates on 'reasonable standards' conflict somewhat with existing County home occupation standards. Therefore, instead of rewriting the home occupation sections of the code, new code sections were added solely for cottage food operations and inserted adjacent to the home occupation standards. There is some likelihood that the State will update cottage food laws within the next few years, which may be a good time for the County to revisit how this ordinance is functioning and make changes as needed.

Accessory Space: Several stakeholders commented that it was difficult or impractical to produce or store certain foods, like honey for example, within the kitchen and they suggested that the ordinance contain language allowing the County to approve operations in a garage or accessory building. An earlier draft of the ordinance contained an exception process wherein the Zoning Administrator could grant approval of such uses if it was demonstrated that the use was impractical to conduct within the residence, was approved by the County Health Officer, and only occupied 150 sq. ft. of the garage or accessory building. However, in the final draft ordinance, that language was taken out of the proposed ordinance after further review of the new State laws, because those laws simply do not allow any portion of a cottage food operation to be conducted outside of the home. Staff felt that it would be

misleading to the public, or give false hope that an exception could be granted, when under current State law that isn't possible. As has been the case with other State mandates, there is some likelihood that the State will update the regulations at some point in the future. If that occurs, and the State enables garages and accessory structures to be used for the operation, then the County could simply update our ordinance as well, likely as part of an annual omnibus code update.

Separation: Although allowed by State law, Staff has not included a separation requirement between cottage food uses. This could result in two or more cottage food operations occurring in close proximity to each other on nearby properties, or even possibly on the same property. The permits are allowed within any legal dwelling unit, so for cases where there are multiple dwelling units on a single property, it is possible that there could be a cottage food operation within each dwelling on the property. Given the general make up of County housing stock, Staff expects that occasions where multiple cottage food operations are requested on a single property or in close proximity will be quite rare, if ever. However, if this were to prove a problem, a separation requirement could be added into the code as part of a future update. Alternatively a separation requirement could be added in now if the Commission believes it is warranted.

Traffic: Related to separation of uses, is traffic generation. Unlike home occupations, cottage food operations must be allowed to have customers visit the residence, but State law allows the local agency to limit visitation. In keeping with visitation practices on agricultural lands, the proposed ordinance would limit cottage food operations to by-appointment visitation averaging three visitors a day and maximum of 10 on any single day. This may result in a noticeable increase in traffic at a cottage food operation residence, but the increase should be nominal. Three visitors a day could represent 1 to 3 vehicles entering and exiting the site daily (in addition to the traffic generated by the residence). Ten visitors maximum, assuming all traveled independently by car, would constitute 20 trips over the course of a by-appointment day in a theoretical worst case situation. Staff anticipates that most cottage food operators will primarily sell their food at fairs, showcases, festivals, events, etc., and customers visiting the home would be rare or seasonally sporadic. Standards also include hours of operation limitations on deliveries and visitation which should ensure a neighborhood is not significantly impacted.

Parking: Since cottage food operations are allowed one nonresident employee and customer visitation, a more liberal parking standard from home occupation permits is proposed. The proposed parking standard simply mandates that on-site parking be conducted in a manner compliant with County code, and allows an employee vehicle and a customer vehicle to be parked on-site in addition to the personal vehicles of the residents. A more stringent parking standard was not recommended due to the rural setting that most homes in unincorporated Napa County are located. The biggest potential for parking issues will likely occur within small lot areas like Angwin, Deer Park, or the unincorporated pockets in the City of Napa (sister streets and Imola neighborhood). If parking proves to be an issue, it could be addressed in a future ordinance clean up action.

Visitation: Customer visitation must be conducted within the residence and cannot include dining. The purpose of a customer visit to the residence would be to purchase the food products. It does not appear that the State intended to allow these business operators to conduct business related hospitality functions from their residences, which raises many building, fire, accessibility, and health and safety code questions. Sampling of the food products could occur, but dining, tours, marketing events and the like were not enabled by these State laws. Given the demand for visitation and marketing events here in Napa County, the proposed ordinance limits visitation to an average of three by-appointment visitors per day.

Property Improvements: Like home occupation permits, cottage food operations will not be permitted to change the outside appearance of the premises. No signage or other forms of exterior improvement that make it apparent that a business is being conducted from the residence are permissible.

Zoning Administrator: The new State laws mandate that the Zoning Administrator must be the decision maker on administrative permits for cottage food operations. It appears that the State's intent was to encourage local

agencies to have an efficient, non-discretionary process. In Napa County, the Zoning Administrator function is an assigned duty of the Planning Director (actually Planning, Building and Environmental Services Director). However, despite the fact that the Planning Director and Zoning Administrator are the same person, State law simply requires that the Planning Director can only be the decision maker if there is no Zoning Administrator. Since the County has created a separate Zoning Administrator decision making function, we are consequently obligated to have the Zoning Administrator act on the cottage food operation permits, and that is why the extra code language was added to section 18.126.030 to address this technicality. This technicality will have no impact on customers. Presently, front line counter Staff process all home occupations permits and act on behalf of the Director as her designee. For cottage food permits, the same Staff will process the permits and act on behalf of the Zoning Administrator as her designee. The approval block on the bottom of the application will say Zoning Administrator instead of PBES Director in other words.

SUPPORTING DOCUMENTS

A . Proposed Ordinance

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina