

BOARD of SUPERVISORS



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MEMORANDUM

TO: Planning Department
Environmental Review Officer

FROM: Angela Calvillo, Clerk of the Board

DATE: April 2, 2013

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors Budget and Finance Committee has received the following, which is being referred to the Planning Department for determination as to whether the proposed legislation and fee increase will impact the environment.

Please provide your findings within 10 days from the date of referral.

File: 130244

Health, Business and Tax Regulations Code - Regulate and Establish Annual Fees - Cottage Food Operations

Please return this cover sheet with the Commission's response to **Victor Young, Clerk, Budget and Finance Committee.**

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

RESPONSE FROM PLANNING DEPARTMENT - Date: April 4, 2013

No Comment
 Recommendation Attached

*Statutory Exemption
pursuant to CEQA
Guidelines Section 15273
Rates, Tolls, Fees, and
Charges*

Garnie L. Surrell for
Sarah Jones, Environmental Review Officer

1 [Health, Business and Tax Regulations Codes - Regulate and Establish Annual Fee - Cottage
2 Foods Operations]

3 **Ordinance amending the Health Code, by adding Section 452.1, to establish a**
4 **procedure for regulating Cottage Food Operations; amending the Business and Tax**
5 **Regulations Code, by adding Section 249.1A, to establish annual fees for Cottage Food**
6 **Operations; and making environmental findings.**

7 NOTE: Additions are *single-underline italics Times New Roman*;
8 deletions are *strike-through italics Times New Roman*.
9 Board amendment additions are double-underlined;
10 Board amendment deletions are ~~strikethrough normal~~.

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. The Planning Department has determined that the actions contemplated in
13 this ordinance comply with the California Environmental Quality Act (California Public
14 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
15 Board of Supervisors in File No. _____ and is incorporated herein by reference.

16 Section 2. The San Francisco Health Code is hereby amended by adding Section
17 452.1, to read as follows:

18 **SEC. 452.1 COTTAGE FOOD OPERATIONS.**

19 (a) Definitions: For purposes of this Section:

20 (1) "Cottage food operation" means:

21 (A) an enterprise in a private home that has not more in gross annual sales as
22 follows:

23 for 2013 - \$35,000 or less;

24 for 2014 - \$45,000 or less;

25 for 2015 - \$50,000 or less.

1 Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more
2 than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year; and

3 (B) is operated by a cottage food operator, and has not more than one full-time
4 equivalent employee, not including the cottage food operator and immediate family or household
5 members of the cottage food operator; and

6 (C) where food products are prepared or packaged for direct and/or indirect
7 sale to the public.

8 (2) "Cottage food operator" means a person who maintains a cottage food operation in
9 his or her private home. Cottage food operators are categorized as follows:

10 (A) Class A cottage food operators may engage only in direct sales of cottage
11 food products to the consumer. A cottage food operation maintained by this
12 category of cottage food operator is known as a Class A cottage food operation.

13 (B) Class B cottage food operators may engage in direct sales and indirect sales
14 of cottage food products. A cottage food operation maintained by this category
15 of cottage food operator is known as a Class B cottage food operation.

16 (3) "Cottage food product" means foods that are not potentially hazardous as
17 determined by the California Department of Public Health ("CDPH"), as set forth in
18 California Health & Safety Code Section 114365.5.

19 (4) "Direct sale" means a transaction between a cottage food operator and a consumer,
20 where the consumer purchases the cottage food product directly from the cottage food
21 operation. Direct sales include, but are not limited to, transactions at holiday bazaars or
22 other temporary events, such as bake sales or food swaps, transactions at farm stands,
23 certified farmers' markets, or through community-supported agriculture subscriptions, and
24 transactions occurring in person in the cottage food operation.

1 (5) "Indirect sale" means an interaction between a cottage food operation, a third-party
2 retailer, and a consumer, where the consumer purchases cottage food products made by the
3 cottage food operation from a third-party retailer that holds a valid permit issued pursuant
4 to California Health & Safety Code Section 114381. Indirect sales include, but are not
5 limited to, sales made to retail shops or to retail food facilities where food may be
6 immediately consumed on the premises.

7 (6) "Registered or permitted area" means that portion of a private home that contains
8 the private home's kitchen used for the preparation, packaging, storage, or handling of
9 cottage food products and related ingredients or equipment or both, and the attached rooms
10 within the home that are used exclusively for storage of said products, ingredients, and/or
11 equipment.

12 (b) Both Class A and Class B cottage food operators must:

13 (1) Complete a food handling/ processing course; and

14 (2) Prepare only foods approved by the CDPH; and

15 (3) Label cottage food products in accordance with state and federal regulations; and

16 (4) Meet the food preparation and sanitation requirements set forth in California Health
17 & Safety Code Section 114365, et seq., or any successor provisions; and

18 (5) Comply with all applicable zoning requirements; and

19 (6) Obtain all necessary business licenses and permits.

20 (c) A Class A cottage food operation shall register annually with the San Francisco
21 Department of Public Health ("Department"), pay the annual registration fee, and certify,
22 under penalty of perjury, that it complies with state law requirements for the operation of
23 such businesses as set forth in the California Retail Food Code, Health & Safety Code
24 Sections 114365, et seq., or any successor provisions, and regulations promulgated by the
25 CDPH.

1 (d) A Class B cottage food operation shall obtain a permit from the Department, which must
2 be renewed annually, and pay the initial application fee and annual permit fees. For the
3 permit to be issued, the Class B cottage food operator shall certify, under penalty of perjury,
4 that it complies with state law requirements for the operation of such businesses as set forth
5 in the California Retail Food Code, Health & Safety Code Sections 114365, et seq., and
6 regulations promulgated by the CDPH. As a condition of the permit being renewed
7 annually, the Class B cottage food operator shall annually make the same certification,
8 under penalty of perjury.

9 (e) The Department may inspect the registered area of a Class A cottage food operation or
10 the permitted area of a Class B food operation only in response to a consumer complaint, or
11 if the Department reasonably suspects that adulterated or unsafe food has been produced, or
12 reasonably suspects that the cottage food operation has violated California food safety laws.

13 (f) Registration as a Class A cottage food operation, or a permit for operation of a Class B
14 cottage food operation, is valid only for the person, location, type of food sales, and
15 distribution activity specified on the registration or permit for the time period specified, and
16 is not transferable.

17 (g) Registration as a Class A cottage food operation, or a permit for a Class B cottage food
18 operation, may be suspended or revoked for violation of state law. For a prospective
19 suspension or revocation, the Director of the San Francisco Department of Public Health
20 ("Director") shall issue a written notice to the cottage food operator specifying the alleged
21 violation(s) and advising the cottage food operator of a right to a hearing. The cottage food
22 operator shall request a hearing, in writing, within 15 calendar days after receipt of the
23 notice. Failure to request a hearing within 15 calendar days, shall be deemed a waiver of
24 the right to a hearing. The hearing shall be held within 15 calendar days of the request for
25 the hearing.

1 (h) If the Director finds an imminent health hazard, unless the hazard is immediately corrected,
2 the Director may temporarily suspend registration as a Class A cottage food operation, or a permit for
3 a Class B cottage food operation, and order the cottage food operation to immediately close. The
4 Director shall issue a written Notice of Violation setting forth the basis for such action, and provide the
5 permit holder or practitioner with the right to a hearing, as set forth in subsection (g), above.

6 Section 3. The San Francisco Business and Tax Regulations Code is hereby amended
7 by adding Section 249.1A, to read as follows:

8 **SEC. 249.1A Cottage Food Operations Fees.**

9 (a) Class A registration \$100

10 (b) Class B

11 (1) Application \$332

12 (2) Annual Permit \$350

13 Section 4. Effective Date. This ordinance shall become effective 30 days from the
14 date of passage.

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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: 
19 VIRGINIA DARIO ELIZONDO
20 Deputy City Attorney

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FILE NO.

LEGISLATIVE DIGEST

[Health, Business and Tax Regulations Code - Cottage Foods]

Ordinance amending the Health Code to establish a procedure for regulating Cottage Food Operations; amending the Business and Tax Regulations Code to establish annual fees for Cottage Food Operations; and making environmental findings.

Existing Law

Existing law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility.

Amendments to Current Law

The proposed ordinance updates the San Francisco Health Code to comply with the newly enacted state law cottage food provisions in the California Retail Food Code. The ordinance would regulate a cottage food operation within a private home, by establishing a registration system for Class A operations, and a permit procedure for Class B operations.

Under California Health & Safety Code section 113758, cottage food operations are separated into two classifications: Class A and Class B. Class A operations may engage only in direct sales (a transaction between the cottage food operator and a consumer), while Class B operations may engage in direct and indirect sales (involving a third-party retailer). All cottage food operations must meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales, and would be subject to inspection under certain circumstances.

As required by state law, both Class A and Class B cottage food operators must complete a food handling/processing course, prepare only foods approved by the California Department of Public Health, label cottage food products in accordance with state and federal regulations, meet the food preparation and sanitation requirements set forth in California Health & Safety Code section 114365, *et seq.*, comply with all applicable zoning requirements, and obtain all necessary business licenses and permits.

Additionally, Class A operations shall register annually with the San Francisco Department of Public Health and pay the annual registration fee. Class B operations shall obtain a permit from the San Francisco Department of Public Health, to be renewed annually, and pay the initial application fee and annual permit fees.

All cottage food operations may be suspended or permanently closed for violation of state law.

