



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

December 11, 2013

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File No. 130998 [Planning Code - Cottage Food Operation Controls]

Small Business Commission Recommendation: **Approval with Modifications**

Dear Ms. Calvillo:

On November 18, 2013, the Small Business Commission heard the subject legislation and received a staff presentation from Judson True, Legislative Aide to Supervisor David Chiu. Overall, the Commission was very supportive of the proposed legislative changes to the Planning Code to conform to State law allowing Cottage Food Operations (CFOs). The Commission appreciated that among the three regulatory schemes authorized by AB 1616 (2012), the Planning Department endorsed the least restrictive by proposing to make a CFO a permitted use of residential property for zoning purposes.

Responding to the Legislation in its current form, the Small Business Commission voted 7-0 to recommend approval of BOS File No. 130998, with two amendments:

- 1) That the Planning Department further study and carefully scrutinize the relevance of a zoning referral and fee for Cottage Food Operations (CFOs); and,
- 2) That the Department of Public Health be authorized to share with the Planning Department information pertaining to CFO permits, including permit location, license type, approval and expiration dates, permittee name, and other pertinent information.

The Commission leaves its amendment recommendations as a policy matter for the Board of Supervisors.

The legislation did raise one particular concern for the Commission. While not specifically stated in the proposed legislation, it has been the practice of the Department of Public Health (DPH) and the Planning Department, as two involved regulatory agencies, to require a zoning referral and associated \$130 fee, hereafter referred to as a *zoning referral*, as part of CFO applications under current law (prior to potential enactment of this legislation). This requirement is sensible considering that Planning Code Section 204.1 currently allows accessory uses in dwelling units within R or NC zoning districts only. A referral from DPH to Planning is necessary to prevent the permitting of a CFO within a dwelling unit in a zoning district where such an accessory use is prohibited.

Yet, in light of new provisions in the proposed legislation to permit CFOs within dwelling units in all zoning districts, the Commission feels this procedure is unnecessary. Instituting a zoning referral is an additional burden to starting up a micro-enterprise of this sort, and is contrary to the Small Business Commission's charge to streamline business permitting in San Francisco. It communicated its opinion and justification to the Planning Commission ahead of consideration of the item on November 21, 2013.

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The Planning Commission voted to approve the subject item as drafted, deciding not to debate the issue of fees as they were not described in the legislative text. Even so, the Small Business Commission continues to oppose the requirement for a zoning referral, and encourages the Board of Supervisors to discuss and weigh-in on its appropriateness. The zoning referral is a foreseeable result of the proposed legislation, and warrants consideration for its impacts on small businesses.

The Commission firmly opposes imposition of a zoning referral for CFO applications barring additional substantiation by the Planning Department. To its credit, however, Planning Department staff has continued a dialogue with Office of Small Business staff on the topic of CFO fees and fees for Planning Department reviews generally. The Commission sincerely appreciates the Planning Department's willingness to communicate on this matter.

Furthermore, it was encouraging to hear Planning Department staff indicate at yesterday's Land Use and Economic Development Committee hearing of this item that Director John Rahaim would support, and Board President and legislative sponsor David Chiu may introduce, trailing legislation that would provide for a 12-month zoning referral fee waiver for CFO applications. Application volume is not expected to be significant (14 applications have been approved in 2013, year-to-date), meaning costs to the City and Department should be minimal. Yet, the 12-month period should provide sufficient opportunity to evaluate any impacts stemming from CFOs and whether a zoning referral continues to be necessary. The approach agreed to by Director Rahaim found middle-ground between the competing viewpoints of the Commission and the Planning Department, and represents a reasonable compromise.

While small in scale in the aggregate, any offset of the zoning fee would be hugely beneficial to the individual operators the Commission seeks to protect. Testimony and written comments provided by La Cocina and SFMade, both prominent nonprofits supporting local production of food and other goods, summarized their experiences with prospective CFO businesses. Both groups similarly perceive the zoning referral fee as an unnecessary obstacle to business formation given that many prospective CFO applicants are low-income, under-capitalized entrepreneurs, which is largely the reason they are considering a CFO in the first place. As things stand currently, the zoning referral fee will add between 15-43% to the start-up fees for a typical CFO applicant. The Commission hopes the Board of Supervisors will give due consideration to the financial dimension of the zoning referral if presented with any trailing legislative proposal.

I thank you for considering the Small Business Commission's comments on this legislation. Please feel free to contact me should you care to discuss this matter further.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Jason Elliot, Mayor's Office
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