



SAN FRANCISCO PLANNING DEPARTMENT

November 25, 2013

Ms. Angela Calvillo, Clerk
Honorable Supervisor Chiu
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Number 2013.1504T
Cottage Food Operations
Board File No. 130998
Planning Commission Recommendation: Approval with Semantic Update**

Dear Ms. Calvillo and Supervisor Chiu,

On November 21, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Chiu that would amend the Planning Code to allow Cottage Food Operations as accessory uses to dwelling units. At the hearing, the Planning Commission recommended approval of the proposed Ordinance along with a semantic update to existing Planning Code language.

The proposed amendment to the Planning Code was found to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "AnMarie Rodgers", written over a white background.

AnMarie Rodgers
Manager of Legislative Affairs

cc:

Marlena G. Byrne, Deputy City Attorney
Judson True, Aide to Supervisor Chiu
Alisa Miller, Office of the Clerk of the Board

Attachments

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19028

HEARING DATE NOVEMBER 21, 2013

Project Name: **Cottage Food Operations**
Case Number: 2013.1504T [Board File No. 130998]
Initiated by: Supervisor Chiu / Introduced October 3, 2013
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6257
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Semantic Update**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE BY ADDING SECTION 102.37 AND AMENDING SECTION 204.1, TO ALLOW COTTAGE FOOD OPERATION AS AN ACCESSORY USE FOR DWELLING UNITS, INCREASE THE ALLOWABLE AREA FOR ACCESSORY USES IN DWELLING UNITS, AND EXPAND ACCESSORY USE CONTROLS FOR DWELLING UNITS TO ALL ZONING DISTRICTS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on October 3, 2013, Supervisors Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 130998, which would amend the Planning Code by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operations (hereinafter CFO) as an accessory use for dwelling units, increase the allowable area for accessory uses in dwelling units, and expand accessory use controls for dwelling units to all zoning districts.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 21, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with a semantic update** the proposed ordinance. The semantic update to the Planning Code includes:

Revise Section 204.1(c) as follows:

The employment of any person not resident in the dwelling unit, other than a domestic *worker servant*, gardener, janitor or other person concerned in the operation or maintenance of the dwelling unit;

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. When the City passed the Urban Agriculture Ordinance in 2011 it did so recognizing the importance of locally grown sustainable food. Food produced in San Francisco contributes to the continued expansion of the "local food" movement and associated businesses, provides additional recreation, outdoor physical activity, and when consumed within the Bay Area, has fewer greenhouse gas emissions than food imported from other regions.
2. Although AB 1616 is a mandate from the State, this legislation helps continue the City's support for such locally-based, environmental sustainable, healthy food.
3. The proposed Ordinance protects the City's supply of housing and the quality of life in its residential neighborhoods while not placing undue burdens on CFOs.
4. With the passage of the City's dwelling unit demolition and conversion controls in Planning Code Section 317 and the advent of the Cottage Food Act, the Commission finds that it is necessary to expand the accessory use controls for dwelling units to all districts.
5. The Commission finds that increasing the allowable floor area of accessory uses from ¼ to 1/3 of the total floor area of the unit will more realistically accommodate CFOs and other accessory uses.
6. This term "Domestic Servant" is an older English term that is not widely used and that has a pejorative connotation, "Domestic Worker" is a more contemporary and neutral term.
7. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

The proposed Ordinance places reasonable limits on CFOs to ensure that a commercial use does not displace an existing dwelling unit.

OBJECTIVE 11

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

POLICY 11.8

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

The proposed Ordinance limits the size and scope of CFOs to help preserve the residential character of existing neighborhoods.

II. COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The proposed Ordinance seeks to attract new commercial and small production activity to the City by allowing CFOs as accessory uses to residential dwelling units with minimal regulatory process.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not affect opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to

preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would limit the size and scope of CFOs in order to protect the City's housing stock and neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

CFOs are limited by the total amount of annual gross sales and cannot have business signs to attract customers to the site, thus even though on-site sales will be permitted traffic generated by CFOs will be less than a typical retail operations. The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have a negative effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have a negative effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have a negative effect on the City's parks and open space and their access to sunlight and vistas.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 21, 2013.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, and Wu

NOES: none

ABSENT: Commissioner Sugaya

ADOPTED: November 21, 2013



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: NOVEMBER 21, 2013

Project Name: **Cottage Food Operations**
Case Number: 2013.1504T [Board File No. 130998]
Initiated by: Supervisor Chiu / Introduced October 3, 2013
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6257
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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Recommendation: **Recommend Approval with Semantic Update**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation (hereinafter CFO) as an accessory use for dwelling units, increase the allowable area for accessory uses in dwelling units, and expand accessory use controls for dwelling units to all zoning districts.

The Way It Is Now:

1. CFO as a use does not currently exist in the Planning Code.
2. There are specific accessory use controls for dwellings in R (Residential) and NC (Neighborhood Commercial) Districts. There are no specific accessory uses controls for dwellings in C (Commercial), M (Manufacturing) and PDR (Production, Distribution and Repair) Districts. Accessory uses for dwellings in those districts are regulated by the general accessory use controls listed Section 204.3.
3. Accessory Uses for Dwellings in R and NC Districts current include the following controls:
 - a. Accessory uses are limited to $\frac{1}{4}$ of the floor area of a dwelling unit.
 - b. Employment of a person not a resident in the dwelling, other than domestic servants, gardeners, janitors, etc., is prohibited.
 - c. The maintenance of a stock in trade other than garden produce related to Neighborhood Agriculture is prohibited.
 - d. The conduct of a business office open to the public other than for sales related to garden produce of Neighborhood Agriculture is prohibited.

The Way It Would Be:

1. CFO would be defined in Section 102.37 of the Planning Code as an accessory use to a Residential Unit and as further defined in Section 113758 of the State of California's Health and Safety Code.

2. Accessory use controls for dwelling units in Section 204.1 would apply to all dwelling units throughout the City, not just in R and NC Districts.
3. Accessory use controls for dwelling units would be amended as follows:
 - a. Accessory uses would be limited to 1/3 of the floor area of the dwelling unit.
 - b. The employment of one person who is not a resident in the dwelling would be permitted for CFOs.
 - c. Maintenance of a stock in trade would be permitted for CFOs in addition to Neighborhood Agriculture.
 - d. The conduct of a business office open to the public would be permitted (within certain limitations) for CFO in addition to Neighborhood Agriculture.

ISSUES AND CONCISERATIONS

On September 1, 2012, the Governor signed AB 1616, the Cottage Food Act, which regulated the production in home kitchens of food for sale, referred to as CFOs. This bill became effective on January 1, 2013. The bill mandates that a city, county, or city and county shall not prohibit a cottage food operation, in any residential dwellings. It provides three options for municipalities on how to permit cottage food operations, which include:

1. Classify a CFO as a permitted use of residential property for zoning purposes.
2. Grant a nondiscretionary permit to use a residence as any CFO 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.
3. Require any CFO to apply for a permit to use a residence for its operation. The zoning administrator 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.

Definition of Cottage Food Operation

AB 1616 defines a CFO as an enterprise that:

1. has limited gross annual sales as specified below;
2. is operated by a cottage food operator; and
3. has no more than one full-time equivalent cottage food employee. Workers who are family members or household members of the cottage food operator do not count toward the employee limit.

The bill limits the gross annual sales, with lower limits for initial years and higher limits through 2015. 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.

Intent of the Cottage Food Act

Per the Cottage Food Act, the intent of the Legislature in enacting the Act was to help address the following challenges and opportunities:

1. Small businesses have played an important role in helping slow economies recover and prosper as an engine of job creation. During the 1990s, small businesses created the majority of new jobs and now account for 65 percent of United States employment.
2. Californians, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.
 - a. Two-thirds of American adults and nearly one-third of children and teens are obese or overweight, placing them at risk for developing chronic diseases such as diabetes, heart disease, and cancer.
 - b. One in every nine California children, one in three teens, and over half of adults are already overweight or obese. This epidemic affects virtually all Californians.
 - c. These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.
3. For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.
4. There is a growing movement in California to support community-based food production, sometimes referred to as “cottage food,” “artisanal food,” “slow food,” “locally based food” or “urban agriculture” movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.
5. Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.
6. At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.
7. Even some bake sales are currently illegal in California.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance, with a semantic update and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

San Francisco has been at the forefront of the community based food production movement. When the City passed the Urban Agriculture Ordinance in 2011 it did so recognizing the importance of locally grown sustainable food. Food produced in San Francisco contributes to the continued expansion of the “local food” movement and associated businesses, provides additional recreation, outdoor physical activity, and when consumed within the Bay Area, has fewer greenhouse gas emissions than food imported from other regions. Although AB 1616 is a mandate from the State, this legislation helps continue the City’s support for such locally-based, environmental sustainable, healthy food.

The Department supports the way the proposed Ordinance implements the Cottage Food Act because it does not place undue burdens on these micro-businesses while also protecting the City’s supply of housing and quality of life in its residential neighborhoods. The Act gives three possible options for implementation (see discussion above), including classifying CFO as a principle use that doesn’t require a permit, requiring CFOs to obtain a non-discretionary permit with reasonable standards, or requiring the Zoning Administrator to review each CFO permit. The approach taken by the proposed Ordinance is a combination of the first two options. Making CFOs an accessory use to a dwelling eliminates the need for a use permit from the Planning Department; however, CFOs are required to get a permit from the Department of Public Health, which will send the Planning Department a referral for our review and approval, similar to restaurant referrals. Making CFOs an accessory use also protects San Francisco’s housing stock by ensuring that the majority of the unit’s floor area is maintained as a residential use and will also help preserve and protect the character of our residential districts and buildings.

Accessory Use Control Changes

The propose Ordinance also makes two significant changes to the Planning Code’s accessory use controls. The first change expands the accessory use controls for dwelling units to all zoning districts. Currently, there are no specific accessory use controls for dwelling units in C, M and PDR districts. Instead, dwelling units in those districts are subject to general accessory use controls as outlined in Section 204.3. This was probably done because these districts are more permissive than NC and R districts, and this section of the Code predates Section 317, which restricts dwelling unit conversion and demolition. One reason we restrict the size of accessory uses in dwelling units is to preserve housing and another reason is to maintain the residential character of a neighborhood or building. With the passage of our dwelling unit demolition and conversion controls in Section 317 and the advent of the Cottage Food Act, the Department believes it is necessary to expand the accessory use controls for dwelling units to all districts.

The second change increases the allowable floor area from $\frac{1}{4}$ to $\frac{1}{3}$ of the floor area of the dwelling unit. The Department felt that CFOs would require more space than $\frac{1}{4}$ of the floor area of a dwelling unit because CFOs require the use of the kitchen and are permitted to also have on-site storage of goods and on-site sales of product. The Department discussed several different approaches to addressing this issue, such as exempting the kitchen area, or only counting $\frac{1}{2}$ of the area of the kitchen. In the end, we felt a more specific limit was easier to promulgate and enforce, and increasing the allowable floor area from $\frac{1}{4}$ to $\frac{1}{3}$ of the unit will more realistically accommodate the use.

Minor terminology update

The existing Code refers to a “domestic servant”. This term is an older English term that is not widely used and that has a pejorative connotation. A more contemporary, neutral term would be “domestic worker”. The Department recommends making this semantic update.

ENVIRONMENTAL REVIEW

The proposed Ordinance would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received comments from the Pacific Heights Residents Association (hereinafter PHRA) concerning the proposed Ordinance. While the PHRA generally supports the Ordinance they have concerns over CFOs impact on neighborhood parking and traffic because of the provision in the law that allows direct on-site sales. PHRA's email is attached to this report.

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| RECOMMENDATION: Recommendation of Approval with Semantic Modification |
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 130998
- Exhibit C: Letter from PHRA