

File No. 130998

Committee Item No. 4

Board Item No. 3

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 9, 2013

Board of Supervisors Meeting Date DECEMBER 17, 2013

#### Cmte Board

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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 19028</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Dept. Exec. Summary</u>             |
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Completed by: Andrea Ausberry Date December 6, 2013

Completed by: A. A. Date 12-10-13

1 [Planning Code - Cottage Food Operation Controls]

2  
3 **Ordinance amending the Planning Code, by adding Section 102.37 and amending**  
4 **Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units**  
5 **and increase the allowable area for accessory uses in dwelling units; and making**  
6 **environmental findings, and findings of consistency with the General Plan, and the**  
7 **eight priority policies of Planning Code, Section 101.1.**

8 **NOTE: Unchanged Code text and uncodified text are in plain Arial font.**  
9 **Additions to Codes are in single-underline italics Times New Roman font.**  
10 **Deletions to Codes are in ~~strike through italics Times New Roman font.~~**  
11 **Board amendment additions are in double-underlined Arial font.**  
12 **Board amendment deletions are in ~~strike through Arial font.~~**  
13 **Asterisks (\* \* \* \*) indicate the omission of unchanged Code**  
14 **subsections or parts of tables.**

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

16 Section 1. The Board of Supervisors of the City and County of San Francisco hereby  
17 finds and determines that:

18 (a) General Plan and Planning Code Findings.

19 (1) (b) On November 21, 2013, the Planning Commission, in Resolution No.  
20 19028, adopted findings that the actions contemplated in this ordinance are consistent, on  
21 balance, with the City's General Plan and eight priority policies of Planning Code Section  
22 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with  
23 the Clerk of the Board of Supervisors in File No. 130998, and is incorporated herein by  
24 reference.

25 (2) Pursuant to Planning Code Section 302, the Board finds that the  
proposed ordinance will serve the public necessity, convenience and welfare for the reasons

1 set forth in Planning Commission Resolution No. 19028, which reasons are incorporated  
2 herein by reference as though fully set forth.

3 (b) Environmental Findings. The Planning Department has determined that the  
4 actions contemplated in this ordinance comply with the California Environmental Quality Act  
5 (California Public Resources Code Section 21000 et seq.). Said determination is on file with  
6 the Clerk of the Board of Supervisors in File No. 130998 and is hereby adopted by this Board  
7 and incorporated herein by reference.

8 (c) General Findings.

9 (1) The City wishes to support the growing movement in California for  
10 community-based food production connecting food to local communities, small businesses,  
11 and environmental sustainability, which has been referred to as "cottage food," "artisan food,"  
12 "slow food" or "locally-based food."

13 (2) Increased opportunities for entrepreneur development through  
14 microenterprises can help to supplement household incomes, prevent poverty and hunger,  
15 and strengthen local economies.

16 (3) Small businesses played an important role in helping slow economies  
17 recover and prosper as an engine of job creation. During the 1990s, small businesses  
18 created the majority of new jobs, and now account for 65 percent of the United States  
19 employment.

20 (4) San Francisco is a leader in the local food movement passing its urban  
21 agriculture reforms in 2011 to respond to the increased demand to produce and procure  
22 locally produced agricultural products.

23 (5) The State of California recently passed Assembly Bill 1616, which  
24 established regulations for cottage food operations and required cities and counties to permit  
25 cottage food operations in residential dwellings.

1 (6) Accordingly, this Board seeks to amend the Planning Code to permit  
2 cottage food operations as a permitted accessory use to dwelling units.

3  
4 Section 2. The Planning Code is hereby amended by adding Section 102.37 and  
5 amending Section 204.1, to read as follows:

6 **SEC. 102.37. COTTAGE FOOD OPERATION**

7 *An Accessory Use to a dwelling unit as defined in Section 113758 of the California Health and*  
8 *Safety Code.*

9  
10 **SEC. 204.1. ACCESSORY USES FOR DWELLINGS IN ~~R-OR-NC~~ ALL DISTRICTS.**

11 No use shall be permitted as an accessory use to a dwelling unit in any ~~R-OR-NC~~ District  
12 ~~which~~ that involves or requires any of the following:

13 (a) Any construction features or alterations not residential in character;

14 (b) The use of more than ~~1/4~~ 1/3 of the total floor area of the dwelling unit, except in  
15 the case of accessory off-street parking and loading or Neighborhood Agriculture as defined  
16 by Section 102.35;

17 (c) The employment of any person not a resident in the dwelling unit, ~~other than~~ with  
18 the following exceptions:

19 (1) a domestic servant, gardener, janitor or other person concerned in the  
20 operation or maintenance of the dwelling unit; or

21 (2) for a Cottage Food Operation, in addition to the foregoing exceptions, the  
22 employment of one employee who is not a family member or resident of the dwelling unit.

23 (d) Residential occupancy by persons other than those specified in the definition of  
24 family in this Code;

1 (e) In RH-1(D), RH-1 and RH-1(S) Districts, the provision of any room for a roomer  
2 or boarder with access other than from within the dwelling unit;

3 (f) Addition of a building manager's unit, unless such unit meets all the normal  
4 requirements of this Code for dwelling units;

5 (g) The maintenance of a stock in trade other than garden produce related to  
6 Neighborhood Agriculture as defined by Section 102.35 or materials and products related to a  
7 Cottage Food Operation; or

8 ~~(h)~~ The use of show windows or window displays or advertising to attract  
9 customers or clients; or

10 ~~(h)(i)~~ The conduct of a business office open to the public other than for sales related  
11 to garden produce of Neighborhood Agriculture as defined by Section 102.35 or to the finished  
12 products of a Cottage Food Operation; or

13 ~~(i)~~ A Medical Cannabis Dispensary as defined in Section 209.3(k) and 217(k) of  
14 this Code.

15 Provided, however, that Subsection ~~(h)(i)~~ of this Section shall not exclude the  
16 maintenance within a dwelling unit of the office of a professional person who resides therein, if  
17 accessible only from within the dwelling unit; and provided, further, that Subsection ~~(g)(h)~~ shall  
18 not exclude the display of signs permitted by Article 6 of this Code.

19  
20 Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.


1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8 Section 5. Undertaking for the General Welfare. In enacting and implementing this  
9 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
10 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
11 would be liable in money damages to any person who claims that such breach proximately  
12 caused injury.

13 Section 6. No Conflict with State or Federal Law. Nothing in this ordinance shall be  
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
15 State or federal law.

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

19 By:

  
20 MARLENA G. BYRNE  
Deputy City Attorney

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22  
23  
24  
25

**LEGISLATIVE DIGEST**

[Planning Code - Cottage Food Operation Controls]

**Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

**Existing Law**

The Planning Code does not currently provide for community-based food production (also referred to as "cottage food," "artisan food," "slow food," or "locally-based food") to operate as an accessory use in dwellings.

**Amendments to Current Law**

The proposed legislation would amend the Planning Code to add a definition of "Cottage Food Operation", which definition references the California Health Code, and allow cottage food operations to operate as an accessory use in dwelling units under Section 204.1.

**Background Information**

The State recently passed Assembly Bill 1616, which established regulations for cottage food operations and required cities and counties to permit cottage food operations in dwellings.



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.





# 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

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

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Planning  
Information:  
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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,

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

[www.sfplanning.org](http://www.sfplanning.org)



# 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 1/4 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.

Resolution 19028  
November 21, 2013

CASE NO. 2013.1504T  
Cottage Food Operations

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  
anmarie.rodgers@sfgov.org, 415-558-6395  
*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 CONSIDERATIONS

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 proposed 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.

<b>RECOMMENDATION:</b> 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

BOARD of SUPERVISORS



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Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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October 15, 2013

File No. 130998

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On October 8, 2013, Supervisor Chiu introduced the following proposed legislation:

**File No. 130998**

Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*Alisa Miller*

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning  
Nannie Turrell, Environmental Planning

*Not a project, pursuant  
to CEQA Guidelines  
15060 and 15273.  
Mannix Sumell  
10/16/2013*

Assembly Bill No. 1616

CHAPTER 415

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed with  
Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That 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. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) 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.

(b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.

(1) 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.

(2) 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.

(3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

(c) 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.

(d) 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.

(e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.

(f) 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.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.1. COTTAGE FOOD OPERATIONS

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.

SEC. 3. Section 109947 of the Health and Safety Code is amended to read:

109947. "Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, a cottage food operation that is registered or has a permit pursuant to Section 114365, or any facility exclusively storing, handling, or processing dried beans.

SEC. 4. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470, 110471, 110485, 114365, 114365.6, 111130, and 113717, and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, licensing, inspection, enforcement, and other provisions of Article 12 (commencing with Section 111070) relating to water, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5, and to carry out and implement the provisions of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104).



SEC. 5. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

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 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.

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
- (c) "Food facility" does not include any of the following:
  - (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
  - (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
  - (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
  - (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
  - (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
  - (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
  - (7) A commercial food processing plant as defined in Section 111955.
  - (8) A child day care facility, as defined in Section 1596.750.
  - (9) A community care facility, as defined in Section 1502.
  - (10) A residential care facility for the elderly, as defined in Section 1569.2.
  - (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.
  - (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

- (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
- (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
- (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
- (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
- (7) A commercial food processing plant as defined in Section 111955.
- (8) A child day care facility, as defined in Section 1596.750.
- (9) A community care facility, as defined in Section 1502.
- (10) A residential care facility for the elderly, as defined in Section 1569.2.
- (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate-care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) "Permit" means the document issued by the enforcement agency that authorizes a person to operate a food facility or cottage food operation.

(b) "Registration" shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

## CHAPTER 11.5. COTTAGE FOOD OPERATIONS

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.

(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.

(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.

(D) (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) 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.

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, except

that a cottage food operation shall 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 instructed by the department to protect the public health within three months of becoming registered. 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" 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, in the case of a "Class B" cottage food operation, the name of the county of the local enforcement agency that issued the permit number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially 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.

(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 pizzelles.

(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.

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.

(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.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15. Section 114405 of the Health and Safety Code is amended to read:

114405. (a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility or cottage food operation for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility or cottage food operation for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility or cottage food operation is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permit holder. If the permit holder fails to comply, the local enforcement officer shall issue to the permit holder a notice setting forth the acts or omissions with which the permit holder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or

revoked. A written request for a hearing shall be made by the permit holder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permit holder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permit holder a notice setting forth the acts or omissions with which the permit holder is charged, specifying the pertinent code section, and informing the permit holder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permit holder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

October 15, 2013

**File No. 130998**

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On October 8, 2013, Supervisor Chiu introduced the following proposed legislation:

**File No. 130998**

Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

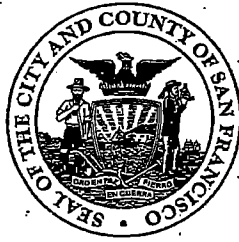
A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning  
Nannie Turrell, Environmental Planning

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

October 15, 2013

Planning Commission and  
Attn: Jonas Ionin  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Commissioners:

On October 8, 2013, Supervisor Chiu introduced the following proposed legislation:

**File No. 130998**

Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

c: John Rahaim, Director of Planning  
Scott Sanchez, Zoning Administrator  
Sarah Jones, Chief, Major Environmental Analysis  
AnMarie Rodgers, Legislative Affairs  
Monica Pereira, Environmental Planning  
Nannie Turrell, Environmental Planning

Orig: LU Clerk  
COB. epage

Member, Board of Supervisors  
District 8



City and County of San Francisco

**SCOTT WIENER**

威善高

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DATE: December 3, 2013

TO: Angela Calvillo  
Clerk of the Board of Supervisors

FROM: Supervisor Scott Wiener  
Chairperson

RE: Land Use and Economic Development Committee  
COMMITTEE REPORT

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RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
DEC 5 AM 9:47

Pursuant to Board Rule 4.20, as Chair of the Land Use and Economic Development Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on December 10, 2013, as a Committee Report:

**130998 Planning Code - Cottage Food Operation Controls**

Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1..

This matter will be heard in the Land Use and Economic Development Committee on December 9, 2013, at 1:30 p.m.



Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisor David Chiu

Subject:

Ordinance amending the Planning Code to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; making environmental and General Plan findings.

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

130998





