

**SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION  
Cottage Food Operations Ordinance Amendments**

**Hearing Date: March 20, 2013**

**Staff Report Date: March 13, 2013**

**Case Nos. 13ORD-00000-00003 & 13ORD-00000-00004**

**Environmental Document: CEQA Guidelines Section  
15061(b)(3) (Montecito LUDC) and Section 15265  
(Article II CZO)**

**Assistant Director: Dianne Black**

**Staff Contact: Noel Langle**

**Phone No.: 805.568.2067**

## **1.0 REQUEST**

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission:

- 1.1 Case No. 13ORD-00000-00003.** Adopt a recommendation to the Board of Supervisors that the Board adopt an ordinance (Case No. 13ORD-00000-00003) amending Division 35.4, Montecito Standards for Specific Land Uses, and Division 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, as set forth in Attachment C; and
- 1.2 Case No. 13ORD-00000-00004.** Adopt a recommendation to the County Planning Commission that the County Planning Commission recommend to the Board of Supervisors that the Board adopt an ordinance (Case No. 13ORD-00000-00004) amending Division 2, Definitions, and Division 7, General Regulations, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code, as set forth in Attachment F.

The purpose of these amendments is to:

- Implement the requirements of State law AB1616 (Cottage Food Operations) by revising the Home Occupations sections of the zoning ordinances to establish permitting processes and development standards that would allow cottage food operations that may include the preparation of specified food items and the sale thereof to be conducted within existing dwelling units.
- Revise the existing language of the Home Occupations sections of the zoning ordinances to specifically allow in-home retail sales (aka Tupperware parties) and include standards for determining when such sales are exempt from planning permits.

## **2.0 RECOMMENDATION AND PROCEDURES**

- 2.1 Case No. 13ORD-00000-00003.** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 13ORD-00000-00003 based upon the ability to make the appropriate findings. Your Commission's motion should include the following:
  1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the required findings for approval of the proposed amendment, including CEQA findings (Attachment A);

2. Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 13ORD-00000-00003, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C).

**2.2 Case No. 13ORD-00000-00004.** Follow the procedures outlined below and recommend to the County Planning Commission that they recommend to the Board of Supervisors that the Board approve Case No. 13ORD-00000-00004 based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend to the County Planning Commission that the County Planning Commission make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment, including CEQA findings (Attachment D);
2. Recommend to the County Planning Commission that the County Planning Commission recommend to the Board of Supervisors that the Board of Supervisors determine that the adoption of this ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Sections 15265 and 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment E); and,
3. Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors approve Case No. 13ORD-00000-00004, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment F).

Please refer the matter to staff if your Commission takes other than the recommended actions for the development of appropriate materials.

### **3.0 JURISDICTION**

**3.1 Case No. 13ORD-00000-00003.** This project is being considered by the Montecito Planning Commission based upon Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.494 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

**3.2 Case No. 13ORD-00000-00004.** This project is being considered by the Montecito Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code that provides that the Montecito Planning Commission may make recommendations to the County Planning Commission on text amendments to Article II of Chapter 35 of the County Code that will affect land use decisions within the Coastal Zone portion of the Montecito

Planning Area.

## **4.0 BACKGROUND**

### **4.1 Cottage Food Operations.**

In 2012, the State legislature enacted Assembly Bill (AB) 1616 (Gatto; Food safety: cottage food operations) that requires cities and counties to allow persons to prepare and package certain types of non-perishable foods from their homes, and allow the sale of such foods either from their homes or from other locations. AB1616 went into effect January 1, 2013, and allows local agencies to establish a permitting process and to set reasonable standards within certain State-prescribed parameters. AB1616 is attached to this report as Attachment G.

AB 1616 requires that local agencies implement one of the following options in their ordinance enabling cottage food operations:

- Option 1: Classify a cottage food operation as an allowed-by-right use of residential property.
- Option 2: Where there is a zoning administrator, establish a zoning administrator level, non-discretionary administrative (ministerial) permit process which can include reasonable standards, restrictions and requirements addressing spacing and concentration, traffic control, parking and noise control.
- Option 3: Establish a quasi-discretionary use permit process with reasonable standards, restrictions and requirements addressing spacing and concentration, traffic control, parking and noise control.

The primary operational requirements required by AB 1616 include the following:

- The operator of the cottage food business must reside in the dwelling where the business is being conducted.
- No more than one full-time non-resident employee is permitted.
- The use must be conducted within the dwelling's kitchen; adjacent rooms within the dwelling may be used for storage.
- Food sales from the residence must be allowed.
- There are two classifications of cottage food operations: Class A operations allow direct to consumer sales, and are only subject to a limited registration process with the local health agency. Class B operations allow indirect sales (wholesale) of packaged food to retailers, and are subject to a streamlined permitting process with the local health agency.
- Gross annual sales are limited to \$35,000 for 2013, \$45,000 for 2014, and \$50,000 for 2015 and thereafter.
- Local agencies may recover costs of permitting such uses, but fees must be reasonable and may not exceed the cost of review and permit processing.

In addition to the operational requirements of the State law, AB1616 also allows local agencies to adopt reasonable standards, restrictions and requirements concerning the factors enumerated below. Due to the construction of the language of AB1616, local agencies may not adopt standards that do not relate to these factors.

- Spacing and concentration.
- Traffic control.

- Parking.
- Noise control.

Food and food products allowed by these laws include:

- Baked goods without cream, custard, or meat fillings.
- Candy, such as brittle and toffee.
- Chocolate-covered nonperishable foods, such as nuts and dried fruit.
- Dried fruit.
- Dried pasta.
- Dry baking mixes.
- Fruit pies, fruit empanadas, and fruit tamales.
- Granola, cereals, and trail mixes.
- Herb blends and dried mole paste.
- Honey and sweet sorghum syrup.
- Jams, jellies, preserves, and fruit butter.
- Nut mixes and nut butters.
- Popcorn.
- Vinegar and mustard.
- Roasted coffee and dried tea.
- Waffle cones and pizzelles (traditional Italian waffle cookies).

The California Department of Public Health will establish and maintain a list of approved food categories and from time to time products may be added to or removed from the list. The California Department of Public Health will also establish a process by which new foods can be added to the list and other foods may be challenged and removed.

Although the existing County regulations regarding home occupations do not strictly prohibit food production, it is difficult to establish a food operation due to the State requirements regarding the preparation of commercial foods. The new State laws mandate that cottage food operations be treated as accessory uses to residential (as opposed to being classified as a commercial use). Thus, commercial building and fire codes do not apply, and food safety laws have been revised to provide for a less stringent registration or permitting process depending on the type of food sales that will occur.

Since these State laws went into effect January 1st, the County is obligated to accept and process cottage food operation approval in advance of the County implementing specific regulations addressing cottage food operations. The County Planning Commission will consider similar amendments on April 3, 2013. The Department expects to present the recommendations of the County and Montecito Planning Commissions to the Board of Supervisors in May such that the regulations will be effective in June outside of the Coastal Zone. Until then, the County will process cottage food operation permits under current County zoning laws for home occupations in compliance with State law. Because the amendment to Article II constitutes an amendment to County's certified Local Coastal Program, the regulations will take effect in the Coastal Zone following final certification by the Coastal Commission. Planning and Development Department staff will work with applicants as necessary to resolve any conflicts between the existing home occupation standards and the mandates of State law.

## **4.2 In-home Retail Sales.**

During the recent hearings regarding the ordinance amendments that addressed revised Temporary Use (Special Event) regulations there was some concern and confusion regarding how the proposed regulations might affect in-home retail sales (also known as “Tupperware Parties”). The Department explained to the County and Montecito Planning Commissions that in-home retail sales are considered as home occupations and as such are not regulated by the Temporary Use sections of the zoning ordinances. In order to alleviate any future confusion, these ordinance amendments also include (1) language that specifies that in-home retail sales are regulated as home occupations, and (2) criteria when certain in-home retail sales are exempt from planning permits.

## **5.0 PROJECT ANALYSIS**

A discussion of the proposed text revisions is provided below. Specific section references refer to the Montecito Land Use and Development Code (Montecito LUDC) ordinance amendment (Attachment C of this staff report). Attachment F, the ordinance amending the Article II Coastal Zoning Ordinance, contains similar amendments that are written in the Article II format. The complete texts of the ordinance amendments are contained in the attachments. Proposed deletions are shown by striking through the text and proposed additions are underlined. The Montecito LUDC amendment also includes the deletion of standards and references that only apply within the Coastal zone or merely distinguish between coastal and non-coastal requirements since the Article II Coastal Zoning Ordinance continues to be the implementing ordinance of the County’s certified Local Coastal Program. The amendments also include minor corrections and language revisions. These revisions, including the deletion of Coastal Zone language, are not discussed in this staff report but are shown through the use of underlines and strikethroughs in the attached ordinances.

### **5.1 Proposed cottage food operation permit process.**

The County zoning ordinances currently allow home occupations (home based businesses) subject to the issuance of a Coastal Development Permit (CDP) or a Land Use Permit (LUP). Certain home occupations do not require a CDP or a LUP if (1) customers do not come to the location of the home occupation, (2) all business advertisements except for business cards and letterhead do not list the address of the home occupation, (3) all business transactions occur via the internet, telephone or other telecommunication medium, or via written correspondence, and (4) the home occupation complies with all the remaining development standards. Also, within the Montecito Community Plan area, if the home occupation requires the issuance of a CDP, and the site of the home occupation is within the Appeals Jurisdiction of the Coastal Zone, then the application is under the jurisdiction of the Montecito Planning Commission and a public hearing may be required.

The proposed ordinances include the same three permit processes for cottage food operations. However, AB1616 specifically provides that if there is a zoning administrator that the zoning administrator shall be the review authority even for administrative permits (CDPs or LUPs). The County Zoning Administrator does not act as a review authority within the Montecito Community Plan area. Therefore, within the Montecito Community Plan area, the Director is proposed to be the review authority for applications for LUPs and CDPs on property located outside the Appeals Jurisdiction of the Coastal Zone. For applications for CDPs located within the Appeals Jurisdiction, the Montecito Planning Commission is proposed to be the review authority.

Section 1, page 4 of Exhibit 1 of Attachment C, and Section 2, page 6 of Exhibit 1 of Attachment F,

provides the criteria for home occupations including cottage food operations that are exempt from planning permits for the Montecito LUDC and Article II Coastal Zoning Ordinance, respectively.

## **5.2 Proposed cottage food operation development standards.**

The proposed ordinances revise the existing code sections that provide the development standards for home occupations by re-structuring the existing development standards for home occupations other than cottage food operations as a new subsection and creating a separate subsection specific to cottage food operations. The following describes the proposed development standards that would apply to cottage food operations, and compares them to the existing development standards for all other home occupations. The purpose of the following development standards is to ensure that the commercial cottage food operation is conducted in compliance with State law such that they are accessory to the primary residential use of the dwelling.

These development standards are limited to those that either reflect the restrictions on cottage food operations contained in AB1616 or, as allowed by AB1616, address spacing and concentration, traffic control, and parking. Although AB1616 allows standards that address noise control, it requires that any noise standards are limited to those that are consistent with a local noise ordinance that implements the Noise Element of the Comprehensive Plan. Since Santa Barbara County has not adopted such an ordinance, development standards addressing noise controls are not included.

Section 1, pages 1 through 4 of Exhibit 1 of Attachment C, and Section 2, pages 3 through 5 of Exhibit 1 of Attachment F, contain the development standards for the Montecito LUDC and Article II Coastal Zoning Ordinance, respectively.

### **D. Development standards.**

#### **2. Cottage food operations.** A cottage food operation shall comply with all of the following development standards.

##### **a. Allowed locations.**

- (1) No more than one cottage food operation shall be allowed within any one dwelling unit.
- (2) No cottage food operation shall be located within 300 feet of another such operation.

*Discussion - The restriction of one operation per dwelling is consistent with the existing requirements for home occupations presently allowed by the Montecito LUDC. The existing standards do not include a separation requirement; however, AB1616 allows the County to include separation criteria and the Department is proposing to require that cottage food operations be separated by 300 feet to maintain the residential character of neighborhoods and also to prevent more than one cottage food operation from being located within a duplex or multi-family residential development. The 300 foot separation requirement is consistent with the State Health and Safety Code definition of overconcentration that applies to residential care facilities.*

##### **b. Allowed location within the dwelling and the lot containing the cottage food operation.** All food preparation, packaging, sales, storage and handling of cottage food products and related ingredients, and equipment, shall be located within the registered or permitted area consisting of the dwelling's private kitchen and one or more attached rooms within the

dwelling in which the cottage food operation is operated that are used exclusively for storage.

*Discussion* - This standard is less restrictive than the existing standard that restricts a home occupation to a single, habitable room within the dwelling, not including garages, in order to comply with AB1616 that allows the cottage food operation to occur within the kitchen and one or more attached rooms.

**c. Cottage food operators and cottage food employees.**

- (1) The cottage food operation shall be conducted by the cottage food operator within the dwelling where the cottage food operator resides as their primary residence. Said dwelling shall be a legally established dwelling.
- (2) Up to one full-time equivalent employee may participate in a cottage food operation in addition to those individuals residing within the dwelling as their primary residence.

*Discussion* - This standard is less restrictive than the existing standard that requires that the home occupation shall be conducted solely by the occupant(s) of the dwelling that contains the home occupation in order to comply with AB1616 that allows one non-resident employee to be part of the cottage food operation.

**d. Parking.** All parking of vehicles and trailers associated with the cottage food operation on the lot on which the cottage food operation occurs shall be maintained in compliance with Chapter 35.436 (Parking and Loading Standards).

- (1) Customers and non-resident cottage food employees shall not park their vehicles within or upon a parking space that is required to satisfy the parking requirement for the primary use of the lot.
- (2) On R-1/E-1 and R-2 zoned lots, the overnight parking of commercial vehicles on the lot shall be in compliance with Section 35.436.090.B.2 (Overnight parking of commercial vehicles).

*Discussion* - This standard is proposed to require (1) that parking spaces that are provided to satisfy the parking requirement for the primary use are not usurped by customers or non-resident employees, and (2) that any overnight parking of commercial vehicles complies with the existing standards that apply to R-1/E-1 and R-2 residentially-zoned lots that allows one bus or non-passenger motor vehicle or trailer used in commerce may be parked overnight on a lot provided the vehicle does not exceed two axles, four tons, or eight feet in height.

**e.** A cottage food operation shall not create vehicular or pedestrian traffic that changes the residential character of the neighborhood and dwelling unit where the business is being conducted, or create a greater demand for parking than can be accommodated onsite or on the street frontage abutting the lot on which the home occupation occurs.

*Discussion* - This standard is consistent with the existing development standard for home occupations and is proposed to help ensure that the operation is compatible with the surrounding neighborhood in regards to not creating parking or traffic impacts that affect the residential

*character of the neighborhood.*

- f. The cottage food operation shall at all times be conducted in compliance with:
- (1) The conditions and limitations of this Subsections D.2. and any other conditions and/or limitations that may be part of the Land Use Permit issued to allow the cottage food operation.
  - (2) California Health and Safety Code Section 113758.
  - (3) All other applicable State and County laws, regulations and requirements.

***Discussion** - This standard affirms that the operation must be conducted in compliance with all applicable laws, regulations and requirements. If the operation is conducted in a manner that is out of compliance with applicable permit, laws, etc., that would provide the basis for revocation of the planning permit for the cottage food operation. The existing regulations for home occupations require the recordation of a Notice to Property Owner that certifies that the home occupation will be conducted in compliance with the development standards. This requirement would also be applicable to cottage food operations.*

- g. The cottage food operation shall be registered or permitted by the County Public Health Department in compliance with Section 114365 of the California Health and Safety Code. Prior to the issuance of a Land Use Permit for a cottage food operation the cottage food operator shall present proof of receipt of registration or permit for the cottage food operation from the County Public Health Department.

***Discussion** - This standard is proposed to ensure that a cottage food operation that is permitted by the Planning and Development Department also receives the necessary clearance from the County Public Health Department.*

### **5.3 Proposed cottage food operation definitions.**

Several new definitions are proposed to clearly explain the meaning of terms that relate to cottage food operations. Section 2, page 6 of Exhibit 1 of Attachment C, and Section 1, page 1 of Exhibit 1 of Attachment F, provide the new definitions for the Montecito LUDC and Article II Coastal Zoning Ordinance, respectively.

### **5.4 In-home retail sales.**

In-home retail sales (also known as “Tupperware parties”), where a product representative sells merchandise either from their own residence or from a client’s residence, are commercial operations that are regulated under the home occupations sections of the zoning ordinances. During the recent hearings on the Temporary Uses (Special Events) ordinance amendment, there was testimony that such in-home retail sales could be considered as a special event and regulated under the temporary use sections of the zoning ordinances. Therefore, the proposed ordinances include language in the Applicability section of the regulations to clearly specify that in-home retail sales are regulated as home occupations (see Section 1, page 1 of Exhibit 1 of Attachment C, and Section 2, page 2 of Exhibit 1 of Attachment F).

The existing home occupation standards include the limitation that there shall be no more than five



customers, patients, clients, students, or other persons served by the home occupation upon the lot that contains the home occupation at any one time. Since in-home retail sales tend to occur infrequently and typically do not occur at the same residence within a short period of time, the ordinances propose to modify this restriction by providing that in-home retail sales may be exempt from a planning permit as long as the sales do not exceed six times within a calendar year at a residence and that there are no more than 25 customers at each sales event (see Section 1, page 5 of Exhibit 1 of Attachment C, and Section 2, page 6 of Exhibit 1 of Attachment F). If the in-home retail sales activity exceeds these standards, then they would be subject to the permit requirements and the existing development standards for home occupations.

## **6.0 ENVIRONMENTAL REVIEW**

- 6.1 Case No. 13ORD-00000-00003.** The proposed ordinance amendment to the County Land Use and Development Code is recommended to be determined to be exempt from environmental review pursuant to Section 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. No significant environmental impacts would occur as a result of these ordinance amendments.
- 6.2 Case No. 13ORD-00000-00004.** The proposed ordinance amendment to the Article II Coastal Zoning Ordinance is recommended to be determined to be exempt from environmental review pursuant to Sections 15265 and 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15265, the statutory exemption for the adoption of coastal plans and programs, including amendments thereto, shifts the burden of CEQA compliance from the local agency to the California Coastal Commission. Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. No significant environmental impacts would occur as a result of these ordinance amendments.

## **7.0 POLICY CONSISTENCY**

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including the Montecito Community Plan, or the Coastal Land Use Plan, and the adoption of the proposed ordinance amendments will not result in any inconsistencies with the adopted policies and development standards. The proposed amendments implement recent changes in State law in a manner that ensures that the cottage food operations are operated in a manner that is subordinate to the primary residential use of the property on which they are located. The proposed ordinances also specify that the existing permit requirements and development standards for home occupations, which have previously been found consistent with the Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use Plan, apply to in-home retail sales.

In order for a development permit to be approved based on these proposed amendments, it still must be determined that the project is consistent with the policies and development standards of the Comprehensive Plan, including the Montecito Community Plan, or the Coastal Land Use Plan. As part of this process, a policy consistency analysis will be performed during the review of the application,

and projects will not be approved unless they are determined to be consistent with applicable policies, and the findings required for approval can be made. Therefore, these amendments may be found consistent with the adopted Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use Plan.

## **8.0 ORDINANCE COMPLIANCE**

The proposed ordinances are consistent with the remaining portions of the Montecito LUDC and Article II that would not be revised by these ordinances. In order to approve a development project based on these proposed amendments, it still must be determined that the project is consistent with the whole of the Montecito LUDC and Article II as applicable.

## **9.0 PROCEDURES**

**9.1 Case No. 13ORD-00000-00003.** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance amendment to the Montecito LUDC to the Board of Supervisors.

**9.2 Case No. 13ORD-00000-00004.** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance amendment to the Article II Coastal Zoning Ordinance to the County Planning Commission.

## **10.0 APPEALS PROCEDURE**

Ordinance amendments are automatically forwarded to the Board of Supervisors for final action following an action of the Planning Commission to either recommend approval, approval with revisions, or denial of the proposed ordinance amendments to the Board of Supervisors, therefore no appeal is required.

## **11.0 ATTACHMENTS**

- A. 13ORD-00000-00003 Findings
- B. 13ORD-00000-00003 Notice of Exemption
- C. 13ORD-00000-00003 Resolution and Proposed Ordinance
- D. 13ORD-00000-00004 Findings
- E. 13ORD-00000-00004 Notice of Exemption
- F. 13ORD-00000-00004 Resolution and Proposed Ordinance
- G. Assembly Bill 1616 Cottage Food Operations (Gatto)