



BOARD OF SUPERVISORS AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: Set Hearing on 05/21/2013 for
06/04/2013
Placement: Administrative (on 05/21/2013)
Departmental (on 06/04/2013)
Estimated Time: 30 minutes (on 06/04/2013)
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director Glenn Russell, Ph.D. (805) 568-2085
Contact Info: Dianne Black, Assistant Director (805)568-2086
SUBJECT: Cottage Food Operations Ordinance Amendments

County Counsel Concurrence
As to form: Yes

Auditor-Controller Concurrence
As to form: N/A

Other Concurrences: N/A

Recommended Actions:

On May 21, 2013, set a hearing for June 4, 2013 to consider the recommendations of the County and Montecito Planning Commissions to approve Case Nos. 13ORD-00000-00002, 13ORD-00000-00003 and 13ORD-00000-00004 which would amend, respectively, the County Land Use and Development Code, the Montecito Land Use and Development Code, and the Article II Coastal Zoning Ordinance, all of Chapter 35, Zoning, of the Santa Barbara County Code, to revise the existing language of the Home Occupations sections of the zoning ordinances 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 within dwelling units.
- Specifically allow in-home retail sales (aka "Tupperware parties") and include standards for determining when such sales are exempt from planning permits.

On June 4, 2013, your Board's action should include the following:

A. Case No. 13ORD-00000-00002 (County LUDC Amendment):

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment A;
2. Determine that the adoption of this ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment B; and

3. Approve Case No. 13ORD-00000-00002, an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code included as Attachment C.

B. Case No. 13ORD-00000-00003 (Montecito LUDC Amendment):

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment D;
2. Determine that the adoption of this ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment E; and
3. Approve 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 Santa Barbara County Code included as Attachment F.

C. Case No. 13ORD-00000-00004 (Article II CZO Amendment):

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment G;
2. Determine that the adoption of this ordinance is exempt from the California Environmental Quality Act pursuant to Sections 15061(b)(3) and 15265 of the Guidelines for Implementation of CEQA included as Attachment H; and
3. Approve Case No. 13ORD-00000-00004, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code included as Attachment I.

Summary Text:

The following provides a summary of the proposed amendments and recommendations of the County and Montecito Planning Commissions as shown in Attachments J and K (the resolutions and ordinances adopted by the County Planning Commission) and Attachment M (the resolution and ordinance adopted by the Montecito Planning Commission). Please also refer to Attachment L (the County Planning Commission staff report dated March 27, 2013) and Attachment N (the Montecito Planning Commission staff report dated March 13, 2013) for further background information and analysis.

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.

1. Cottage Food Operations.

Assembly Bill (AB) 1616 Cottage Food Operations (Gatto), which went into effect January 1, 2013, requires cities and counties to allow persons to prepare and package certain types of non-perishable

food from their homes, and to allow the sale of such foods either from their homes or from other locations. AB1616 also establishes operational requirements for cottage food operations including:

- The operator of the cottage food business must reside in the dwelling where the business is being conducted.
- No more than one full-time equivalent non-resident employee is permitted.
- The use must be conducted within the dwelling's kitchen; however adjacent rooms within the dwelling may be used for storage.
- Food sales from the residence must be allowed.
- Gross annual sales are limited to \$35,000 for 2013, \$45,000 for 2014, and \$50,000 for 2015 and thereafter.

AB1616 establishes two classifications of cottage food operations. Class A operations allow direct to consumer sales, either from the dwelling or some offsite location (e.g., farmers markets), 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. AB1616 also requires the California Department of Public Health to establish and maintain a list of approved food categories; and to establish a process by which new foods can be added to the list and other foods may be challenged and removed.

AB1616 also allows cities and counties to establish a permitting process and to set reasonable standards within certain State-prescribed parameters which may include the adoption of reasonable regulations that relate to the factors listed 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.

However, in regards to noise control, AB1616 restricts any noise standards 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, the development standards as recommended by the County and Montecito Planning Commission do not include noise standards.

Cities and counties may recover costs associated with allowing cottage food operations, but the fees must be reasonable and may not exceed the cost of review and permit processing.

At its hearing on March 20, 2013, the Montecito Planning Commission, by a vote of three in favor, one opposed, and one absent, adopted a resolution recommending that that the Board adopt ordinance amendments for the Montecito Community Plan area that would:

- Provide that cottage food operations are regulated as home occupations that may be allowed either as a use that is exempt from planning permits (because it does not include sales to on-site customers), or requires a Coastal Development Permit or Land Use Permit, or if located within the Appeals Jurisdiction of the Coastal Zone, then the Coastal Development Permit may be required to be approved by the Montecito Planning Commission after a public hearing on the request.
- Require that the cottage food operation be subject to compliance with a set of development standards that address access and concentration, traffic control and parking.

At its hearing on April 3, 2013, the County Planning Commission, by a vote of five to zero, adopted a resolution recommending that the Board adopt ordinance amendments for the area of the County located outside of the Montecito Community Plan area that would:

- Provide that cottage food operations are regulated as home occupations that may be allowed either as a use that is exempt from planning permits (because it does not include sales to on-site customers), or requires a Coastal Development Permit or Land Use Permit, or if located within the Appeals Jurisdiction of the Coastal Zone, then the Coastal Development Permit may be required to be approved by the County Zoning Administrator after a public hearing on the request.
- Require that the cottage food operation be subject to compliance with a set of development standards that address access and concentration, traffic control and parking.

The proposed development standards are summarized below; the language of the actual standard is shown in *italics*. The standards that are recommended by the Montecito Planning Commission that would apply within the Montecito Community Plan Area are slightly different than those recommended by the County Planning Commission that would apply throughout the rest of the unincorporated area. Where there are differences those differences are discussed.

Development Standards

a. Allowed locations.

- (1) *No more than one cottage food operation shall be allowed within any one dwelling unit.*
- (2) *Only one cottage food operation may be allowed on a lot.*
- (3) *No cottage food operation shall be located within 300 feet of another such operation as measured from lot that the cottage food operation is located on.*

This standard provides that only one cottage food operation is allowed on a single lot and that a cottage food operation may not be located within 300 feet of another cottage food operation.

During the County Planning Commission public hearing there was a motion to delete the 300 foot separation requirement. This was in response to the concern that a potential cottage food operation would be prevented from operating simply because there was one already established within 300 feet of the proposed operation. However, the motion failed by a vote of two in favor to three against.

b. Allowed location within the dwelling and the lot containing the cottage food operation.

The development standard regarding the allowed location of the cottage food operation within the dwelling as recommended by the Montecito Planning Commission requires that:

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.

The County Planning Commission was concerned that the cottage food operation may usurp parking spaces that are required to satisfy the parking requirement for the primary dwelling use and added a new Subsection (1) to address this concern:

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.

- (1) *No portion of the cottage food operation including sales and storage shall occur within any parking area required in compliance with Chapter 35.36 (Parking and Loading Standards).*

c. Cottage food operators and cottage food employees.

The development standard that addresses cottage food operators and employees as recommended by the Montecito Planning Commission requires that:

- (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 as defined by California Health and Safety Code Section 113758(b)(1) may participate in a cottage food operation in addition to those individuals residing within the dwelling as their primary residence.*

The County Planning Commission revised this standard by deleting the initial words “up to” from Subsection (2) to clarify that only one non-resident employee could be associated with the cottage food operation. The revised language is shown below:

- (2) One full-time equivalent employee as defined by California Health and Safety Code Section 113758(b)(1) may participate in a cottage food operation in addition to those individuals residing within the dwelling as their primary residence.*

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 35.36 (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 35.36.100.B.2 (Overnight parking of commercial vehicles).*

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. Sales.

As recommended by the Montecito Planning Commission onsite sales of products produced by the cottage food operation are restricted to the hours of 9:30 a.m. to 3:30 p.m. as the Commission felt that customer traffic should not add vehicle trips during peak traffic times.

The Montecito Planning Commission added the following development standard in order to prevent cottage food operations from adding traffic trips attributable to customers driving to the site of the cottage food operation during peak traffic hours:

Food items may only be sold, or offered for sale, from the dwelling to customers present at the dwelling between the hours of 9:30 a.m. to 3:30 p.m.

The County Planning Commission recommended the adoption of a similar standard with expanded hours. Their primary concern was not peak hour traffic but that the traffic would not be

a nuisance to neighbors of the cottage food operation.

Food items may only be sold, or offered for sale, from the dwelling to customers present at the dwelling between the hours of 8:00 a.m. to 7:00 p.m.

f. Waste generated by cottage food operations.

The County Planning Commission was concerned that waste containers associated with the cottage food operation could be unsightly especially if left by the curb or in an area visible from an adjacent road right-of-way. In response to this concern they recommended adding the following additional development standard that would reference the requirements for waste containers contained in Chapter 17 (Solid Waste Services) of the County Code. The Montecito Planning Commission did not include this standard in their recommendation.

All waste containers shall be in compliance with Section 17-8 (Containers) of Chapter 17 (Solid Waste Services) of the County Code.

g. Public nuisances and traffic impacts.

A cottage food operation shall not create vehicular or pedestrian traffic or other public nuisance 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.

This standard is proposed to help ensure that the cottage food operation is compatible with the surrounding neighborhood in regards to not creating parking or traffic impacts, and other nuisances (e.g., odors, noise) that may have adverse impacts on the neighbors and affect the residential character of the neighborhood.

h. Compliance with conditions.

The cottage food operation shall at all times be conducted in compliance with:

- (1) The conditions and limitations of [the cottage food operations development standards] 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.*

This standard affirms that the cottage food 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., then that would provide the basis for revocation of the approval for the cottage food operation.

i. County Public Health Department.

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.

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

2. 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 amendments, there was testimony that such in-home retail sales could be construed as a special event and regulated under the temporary use sections of the zoning ordinances. Therefore, to alleviate any confusion the proposed ordinances include language in the Applicability section of the regulations that clearly specify that in-home retail sales are regulated as home occupations.

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, as recommended by the Planning Commissions 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 four times within a calendar year at a residence and that there are no more than 25 customers at each sales event. 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.

3. Corrections to ordinances.

The ordinances proposed for adoption by your Board include the following corrections to the ordinances recommended by the Planning Commissions.

- County LUDC: Page six of Attachment C, change the citation in Note (5) regarding Home Occupations from Section 35.42.130 to Section 35.42.190.
- Montecito LUDC: Page three of Attachment F, change the citation in Subsection 2.d from Chapter 35.36 (Parking and Loading Standards) to Chapter 35.436 (Parking and Loading Standards).
Page three of Attachment F, change the citation in Subsection 2.d(2) from Section 35.436.090.B.2 (Overnight parking of commercial vehicles) to Section 35.436.090.B (Overnight parking of commercial vehicles).
Page four of Attachment F, change the citation in Subsection 2.g(1) from Subsection C.2 to Subsection D.2.
- Article II CZO: Page three of Attachment I, change the citation in Section 35-121.3.1.a(2)(c) from Section 35.182 (Appeals) to Section 35-182 (Appeals).

Fiscal Analysis:

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-138 of the adopted Planning and Development Department's budget for fiscal year 2012-13. There are no facilities impacts.

Special Instructions:

1. The Planning and Development Department will satisfy all noticing requirements.
2. The Clerk of the Board will send a copy of the signed and numbered ordinance and minute order

to the Planning and Development Department, attention Noel Langle.

Attachments:

- A. County LUDC Findings
- B. County LUDC CEQA Notice of Exemption
- C. County LUDC Ordinance
- D. Montecito LUDC Findings
- E. Montecito LUDC CEQA Notice of Exemption
- F. Montecito LUDC Ordinance
- G. Article II CZO Findings
- H. Article II CZO CEQA Notice of Exemption
- I. Article II CZO Ordinance
- J. County Planning Commission Resolution 13-12 and Ordinance
- K. County Planning Commission Resolution 13-13 and Ordinance
- L. 03/27/2013 County Planning Commission staff report (w/o attachments)
- M. Montecito Planning Commission Resolution 13-10 and Ordinance
- N. 03/13/2013 Montecito Planning Commission staff report (w/o attachments)

Authored by:

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