

ATTACHMENT M: MONTECITO PC RESOLUTION NO. 13-10 AND ORDINANCE

**RESOLUTION OF THE SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

IN THE MATTER OF RECOMMENDING TO THE BOARD)
OF SUPERVISORS THE ADOPTION OF AN AMENDMENT)
TO SECTION 35-2, THE SANTA BARBARA COUNTY) RESOLUTION NO.: 13 - 10
MONTECITO LAND USE AND DEVELOPMENT CODE,)
OF CHAPTER 35, ZONING, OF THE COUNTY CODE,) CASE NO.: 13ORD-00000-00003
AMENDING DIVISION 35.4, MONTECITO STANDARDS)
FOR SPECIFIC LAND USES, AND DIVISION 35.10,)
GLOSSARY, TO IMPLEMENT NEW REGULATIONS)
REGARDING COTTAGE FOOD OPERATIONS AND)
SPECIFY THAT IN-HOME RETAIL SALES ARE)
REGULATED AS HOME OCCUPATIONS.)

WITH REFERENCE TO THE FOLLOWING:

- A. On November 27, 2007, by Ordinance 4660, the Board of Supervisors adopted the Santa Barbara County Montecito Land Use and Development Code, Section 35-2 of Chapter 35 of the Santa Barbara County Code; and
- B. The Montecito Planning Commission now finds that it is in the interest of the orderly development of the County and important to the preservation of the health, safety and general welfare of the residents of the County to recommend that the Board of Supervisors adopt an ordinance (Case No. 13ORD-00000-00003) amending Section 35-2 of Chapter 35 of the Santa Barbara County Code, the Santa Barbara County Montecito Land Use and Development Code, to implement new regulations and make other minor clarifications, corrections and revisions.

Said Ordinance is attached hereto as Exhibit 1 and is incorporated herein by reference.

- C. The proposed Ordinance is consistent with the Santa Barbara County Comprehensive Plan including the Montecito Community Plan, and the requirements of the State Planning, Zoning and Development Laws.
- D. The proposed Ordinance is in the interest of the general community welfare since the amendment will serve to implement the requirements of State law regarding allowing cottage food operations within dwellings in a manner that ensures that the cottage food operation is accessory and incidental to the primary use of the dwelling as a residence such that the commercial cottage food operation is compatible with the surrounding neighborhood.
- E. This Montecito Planning Commission has held a duly noticed public hearing, as required by Section 65854 of the California Government Code, on the proposed Ordinance at which hearing the proposed Ordinance was explained and comments invited from the persons in attendance.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The above recitations are true and correct.
2. In compliance with the provisions of Section 65855 of the California Government Code, this Montecito Planning Commission recommends that the Board of Supervisors of the County of Santa Barbara, State of California, following the required noticed public hearing, approve and adopt the above mentioned recommendation of this Montecito Planning Commission, based on the findings included as Attachment A of the Montecito Planning Commission Staff report dated March 13, 2013.
3. A certified copy of this resolution shall be transmitted to the Board of Supervisors.
4. The Chair of this Montecito Planning Commission is hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above mentioned action by the Montecito Planning Commission.

PASSED, APPROVED AND ADOPTED this March 20, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

(signed copy on file).
SUE BURROWS, Chair
Santa Barbara County Montecito Planning Commission

ATTEST:

(signed copy on file).
DIANNE MEESTER BLACK
Secretary to the Commission

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By (signed copy on file).
Deputy County Counsel

EXHIBITS:

1. 13ORD-00000-00003

EXHIBIT 1

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE BY AMENDING DIVISION 35.4, MONTECITO STANDARDS FOR SPECIFIC LAND USES, AND DIVISION 35.10, GLOSSARY, TO IMPLEMENT NEW REGULATIONS FOR HOME OCCUPATIONS THAT QUALIFY AS COTTAGE FOOD OPERATIONS AND SPECIFY THAT IN-HOME RETAIL SALES ARE REGULATED AS HOME OCCUPATIONS.

Case No. 13ORD-00000-00003

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 35.4, Montecito Standards for Specific Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.442.130, Home Occupations, of Chapter 35.442, Standards for Specific Land Uses, to read as follows:

35.442.130 - Home Occupations

A. Purpose and applicability. This Section provides development and operational standards for home occupations where allowed by Division 35.2 (Montecito Zones and Allowable Land Uses). The intent is to prevent any adverse effects on the residential enjoyment of surrounding residential properties.

B. Applicability. The provisions of this Section shall apply to all home occupations which include Cottage Food Operations and In-home Retail Sales. Home occupations may be permitted in any dwelling in any zone including nonconforming dwellings.

BC. Permit requirements.

1. Before the commencement of a home occupation within a dwelling or artist studio, ~~a Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits) or a~~ Land Use Permit in compliance with Section 35.472.110 (Land Use Permits) shall be ~~obtained~~ issued for the home occupation unless the occupation qualifies for an exemption as stated in Subsection ~~DE~~. (Exceptions to permit requirements for home occupations) below.
2. Prior to the issuance of ~~a Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits) or a~~ Land Use Permit in compliance with Section 35.472.110 (Land Use Permits) for a home occupation within a dwelling or artist studio, a Notice to Property Owner certifying that the home occupation will be conducted in compliance with the development standards of Subsection ~~ED~~. (Development standards), below, and any other conditions as may be made part of the ~~Coastal Development Permit or~~ Land Use Permit shall be recorded by the property owner.

ED. Development standards.

1. **Home occupations other than cottage food operations.** A home occupation shall comply with all of the following development standards, except that if the home occupation qualifies as a cottage food operation then the development standards of Subsection D.2 (Cottage food operations) shall apply instead.

1. **a.** Only one home occupation shall be allowed on any one lot. The home occupation shall be

conducted either entirely within not more than one room of the dwelling, not including garages, or entirely within an artist studio. A home occupation may not be conducted outside of the dwelling or the artist studio.

- 2 b. The home occupation shall not alter the residential character of the dwelling or the lot that contains the home occupation. There shall be no internal or external alterations to the dwelling that are not customarily found in residential structures, and the existence of the home occupation shall not be discernible from the exterior of the dwelling.
- 3 c. The home occupation shall be conducted solely by the occupant(s) of a dwelling located on the lot that contains the home occupation. No employees other than the dwelling occupant(s) shall be permitted for business purposes on the lot that contains the home occupation. The home occupation may have off-site employees or partners provided they do not report for work at the lot that contains the home occupation.
- 4 d. No displays or signs naming or advertising the home occupation shall be permitted on or off the lot that contains the home occupation. All advertising for the home occupation (e.g., telephone directories, newspaper or other printed material) or on equipment or vehicles associated with the home occupation shall not divulge the location of the home occupation. Business cards and letterhead may list the address of the home occupation.
- 5 e. 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 except for in-home retail sales as allowed in compliance with Subsection E.1.a, below.
- 6 f. A home occupation shall not use electrical or mechanical equipment that would create any visible or audible radio or television interference or create noise audible beyond the boundaries of the lot that contains the home occupation. Noise levels associated with the home occupation shall not exceed 65 dBA outside the dwelling that contains the home occupation.
- 7 g. No smoke or odor shall be emitted that occurs as a result of the home occupation.
- 8 h. There shall be no outdoor storage of materials related to the home occupation.
- 9 i. No vehicles or trailers, except those incidental to the residential use and those allowed under Subsection 35.436.090.B.2 (Overnight parking of commercial vehicles), shall be kept on the lot that contains the home occupation.
- 10 j. A home occupation shall be strictly secondary and subordinate to the primary residential use and shall not change or detrimentally affect the residential character of the dwelling, the lot that contains the home occupation, or the neighborhood.
- 11 k. Where a home occupation will be conducted within a dwelling or artist studio that relies on a septic system, written clearance from the Public Health Department shall be required prior to approval of ~~the Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits)~~ or a Land Use Permit in compliance with Section 35.472.110 (Land Use Permits).
- 12 l. No hazardous materials other than those commonly found within a residence shall be used or stored on the site. Hazardous materials and equipment shall be limited to quantities that do not constitute a fire, health, or safety hazard.
- 13 m. Business-related deliveries shall be limited to a maximum of two per week. United States Mail and commercial parcel carriers' deliveries shall be exempt from this limitation.
- 14 n. A home occupation 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 that contains the home occupation.

15 ~~The home occupation shall at all times be conducted in compliance with the conditions and limitations of the foregoing Subsections C.1 through C.14 and any other conditions and/or limitations that may be part of the Coastal Development Permit or Land Use Permit issued to allow the home occupation. Failure to comply with conditions and limitations shall be cause for revocation of the Coastal Development Permit or Land Use Permit in compliance with Section 35.474.060 (Revocations).~~

16 ~~Occupations that cannot comply with all of the development standards listed in Subsections C.1 through C.14 shall not be permitted as home occupations. Examples of prohibited occupations include:~~

- ~~a. Onsite automotive repair or service.~~
- ~~b. Painting of vehicles, trailers, boats or machinery.~~

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) 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.

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.

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 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 35.436.090.B.2 (Overnight parking of commercial vehicles).

e. Sales. 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.

f. 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.

- g. The cottage food operation shall at all times be conducted in compliance with:
- (1) The conditions and limitations of this Subsections C.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.
- h. 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.

DE. **Exceptions to permit requirements for home occupations.** ~~A Coastal Development Permit or Land Use Permit shall not be required for home occupations (e.g., accounting, bookkeeping, consultants in engineering, finance, management, and publishing, telephone sales) that meet~~ are in compliance with all of the following criteria:

1. ~~The Development development standards 1 through 4, and 6 through 15 under Subsection C. (Standards) above.~~ of Subsection D.1 or D.2, above, as applicable to the specific home occupation except that:
2. a. Clients or customers shall not be served at the lot that contains the home occupation except for in-home retail sales provided that these sales do not exceed four times within a calendar year and that there are no more than 25 customers at each sales event.
3. b. Business advertisements, except for business cards and letterhead, shall not list the home address of the artist studio or dwelling in which the home occupation occurs.
4. c. Business transactions occurring on the lot that contains the home occupation shall occur by internet, telephone, facsimile, computer modem or other telecommunication medium, or written correspondence.

EF. **Violations of home occupation regulations.**

1. ~~It shall be unlawful for a person, firm, or corporation, to establish, cause, allow, or maintain a type of business, profession or other commercial occupation (collectively to be referred to as a "home occupation") in an area zoned for residential use within a dwelling before the issuance of a Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.472.110 (Land Use Permits) allowing the home occupation unless the home occupation does not require the issuance of a Land Use Permit in compliance with Subsection E (Exceptions to permit requirements for home occupations), above.~~
2. The home occupation shall at all times be conducted in compliance with the conditions and limitations of Subsection D (Development Standards), above, any other conditions and/or limitations that may be part of the Land Use Permit issued in compliance with Section 35.472.110 (Land Use Permits) to allow the home occupation, and it shall be unlawful for a person to conduct a home occupation for which a Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.472.110 (Land Use Permits) has been issued without complying with all conditions attached to the permit.
3. Failure to comply with conditions and limitations of the Land Use Permit shall be cause for revocation of the Land Use Permit in compliance with Section 35.474.060 (Revocations).
4. Occupations that cannot comply with all of the development standards listed in Subsection D (Development Standards), above, shall not be permitted as home occupations. Examples of

prohibited occupations include:

- a. Automotive repair or service.
- b. Painting of vehicles, trailers, boats or machinery.

SECTION 2:

DIVISION 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.500.020, Definitions of Specialized Terms and Phrases, of Chapter 35.500, Definitions, to add the following new definition of “Cottage Food Employee,” “Cottage Food Operation,” “Cottage Food Operator,” “Cottage Food Products,” “Direct Sale,” “Indirect Sale,” “In-home Retail Sales,” “Private Home” and “Registered or Permitted Area” to read as follows:

Cottage Food Employee. 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.

Cottage Food Operation. A commercial enterprise conducted within the registered or permitted area of a dwelling unit where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers in compliance with California Health and Safety Code Section 113758.

Cottage Food Operator. An individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

Cottage Food Products. Nonpotentially hazardous foods, including foods that are described in California Health and Safety Code Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

Direct Sale. 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 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.

Indirect sale. 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 California Health and Safety Code 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.

In-home Retail Sales. A type of direct sales occurring within a dwelling in which sellers operate either from their primary residence or the homes of customers.

Private Home. A dwelling, including an apartment or other leased space, where individuals reside.

Registered or Permitted Area. 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.

SECTION 3:

All existing indices, section references, and figure and table numbers contained in Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated

above.

SECTION 4:

Except as amended by this Ordinance, Division 35.4 and Division 35.10 of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5:

This ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

SALUD CARBAJAL
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel