

City of Bishop
PLANNING COMMISSION MEETING AGENDA
City Council Chambers – 301 West Line Street
Bishop, California 93514

DATE:
May 29, 2013
7:00 P.M.

NOTICE TO THE PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (760) 873-5863. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35.104 ADA Title II).

Any writing that is a public record that relates to an agenda item for open session distributed less than 72 hours prior to the meeting will be available for public inspection at City Hall, 377 West Line Street, Bishop, California.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC COMMENT: NOTICE TO THE PUBLIC: This time is set aside to receive public comment on matters not calendared on the agenda.

CORRESPONDENCE:

APPROVAL OF MINUTES

- (1) Minutes of the Planning Commission meeting held on April 30, 2013 subject for approval.

PUBLIC HEARING

- (2) Request for a Conditional Use Permit to set aside the minimum parking requirements at 106 MacIver Street which is located in a C-1 (General Commercial zone).
- (3) Proposed amendment of Zoning Ordinance – Cottage Food Operation

NEW BUSINESS

- (4) Request for a Conditional Use Permit to set aside the minimum parking requirements at 106 MacIver Street which is located in a C-1 (General Commercial zone).
- (5) Proposed amendment of Zoning Ordinance – Cottage Food Operation

STAFF AND COMMISSION REPORTS

ADJOURNMENT: The next regularly scheduled meeting of the Planning Commission will be June 25, 2013 at 7:00 P.M. in the Bishop City Council Chambers, 301 West Line Street, Bishop.

City of Bishop
PLANNING COMMISSION MINUTES
City Council Chambers – 301 West Line Street
Bishop, California 93514

April 30, 2013

CALL TO ORDER:

Chairman Malloy called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Chairman Malloy.

COMMISSIONERS PRESENT:

Huntley, Hardy, Lowthorp, Garcia, Bhakta, and Malloy

COMMISSIONERS ABSENT:

Crom

OTHERS PRESENT:

Gary Schley, Public Services Officer
Keith Caldwell, City Administrator / Planning Director
Michele Thomas, Secretary
David Grah, Director of Public Works

PUBLIC COMMENT

Chairman Malloy asked if anyone wished to speak on a subject not calendared on the agenda. There was no public comment.

CORRESPONDENCE

None

(1) APPROVAL OF MINUTES

MOTION

Commissioner Hardy moved to approve the minutes of the March 26, 2013 meeting as written.

Ayes: Huntley, Hardy, Garcia, and Malloy
Abstain: Bhakta and Lowthorp

MOTION CARRIED: 4-0

NEW BUSINESS

- (2) Set Interview Committee for Planning Commission opening.

There is a scheduled vacancy to be open as of June 22. There are to be two commissioners along with two council members on the interview committee. The scheduled vacancy is Commission Crom's and he may apply to stay on the commission.

Hardy, Huntley, and Garcia are available various dates and times during the proposed dates the interviews shall take place. Bhakta and Malloy are available if necessary. Staff will get back to the commissioners with exact interview dates after the two council members have been selected.

At this time, no applications have been received for this vacancy.

OLD BUSINESS

- (3) Review Caltrans proposed Maintenance Yard Extension on Spruce Street.

David Grah, Director of Public Works, stated that the commission has discussed the Caltrans project at their previous meetings in October 2012 and February 2013. The project is to double the size of the existing maintenance yard. Being that this is a state project, the city has no land use authority regarding the proposed project. The property is zoned M-1 and because there is not much land in the city with this type of zoning, the city may want to keep as much available as possible for future development. The first proposal from Caltrans to city staff was to double the frontage along Spruce Street. City staff suggested to Caltrans to widen directly to the east although Caltrans had identified environmental issues in that area. At the October Planning Commission meeting, Caltrans proposed five variations to the project. Commission discussion seemed to support a hybrid alternative to Caltrans' proposed variations of Alternative C and E which would minimize the use of frontage on Spruce Street.

City staff again met with Caltrans a couple months ago. Caltrans indicated they completed the environmental process and selected Alternative C instead of the commission's recommended hybrid alternative. Grah noted that although Caltrans did not accept the commission's recommendation, alternative C does take substantially less footage along Spruce Street than the original proposal. From discussion that took place at the February commission meeting, Grah states that he understands the commission would like Caltrans to go forward with the hybrid approach. Grah drafted a letter addressed to Caltrans explaining their request and is awaiting commission approval.

Brian Wizenread of Caltrans stated that Caltrans did take the hybrid alternative into consideration. The cost to use the hybrid would be an additional cost of \$480,000 due to the site sloping to the east significantly. Alternative C does minimize Spruce Street frontage to accommodate the city's concerns.

Chairman Malloy asked what the estimated costs are for the project. Wizenread stated that using Alternative E which is similar to the hybrid is projected at \$1,440,000 compared to Alternative C at \$960,000.

Brian McElwain, Caltrans Project Manager, expressed that Caltrans staff did take the commission's and city staff's concerns into consideration. There has been project development meetings conducted at three separate occasions in which city staff attended.

Huntley expressed his concern regarding the lack of available commercial property within city limits. He added that by not using the space directly behind the existing maintenance yard obstructs future development there from Spruce Street.

Hardy shared that even if the commission's preferred alternative isn't Caltrans preferred alternative he respects and appreciates the views of Caltrans and their good faith on dealing with the city.

Malloy added that he appreciates all the commissioners input over the meetings this project has been discussed. There has been a good sign of communication between two partners that can hopefully continue to work together. Malloy asked himself whether if this was a private business rather than a government agency, would the commission have a different feeling about requesting a potential additional expense or change to the plan before using up a city resource that would be used for a long time. Malloy feels both should be treated equally even if one would be bringing in more employment and city economy compared to not. Malloy is not inclined to encourage the commission to send the letter to Caltrans to request more study on the project.

The commission agreed unanimously to end discussion on the matter.

STAFF AND COMMISSION REPORTS:

Schley informed the commission about a cottage food ordinance and a Conditional Use Permit for Salvation Army at 106 MacIver Street that will be on the May agenda.

ADJOURNMENT:

Chairman Malloy adjourned the meeting at 7:30 P.M. The next scheduled meeting will be May 29, 2013 at 7:00 P.M. in the City Council Chambers.

Chairman Malloy

Michele Thomas, Secretary

MEMORANDUM

TO: Planning Commission

FROM: Keith Caldwell, Planning Director *KAC*

SUBJECT: PUBLIC HEARING – Conditional Use Permit – 106 MacIver Street

DATE: May 14, 2013

The attached request is to set aside the minimum parking requirement for Salvation Army for the proposed project of a church / store. The property is located in a C-1 zone.

RECOMMENDATION:

Review the request for a Conditional Use Permit to set aside the minimum parking requirement at 106 MacIver Street.

MEMORANDUM

TO: Planning Commission

FROM: Keith Caldwell, City Administrator *KSC*

SUBJECT: PUBLIC HEARING – Proposed Amendment of Zoning Ordinance –
Cottage Food Operation

DATE: May 14, 2013

The attached is an amendment to the Zoning Ordinance and Bishop Municipal Code Title 17 to include a definition for “Cottage Food Operation,” and amend section 17.20.020 R-1 Single Family Residential District, Uses Permitted, to include a cottage food operation as a permitted home occupation use.

RECOMMENDATION:

Review the draft amended zoning ordinance for Cottage Food Operation.

MEMORANDUM

TO: Planning Commission

FROM: Keith Caldwell, Planning Director *KCC*

SUBJECT: NEW BUSINESS – Conditional Use Permit – 106 MacIver Street

DATE: May 14, 2013

The Salvation Army is proposing a project to build a 9000 sq. ft. church / store facility at 106 MacIver Street. This size facility would require 74 parking spaces pursuant to the Bishop Municipal Code. The proponent is requesting to set aside the minimum parking requirements for the project by 28 spaces to make a total of 46 parking spaces.

RECOMMENDATION:

Review the request for a Conditional Use Permit to set aside the minimum parking requirement at 106 MacIver Street and make a recommendation for approval.

MEMORANDUM

Date: May 14, 2013

To: Keith Caldwell, City Administrator *KIC*

From: Gary Schley, Public Services Officer *GS*

Project Title: Salvation Army / Conditional Use Permit

Project Proponent: Salvation Army
Major Don Bowman
621 W. Line Street
Bishop, CA 93514

Project Location: 106 MacIver Street
Bishop, CA 93514
(APN 008-120-20)

Subject: An application for a request of a Conditional Use Permit to allow the applicant The Salvation Army, to set aside the minimum parking requirements for a church / store facility in a C-1 zone.

Background: The proposed project is a 9000 square foot church / store facility with 46 paved parking spaces on a .74 acre site located at 106 MacIver Street, Bishop. The proposed structure is a steel fabricated structure with facades to enhance the aesthetic appearance with site improvements. The facility will include areas for Chapel worship, Salvation Army Thrift Store and supplementary uses for administrative and social service offices, meeting rooms, classrooms, and a kitchen and storage areas for the facility.

The proposed facility would require seventy four (74) parking spaces, pursuant to Section 17.48.070 of the Bishop Municipal Code. As designed the facility cannot provide the additional twenty eight (28) parking spaces that are required, therefore, the proponent is requesting to set aside the minimum parking requirement for the project.

The project proponent performed and submitted a parking survey of their current facility at 621 West Line Street and the proposed site on MacIver Street to determine if there was an adequate parking supply for the demand. The Town and Country Center parking lot survey reflects an average of 17.2 parked cars at 10:00 AM Sundays (time of services). The findings conclude that only on the worst case scenario would the demand exceed the supply. In that case the overflow would be required to park on the street and adjacent parking areas. The survey does not address the size of the West Line St. facility or the congregations anticipated growth. The proponent of the project has a signed memorandum of understanding with an adjacent parcel owner that approves overflow

parking upon the adjacent parcel parking area on Sunday mornings.

The "Religious Land-Use and Institutionalized Persons Act of 2000" (RLUIPA) prohibits governments from imposing a land use regulation in a manner that imposes a substantial burden on the institution. The effect of this legislation allows religious institutions to circumvent government regulations unless the government can demonstrate that the imposition of that burden is in furtherance of a compelling governmental interest.

The proposed project and adjacent properties are within a C-1 zoning district (General Commercial and Retail District). The settings vary from restaurants to the west, a large retail/professional facility to the south, a trailer park across MacIver St. to the north and a senior citizen manufactured home park to the east.

Recommendation: Review the request for a Conditional Use Permit to set aside the minimum parking requirements for church / store at 106 MacIver Street.

City of Bishop

Use Permit and Zoning Variance Application Form
(To be completed by applicant)

Date Filed 10-29-12

This application is for a (circle one) Conditional Use Permit Zoning Variance

Name and address of applicant:

Jason GRIFFIN 1303 W Ridgcrest Blvd - Ridgcrest Ca. 93555

Name and address of property owner:

The Salvation Army

Legal description of property:

Por NE4 sec 10 T 75 R 33 E - Bishop

Location (address, section, township, range, parcel number):

106 Maxwell St. sec 10 ATN: 008-120-20-0

Present zoning:

VAC - C - 1 ZONE

General Plan designation:

TYPE: 11-B

Proposed use of property:

New Church structure / M/ group # A3 (Church)

Consent of Owner: The following must be signed by at least one owner of record. I consent to the information accompanying this statement.

Stephen C. Smith
Signature

11/6/12
Date

Stephen C. Smith
Name

310-503-5941
Phone or email

Applicant Certification: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Jason W. Griffin
Signature

10-27-12
Date

Jason W. Griffin
Name

760-608-2039
Phone or email

Jwgriffin@mehsi.com

This Section For City Use

Filing Fee:

Receipt/application number:

Accepted for processing (signature and date):

Staff action:

Planning Commission Action:

Remarks

MEMORANDUM

TO: Planning Commission

FROM: Keith Caldwell, City Administrator KSC

SUBJECT: NEW BUSINESS – Proposed Amendment of Zoning Ordinance – Cottage Food Operation

DATE: May 14, 2013

The City of Bishop is proposing an amendment to the Zoning Ordinance and Bishop Municipal Code Title 17 to include a definition for “Cottage Food Operation,” and amend section 17.20.020 R-1 Single Family Residential District, Uses Permitted, to include a cottage food operation as a permitted home occupation use.

RECOMMENDATION:

Review the draft amended zoning ordinance for Cottage Food Operation and make a recommendation for approval of the Final amended ordinance for Cottage Food Operation to the City Council.

MEMORANDUM

Date: May 14, 2013

To: Keith Caldwell, Planning Director KSC

From: Gary Schley, Public Services Officer

Subject: Amendment to the City of Bishop Zoning Ordinance

Background: The City of Bishop is proposing an amendment to the Zoning Ordinance and Bishop Municipal Code Title 17 to include a definition for "Cottage Food Operation," and amend section 17.20.020 R-1 Single Family Residential District, Uses Permitted, to include a cottage food operation as a permitted home occupation use.

Recently approved Assembly Bill 1616, the California Homemade Food Act, allows for Cottage Food Operations in residential districts effective January 1, 2013. A Cottage Food Operation (CFO) is an enterprise at a private home where low-risk foods are prepared or packaged for public consumption. Assembly Bill (AB) 1616 requires local jurisdictions approval of CFOs in residential dwellings. Home occupations are currently permitted in Bishop residential districts, subject to the provisions in Bishop Municipal Code, section 17.20.020. The code section allows for home based businesses that do not change the appearance or conditions of a residence or neighborhood. CFOs are home businesses and are therefore subject to this code section. The code contains specific criteria for home occupations, most of which is consistent with the provisions of AB 1616. The proposed zoning update provides greater consistency between State and local laws related to CFOs.

Based upon a review of the proposed zoning ordinance amendment it is determined exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sec. 15061, (Title 14 of the California Code of Regulations) in that the ordinance amendment in question would not have a significant effect on the environment. It is also determined that this zoning ordinance amendment is categorically exempt from CEQA pursuant to section 15301 as operation of an existing structure involving negligible expansion of use. The Cottage Food Operation, as a home occupation, is an operation of a structure involving negligible expansion, and is required to be in keeping with the existing residential character of the dwelling and neighborhood.

Proposed zoning ordinance amendments must be submitted to the Planning Commission and given a noticed public hearing. After the hearing, the planning commission must render its decision in the form of a written recommendation to the City Council. The code section additions or changes in the attached zoning amendment are highlighted in red.

Recommendation: Hold a public hearing and review the draft zoning ordinance amendment and provide a recommendation to the City Council.

Attached: Draft Zoning Ordinance Amendment
Health and Safety Code, Section 113758
Assembly Bill No. 1616

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BISHOP, STATE OF CALIFORNIA, ADDING SECTION 17.08.085 TO CHAPTER 17.08 DEFINITIONS OF TITLE 17 ZONING OF THE BISHOP MUNICIPAL CODE; AND AMENDING SECTION 17.20.020 R-1 SINGLE FAMILY RESIDENTIAL DISTRICT, USES PERMITTED RESPECTING HOME OCCUPATIONS

THE CITY COUNCIL OF THE CITY OF BISHOP, STATE OF CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Bishop Municipal Code Title 17 ZONING, Chapter 17.08 DEFINITIONS is hereby amended to add new section titles as follows:

Chapter 17.08
DEFINITIONS

Sections:

17.08.085

SECTION 2. Bishop Municipal Code Chapter 17.08 DEFINITIONS is hereby amended to add new sections 17.08.085 Cottage Food Operation read in its entirety as follows:

17.08.085 Cottage Food Operation. An enterprise at a private home where low-risk food products are prepared or packaged for public consumption, as defined in Section 113758 of the Health and Safety Code.

SECTION 3. Section 17.20.020 R-1 - Uses Permitted is hereby amended to read in its entirety as follows:

17.20.020 - Uses permitted.

No building or structure on land shall be used, and no building or structure shall be designed, erected, structurally altered or enlarged except for the following purposes:

- A. Single-family residential structure, not more than one dwelling unit to each lot;
- B. Home occupations:

1. No employment of help in such occupation other than the members of the resident family.
 2. The use shall not generate traffic beyond that normal to the zone in which it is located nor involve the use of commercial vehicles,
 3. No storage of materials and/or supplies indoors or outdoors,
 4. Not more than one room in the dwelling shall be employed for the home occupation,
 5. In no way shall the appearance of the structure be so altered that the structure may be reasonably recognized as serving a nonresidential use,
 6. A cottage food operation as defined in Section 113758 of the Health and Safety Code shall be a permitted home occupation provided it complies with all applicable provisions of this section and the Health and Safety Code, as it may be amended. Any applicant for home occupation business license shall demonstrate he or she operates a qualifying cottage food operation. Notwithstanding the foregoing, subsections (B) (1), (3) and (4).
- C. Guesthouse, provided said house is without a kitchen and is an accessory use for transient guests of the occupant of the main building and where no rent is paid either in money or by services and is located in the rear of the main building;
- D. Accessory buildings and structures;
- E. Any other such uses the planning commission may deem to be similar to those listed above and not more obnoxious or detrimental to health and safety. When such use is deemed to be similar a use permit may be granted by the planning commission;
- F. Mobile homes complying with state regulations.
- G. Bed and breakfast inn. Bed and breakfast inn means a residential structure, located in a residential zone, which provides overnight accommodations for travelers or tourists on a daily basis, and which serves breakfast to its guests, but not to the public generally, the price for which is included in the charge lodging. Bed and breakfast inns shall comply with all of the following conditions:
- A. The approval of an initial study and assessment of environmental impact, as per Resolution 84-18, shall first be required.
 - B. The approval of a conditional use permit, pursuant to the zoning title, shall be required.
 - C. The minimum size shall be one acre.
 - D. The dwelling or structure to be used as the bed and breakfast inn shall have been erected prior to the date of adoption of this ordinance.

- E. Parking requirements and driveway standards shall meet the city standards with a minimum of two spaces for the owners unit and one space per guest room. These places should be adequately screened from the street with landscaping or fencing.
- F. The maximum number of rooms which may be rented is four, unless it can be shown that the structure and/or parcel is of sufficient size to contain more rooms while meeting the purpose of this article.
- G. The owner of the property must reside on subject premises at all times.
- H. No restaurant activity shall take place. Breakfast meals shall be served only to registered overnight guests.
- I. The maximum length of stay for any guest shall be fourteen (14) days during any consecutive ninety (90) day period.
- J. No cooking facilities shall be permitted in any of the guest rooms.
- K. Sign on premises advertising for any bed and breakfast inn located in any residential zone shall be limited to one wall sign not more than four square feet in area. The content of any such sign shall be limited to identifying not more than the name and address of the facility. No sign shall be illuminated. Placement and material of the sign shall be reviewed planning commission.
- L. Kitchen use to prepare meals served to overnight guests shall meet all Health Department standards and any required permits to be issued by the Health Department.
- M. In no way shall the appearance of the structure be so altered that the structure may be reasonably recognized as a service of non-residential use.
- N. Other than uses as a bed and breakfast inn, no non-residential use shall be permitted on subject property.
- O. A city business license shall be obtained and maintained by the owners.
- P. The bed and breakfast inn shall meet all other standards of underlying zone.

SECTION 4. Except as hereby specifically amended, all other terms and provisions of Chapters 17.08 and 17.20 of Title 17 of the Bishop Municipal Code shall remain in full force and effect. Ordinance No. 424 of the City of Bishop is hereby amended to the extent that it is inconsistent herewith; however except as hereby specifically amended, all other terms and provisions or Ordinance No.424 shall remain in full force and effect.

SECTION 5. This ordinance shall be in full force and effect thirty (30) days from and after its passage and adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published in the manner and form provided by law in the Inyo Register, a newspaper of general circulation printed and published in the City of Bishop, State of California which said newspaper is hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2013.

LAURA SMITH, MAYOR

ATTEST: Keith Caldwell, City Clerk

By: _____
Robin Picken, Assistant City Clerk

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.

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 pizelles.

(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 permitholder. If the permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder 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 permitholder 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 permitholder, 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 permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permitholder 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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CITY OF BISHOP

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June 1, 2013

Bishop City Council
PO Box 1236
Bishop, CA 93515

Re: Proposed Amendment of Zoning Ordinance

Please be advised that the Bishop Planning Commission, at their May 29, 2013 meeting, voted ___ to recommend the City Council adopt an amendment to Bishop Municipal Code Chapter 17 Zoning by adding Section 17.08.085 to provide a definition for Cottage Food Operation and amending Section 17.20.020 R-1- Uses Permitted. The draft ordinance amendment is intended to allow permitting of cottage food operation as a home occupation in residential zones.

The Planning Commission found that the proposed zoning ordinance amendments are consistent with the goals and policies of State of California Assembly Bill No.1616, State of California Health and Safety Code and the City of Bishop General Plan.

Sincerely,

Darren Malloy
Commissioner, Bishop Planning Commission