

ORDINANCE NO. 1108

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING SECTIONS OF THE ZONING CODE OF THE LOS BANOS MUNICIPAL CODE RELATING TO COTTAGE FOOD OPERATIONS AMENDING TITLE 9, CHAPTER 3

WHEREAS, Cottage Food Operations were approved by the State of California with Assembly Bill 1616; and

WHEREAS, according to Assembly Bill 1616, cities need to permit Cottage Food Operations within the residential districts; and

WHEREAS, the only control the local government may have is placing reasonable requirements relating to spacing and concentration, traffic control, parking and noise control relating to the home uses; and

WHEREAS, a definition for a Cottage Food Operation has been added to the Los Banos Municipal Code, the use has been added as a use that is allowed with a permit and an Article has been added related to the use; and

WHEREAS, a public hearing notice was advertised in the Los Banos Enterprise as required by the Los Banos Municipal Code and Government Code Section 65091; and

WHEREAS, the Los Banos Planning Commission conducted a duly noticed public hearing on March 27, 2013 at which time all individuals desiring to comment on the proposed ordinance were heard, and recommended the City Council approve an amendment related to Cottage Food Operations; and

WHEREAS, The City Council conducted a duly noticed public hearing on the Zoning Ordinance amendment for the City of Los Banos on April 17, 2013, May 1, 2013 and May 15, 2013 at which time all individuals desiring to comment on the document were heard.

The City Council of the City of Los Banos does ordain as follows:

Section 1. Existing Section 9-3.201 of the Los Banos Municipal Code is amended to include the definition of a Cottage Food Operation and will read as follows:

Sec. 9-3.201 Definitions.

"Cottage Food Operation" means an enterprise at a private home where specific low-risk food products that do not require refrigeration are prepared or packaged for sale to consumers, subject to the requirements of the State of California with criteria and conditions related to spacing/concentration, parking, traffic and noise control to maintain the residential nature of the neighborhoods.

Section 2. A new Article 39 is added to be numbered and titled and to read as follows:

Article 39. Cottage Food Operation

Section 3. A new Section 9-3.3901 is added to be numbered and titled and to read as follows:

Sec. 9-3.3901 Definition and purpose.

The definition and purpose of Cottage Food Operation shall be as described in Section 9-3.201 of this chapter.

Section 4. A new Section 9-3.3902 is added to be numbered and titled and to read as follows:

Sec. 9-3.3902 Permit required.

No person may operate within the City without first having in his or her possession a Cottage Food Operation permit issued by the City in accordance with this chapter. No permit granted herein shall confer any vested right to any person or business for more than the permit period. All Cottage Food Operations shall comply with the provisions of this chapter as they may be amended hereafter. The operation of a Cottage Food Operation shall be permitted in all private homes subject to the criteria and conditions as established.

Section 5. A new Section 9-3.3903 is added to be numbered and titled and to read as follows:

Sec. 9-3.3903 Permit period.

All Cottage Food Operation permits issued by the City to operate in private homes pursuant to Section 9-3.3902 shall be limited to a permit period of one calendar year.

Section 6. A new Section 9-3.3904 is added to be numbered and titled and to read as follows:

Sec. 9-3.3904 Application for permit to operate.

A person desiring to run a Cottage Food Operation shall submit a written application for a permit to operate in a form acceptable to and with all supporting information required by the Community Development Department. Such application shall be accompanied by a nonrefundable, nontransferable application fee in an amount as established by resolution of the City Council. Any such permit shall be required to be renewed annually and a separate nonrefundable, nontransferable application fee shall be paid yearly for such renewal applications. The permit is to be on the premises at all times. Permits to operate are nontransferable.

- (a) Every Cottage Food Operation shall obtain a City of Los Banos Business License.
- (b) As part of the permit to operate application, the applicant shall provide the following:
 - (1) All items as required on the Los Banos Uniform Application.
 - (2) Two (2) pictures of the front exterior of the home, showing the driveway and off street parking locations.
 - (3) Two (2) pictures of the home kitchen, preparation and storage area for the Cottage Food Operation.
 - (4) A site plan, including sufficient parking for the employee and customers.
- (c) The following may constitute grounds for denial of a permit to operate or a renewal application:
 - (1) The proposed Cottage Food Operation does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety and health regulations;
 - (2) The applicant has knowingly made a material misstatement in the application for a permit to operate;
 - (3) Failure to obtain registration from Merced County Environmental Health;
 - (4) Failure to complete California Department of Public Health (CDPH) approved food processing course;
 - (5) Failure to submit copy of Merced County Environmental Health permit registration to the Community Development Department;
 - (6) Violation of criteria or conditions from previous Cottage Food Operation permit.
- (d) The Planning Commission shall be the decision making authority for any initial application of a permit to operate. The Community Development Director or designee shall be the decision making authority for any renewal application of a permit to operate.

Section 7. A new Section 9-3.3905 is added to be numbered and titled and to read as follows:

Sec. 9-3.3905 Criteria.

The following criteria shall apply to cottage food operations in addition to other conditions of approval as may be added through the permit process:

- (a) Each Cottage Food Operation shall conform to all State and County laws, regulations and requirements.
- (b) Foods allowed for the Cottage Food Operation must be in accordance with those listed as "approved" foods by the California Department of Public Health (CDPH).
- (c) The operator of a Cottage Food Operation shall reside within the residential unit used for such activity as their primary residence.
- (d) No more than twenty-five (25) percent of the private dwelling may be utilized for the Cottage Food Operation.
- (e) Only the home kitchen, meaning that which is primarily intended for use by the residents of a home may be utilized for preparation of Cottage Food Operations.
- (f) No physical conversions or alterations to the residential nature and character of the residential unit where a Cottage Food Operation is being conducted shall be allowed in conjunction with the Cottage Food Operation.
- (g) No portion of any building other than the primary residence may be utilized for any aspect of the Cottage Food Operation.
- (h) No Cottage Food Operation shall be located within 300 feet of another such operation.
- (i) All Cottage Food Operations shall conform to the requirements and restrictions of the Los Banos Municipal Code Noise Control.
- (j) Only those individuals residing within the residential unit, as their primary residence, shall participate in a Cottage Food Operation, except for a full-time equivalent employee.
- (k) Customers of any Cottage Food Operation shall be prohibited from consuming any products purchased from the Cottage Food Operation on the property where such product was produced.
- (l) Where a Cottage Food Operation is conducted from a residential unit within a multi-family residential complex, the operator of the Cottage Food Operation shall police, clean and maintain the property with regard to discarded items that may result from the Cottage Food Operation.
- (m) Violations of criteria and conditions of a Cottage Food Operation shall result in the revocation of the Business License and permit issued by the City of Los Banos.
- (n) No signage or advertising on the site is allowed.
- (o) Gross sales cannot exceed those limits as established by the State of California.
- (p) All persons who prepare or package cottage food products shall complete a food processor course instructed by the California Department of Public Health within the next three (3) months. Copies of each certificate issued are to be submitted to the Community Development Department within three months of permit issuance.

Section 8. A new Section 9-3.3906 is added to be numbered and titled and to read as follows:

Sec. 9-3.3906 Conditions.

In addition to the criteria established in Section 9-3.3905, the Planning Commission may add conditions of approval related to spacing/concentration, parking, traffic control and noise control with the initial permit to operate. The conditions of approval established by the Planning Commission will be a requirement on all subsequent renewals and can only be modified by the Planning Commission after a public hearing.

Section 9. A new Section 9-3.3907 is added to be numbered and titled and to read as follows:

Sec. 9-3.3907 Suspension/revocation of permit to operate.

- (a) Violation and Noncompliance. The Community Development Director or designee may refuse to renew a permit or may revoke or suspend an existing permit on the grounds that the permit holder has failed to comply with the permit conditions or other requirements of this chapter. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period. In any such case, the permit holder shall have the right to appeal in the time and manner set forth in this section.
- (b) Revocation and Suspension of Permit to Operate when the City concludes that grounds for denial, suspension, revocation or refusal to renew a permit to operate exist, he or she shall serve the applicant or permit holder, personally or by certified mail, with a notice of denial or notice of intent to suspend, revoke or refuse to renew permit.
 This notice shall state:
 - (1) The reasons for the proposed action;
 - (2) The effective date of the decision;
 - (3) The right of the applicant or permit holder to a hearing; and
 - (4) That the decision will be final if no hearing request is filed within five (5) business days.
- (c) Hearings and Appeals. Hearing and appeals of the decision of the Community Development Director or designee or the Planning Commission shall be conducted in the same manner provided by Sections 9-3.2326 through 9-3.2328.

Section 10. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Silveira and seconded by Council Member Faria on the 15th day of May, 2013.

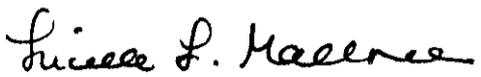
Passed on the 5th day of June, 2013 by the following vote:

AYES: Council Members Faria, Lewis, Silveira, Stonegrove, Mayor Villalta
 NOES: None
 ABSENT: None

APPROVED:


 Michael Villalta, Mayor

ATTEST:


 Lucille L. Mallonee, City Clerk