

ORDINANCE # 2013- 07

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON
RECOMMENDING CITY COUNCIL APPROVAL OF THE COTTAGE FOOD
ORDINANCE CONSISTING OF AMENDING MUNICIPAL CODE SECTION 19.04.030
ADDING A NEW SUBSECTION 19.10.040 OF THE AMERICAN CANYON
MUNICIPAL CODE RELATING TO COTTAGE FOOD OPERATIONS**

WHEREAS, Assembly Bill 1616 which amended State law, including, but not limited to California Government Code Part 1 of Division 1 of Title 5, Sections 109947, 110050, 110460, 11955, 113789, 114021, 114023, 114390, 114405 and 114409 and California Health and Safety Code Part 7 of Division 104, requires municipalities to allow for cottage food operations within residences, effective January 1, 2013; and

WHEREAS, the City wishes to establish standards for cottage food operations (CFOs) as an accessory use to dwelling units and to ensure compatibility with the residential character of the neighborhoods in which such businesses are located; and

WHEREAS, the Zoning Code Amendment is not a project that has the potential for causing a significant effect on the environment and therefore is not subject to review under the California Environmental Quality Act (CEQA). In addition, the proposed ordinance amendment is exempt under the definition of Project in Section 15378 (b)(3) in that it concerns general policy and procedure making; and

WHEREAS, a duly-noticed public hearing was held by the City of American Canyon Planning Commission on October 24, 2013 on the subject application, and unanimously recommended City Council approval of the ordinance; and

WHEREAS, a duly-noticed public hearing was held by the City of American Canyon City Council on November 5, 2013 on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal; and

WHEREAS, the City Council has considered all of the written and oral testimony presented at the public hearing in making its decision.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of American Canyon as follows:

SECTION 1: Required Findings. The city council may approve an application for a zoning map or ordinance text amendment only if it finds all of the following:

1. The amendment is consistent with the goals and policies of the general plan.

The Economic Development Element of the General Plan states that economic vitality is not necessarily linked only with larger businesses and big box retail. The City is establishing a base of diverse small businesses. The City should adopt policies and programs to continue and reinforce this trend. Adoption of the ordinance will foster small home-based businesses which is consistent with the General Plan.

2. The amendment is consistent with the purposes of this title, as set forth in Chapter 19.01, Authority, Purposes and Effects of the Zoning Ordinance.

The amendment is consistent with the purpose of the Zoning Ordinance to protect and promote the public health, safety, peace, comfort, convenience, aesthetics, prosperity, and general welfare because it provides greater opportunities for entrepreneurial enterprise in the City of American Canyon that can be accomplished with minimal capital outlay. State-mandated and local standards ensure the Cottage Food Operations occur as an accessory use of a dwelling for employment and/or business purposes operated by the resident of the home. The business will be conducted in a manner so that the average neighbor, under normal circumstances, would not be aware of its existence.

SECTION 2: Amendment. City of American Canyon Municipal Code Section 19.04.030 is hereby amended to add “Cottage food operations” to the appropriate alphabetical location within the zoning code definition section, to read as set forth below:

“Cottage food operations” means an enterprise defined by the California Health and Safety Code Section 11378, holding a permit or registration by the County of Napa, and is generally an accessory business located within a residence where non potentially hazardous food products are prepared or packed for direct (“Class A” as defined in Section 113758), or direct and indirect sale to consumers (“Class B” as defined in Section 113758).

SECTION 3: Amendment. City of American Canyon Municipal Code Section 19.10.040 is hereby amended to identify “Cottage food operations” as a Permitted Use to the appropriate alphabetical location within each residential zoning district as set forth in Table 19.10.040.

SECTION 4: Amendment. A new Chapter 19.36 “Cottage Food Operations” is hereby added to Title 19 of the City of American Canyon Municipal Code, to read as set forth below:

Chapter 19.36 Cottage Food Operations

19.36.010 Purpose. The purpose of this section is to implement requirements of Assembly Bill 1616 (Chapter 415, effective January 1, 2013), which amended State law, including, but not limited to California Governments Code 6.1 Part 1 of Division of Title 5, Sections 109947, 110050, 110460, 11955, 113789, 114021, 114023, 114390, 114405, and 114409 and California Health and Safety Code Part 7 of Division 104 to allow for cottage food operations, establish standards for cottage food businesses as an accessory use to dwelling units, and to ensure compatibility with the residential character of the neighborhoods in which such businesses are located.

19.36.020 Definition. “Cottage food operations” (CFO) means an enterprise as defined by California Health and Safety Code Section 113758, holding a permit or registration issued by the County of Napa and the City of American Canyon in accordance with Municipal Code Chapter 19.36, and is generally an accessory business located within a residence where non-potentially hazardous food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers.

19.36.030 Applicability. A cottage food operation is an accessory use permitted in any legally established dwelling, subject to standards in Subsections D and E, and is a distinct use different than a home occupation. Cottage food operations are not required to comply with the requirements of home occupations as defined in Municipal Code Chapter 19.29.

19.36.040 Standards. Cottage food operations are permitted accessory uses to residences provided that all of the following standards are met:

1. **Size.** The use is confined to the registered or permitted area, as defined by Section 113758 of the California Health and Safety Code and shall not exceed 200 square feet or 25% of the principal dwelling, attached or detached garage, or any other accessory structure. A garage may be used for storage only when sufficient parking spaces remain available to meet current residential parking standards.
2. **Indoors.** The use, including any storage, is conducted entirely indoors within the principal dwelling, garages, or accessory structures.
3. **Employees.** The use is carried on only by an immediate family member or household member occupying the dwelling, with no more than one nonresident, non-family member person employed.
4. **Traffic.** The operation shall not invite customers to the residence and the operation shall not transact business with customers at the residence.
5. **Traffic.** No pedestrian or vehicular traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
6. **Signage.** No on-site signage or advertisement identifying the CFO is permitted.
7. **Vehicle.** No vehicle over one ton carrying capacity may be used in conduct of a CFO.
8. **Parking.** One parking space that may be covered or uncovered shall be available for each employee of the Cottage food operator that is a nonresident family member or nonfamily member employee.
9. **Deliveries.** Merchandise produced on the premises may be delivered to customers or clients. The subsection does not prohibit the operation from the delivery of merchandise from the residence to customers or the pick-up or delivery by commercial parcel service companies.
10. **Noise.** No equipment or process shall be used in such CFO that creates noise, vibration, glare, fumes, odors, or electrical interference detectable off the lot to the normal senses. In the case of electrical interference, no equipment or process shall be used that creates visual or audible interference upon any radio or television receivers off the premises, or cause fluctuations in line voltage off the premises. A CFO shall not cause any adverse impacts such as offensive odors or excessive noise that are incompatible with the residential area or in violation with the provisions of any applicable laws or regulations.
11. **No On-Site Dining.** On site dining or tasting events for customers are prohibited.
12. **County Authorization Required.** The applicant shall furnish to the City evidence of the application for, or issuance of, the necessary permits and/or registration for operation from the County of Napa.

19.36.050 Cottage Food Operation permits.

- A. **Applicability.** No person shall commence or carry on any cottage food operation within the city without first having obtained a cottage food operation permit.
- B. **Application.**

1. An application for a cottage food operation permit shall be filed in writing with the community development department by the person who intends commencing or carrying on a home occupation. Where the applicant is not the owner of the property on which the cottage food operation is proposed to be conducted, the application shall be accompanied by the written consent of the owner or his or her agent.

2. The application shall be upon forms furnished by and in a manner prescribed by the community development director and shall be accompanied by any applicable filing fee established by resolution of the city council.

C. Review and Approval.

1. Within ten working days after the filing of an application for a cottage food operation permit, the community development director shall review the application and approve, conditionally-approve or deny the permit. The director may approve or conditionally-approve an application for a cottage food operation permit if he/she finds it consistent with the purpose and standards of this chapter.

2. The director shall serve a notice of such action upon the applicant by mailing a copy of such notice to the applicant at the address appearing on the application.

3. Any person aggrieved by the action of the director upon an application for a cottage food operation permit may appeal such an action by filing a written notice of appeal with the director within the ten days after the date of the mailing of such action. The director shall refer all appeals to the planning commission. The commission shall set the matter for hearing at the earliest available date. The applicant shall be given notice of the time and date set for such consideration.

4. An appeal of a commission decision may be made by filing a notice of appeal with the city clerk. The notice shall comply with the requirements of Section 2.04.110 of the municipal code except that the notice of appeal shall be filed within ten days after the decision of the commission and appeal shall be subject to the procedures set forth in Chapter 2.04 of the municipal code.

D. Suspension and Revocation.

1. Any cottage food operation permit may be suspended or revoked when it is determined that the cottage food operation authorized by the permit has been or is being conducted:

- a. In violation of any city, county and/or state code, ordinance, rule or regulation;
- b. In a disorderly manner;
- c. To the detrimental of the general public; or
- d. In a different form than which the permit was issued.

2. Any cottage food operation permit that has been issued shall not be revoked or suspended unless a hearing shall first have been held by the community development director. Written notice of the time and place of such hearing shall be served upon the permittee at least

ten days prior to the date set forth for such hearing. The notice shall contain a brief statement of the grounds for revoking or suspending the permit. The notice shall be served by mailing, by registered mail, a copy of such notice to the permittee at the address appearing on the permit.

3. Any person aggrieved by the action of the director upon an application for a cottage food operation permit may appeal an action by filing a written notice of appeal to the director within ten days after the date of mailing of the director's action on the suspension or revocation of the permit. Appeals shall be processed as set forth in subsection C of this section.

E. Transferability. No cottage food operation permit shall be transferred or assigned, nor shall the permit authorize any person, other than the person named therein, to commence or carry on the home occupation for which the permit was issued.

19.36.060 Business license required.

Every cottage food operation shall obtain a business license. If the business license is not renewed annually, the cottage food operation permit shall automatically expire.

SECTION 5: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, subsections subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional., is for any reason held to in invalid or unconstitutional.

SECTION 6: The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause a summary of it to be published in a newspaper and circulated in the City and thereupon and thereafter this Ordinance shall take effect and be in force according to law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council on the 19th day of November 2013, by the following vote:

- MAYOR GARCIA:
- VICE MAYOR JOSEPH:
- COUNCIL MEMBER BENNETT:
- COUNCIL MEMBER LEARY:
- COUNCIL MEMBER RAMOS BENNETT:

yes
yes
yes
yes
yes

Leon Garcia
 Leon Garcia, Mayor

ATTEST:
Rebekah Barr
 Rebekah Barr, MMC, City Clerk

APPROVED AS TO FORM:
William D. Ross
 William D. Ross, City Attorney