

PLANNING COMMISSION

AGENDA

REGULAR MEETING OF THE HEMET PLANNING COMMISSION

City Council Chambers

450 East Latham Avenue, Hemet CA 92543

March 19, 2013

6:00 PM

If you wish to make a statement regarding any item on the agenda, please complete a Speaker Card and hand it to the clerk. When the Chairman calls for comments from the public on the item you wish to address, step forward to the lectern and state your name and address. Only testimony given from the lectern will be heard by the Planning Commission and included in the record.

1. CALL TO ORDER:

Roll Call: Chairman John Gifford, Vice Chairman Vince Overmyer, and Commissioners Nasser Moghadam, Michael Perciful, and Greg Vasquez

Invocation and Flag Salute: Commissioner Perciful

2. APPROVAL OF MINUTES: None at this time

3. PUBLIC COMMENTS:

Anyone who wishes to address the Commission regarding items not on the agenda may do so at this time. Please line up at the lectern when the Chairman asks if there are any communications from the public. When you are recognized, please give your name and address. Please complete a Speaker Card and hand it to the Clerk so that we have an accurate recording of your name and address for the minutes.

PUBLIC HEARING ITEMS

Meeting Procedure for Public Hearing Items:

1. Receive Staff Report Presentation
2. Commissioners report any Site Visit or Applicant Contact, and ask questions of staff
3. Open the Public Hearing and receive comments from the applicant and the public.
4. Close the Public Hearing
5. Planning Commission Discussion and Motion

4. **ZONING ORDINANCE AMENDMENT NO. 13-003 (Homemade Food Operator Regulations) – Continued from March 5, 2013**

APPLICANT: City of Hemet
LOCATION: City-wide
PLANNER: Emery Papp – Principal Planner – (951) 765-2375

DESCRIPTION: A request for Planning Commission review and recommendation to the City Council regarding a Zoning Ordinance Amendment to modify Chapter 90, amending Article III, Special Uses and Conditions, of the Hemet Municipal Code, adding Section 90-100 regulating Cottage Food Operators pursuant to Assembly Bill 1616, with consideration of an environmental exemption pursuant to CEQA Guidelines Section 15061.

Recommended Action:

That the Planning Commission:

1. *Re-open the public hearing and take testimony regarding the proposed project and draft Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003); and,*
2. *Adopt Planning Commission Resolution Bill No. 13-004, recommending **APPROVAL** of Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003) to the City Council.*

5. **MUNICIPAL CODE AMENDMENT NO. 13-002 (Automatic Extensions of Time)**

APPLICANT: City of Hemet
LOCATION: City-wide
PLANNER: Deanna Elliano, Community Development Director – (951) 765-2375

DESCRIPTION: A request for Planning Commission review and recommendation to the City Council regarding a city-initiated Municipal Code Amendment to extend the life of existing Conditional Use Permits and Site Development Review approvals set to expire between April 15, 2013 and December 31, 2013.

Recommended Action:

That the Planning Commission:

1. *Recommend to the City Council adoption of Ordinance Bill No. 13-008 (MCA13-002) based on the Findings contained in the staff report.*

DEPARTMENT REPORTS

6. **CITY ATTORNEY REPORTS:** *Verbal report from Assistant City Attorney Stephen McEwen on items of interest to the Planning Commission.*

7. COMMUNITY DEVELOPMENT DIRECTOR REPORTS:

- A. Summary report regarding City Council Meeting of March 12, 2013
- B. Planning Division Updates

8. PLANNING COMMISSIONER REPORTS: *Commissioner reports on meetings attended or other matters of Planning interest*

- A. Chairman Gifford
- B. Vice Chair Overmyer
- C. Commissioner Moghadam
- D. Commissioner Perciful
- E. Commissioner Vasquez

9. ADJOURNMENT: To the meeting of the City of Hemet Planning Commission scheduled for ***April 2, 2013 at 6:00 P.M.*** to be held at the City of Hemet Council Chambers located at 450 E. Latham Avenue, Hemet, California 92543.

NOTICE TO THE PUBLIC:

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the Planning Department counter of City Hall located at 445 E. Florida Avenue during normal business hours. Agendas for Planning Commission meetings are posted at least 72 hours prior to the meeting. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meeting, please contact the Planning Department office at (951) 765-2375. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to insure accessibility to the meeting. (28 CFR 35.102-35.104 ADA Title II).



Staff Report

TO: Honorable Chairman and Members of the Planning Commission

FROM: Deanna Elliano, Community Development Director *DE*
Emery J. Papp, Principal Planner *EP*

DATE: March 19, 2013

RE: **ZONING ORDINANCE AMENDMENT (ZOA) NO. 13-003 (Homemade Food Operator Regulations)**

APPLICANT: City of Hemet
LOCATION: City-wide
PLANNER: Emery J. Papp, Principal Planner
DESCRIPTION: A request for Planning Commission review and recommendation to the City Council regarding a Zoning Ordinance Amendment to modify Chapter 90, amending Article III, Special Uses and Conditions, of the Hemet Municipal Code, adding Section 90-100 regulating Cottage Food Operators pursuant to Assembly Bill 1616, with consideration of an environmental exemption pursuant to CEQA Guidelines Section 15061.

STAFF RECOMMENDATION:

1. *That the Planning Commission re-open the public hearing and take testimony regarding the proposed project and draft Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003); and*
2. *Adopt Planning Commission Resolution Bill No.13-004, recommending APPROVAL of Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003) to the City Council.*

BACKGROUND:

Assembly Bill 1616 (AB 1616), "The California Homemade Food Act" is a State mandated local program that requires local jurisdictions to allow homemade food operators to prepare, package, and sell non-perishable food items from their place of residence. The law became effective on January 1, 2013.

Under AB 1616, cities have the authority to require any homemade food operator to obtain a non-discretionary Homemade Food Operator Permit, provided the City adopts reasonable standards to avoid nuisance behavior and activities. A draft Ordinance was first presented to the Planning Commission at a Work Study on January 15, 2013, further discussed on February 5, 2013, with a final draft of the Ordinance presented on March 5, 2013. At the March 5, 2013 Planning Commission meeting, the consensus of the Commissioners was that the draft Ordinance needed to include enforcement and penalty provisions, and the Commission felt that the proposed fees for the Homemade Food Operator Permit may be too low, and requested an analysis of how the fees were derived. These issues are further discussed below.

Staff has worked with the City Attorney to revise the final draft Ordinance, and has prepared a revised draft City Council Resolution Bill which will set permit fees, to address the concerns expressed by the Planning Commission at its March 5, 2013 meeting.

PERMITTING PROCESS:

Under AB 1616, cities have the authority to require any resident of any private home containing a kitchen to apply for a non-discretionary cottage food operator permit. The City wishes to retain its police powers to monitor homemade food operations as they relate to local zoning controls and recommends implementing a new Homemade Food Operator Permit. The permit will require the Applicant to, among other things, acknowledge and adhere to nine operating conditions.

Upon submittal of a completed Homemade Food Operator Permit Application and payment of the appropriate fee, City staff will review and verify the provided information, and then issue the permit in addition to a City Business License. Upon approval, a copy of the Homemade Food Operator Permit will be given to the Applicant, one copy will be kept by the Planning Division for its records, and one copy will be forwarded to the Riverside County Health Department. The Applicant may then obtain a permit to operate from the Health Department.

Depending on the type of sales activity, Class A (Direct Sales) or Class B (Direct and Indirect Sales) the homemade food operator engages in will determine whether or not County Environmental Health will require kitchen inspections for sanitary conditions prior to approval of a permit and commencement of operation. The health department will allow Class A homemade food operators to self-certify their private kitchen and will not inspect the facility unless it receives a complaint or has other reason to believe that food safety laws are not being met. Class B operators require a health department inspection prior to approval, and annually thereafter.

ENFORCEMENT:

Under AB 1616, the City of Hemet may only exercise local control over zoning and its police powers identified in the Municipal Code limited to the following four criteria:

1. Spacing and Concentration;
2. Traffic Control;
3. Parking; and
4. Noise Control.

Violations under any of these criteria could lead to temporary revocation of a Homemade Food Operator Permit. If zoning violations have occurred and continue to occur, City staff may revoke or withhold renewal of the permit until the violation has been corrected. Responding to concerns expressed by the Planning Commission at its March 5, 2013 meeting regarding enforcement and potential fines, Section 90-100(l) has been added to the draft Ordinance Attachment "A." Moreover, if violations continue to go uncorrected, the City may issue administrative citations of up to \$500.00 per day or other remedies pursuant to Chapter 1, Section 1-8 of the Hemet Municipal Code as shown in Attachment No. 3.

The health department is responsible for investigating complaints regarding sanitary conditions, safety of products offered for sale, conformance with food handling and food safety laws, and conducting inspections. Violations of food safety and handling laws can result in revocation of the health department's approval and penalties pursuant to County of Riverside Environmental Health Department Ordinance No. 916.

PROPOSED FEES:

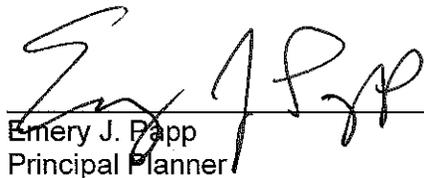
The recommended fee to obtain a Homemade Food Operator Permit is \$75.00 for the initial approval as indicated in Attachment No. 2. The \$75.00 initial permit fee is reasonable in light of the City's actual costs of providing the service of issuing homemade food operator permits. The estimated staff time involved to process a homemade food operator permit is approximately 80-90 minutes to take in the application, process payment, enter data into the CRW database, verify that the address qualifies as a homemade food operation, coordinate licensing with Riverside County Environmental Health, and issue the permit. The fully burdened cost for this staff time is approximately \$75.00 (1.5 hr. Tech @ \$47.00/hr. = \$70.50 plus processing costs).

The current City business license fee for this kind of use is \$41.00 per year, and an additional \$10.00 per year if the Homemade Food Operator has an employee as permitted under State law.

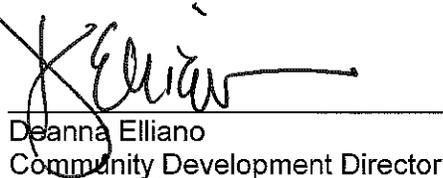
After a Homemade Food Operator permit has been issued by the City and by the County Department of Environmental Health, the City will require a \$35.00 annual renewal fee. The \$35.00 annual renewal fee is reasonable in light of the City's actual costs of providing the service of verifying compliance with permitting and licensing requirements of the Health Department and to determine whether or not the operator remains in compliance with city standards for the zone in which the homemade food operation is located. Compliance with City standards can be verified by a City staff site visit. The estimated staff time involved to process the annual renewal for a homemade food operator permit is approximately 40-45 minutes and fully burdened cost for this staff time is approximately \$35.00 (0.75 hr. Tech @ \$47.00 = \$35.25 plus processing costs).

The annual renewal fee is intended to recover staff time to follow up with the health department to verify that the homemade food operator continues to operate at the location, has maintained a valid operating permit with the County Department of Environmental Health, and remains in compliance with all Health Department and City zoning requirements for the zone in which the homemade food operation is located. If no known violations have occurred, City staff will renew the license. If zoning violations have occurred and continue to occur, then City staff may withhold renewal of the permit until the violation has been corrected.

Prepared by:


Emery J. Papp
Principal Planner

Reviewed by:


Deanna Elliano
Community Development Director

ATTACHMENTS:

1. Planning Commission Resolution Bill No. 13-004
Exhibit 1 – Proposed City Council Ordinance Bill No. 13-003
2. Proposed City Council Resolution Bill No. 13-004 (Homemade Food Operator Permit Fees)
3. Section 1-8, Violations of Code, Hemet Municipal Code
4. March 5, 2013 Planning Commission Staff Report for ZOA 13-003 (w/o Attachments)

Attachment

No. 1

Planning Commission

Resolution Bill No.

13-004

Planning Commission

March 19, 2013



CITY OF HEMET
Hemet, California

PLANNING COMMISSION
RESOLUTION BILL NO. 13-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HEMET, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT ZONING ORDINANCE AMENDMENT NO. 13-003, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, ADDING A NEW SECTION 90-100 TO ARTICLE III OF THE HEMET MUNICIPAL CODE REGULATING HOMEMADE FOOD OPERATORS PURSUANT TO ASSEMBLY BILL 1616, WITH ADOPTION OF AN ENVIRONMENTAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15061

WHEREAS, the state of California has recognized a growing movement to support community-based food production and to connect safe food to local communities, and has also determined a need to regulate “cottage food operators”, also known as “homemade food operators”; and

WHEREAS, the California legislature introduced Assembly Bill 1616 (AB 1616) on February 8, 2012 to facilitate small home-based food preparation businesses and specify criteria and other requirements for certifying such homemade food operators with local health departments; and

WHEREAS, Governor Brown signed AB 1616 into law on September 21, 2012, becoming the 33rd state in which to enact legislation to provide for cottage food operations; and

WHEREAS, AB 1616 became effective on January 1, 2013; and

WHEREAS, the provisions of AB 1616 expressly state that a city, county, or city and county shall not prohibit cottage food operations in any residential dwelling; and

Planning Commission Resolution Bill No. 13-004
ZONING ORDINANCE AMENDMENT NO. 13-003
HOMEMADE FOOD OPERATOR REGULATIONS

1 **WHEREAS**, AB 1616 allows local jurisdictions the ability to exercise limited local
2 zoning controls and operational standards through the permit process; and

3 **WHEREAS**, the City of Hemet desires to exercise local control over homemade
4 food operators to the extent allowed under AB 1616; and

5 **WHEREAS**, pursuant to Government Code sections 65854 and 65855, the
6 Planning Commission has the authority to review and make recommendations to the
7 City Council regarding amendments to the City's zoning ordinances; and

8
9 **WHEREAS**, the Hemet Planning Commission conducted a work-study at its
10 January 15, 2013 meeting on the regulation of homemade food operators and provided
11 direction to staff regarding amending the City's Zoning Code to implement the
12 provisions of AB 1616 in coordination with the Riverside County Department of
13 Environmental Health; and

14
15 **WHEREAS**, on January 25, 2013, the City gave public notice by publishing
16 notice in the Press Enterprise of the holding of a public hearing at which the amendment
17 to the City's zoning ordinances would be considered; and

18 **WHEREAS**, on February 5, 2013 the Planning Commission held the noticed
19 public hearing at which interested persons had an opportunity to testify in support of, or
20 opposition to, the proposed amendment to the City's zoning ordinance and at which
21 time the Planning Commission considered the proposed amendment to the City's
22 zoning ordinance and recommended continuing the item for 30 days to March 5, 2013;
23 and

24 **WHEREAS**, on March 5, 2013 the Planning Commission held the noticed public
25 hearing at which interested persons had an opportunity to testify in support of, or
26 opposition to, the proposed amendment to the City's zoning ordinance and at which
27 time the Planning Commission considered the proposed amendment to the City's
28 zoning ordinance; and

29 **WHEREAS**, on March 5, 2013 the Planning Commission reopened the public
30 hearing at which interested persons had an opportunity to testify in support of, or
31 opposition to, the proposed amendment to the City's zoning ordinance and at which
32 time the Planning Commission considered the proposed amendment to the City's
33 zoning ordinance and recommended continuing the item; and

34 **WHEREAS**, on March 9, 2013, the City gave public notice by publishing notice in
35 the Press Enterprise of the holding of a public hearing at which the amendment to the
36 City's zoning ordinances would be considered; and

**Planning Commission Resolution Bill No. 13-004
ZONING ORDINANCE AMENDMENT NO. 13-003
HOMEMADE FOOD OPERATOR REGULATIONS**

1 **WHEREAS**, on March 19, 2013 the Planning Commission held the noticed public
2 hearing at which interested persons had an opportunity to testify in support of, or
3 opposition to, the proposed amendment to the City's zoning ordinance and at which
4 time the Planning Commission considered the proposed amendment to the City's
5 zoning ordinance; and

6 **WHEREAS**, the City has analyzed this proposed project and has determined that
7 it is exempt from the California Environmental Quality Act ("CEQA") under section
8 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is
9 no possibility that the activity in question may have a significant effect of the
10 environment; and

11 **WHEREAS**, attached as Exhibit "A" is the proposed Ordinance.

12
13 **NOW, THEREFORE**, the Planning Commission of the City of Hemet does
14 Resolve, Determine, Find and Order as follows:

15
16 **SECTION 1: ENVIRONMENTAL FINDINGS**
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18 The Planning Commission, in light of the whole record before it, including but not limited
19 to, the City's Local CEQA Guidelines and Thresholds of Significance, the direction of
20 the Planning Commission at its meeting on March 5, 2013 and documents incorporated
21 therein by reference, and any other evidence (within the meaning of Public Resources
22 Code Sections 21080(e) and 21082.2) within the record or provided at the public
23 hearing of this matter, hereby finds and determines as follows:

24 1. **CEQA:** The City has analyzed this proposed project and has determined that it is
25 exempt from the California Environmental Quality Act ("CEQA") under section
26 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects
27 that have the potential for causing a significant effect on the environment. Whereas
28 here, it can be seen with certainty that there is no possibility that the activity in question
29 may have a significant effect on the environment, the activity is not subject to CEQA.
30 The addition of this section to Chapter 90 relates only to regulations for foods prepared
31 in an existing private home kitchen and offered for sale. It does not relate to any
32 physical project and will not result in any physical change to the environment.
33 Therefore, it can be seen with certainty that there is no possibility that this Ordinance
34 may have a significant adverse effect on the environment, and therefore the adoption of
35 this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA
36 Guidelines.
37

38 **SECTION 2: ZONING ORDINANCE AMENDMENT FINDINGS**

39 Pursuant to Hemet Municipal Code Section 90-41.5(a), the Planning Commission
40 makes the following findings with respect to this zoning ordinance amendment:

Planning Commission Resolution Bill No. 13-004
ZONING ORDINANCE AMENDMENT NO. 13-003
HOMEMADE FOOD OPERATOR REGULATIONS

1 1. *The zoning ordinance amendment is in conformance with the latest adopted general*
2 *plan for the City.*

3 The proposed Zoning Ordinance Amendment is in conformance with the adopted
4 2030 General Plan Land Use Policy LU-15.9 to encourage a mix of food
5 establishments and reduce barriers to the production and distribution of locally
6 grown food.

7 2. *The zoning ordinance amendment will protect the public health, safety and welfare.*

8 The Zoning Ordinance Amendment implements a State mandated program requiring
9 cities to allow residents to use their private home kitchen to prepare and sell
10 homemade food products. The law provides for certification through the Riverside
11 County Department of Environmental Health and the proposed Ordinance creates a
12 regulatory framework and licensing requirements to ensure that homemade food
13 operations do not disturb the peace and quiet customarily associated with the zone
14 in which the use is located.

15
16 **SECTION 3: PLANNING COMMISSION ACTIONS**

17
18 The Planning Commission hereby takes the following actions:

19 1. The Planning Commission approves Resolution Bill No. 13-004 recommending
20 that the City Council adopt the proposed Ordinance which is attached hereto and
21 incorporated herein by reference as Exhibit "A."
22

23
24 **PASSED, APPROVED AND ADOPTED** this 19th day of March, 2013, by the
25 following vote:

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27 **AYES:**

28 **NOES:**

29 **ABSTAIN:**

30 **ABSENT:**
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34 _____
35 John Gifford, Chairman
36 Hemet Planning Commission

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41 **ATTEST:**

Nancie Shaw, Records Secretary
Hemet Planning Commission

**Planning Commission Resolution Bill No. 13-004
ZONING ORDINANCE AMENDMENT NO. 13-003
HOMEMADE FOOD OPERATOR REGULATIONS**

Exhibit

No. 1A

**Proposed City
Council Ordinance
Bill No. 13-003**

**Planning Commission
March 19, 2013**



CITY OF HEMET
Hemet, California
ORDINANCE BILL NO. 13-003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, ADDING SECTION 90-100 REGULATING HOMEMADE FOOD OPERATORS PURSUANT TO ASSEMBLY BILL 1616, WITH CONSIDERATION OF AN ENVIRONMENTAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15061.

WHEREAS, on September 21, 2012, Governor Brown signed Assembly Bill 1616 (AB 1616), which allows and regulates home-based food production, commonly known as "cottage food operations"; and

WHEREAS, AB 1616 became effective on January 1, 2013; and

WHEREAS, AB 1616 exempts cottage food operations from many of the regulations that apply to traditional food production, requires cottage food operators to obtain nondiscretionary approvals from the local county health department, and requires cities and counties to allow cottage food operations in residential dwellings; and

WHEREAS, AB 1616 requires cities and counties to either classify a cottage food operation as a permitted residential use or require cottage food operators to obtain a nondiscretionary permit, which the city or county must grant if the cottage food operation complies with local ordinances that impose "reasonable" standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control; and

WHEREAS, the City of Hemet desires to exercise local control over cottage food operators to the extent allowed under AB 1616; and

1 **WHEREAS**, the Hemet Planning Commission conducted a work-study at its
2 January 15, 2013, meeting on the regulation of cottage food operators and provided
3 direction to staff regarding how to amend the City's Zoning Code to address
4 implementing the provision of AB 1616 and coordination with Riverside County
5 Department of Environmental Health; and,

6 **WHEREAS**, on March 5, 2013, the Planning Commission was presented with a
7 draft of this Ordinance Bill 13-003 regulating homemade food operators and, after
8 conducting a duly noticed public hearing, moved and approved a motion to continue
9 discussion of the item; and

10
11 **WHEREAS**, on March 19, 2013 the Planning Commission was presented with a
12 revised draft of this Ordinance Bill No. 13-003 regulating homemade food operators,
13 and after conducting a duly noticed public hearing, voted to recommend that the City
14 Council approve Ordinance Bill 13-003; and

15
16 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES HEREBY**
17 **ORDAIN AS FOLLOWS:**

18
19 **SECTION 1: ADDITION OF SECTION 90-100.**

20 A new Section 90-100 is added to the Hemet Municipal Code, and shall read as
21 shown in Exhibit "A" hereto.

22 **SECTION 2: CEQA FINDINGS.**

23 This Ordinance is exempt from the California Environmental Quality Act
24 ("CEQA") under CEQA Guidelines 5006(c)(2) because the activity will not result in a
25 direct or reasonably foreseeable indirect physical change in the environment and
26
27

1 15061(b)(3) because it can be said with certainty that there is no possibility the
2 proposed Ordinance may have a significant effect on the environment.

3 **SECTION 3: SEVERABILITY.**

4 If any section, subsection, subdivision, sentence, clause, phrase, or portion of
5 this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of
6 any court of competent jurisdiction, such decision shall not affect the validity of the
7 remaining portions of this Ordinance. The City Council hereby declares that it would
8 have adopted this Ordinance, and each section, subsection, subdivision, sentence,
9 clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,
10 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared
11 invalid or unconstitutional.

12 **SECTION 4: EFFECTIVE DATE.**

13 This Ordinance shall take effect thirty (30) days from its passage by the City
14 Council of the City of Hemet.

15 **SECTION 5: PUBLICATION.**

16 The City Clerk is authorized and directed to cause this Ordinance to be published
17 within fifteen (15) days after its passage in a newspaper of general circulation and
18 circulated within the City in accordance with Government Code Section 36933(a) or, to
19 cause this Ordinance to be published in the manner required by law using the
20 alternative summary and pasting procedure authorized under Government Code
21 Section 39633(c).

22
23 **INTRODUCED** at the regular meeting of the Hemet City Council on _____ 2013.

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25 **APPROVED AND ADOPTED** this ____ day of _____ 2013.

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Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
5 foregoing Ordinance was introduced and first read on the ___ day of _____ 2013,
6 and had its second reading at the regular meeting of the Hemet City Council on the ___
7 day of _____, 2013, and was passed by the following vote:

8 **AYES:**

9 **NOES:**

10 **ABSTAIN:**

11 **ABSENT:**

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13 _____
14 Sarah McComas, City Clerk

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EXHIBIT "A"

Sec. 90-100. – Homemade Food Operator Permit.

(a) *Purpose*

Pursuant to Government Code section 51035(a), the city must allow cottage food operations in residential dwellings, but can impose reasonable standards on cottage food operations to minimize potential effects on surrounding residences. The purpose of this section is to establish reasonable standards for cottage food operations as allowed by state law.

(b) *Definitions.*

The following definitions shall apply unless subsequently amended under the Health and Safety Code of the State of California

(1) "Cottage food operation" or "homemade food operation" means an enterprise that 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. A cottage food operation includes both of the following:

(a) A "Class A" or "Direct Sales" cottage food operation, 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) of section 113758 of the California Health and Safety Code.

(b) A "Class B" or "Indirect Sales" cottage food operation, 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) of section 113758 of the California Health and Safety Code.

(2) "Cottage food operator" or "homemade 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 product" or "homemade food product" means non-perishable foods not requiring refrigeration, including foods that are identified by the Health Department as cottage foods, and that are prepared for sale in the kitchen of a cottage food operation.

- (4) "Health Department" shall mean the Riverside County Department of Environmental Health.
- (5) "Private home" means a dwelling, including an apartment or other leased space, where individuals reside.
- (6) "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.

(c) *Permit and Business License required.*

An individual may conduct a homemade food operation in a private home provided he/she obtains a business license in conformance with Chapter 18 of the Hemet Municipal Code and a homemade food operator permit from the Director. If a business license for a homemade food operator is not renewed, the homemade food operator permit shall automatically expire with the business license. A fee for the processing of a homemade food operator permit may be established from time to time by resolution of the City Council.

(d) *Application for Permit*

Applications for homemade food operator permits must be submitted to the Director on a form prescribed by the city. The application shall include the following information and documentation:

- (1) The name, address, telephone number, and e-mail address of the proposed homemade food operator and description of the property on which the homemade food operation is to be located, including the registered or permitted area of the homemade food operation. The proposed homemade food operator must reside at the site of the homemade food operation.
- (2) A statement of whether the proposed homemade food operator owns the property on which the homemade food operation is to be located or is a tenant or lessee at the property. If the proposed homemade food operator is not an owner of the property, the application must include the property owner's written consent to the application and the proposed homemade food operation.
- (3) A description of the homemade food products to be produced by the proposed homemade food operation, all of which must be consistent with the list of approved cottage food products posted on the Health Department website which may be amended from time to time.
- (4) A statement of whether the proposed homemade food operation will involve direct sales and/or indirect sales, as those terms are defined by this chapter, and whether

there will be direct sales to customers at the site of the proposed homemade food operation.

(e) *Issuance of Permit*

Upon receipt of a completed homemade food operator permit application, applicable fee, and confirmation that the application contains truthful information and the applicant has or will comply with the requirements of this section, the Director shall issue a homemade food operator permit subject to the standards and conditions set forth in subsection (i) of this section. The applicant must agree in writing to comply with such standards and conditions. The homemade food operator permit is non-transferable and shall be valid for one year upon issuance. In order to renew a homemade food operator permit, a homemade food operator must submit a completed application on a City-approved form to the Director. The renewal application must be submitted no later than thirty days prior to the expiration date of the existing homemade food operator permit.

(f) *Coordination with Health Department*

Upon approval of a City-issued homemade food operator permit, the city shall provide a copy of the homemade food operator permit to the Health Department via USPS First Class mail, facsimile, email, or other method prescribed by the Health Department within 14 days of the issuance of the permit.

(g) *Annual Renewal Fee Required*

An annual fee for the renewal of a homemade food operator permit shall be established by resolution of the City Council. The purpose of the renewal fee is to recover the cost of staff time to confirm the applicant's compliance with permitting and licensing requirements of the Health Department and to determine whether or not the operator remains in compliance with city standards for the zone in which the homemade food operation is located.

(h) *Limitations on Homemade Food Operation Permit*

A maximum of one homemade food operation permit shall be deemed active and approved at any time for each private home. If more than one permit has been issued for the same private home, only the most recently approved application shall be deemed to be active. All other prior applications shall be deemed void. Such limitation shall not preclude a resident from also obtaining a Home Occupation Permit pursuant to Section 90-72, for a non-food related home-based business.

(i) *Conditions*

The following conditions shall be observed at all times by the holder of a homemade food operator permit:

- (1) A homemade food operation shall comply with all permitting and licensing requirements of the Health Department and shall obtain certification from the Health Department prior to, or within 14 days of the issuance of a homemade food operator permit.
 - (2) Signs or advertising shall not be displayed on the premises except for signage permitted under Section 90-1250(2) of the Hemet Municipal Code.
 - (3) The homemade food operation shall not have more than one full-time equivalent employee, not including a family member or household member of the homemade food operator, within the registered or permitted area of a private home where the homemade food operator resides and where homemade food products are prepared and packaged.
 - (4) The homemade food operation, including the storage of inventory, supplies, and equipment, shall be conducted wholly within the registered or permitted area of a private home.
 - (5) Display(s) or sales activity of any kind shall not be visible from the exterior of the premises.
 - (6) On-site direct sales of homemade food products are permissible only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Sunday. There cannot be more than two homemade food product customers on the premises of a homemade food operation at any single time. All sales shall be conducted indoors.
 - (7) Homemade food operators may load cottage food products into a vehicle outside of an enclosed garage only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Sunday. Vehicles shall not idle while being loaded with homemade food products.
 - (8) A maximum of one vehicle not larger than 10,000 pounds gross vehicle weight rating, used in conjunction with a homemade food operation, shall be parked on the driveway or in a garage space of the homemade food operation site. No commercial vehicle owned, leased, or otherwise operated for the specific use of the homemade food operator shall be parked in the street.
 - (9) A homemade food operation shall comply with all applicable noise regulations for the zone in which it is located.
- (j) *Grounds for revocation of permit.* Any homemade food operator permit may be revoked by the Director upon violation of any requirements of this chapter, upon notification by the Health Department that the Class A or the Class B permit has been revoked, or upon failure to comply with any of the conditions or limitations of the permit, unless such violation is corrected within three days of the giving of written notice thereof. A permit may be revoked for repeated violation of the requirements of this chapter, notwithstanding further notice.

(k) *Appeal revocation of permit.* A decision of the Director may be appealed to the Planning Commission as prescribed in Section 90-43.6 of the Hemet Municipal Code.

(l) *Enforcement.* Every person who violates any provision of this section shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in section 1-8. Each day that such violation exists shall be deemed a new and separate offense. Neither the arrest, prosecution, conviction, imprisonment, or payment of any fine for the violation of this section shall satisfy or diminish the authority of the city to institute administrative or civil actions seeking enforcement of any or all of the provisions of this section.

Attachment No. 2

Proposed City Council
Resolution Bill No. 13-004
(Homemade Food Operator
Permit Fees)

Planning Commission
March 19, 2013



CITY OF HEMET
Hemet, California

RESOLUTION BILL NO. 13-004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF HEMET, CALIFORNIA AMENDING THE FEE
SCHEDULE TO INCLUDE A PERMIT FEE REGARDING
THE REGULATION OF HOMEMADE FOOD OPERATORS
PURSUANT TO ADOPTION OF ZONING ORDINANCE
AMENDMENT NO. 13-003

WHEREAS, on September 21, 2012, Governor Brown signed Assembly Bill 1616 (AB 1616), which allows and regulates home-based food production, commonly known as "cottage food operations"; and

WHEREAS, AB 1616 became effective on January 1, 2013; and

WHEREAS, AB 1616 exempts cottage food operations from many of the regulations that apply to traditional food production, requires cottage food operators to obtain nondiscretionary approvals from the local county health department, and requires cities and counties to allow cottage food operations in residential dwellings; and

WHEREAS, AB 1616 requires cities and counties to either classify a cottage food operation as a permitted residential use or require cottage food operators to obtain a nondiscretionary permit, which the city or county must grant if the cottage food operation complies with local ordinances that impose "reasonable" standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control; and

WHEREAS, the City of Hemet desires to exercise local control over cottage food operators to the extent allowed under AB 1616; and

1 **WHEREAS**, on March 5, 2013 the Planning Commission was presented with a
2 draft of Ordinance Bill No. 13-003 regulating homemade food operators and Resolution
3 Bill No. 13-004 recommending fees associated with the processing of homemade food
4 operator permits, and after conducting a duly noticed public hearing, moved and
5 approved a motion to continue discussion of the item; and
6

7 **WHEREAS**, on March 19, 2013 the Planning Commission was presented with a
8 revised draft of Ordinance Bill No. 13-003 regulating homemade food operators and
9 Resolution Bill No. 13-004 recommending fees associated with the processing of
10 homemade food operator permits, and after conducting a duly noticed public hearing,
11 voted to recommend that the City Council approve Ordinance Bill 13-003 and City
12 Council Resolution Bill No. 13-004; and

13 **WHEREAS**, on _____, 2013, the City Council held a duly noticed public
14 hearing on the proposed Ordinance Bill 13-003 and City Council Resolution Bill No. 13-
15 004, and considered all written and oral reports of staff and public testimony on the
16 matter, and such other matters as are reflected in the record.
17

18 **NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of
19 Hemet Does Resolve, Determine, Find and Order as follows:
20

21 **SECTION 1. FINDINGS.**

- 22 1. The proposed City Council Resolution Bill No. 13-004 establishing fees for
23 homemade food operator permits will not cause any internal inconsistencies in
24 the General Plan and will serve to implement the policies and programs
25 contained in AB 1616, Riverside County Environmental Health Ordinance No.
26 916, or Section 90-100 of the Hemet Municipal Code pursuant to the approval of
27 Ordinance Bill No. 10-003.
- 28 2. The proposed City Council Resolution Bill No. 13-004 establishing fees for
29 homemade food operator permits is exempt from review under the California
30 Environmental Quality Act (CEQA). The approval of a Homemade Food Operator
31 Permit is a non-discretionary action, or a "ministerial" permit this General Plan
32 Amendment is exempt from CEQA review per Section 15162 of the State
33 Guidelines for Implementing CEQA because the proposed text and map
34 revisions are consistent with the previously adopted Environmental Impact
35 Report for the Comprehensive General Plan Update that was certified by City
36 Council on January 24, 2012.
37

38 **SECTION 2. CITY COUNCIL ACTIONS.**
39

40 Based on the foregoing findings, and on substantial evidence in the whole of the record,
41 the City Council does hereby resolve:
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1. The fee for a Homemade Food Operator Permit shall be \$75.00.
2. The fee for a Homemade Food Operator Permit Annual Renewal shall be \$35.00.
3. The \$75.00 initial permit fee is reasonable in light of the City's actual costs of providing the service of issuing homemade food operator permits. The estimated staff time involved to process a homemade food operator permit is approximately 80-90 minutes to take in the application, process payment, enter data into the CRW database, verify that the address qualifies as a homemade food operation, coordinate licensing with Riverside County Environmental Health, and issue the permit. The fully burdened cost for this staff time is approximately \$75.00.
4. The \$35.00 annual renewal fee is reasonable in light of the City's actual costs of providing the service of verifying compliance with permitting and licensing requirements of the Health Department and to determine whether or not the operator remains in compliance with city standards for the zone in which the homemade food operation is located. The estimated staff time involved to process the annual renewal for a homemade food operator permit is approximately 40-45 minutes and fully burdened cost for this staff time is approximately \$35.00.

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

Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

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State of California)
County of Riverside)
City of Hemet)

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 22nd day of May, 2012 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sarah McComas, City Clerk

Attachment No. 3

Hemet Municipal Code
Section 1-8
Violations of Code

Planning Commission
March 19, 2013

Sec. 1-8. - Violations of Code.

- (a) *Purpose and intent.* The title of this section is "Violations of Code." The provisions of this section represent the general means and methods by which the city may secure compliance with the provisions of this Code and city approvals, permits or licenses. The city may use any available legal remedy to secure compliance and multiple enforcement remedies may be used to achieve compliance with respect to persons who commit continuing violations.
- (b) *Code violations.*
- (1) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this Code.
 - (2) Whenever in this Code any act or omission is made unlawful, it includes causing, permitting, aiding, abetting, maintaining, suffering or concealing the fact of such act or omission.
 - (3) Any person violating any of the provisions of this Code is guilty of a misdemeanor, unless the offense is specifically classified in this Code or by state law as an infraction, or the city attorney reduces the charge to an infraction.
 - (4) Each day that any condition caused or permitted to exist in violation of this Code continues will constitute a new and separate violation.
 - (5) The owner of any property, building or structure within the city has the responsibility for keeping such property, building or structure free of violations related to its use or condition. The owner of such property, building or structure is separately liable for violations committed by tenants or occupants relative to the use or condition of the property.
- (c) *Land use permit or approval violations.*
- (1) Each person or the successor of each person who holds a land use permit or approval issued by the city shall comply with each provision of the permit or license and with each term that is imposed as a condition to the exercise of the permit, license, or exception.
 - (2) Each person who violates paragraph (1) of this subsection is guilty of a misdemeanor and may be punished as provided in subsection (f). The penalty provided in this section is in addition to other provisions of this Code that provide for revocation of the land use permit or approval or authorize the imposition of a civil fine or penalty.
- (d) *Authority to issue criminal citations.* Pursuant to California Penal Code § 836.5, city code enforcement officers are authorized to issue criminal citations following the procedures set forth in California Penal Code §§ 853.5 through 853.6a, or such other procedures as the State of California may subsequently enact.
- (e) *Criminal prosecution.* Pursuant to California Government Code § 36900, the city attorney may prosecute any violation of this Code in the name of the people of the State of California. In any such criminal prosecution, the city attorney is authorized to reduce the charge for any misdemeanor violation to an infraction.
- (f) *Misdemeanor penalties.* Any person convicted of a misdemeanor for the violation of this Code may be punished by a fine of not more than \$1,000.00 or by imprisonment not to exceed six months, or by the imposition of both such fine and imprisonment.
- (g) *Infraction penalties.*
- (1) Except as provided in subsection b., below, any person convicted of an infraction for the violation of this Code may be punished by:
 - a. A fine not exceeding \$100.00 for a first violation.
 - b. A fine not exceeding \$200.00 for a second violation of the same Code section within one year.
 - c. A fine not exceeding \$500.00 for each additional violation of the same Code section within one year.
 - (2) Any person convicted of an infraction for a violation of any city building and safety code may be punished by:
 - a. A fine not exceeding \$100.00 for a first violation.

- b. A fine not exceeding \$500.00 for a second violation of the same Code section within one year.
 - c. A fine not exceeding \$1,000.00 for each additional violation of the same Code section within one year.
- (h) *Public nuisances.* In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of this Code is deemed a public nuisance and may be abated as such by the city in any manner provided by law or in this Code for the abatement of a nuisance.
- (i) *Administrative citations.* Upon a finding by a city official vested with the authority to enforce the provisions of this Code that a violation exists, such official may issue an administrative citation under division 4 of chapter 30 of this Code.
- (j) *Civil actions.* The city attorney, at the direction of the city council, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate any condition found to be in violation of this Code or any approval, order, rule or regulation issued by any duly authorized officer or agent of the city in the manner provided by law. The prevailing party in any such civil action will be entitled to recovery of attorneys' fees and costs incurred in such action.
- (k) *Violation of administrative provisions by officers or employees.* The violation of or the failure to perform in accordance with any administrative provision of this Code by any officers or employee of the city shall generally not be considered a criminal act, but may be deemed a failure to perform the duties or to observe the rules or regulations of the department, office, commission or board within the meaning of the civil service ordinances and rules and regulations of the city, if applicable.

(Code 1984, § 1200; Ord. No. 1686, § 1, 7-8-03; Ord. No 1791, § 1(Exh. A), 2-12-08)

State law reference— Penalties for violation of municipal ordinances, Government Code §§ 36900, 36901.

Attachment No. 4

March 5, 2015 Planning
Commission Staff Report
(w/o Attachments)

Planning Commission
March 19, 2013



Staff Report

TO: Honorable Chairman and Members of the Planning Commission

FROM: Deanna Elliano, Community Development Director
Emery J. Papp, Principal Planner

DATE: March 05, 2013

RE: **ZONING ORDINANCE AMENDMENT (ZOA) NO. 13-003 (Homemade Food Operator Regulations)**

APPLICANT: City of Hemet

LOCATION: City-wide

PLANNER: Emery J. Papp, Principal Planner

DESCRIPTION: A request for Planning Commission review and recommendation to the City Council regarding a Zoning Ordinance Amendment to modify Chapter 90, amending Article III, Special Uses and Conditions, of the Hemet Municipal Code, adding Section 90-100 regulating Cottage Food Operators pursuant to Assembly Bill 1616, with consideration of an environmental exemption pursuant to CEQA Guidelines Section 15061.

STAFF RECOMMENDATION:

1. *That the Planning Commission re-open the public hearing and take testimony regarding the proposed project and draft Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003); and*
2. *Provide any additional comment or direction to staff regarding Homemade Food Operator Regulations; and*
3. *Adopt Planning Commission Resolution Bill No.13-004, recommending APPROVAL of Zoning Ordinance Amendment No. 13-003 (Ordinance Bill No. 13-003) to the City Council.*

BACKGROUND:

Assembly Bill 1616 (AB 1616), "The California Homemade Food Act," was introduced to the legislature by Assemblyman Mike Gatto (D-Los Angeles) on February 8, 2012 and signed into law by Governor Brown on September 21, 2012. The law became effective on January 1, 2013. AB 1616 is a State mandated local program and it expressly states that a city or county shall not prohibit cottage food operations in any residential dwelling, but may exercise local zoning controls limited to the following criteria:

1. Spacing and Concentration;
2. Traffic Control;
3. Parking; and
4. Noise Control.

Cottage foods are currently defined under AB 1616 as non-potentially hazardous foods that do not require refrigeration to prevent bacteria growth. The types of food items currently identified under AB 1616 as cottage foods include 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.

Under AB 1616, the local health department (Riverside County Department of Environment Health) may add to the list of cottage foods and shall maintain the list on its website.

Assembly Bill 1616 (AB 1616) is intended to address two key issues. The first of these is to remove impediments and assist start-up prepared food businesses to establish a client base without having to invest thousands of dollars into a traditional brick and mortar business and equipment. The second purpose is to place health department regulations and requirements on homemade food operators who engage in the sale of homemade food products to protect the public from unsafe food handling practices.

Under AB 1616, cities have the authority to require any resident of any private home containing a kitchen to apply for a non-discretionary Homemade Food Operator Permit, provided the City adopts reasonable standards to avoid nuisance behavior and activities. Staff believes the proposed Ordinance, in combination with the provisions of AB 1616, existing City of Hemet Municipal requirements, and health department regulations meets the State requirements and provides as much oversight and protection to public health as allowable under AB 1616.

PERMITTING PROCESS AND ENFORCEMENT:

Under AB 1616, cities have the authority to require any resident of any private home containing a kitchen to apply for a non-discretionary permit. The City wishes to retain its police powers to monitor homemade food operations as they relate to local zoning controls. As such, staff recommends implementing a new Homemade Food Operator Permit (Attachment No. 3). The permit will require the Applicant to detail the type of food products that will be available for sale and where or how they will be sold. Standard information will also require the Applicant's name and contact information; name and location of the business; property owner name, contact information, authorization and signature; type of residence (e.g., single- or multi-family home); type of occupancy (e.g., owner- or tenant-occupied); whether the operator will engage in direct or indirect sales; and whether the application is for an initial approval or annual renewal. The City's Homemade Food Operator Application packet will include information and handouts from the health department regarding County procedures, process flowcharts, self-certification, and when

inspections will be required. Also included will be the current list of health department approved "cottage foods" and other information deemed helpful to educate potential homemade food operators.

Upon submittal of a completed Homemade Food Operator Permit Application and payment of the appropriate fee, City staff will review and verify the provided information, and then issue the permit in addition to a City Business License. The suggested fee to obtain a Homemade Food Operator Permit is \$75.00 for the initial approval as indicated in Attachment No. 4.

Upon approval, a copy of the Homemade Food Operator Permit will be given to the Applicant, one copy will be kept by the Planning Division for its records, and one copy will be forwarded to the Riverside County Health Department. The Applicant may then obtain a permit to operate from the Health Department. Pursuant to Riverside County Environmental Health Ordinance No. 916 and associated permit procedures (Attachment Nos. 5-8), City approvals must precede County approval.

Depending on the type of sales activity, Class A (Direct Sales) or Class B (Direct and Indirect Sales) the homemade food operator engages in will determine whether or not County Environmental Health will require kitchen inspections for sanitary conditions prior to commencement of operation. The health department will allow Class A homemade food operators to self-certify their private kitchen and will not inspect the facility unless it receives a complaint or has other reason to believe that food safety laws are not being met. Class B operators require a health department inspection prior to approval, and annually thereafter. Under AB 1616, the City of Hemet may only exercise local control over zoning and its police powers identified in the Municipal Code limited to the four criteria specifically discussed under AB 1616, and the health department shall be responsible for investigating complaints regarding sanitary conditions, safety of products offered for sale, conformance with food handling and food safety laws, and conducting inspections.

After a Homemade Food Operator permit has been issued by the City and by the County, the City will require a \$35.00 annual renewal fee. The annual renewal fee is intended to recover staff time to follow up with the health department to verify that the homemade food operator continues to operate at the location, has maintained a valid operating permit with the County Department of Environmental Health, and remains in compliance with all Health Department and City zoning requirements for the zone in which the homemade food operation is located. If no known violations have occurred, City staff will renew the license. If zoning violations have occurred and continue to occur, then City staff may withhold renewal of the permit until the violation has been corrected.

PROPOSED ORDINANCE DESCRIPTION:

The proposed Ordinance will allow Homemade Food Operators to conduct business within the City of Hemet through the approval of a non-discretionary Homemade Food Operator Permit, subject to the provisions of AB 1616, and in coordination with the Riverside County Department of Environmental Health. In addition, the new Ordinance establishes performance standards and operational criteria as set forth below. The complete text of the proposed ordinance is included as Attachment No. 1A to this staff report.

The proposed ordinance accomplishes the following:

1. Adopts by reference and implements all provisions under AB 1616, including the establishment of authority and purpose.
2. Sets forth definitions pursuant to Section 90-100.(c) for: Cottage Food Operation or Homemade Food Operation, Cottage Food Operator or Homemade Food Operator, Cottage Food Product or

- Homemade Food Product, Health Department, Private Home, and Registered or Permitted Area.
3. Requires a non-discretionary Homemade Food Operator Permit (HFOP) and City issued Business License, including annual renewal fees, and places a limitation of one active Homemade Food Operation per unit.
 4. Specifies that Homemade Food Operations shall only be permitted in the primary residence or private home, and such uses are prohibited in accessory structures.
 5. Sets forth conditions and operational standards to safeguard the safety and general welfare of the public to the extent allowed under AB 1616, the existing City of Hemet Municipal Code and this section, and to ensure the City properly exercises its police powers with respect to the zone in which the use is permitted, as follows:
 - (a) A homemade food operation shall comply with all permitting and licensing requirements of the Health Department and shall obtain certification from the Health Department prior to, or within 14 days of the issuance of a homemade food operator permit.
 - (b) Signs or advertising shall not be displayed on the premises except for signage permitted under Section 90-1250(2) of the Hemet Municipal Code.
 - (c) The homemade food operation shall not have more than one full-time equivalent employee, not including a family member or household member of the homemade food operator, within the registered or permitted area of a private home where the homemade food operator resides and where homemade food products are prepared and packaged.
 - (d) The homemade food operation, including the storage of inventory, supplies, and equipment, shall be conducted wholly within the registered or permitted area of a private home.
 - (e) Display(s) or sales activity of any kind shall not be visible from the exterior of the premises.
 - (f) On-site direct sales of homemade food products are permissible only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Sunday. There cannot be more than two homemade food product customers on the premises of a homemade food operation at any single time. All sales shall be conducted indoors.
 - (g) Homemade food operators may load cottage food products into a vehicle outside of an enclosed garage only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Sunday. Vehicles shall not idle while being loaded with homemade food products.
 - (h) A maximum of one vehicle not larger than 10,000 pounds gross vehicle weight rating, used in conjunction with a homemade food operation, shall be parked on the driveway or in a garage space of the homemade food operation site. No commercial vehicle owned, leased, or otherwise operated for the specific use of the homemade food operator shall be parked in the street.
 - (i) A homemade food operation shall comply with all applicable noise regulations for the zone in which it is located.

Staff recommends the adoption of the proposed ordinance to comply with the provisions of AB 1616 and to further ensure the safety and quality of life for Hemet's citizens by adopting requirements to the extent permitted under AB 1616 to exercise local control and regulation of homemade food operators.

COORDINATION AND PUBLIC REVIEW:

A Planning Commission Work Study was held on January 15, 2013, where some Commissioners expressed concern that allowing food items to be prepared in a home kitchen that may not require inspection and then sold to the public could lead to health problems for the consumers of those items. As the law is written, it would appear that enforcement and regulatory action would be reactive and may not serve to adequately protect the public. The Commission, however, was in agreement that the City should exercise as much local control over homemade food operators as allowed under AB 1616.

On January 25, 2013, the City published a notice in the Press Enterprise of the holding of a public hearing before the Planning Commission on February 5, 2013 at which the amendment to the City's zoning ordinance would be considered. The text of the proposed ordinance was developed by the City Staff and reviewed by the City Attorney's office. Upon advice from legal counsel, Staff requested a 30-day continuance of this Zoning Ordinance Amendment to March 5, 2013, to ensure that all proposed provisions are in compliance with State law.

Staff has worked with the City Attorney to revise the proposed Ordinance and believes that the proposed Ordinance is in compliance with State law, provides operational standards and conditions that will reduce potential impacts to residential neighborhoods, and provides City staff with a mechanism to revoke a homemade food operator permit if circumstances warrant such action.

To date, staff has issued two temporary Home Occupation Permits to homemade food operators who were eager to begin their home based businesses. Through conditions attached to those permits, the homemade food operators will be required to upgrade their Home Occupation Permit to a Homemade Food Operator Permit within 90 days of the new Ordinance becoming effective.

No other public comments have been received regarding the draft ordinance.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

The proposed Zoning Ordinance Amendment is in conformance with the adopted 2030 General Plan Land Use Policy LU-15.9 to encourage a mix of food establishments and reduce barriers to the production and distribution of locally grown food.

The Zoning Ordinance Amendment implements a State mandated program requiring cities to allow residents to use their private home kitchen to prepare and sell homemade food products. The law provides for certification through the Riverside County Department of Environmental Health and the proposed Ordinance creates a regulatory framework and licensing requirements to ensure that homemade food operations do not disturb the peace and quiet customarily associated with the zone in which the use is located.

CEQA REVIEW AND COMPLIANCE:

The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Whereas here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The addition of this section to Chapter 90 relates only to regulations for foods prepared in an existing private home kitchen and offered for

sale. It does not relate to any physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment, and therefore the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Prepared by:

Reviewed by:

Emery J. Papp
Principal Planner

Deanna Elliano
Community Development Director

ATTACHMENTS:

1. Planning Commission Resolution Bill No. 13-004
Exhibit 1 – Proposed City Council Ordinance Bill No. 13-003
2. Assembly Bill 1616
3. Proposed City of Hemet Homemade Food Operator Permit Application
4. Proposed City Council Resolution Bill No. 13-004 (Homemade Food Operator Permit Fees)
5. Riverside County Environmental Health Ordinance No. 916 (Cottage Food Operations)
6. Riverside County Environmental Health Qualification, Registration, and Permit Process Flowcharts
7. Riverside County Environmental Health Self Certification Checklist (Class A CFO)
8. Riverside County Environmental Health CFO Registration/Permitting Form

AGENDA #5



Staff Report

TO: Honorable Chairman and Planning Commissioners

FROM: Deanna Elliano, Community Development Director *DE*

DATE: March 19, 2013

RE: **MUNICIPAL CODE AMENDMENT NO.13-002- AUTOMATIC EXTENSIONS OF TIME** – A request for Planning Commission review and recommendation to the City Council for approval of an Urgency Ordinance to extend the life of certain land use approvals set to expire between April 15, 2013 and December 31, 2013.

RECOMMENDED ACTION:

*That the Planning Commission, by Minute Action, recommend to the City Council the **adoption of Ordinance Bill No. 13-008**, regarding the automatic extension of certain land use approvals, based on the findings contained in the staff report and testimony presented at the public hearing.*

PROJECT DESCRIPTION AND BACKGROUND

The proposed ordinance was initiated at the request of several property owners and developers who have project approvals (i.e. Conditional Use Permits and Site Development Reviews), that are due to expire before the end of this year. In some cases, these projects have exhausted all of the time extensions allowed under the zoning code, and would essentially have to re-apply with a new project application and fees, submit new plans and materials, and complete the public hearing process before the Planning Commission. In addition to the costs to the applicant for processing a re-submittal or time extension application, there is considerable staff time involved in preparing the projects and staff reports for the public hearing and Planning Commission review. A similar ordinance granting a 2-year automatic extension of time was approved by the City Council in 2009 (Ordinance 1815).

Staff has identified 12 commercial and residential projects that have received prior approvals and would otherwise expire in the next few months without the extensions granted under this ordinance. Several of the developers of commercial projects previously approved as Conditional Use Permits have indicated to staff a slow improvement in the retail market and an increase in the financing or investment capital available, and anticipate moving forward within the next several months. The proposed ordinance and automatic extension of time will allow them to continue to market an already entitled property as the economy improves. One of the commercial project representatives, Mr. Don McCoy, has submitted a letter in support of the ordinance, included as Attachment No. 2.

The proposed Ordinance would automatically grant an extension of time for a two year period for all of the approved CUPs and SDRs that would expire between April 15, 2013 and December 31, 2013. In the event the ordinance is not adopted, individual applications for Extensions of Time would be required to be filed and processed in the standard manner. However, there would also be a few of the applications that would no longer be eligible to apply for any extension, as noted previously.

Automatic Extensions of Time

In reviewing the case logs of several of the project approvals that would be subject to the ordinance, the approvals are for commercial, office, senior housing or infill residential projects which are consistent with the new General Plan. In addition, the zoning and development standards for these projects are also not anticipated to be substantially changed during the two-year extension time period. Any new state legislation or city ordinances regarding Building, Fire, or Health and Safety Codes would still apply to the developments at the time of plan check and building permit.

ENVIRONMENTAL DETERMINATION

The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This Ordinance is enacted for the immediate preservation of the public peace, health and safety by extending the life of certain project approvals that have already undergone CEQA review. There have been no changes in the development standards or environmental conditions since these projects were approved that would warrant reconsideration of the environmental effects of the proposed projects. Therefore, it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment, and therefore the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

PUBLIC NOTICE AND COMMENT

A Notice of Public Hearing was published in the Press Enterprise newspaper on March 8, 2013 for the required 10-day notice, and the Planning Commission Agenda was posted at City Hall and on the City's website at www.CityofHemet.org, a minimum of 72 hours in advance of the public hearing. To date, one letter has been received from members of the public regarding this item, included as Attachment 2 to the staff report.

STAFF RECOMMENDATION

Staff recommends approval of the proposed ordinance as a reasonable and appropriate response to the nationwide economic conditions affecting the current viability of already approved projects in the City of Hemet. The proposed automatic extension of two years will allow applicants the opportunity to address the current financial challenges, without having to expend additional time and money on filing applications for individual extensions. The following findings are offered in support of the Planning Commission's recommendation to the City Council for approval of the proposed Ordinance.

PLANNING COMMISSION FINDINGS FOR APPROVAL

The Planning Commission finds that:

- 1. The proposed ordinance is in conformance with the latest adopted general plan for the City, as the extensions of time would only affect those projects already approved pursuant to the City's existing general plan and zoning.*
- 2. The proposed ordinance will protect the public health, safety and welfare by allowing entitlements for approved projects to remain active for an additional period of time in response*

Automatic Extensions of Time

to the severe economic and financial conditions present in the city. All extended projects are consistent with the City's zoning and development standards, which will continue to be in force for the life of the approval.

3. *In accordance with the California Environmental Quality Act (CEQA), the proposed Ordinance is exempt from the requirements of the CEQA pursuant to Title 14, Section 15601(b)(3) because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. The ordinance extends the life of approved projects that have already undergone CEQA review.*

Respectfully submitted,



Deanna Elliano
Community Development Director

ATTACHMENTS

- 1) Proposed Ordinance Bill No. 13-008
- 2) Letters from project proponents supporting the proposed Ordinance



CITY OF HEMET
Hemet, California

ORDINANCE BILL NO. 13-008

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF HEMET, CALIFORNIA, EXTENDING THE
LIFE OF EXISTING CONDITIONAL USE PERMITS AND
SITE DEVELOPMENT REVIEW APPROVALS SET TO
EXPIRE BETWEEN APRIL 15, 2013 AND DECEMBER 31,
2013.

WHEREAS, the severe decline in the real estate and development markets, has resulted in a high volume of requests for extensions and unfavorable conditions for the commencement of approved projects; and,

WHEREAS, if extensions are not granted to developers whose project approvals are set to expire, those developers will be forced to start the process over once the market recovers, which will result in the unnecessary consumption of even further staff time and resources; and,

WHEREAS, the City Council previously approved Ordinance No. 1815, which extended the life of all Conditional Use Permits, Administrative Use Permits, Site Development Review approvals, Zoning Adjustments and Planning Director Review approvals issued by the City that were set to expire between April 1, 2009 and December 31, 2009, for a period of twenty-four months from their then-current expiration date; and,

WHEREAS, Government Code section 36937 authorizes ordinances to take effect immediately if they are for the immediate preservation of the public peace, health

1 or safety, contain a declaration of the facts constituting the urgency, and are passed by
2 a four-fifths vote of the city council.

3 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES**
4 **HEREBY ORDAIN AS FOLLOWS:**

5 **SECTION 1: EXTENSION OF CERTAIN LAND USE APPROVALS.** All Conditional
6 Use Permits (HMC 90-42 et seq. and HMC 90-1531 et seq.) and Site Development
7 Review approvals (HMC 90-1451) issued by the City of Hemet that are set to expire
8 between April 15, 2013 and December 31, 2013 are hereby extended for a period of
9 twenty-four (24) months from their current expiration dates. This ordinance granting an
10 automatic extension does not exempt any project from having to comply with state and
11 local building, fire, and health and safety codes in effect at the time of the building
12 permit issuance.

13
14 **SECTION 2: DECLARATION OF FACTS CONSTITUTING URGENCY.** The City has
15 received and processed numerous applications for extensions of land use approvals
16 since the economic downturn in 2008. Due to the length of this current recession, some
17 developers have had to request more than one extension for individual projects, and in
18 some cases may not be eligible for any further extensions of time under the City's
19 current ordinances. It is anticipated that the City will continue to receive applications for
20 extensions until the economy fully recovers. Reviewing and processing these requests
21 for time extensions consumes valuable staff time that could be used for more pressing
22 matters. By adopting this urgency ordinance, the City will free up valuable staff time
23 and ensure that developers whose project approvals are set to expire between April 15,
24 2013 and December 31, 2013 will not have to start the process all over again by
25 applying for a new project approval once the market recovers. The process of applying
26 for a new land use approval can be costly and time consuming, and places further
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28

CITY OF HEMET ORDINANCE BILL NO. 13-008
AUTOMATIC EXTENSIONS OF TIME FOR LAND USE APPROVALS

1 burdens on staff time and resources. Therefore, the City Council finds that this
2 ordinance is necessary for the immediate preservation of the public peace, health, and
3 safety, and declares that it shall take effect immediately upon its adoption as an urgency
4 ordinance.

5 **SECTION 3: CEQA.** The City has analyzed this proposed project and has determined
6 that it is exempt from the California Environmental Quality Act ("CEQA") under Section
7 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects
8 that have the potential for causing a significant effect on the environment. Where, as
9 here, it can be seen with certainty that there is no possibility that the activity in question
10 may have a significant effect on the environment, the activity is not subject to CEQA.
11 This ordinance is enacted for the immediate preservation of the public peace, health
12 and safety by extending the life of certain project approvals that have already
13 undergone CEQA review. There have been no changes to development standards of
14 environmental conditions since these projects were approved that would warrant
15 reconsideration of the environmental effects of the proposed projects. Therefore, it can
16 be seen with certainty that there is no possibility that this ordinance may have a
17 significant adverse effect on the environment, and therefore the adoption of this
18 ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA
19 Guidelines.

20
21 **SECTION 4: SEVERABILITY.**

22 If any section, subsection, subdivision, sentence, clause, phrase, or portion of
23 this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of
24 any court of competent jurisdiction, such decision shall not affect the validity of the
25 remaining portions of this Ordinance. The City Council hereby declares that it would
26 have adopted this Ordinance, and each section, subsection, subdivision, sentence,
27

1 clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,
2 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared
3 invalid or unconstitutional.

4 **SECTION 5: EFFECTIVE DATE.**

5 This Ordinance shall take effect immediately after its passage by the City Council
6 of the City of Hemet.

7 **SECTION 6: PUBLICATION.**

8 The City Clerk is authorized and directed to cause this Ordinance to be published
9 within fifteen (15) days after its passage in a newspaper of general circulation and
10 circulated within the City in accordance with Government Code Section 36933(a) or, to
11 cause this Ordinance to be published in the manner required by law using the
12 alternative summary and posting procedure authorized under Government Code
13 Section 39633(c).

14 **PASSED, APPROVED AND ADOPTED** this ___ day of _____, 2013.

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Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
5 foregoing Urgency Ordinance was passed, approved and adopted on the ___ day of
6 _____, 2013, by the following vote:

7 **AYES:**

8 **NOES:**

9 **ABSTAIN:**

10 **ABSENT:**

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12 Sarah McComas, City Clerk

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DON McCOY CORPORATION

March 14, 2013

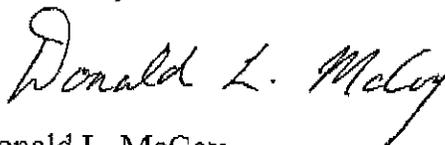
City of Hemet
Planning Department
445 E. Florida Avenue
Hemet, CA 92543
Attn: Carole Kendrick

Re: Hemet Auto Mall Property
Subject: 2 Years Extension of Conditional Use Permit

Dear Carole,

We are in favor of an automatic extension of time for our property at the Hemet Auto Mall for another two years. We are still actively looking for opportunity to develop the property in this poor economic environment. We have had three inquiries within the last 30 days. This extension will be most helpful and we are looking forward to a successful development in the near future. Thank you.

Yours truly,



Donald L. McCoy