

## ORDINANCE NO. 916

### AN ORDINANCE OF THE COUNTY OF RIVERSIDE REGULATING COTTAGE FOOD OPERATIONS AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE SECTIONS 113758, 114365, 114390, 114405 AND 114409

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. FINDINGS. The Board of Supervisors finds that small businesses play an important role in helping economies recover and prosper. There is a growing movement to support community-based food production and to connect safe food to local communities. Allowing and regulating certain foods to be produced for the community locally in private homes encourages small businesses, economic recovery and environmental sustainability.

Section 2. PURPOSE. The purpose of this Ordinance is to establish and regulate Cottage Food Operations and to clarify local requirements relating to training, sanitation, preparation, labeling, inspections, permissible types of sales and operations for a Cottage Food Operation.

Section 3. AUTHORITY. Assembly Bill 1616 was passed on September 21, 2012, adding to and amending sections of the Government Code and Health and Safety Code, relating to food safety. This ordinance is adopted in accordance with Assembly Bill 1616 and pursuant to the Board of Supervisors' police powers as set forth under Article XI, section 7 of the California Constitution. This Ordinance shall be administered and implemented by the Riverside County Department of Environmental Health.

Section 4. DEFINITIONS. The definitions set forth in Health and Safety Code section 113758 are incorporated by reference in this ordinance. The following terms are consistent with California Health and Safety Code Section 113758 and shall have the following meanings:

- A. Cottage Food Operation. An enterprise with gross annual sales limits set forth in subdivision (a) of section 113758 of the Health and Safety Code, is operated by a Cottage Food Operator and having not more than one full-time equivalent cottage food employee, not including a family member or household member of the Cottage Food Operator, and conducted within the Registered or Permitted Area of a private home where the Cottage Food Operator resides and where Cottage Food Products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to section 113758 subdivision (b), subsections (4) and (5) of the Health and Safety Code. A Cottage Food Operation includes both of the following:
1. Class A cottage food operations may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues such as temporary events. A separate permit from the Department shall be required to operate a temporary food facility at such events.
  2. Class B cottage food operations may engage in both direct sales and indirect sales of cottage food products such as a permitted third-party retail food facility.
- B. Cottage Food Operator. An individual who owns and conducts a Cottage

- Food Operation in his or her private home.
- C. Cottage Food Products. A specific list of not potentially hazardous foods approved by the California Department of Public Health and posted on its Internet Web site and that are prepared for sale in the kitchen of the Registered or Permitted Area of a Cottage Food Operation. Typical food items include baked goods without cream, custard, or meat fillings; candies; dried fruits and pastas; fruit pies; cereals; herbs; honey; jams and jellies; nuts; popcorn; roasted coffees and dried teas.
  - D. Department. Riverside County Department of Environmental Health.
  - E. Enforcement Officer. The Director of Environmental Health and his or her duly authorized designees.
  - F. Registered or Permitted Area. A private home kitchen described and authorized in the permit or registration for the Cottage Food Operation and used for the preparation, packaging, storage, or handling of Cottage Food Products and related ingredients and/or equipment, and attached rooms within the home that are used exclusively for storage. Detached accessory buildings, including garages and guest quarters, enclosed patios and second units are not included as registered or permitted areas.

Section 5. INSPECTIONS. The Department shall inspect Class B Cottage Food Operations upon the initial application as well as on an annual basis using an inspection form provided by the Department. Although Class A Cottage Food Operations are not subject to initial or routine inspections, the Enforcement Officer may access and inspect the Registered Area only if, on the basis of a consumer complaint, there is reason to suspect that unsafe food has been produced or there is another violation of this Ordinance. The Department may seek cost recovery, based on the hourly rate established in the current version of Ordinance 640 if additional inspections are required to ensure compliance with this Ordinance.

Section 6. OPERATING REQUIREMENTS. Consistent with the operational requirements set forth in California Health and Safety Code Section 114365, et seq., a Cottage Food Operation shall comply with the following:

- A. No Cottage Food Product preparation, packaging, or handling may occur concurrent with any other domestic activities, including, but not limited to, family meal preparation, guest entertaining or dishwashing.
- B. No infants, small children, or pets may be in the Registered or Permitted area during the preparation, packaging, or handling of any Cottage Food Products.
- C. Equipment and utensils used to produce Cottage Food Products shall be clean and maintained in a good state of repair.
- D. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any Cottage Food Products shall be washed, rinsed, and sanitized before each use.
- E. All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.
- F. No preparation, packaging, storage, or handling of Cottage Food Products and related ingredients and/or equipment shall occur outside of the Registered or Permitted Area.

- G. Smoking shall be prohibited in the Registered or Permitted Area during the preparation, packaging, storing, or handling of Cottage Food Products and related ingredients and equipment.
- H. A person with a contagious illness shall refrain from work in the Registered or Permitted Area of the Cottage Food Operation.
- I. A person involved in the preparation or packaging of Cottage Food Products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity.
- J. Water used during the preparation of cottage food products shall meet potable drinking water standards.
- K. A person who prepares or packages Cottage Food Products shall complete a food processor course instructed by the California Department of Public Health within three months of becoming registered or permitted.
- L. A Cottage Food Operation shall properly package and label all Cottage Food Products in compliance with the Federal Food, Drug and Cosmetic Act (21 USC §343 et seq.).  
 Additional labeling requirements shall include:
  - 1. The words "Made in a Home Kitchen"
  - 2. A descriptive common product name
  - 3. Name of the Cottage Food Operation
  - 4. Registration or permit number
  - 5. For Class B Cottage Food Operations, the name of the Department issuing the registration or permit number must also be stated
  - 6. A listing of all ingredients in descending order of predominance by weight.
- M. A cottage food operation shall comply with all standards, requirements and conditions as set forth in Section 18.53 of Ordinance No. 348.

Section 7. REGISTRATION AND PERMIT. No person shall conduct a cottage food operation without holding a valid registration or permit issued by the Department. Application for a registration or permit shall be made to the Department upon a form issued by the Department, and shall be accompanied by a fee as listed below:

- Registration for Class A Cottage Food Operation \$145.00
- Permit for Class B Cottage Food Operation \$290.00

The fees listed in this Section shall be valid until such time as Ordinance 640 is revised to incorporate these new fees therein. Any annual permit or registration shall be valid for no more than one year from the month of issue. The application shall not be deemed as completed unless accompanied with documentation indicating that all applicable planning/zoning requirements have been met. Class A Cottage Food Operators shall complete and submit a self-certification checklist provided by the Department at the time of application for registration. A registration or permit number shall be issued by the Department after the Enforcement Officer has determined that the Cottage Food Operation has conformed to this Ordinance. If it can readily be determined by the Department, by checking the Internet Web site of a neighboring County, that a Class B cottage food operation is currently permitted, then indirect sales of those Cottage Food Products may be allowed in Riverside County. A registration or permit is not transferrable.

Section 8. ENFORCEMENT Notwithstanding the remedies set forth in California Health and Safety Code Sections 114390, 114405, and 114409, the Department reserves the right to issue administrative citations in accordance with Government Code

Section 53069.4. An administrative citation may be issued for any violation of this Ordinance. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.

- A. Notice of Violation. If the violation is not corrected within the period stated in the notice of violation, or if the violation creates an immediate danger to health or safety, an administrative citation may be issued by the Enforcement Officer. The notice of violation shall specify the manner in which the conditions of the Cottage Food Operation violate the provisions of this Ordinance and the corrective actions required to correct the condition or conduct. The notice shall also state that failure to come into compliance with this Ordinance could subject the registrant or permittee of the Cottage Food Operation to administrative and criminal penalties. The failure of the notice to set forth all required contents shall not affect the validity of the proceedings.
- B. Content of Citation. The administrative citation shall be issued on a form approved by County Counsel and shall contain the information listed below. The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.
  1. Date, location and approximate time the violation was observed.
  2. The Ordinance section violated and a brief description of the violation.
  3. The amount of the administrative penalty imposed for the violation.
  4. Instructions for the payment of the penalty, the time period by which it shall be paid, and the consequences of failure to pay the penalty within this time period.
  5. Instructions on how to appeal the citation.
  6. The signature of the Enforcement Officer.
- C. Service of Citation.
  1. If the registrant, permittee or other person who has violated the Ordinance is present at the scene of the violation, the Enforcement Officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
  2. If the registrant, permittee or other person who has violated the Ordinance cannot be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the registrant or permittee who has violated the Ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last County Equalized Assessment Roll.
  3. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
- D. Administrative Penalties.
  1. The penalties assessed for each violation shall not exceed the following amounts:
    - a. \$100.00 for a first violation;
    - b. \$200.00 for a second violation of the same Ordinance within one year; and
    - c. \$500.00 for each additional violation of the same Ordinance within one year.
  2. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall

increase at the rate specified above.

3. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
4. The penalties assessed shall be payable to the County of Riverside.

E. Administrative Appeal.

1. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall contain the following information:
  - a. A brief statement setting forth the appellant's interest in the proceedings;
  - b. A brief statement of the material facts which the appellant claims supports his/her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
  - c. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
  - d. The notice of appeal must be signed by the appellant.
2. Administrative Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:
  - a. Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
  - b. Hearing Officer. The administrative hearing shall be held before the Board of Supervisors, the County Hearing Officer or the County Hearing Board. The hearing officer shall not be the Enforcement Officer who issued the administrative citation or their immediate supervisor or subordinate. The Board of Supervisors, the County Hearing Officer or the County Hearing Board may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
  - c. Conduct of the Hearing. Except as may be required by the hearing officer, the Enforcement Officer who issued the administrative citation is not required to participate in the administrative hearing. The contents of the Enforcement Officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make his or her determination based on the information contained in the notice of appeal.
  - d. Hearing Officer's Decision. The hearing officer's decision

following the administrative hearing shall be delivered to the person requesting the hearing personally or sent by mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.

F. Review of Administrative Hearing Officer's Decision.

1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the superior court. The fee for filing the notice of appeal is twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or Instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.
3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the Department. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to any manner provided by law.

Section 9. NUISANCE DEFINED. Any Cottage Food Operation, whether permitted or not pursuant to the procedures of this Ordinance, found in violation of this Ordinance is hereby declared to be a public nuisance and dangerous to the health and safety of Riverside County.

Section 10. CIVIL ACTIONS

- A. Injunctive Relief and Abatement. Whenever, in the judgment of the Enforcement Officer, any person is engaged in or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Ordinance, or any rule, regulation, order, permit or conditions of approval issued thereunder, upon the request of the Enforcement Officer, the County Counsel or District Attorney may commence proceedings for the abatement, removal, correction and enjoinder thereof, and require the violator to pay civil

penalties and/or abatement costs.

- B. Civil Remedies and Penalties. Any person, whether acting as principal, agent, employee, Owner, lessor, lessee, tenant, occupant, operator, contractor or otherwise, who willfully violates the provisions of this Ordinance or any rule, regulation, order or conditions of approval issued thereunder, shall be liable for a civil penalty not to exceed \$1,000.00 for each day or portion thereof, that the violation continues to exist. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.

Section 11. COSTS AND DAMAGES. Any person, whether acting as a principal, agent, employee, Owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating any provisions of this Ordinance or the rules, regulations, orders, permits or conditions of approval issued thereunder, shall be liable to the County of Riverside for costs of abatement and any damages suffered by the County, its agents and agencies, as a result of such violations.

Section 12. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

Section 13. REMEDIES AND PENALTIES. All remedies and penalties provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of which any violation of this Ordinance or the rules, regulations, orders, Permits or conditions of approval issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and distinct offense.

Section 14. SEVERABILITY. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 15. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

**Adopted: Item No. 9.2 of 01/29/2013**