I. CALL TO ORDER: Chairman Siva

- Pledge of Allegiance: Chairman Siva
- Roll Call: Chairman Siva, Commissioner Barsh, Commissioner Ellis, Commissioner Hawkins and Commissioner Shaw

II. COMMISSIONER APPOINTMENT:

A welcoming for newly appointed Commissioner Eric Shaw appointed by action of the City Council on May 14, 2013.

III. PUBLIC COMMENTS:

At this time, the general public is invited to address the Planning Commission concerning any items that are not listed on the agenda, which are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public of any non-agenda items will be limited to three (3) minutes in accordance with City policy.

IV. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

Minutes of May 1, 2013 meeting..........................................................Page 1
V. PUBLIC HEARING

1. ZONE TEXT AMENDMENT (ZTA) NO. 13-97501
   ORDINANCE NO. 1463 REGULATING COTTAGE FOOD
   OPERATIONS/ HOMEMADE FOOD OPERATIONS

   Staff Report……………………………………………………………………………..Page 5

Order of Procedure:
1. Request staff report / Questions of staff
2. Open public hearing
3. Close public hearing
4. Planning Commission discussion / Questions of staff
5. Motion and Second
6. Discussion on motion
7. Call the question (Roll call vote)

Recommendations:

That the Planning Commission take the following actions:

   Adopt Planning Commission Resolution No. 2013-08 (Attachment 1)
   recommending that City Council approve Ordinance No. 1463 (Exhibit A)
   Regulating Cottage Food Operations/Homemade Food Operations and

VI. PLANNING COMMISSIONER COMMENTS

VII. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS

VIII. ADJOURNMENT

   The City of Banning Planning Commission is hereby adjourned to the regular Planning
   Commission meeting of July 3, 2013 starting at 6:30 p.m. in the City Council Chambers.

   In compliance with the Americans with Disabilities Act, if you need special assistance to
   participate in this meeting, please contact the Planning Division (951) 922-3125. Notification 48
   hours prior to the meeting will enable the City to make reasonable arrangements to ensure
   accessibility to this meeting [28 CFR 35.102-35.104 ADA title II]
City of Banning

PLANNING COMMISSION MINUTES

May 1, 2013

A regular meeting of the City of Banning Planning Commission was held on Wednesday, May 1, 2013 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

**Commissioners Present:** Commissioner Barsh
Commissioner Briant
Commissioner Ellis
Commissioner Hawkins

**Commissioners Absent:** Chairman Siva

**Staff Present:** Community Development Director Abu Bakar
Economic Development Director/Public Information Officer Bill Manis
Associate Planner Guillot
Assistant City Attorney Lona Laymon
Recording Secretary Stuart

I. CALL TO ORDER

II. COMMISSIONER APPOINTMENT

Commissioner Ellis was congratulated and welcomed to the Planning Commission as his appointment was approved by the City Council on April 23, 2013.

III. PUBLIC COMMENTS:

Jeff Wright, 981 E. Charles Street: Requesting to have property rezoned back to residential from industrial.

Mikayla Cashe, 981 E. Charles Street: Requesting to have property returned to residential zoning from industrial. When she originally moved into the property it was designated as RA-1, Residential Agricultural.

Dakota Poplit, 981 E. Charles Street: Requesting to have property rezoned back to residential.
IV. CONSENT CALENDAR

1. Minutes of February 6, 2013
2. Minutes of March 6, 2013

ACTION (HAWKINS/BARSH): A motion was moved, seconded and carried that items 1 & 2 be approved as presented.

(Motion carried 3-0) (Commissioner Ellis abstained / Chairman Siva absent)

V. PUBLIC HEARINGS

1. TIME EXTENSION FOR DESIGN REVIEW (DR) #10-702 (VILLAGE AT PASEO SAN GORGONIO)

Associate Planner Brian Guillot presented the request for extension of time related to the Village of Paseo San Gorgonio. The project was approved previously and is across the street from City Hall. City Council approved the design review on May 24, 2011. After the approval of the design review, City Council approved a purchase and sale agreement on February 26, 2012. Unfortunately because of the time it took to get those two items approved the dates that they expired did not correspond. At this time staff is asking the Planning Commission to extend the design review to or near the expiration date of the purchase and sale agreement. The purchase and sale agreement cannot be extended past May 30, 2015 so staff is requesting that the design review be extended two years to May 24, 2015. Associate Planner Guillot reviewed site plans and pictures and confirmed only the time will be adjusted and all other conditions of approval will remain the same.

Vice-Chairman Briant inquired if the extension impacts any existing permits or conditions that are part of the originally approved design. Mr. Guillot responded and stated there were no impacts to his knowledge and that essentially this is the entitlement phase of the project.

Director Zai Abu Bakar informed the Commissioners that the applicant was present and available to answer questions.

Commissioner Ellis stated he had questions for the developer. Arthur Pearlman (Arthur Pearlman Corporations, Santa Monica) and Mark Frost (Frost Company, Laguna Nigel) came forward. Together they are the owners of the project identified as JMA Village, LLC which is the owner entity of the Paseo project.

Commissioner Ellis inquired if they were having any problems with the design review at this time. Mr. Pearlman stated no and that they have absolutely no issues with the City.

Commissioner Ellis inquired if they foresaw any problems in keeping to the vertical construction date tentatively scheduled for December of 2014. Mr. Pearlman responded by answering no.
Commissioner Ellis inquired if they could provide a schedule of events. Mr. Pearlman responded by stating he could provide a basic schedule. Today they met with City staff and department heads and they are now creating a new schedule based on that meeting. They have been working on this project for approximately four years which is fairly standard. They will be processing and preparing the working drawings over the next several months internally and by the end of the year they anticipate submitting plans to the City for processing.

Commissioner Ellis asked what financial arrangements have been made for the purchase of the property and construction of the project and if there were any other investors. Mr. Pearlman responded by stating to date they have been working on this project for four years and have personally invested over 1 Million dollars into the project. Mr. Pearlman stated that along with their investment of time and money they have the motivation to complete the project. Additionally, over the last several years they have had an executed letter of intent to obtain EB5 financing which is still in place. Due to the economic changes overall the last few years they were unable to find a lender three years ago, a bank or any financial institution that wanted to invest in any type of real estate. Due to recent events over the last three to four months and outcomes of others projects in which they are involved they are now confident that they can either self-finance or bring in an outside financing to pursue the project.

Commissioner Ellis questioned as to how many tenants are tentatively lined up at this time to occupy the building. Mr. Pearlman stated tenant names are not released until leases are fully executed and typically that is what the tenant demands. At this point he cannot provide any names; however, later this month they are participating in the International Council of Shopping Centers conference where they have a series of meetings set-up. Following this meeting they anticipate having prospect announcements. They do have letters of intent. Mr. Frost also added that many of the tenants are waiting for the completion of the courthouse.

Commissioner Ellis also inquired how far along they were in their plan approval process. Mr. Pearlman responded stating they have the tentative parcel maps fully approved ready for submittal and as of today are ready to process the final parcel map. The working drawings are now being processed following the meeting with staff today.

Commissioner Ellis also commented on the condition of the perspective development site requesting that it be cleaned-up and made more presentable. Mr. Frost responded stating they have a contract with TruGreen LandCare to perform maintenance of the property. He agreed and will schedule weed abatement.

Commissioner Ellis asked if escrow had closed on the property. The response was that escrow had closed but is subject to the note that is favorable to the City.

Vice-Chairman Briant declared the public hearing open. Seeing that there were no public comments the public hearing was declared closed.
ACTION (HAWKINS/ ELLIS): A motion was moved, seconded and carried that the Planning Commission take the following action:

1. ADOPT PLANNING COMMISSION RESOLUTION NO. 2013-07 APPROVING THE EXTENSION OF TIME FOR DESIGN REVIEW (DR) #10-702.

(Motion Carried 4 – 0)(Siva absent)

VI. PLANNING COMMISSIONER COMMENTS

None.

VII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

The Community Development Director welcomed Commissioner Ellis. The Director informed the Commission that for the June meeting, staff would like to take pictures of the Commissioners to post on the website. Secondly, she was planning to arrange a swearing-in ceremony for all Commissioners because it has never been done formally.

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 6:53 p.m.

Respectfully submitted,

__________________________
Holly Stuart
Recording Secretary
CITY OF BANNING
Planning Commission Report

DATE:       June 5, 2013
TO:         Planning Commission
FROM:       Zai Abu Bakar, Community Development Director

SUBJECT: ZONE TEXT AMENDMENT (ZTA) NO. 13-97501
       ORDINANCE NO. 1463 REGULATING COTTAGE FOOD
       OPERATIONS/HOMEMADE FOOD OPERATIONS

STAFF RECOMMENDATION:

That the Planning Commission takes the following actions:


BACKGROUND/ANALYSIS: Assembly Bill (AB) 1616 was signed into law by Governor Brown on September 21, 2012, and became effective on January 1, 2013. The bill allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens referred to as “cottage food operations” (CFOs). The regulations stipulate that a city or county shall not prohibit cottage food operations and must provide a nondiscretionary permit process to accommodate the use of a residence for its operation.

AB 1616 creates a two-tier cottage food operator registration and permitting system to be enforced by local county or city environmental health agencies: 1) “Class A” cottage food operators are those operations that sell CFO prepared foods directly to the public (at the home where the cottage food operation is located or at a community event), and 2) “Class B” cottage food operators are those operations that sell CFO prepared foods either indirectly through restaurants and stores or both directly to the public as well as indirectly to the public via sale to retail food facilities such as restaurants and markets. There are different requirements for “Class A” and “Class B” cottage food operations.
Cottage food operations are not allowed to manufacture potentially hazardous foods, acidified foods, or low acid canned food products that would support the growth of botulism if not properly prepared. These foods, as well as other foods not on the approved foods list, are regulated by the California Department of Public Health (CDPH). The enactment of AB 1616 provides cottage food operators with the opportunity to operate a small scale food business. Once the cottage food operation exceeds the gross sales volume established in the law, they must move their operations to a commercial processing facility and register with the CDPH under the Processed Food Registration Program. Please see Attachment 2 frequently asked questions as prepared by CDPH for additional information.

ENVIRONMENTAL DETERMINATION

The Planning Commission, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated June 5, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **California Environmental Quality Act (CEQA):**

   The Planning Commission 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. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Furthermore, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. 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 resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. **Multiple Species Habitat Conservation Plan (MSHCP):**

   The amendments to the Municipal Code do not relate to any one physical project and are not subject to the MSHCP. Furthermore, projects subject to this Ordinance and/or the Zoning Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.
REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO. 13-97501:

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the Planning Commission. The following findings are provided for Commission consideration:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

   Findings of Fact:

   The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal is “A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. Ordinance No. 1463, as proposed, will permit cottage food operations within the regulations set forth in the Municipal Code not previously allowed. This should encourage new home-based businesses, while at the same time limiting the businesses operations to a scale compatible with a residential land use.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

   Findings of Fact:

   The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will modify and the permitting process pertaining to cottage food operations within the present limits and development standards established by the Zoning Ordinance. No significant changes are proposed to the development standards of the Zoning Ordinance. Staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies.

3. That the Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

   Findings of Fact:

   The Planning Commission 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. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to the ordinance will trigger individual analysis and documentation related to CEQA. 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 resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

PUBLIC COMMUNICATION

The proposed Ordinance was advertised in the Record Gazette newspaper on May 24, 2013. As of the date of this report, staff has not received any verbal or written comments for or against the proposal.

Prepared by:

Brian Guillot
Associate Planner

Approved by:

Zai Abu Bakar
Community Development Director

Attachments:

1. Planning Commission Resolution No. 2013-08
2. Frequently Asked Questions AB 1616
RESOLUTION NO. 2013-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING TO THE CITY COUNCIL THE APPROVAL ORDINANCE NO. 1463 REGULATING COTTAGE FOOD OPERATIONS/HOMEMADE FOOD OPERATIONS AND INCORPORATING BY REFERENCE PORTIONS OF THE GOVERNMENT CODE AND HEALTH AND SAFETY CODE

WHEREAS, the Community Development Director for the City of Banning is proposing amending the Banning Municipal Code to comply with Assembly Bill (AB) 1616 signed into law by Governor Brown on September 21, 2012, and became effective on January 1, 2013; and

WHEREAS, the Planning Commission has authority per Chapter 17.116 of the Municipal Code to review and make recommendations to the City Council regarding amendments to the Zoning Ordinance consistent with the goals and policies of the General Plan; and

WHEREAS, in accordance with Government Code §65854, on the 24th day of May 2013, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of the holding of a public hearing at which the amendment to the Municipal Code would be considered; and

WHEREAS, on the 5th day of June 2013, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed amendment, and at which time the Planning Commission considered the Zone Text Amendment; and

WHEREAS, at this public hearing on the 5th day of June 2013, the Planning Commission considered and heard public comments on the proposed Zone Text Amendment; and

WHEREAS, at this public hearing, the Planning Commission has analyzed this proposed project and determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines; and

NOW THEREFORE, the Planning Commission of the City of Banning does hereby find, determine, and resolve as follows:
SECTION 1. ENVIRONMENTAL FINDINGS.

The Planning Commission, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated June 5, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

   CEQA: The Planning Commission 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. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. 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 resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. Multiple Species Habitat Conservation Plan (MSHCP).

   The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

SECTION 2. REQUIRED FINDINGS.

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the Planning Commission. The following findings are provided for Commission consideration:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

   Findings of Fact: The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal is "A balanced, well planned community including
businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. Ordinance No. 1463, as proposed, will permit cottage food operations within the regulations set forth in the Municipal Code not previously allowed. This should encourage new home-based businesses, while at the same time limiting the businesses operations to a scale compatible with a residential land use.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will modify and the permitting process pertaining to cottage food operations within the present limits and development standards established by the Zoning Ordinance. No significant changes are proposed to the development standards of the Zoning Ordinance. Staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies.

3. That the Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact: The Planning Commission 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. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to the ordinance will trigger individual analysis and documentation related to CEQA. 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 resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. PLANNING COMMISSION ACTIONS.

The Planning Commission hereby takes the following actions:

PASSED, APPROVED AND ADOPTED this 5th day of June, 2013.

Kevin Siva, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT:

Lona N. Laymon
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:

Holly Stuart, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Holly Stuart, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-08, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 5th day of June 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Holly Stuart, Recording Secretary
City of Banning, California
Exhibit A
(Ordinance No. 1463)
ORDINANCE NO. 1463

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BANNING, CALIFORNIA REGULATING
COTTAGE FOOD OPERATIONS/HOMEMADE
FOOD OPERATIONS AND INCORPORATING BY
REFERENCE PORTIONS OF THE GOVERNMENT
CODE AND HEALTH AND SAFETY CODE

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 cities and counties
shall not prohibit cottage food operations in any residential dwelling; and

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

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

WHEREAS, the City Council has authority per Section 1.04.040 of the
Municipal Code to approve, approve with modifications, or disapprove amendments to
the code of the City of Banning; and

WHEREAS, on the ______th day of ____________ , 2013, the City gave
public notice by advertising in the Record Gazette newspaper of the holding of a public
hearing at which the amendment to the code would be considered; and

WHEREAS, on the ______th day of ____________ , 2013, the City
Council held the noticed public hearing at which interested persons had an opportunity to
testify in support of, or opposition to, the proposed amendment, and at which time the City Council considered Ordinance No. 1463; and

WHEREAS, at this public hearing on the ______ th day of ___________ 2013, the City Council considered and heard public comments on the proposed code amendment; and

WHEREAS, at this public hearing, the City Council 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;

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the ______ th day of _________________ 2013;

NOW THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Banning as follows:

SECTION 1. Environmental.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated ____________, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

CEQA: The City Council 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. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Furthermore, projects subject to this Ordinance will trigger individual analysis and documentation related to CEQA. 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.
2. **Multiple Species Habitat Conservation Plan (MSHCP).**

The amendments to the municipal code do not relate to any one physical project and are not subject to the MSHCP. Furthermore, projects subject to this Ordinance and/or the Zoning Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**SECTION 2. Add Article V Cottage Food Operations to Title 8, Chapter 8.24 Food Establishments and Facilities of the Banning Municipal Code as follows:**

**Article V**

**Cottage Food Operations**

**8.24.340. – Cottage Food Operator Permit.**

**A. Authority**

On September 21, 2012, AB 1616, the “California Homemade Food Act,” was signed into law requiring cities and counties to allow homemade food operators by adding Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 115851, 114021, 114023, 114390, 114405, and 114409, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of the Health and Safety Code, relating to food safety. Such provisions, as amended by the State of California from time to time, are hereby incorporated by reference. Subject to the provisions under state law, and additional criteria established in this Section and Chapter 17.72 Home Occupation Permits, homemade food operators may apply for approval from the City of Banning Home Occupation Permit as provide for in Chapter 17.72 of the Zoning Ordinance.

**B. Purpose**

The purpose of this Section is to establish and regulate homemade food operators and to set local requirements in addition to those required under the California Homemade Food Act for businesses to be conducted in a home kitchen. Such homemade food operations shall be accessory to a residential land use where such a use will clearly not be disruptive or alter the character or the appearance of the neighborhood.

**C. Definitions.**

1. “Cottage Food Operation” and/or “Homemade Food Operation (HFO)” shall mean an enterprise with annual gross sales limits set forth under California Health and Safety Code Section 113758 (a), operated by a homemade food
operator having no more than one full-time equivalent employee, conducted within a private home kitchen where the homemade food operator resides, and where homemade food products are prepared or packaged for direct, indirect, or direct and indirect sales pursuant to Section 113758 of the California Health and Safety Code. A homemade food operation may engage in the following sales activity subject to approval from the Health Department:

a. Class A homemade food operations may engage only in direct sales of homemade food products from the homemade food operation or other direct sale venues such as temporary events. Door to door sales shall be prohibited.

b. Class B homemade food operators may engage in both direct and indirect sales of homemade food products such as a permitted third-party retail food facility.

2. “Cottage Food Operator” or “Homemade Food Operator” shall mean an individual who owns or operates a homemade food operation in his or her private home kitchen.

3. “Cottage Food Product” or Homemade Food Product” shall mean non-potentially hazardous foods and food products that do not require refrigeration to prevent bacteria growth and as otherwise defined in Section 113871 of the California Health and Safety Code. Pursuant to Section 114365.5(a) of the California Health and Safety Code, the Health Department shall adopt and post on its internet website a list of non-potentially hazardous foods that are approved for sale by a homemade food operation.

4. “Health Department” shall mean the Riverside County Department of Environmental Health.

5. “Private Home” shall mean any lawfully constructed single-family, multiple-family, factory built or manufactured dwelling units that are occupied and used by an individual(s) as a principal residence. Detached accessory buildings, including garages, carports, guest quarters, enclosed patios, second dwelling units, and storage sheds shall not be included as permitted areas for the purpose of this Chapter.

6. “Private Home Kitchen” shall mean the kitchen described and authorized in the permit or registration for the homemade food operation and will be used for the preparation, packaging, storing, or handling of homemade food products and related ingredients, equipment, and attached rooms within the house that are used exclusively for storage.
D. Permit and Business License required.

Dwelling units may be used for business purposes when a business license, in conformance with Chapter 17.72, and a home occupation permit have been issued. A home occupation permit shall be required for each business. If a business license for a homemade food operator is not renewed, the home occupation permit shall automatically expire with the business license. A fee for the processing of a home occupation permit may be established from time to time by resolution of the city council.

E. Issuance of Permit

The Community Development Director may, upon application, and payment of the required fee, issue a homemade food operator permit, with the conditions required in this Section and the Zoning Ordinance and any time limitations that are deemed necessary. The permit shall not be issued unless the Community Development Director is satisfied that the applicant will meet all the conditions listed in this Section and Chapter 17.72 of the Zoning Ordinance; and, the applicant has agreed in writing to comply with such conditions. The Community Development Director may require a hearing for homemade food operators which the director determines potentially may not meet the purposes of this Section. If a hearing is required it shall be in accordance with the requirements of Section 17.68 of the Zoning Ordinance.

F. Annual Renewal Fee Required

An annual fee for the renewal of a home occupation permit may be established by resolution of the city council. The purpose of the renewal fee is to recover the cost of staff time to notify the health department regarding the continued use of the homemade food operation, and to determine whether or not the operator remains in compliance with City regulations and standards.

G. 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 Chapter 17.72, for a non-food related home-based business.

H. Owner Authorization Required.

A non-owner occupant of a private home, e.g. tenant, shall provide an authorization statement from the owner of the property or the property
management company indicating support for the proposed homemade food operation on their property. Such authorization shall include the name, address, telephone number, and other contact information of the owner or manager of the property. Failure to provide complete and accurate authorization information shall result in the denial or revocation of a home occupation permit.

I. Conflicting Provisions

In the event that the type of permit required for a proposed use under this Section differs from the permit authority allowed under California Assembly Bill 1616, the provisions of AB 1616 shall apply.

J. Exceptions

Homemade food operations shall not be permitted in any second unit, guest quarter or other accessory building in any zoning district.

K. Conditions

The following conditions shall be observed at all times by the holder of a home occupation permit for the purpose of homemade food operations. In order to meet the purposes of the zoning district, for public safety, and/or to meet the requirements of state and local laws, the director may require additional conditions.

1. A homemade food operation shall comply with all development standards for the zoning district in which the use is located, in addition to the requirements of this Section and Chapter 17.72 Home Occupation Permits.

2. A homemade food operation shall comply with all permitting and licensing requirements of the Riverside County Department of Environmental Health.

3. Signs or advertising shall not be displayed on the premises except for signing permitted under Chapter 17.36 Sign Regulations of the Zoning Ordinance.

4. No more than one (1) employee, assistant or volunteer other than the licensee shall participate in the HFO food preparation activities on the premises.

5. The homemade food operation, including inventory and supplies stored on the premises, shall be conducted wholly within the principal structure and shall not exceed 25 percent of the total floor area. The required garage space, or any other accessory structure shall not be utilized for homemade food operator purposes or storage. Required off street parking areas shall not be utilized for homemade food operators other than for parking, and shall not be considered as part of the total floor area.
6. Display(s) of any kind shall not be visible from the exterior of the premises.

7. No mechanical or electrical apparatus, equipment or tools shall be permitted except those items which are commonly associated with residential use or are customary to home kitchens.

8. Pedestrian or vehicular traffic shall not be in excess of that customarily associated with the zoning district in which the use is located. Customer visits to a homemade food operator's home shall adhere to the following maximum standards:
   a. Hours of operation are limited to between 7:00 a.m. and 7:00 p.m.
   b. No more than two customers per visit
   c. No more than four customer visits per hour

9. Except for homemade food products that have been prepared for sale in the private kitchen of a homemade food operator, no customer services or sales of goods, wares or merchandise shall be made on the premises.

10. There shall be conformity with fire, building, plumbing, electrical and health codes and with all state and local laws.

11. There shall be no demand for municipal or utility services or community facilities in excess of those usual and customary for residential use.

12. The residential character of the premises shall not be altered, nor shall the use unreasonably disturb the peace and quiet of the area, including alteration or disturbance relating to radio and television reception, color, design, materials, construction, lighting, sounds, noises, vibrations or vehicles.

13. The Community Development Director, in approving a homemade food operator permit, may impose any additional conditions as deemed necessary to carry out the intent of this Section.

14. If the municipal codes applicable to the premises are amended to prohibit such use, the homemade food operator permit shall be canceled within 90 days after notification.

15. The use or storage of any flammable, combustible or toxic materials in conjunction with a homemade food operation shall be limited to materials and quantities allowed for a residential use pursuant to applicable law.

L. Grounds for revocation of permit.

Any homemade food operator permit shall be revoked by the Community Development Director upon violation of any requirements of this Chapter,
Chapter 17.72 Home Occupation Permits, 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.

M. Appeal of denial or revocation of permit.

A decision of the Community Development Director may be appealed to the planning commission as prescribed in Chapter 17.68 Hearings and Appeals.

SECTION 3. Section 8.24.010 Purpose and intent of the Banning Municipal Code is amended to read as follows:

"8.24.010 - Purpose and intent.

The county of Riverside shall administer standards related to the health and safety and sanitation of food facilities within the jurisdiction of the City of Banning pursuant to the laws herinafter set forth except as provided for in Article V Cottage Food Operations of this Chapter."

SECTION 4. Section 8.24.020 Definitions of the Banning Municipal Code is amended to read as follows:

"8.24.020 - Definitions.

As used in this Chapter:

"Community Development Director" means the Community Development Director for the City of Banning or the individual so designated by the City Manager for the City of Banning.

"Food establishment" means a food establishment as defined in the California Uniform Retail Food Facilities Law, Section 27520 of the California Health and Safety Code. These are commonly referred to as restaurants, markets, delis or similar operations except as provided for in Article V Cottage Food Operations of this Chapter.

"Food facilities" means a food facility as defined in Section 27521 of the California Health and Safety Code except as provided for in Article V Cottage Food Operations of this Chapter. These are commonly referred to as wholesale food facilities, vehicles, vending machines, satellite food distribution facilities, open-air barbecues, certified farmers markets, stationary food preparation units and mobile food preparation units. This definition also includes commercial food establishments.
"Enforcement officer" means the director of the Riverside County department of environmental health services and his or her duly authorized environmental health specialists.

"Food preparation" means food preparation as defined in Section 27522 of the California Health and Safety Code.

"Official inspection form" means the form provided by the Department of Environmental Health Services.”

SECTION 5. Section 17.72.020 Application procedures of the Banning Municipal Code is amended to read as follows:

“Section 17.72.020 Application procedures.

A. The conduct of a home occupation requires the approval of the Director who may establish conditions to further the intent of this Chapter. An application for a Home Occupation Permit shall be on a form prescribed by the Director and shall be filed with the Department pursuant to the Chapter 17.48 Applications and Fees of this Zoning Ordinance.

B. A home occupation permit shall not be required for an in-home education activity, including but not limited to music lessons, academic tutoring, or religious instruction, provided that no more than 5 students are present at any one time, and the use complies with all of the operating standards of the Zoning Ordinance.”

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 7. PUBLICATION; EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.
PASSED, APPROVED, AND ADOPTED this ___ day of ___________, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1463 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____th day of ________________ 2013, and was duly adopted at a regular meeting of said City Council on the ______ day of ___________ _____, 2013, by the following vote, to wit:

AYES:
NOES:
ABSEN:
ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California
Attachment 2

(AB1616 California Homemade Food Act Frequently Asked Questions)
California Homemade Food Act  
Frequently Asked Questions  
AB 1616 (Gatto) - Cottage Food Operations

When does the new Cottage Food Law go into effect? The new law becomes effective January 1, 2013. The law requires the California Department of Public Health (CDPH) to carry out certain tasks associated with implementation, and imposes certain responsibilities on local planning and environmental health jurisdictions. Further information regarding the status of implementation can be obtained from your local environmental health agency.

1. What is a cottage food operation (CFO)? A CFO is an enterprise at a private home where specific low-risk food products that do not require refrigeration are prepared or packaged for sale to consumers.

2. What is meant by a private home? "Private home" means a dwelling, including an apartment or other rented space, where the CFO operator resides.

3. Are there limitations on the size of CFO sales?

   $35,000 or less in gross sales annually in 2013  
   $45,000 or less in gross sales annually in 2014  
   $50,000 or less in gross sales annually in 2015 and beyond

4. Can a CFO have employees? A CFO can have one full-time equivalent employee (not counting family members or household members).

5. What cottage foods are CFOs permitted to produce? Only specific foods that are defined as "non-potentially hazardous" are approved for preparation by CFOs. These are foods that do not require refrigeration to keep them safe from bacterial growth that could make people sick.

   CDPH will establish and maintain a list of approved cottage food categories on their website. The list included in the new law includes:
Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas
Candy, such as brittle and toffee
Chocolate-covered nonperishable foods, such as nuts and dried fruit
Dried fruit
Dried pasta
Dry baking mixes
Fruit pies, fruit empanadas, and fruit tamales
Granola, cereals, and trail mixes
Herb blends and dried mole paste
Honey and sweet sorghum syrup
Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.
Nut mixes and nut butters
Popcorn
Vinegar and mustard
Roasted coffee and dried tea
Waffle cones and pizzelles

6. What are the two classifications of CFO’s?

"Class A" CFOs are only allowed to engage in "direct sale" of cottage food.

"Class B" CFO’s may engage in both "direct sale" and "indirect sale" of cottage food.

7. What is meant by "direct sale" of cottage food? "Direct sale" means a transaction between a CFO operator and a consumer, where the consumer purchases the cottage food product directly from the CFO. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers’ markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation within the jurisdiction of the local environmental health agency in which the CFO is permitted or registered.

8. What is meant by "indirect sale" of cottage food? "Indirect sale" means an interaction between a CFO, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the CFO from a third-party retailer that holds a valid permit issued by the local environmental health agency in their jurisdiction. Indirect sales include, but are not limited to, sales made to retail food facilities including markets, restaurants, bakeries, and delis, where food may be immediately consumed on the premises.
9. What are limitations on Internet sales and delivery of cottage food products? A cottage food operator may advertise as well accept orders and payments via Internet or phone. However, a CFO must deliver (in person) to the customer. A CFO may not deliver any CFO products via US Mail, UPS, FedEx or using any other third-party delivery service. A cottage food operator may not introduce a CFO product into interstate commerce.

10. What are limitations on advertising of CFO products? It is unlawful for any person to disseminate any false advertising of any food. An advertisement is false if it is false or misleading in any particular. A cottage food product that is found to be falsely advertised would be subject to enforcement action.

11. Do I need any special training or certification to make cottage foods? A person who prepares or packages cottage food products must complete a food processor course instructed by the CDPH within three months of being registered or permitted.

12. Does a CFO need a permit to operate?

**Planning and zoning:** All CFO's need to obtain approval from their local city or county planning department. The Homemade Food Act gives planning departments several options to consider, so planning department requirements may vary between jurisdictions.

**Environmental Health:** For "Class A" CFO's (direct sale only), registration with the local enforcement agency and submission of a completed "self-certification checklist", approved by the local environmental health agency. For "Class B" CFO's (either direct and indirect or indirect only), a permit from the local environmental health agency is required.

**Other requirements:** Check on other state or local requirements that may be applicable, such as Sellers Permits through the Board of Equalization, or Business Licenses through your city or county.

Registrations and permits are nontransferable between:
1) Persons
2) Locations
3) Type of food sales [i.e., direct sales ("Class A") vs. indirect sales ("Class B")]
4) Type of distribution

13. How much will the permit or registration cost the CFO? Each local jurisdiction will establish fees that are not to exceed the cost of providing the service. Additional fees may be charged for inspection and/or enforcement activities if
the cottage food operation is found to be in violation of California food safety laws on cottage food operations.

14. Will my CFO registration/permit allow me to sell at other retail venues? There may be health permits required to sell at other locations, such as Certified Farmers' Markets, Swap Meets or community events. Please check with your local environmental health department for additional permit requirements.

15. How often will a CFO be inspected?

"Class A" CFO kitchens and food storage areas (referenced in the law as the "registered or permitted area") are not subject to initial or routine inspections.

"Class B" CFO kitchens and food storage areas are inspected initially prior to permit issuance.

"Class A or B" (complaint inspections) - The local environmental health agency may access, for inspection purposes, the registered or permitted area where a cottage food operation is located if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated California food safety laws.

16. What are CFO operational requirements? All CFOs must comply with the following:

No domestic activity in kitchen during cottage food preparation
No infants, small children, or pets in kitchen during cottage food preparation
Kitchen equipment and utensils kept clean and in good repair
All food contact surfaces and utensils washed, rinsed, and sanitized before each use
All food preparation and storage areas free of rodents and insects
No smoking in kitchen area during preparation or processing of cottage food
A person with a contagious illness shall refrain from preparing or packaging cottage food products
Proper hand-washing shall be completed prior to any food preparation or packaging
Water used in the preparation of cottage food products must be potable
Cottage food preparation activities include:
  o Washing, rinsing, and sanitizing of any equipment used in food preparation
  o Washing and sanitizing hands and arms
  o Water used as an ingredient of cottage food.
17. What has to be on my cottage food label?

All cottage food products must be properly labeled in compliance with the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). The label must include:

- The words “Made in a Home Kitchen” in 12-point type.
- The name commonly used to describe the food product.
- The name city, state and zip code of the cottage food operation which produced the cottage food product. If the CFO is not listed in a current telephone directory then a street address must also be declared. (A contact phone number or email address is optional but may be helpful for consumers to contact your business.
- The registration or permit number of the CFO which produced the cottage food product and, in the case of “Class B” CFOs, the name of the county where the permit was issued.
- The ingredients of the food product, in descending order of predominance by weight, if the product contains two or more ingredients.
- The net quantity (count, weight, or volume) of the food product, it must be stated in both English (pound) units and metric units (grams).
- A declaration on the label in plain language if the food contains any of the eight major food allergens such as milk, eggs, fish, shellfish, tree nuts, wheat, peanuts, and soybeans. There are two approved methods prescribed by federal law for declaring the food sources of allergens in packaged foods: 1) in a separate summary statement immediately following or adjacent to the ingredient list, or 2) within the ingredient list.
- The use of the following eleven terms are considered nutrient content claims (nutritional value of a food): free, low, reduced, fewer, high, less, more, lean, extra lean, good source, and light. Specific requirements have been established for the use of these terms. Please refer to the Cottage Food Labeling Guideline for more details.
- A health claim is a statement or message on the label that describes the relationship between a food component and a disease or health-related condition (e.g., sodium and hypertension, calcium and osteoporosis). Please refer to the Cottage Food Labeling Guideline for more details.
- If the label makes approved nutrient content claims or health claims, the label must contain a “Nutrition Facts” statement on the information panel.
Labels must be legible and in English (accurately translated information in another language may also be included on the label). Labels, wrappers, inks, adhesives, paper, and packaging materials that come into contact with the cottage food product by touching the product or penetrating the packaging must be food-grade (safe for food contact) and not contaminate the food.

In a permitted retail food facility (such as a restaurant, market, or deli), cottage food products served without packaging or labeling shall be identified to the customer as homemade on the menu, menu board or in another easily accessible location that would reasonably inform the consumer that the food or an ingredient in the food has been made in a private home.

18. What is my legal responsibility as a cottage food operator in ensuring that my food product is safe? Cottage food operators and/or their employees shall not commit any act that may cause contamination or adulteration of food.

This would include making foods that are not on the approved food list and or making foods under unsanitary conditions or with spoiled or rancid ingredients.

A cottage food operation that is not in compliance with the requirements of AB 1616 would be subject to enforcement action taken by the local environmental health agency and/or the California Department of Public Health.

19. What if I find out an ingredient I used has been recalled because it can make people sick or has been identified as the cause of food borne illness? You should notify your local environmental health agency or CDPH immediately and do not distribute anymore product. You may need to notify your customers and request that they return or dispose of the products. For specific food recall information, you can contact CDPH at: (916) 650-6500 or email: FDBinfo@cdph.ca.gov.

20. What is my liability as a cottage food business operating out of my home? You should check with your homeowner insurance company or your landlord if you are operating out of a rental property. Many homeowner insurance policies will not extend liability coverage to liabilities arising out of home-based businesses.
21. What other educational resources and guidelines are available to assist me in ensuring I am making a safe food product? Please see the CDPH website or contact your local environmental health agency for guidance and resource documents or web links.

22. What can I do to ensure I am still meeting legal requirements if my cottage food operation grows to exceed the gross annual sales limit and/or I decide want to make another type of food product that is not on the approved food list? Please contact CDPH for registration and facility requirements for food processors.

23. Where can I file a complaint about a cottage food operation or cottage food product? You can file a complaint at the CDPH toll-free complaint line — 1-800-495-3232.