Urban Agriculture and

Cottage Food Laws

March 2017

A Blueprint Developed by the Cass Clay Food Systems Initiative

Cottage Food Laws

This issue brief will provide background information related to cottage food laws and address the common concerns and benefits from a health, environment, social, and economic standpoint. Appendices have been provided to share the cottage food laws of regional jurisdictions, as well as example policy language from other jurisdictions.

Background

Cottage food laws are regulations applying to small-time producers including individuals that bake, pickle, can, or dry certain low risk foods to sell directly to the consumer in a non-commercial kitchen. These low-risk foods are often referred to as "non- potentially hazardous foods." Some examples include: pickles, baked goods, jams, jellies, and honey which do not present the same food safety risks as other processed foods. Using a pH level as an indicator of low risk is common. A certain level of acidity is required in this case (see Attachment 1). Through standardized cottage food laws small scale food processors will have easier access to markets for their homemade jams, jellies, baked and canned goods.[1]

With the many benefits of Cottage Food Laws (see Table 2), individuals are able to become involved and join together within the community through relationships built by producers and buyers. A vendor at a farmer's market is one example of a community-based producer. The food items available at the farmer's market are usually classified as low risk foods. The producer must sell directly to the customer and not through a third party distributor such as a grocery store or through another individual, as these regulations apply only to individuals and not businesses. A cottage food producer cannot apply as a Limited Liability Corporation (LLC) or operate as any other type of business, even within the home.

Cottage Food Laws are created at the federal and state levels. According to federal regulations, canned goods cannot cross state lines, but other goods covered under the Cottage Food Exemption can be sold across state lines, as long as they meet applicable state laws or regulations.[2] The Minnesota Cottage Food Laws require producers coming from outside of Minnesota to sell non-potentially hazardous foods (i.e. not canned goods) to register with the Minnesota Department of Agriculture.[3] Producers from out of state that wish to sell in North Dakota must follow regulations provided by the North Dakota Department of Health.[4] Contact information for regulatory bodies in Minnesota and North Dakota can be found in Appendix B.

Table 1 denotes if municipalities or counties have additional requirements or require permitting. If no additional requirements are noted, jurisdictions defer to state laws, regulated by North Dakota Department of Health in Fargo and Cass County, and the Minnesota Department of Agriculture in Moorhead and Clay County.

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[1] Department of Agriculture & Rural Development. 2016. *Michigan Cottage Foods Information.* [accessed 10 November 2016]. http://www.michigan.gov/mdard/0,4610,7-125-50772_45851-240577--,00.html

[2] US Government Publishing Office. 2017. http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fea036e06a37182d500ccc0211adee50&mc=true&r=PART&n=pt21.2.108

[3] The Office of the Reviser of Statutes. 2016. https://www.revisor.mn.gov/statutes/?id=28A.152#stat.28A.152.2

[4] North Dakota Department of Health. Fact Sheet for Certain Home-Processed, Home-Baked, and Home-Canned Goods. http://www.ndhealth.gov/foodlodging/pdf/proof_farmers_market_ruling.pdf

Table 1. Summary of Cottage Food Law approval in local jurisdictions (as of October 2016)

Moorhead	Dilworth	Clay County	Fargo	West Fargo	Cass County
Not addressed*	Not addressed	Not addressed	Not addressed	Not addressed**	Not addressed

*Before registering with the Minnesota Department of Agriculture (MDA), individuals are required to take an approved food safety course, and training is required every three years thereafter. Individuals intending to sell foods under the Cottage Food Exemption must register with the MDA each year.[5]
**Cottage Food Law can be classified under the term "other food service establishment"

Benefits and Concerns

Table 2. Framework for evaluating cottage food law

DOMAIN	BENEFIT	CONCERN
Health	More homemade foods will be available in the community, thus increasing the amount of healthy foods available to community members Less nutrients lost in food transport due to short time from farm to table Higher amount of vitamins A, B, C, and E[6]	Risk of foodborne illness Risk of allergic reactions Risk of incorrectly labeling products or allergens
Environment	Provides residents greater access to locally produced foods, reducing "food miles" Incentivizes a reduction in food waste by encouraging and allowing home growers to preserve their excess produce for sale Farms reuse natural resources to sustain environmental conditions, such as fertilizing soil and protecting natural water resources[7] Provides natural habitats for animals and wildlife relating to farm production	Safety of customers in relation to traffic and parking access points Hazard increase due to clutter accumulation such as boxes or bins possibly leading to trip and fall accidents Unforeseen staff absences decrease the ability to provide a safe environment
Social	Allows for a closer relationship between producer and buyer Builds pride in the community through encouraging local producers	Variety of prices for goods Customers are less inclined to purchase due to home canned goods being more expensive than local stores

[5]Minnesota Department of Agriculture. 2016. *Cottage food producer registration.* [accessed 09 November 2016]. http://www.mda.state.mn.us/licensing/licensetypes/cottagefood.aspx

[6] Bishop, Tandis. 2010. *Health Benefits of Eating Local Produce*. [accessed 10 November 2016]. https://www.downtoearth.org/environment/localhawaii/health-benefits-eating-local-produce

[7] Grubinger, Vern. 2010. *Ten Reasons for Growing Local Food.* University of Vermont Cultivating Healthy Communities Extension. [accessed 11 November 2016]. https://www.uvm.edu/vtvegandberry/factsheets/buylocal.html

	Decrease F-M food insecurity Vendors value and benefit from interactions among consumers by providing feedback for improvement	
Economic	Direct economic benefit of increasing the amount of money that stays in the local economy. Can serve as a business incubator by reducing some of the start- up barriers for fledgling entrepreneurs and providing the indirect economic benefit of growing more local businesses. Encourage more people to grow food because the growers know they have an outlet to create value- added products from any excess fresh fruits and vegetables they produce." [8] Opens opportunities for supplemental income for those working from the home Cottage food operations can meet local demand for locally produced and processed foods Reduces start-up cost for fledgling entrepreneurs by easing regulations on those producers Presents the opportunity for small food producers to earn more revenue from value-added products Increased income and potential jobs for the local and state economy	Decreased small business sales due to increase of cottage food sales

Risk Prevention

- Inspection of home kitchens and licensing of cottage food producers
- Food safety or hygiene training for those selling cottage foods
- Vendor education on food allergen contamination
- Labels listing all ingredients and potential allergens
- Provision of a pre-determined list of allowed 'not potentially hazardous' foods

[8] Condra, Alli. Cottage Food Laws in the United States. *Harvard Food Law and Policy Clinic*. August 2013.

Recommendations

- **Cottage food laws should be easily found and interpreted** - "By having difficult- to- find cottage food laws or hidden exemptions from the requirements for food establishments, states may cause cottage food operators to inadvertently break their state's laws or lead potential cottage food operators to forego starting cottage food businesses."

- **Amend the FDA Food Code** - States that accept the FDA recommended food code verbatim will create a ban on cottage food operations. To allow cottage food operations, "States must amend the adopted version of the FDA Food Code to allow cottage food operations."[9]

- A balance must be found between cottage food laws that are lenient enough to remove barriers for the producer, while also being strict enough for the safety of the consumer.

Resource

If you have questions, please contact Kim Lipetzky with the Fargo Cass Public Health Office at 701-241-8195 or klipetzky@cityoffargo.com.

[9] Harvard report, 2013. http://blogs.harvard.edu/foodpolicyinitiative/files/2013/08/FINAL_Cottage-Food-Laws-Report_2013.pdf

Appendix A: Cottage Food Laws in Local Jurisdictions

Moorhead, MN
By state law, cottage food sales are permitted with common restrictions (food safety course, training every three years, and registration with MDA).

Dilworth, MN
By state law, cottage food sales are permitted with common restrictions (food safety course, training every three years, and registration with MDA)..

Clay County, MN
By state law, cottage food sales are permitted with common restrictions (food safety course, training every three years, and registration with MDA).

Fargo, ND
Cottage food sales are not addressed in city code.

West Fargo, ND
Cottage food sales are not directly addressed in city code but can be classified as “other food establishment”.

Cass County, ND
Cottage food sales are not addressed in county code.

Appendix B: Minnesota and North Dakota Regulations

North Dakota

Table 3. Framework of North Dakota regulation[10]

STATE REGULATION	NORTH DAKOTA
Regulating Body	North Dakota Department of Health Kenan Bullinger, Director Division of Food and Lodging North Dakota Department of Health 701.328.1291
Foods Allowed	Pickles, vegetables or fruits having an equilibrium pH value of 4.6 or lower and non-temperature-controlled baked goods that do not require refrigeration. (See Attachment 1)
Labeling Requirement	Must include the following statement using a font size that is prominent, conspicuous, and easy to read. *"These food products were produced in an uninspected home kitchen where major food allergens may also have been handled and prepared, such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish."* The seller must display a sign or placard at the point of sale which states: *These canned goods/baked goods are homemade and not subject to state inspection.*
Sales Limit	N/A
Training Required	N/A
Registration or Permit Required	N/A
Sales Location	The food products can only be sold at community and nonprofit events or farmers markets located in North Dakota. This includes such events as: county fairs, nonprofit and charitable events, public spirited and/ or community celebrations, and farmers markets and roadside stands. **It does NOT include:** Craft shows, food festivals, or other for profit events nor sales to other businesses; interstate or Internet sales, or sales from one's home or business.

Minnesota

Table 4. Framework for Minnesota regulation[11]

STATE REGULATION	MINNESOTA
Regulating Body	Minnesota Department of Agriculture mda.cottagefood@state.mn.us Cottage food registration: 651.201.6081
Foods Allowed	NON-potentially hazardous food (such as baked goods, certain jams and jellies) and/or home canned pickles, vegetables, or fruits with a pH of 4.6 or lower.
Labeling Requirement	Yes, including producers name and address, the date produced, and the ingredients, including potential allergens.

[10] North Dakota Department of Health.*Home prepared foods/farmers markets*. [accessed 11 November 2016]. www.ndhealth.gov/foodlodging/pdf/proof_farmers_market_ruling.pdf

[11] Minnesota Department of Agriculture. 2016. *Cottage food producer registration.* [accessed 09 November 2016]. http://www.mda.state.mn.us/licensing/licensetypes/cottagefood.aspx

Sales Limit	Sales cannot exceed $18,000 in a calendar year, and the producer must pay a fee if they sell between $5,000 and $18,000 dollars per year.
Training Required	State mandated training is required
Registration or Permit Required	Registration as a cottage food producer with the Minnesota Dept of Agriculture is required
Sales Location	Home sales are permitted without another business residing that establishment. Sales may also be from farmer's markets, community events, or over the Internet. Canned goods cannot be sold across state lines.

Appendix C: Regional Ordinances

Wyoming[12]

HB 0016
Section 1
35-7-110. Definitions.
As used in this act:
(xxviii) "Cottage food establishment" means a licensed establishment in a person's private home utilizing home style equipment in producing a non-potentially hazardous food for sale or distribution to the general public;
(xxix) "Function" means any gathering or occasion;
(xxx) "Not potentially hazardous food" means any food which does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation. The natural pH or the final pH of acidified food must be 4.6 or less;

35-7-124. License required; exemptions; electronic transmittals.
(a) Any person processing, storing or preparing any food for sale shall obtain a license from the department of agriculture or a local health department. The license is not transferable, shall be renewed on an annual basis and shall be prominently displayed in the establishment. No food establishment shall serve, hold for sale or sell food to the public without a valid license. An agricultural producer shall be exempt from the licensure requirement in this section for processing, distributing, storing or sale of any raw agricultural commodity he produces.
(b) Written application for a new license shall be made on a form approved by the department of agriculture and provided by the department of agriculture or the local health department and shall be signed by the applicant. License requirements and fees for temporary food events operated by nonprofit organizations shall be waived. Licenses shall expire one (1) year after the date of issuance unless suspended or revoked. Licenses may be renewed each year upon application to the department or local health department. The director shall establish license categories and fees by rule and no fee shall exceed two hundred dollars ($200.00).
(e) The provisions of subsection (a) of this section shall not apply to food operators or kitchens in private homes that prepare food that is not potentially hazardous and prepared for sale or use at farmers' markets, roadside stands, private homes and at functions including, but not limited to those operated by not for profit charitable or religious organizations.

Section 2
This act is effective July 1, 2009.

South Dakota[13]

HB 1222 | March 2010
Section 1.
Person selling whole, intact fresh fruits or vegetables at a farmer's market, roadside stand, or similar venue is required to be licensed pursuant to this chapter.

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[12] State of Wyoming, House Bill Number HB0016. http://www.pickyourown.org/PYO.php?URL=http%3A%2F%2Flegisweb.state.wy.us/2009/Introduced/HB0016.pdf
[13] South Dakota Legislature. House Bill 1222. http://sdlegislature.gov/docs/legsession/2010/Bills/HB1222ENR.pdf

Section 2.
No person selling non-temperature-controlled baked goods or non-temperature-controlled home-processed canned goods at a farmer's market, roadside stand, or similar venue is required to be licensed pursuant to this chapter. However, any non-temperature-controlled baked goods or non- temperature-controlled home-processed canned goods sold at a farmer's market, roadside stand, or similar venue shall meet the requirements of section 3, if applicable, and section 4 of this Act.

Section 3.
No canned good may be sold unless the pH level is 4.6 or less or the water activity level is .85 or less.

Section 4.
No baked good or canned good may be sold unless it has a label that includes the following information:
(1) Name of the product;
(2) Producer and contact information;
(3) Date the product was made or processed;
(4) Ingredients; and
(5) Disclaimer. The disclaimer shall state: "This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish."

In 2011, South Dakota amended the above bill to include the sales of non-temperature-controlled baked goods from licensing requirements. This allows direct sales from home, but limits the yearly sales to $5,000. This does not include jams/preserves, but does include candy and confection items. Shelf stabilization without refrigeration is needed, but lab testing is not.

HB 1240
Section 1.
Any person selling non-temperature-controlled baked goods from the person's own primary residence is exempt from the licensing and license fee provisions of this chapter under the following conditions:
(1) Any non-temperature-controlled baked goods sold from a person's own primary residence is for consumption off the premises;
(2) Any non-temperature-controlled baked goods sold from a person's own primary residence meets the requirements of HB 1222; and
(3) The total gross receipts from the sale of non-temperature-controlled baked goods from the person's own primary residence does not exceed five thousand dollars in a calendar year.

Washington[14]

Section 20.
Requirements—Authority of director.
(1) The director may adopt, by rule, requirements for cottage food operations. These requirements may include, but are not limited to:
(a) The application and renewal of permits under RCW 69.22.030;
(b) Inspections as provided under RCW 69.22.040;
(c) Sanitary procedures;
(d) Facility, equipment, and utensil requirements;
(e) Labeling specificity beyond the requirements of this section;
(f) Requirements for clean water sources and waste and wastewater disposal; and

[14]Washington Legislature. Chapter 69.22 RCW. http://apps.leg.wa.gov/rcw/default.aspx?cite=69.22&full=true#69.22.050

(g) Requirements for washing and other hygienic practices.
(2) A cottage food operation must package and properly label for sale to the consumer any food it produces, and the food may not be repackaged, sold, or used as an ingredient in other foods by a food processing plant, or sold by a food service establishment.
(3) A cottage food operation must place on the label of any food it produces or packages, at a minimum, the following information:
(a) The name and address of the business of the cottage food operation;
(b) The name of the cottage food product;
(c) The ingredients of the cottage food product, in descending order of predominance by weight;
(d) The net weight or net volume of the cottage food product;
(e) Allergen labeling as specified by the director in rule;
(f) If any nutritional claim is made, appropriate labeling as specified by the director in rule;
(g) The following statement printed in at least the equivalent of eleven-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been subject to standard inspection criteria."
(4) Cottage food products may only be sold directly to the consumer and may not be sold by internet, mail order, or for retail sale outside the state.
(5) Cottage food products must be stored only in the primary domestic residence.

Section 30.
Permits, permit renewals.
(1) All cottage food operations must be permitted annually by the department on forms developed by the department. All permits and permit renewals must be made on forms developed by the director and be accompanied by an inspection fee as provided in RCW 69.22.040, a seventy-five dollar public health review fee, and a thirty dollar processing fee. All fees must be deposited into the food processing inspection account created in RCW 69.07.120.
(2) In addition to the provision of any information required by the director on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a cottage food operation must also provide documentation that all individuals to be involved in the preparation of cottage foods [cottage food products] have secured a food and beverage service worker's permit under chapter 69.06 RCW.
(3) All cottage food operations permitted under this section must include a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the director the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspections under this chapter.

Section 40.
Basic hygiene inspections.
(1) The permitted area of all cottage food operations must be inspected for basic hygiene by the director both before initial permitting under RCW 69.22.030 and annually after initial permitting. In addition, the director may inspect the permitted area of a cottage food operation at any time in response to a foodborne outbreak or other public health emergency.
(2) When conducting an annual basic hygiene inspection, the director shall, at a minimum, inspect for the following:
(a) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of any cottage food products or be in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(b) That no cottage food preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;
(c) That no infants, small children, or pets are in the home kitchen during the preparation, packaging, or handling of any cottage food products;
(d) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use;
(e) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and
(f) That all persons involved in the preparation and packaging of cottage food products:
(i) Have obtained a food and beverage service worker's permit under chapter 69.06 RCW;
(ii) Are not going to work in the home kitchen when ill;
(iii) Wash their hands before any food preparation and food packaging activities; and
(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.
(3) The department shall charge an inspection fee of one hundred twenty-five dollars for any initial or annual basic hygiene inspection, which must be deposited into the food processing inspection account created in RCW 69.07.120. An additional inspection fee must be collected for each visit to a cottage food operation for the purposes of conducting an inspection for compliance.
(4) The director may contract with local health jurisdictions to conduct the inspections required under this section.

Section 50.
Annual gross sales.
(1) The annual gross sales of cottage food products may not exceed twenty-five thousand dollars. [Annual gross sales increased from $15,000 to $25,000 on March 21, 2016.][15] The determination of the maximum annual gross sales must be computed on the basis of the amount of gross sales within or at a particular domestic residence and may not be computed on a per person basis within or at an individual domestic residence.
(2) If gross sales exceed the maximum allowable annual gross sales amount, the cottage food operation must either obtain a food processing plant license under chapter 69.07 RCW or cease operations.
(3) A cottage food operation exceeding the maximum allowable annual gross sales amount is not entitled to a full or partial refund of any fees paid under RCW 69.22.030 or 69.22.040.
(4) The director may request in writing documentation to verify the annual gross sales figure.

Section 60.
Access to permitted areas of domestic residence housing cottage food operations—Authority of director.
(1) For the purpose of determining compliance with this chapter, the director may access, for inspection purposes, the permitted area of a domestic residence housing a cottage food operation permitted by the director under this chapter. This authority includes the authority to inspect any records required to be kept under the provisions of this chapter.
(2) All inspections must be made at reasonable times and, when possible, during regular business hours.
(3) Should the director be denied access to the permitted area of a domestic residence housing a cottage food operation where access was sought for the purposes of enforcing or administering this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the

[15] Washington State Department of Agriculture. April 15, 2016. *Cottage Food Operation.* [accessed November 25, 2016]. http://agr.wa.gov/FoodAnimal/CottageFoodOperation/

permitted area of a domestic residence housing a permitted cottage food operation, upon which the court may issue a search warrant for the purposes requested.
(4) Any access under this section must be limited to the permitted area and further limited to the purpose of enforcing or administering this chapter.

Section 70.
Cottage foods operations permit—Denial, suspension, or revocation.
(1) After conducting a hearing, the director may deny, suspend, or revoke any permit provided for in this chapter if it is determined that a permittee has committed any of the following acts:
(a) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;
(b) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;
(c) Consistent with RCW 69.22.060, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;
(d) Consistent with RCW 69.22.060, refused the department access to any records required to be kept under the provisions of this chapter; or
(e) Exceeded the annual income limits provided in RCW 69.22.050.
(2) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.

Section 80.
Application of administrative procedure act.
The rights, remedies, and procedures respecting the administration of this chapter, including rule making, emergency actions, and permit suspension, revocation, or denial are governed by chapter 34.05 RCW.

Section 90.
Penalties.
(1)(a) Any person engaging in a cottage food operation without a valid permit issued under RCW 69.22.030 or otherwise violating any provision of this chapter, or any rule adopted under this chapter, is guilty of a misdemeanor.
(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.
(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.