



Contra
Costa
County

To: Board of Supervisors
From: LEGISLATION COMMITTEE
Date: May 23, 2017

Subject: Oppose position on AB 626 (Garcia): Microenterprise Home Kitchen Operations

RECOMMENDATION(S):

ADOPT an "Oppose" position on AB 626 (Garcia): Microenterprise Home Kitchen Operations, a bill that would legalize the sale of food prepared in private home directly to consumers.

FISCAL IMPACT:

No immediate impact. However, see notes below.

BACKGROUND:

At its May 8, 2017 meeting, the Legislation Committee considered and supported the recommendation from the Director Public Health and the Environmental Health Director to recommend a position of "Oppose" to the Board of Supervisors on AB 626, as amended on 4/06/17.

Status: 5/18/201 AB 626 passed out of the Assembly Health Committee on April 25 with amendments last made on 4/6/17 on a 12-0 vote with three (3) members abstaining. The Bill has been referred to the Assembly Appropriations Committee with a hearing scheduled for May 24, 2017.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **05/23/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 23, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Lara Delaney,
335-1097

cc:

Bill Analysis – 5/18/17

SUMMARY: This bill would legalize the sale of potentially hazardous food prepared in private homes directly to consumers. Essentially the same home kitchen that serves the needs of family members now becomes and dual-functions as a restaurant kitchen serving the public. While the bill contains some limits (such as no sale of raw oysters) the bill permits the home operator to prepare, hold and serve foods that otherwise require strict compliance with food handling and storage requirements that have long applied to commercial restaurants. The bill does allow for local control in the sense that each County may separately authorize or prohibit the use of home kitchens in this fashion.

FISCAL EFFECT: There are two major costs to local governments that will increase if AB 626 is passed.

First, there is the cost of permitting local businesses. It is unlikely that local health departments will be able to pass the entire cost of licensing and inspection on to the in-home restaurant operators. Under the Cottage Food Program, registration, permitting, accounting, and enforcement processes have resulted in higher costs to departments than initially expected. Health departments have consistently determined the cost associated with the permitting of the Cottage Food Program exceeds the permitting fees collected and must rely

on resources in existing health department budgets. If local health departments were to charge the entire cost of microenterprise home kitchen administrative and enforcement activities, such ventures may not be financially feasible for most applicants.

Second, there is the cost of managing a foodborne illness outbreak. Local health departments receive reports of cases from local health care providers. This triggers what is called an outbreak investigation. Food borne illness events are often “surge” events which greatly tap the day to day resources of the Communicable Disease staff and Epidemiologists. Disease investigators and their staff conduct interviews, review histories, in some cases go to extraordinary efforts to isolate and determine which foods are the source of the contamination. These investigations can take local health departments weeks, even months, and incur significant expenses to counties. Given the difficulty in regulating a home kitchen which is attempting to function as a commercial kitchen, public health experts expect an increase in the number of food borne illness events across the State should this bill pass.

COMMENTS: AB 626 is a dangerous expansion of California’s cottage food law. Under the Cottage Food law, individuals may prepare non potentially-hazardous foods in their homes and sell them to the public. These are foods that do not contain ingredients that need

to be kept cool and that are less likely to grow harmful bacteria leading to serious food borne illness. The California Department of Public Health (CDPH) maintains a list of allowable foods, and updates the list with non-potentially hazardous foods upon review of petitions. AB 626 significantly alters the safety margin by permitting home kitchens to, in fact, prepare, hold and sell foods that are potentially hazardous if not closely monitored and handled according to strict regulatory requirements, that have long applied to commercial kitchens. AB 626 would allow individuals, when licensed by the county, city and county, or city, to prepare potentially hazardous foods for sale to the public. This will increase the likelihood of foodborne illness outbreaks. Potentially hazardous foods are those that must be maintained and cooked at specific temperatures to avoid spreading pathogens.

It is important to note with the passage of AB 626, the number of food facilities requiring regulation and inspection by local health and environmental health departments stands to increase substantially. If even one percent of households in counties apply for microenterprise kitchen permits, local health departments could see their food facility inventory increase by threefold or more. This results in thousands of new food facilities requiring inspection, enforcement, and foodborne illness outbreak investigation by health departments. Throughout the state, local health department infrastructure is unprepared and unable to meet such an increased demand on current resources, posing a potentially

devastating impact on financial operations of local health departments.

Furthermore and most importantly, these kitchens are not set up as commercial kitchens. They are the same kitchens where family meals are prepared, the same kitchens frequented by family pets, the same kitchen where the families children inadvertently leave the refrigerator door open, compromising the cooling temperature of potentially hazardous foods intended to sold to the public. There is simply no way that environmental health inspectors can assure that the conditions in a home environment can approximate those in a commercial kitchen.

These risk are by no means hypothetical. In fact Contra Costa County recently experience one of the State's worst ever home-prepared food borne illness events in the fall of 2016. Three deaths occurred and others became gravely ill in association with a Thanksgiving Day meal where food was prepared in a home kitchen and subsequently served in a congregate setting. In addition to the tragic loss of life, this event consumed literally hundreds of hours of staff time to isolate the specific foods that were most likely associated with the outbreak, contact and advise individuals who had dined at the event and work with event promoters. It is likely that more of these types of events will occur should AB 624 pass.

While this bill is intended to provide an economic opportunity to individuals who wish to operate out of their home the State's Cottage food laws already allow this opportunity with foods that have been deemed as non-hazardous, and therefore present a lower risk of foodborne illnesses. Individuals can petition to have recipes added to the approved cottage food listing, and the State Department of Public Health has the discretion to allow new foods as they deem acceptable.

A number of Public Health organizations strongly oppose this bill, including the California Health Executives Association of California (CHEAC) and the Health Officers Association of California (HOAC). HOAC, CHEAC and HOAC met directly with the author and sponsor and did not find a pathway forward that would remove their opposition. In addition RCRC, UCC and

BACKGROUND: (CONT'D)

CSAC opposes AB 626 for public and environmental health reasons: cooling, cooking, and reheating foods while ensuring appropriate temperature controls can be challenging even in a commercial kitchen with appropriate training, equipment, and facilities.

Should the County endorse an oppose position on this Bill is would be important to convey that position to the Assembly Appropriations Committee.

Analysis Prepared by: Daniel Peddycord, Public Health Director

Bill text can be found at:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB626

Attachment A includes the bill text.

Attachment B includes letter of opposition from a consortium of public health organizations.

CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County would not have a position on the bill.

CHILDREN'S IMPACT STATEMENT:

N/A

ATTACHMENTS

Attachment A - 2017 CA A 626

Attachment B - Letter of opposition from a consortium of public health organizations