



Contra
Costa
County

To: Board of Supervisors
From: LEGISLATION COMMITTEE
Date: July 28, 2020

Subject: Microenterprise Home Kitchen Operations

RECOMMENDATION(S):

CONSIDER adopting the recommendation from the Legislation Committee (Mitchoff/Burgis) to not have Contra Costa County opt into a Microenterprise Home Kitchens Operations program and to not allow Microenterprise Home Kitchen Operations to be established in Contra Costa County.

FISCAL IMPACT:

No fiscal impact to the County at this time. If the Board of Supervisors were to adopt an ordinance or resolution to permit microenterprise home kitchen operations in Contra Costa County, the Environmental Health Department would need to develop and charge permit fees to support a Microenterprise Home Kitchen Operations program in Contra Costa County.

BACKGROUND:

At its July 13, 2020 meeting, the Legislation Committee received the following report on Microenterprise Home Kitchen Operations (MEHKO's) from the Director of Environmental Health, Jocelyn Stortz, and considered this matter before acting to support staff's recommendation that Contra Costa County not adopt an ordinance to permit the

☒ APPROVE
 ☐ OTHER
☐ RECOMMENDATION OF CNTY ADMINISTRATOR
 ☒ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **07/28/2020** ☒ 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: July 28, 2020

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

By: June McHuen, Deputy

Contact: L. DeLaney,
925-335-1097

cc:

establishment of MEHKO's in Contra Costa County.

BACKGROUND: (CONT'D)

Prior to 2012, the California Retail Food Code (CRFC), required all food sold to consumers to be made at an inspected commercial kitchen. With the passage of the California Homemade Food Act known as “cottage food operations” (CFO) in 2013, certain low risk (i.e. shelf-stable, non-perishable) food products such as bread, fruit jams, and dried fruit could be made in private home kitchens and be sold to consumers under limited conditions.

On September 18, 2018, then Governor Brown signed Assembly Bill 626 (AB 626), making an amendment to the California Retail Food Code: Microenterprise Home Kitchen Operations which established “microenterprise home kitchen operation” (MEHKO) as a new category of retail food facility. MEHKOs are restaurants in a private residence operated by the resident and are allowed to produce a very broad variety of complex food products that the CFO permit does not allow.

Assembly Bill 626 and 377 (Eduardo Garcia)

The text of these bills is available at:

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB626
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB377

Assembly Bill 626 was signed into law by Governor Brown on September 18, 2018 and became effective on January 1, 2019. This bill, known as the Homemade Food Act, allows for home cooks to sell potentially hazardous foods to the public.

The intent of the bill was to provide economic opportunities for those who were limited by the cost and other barriers to starting a food business. Under it, residents of single family homes can operate what are referred to as microenterprise home kitchen operations, which can earn up to \$50,000 in revenue per year by cooking meals or items at their homes’ kitchens. Meal sales are capped at 30 meals per day, or 60 meals per week. So-called homecooks must obtain California food handler card certification, which can be obtained through completing online training and passing a test. Kitchens must pass an on-site inspection in order to be permitted. Under AB 626, prepared food can be picked up or sent out, as well as consumed at the home.

Although the bill passed the California state legislature and was signed by the Governor, it is up to each county in California to adopt the law. The county or city can choose to “opt-in” by ordinance or resolution to allow Microenterprise Home Kitchen Operations (MEHKOs) in their jurisdiction¹. Riverside County was the first county to opt-in to AB 626. Solano County has opted in, and San Mateo County has a 2-year pilot project.

Subsequent to the passage of AB 626, a clean-up bill (**Assembly Bill 377**) was signed into law by Governor Newsom. This bill became effective on October 7, 2019.

This clean-up bill includes and clarifies the following:

1. Prohibits a MEHKO from producing, manufacturing, processing, freezing, or packaging milk or milk products, including, but not limited to, cheese and ice cream;
2. Modifies the conditions for a city, county, or city and county to permit MEHKO within its jurisdiction. The County is the only entity allowed to opt in by ordinance or resolution, except if a city has their own environmental health enforcement agency (e.g., City of Berkeley);
3. Modifies the inspections and food safety standards applicable to MEHKO;
4. Prohibits an internet food service intermediary or a MEHKO from using the word ‘catering’ or any variation of that word in a listing or advertisement of a

- microenterprise home kitchen operation's offer of food for sale;
5. Requires MHKO to include specific information, including its permit number, in its advertising; and
 6. Prohibits third party delivery service from delivering food produced by a MEHKO, except to an individual who has a physical or mental condition that is a disability which limits the individual's ability to access the food without the assistance of a third-party delivery service.

Concerns of Staff:

1. Several of the exceptions for a MEHKO in Section 114367.1 of the Health and Safety Code undermine established food safety practices and engineering controls that mitigate cross contamination, which is identified by Center for Disease Control (CDC) to be a contributing factor that lead to food borne illness outbreaks. These exceptions include:
 - Dedicated handwash sink in the food preparation area;
 - Dedicated sinks, warewashing machines, and manual/machine sanitation;
 - Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing area;
 - Limitations on employee consumption of food drink or tobacco outside of designated areas;
 - Limitations on consumer access to the food facility through food preparation areas;
 - Providing display guard, cover and container requirements;
 - Providing clean drinking cups and tableware for second portions and beverage refills;
 - Requirements that food facility premises be free of litter; and
 - Limitations on the presence and handling of animals.
2. Inspection requirements in Section 114367.3 of the Health and Safety Code limit health and safety routine inspections to once a year and complaint/emergency inspections as they come up. All inspections must be scheduled with the owner.

The benefit of conducting unscheduled inspections is that the Registered Environmental Health Specialist (REHS) can observe normal behavior in how the food facility is maintained and their food handling practices. Scheduling an inspection may change the behavior and food handling practices of the food employees.

By conducting an unscheduled inspection, the REHS gets a snapshot in time which represents normal business operations. This gives the REHS the information needed to educate the operator on proper food handling practices and ultimately stop a health hazard from occurring.

3. Lack of dedicated hand wash sink

- Per the CDC, “a large percentage of foodborne disease outbreaks are spread by contaminated hands.” California Retail Food Code (CRFC) requires providing

handwashing facilities exclusively for handwashing in food preparation areas.

Handwashing facilities shall be sufficient in number and conveniently located so as to be accessible at all times for use by food employees.

- With the handwashing facility only in the bathroom, those preparing food may not be able to access it if the bathroom is occupied. And, if the previous user of the toilet did not wash their hands, the food employee could have their hands contaminated when they touched the doorknob of the restroom.
- Not providing a dedicated handwash station in the food preparation area may prevent those preparing food from washing their hands as often as needed. The kitchen & sink may be stacked with equipment/utensils/food that there isn't room to encourage proper hand hygiene.

Environmental Health's concerns with the exceptions availed by the bill would be mitigated by the home cook working out of a permitted production kitchen which would exclude unnecessary personnel and animals, have the required equipment, and maintain necessary sanitation, etc., which would make food processing and handling safer.

1. AB 377, Chapter 536, Section 114367 states "The governing body of a city, county, or city and county that is designated as the enforcement agency, as defined in Section 113773, may authorize, by ordinance or resolution, within its jurisdiction the permitting of microenterprise home kitchen operations in accordance with this chapter. If a governing body of a city, county, or city and county authorizes the permitting of microenterprise home kitchen operations, the authorization shall apply to all areas within its jurisdiction, including being applicable to all cities within a county that authorizes microenterprise home kitchen operations, regardless of whether each city located within the jurisdiction of the county separately authorizes them.

CONSEQUENCE OF NEGATIVE ACTION: If the Board of Supervisors does not adopt this recommendation to not permit MEHKO's in Contra Costa County, the matter would be referred back to the Legislation Committee for reconsideration of the recommendation.