



# Microenterprise Home Kitchen Operations

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# Microenterprise Home Kitchen Operation AB 626 and AB 377

- Under AB 626 and AB 377, a Microenterprise Home Kitchen Operation (MEHKO) is a small-scale restaurant operated by a resident in a private home
- The law allows internet food service companies to act as intermediaries
- The county may “opt in” by ordinance or resolution, which allows permitting of MEHKOs

# Purpose

- The Legislature sought to create opportunities for small scale local businesses and to address barriers for entry to disadvantaged persons who wish to enter into a food related business.
- The Legislature also found that many of these small scale businesses already exist, and that they should be legalized and regulated so that they can operate with appropriate food safety oversight.

# Microenterprise Home Kitchen Operations

- Operator must be a resident of the private home operating as a MEHKO and hold a food safety manager certification
- No more than one employee may work in the facility in addition to family and household members
- Food must be prepared, cooked and served the same day
- Sales limited to no more than 30 meals per day or 60 meals per week
- Meals can be consumed on site, picked up or delivered (Direct sales only)
- Gross annual sales limited to \$50,000 annually

# Health and Safety Code Limitations

- AB 626/377 exempts MEHKOs from several health and safety code requirements that apply to other restaurants
- Environmental Health could conduct no more than one routine inspection per year, with additional inspections being allowed only to investigate a complaint or suspected health hazard
- MEHKOs are exempted from several food facility requirements such as:
  - Handwashing sink requirements in the kitchen area
  - Dishwashing/preparation sink requirements
  - Ventilation and hood requirements
  - Animal exclusions in cooking areas
  - ADA requirements

# Zoning and Land Use Limitations

- MEHKOs are automatically by right uses in residential occupancies for the purposes of zoning and cannot be further regulated by local zoning or building regulations
- All that is required is a Health permit
- Cities and Counties cannot impose additional requirements, for example addressing the following:
  - Location and compatibility
  - Parking
  - Hours of Operation

# Opting In

- No action required to opt out.
- The decision to opt in will also apply automatically within the city limits. (Health & Safety Code § 114367) If the county opts in, the cities may not opt out.
- If the County opts in, then a MEHKO will automatically be an allowed by-right use for zoning purposes in any private home, both in the unincorporated area and within city limits.
- The County and the Cities are preempted from further regulating MEHKOs.

# Opting In (cont.)

- The law allows for the enforcement of noise and nuisance ordinances. However, in the unincorporated area, the county does not currently have a noise ordinance or a general nuisance ordinance.
- If the Board elects to opt in, Staff advises that the Department of Health Services should return with a proposed opt in ordinance that addresses permitting procedures and fees.



# Sonoma County Outreach to Cities

*July 2021*

- County received written comments from the following cities:
  - Town of Windsor (August 12, 2021)
  - City of Rohnert Park (August 12, 2021)
  - City of Cotati (August 12, 2021)
  - City of Sebastopol (August 16, 2021)
  - City of Santa Rosa (August 31, 2021)
- All cities were in support of lowering barriers and creating economic opportunities but not in support of moving forward with opting into the State's MEHKO program. Santa Rosa raised similar concerns to the other cities but proposed a pilot program.

# Concerns Raised by the Cities

## Fire Safety

- Increased fire risk due to lack of fire-suppression systems, exhaust hood systems, grease traps/filters, food storage areas and similar protective equipment found in a commercial kitchen
- Cities would not have the authority to require building and fire code improvements
- Higher threat of injury or death in an emergency situation due to lack of emergency exit signage, capacity limitations, panic/egress hardware, fire suppression/sprinklers and ADA accessibility

## Impacts to Existing Businesses

- Existing restaurants have struggled to remain in business during the past eighteen months during the COVID pandemic and the strain on them before they have fully recovered would be increased by the allowance of MEHKOs
- Current vacant buildings in downtown districts

# Concerns Raised by the Cities (cont.)

## Neighborhood Disruptions/Land Use Impacts

- General concerns over preemption of land use authority
- Parking availability and traffic
- Undefined hours of operation, capacity, service frequency
- Noise and odor
- Lack of supportive infrastructure for waste disposal, grease collection, and sanitary sewer
- Inability to address possible overconcentration
- Potential ability to sell alcohol out of a residential home

## Limited Resources

- Limited staffing resources to monitor, respond to and enforce health, safety, nuisance and land use complaints from neighboring properties

# Alternatives offered by the Cities

## Two-Year Pilot Program (Santa Rosa)

- Term limited
- Could have restriction on number of permits
- Ability to evaluate and reconsider down the road

## Alternative Program

Develop a collaborative County/City alternative program through local ordinances that will meet the goals of a MEHKO

# Other Jurisdictions

- The counties of Riverside, Santa Barbara, Solano, San Mateo, Santa Clara, Alameda, Lake and the City of Berkeley have opted into the MEHKO program.
- Lake County and San Mateo counties have opted in with a “Pilot Program” restricting the number of permits available and term of the program.
- Riverside County was the first county to opt into the program with just under 40 operations currently permitted.
- Napa and Siskiyou Counties have decided not to opt into the program.

# Policy Options/Considerations

## **Opt In**

Direct staff to return with a proposed action to opt into the MEHKO statute, via ordinance to address fees and permit requirements. If this option is chosen, the Board may want to consider subsidizing permitting fees so that MEHKO permits remain affordable, meeting the intent of the program.

## **Opt Out/No Action**

Direct staff not to return with an option to opt in. If this option is chosen the Board may want to consider directing staff to advocate for legislative changes that would allow jurisdictions to opt in while also addressing the concerns raised.

# Questions ?