



Legislation Text

File #: 2021-0822, **Version:** 1

To: Board of Supervisors of Sonoma County
Department or Agency Name(s): Department of Health Services
Staff Name and Phone Number: Christine Sosko, 565-6521
Vote Requirement: Majority
Supervisory District(s): Countywide

Title:

Microenterprise Home Kitchen Operations AB 626

Recommended Action:

Provide direction to staff about whether to further consider authorizing Microenterprise Home Kitchen Operations.

Executive Summary:

Assembly Bills 626 and 377 amended the California Retail Food Code to allow a home chef to prepare food in a private home and sell directly to the public as a microenterprise home kitchen operation. For these types of kitchens to be permitted, the County must “opt into” the program, and if it does so, the program will also be authorized in the cities. If authorized by the County, a microenterprise home kitchen operation can be operated by a resident in any private home, and with some restrictions, food may be served directly to consumers for on or off-site consumption.

Discussion:

Health Services is requesting that the Board provide direction to Environmental Health on whether or not to further consider implementation of a microenterprise home kitchen operation (MEHKO) program, including development of an ordinance, permitting process, fees, and inspection services.

The California Retail Food Code (CalCode), establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce these provisions. Existing law defines “food facility” as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Previously, a private home, including a registered or permitted cottage food operation, was exempted from the definition of food facility. AB 626, includes a microenterprise home kitchen within the definition of a food facility, defining it as a food facility that is operated by a resident in a private home where food is stored, handled, prepared for, and may be served to consumers, and that meets specified requirements, including, among others, that the operation has no more than one full-time equivalent food employee, does not exceed more than 30 meals per day or 60 meals per week and has no more than \$50,000 in verifiable gross annual sales.

Assembly Bills 626 and 377 amended the California Health and Safety Code to allow the governing body of a city or county that is designated as the enforcement agency to authorize, by ordinance or resolution, microenterprise home kitchen operations. Within Sonoma County this permitting/enforcement authority lies with the Department of Health Services, Environmental Health. The County’s decision to “opt in” and

authorize microenterprise home kitchen operations would therefore apply to all of the County's cities and towns.

Taking no action and/or affirmatively "opting out" are procedurally equivalent County actions.

On the other hand, if the County "opts in", both the cities, towns and the County would be preempted from adopting any further regulation that restricts the location of these small food operations. Specifically, the law states that "[a] microenterprise home kitchen operation shall be a permitted use of residential property in any residential dwelling for zoning purposes." The law also prohibits microenterprise home kitchen operation from being considered a change of occupancy for building and fire codes, and requires that such uses be considered a residential occupancy for local building and fire codes. (Health & Safety Code section 114367.4.)

The goal of this law is to provide a framework for home cooks to legally make and sell food directly from their home without making a large monetary investment. The law exempts several health and safety code requirements for food facilities and prohibits local agencies from placing additional limits on these operations, with the exception of noise and nuisance ordinances. In short, microenterprise home kitchen operation regulations limit the county's ability to modify and create a tailored local program, and also prohibit cities from restricting MEHKOs. Therefore, "opting in" is an "all in" decision.

Microenterprise home kitchen operations are exempt from various provisions applicable to food facilities, including, among others, provisions relating to handwashing, sinks, ventilation, and animals. Applicants are required to submit to the local enforcement agency written standard operating procedures that include specified information, including all food types or products that will be handled and the days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation. Below are some of the main operational and regulatory parameters:

- The County has discretion to authorize operation of microenterprise home kitchens in their jurisdiction through a resolution or ordinance but cannot adopt requirements more restrictive than CalCode. Until MEHKOs are authorized by resolution or ordinance, they cannot operate.
- A resident can prepare and sell up to 30 meals per day but no more than 60 meals per week from their home kitchen up to a maximum of \$50,000 gross annual sales.
- A microenterprise home kitchen can be operated from single or multi-family homes, owned or rented, but must be operated by a resident of the home.
- Home prepared meals may contain perishable food items except for oysters, raw milk, homemade ice cream and alcohol. All items must be made and sold the same day, and must be sold directly to the consumer either through sit down on site or take out, which includes internet sales.
- A microenterprise home kitchen may have one employee, in addition to family members, with appropriate food training certification and food handling cards required for the operator and those involved in food preparation.
- An enforcement agency may conduct no more than one routine inspection per year, with additional inspections being allowed only to investigate a complaint or if health hazard is suspected.
- Microenterprise home kitchens are permitted uses in residential occupancies for the purposes of zoning. They cannot be further regulated by zoning or building regulations. Thus, the County and the cities cannot impose additional requirements that address location, parking, hours of operation, and other similar issues.

The counties of Riverside, Santa Barbara, Solano, Santa Clara, Alameda and the City of Berkeley have opted into the program. (Most cities cannot themselves opt in or out. The City of Berkeley is one of the four cities in the State that have their own environmental health department that enforces CalCode, and thus could opt in.) Lake and San Mateo County have opted in on a pilot basis, and Lake has capped the pilot program at 10 permits. Riverside County has the largest and most established program with just under 40 microenterprise home kitchen operations currently permitted. Napa County has decided not to opt into the program due to its agricultural preservation initiative. Placer and Siskiyou County also have affirmatively decided not to opt in.

In July of 2021, the County Administrator sent a letter to the city managers to share information about the microenterprise home kitchen operation program and asking for their position as stakeholders prior to August 16, 2021 (Attachment 1). The County received letters from the Town of Windsor, City of Rohnert Park, City of Cotati, City of Sebastopol and the City of Sonoma, all of which opposed opting into the MEHKO statute (Attachments 2-6). The City of Santa Rosa sent a letter that raised some of the same issues as the other cities, but proposed a two-year pilot program (Attachment 7). Although all cities responding supported the overall concept of encouraging local business opportunities, the cities opposed to opting into the MEHKO statute expressed concerns with local control; code enforcement burdens; fire safety; sewer impacts such as grease; land use compatibility issues such as parking, noise, hours of operation, and the possibility of overconcentration; and competition to already struggling restaurants. When AB 626 was first proposed, the California State Association of Counties, the Urban Counties of California, the Rural County Representatives of California, the County Health Executives Association of California, and the Health Officers Association of California submitted a joint letter of opposition to the bill based on some of the same concerns as those raised by the cities (Attachment 8).

Some cities expressed support for exploring an alternative local program via local ordinances that would not be based on State's MEHKO law. Food permitting is dictated by State law, which occupies the field and does not allow local regulation that goes beyond the provisions of CalCode. While the County and cities could explore other options to incubate food businesses, there is not a legal pathway to create a MEHKO-like residential program solely via local ordinances that addresses the cities' concerns about preemption and compatibility.

Policy options that the Board may want to consider include:

1. If the Board directs staff to return with a proposed action to opt into the MEHKO statute, Staff recommends that the County opt in via ordinance to address fees and permitting procedures. The Board may want to consider subsidizing permitting fees, so that MEHKO permits remain affordable, meeting the intent of the program. Environmental Health preliminarily estimates that unsubsidized permit fees would be around \$800, but the costs are currently being analyzed in an in-process fee study.
2. The Board could consider a two-year pilot program with a cap on the number of permits, but Staff would not recommend doing so. It would be more straightforward to monitor legislative developments and developments in other jurisdictions.
3. If the Board does not direct staff to return with an option to opt in, it may want to consider directing Staff to advocate for legislative changes that would allow jurisdictions to opt in while also addressing the concerns of the cities.

Prior Board Actions:

None

FISCAL SUMMARY

Expenditures	FY 21-22 Adopted	FY 22-23 Projected	FY 23-24 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0

Narrative Explanation of Fiscal Impacts:

There are no fiscal impacts associated with this item.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1 - Correspondence from County Administrator to City Managers
Attachment 2 - Town of Windsor Letter
Attachment 3 - City of Cotati Letter
Attachment 4 - City of Sebastopol Letter
Attachment 5 - City of Rohnert Park Letter
Attachment 6 - City of Sonoma Letter
Attachment 7 - City of Santa Rosa Letter
Attachment 8 - CSAC Letter

Related Items "On File" with the Clerk of the Board:

None