



Microenterprise Home Kitchen Operations

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Tina Rivera

Interim Director, Department of Health Services

Christine Sosko

Director of Environmental Health, Department of Health Services

Tennis Wick

Director, Permit Sonoma



sonoma county
DEPARTMENT OF HEALTH SERVICES

Good Morning Chair Hopkins and members of the Board. I am Christine Sosko, Director of Environmental Health and am pleased to bring information to you today about the Microenterprise Home Kitchen Operation program or MEHKOS. I am joined today by Tina Rivera, Health Services Director, Tennis Wick, Permit Sonoma Director and Verne Ball from County Counsel, who will be available to answer questions after our presentation.

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

In 2019, AB 626 and its cleanup bill, AB 377 were passed., allowing a small-scale restaurant to be operated by a private resident within their home. These home restaurants are known as a Microenterprise Home Kitchen Operation or MEHKO for short.

MEHKOs may operate through a internet food service company that is registered with California Department of Public Health as an intermediary. The intermediary site will share the daily menu and service available for local MEHKOs with the public.

Before a MEHKO can operate, the county in which they are located must opt in to the program.

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.

MEHKOs were created to provide opportunities and remove barriers for disadvantaged persons, allowing them to enter into a small scale restaurant without the barriers that exists with a larger operation. This legislation also sought to legalize and regulate some of these small scale operations that may already exist.

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

There are limitations on a microenterprise home kitchen which include:

The operator must be a resident of the private home operating as a MEHKO

The operator must hold a food safety manager certification

There can only be one employee other than other family or household members and everyone within the facility must have a food handler certification

The food that is being sold must be prepared and sold the same day

Sales are limited to no more than 30 meals a day or 60 meals a week

Meals can be consumed on site in a home dining area, available for take out or delivered. Delivery cannot go through a third party like door dash or grub hub

Gross annual sales are limited to \$50,000

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

Although, Health and Safety code classifies a MEHKO as a food facility it is exempted from some of the requirements of a standard restaurant. Some of these exceptions are that a MEHKO is limited to one health and safety inspection per year that is announced ahead of the time. A standard restaurant receives two unannounced inspections per year.

A MEHKO is also exempted from the requirement to have a dedicated handwashing sink within the kitchen area, does not require a three compartment dishwashing sink or a dedicated preparation sink, excludes commercial hood and fire suppression requirements, allows for family pets to enter into the kitchen and does not limit operations based on 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

A MEHKO, by right is allowed in any residential dwelling and cannot be excluded through local zoning or building regulations.

A use permit or other local business license permits would not be required. The health permit would be the only permit required of a MEHKO.

The MEHKO could not have additional requirements imposed by either the cities or counties, which include: Location and neighborhood compatibility, parking and 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.

In order for MEHKOS to be permitted, the County would need to opt in to the program. If the County opts in, the cities may not opt out. By opting in both the cities and county would be pre-empted from imposing further regulations on MEHKOs.

No action is required to opt out of the program.

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.

The MEHKO regulation does allow for enforcement of noise and nuisance ordinances. However, in the unincorporated areas of the County, the county does not have a general nuisance ordinance or noise ordinance.

If the board elects to opt into this program, staff advises that it be conducted through an ordinance to address permitting procedures and appropriate 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.

In July, The County CAO sent a letter out to all the cities asking them for comments about implementation of the MEHKO program. We received comments from Windsor, Rohnert Park, Cotati, Sebastopol and Santa Rosa. Comments were not received from Cloverdale and Petaluma.

In general, all cities were supporting of lowering the barriers and creating local economic opportunities but not in support of opting into the State's MEHKO program.

Santa Rosa raised similar concerns and proposed a pilot program as an option.

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

The cities raised concerns about fire risk, finding that there is an increased risk due to the lack of fire suppression systems, exhaust hoods, grease traps and similar protective equipment that is required in a standard restaurant.

Cities were concerned that they would not have authority to require building and fire code improvements and that the threat to health and safety of the residents and patrons would be increased due to their inability to regulate capacity, panic/egress hardware, sprinklers and ADA accessibility.

Cities also expressed concerns about the vacant buildings in their downtown districts and the impacts to already struggling businesses that have struggled to remain open during the Covid pandemic.

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

Additional concerns were raised by the Cities around neighborhood disruptions and impacts on land use. They raised concerns about the pre-emption of their land use authority and inability to enforce parking, traffic, operational hours, noise, odor, and inequities caused by over concentration in areas. They also raised the concern with sales of alcohol from a private home and expressed an overall concern with their lack of resources to monitor and enforce safety and nuisance concerns within their neighborhoods.

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

The City of Santa Rosa suggested an option of a two year pilot program, which could be term limited, restrict the number of permits allowed and provide for an ability to reconsider after an evaluation. In addition, several of the other cities suggested that we develop a collaborative program through local ordinances that meet similar goals as the 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.

The policy options and considerations for the Board today are to

1. direct staff to return with a proposed action to opt into the MEHKO program statute, via ordinance to address fees and permit requirements. If the BOARD chooses this option, they may want to consider subsidizing permit fees so that MEHKO permits remain affordable, meeting the intent of the program.
2. 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 addressing the concerns raised.

Thank you,

I will move it over to questions.

Questions ?