

**ORDINANCE NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA**

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**AN ORDINANCE ADDING CHAPTER 4.58 TO TITLE 4 OF THE SAN MATEO  
COUNTY ORDINANCE CODE, AUTHORIZING THE PERMITTING OF  
MICROENTERPRISE HOME KITCHEN OPERATIONS**

**The Board of Supervisors of the County of San Mateo, State of California,  
ORDAINS as follows:**

**SECTION 1. Findings.**

The Board of Supervisors finds and determines that:

**WHEREAS**, San Mateo County seeks to pursue and adopt policies, programs and activities that foster economic empowerment, food access and strong and healthy communities; and

**WHEREAS**, San Mateo County is committed to expanding access to a wide variety of foods prepared locally and to supporting small-scale businesses and microenterprises; and

**WHEREAS**, small-scale, home-cooking operations can create significant economic opportunities for people that need them the most – often women, immigrants and people of color; and

**WHEREAS**, the sale of home-cooked meals by small-scale operators can improve access to healthy foods for communities, particularly in communities with limited options; and

**WHEREAS**, the bar for entry to restaurant ownership is high, and access to rental kitchens is limited by physical availability and cost, such that an informal economy of

locally produced and prepared hot foods exists that includes meal preparation services, delivery of home-cooked items, and communally shared meals; and

**WHEREAS**, many experienced cooks in California, including in San Mateo County, work in the informal food economy, often because of disability, family responsibilities or lack of opportunity; and

**WHEREAS**, Assembly Bill (AB) 626 went into effect at the beginning of 2019, and sets a framework for local governments to authorize independent, small-scale cooks in San Mateo County to establish food preparation businesses from their homes, selling meals to diners who are served on site, or as take out or delivery; and

**WHEREAS**, AB 626 authorizes counties and cities to adopt ordinances or resolutions permitting microenterprise home kitchens operations, subject to various requirements set forth in the legislation; and

**WHEREAS**, on January 29, 2019, the Board of Supervisors (“Board”) appointed Supervisors David Canepa and Don Horsley to a subcommittee of the Board (“Subcommittee”) to work with staff to assess and report on implementation of AB 626 in San Mateo County and to develop and bring to the Board an appropriate form of ordinance or resolution to implement AB 626 in San Mateo County: and

**WHEREAS**, on February 25, 2019, the State Assembly introduced AB 377 as an emergency bill, clarifying the authority to permit microenterprise home kitchens is by cities and counties that are designated as enforcement agencies for the California Food Retail Code and clarifying other requirements and regulations pertaining to microenterprise home kitchen operations, and AB 377 was signed into law on October 7, 2019; and

**WHEREAS**, the Subcommittee has since worked with staff to develop this Ordinance to implement AB 626, as amended by AB 377, in San Mateo County for the Board's consideration; and

**WHEREAS**, this Ordinance is intended to help foster economic opportunities for San Mateo County residents and increase dining options for potential customers by permitting microenterprise home kitchen operations, while also safeguarding the health and safety of the community.

SECTION 2. Chapter 4.58 is hereby added to Title 4 of the San Mateo County Ordinance Code, to be entitled, and to read, as follows:

**CHAPTER 4.58 PERMITTING MICROENTERPRISE HOME KITCHEN OPERATIONS**

**Section 4.58.010 Application.**

The provisions of this Chapter shall apply to all Microenterprise Home Kitchen Operations within the incorporated and unincorporated areas of San Mateo County, as and to the extent permitted under California Health and Safety Code section 114367.

**Section 4.58.020 Definitions.**

For the purposes of this Chapter, the following terms have the following meanings:

- (a) "CRFC" means the California Retail Food Code, as set forth in California Health and Safety Code section 113700, *et seq.*, as it may be amended from time to time.
- (b) "Hearing Officer" means the director of the Local Enforcement Agency, or the director's designee.
- (c) "Local Enforcement Agency" or the "LEA" means the County of San Mateo Environmental Health Services Division and its designated employees and other designated agents.
- (d) "Microenterprise Home Kitchen Operation" or "MEHKO" has the same meaning as set forth in the CRFC at California Health and Safety Code section 113825, as that section may be amended from time to time.

(e) "Permit" means the document issued by the LEA that authorizes a Person to operate a MEHKO.

(f) "Person" has the same meaning as the term is defined in the CRFC at California Health and Safety Code section 113855, as that section may be amended from time to time.

(g) "Permitholder" means the entity that is legally responsible for the Microenterprise Home Kitchen Operation, such as the owner, the owner's agent, or other Person, and that possesses a Permit to operate a Microenterprise Home Kitchen Operation.

### **Section 4.58.030 Permits.**

(a) Permit Required to Operate MEHKO; Permitting Process. No Person shall operate a MEHKO unless the Person has obtained a Permit from the LEA, and such Permit remains valid. A Permit issued by the LEA pursuant to this Chapter shall remain valid from the date of issuance through the 30<sup>th</sup> day of the following September, provided, however, that no Permit shall remain valid after this Ordinance expires. All applicants for a Permit and Permitholders seeking renewal of an existing Permit shall submit an application in the form and accompanied by such materials as required by the LEA, which materials shall include, at a minimum, the following:

- (1) A completed MEHKO application provided by the LEA;
- (2) Written standard operating procedures for the MEHKO as described in the CRFC, at California Health and Safety Code section 114367.2(c) (as such section may be amended from time to time); and
- (3) Proof acceptable to the LEA that the applicant has successfully completed an approved and accredited food safety certification course and passed an approved and accredited food safety certification examination, as specified in the CRFC at California Health and Safety Code section 113947.1 (as such section may be amended from time to time).

(b) Initial Inspection Prior to Permit Issuance. The LEA shall issue an initial Permit only after the LEA has conducted an initial inspection of the proposed MEHKO location and determined that the proposed MEHKO and its method of operation complies with the requirements of Chapter 11.6 of the CRFC. The LEA will contact each Permit applicant to schedule an initial inspection of the proposed MEHKO, once the LEA has confirmed that the applicant has submitted an application in conformance with the requirements set forth in subsection (a) above.

(c) Permits Not Transferable. Permitholders shall not transfer Permits to any other Person or to operations at any other place. A Permit is only valid for the Person and place specified in the Permit and for the time period indicated therein (unless the Permit is suspended or revoked for cause as provided in this Chapter).

(d) Prominent Display. Permits must be prominently displayed on the site of the MEHKO during all hours of operation.

(e) Financial Compliance. The LEA shall not approve an application for a new Permit or renewal of an existing Permit until the Permitholder has paid all outstanding fees and administrative fines that the Permitholder owes to the LEA.

#### **Section 4.58.050 Inspections of MEHKOs.**

The LEA may conduct inspections of MEHKO consistent with the CRFC at California Health and Safety Code section 114367.3.

#### **Section 4.58.060 Suspension and Revocation of Permits.**

(a) Grounds. The LEA may suspend or revoke a Permit if the LEA determines that information submitted in connection with an application for a Permit or to renew a Permit was materially false or that information material to the Permit application or application to renew a Permit was misrepresented, withheld or concealed, in addition to failure to comply with the requirements of the CRFC.

(b) Notice of Suspension or Revocation. The LEA may initiate the suspension or revocation of a Permit by either of the two actions: (1) on the site of a MEHKO in an LEA inspection report; or (2) issuance by the LEA of a Notice of Violation, which sets forth in clear and concise language the acts or omissions with which the Permitholder is charged and informs the Permitholder of their right to a hearing, if requested, to show cause why the Permit should not be suspended or revoked. Regardless of the method used to initiate the suspension or revocation of a Permit, the LEA shall send to Permitholder by certified mail, a copy of the notice document, and the Permitholder shall be afforded an opportunity for a hearing and the written notice that the LEA provides to Permitholder shall describe Permitholder's hearing rights, in accordance with the CRFC, at California Health and Safety Code section 114405, as this section may be amended from time to time.

(c) Reinstatement of Permit; Issuance of New Permit. A Permit may be reinstated or a new Permit issued if the LEA determines that the conditions that prompted the suspension or revocation no longer exist.

(d) Evidence. The following rules shall apply to any hearing required by this Chapter. Any hearing that takes place pursuant to this Chapter shall be conducted in accordance with the provisions of the CRFC, at California Health and Safety Code section 114405, as this section may be amended from time to time. All parties shall have the right to offer relevant testimonial, documentary, and tangible evidence bearing on the issues. Formal rules of evidence and discovery do not apply to proceedings governed by this Chapter. Unless otherwise specifically prohibited by law, at a hearing conducted under this Chapter, the LEA shall have the burden to establish the existence of a violation of the CRFC by the Permitholder, and thereafter, the Permitholder shall have the burden to establish why the Permitholder's Permit should not be suspended or revoked, whichever is applicable.

(e) Written Notice of Decision. If the Permitholder requests a hearing in accordance with the procedures set forth in California Health and Safety Code section 114405, the Hearing Officer shall issue a written notice of decision to the Permitholder in accordance with California Health and Safety Code section 114407, as this section may be amended from time to time. The Hearing Officer's written notice of decision shall be a final administrative order, with no further administrative right of appeal or reconsideration. The Hearing Officer may sustain a suspension or revocation, overrule a suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension. Further, the Hearing Officer may stay the effective date of any suspension for a reasonable time following a hearing.

(f) Closure of Operation; Reapplication. Any MEHKO for which the Permit has been suspended shall close and remain closed until the Permit has been reinstated. Any MEHKO for which the Permit has been revoked shall close and remain closed until a new Permit has been issued. No reapplication will be accepted within one (1) year after a Permit is revoked.

#### **Section 4.58.070 Administrative Fine.**

(a) Upon a finding by the LEA that the Person has violated any provision of this Chapter, the LEA may issue a Notice to Comply or Notice of Violation requiring that the violation be corrected.

(b) Any violation of this Chapter shall be an infraction.

(c) The following administrative fine schedule shall apply to violations of this Chapter:

- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.
- (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent

violations within one year of the first violation.

(d) Each day that a MEHKO continues to operate without a current and valid Permit shall constitute a separate violation.

(e) Fine Procedures.

(1) Notice of the fine shall be served by certified mail with a description of the underlying violation(s) and supporting facts. The notice shall set forth the right to lodge an appeal to the Director of the LEA, or designee, contesting the imposition of the fine.

(2) Appeals must be made in writing, and shall set forth the factual basis for disputing the violation(s). If the Person to whom the Notice is directed wishes to request a hearing for its appeal, that request must be stated in the appeal. Appeals must be addressed to the Director of the LEA, and must be received within fifteen (15) days of the date appearing on the notice of the fine.

(3) After reviewing the appeal, the Director of the LEA shall prepare his or her decision in writing and send it to the Person to whom it is directed via certified mail. The decision shall constitute a final administrative order with no additional right to appeal.

(4) If the fine is not paid within thirty (30) days from the date appearing on the notice of the fine or the notice of decision from the Director of the LEA after the appeal, the fine may be referred to a collection agency and may affect the status of any Permit for the MEHKO.

#### **Section 4.58.080 Severability.**

If any of the provisions of this Chapter or the application thereof to any Person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

#### **Section 4.58.090 Sunset.**

This Ordinance will sunset on September 30, 2023, unless extended by the Board of Supervisors prior to that date.

SECTION 3. This Ordinance shall be effective thirty (30) days from the passage date thereof.

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