



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 5
File #: 23-701

Board Meeting Date: 9/12/2023

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Supervisor David Canepa, District 5
Supervisor Ray Mueller, District 3
Subject: Microenterprise Home Kitchen Operations Ordinance, and amendment to Chapter 5.64 to adjust program fees for Microenterprise Home Kitchen Operation permits

RECOMMENDATION:

Recommendation to:

- A) Introduce an ordinance repealing and replacing Chapter 4.58 of Title 4 of the San Mateo County Ordinance Code, authorizing the permitting of Microenterprise Home Kitchen Operations and waive the reading of the ordinance in its entirety; and
- B) Introduce an ordinance amending Section 5.64.070 of Chapter 5.64 of Title 5 of the San Mateo County Ordinance Code, effective 30 days from adoption, relating to collection of fees for enforcement of state public health laws, and waive the reading of the ordinance in its entirety; and
- C) Adopt a resolution authorizing the Director of the Environmental Health Services Division (“EHS”) of San Mateo County Health, or designee(s), to implement a program to pay for a one-time credit equal to the approved annual fee, pursuant to the ordinance passed herein, at a total cost not to exceed \$92,000, for permitted Microenterprise Home Kitchen Operations, which qualify as small businesses under the American Rescue Plan Act.

BACKGROUND:

State Law Allowing MEHKOs.

California Assembly Bill 626 (“AB 626”), as amended, established Microenterprise Home Kitchen Operations (“MEHKOs”) as a new category of food facility under the California Health and Safety Code section 113700, et seq. AB 626 authorizes the use of home kitchens for small-scale, direct food sales by home cooks to consumers.

For MEHKOs to legally operate in the County, the Board must adopt an ordinance or resolution to affirmatively “Opt-In” to the permitting program established by AB 626. The Board does this by authorizing an “enforcement agency,” such as Environmental Health Services (EHS), to permit MEHKOs, which then provides EHS permit authority over both incorporated and unincorporated areas of the County. Since AB 626 went into effect, Alameda, San Benito, Imperial, Lake, Riverside, Solano, San Diego, and Santa Barbara Counties, and the City of Berkeley, have each adopted ordinances authorizing the permitting of MEHKOs within their jurisdictions.

Prior Board Action Regarding MEHKOs

The Board has already taken steps towards establishing a MEHKO program in the County. On January 29, 2019, the Board adopted a resolution stating support for implementing AB 626, and appointed Supervisors Canepa and Horsley to a subcommittee to assess and report on recommended next steps. Thereafter, on July 20, 2021, the Board authorized a MEHKO “pilot program,” which authorized EHS to permit MEHKOs for a two-year period. The pilot program provided the opportunity to assess the benefits of MEHKOs throughout the County before permanently adopting an ordinance. Additionally, the pilot provided data to help determine long-term staffing needs and estimated costs for a permanent MEHKO program. Furthermore, as part of the pilot program, the Board allocated \$300,500 in ARPA funds (\$238,000 in funds to launch the pilot program and \$62,500 in business grants) to assist MEHKO businesses negatively impacted by the pandemic.

Now, with the two-year pilot program set to expire, the package before the Board seeks to permanently authorize Environmental Health Services (“EHS”) to permit MEHKOs pursuant to AB 626, to fund the cost of administering this permit program through a fee increase, and to continue providing MEHKO businesses negatively impacted by the pandemic temporary relief by covering this fee increase for an approximately one-year period.

Basics Regarding What MEHKOs Can and Cannot Do

Under state law, MEHKOs may:

- Prepare up to 30 meals per day, or 90 meals per week, or their equivalents.
- Have up to \$100,000 in gross annual sales per year
- Only sell directly to consumers.
- Prepare meals for pick up, direct delivery, and/or consumption by diners onsite, or sell meals from a cart.
- Hold cooking classes and food demonstrations.
- Not serve certain foods (e.g., raw oysters, raw milk, raw milk products), or serve food using certain high-risk preparation or storage practices (e.g., vacuum packaging).
- Operate an open-air barbecue or outdoor wood-burning oven.
- Employ up to one employee, in addition to family members.
- Not have signs or other visual exterior advertisement.
- Store food carts onsite.

MEHKO operations:

- Require all food handlers (residents and employee) have the appropriate State-mandated food safety training.

- Receive one routine inspection per year.
- Must comply with local noise and nuisance ordinances.
- Are exempt from commercial kitchen construction requirements.
- Are a permitted use of residential property in any residential dwelling for zoning purposes.
- Are considered a residence for the purposes of the State Uniform Building Standards Code and local building and fire codes.
- Would be permitted in all cities and unincorporated areas within San Mateo County, if adopted by Ordinance.

In addition, under state law, MEHKOs are exempt from commercial kitchen construction requirements. These facilities may be located in any residential dwelling for zoning purposes if the MEHKO abstains from signage or other outdoor displays advertising the MEHKO and complies with local noise ordinances. MEHKOs are considered a residential use for the purposes of the State Uniform Building Standards Code and local building and fire codes.

EHS Would Continue Serving as The MEHKO Enforcement Agency

EHS, a division of San Mateo County Health, performs regulatory oversight to over 14,000 businesses, implementing State regulations for operations in both incorporated and unincorporated areas of the County. Specifically, EHS provides regulatory oversight of retail food and enforces the California Retail Food Code, which includes AB 626 relating to MEHKO regulation. EHS operates on a fee-for-service basis, meaning that businesses/regulated entities pay for the cost of the regulatory service and issuance of associated permits; accordingly, EHS inspection programs have zero Net County Cost. EHS issues annual invoices for operating permits to those retail food businesses it regulates.

If the Board adopted an ordinance affirmatively “Opting-In” and authorizing the permitting of MEHKOs in the County, EHS would be the local enforcement agency for MEHKOs countywide, as it was during the pilot program.

DISCUSSION:

The Fee Increase Proposal

Based on information gathered during the 2-year pilot, including a determination of average time of EHS’s oversight per operation, staff proposes an annual permit fee for MEHKO businesses of \$1108 to cover EHS’s associated regulatory costs.

Fee Relief for Negatively Impacted MEHKO Businesses.

As noted, the Board allocated \$238,000 in ARPA funds to establish the pilot program. Of this amount, approximately \$92,000 remains. With the County re-opening and due to the need to create entry level business opportunities for workers displaced and negatively economically impacted by the COVID-19 pandemic, staff is recommending using up to the remaining \$92,000 in ARPA funds to provide additional assistance to MEHKO businesses approved to operate with permit fees through December 2024. The establishment of this ordinance will, with a permit fee credit program available to operators for one year and 2 months, respond to the negative economic impact of the pandemic by supporting the expansion of food service industry opportunities that were delayed due to the

pandemic. This ordinance would, if passed, serve as a business launchpad for women, minorities, residents of low-income neighborhoods and other people who have historically faced challenges entering the food business and who have been disproportionately impacted by the pandemic.

During the 2-year pilot, there were up to 31 businesses permitted each year. There have been no significant food safety or substandard housing-related issues with permitted MEHKO operations.

If adopted, this Ordinance would be effective thirty (30) days from the passage date and would apply to all MEHKOs within the incorporated and unincorporated areas of San Mateo County as permitted under California Health and Safety Code section 114367.

The County Attorney has approved this resolution as to form.

FISCAL IMPACT:

County Health's Environmental Health Services Division permit fees are established by this ordinance to fund this program. The total cost of the proposed Fee Credit for the MEHKO Program will not exceed \$92,000. Authorization to spend an amount not to exceed \$92,000 in American Rescue Plan Act funds is being requested to the Board. There is no Net County Cost associated with this ordinance.