



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 5
File #: 21-626

Board Meeting Date: 8/3/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Supervisor David Canepa, District 5
Supervisor Don Horsley, District 3
Subject: Microenterprise Home Kitchen Operations Ordinance

RECOMMENDATION:

Adopt an ordinance authorizing, on a pilot basis, the permitting of Microenterprise Home Kitchen Operations (“MEHKO”) in San Mateo County, previously introduced on July 20, 2021, and waive the reading of the ordinance in its entirety.

BACKGROUND:

California Assembly Bill 626 (“AB 626”) chaptered on September 18, 2018 and amended by Assembly Bill 377 (“AB 377”) chaptered on October 7, 2019 (collectively, the “MEHKO State Law”) established Microenterprise Home Kitchen Operations (“MEHKOs”) as a new category of food facility under the California Retail Food Code, Health and Safety Code section 113700, et seq. (“CRFC”). The MEHKO State Law authorizes the use of home kitchens for small-scale, direct food sales by home cooks to consumers, providing appropriate flexibility in food types and appropriate health and sanitation standards.

Under the MEHKO State Law, these facilities may do the following:

- Prepare up to 30 meals per day, or 60 meals per week, or their equivalents;
- Have up to \$50,000 in gross annual sales per year;
- Only sell directly to consumers;
- Prepare meals for pick up, direct delivery, and/or consumption by diners onsite;
- Hold cooking classes and food demonstrations;
- Operate an open-air barbecue or outdoor wood-burning oven;
- Employ up to one employee, in addition to family members; and
- Use a State-registered internet food service intermediary or other method (e.g., newspaper, social media) to advertise the MEHKO, provided such advertisement is consistent with California Health and Safety Code requirements.

MEHKOs may not do any of the following:

- Have signs or other visual exterior advertisement; or
- 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).

MEHKOs shall:

- Require all food handlers (residents and employee) to have the appropriate State-mandated food safety training;
- Receive one routine inspection per year; and
- Comply with local noise and nuisance ordinances.

In addition, under the MEHKO State Law, MEHKOs are exempt from commercial kitchen construction requirements. These facilities are also a permitted use of residential property 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 residence for the purposes of the State Uniform Building Standards Code and local building and fire codes.

In order for MEHKOs to operate in San Mateo County, the Board must adopt an ordinance or resolution to affirmatively “Opt-In” and authorize the permitting of MEHKOs, subject to the various requirements set forth in the CRFC. If the Board opts in, this authorization would apply County-wide. Since the MEHKO State Law went into effect, Alameda, Imperial, Lake, Riverside, Solano and Santa Barbara Counties have adopted ordinances authorizing the permitting of MEHKOs within their jurisdictions.

On January 29, 2019, the Board adopted a resolution, expressing support for the implementation of AB 626 in San Mateo County and appointing Supervisors David Canepa and Don Horsley to a subcommittee to work with staff to develop and bring to the Board an appropriate form of ordinance to implement AB 626 in San Mateo County.

Environmental Health Services (“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 CRFC. EHS operates on a fee-for-service basis, meaning that businesses/regulating 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.

DISCUSSION:

The Subcommittee met with staff to develop an ordinance, which would authorize the permitting of MEHKOs countywide for an approximately two-year pilot period.

Pursuant to the proposed MEHKO Ordinance, EHS, as the local enforcement agency, would issue

permits to operate MEHKOs, provided that the applicant (1) completes a MEHKO application provided by EHS; (2) prepares and submits written standard operating procedures for the MEHKO as set forth in the CRFC; and (3) submits proof acceptable to EHS that the applicant has successfully completed an approved and accredited food safety certification examination as specified in the CRFC. After receiving a completed application and prior to issuing a MEHKO permit, EHS would conduct an initial inspection of the proposed MEHKO and determine that the proposed MEHKO and its method of operation complies with applicable requirements under the CRFC. The permit would be valid from the date of issuance through the 30th day of the following September (for the period the Ordinance remains in effect).

In addition, the proposed MEHKO Ordinance would authorize EHS to conduct follow-up inspections of MEHKOs. EHS would also be authorized to suspend or revoke a MEHKO permit and impose administrative fines for violations of the Ordinance, subject to providing the permit holder notice and an opportunity for a hearing in accordance with the CRFC, if EHS determined that the permit holder failed to comply with applicable legal requirements, that information submitted in connection with an application for a permit was materially false or that information material to the permit application was misrepresented, withheld or concealed.

The proposed MEHKO Ordinance would sunset on September 30, 2023, unless extended by the Board of Supervisors prior to this date. Based on the Board's recent approval of an allocation of \$238,000 to cover EHS administrative costs of implementing the proposed MEHKO Ordinance, no application fees or annual permit fees would be charged to applicants during this approximately two-year pilot period.

This Ordinance was introduced at the Board meeting on July 20, 2021. 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.

FISCAL IMPACT:

The cost of issuing MEHKO permits will be covered by the Board's recent approval of an allocation of \$238,000 in federal American Rescue Plan funds to the extent eligible and available, or other funds as determined by the County Manager, to the MEKHO Pilot Program. This funding will ensure that the administrative costs incurred by EHS in issuing MEHKO permits will not be passed onto the permit holder in the form of application fees or annual permit fees, during the period that the MEHKO Ordinance is in effect.