



OFFICE OF THE AGENCY DIRECTOR
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February 15, 2021

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612-4305

SUBJECT: PUBLIC HEARING AND FIRST READING OF PROPOSED AMENDMENTS TO THE ENVIRONMENTAL HEALTH SERVICES COUNTY GENERAL ORDINANCE CODE, TITLE 6 TO AUTHORIZE MICROENTERPRISE HOME KITCHEN OPERATIONS

Dear Board Members:

RECOMMENDATION:

- A. Conduct a Public Hearing for the purpose of reviewing and authorizing the permitting of Microenterprise Home Kitchen Operations, within the Department of Environmental Health enforcement agency's jurisdiction, in accordance with the requirements of the California Retail Food Code and approving a permit fee; and
- B. Hear public testimony and accept written comments; and
- C. Authorize the permitting of Microenterprise Home Kitchen Operations within the jurisdiction of the County; and
- D. Authorize the permit fee of \$696 per year for Microenterprise Home Kitchen Operations; and
- E. Conduct a first reading of proposed amendments to the Alameda County General Ordinance Code, Title 6, Chapter 6.68 to include Microenterprise Home Kitchen Operations.

SUMMARY:

The Department of Environmental Health is the enforcement agency and implements the Retail Food Safety Program pursuant to California Health and Safety Code Chapter 11.6 Section 114367. Its jurisdiction is county-wide except for the City of Berkeley, which has its own Environmental Health Department and is responsible for food facilities within the Berkeley city limits. By adopting the recommendation and ordinance amendments "Microenterprise Home Kitchen Operations" would be added to food facility types that may operate in the County jurisdiction.

DISCUSSION/FINDINGS:

California Assembly Bill 626 (AB626) chaptered on September 18, 2018 and amended by Assembly Bill 377 (AB377) chaptered on October 7, 2019 established a new category of food facility called Microenterprise

Home Kitchen Operations (MEHKO), which allows for the preparation and sale of foods from a private home kitchen.

In order for MEHKOs to operate in Alameda County, the County Board of Supervisors must affirmatively “Opt-In” and authorize the permitting of MEHKOs. This authorization would apply county-wide except for the City of Berkeley.

Only two other counties in the state have Opted-In, Riverside and Santa Barbara. A number of counties are considering permitting MEHKOs.

A MEHKO is a food facility operated in a private home where food is stored, handled, prepared for, or served to consumers. MEHKO operations are limited to 30 meals per day or 60 meals per week and food must be prepared, cooked and served on the same day. Operations may not have more than one full-time equivalent food employee, not including a family or household member, and may not exceed \$50,000 in verifiable gross annual sales. Customers may dine in, pick up, or have food delivered.

MEHKOs are exempt from numerous food facilities requirements including handwashing facilities, sinks, storage, utensils, equipment, surfaces, water, plumbing, drainage, waste, limitations of animals, light sources, and planning. Inspections may only be conducted at a mutually agreeable date and time, unless there is just cause that the MEHKO poses a serious hazard or immediate threat to public health, in which case a limited emergency inspection is allowed with prior notice to the extent that notice “is reasonable under the circumstances.”

If the County passes an ordinance to “Opt-In”, cities cannot prohibit MEHKOs and residential zones must allow MEHKOs to operate. Zoning requirements do not apply to MEHKOs, so they can be located in high density housing, subsidized housing, and suburban areas.

During the legislative process to add MEHKOs, a number of cities opposed the bill and raised concerns about authorization of permits, zoning, and wastewater management. Concerns include that residential zones and neighborhoods will be affected by additional traffic, demand for parking, use of home as a business, noise from business patronage, and potential fire hazards. Water Districts have raised concerns that MEHKOs in residential neighborhoods would raise a host of issues associated with the disposal of fats, oils, and grease into wastewater systems. Other concerns of increased use of BBQs and outdoor ovens will result in increased exposure to smoke and odors.

The position of proponents of MEHKOs is that that they will make it easier for the people who sell food from their homes to create or legitimize businesses and that MEHKOs offer an opportunity for home cooks to earn income while offering neighbors warm food. In addition, they state that home cooking provides immigrant security & decolonizes food trends, letting people be the faces & benefactors of their own cultures and that legalizing home cooking lowers barrier to entry for food entrepreneurs. Proponents also explain that MEHKOs gives parents an accessible income opportunity that meets them where they are, works around their schedule, and lets them prioritize family values.

It should be noted that in preparation for proposing the adoption of “Microenterprise Home Kitchen Operations” in Alameda County, the Department of Environmental Health participated in BOS Health Committee hearings on 11/09/2020 and 11/23/2020. Various stakeholders, including prospective operators, community-based organizations, county and municipal agencies and the general consuming public participated in the Health Committee hearings and stakeholder meetings. In addition, draft

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ordinance language was provided and reviewed for comment. Essentially the same positions for and against MEHKOs were raised during these meetings as were raised during the legislative process.

In order to implement and properly maintain an effective Food Safety Program along with the additional demand of MEHKOs, if adopted, for an increase in service delivery, an increase in appropriation with offsetting revenue will be required. The Department of Environmental Health has not yet determined if additional inspectors will be needed but a permit fee designed to offset the cost of MEHKO implementation has been determined that enables continuity in the desired service levels into the foreseeable future.

DEH has calculated an annual permit fee for MEHKOs of \$696.00. This annual permit fee is based on the estimated time and actual cost of staff to review applications from perspective operators, meeting with operators regarding standing operating procedures and their operational plan, initial site visits, issuance of the permit and routine inspection. The Board is asked to approve this fee effective on the same date that the Board "Opt-In" to permitting MEHKOs in the County becomes effective.


FINANCING:

There will be no net county cost associated with this request.

VISION 2026 GOAL:

Ensuring public health through effective ongoing inspections and services in order to protect and promote a healthy environment and safe and livable communities meets the 10x goal pathways of **Healthcare for All** and **Accessible Infrastructure** in support of our shared visions of **Thriving and Resilient Population** and **Prosperous and Vibrant Economy**.

Very truly yours,

DocuSigned by:

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Colleen Chawla, Director
Health Care Services Agency

CC:hn

Attachments

cc: County Counsel
Auditor-Controller

AN ORDINANCE AMENDING CHAPTER 6.68 TO THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA

Whereas, the Board of Supervisors (the Board) is the governing body of the local enforcement agency for food facilities in Alameda County, with the exception of those in the City of Berkeley; and

Whereas, California Health and Safety Code Section 113000 seq. known as the California Retail Food Code, was amended to add Microenterprise Home Kitchen Operations as a type of food facility; and

Whereas, Health and Safety Code Section 114367 provides that the Board has the ability to “Opt-In” and allow Microenterprise Home Kitchen Operations Facilities within the enforcement agency’s jurisdiction in accordance with the requirements of the California Retail Food Code; and

Whereas, this Board has determined that it will “Opt-In” and authorizes the permitting of Microenterprise Home Kitchen Operations within the enforcement agency’s jurisdiction in accordance with the requirements of the California Retail Food Code

Now therefore the Board of Supervisors of the County of Alameda ordains that Chapter 6.68 of the General Ordinance is amended as follows:

SECTION I

The name of the ordinance is hereby revised to “**THE RETAIL FOOD FACILITY ORDINANCE**”

SECTION II

6.68.010 Declarations of Findings is amended by adding the following as the second paragraph:

The Board of Supervisor finds that California Health and Safety Code Section 113000 seq. (the California Retail Food Code) was amended to add Microenterprise Home Kitchen Operations as a type of food facility. Health and Safety Code Section 114367 provides the governing body of the local enforcement agency for Food Facilities the ability to allow Microenterprise Home Kitchen Operations Facility within the enforcement agency’s jurisdiction in accordance with the requirements of the California Retail Food Code. This Chapter authorizes the permitting of Microenterprise Home Kitchen Operations

6.68.040 Definitions is amended by adding the following definition:

“Food Facility” or “Retail Food Facility” shall have the same meaning as Food Facility in the California Retail Food Code.

SECTION III

Article X. Section 6.68.300 is added to the ordinance as follows:

ARTICLE X - Microenterprise Home Kitchen Operations

6.68.300 Microenterprise Home Kitchen Operations.

- A. The permitting of Microenterprise Home Kitchen Operations is authorized in the jurisdiction. Microenterprise Home Kitchen Operations must meet all Food Facility requirements, unless they are statutorily exempt.
- B. A Microenterprise Home Kitchen Operation may not operate without a Health Permit issued by ACDEH, which is valid for up to one year and may be renewed annually.
- C. Microenterprise Home Kitchen Operations are exempt from the Grading and Placard Requirements of this Chapter.
- D. The right is reserved to opt out of allowing and permitting Microenterprise Home Kitchen Operations through an amendment to this Chapter.

SECTION IV

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Passed and adopted this _____ day of _____ 2021 by the Board of Supervisors of Alameda County, California.


AYES:

NOES:

EXCUSED:

Keith Carson, President, Board of Supervisors

APPROVED AS TO FORM:
Donna Ziegler, County Counsel

DocuSigned by:

By: _____
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Kathleen Pacheco, Senior Deputy County Counsel

NOTICE OF SERVICE FEE AND PERMITTING OF MICROENTERPRISE HOME KITCHEN OPERATIONS

NOTICE IS HEREBY GIVEN that the Board of Supervisors of the County of Alameda, State of California, will consider an ordinance to amend the Alameda County General Ordinance Code, Title 6, Chapter 6.68 to include Microenterprise Home Kitchen Operations and to be effective July 1, 2021. The amount of the permit fee to allow recovery of reasonable costs of labor and material incurred, will also be considered.

The ordinance will be considered on Tuesday, May 4, 2021, at the meeting of the Board of Supervisors, Fifth Floor, Alameda County Administration Building, 1221 Oak Street, Room 512, Oakland, California 94612, scheduled for 10:30 a.m. Due to the COVID-19 public health emergency, including the shelter-in-place directives from local and State health officers, the County of Alameda has made several changes related to Board of Supervisors' meetings to protect the public's health and prevent the disease from spreading.

Members of the public may observe and participate in meetings by following the instructions located on the Board of Supervisors' agenda for the meeting, located at: https://www.acgov.org/agenda_minutes_app/board/bos_calendar/ag_min.jsp

The teleconferencing guidelines can be found on-line at:
https://www.acgov.org/board/bos_calendar/documents/TeleconferencingGuidelines.pdf

The meeting may also be observed online at:
<http://acgov.org/board/broadcast.htm>

The proposed ordinance and data related to the revised fees is available for review at the Office of the Clerk of the Board of Supervisors located in room 536 of said County Administration Building and the Department of Environmental Health Services, 1131 Harbor Bay Parkway, Alameda, California.

For questions and additional information, please call Department of Environmental Health at (510) 567-6777.

Clerk of the Board of Supervisors of the
County of Alameda, State of California