



December 19, 2023

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: Receive and File a Report on and Provide Direction to the Environmental Health Division Regarding a Permitting Program for Microenterprise Home Kitchen Operations

RECOMMENDATIONS:

1. Receive and file a report regarding the permitting of microenterprise home kitchen operations (MEHKOs) as authorized by Assembly Bill 626 (AB 626) (2018), AB 377 (2019), Senate Bill 972 (SB 972) (2022), and AB 1325 (2023).
2. Provide direction to the Environmental Health Division (Division) with regard to a MEHKO permitting program by either:
 - a. Directing the Division to prepare for future action by your Board to amend the Ventura County Ordinance Code to establish a permitting program for MEHKOs in Ventura County; or
 - b. Directing staff to take no further action regarding MEHKOs at this time.

FISCAL IMPACTS/MANDATES:

Mandated:	No
Source of Funding:	Cost recovery through permit fees or grant funding, if MEHKOs are authorized.
Funding Match Required:	None
Impact on Other Departments:	None

There is no fiscal impact associated with this item. If staff is directed to return to your Board, associated fiscal impacts, if any, will be presented at that time.

BACKGROUND:

On September 18, 2018, then Governor Brown signed into law AB 626 making amendments to the California Retail Food Code (Health & Safety Code, § 113700 et seq.) establishing MEHKOs as a new category of retail food facility. The California Retail Food Code defines a MEHKO as a food facility that is operated by a resident in a private home. This allows a resident to operate his or her home as a restaurant with certain limitations.

AB 626 became effective January 1, 2019; however, implementation posed significant challenges due to unclear language regarding opt-in procedures and local permitting. AB 377 was introduced on February 5, 2019, to clarify these issues. AB 377 was signed by Governor Newsom on October 7, 2019. AB 377 contained amendments that provide a board of supervisors with full discretion to authorize a local MEHKO program for the entire county, including all incorporated cities within the county. Permits authorizing MEHKOs cannot be issued unless a program is authorized by the Board of Supervisors.

In 2020, the Division staff met with our local city managers and planners to provide an overview of the statutory requirements for their consideration and comment. On June 16, 2022, City Managers were provided an update on status of MEHKOs and potential changes resulting from SB 972. The cities were advised that should your Board decide to implement a MEHKO program, it would preclude all other local agencies from prohibiting the operation of, requiring a permit to operate, requiring a rezone of the property for, or levy any fee on, or impose any other restriction on, a MEHKO in any residential dwelling for zoning purposes.

On October 12, 2021, the Division presented to the Board information on MEHKO requirements, some of the pros and cons with permitting MEHKOs, and feedback received from local cities. The Board requested that the Division gather further information specifically to any complaints related to MEHKOs in the jurisdictions that have a MEHKO program and to report back.

The Division decided to hold off on returning to the Board for direction pending the outcome of SB 972 that was introduced February 2022, which proposed to amend the California Retail Food Code and expand the type of operations of a MEHKO. More recently, Assembly Bill 135 (AB 135) was also introduced to further expand the operations of MEHKOs.

DISCUSSION:

Pursuant to the California Retail Food Code and recent legislative amendments with SB 972 and AB 135, there are specific operational and regulatory requirements for MEHKOs that need to be addressed should your Board decide to authorize a permitting program. The County is limited by the requirements in the California Retail Food Code and cannot place additional restrictions on the operation or regulation of MEHKOs.

OPERATIONAL REQUIREMENTS FOR MEHKOs

Your Board, as the governing body of the County, which through the Division is the designated enforcement agency for retail food safety in the County of Ventura under the California Retail Food Code Section 114367, has full discretion to authorize the permitting of MEHKOs in the County of Ventura, including incorporated cities, through a resolution or ordinance, but cannot adopt requirements more restrictive than what is included in the California Retail Food Code. In other words, MEHKOs can operate in Ventura County only if your Board authorizes it.

A resident operating a MEHKO may prepare and sell up to 30 meals per day, but no more than 90 meals per week, from the resident's home kitchen with a maximum of \$100,000 gross annual sales. The meals may be consumed on-site, packaged for carry-out, or delivered. A MEHKO is not authorized to provide catering services.

In addition to the 30 meals per day or 90 meals per week, a MEHKO may also sell unlimited meals from up to two Compact Mobile Food Operations (food carts).

"Potentially hazardous foods" may be prepared in permitted home kitchens. Potentially hazardous foods are foods that require time and temperature control to prevent bacterial growth, including cooked meats, poultry, dairy and fish.

A MEHKO may serve as a commissary for up to two compact mobile food operations (food carts) operated by the MEHKO, which includes servicing and cleaning the carts.

A resident operating a MEHKO may hire one employee in addition to family members.

Appropriate food training certification and food handling cards are required for the operator and those involved in food operations.

REGULATORY REQUIREMENTS FOR MEHKOs

MEHKOs are exempt from any additional planning and permitting provisions of other laws such as zoning, traffic, and occupancy requirements.

MEHKOs are also exempt from many commercial structural requirements, including those related to sinks for handwashing, dishwashing and requirements for commercial-grade equipment, ventilation, and overall construction of the facility.

The California Retail Food Code authorizes no more than one pre-scheduled inspection per year, with additional inspections allowed only to investigate a complaint or if a health hazard is suspected. All inspections require that the MEHKO operator be notified prior to inspection. In comparison, the Division performs unannounced inspections at commercial restaurants.

STATUS OF MEHKOs in CALIFORNIA & RESPONSE FROM CITIES IN VENTURA COUNTY

A recent survey of all California environmental health agencies throughout the state shows that most jurisdictions have not authorized the permitting of MEHKOs due to lack of interest or general concern with issues surrounding MEHKOs.

To date, only 11 jurisdictions have authorized to the implementation of a MEHKOs permitting program: Riverside County (2019), Imperial County (2020), Lake County (2021), Alameda County (2021), Solano County (2021), Santa Barbara (2021), City of Berkeley (2021), Sierra County (2021), San Mateo County (2021), San Diego County (2022), and Santa Clara County (2023).

The Division met with the City Managers on February 20, 2020, and June 16, 2022, to present information on the implementation of MEHKOs in Ventura County and to request their input. To date, six cities have provided recommendations regarding the implementation of MEHKOs in the county. The following cities have all recommended that your Board does not authorize the permitting of MEHKOs: Ojai, Moorpark, Port Hueneme, Thousand Oaks, Simi Valley, and Oxnard. The cities have expressed concerns related to building and fire safety, parking and traffic congestion, zoning and unfair business advantage compared to other businesses.

COMPLAINTS REPORTED FROM JURISDICTIONS WITH A MEHKO PROGRAM

The Division contacted the jurisdictions with a MEHKO program to inquire about the number and types of complaints received related to MEHKOs. Most jurisdictions reported few complaints. The types of complaints reported are primarily related to operating beyond limitations of the permit and noise. One jurisdiction received one report of a foodborne illness associated with a MEHKO.

REQUEST FOR DIRECTION:

The Division is requesting direction on the following:

1. Direct the Division to prepare for future action by your Board to amend the Ventura County Ordinance Code to establish a permitting program for MEHKOs in Ventura County. If your Board were to enact an ordinance to permit MEHKOs in Ventura County, the permit would be valid in any city within the county; or
2. Direct staff to take no action regarding MEHKOs at this time. If your Board directs the Division to not take further action, no MEHKO permitting program could be implemented in Ventura County. However, whether or not to authorize a MEHKO permitting program could be reconsidered at a later date.

Board of Supervisors
December 19, 2023
Page 5 of 5

This letter has been reviewed by County Executive Office, County Counsel, and the Auditor-Controller's Office. If you have any questions, please call me at 654-2818 or Graciela Garcia at 654-2814.



Charles Genkel, Director
Environmental Health Division
Resource Management Agency

Attachments:

Exhibit 1 - Pertinent sections of the California Retail Food Code
Exhibit 2 - Letters of opposition from cities in Ventura County