



October 12, 2021

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) and Assembly Bill 377 (AB 377) (2019).
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, if MEHKOs are authorized
Funding Match Required:	None
Impact on Other Departments:	None

BACKGROUND:

On September 18, 2018, then Governor Brown signed into law AB 626 making amendments to the California Retail Food Code (Health & Saf. Code, § 113700 et seq.) establishing MEHKOs as a new category of retail food facility. The 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 in regard to the 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.

Last year, the Division staff met with our local city managers and planners to provide an overview of the statutory requirements for their consideration and comment. The cities were advised that should your Board decide to implement a MEHKO program, it would preclude all other local agencies from requiring applications, collecting fees or issuing permits, including business licenses.

The purpose of this report is to provide background information on MEHKO requirements, some of the pros and cons with permitting MEHKOs, and feedback received from local cities and to request direction from your Board.

DISCUSSION:

Pursuant to AB 626 and AB 377, the Retail Food Code contains 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 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 Ventura County under the California Retail Food Code Section 114367, has full discretion to authorize the permitting of MEHKOs in Ventura County 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 60 meals per week, from the resident's home kitchen with a maximum of

\$50,000 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.

- “Potentially hazardous foods” may be prepared in permitted home kitchens. Potentially hazardous foods are foods that require time and temperature control in order to prevent bacterial growth, including cooked meats, poultry, dairy and fish.
- 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 Retail Food Code allows for 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. In comparison, the Division may and does perform unannounced inspections at commercial restaurants.

SUPPORT AND OPPOSITION TO MEHKOs:

Proponents of AB 626 and AB 377 argue that MEHKOs provide substantial cultural, economic, and public health benefits in the communities, including:

- Enabling home cooks, who are mostly women, immigrants, and people of color, to use their skills to generate income. Supporters contend that without the fear of fines, thousands of existing home cooks will be able to openly access business education and training on safe food handling practices. Supporters also say that allowing MEHKOs will protect consumers by ensuring public officials have access to the kitchens where the food is prepared and protecting their rights to use existing public health reporting mechanisms if concerns arise.
- Increased food options in the community.
- Provide additional pathways to compliance that will help decrease the number of unpermitted food operations.

Opponents of AB 626 and AB 377 include many public health departments and health officials, including the Health Officers Association of California. The opponents raise the following concerns regarding MEHKOs:

- Concern about the preparation of potentially hazardous foods in home kitchens. Cooking, cooling, and reheating foods, as well as ensuring appropriate hot and cold temperature controls, are challenging in a commercial kitchen even with trained staff and

appropriate equipment and facilities. Opponents contend that this danger increases in a home kitchen, thus putting the public at risk of foodborne illness.

- Impacts on neighborhoods, including increased pedestrian and vehicular traffic and issues with parking and trash, as AB 626 exempts MEHKOs from many zoning and building requirements.
- Challenges in inspecting MEHKOs with safety concerns for staff inspecting MEHKOs where pets, undeclared firearms, or other potential hazards may be present.

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 8 jurisdictions have authorized the implementation of a MEHKOs permitting program: Riverside County, Santa Barbara County, Solano County, San Mateo County, Alameda County, Lake County, Imperial County and City of Berkeley.

The Division met with the city managers on February 20, 2020, to present information on the implementation of MEHKOs in Ventura County and to request their input. To date, five cities have provided recommendations regarding the implementation of MEHKOs in the county. The following cities have all recommended that your Board NOT authorize the permitting of MEHKOs: Ojai, Moorpark, 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.

REQUEST FOR DIRECTION:

The Division is requesting direction on the next action to take.

- One option is to 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.
- Another option is to direct staff to take no further action regarding MEHKOs at this time. If your Board directs the Division to not take further action at this time, no MEHKO permitting program could be implemented in Ventura County. However, whether to authorize a MEHKO permitting program could be reconsidered at a later date.

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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.

A handwritten signature in black ink, appearing to read "C.R. Genkel", is displayed on a light gray rectangular background.

Charles R. Genkel, Director
Environmental Health Division
Resource Management Agency

Attachments:

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