



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Public Health  
**Department No.:** 041  
**For Agenda Of:** January 28, 2020  
**Placement:** Departmental  
**Estimated Tme:** 45 min  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Department Van Do-Reynoso, MPH, PhD  
Director(s) Public Health Department Director  
Contact Info: Larry Fay, Director  
Environmental Health Services 805-346-8463  
**SUBJECT: Microenterprise Home Kitchen - Policy and Direction**

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors:

- a) Receive and file a report on current food facility health permits and options related to Microenterprise Home Kitchens (AB 626 and AB 377).
- b) Provide one of the following policy directions with regard to implementing a Microenterprise Home Kitchen permitting program:
  - 1) Direct staff to prepare amendments to the Santa Barbara County Code authorizing Microenterprise Home Kitchen Operations to be permitted as food facilities in the county and return to the Board for further consideration; or
  - 2) Direct staff to take no further action at this time.
- c) Determine that the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378(b)(5) as they are administrative actions that will not result in direct or indirect changes to the environment.

**Summary Text:**

AB 626 was passed into law in September 2018 and became effective January 1, 2019. The law allows for individuals to prepare limited amounts of certain foods for sale or distribution to the public from a home kitchen by creating a new category of food facility under the California Retail Food Code known as a "Microenterprise Home Kitchen Operation" or "MEHKO." The law would allow for "potentially hazardous foods" to be prepared in the permitted home kitchens. "Potentially hazardous foods" are

foods that require time and temperature control in order to prevent bacteria growth, such as meat, fish, poultry, and dairy products.

The County, as the “local enforcement agency,” is solely responsible for enforcing food safety laws in Santa Barbara County. The law enables each enforcement agency to “opt in” by adopting a resolution or ordinance that authorizes the permitting of MEHKO. Effective October 7, 2019, another bill, AB 377, revised the applicable statutes to provide that if a local enforcement agency does opt in, “the authorization shall apply to all areas within its jurisdiction, including being applicable to all cities within a county that authorizes microenterprise home kitchen operations, regardless of whether each city located within the jurisdiction of the county separately authorizes them.” The purpose of this report is to present some of the issues associated with commercial home cooking and to seek policy direction from your Board (Attachment A).

**Background:**

In September 2018, Governor Jerry Brown signed AB 626, MEHKO, into law. Effective January 1, 2019, the bill allows individuals in participating jurisdictions to prepare and sell a wide range of foods, including “potentially hazardous foods” such as soups, casseroles, and meat dishes prepared in a home kitchen. AB 377, signed in October 2019 amended parts of AB 626 clarifying certain provisions notably eliminating the possibility of cities opting out if the county is the lead enforcement agency. AB 377 did not make substantive changes to the substantive food safety aspects of AB 626.

A MEHKO may prepare food for pick up, delivery, or onsite consumption. The bill sets boundaries on the types of food prepared, quantity of food sales, and no allowance for wholesaling of their food product(s). MEHKO may prepare and serve no more than 30 meals or meal equivalents in a day and no more than 60 meals in a week. These are upper limits and the regulatory agency has the authority to reduce the quantity or type of meals that are served based on the capacity of the Microenterprise Home Kitchen facility. Microenterprise Home Kitchens cannot exceed \$50,000 per year in verifiable gross receipts, must prepare and serve food on the same day, and must pass a food handler’s training course, among other requirements.

In addition, the bill provides that a MEHKO shall be a permitted use of residential dwellings for zoning purposes and a city, county, or city and county shall not prohibit the operation of, require a permit to operate, require a rezone, levy and fees, or impose other restrictions on a MECKO for zoning purposes.

**Current Home Food Preparation and Sales in Santa Barbara**

Sales of food made in a home kitchen are currently occurring in Santa Barbara County, both with and without the benefit of a health permit issued by Santa Barbara County Environmental Health Services (EHS). Examples of permitted commercial home kitchen activity include nearly 300 permitted or registered Cottage Food Operations, of which 39 are inspected by EHS under their Class B Cottage Food permits. Additionally, there are bed-and-breakfast operations and agricultural homestays permitted by EHS. The latter two are in a unique category, as they are private residences that operate with health permits (as well as other licenses) as transient occupancy businesses.

EHS conducted an informal review of a local online marketplace (Facebook Marketplace) in October 2018 and January 2019. In both reviews, multiple listings for home-cooked foods were posted. Homemade sandwiches, barbeques of specialty foods such as ribs, tri-tip, chicken, tortillas, tamales, pozole, chicken mole and menudo are examples of current food sales observed on platforms like Facebook Marketplace. With the exception of the tortillas and some fruit tamales, none of the other

foods observed in this informal review are eligible to be made in a home kitchen under existing California Law.

Reasons for considering authorizing Microenterprise Home Kitchens include:

- Food Safety Education: As discussed, illegal home kitchen operations already exist, functioning in an underground market place and without the benefit of Public Health oversight. Authorizing Microenterprise Home Kitchens would provide a compliance pathway for residents. Currently the only compliance option is to identify operators and attempt to shut them down.
- Economics: Increased community interest in expanding economic opportunities for stay at home parents, immigrant men and women, and entrepreneurship for local residents using existing domestic infrastructure.
- Emergency Preparedness: Opportunities to increase local capacity to provide emergency food service and distribution in the event of a widespread natural or other disaster.
- No Cook Housing: Opportunity for home-based food operation to provide food within that neighborhood to persons who may not have the cooking means to prepare their own meals.

Reasons for not authorizing MEHKO include:

- The challenge of regulating and inspecting operations within private homes,
- Additional workload and staffing needs
- Potential conflict city and county controls over zoning and permitting

### **Policy Options**

With the goal of minimizing public health risk from home-prepared foods, EHS has identified several policy options for consideration at this time and requests direction from your Board:

- Option 1: Direct EHS staff to prepare amendments to the Santa Barbara County Code authorizing Microenterprise Home Kitchen Operations to be permitted as food facilities in the county.
- Option 2: Direct EHS staff to take no action at this time.

### **Fiscal and Facilities Impacts:**

Budgeted: N/A

### **Fiscal Analysis:**

There is no fiscal impact associated with the acceptance of this report. Financial impacts could occur depending on the options and will be further analyzed as options are developed and brought forward based on the direction from your Board. AB 626, as amended by AB 377, allows regulatory agencies to implement and collect fees that recover the administrative costs of issuing permits.

### **Staffing Impacts:**

Implementation of Microenterprise Home Kitchens within Santa Barbara County would likely increase the workload for existing staff. As EHS is a fee-for-service supported agency, a significantly increased workload may generate sufficient fees to allow for the hiring of additional staff, if necessary.

**Special Instructions:**

Please email the Minute Order to [phdcu@sbcphd.org](mailto:phdcu@sbcphd.org).

**Attachments:**

- A. EHS staff report on Microenterprise Home Kitchens
- B. Powerpoint Presentation

**Authored by:**

Larry Fay, Environmental Health Director