

Microenterprise Home Kitchens in Santa Barbara County

Legislative Background

The preparation of food for commercial sale in home kitchens traditionally has been prohibited or severely restricted in California, with only low-risk foods such as baked goods permitted under the 2013 Cottage Food Act. In September 2018, Governor Jerry Brown signed AB 626, Microenterprise Home Kitchens, into law. AB377, passed in 2019, amends certain sections of AB626, but core intent of the law remains unchanged.

AB 626 became 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, from a home kitchen. Patrons of the microenterprise home kitchen can pick the food up for takeout or dine on the property, and the microenterprise home kitchen can deliver food as well as distribute it through limited charitable feeding operations. The bill sets some boundaries on the extent and nature of the foods that can be made, as well as on quantities, and does not allow the operator to wholesale their products. Microenterprise home kitchen operators may prepare and serve no more than 30 meals or meal equivalents in a day and no more than 60 in a week; these are upper limits and the regulatory agency has the authority to reduce them based on the capacity of the microenterprise home kitchen facility. Microenterprise home kitchens may also not exceed \$50,000/year in verifiable gross receipts, must cook and serve food on the same day (no cooling or overnight holding of foods) and must pass a food handler's training course, among other requirements.

AB 626 provides that the local governing body has the discretion to authorize microenterprise home kitchens by ordinance or resolution. In other words local jurisdictions must opt-in to the microenterprise home kitchen law.

Scope and Nature of Unpermitted Food Sales in Santa Barbara County

Sales of food made in a home kitchen are currently occurring in Santa Barbara County, both with and without the benefit of a health permits from 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 as Class B Cottage Food Operations. In addition, there are bed-and-breakfasts under permit, as well as agricultural homestays. The latter two are in a unique category, as they are private residences that also operate with health permits (as well as other licenses) as transient occupancy businesses.

The extent and nature of home-based commercial food businesses operating without health permits in Santa Barbara County is difficult to quantify or track. Much of this business is conducted quietly. Examples of home-based unpermitted food businesses include making meals for sale to neighbors or friends as well as the general public, in-home cooking classes, and local food-based tourism, where paying guests enjoy a home-

made meal at the home of a local (for an example of the latter, go to eatwith.com and search “Los Angeles.”).

While much of this activity is conducted via word-of-mouth, the emergence of the sharing and “gig” economies, coupled with the rise of crowd-sourcing and social media platforms, has resulted in an increase of home-based food businesses and culinary experiences advertised online. Websites like Josephine.com (now closed) and eatwith.com are becoming more common. These types of advertising platforms increase the advertising range of home-based food businesses. Whereas prior commercial transactions involving homemade food tended to be between people who knew each other or were in the same neighborhood, the rise of social media and online marketing platforms means that it is easier for relative strangers to be involved in home-made food-based commerce with each other.

To better understand the extent and nature of commercial food businesses operating from private homes without the benefit of health permits, EHS conducted an informal review of a local online marketplace (Facebook Marketplace) in October 2018 and January 2019. In both cases, multiple listings for home-cooked foods were posted. Examples of foods advertised included homemade flour tortillas, tamales, posole, chicken and mole, menudo, empanadas, flan, gelatin desserts, cakes, elotes, candy, sandwiches (tortas), and weekend barbecues of specialty foods such as tri-tip or birria, etc.

In the absence of a path to compliance for home-based food operators, regulatory options for dealing with this issue are limited. Home-based food businesses are difficult to locate and are usually only brought to the attention of the enforcement agency through complaints of neighbors or competitors, which happens rarely. Tracking and enforcing closures of home-based activities is difficult and time-consuming as they are conducted in private homes not subject to entry by Environmental Health and may not have regular business hours. Operators may not answer phones, sign for certified mail, or answer the door, resulting in limited and challenging contact for enforcement agents. Local agencies often do not have enough staff or appropriately trained staff to carry out the lengthy surveillance and documentation processes that equitably enforcing existing law requires.

Differing Viewpoints about Microenterprise Home Kitchens

Proponents of AB 626 have argued that microenterprise home kitchens are able to provide substantial cultural, economic, and public health benefits to California communities, including:

- Increased economic opportunity, especially for women, recent immigrants, the disabled, and those who, because of caregiving or other family-oriented duties, find it difficult to work outside of the home or who lack access to the capital required to begin a traditional commercial food-based business;
- Increased food options in underserved communities, including food deserts;

- Additional pathways to compliance that will help decrease the number of food operators operating without a permit;
- Increased opportunities to improve food handling and public health education, including food safety education, among home-based food businesses.
- More efficient use of existing distribution networks and infrastructure.

Opponents of AB 626 include many public health and health officials, who cite the following concerns about microenterprise home kitchens:

- Concerns about public health and safety, in particular the production and handling of commercial volumes of potentially hazardous foods in home kitchens, without the benefit of plan check, plan review, or the commercial equipment required for commercial food establishments;
- Impacts on neighborhoods, including increased pedestrian and vehicular traffic, parking, and noise, as AB 626 effectively eliminates many zoning and building requirements for microenterprise home kitchens;
- Potential challenges in inspecting microenterprise home kitchens, with a concern about staff operating in private homes where pets, undeclared firearms, or other potential hazards may be present.

Considerations

For jurisdictions deciding whether or not to opt in or out of the bill, the following factors should be considered:

- The type of food production permitted under AB 626 is already occurring in Santa Barbara County, without benefit of permit. As there is currently no way to issue permits to these types of operations, home cooks who choose to sell their food without a health permit do so in violation of the California Retail Food Code and without technical guidance made available through Environmental Health Services or other community agencies.
- Due to a lack of incubator kitchens, affordable commercial kitchen rental space is challenging to find in Santa Barbara County. Using existing infrastructure in a more limited way (i.e., home-based kitchens) may provide reduced barriers to entrepreneurship, especially for undercapitalized and underrepresented groups (women, people of color, recent immigrants, family caretakers and the elderly).
- Environmental Health Services staff already conduct inspections in private homes. Certain Cottage Food Operations, agricultural homestays and Bed & Breakfast operations are all inspected by EHS staff. Concerns about staff safety can be addressed through proper training of inspection staff, operational adjustments for inspectors (for example, inspecting in pairs and/or using a text or email-based check-in / check-out before and after each inspection), and education of prospective operators about their responsibilities and rights as a microenterprise home kitchen operator.

- As Environmental Health Services is a fee-for-service division, a substantial increase in workload (in terms of number of permitted facilities), including microenterprise home kitchens, can be offset by hiring additional staff, allowing the agency to continue to provide a diligent level of inspection based on the relative risk of food facility operations in the County.
- AB 626 clearly addressed multiple zoning issues as well as building and safety code in order to reduce or eliminate zoning and building requirements for microenterprise home kitchens. While this may be a benefit to prospective microenterprise home kitchen operators, municipalities and fire departments may have concerns about these limited commercial activities in residential areas. Local nuisance and parking ordinances did not appear to be addressed by AB 626, giving local jurisdictions control over some of the potential challenges associated with commercial activity in residential areas.
- As part of acquiring a microenterprise home kitchen permit, the prospective operator would need to both pass an approved food safety course as well as discuss their planned activity with Environmental Health Services staff. This, plus routine inspections, provides EHS staff with the opportunity to engage in significant food safety education. This educational process may have community-wide impact, since home cooks who have a food business are often involved in bringing food to community events such as potlucks, church and school socials, and large family gatherings, and can educate the people who work with them on safe food handling practices.
- A robust and well-educated microenterprise home kitchen sector may also have community-wide disaster preparedness and emergency benefits, as the community's capacity to feed itself in times of disaster, emergency or disruption increases. Microenterprise home kitchens that have permits with EHS will be easier to communicate with in times of emergency, and with thoughtful coordination and support from emergency management personnel may have the capacity to act as small, localized food distribution centers. They are also able to provide food for ongoing efforts to feed the hungry in our community, and could be sources of permitted, safe food for community warming centers and similar feeding operations.
- Increased local food enterprise activity may also result in improved nutrition for community members, a reduction in poverty due to increased opportunities to earn income, increased markets for local agriculture, and an energetic local food economy.
- AB 626 passed through its committee hearings and both chambers of the state legislature with only one legislator voting against the bill, indicative of strong statewide support for the concept.

References:

Text of and legislative history of AB 626 can be found here:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB626

Cook Alliance paper in support of AB 626: <https://www.cookalliance.org/about-the-bill/>

Letter in Opposition to AB 626, the Health Officer's Association of California (HOAC): <http://www.calhealthofficers.org/documents/AB626OpposetoAuthor.pdf>