



April 20, 2021

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RE: Microenterprise Home Kitchen Operations (MEHKOs)

Dear County Board of Supervisors:

The Solvang Chamber of Commerce is writing to express our opposition to the proposed microenterprise home kitchen operations (MEHKOs) ordinance being considered by the Santa Barbara County Board of Supervisors. Our reasons for opposing this ordinance are set forth below.

Impact on existing restaurants

Restaurants have been severely impacted by Covid 19 because of shutdowns and restrictions that reduced or eliminated revenue. At the same time, restaurant owners have experienced increased costs in order to create outdoor dining capacity and to initiate or expand take-out and delivery sales.

According to the National Restaurant Association, over 110,000 restaurants, about one in six across the US, closed permanently between March, 2020 and January, 2021, resulting in the loss of 2.4 million jobs. Small restaurants lost over \$135 billion in sales last year while the broader industry lost \$240 billion.

The federal government has recognized this devastating impact on restaurants by allowing them to receive more money (3.5 times monthly payroll versus 2.5 times monthly payroll) in the second round of PPP funding. The federal government has also created a separate program specifically to provide relief to the hard-hit restaurant industry entitled the Restaurant Revitalization Fund Grant Program.

In spite of these facts, the Santa Barbara County Board of Supervisors is considering a proposed ordinance that will introduce new competition with an unfair advantage at a time when our existing restaurants are most vulnerable. This new competition from microenterprise home kitchen operations (MEHKOs) would not be subject to the same rules, regulations and costs as existing restaurants.

Many of our local restaurant owners have expressed grave concerns about the additional negative impact that the MEHKO's ordinance will have upon their businesses. Permitting such unfair competition is inappropriate even in the best of times and is extremely inequitable and ill-advised in this time of severe economic hardship for our local restaurants.

Protect our struggling local restaurants by refusing to pass the proposed MEHKO ordinance.

Health & Safety Code concerns

In this time of Covid, as we all are aware, additional safety measures have been mandated for the public in general and for restaurants in particular. These additional safety requirements have inconvenienced the public and placed yet another economic burden upon our restaurant owners. However, we all recognize the necessity of limiting the spread of the Covid virus.

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Health & Safety Code Section 114367.1 provides that MEHKOs are subject to all of the applicable requirements of the California Retail Food Code but then goes on to list 25 provisions from which a MEHKO are exempt. 21 of those 25 provisions that MEHKOs do not need to follow have to do with ensuring the health and safety of the customers and employees of the establishment. Enclosed with this letter a copy of Health & Safety Code Section 114367.1 marked as Exhibit A and incorporated herein by reference

Why anyone on the Santa Barbara County Board of Supervisors would think it is appropriate to allow any type of food service business to operate with numerous exemptions from the standard Health & Safety Code requirements, much less the additional Covid requirements, during the time of a pandemic is difficult to comprehend. For this reason alone, it is totally inappropriate to entertain the proposed MEHKO's ordinance that via its enabling legislation exempts MEHKOs from all of the aforementioned Health & Safety Code requirements.

Protect the health and safety of our county residents by refusing to pass the proposed MEHKO ordinance.

General regulatory concerns

Health & Safety Code Section 113825 sets forth numerous restrictions on the operations of MEHKOs. Among those conditions are:

- Making and serving food on the same day
- Selling directly to customers (no wholesaling or catering)
- A maximum of 60 meals per week (with a maximum of 30 meals per day)
- Less the \$50,000 per year gross receipts
- Alcoholic beverages may not be served, sold or given away without a permit from the California Department of Alcoholic Beverage Control
- No canning or bottling of foods (including salsas, sauces, dressings or juices)
- Limits on number of employees
- Limits on household activities that can occur in MEHKO during its operating hours.

A copy of Health & Safety Code Section 113825 is enclosed with this letter as Exhibit B and incorporated herein by reference

Who is going to enforce these restrictions? Inspection of MEHKOs once a year by Environmental Health Services (EHS) is inadequate oversight given the aforementioned restrictions and the nature of these operations.

It is highly unlikely that any MEHKO business would throw out food if it were not sold on the day it was prepared. It is also highly unlikely that any MEHKOs business would turn down business that was in excess of 30 meals per day or 60 meals per week. Similarly, it will be impossible to verify a MEHKOs business yearly gross receipts since the restaurant business is a famously a cash business. The largely cash nature of the business will certainly be even more true with MEHKOs since it is likely many of them will not be processing credit card transactions.

There will be no one minding the store and no meaningful restrictions of any kind on these MEHKO operations. This is yet another reason why this proposed ordinance must not be passed.

Infrastructure concerns

The proposed MEHKOs will be exempt from building, zoning and fire code requirements that apply to all licensed restaurants and which were put in place to protect the public and to ensure the integrity of the current infrastructure. For MEHKOs, among numerous other exemptions, there are no fire suppression requirements or requirements to mitigate increased grease production, which will result in a greater risk of fires and sewer overflows. The MEHKO's ordinance wholesale exemption from standard regulatory requirements will result in further deterioration of our already weakened zoning and permitting laws and must not be allowed to take place.

Impact on neighborhoods

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Our existing residential neighborhoods were not designed to accommodate business activities. The home occupation business permitting regulations currently in place were designed specifically to eliminate any negative impact such businesses might have on their neighborhoods. This is decidedly not the case with MEHKOs.

MEHKOs may serve up to 30 meals per day on their premises. In reality, there is no meaningful oversight or limitation regarding how many meals per day they can actually serve. Allowing such business activity will negatively impact the quality of life in our residential neighborhoods. These negative impacts include, but are not limited to, increased traffic, parking and noise. This will inevitably lead to conflicts between neighbors. The proposed activities allowed by the MEHKO's ordinance are also in direct conflict with our existing noise ordinances and nuisance laws.

Protect our neighborhoods by refusing to pass the proposed MEHKO ordinance.

Prevalence of MEHKOs in California

In 2018 Governor Brown signed AB 626, the authorizing legislation for MEHKOs, and it was amended by AB 377 in 2019. The legislation took effect on January 1, 2019 and allows home cooks to apply for a health permit to make and sell meals out of their home kitchen, if their local jurisdiction has adopted a MEHKO ordinance that allows such operations.

To date only four counties in California have adopted MEHKO ordinances. Those four benighted counties are Imperial, Lake, Riverside and Solano. I would be very surprised if any of these counties have adopted their MEHKO ordinance since the Covid 19 pandemic began. This is simply not the time to even consider such an ordinance for all of the reasons outlined above.

Conclusion

MEHKOs are an extremely ill-conceived idea that are being proposed in the County of Santa Barbara at the worst possible time. For all the aforementioned reasons, the Solvang Chamber of Commerce is and will remain adamantly opposed to the adoption of any MEHKO ordinance in the County of Santa Barbara.

Sincerely,

Tracy Beard, CEO
Solvang Chamber of Commerce

Jack Williams, President
Solvang Chamber of Commerce

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EXHIBIT A

Health & Safety Code Section 114367.1

- (a) A microenterprise home kitchen operation, as defined in Section 113825, shall be considered a restricted food service facility for purposes of, and subject to all applicable requirements of, Chapter 1 (commencing with Section 113700) to Chapter 9 (commencing with Section 114265), inclusive, and Chapter 13 (commencing with Section 114380), except as otherwise provided in this chapter.
- (b) A microenterprise home kitchen operation shall be exempt from all of the following provisions:
- (1) Handwashing facilities requirements, as required in Section 113953, provided that a handwashing sink is supplied with warm water and located in the toilet room and supplied, as specified in Section 113953.2.
 - (2) Any provision in this part relating to sinks, warewashing machines, and manual or machine sanitation, including, but not limited to, Sections 114099, 114099.2, 114099.4, 114101.1, 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279, provided that all of the following conditions are met:
 - (A) Utensils and equipment are able to be properly cleaned and sanitized.
 - (B) The sink in a microenterprise home kitchen operation has hot and cold water and is fully operable.
 - (C) If a dishwasher is used, it shall be operated in accordance with the manufacturer's specifications.
 - (3) Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing areas, as specified in Section 113945.1, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.
 - (4) No smoking sign posting requirements, as specified in Section 113978.
 - (5) Limitations on employee consumption of food, drink, or tobacco outside of designated areas, as specified in Sections 113977 and 114256, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.
 - (6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section 113984.1, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.
 - (7) Display guard, cover, and container requirements, as specified in Section 114060, provided that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer.
 - (8) Requirements to provide clean drinking cups and tableware for second portions and beverage refills, as specified in Section 114075.
 - (9) Requirements pertaining to the characteristics and certification of utensils and equipment, as specified in Sections 114130 and 114139, provided that utensils and equipment are designed to retain their characteristic qualities under normal use conditions.
 - (10) Requirements pertaining to the characteristics, construction, and multiuse of food-contact and nonfood-contact surfaces, as specified in Sections 114130.3 and 114130.4, provided that food contact surfaces are smooth, easily cleanable, and in good repair.
 - (11) Requirements pertaining to the characteristics, construction, and disassembly of clean in place (CIP) equipment, as specified in Section 114130.5.

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- (12) Limitations on the use of wood as a food contact surface and in connection with other equipment, as specified in Section 114132, provided that hard maple or equivalent wood is approved for use in direct contact with food during preparation.
- (13) Any provision in this part relating to ventilation, including, but not limited to, Article 2 (commencing with Section 114149) of Chapter 6, provided that gases, odors, steam, heat, grease, vapors, and smoke are able to escape from the kitchen.
- (14) Requirements that cold or hot holding equipment used for potentially hazardous food be equipped with integral or permanently affixed temperature measuring device or product mimicking sensors, as specified in subdivision (c) of Section 114157.
- (15) Requirements pertaining to the installation of fixed, floor-mounted, and table-mounted equipment, as specified in Section 114169.
- (16) Dedicated laundry facility requirements, as specified in Section 114185.5, provided that linens used in connection with the microenterprise home kitchen operation shall be laundered separately from the household and other laundry.
- (17) Requirements pertaining to water, plumbing, drainage, and waste, as specified in Sections 114193, 114193.1, and 114245.7.
- (18) Any requirement that a microenterprise home kitchen operation have more than one toilet facility or that access to the toilet facility not require passage through the food preparation, food storage, or utensil washing areas, including, but not limited to, the requirements specified in Sections 114250 and 114276.
- (19) Light intensity, light source, and lightbulb requirements, as specified in Sections 114252 and 114252.1, provided that food preparation areas are well lighted by natural or artificial light whenever food is being prepared.
- (20) Requirements to provide and use lockers, storage facilities, and designated dressing areas, and that food facility premises be free of litter and items that are unnecessary to the operation, as specified in Sections 114256.1 and 114257.1, provided that personal effects and clothing not ordinarily found in a home kitchen are placed or stored away from food preparation areas and dressing takes place outside of the kitchen.
- (21) Limitations on the presence and handling of animals, such as domestic, service, or patrol animals, as specified in Sections 114259.4 and 114259.5, provided that all animals are kept outside of the kitchen during food service and preparation.
- (22) Requirements pertaining to floor, wall, and ceiling surfaces, as specified in Sections 114268, 114269, and 114271, provided that the floor, wall, and ceiling surfaces of the kitchen, storage, and toilet areas are smooth, of durable construction, and easily cleanable with no limitations on the use of wood, tile, and other nonfiber floor surfaces ordinarily used in residential settings.
- (23) Any local evaluation or grading system for food facilities, as authorized by Section 113709.
- (24) All prohibitions and limitations on the use of a kitchen in a private home as a food facility, including, but not limited to, prohibitions and limitations specified in Section 114285, provided that food is not prepared in designated sleeping quarters. Open kitchens adjacent to living and sleeping areas, kitchens in efficiency, studio, and loft-style residences, and kitchens without doors at all points of ingress and egress may be used in microenterprise home kitchen operations.
- (25) Planning and permitting provisions of Sections 114380 and 114381.2.
- (c) A microenterprise home kitchen operation may operate an open-air barbecue or outdoor wood-burning oven, pursuant to the requirements of Section 114143.
- (d) The operator of a microenterprise home kitchen operation shall successfully pass an approved and accredited food safety certification examination, as specified in Section 113947.1.
- (e) Any individual, other than the operator, who is involved in the preparation, storage, or service of food in a microenterprise home kitchen operation shall be subject to the food handler card requirements specified in Section 113948.
- (f) A microenterprise home kitchen operation shall only offer for sale or sell food that was prepared during a food demonstration or preparation event to a consumer who was present at that food demonstration or preparation event.

(Amended by Stats. 2019, Ch. 536, Sec. 4. (AB 377) Effective October 7, 2019.)

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EXHIBIT B

Health & Safety Code Section 113825.

(a) "Microenterprise home kitchen operation" means a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets all of the following requirements:

- (1) The operation has no more than one full-time equivalent food employee, not including a family member or household member.
 - (2) Food is prepared, cooked, and served on the same day.
 - (3) Food is consumed onsite at the microenterprise home kitchen operation or offsite if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity.
 - (4) Food preparation does not involve processes that require a HACCP plan, as specified in Section 114419, or the production, service, or sale of raw milk or raw milk products, as defined in Section 11380 of Title 17 of the California Code of Regulations.
 - (5) The service and sale of raw oysters is prohibited.
 - (6) The production, manufacturing, processing, freezing, or packaging of milk or milk products, including, but not limited to, cheese, ice cream, yogurt, sour cream, and butter, is prohibited.
 - (7) Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals, or the approximate equivalent of meal components when sold separately, per week. The local enforcement agency may decrease the limit of the number of individual meals prepared based on food preparation capacity of the operation, but shall not, in any case, increase the limit of the number of individual meals prepared.
 - (8) The operation has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.
 - (9) The operation only sells food directly to consumers and not to any wholesaler or retailer. For purposes of this paragraph, the sale of food prepared in a microenterprise home kitchen operation through the internet website or mobile application of an Internet food service intermediary, as defined in Section 114367.6, is a direct sale to consumers. An operation that sells food through the internet website or mobile application of an Internet food service intermediary shall consent to the disclosures specified in paragraphs (6) and (7) of subdivision (a) of Section 114367.6.
- (b) "Microenterprise home kitchen operation" does not include either of the following:
- (1) A catering operation.
 - (2) A cottage food operation, as defined in Section 113758.
- (c) For purposes of this section, "resident of a private home" means an individual who resides in the private home when not elsewhere for labor or other special or temporary purpose.
- (Amended by Stats. 2019, Ch. 536, Sec. 1. (AB 377) Effective October 7, 2019.)*