



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: Set Hearing 2/9/21
1st Reading: 3/2/21
2nd Reading: 3/9/21
Placement: Departmental 3/2/21
Administrative 3/9/21
Estimated Time: 15 minutes on 3/2/21
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Van Do-Reynoso, MPH, PhD
Director(s)
Contact Info: Lars Seifert, Director
Environmental Health Services 805-681-4934

**SUBJECT: Ordinance to Amend Chapter 16 of the Santa Barbara County Code and
Resolution to Amend Environmental Health Services Fee Schedule to include
Microenterprise Home Kitchen Operations**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors consider the following recommendations:

On February 9, 2021, set a public hearing on the Departmental Agenda of March 2, 2021 to consider recommendations regarding an ordinance amending Santa Barbara County Code Chapter 16 to authorize Microenterprise Home Kitchen Operations to be permitted countywide as a Food Facility, and a resolution amending Food Facility Fees to include application plan review and annual permitting fees for Microenterprise Home Kitchen Operations.

On March 2, 2021:

- a) Receive and file a presentation regarding an Ordinance authorizing Microenterprise Home Kitchen Operations and an Environmental Health Services Fee Resolution; and
- b) Approve the introduction (First Reading) of an Ordinance to amend Chapter 16, Article III, entitled "County Retail Food Code" in the Santa Barbara County Code; and
- c) Read the title of the Ordinance and waive full reading of the Ordinance; and

- d) Adopt a Resolution amending fees for Environmental Health Services relating to Food Facilities to incorporate new fees for Microenterprise Home Kitchen Operations; and
- e) Determine that the Resolution amending fees for Environmental Health Services relating to Food Facilities is exempt from California Environmental Quality Act review pursuant to CEQA Guideline Sections 15273 and Public Resources Code 21080, subdivision (b)(8)(A) because it is for the purpose of meeting public agency operating expenses and does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment; and that the recommended actions are otherwise not a project subject to CEQA pursuant to Guidelines Sections 15378(b)(4) and 15378(b)(5), because they are administrative activities of a local government and government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, and direct staff to include these findings in a Notice of Exemption to be filed after the Board's actions at the hearing continued in accordance with Recommended Action f) below; and
- f) Continue the hearing to the Administrative Agenda for March 9, 2021 to consider recommendations, as follows:

On March 9, 2021

- i) Consider and approve the adoption (Second Reading) of an Ordinance to amend Chapter 16, Article III, entitled "County Retail Food Code" in the Santa Barbara County Code;
- ii) Find that the Ordinance is exempt from California Environmental Quality Act (CEQA) review per CEQA Guideline Section 151061(b)(3), since it can be seen with certainty that there is no possibility that the activity may have a significant impact on the environment, and direct staff to file a Notice of Exemption.

Summary Text:

This item is on the agenda to consider adoption of an Ordinance codifying a new category of retail food facility, Microenterprise Home Kitchen Operations, in the County Retail Food Code; and to amend the Food Facility Fee Schedule for services related to Microenterprise Home Kitchen Operations provided by the Public Health Department's (PHD) Environmental Health Services (EHS).

If approved, this Board action will authorize EHS to permit Microenterprise Home Kitchen Operations within all areas of its jurisdiction, including within all cities in Santa Barbara County pursuant to California Health and Safety Code 114367; and will amend the EHS Food Facilities Fee Schedule to establish the necessary fees for the regulatory oversight of this new retail food facility category.

A Microenterprise Home Kitchen Operation ("MEHKO") would be permitted to store, handle, and prepare a limited number of meals (no more than 30 individual meals per day, and no more than 60 per week) for direct sale to consumers, expanding home-based business and employment opportunities within the county provided specific food safety provisions are met.

Background:

In September 2018, then Governor Brown signed Assembly Bill 626 (AB626), amending the California Retail Food Code to establish a new type of retail food facility called Microenterprise Home Kitchen Operations (MEHKO). In October 2019, Governor Brown signed Assembly Bill 377 (AB377) which further amended AB626 and revised the applicable statutes to provide regulatory clarity regarding MEHKO participation within city jurisdictions. AB377 states 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.” AB377 did not make substantive changes to the food safety aspects of AB626.

On January 28, 2020, the Public Health Department came before the Board requesting policy direction regarding MEHKOs in Santa Barbara County, and staff were directed to prepare amendments to the Santa Barbara County Code authorizing MEHKOs and return to the Board for further consideration.

Ordinance to Amend Chapter 16, Article III

Attachment A is a proposed ordinance amending Chapter 16, Article III to also include Section 16-24 “Microenterprise Home Kitchen Operations,” which authorizes the permitting of MEHKO as discussed above. Section 16-24 adopts by reference the California Retail Food Code’s operational requirements for MEHKOs including, but not limited to: food preparation; packaging and handling requirements; water; sewer and sanitary requirements; transportation and temperature holding requirements; operator hygiene requirements; facility equipment requirements; limitations on servings per day/week; limitations on gross annual sales; and third-party intermediaries for MEHKO sales and/or promotion. Minor cleanup provisions to the County Regulatory Code have also been included for greater clarity and to ensure obsolete policies and Code provisions are deleted, references to State laws are accurately reflected, and that the remaining requirements reflect current Board standards and practices.

Outreach

Stakeholder outreach presentations for interested parties, potential MEHKO operators, and city and county governmental agencies were conducted on February 19 and May 14 of 2020, and on January 6, 2021. Information was provided on MEHKO limitations, requirements, and exemptions in the California Retail Food Code, proposed regulatory fees, and the required steps for authorization of MEHKOs as a permitted food facility in Santa Barbara County. Spanish translation services were also provided at the January 6, 2021 stakeholder meeting.

Resolution to Amend EHS Fee Schedule

Attachment C is a proposed Resolution to amend the Environmental Health Services Food Facility Fee Schedule to include new fees for MEHKOs in Santa Barbara County. As regulatory oversight of MEHKOs will be a new, there is no direct experience or time study data with which to establish fees; however, the workload for Microenterprise Home Kitchen Operations is expected to be similar to that of full-service food operations in terms of risk and complexity of operation, based on facility square footage.

The proposed annual health permit fee for Microenterprise Home Kitchen Food Operations is \$391 based on square footage of less than 500’ typical of a home kitchen, including any onsite consumer eating area, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, open-air barbecue, and refuse storage area. New MEHKO facilities will also be required to complete the Plan

Review process which requires a \$255 application fee plus hourly plan review services at the standard EHS Community Health rate of \$161 per hour to review written standard operating procedures and to conduct an initial inspection of the home kitchen prior to issuance of a health permit to operate. An annual routine inspection will be conducted by EHS at MEHKO facilities to ensure ongoing food safety requirements are met.

Fiscal and Facilities Impacts: Budgeted: Yes

Fiscal Analysis:

Adopting an amended Environmental Health Services retail food facility fee resolution will add a new MEHKO fee category. The MEHKO fee has been reviewed by the Auditor-Controller and is set to match the existing full-service food facility with less than 500 square feet because of the similarities in terms of scope of operation and risk. The adequacy of this fee to fully recover regulatory costs will be reviewed once there is sufficient history and experience with these operations. At this time, it is unknown how many MEHKOs will seek a permit, and therefore no estimate for revenue increase can be made. There are no one-time costs associated with this ordinance revision to authorize MEHKOs.

Staffing Impacts:

There will be no increase or decrease in staff as a result of adopting the proposed resolution and ordinance.

Special Instructions:

- A. That the Clerk of the Board publish notice of this hearing, per the attached Public Notice, in a newspaper of general circulation in Santa Barbara County 10 days prior to the hearing and again 5 days prior to the hearing.
- B. That the Clerk of the Board return one original adopted resolution, one original adopted ordinance and one Minute Order to Public Health by emailing Kelly.Lazarus@sbcpd.org for pick-up.

Attachments:

- A. Ordinance amending Chapter 16, Article III of the Santa Barbara County Code (Final)
- B. Ordinance amending Chapter 16, Article III of the Santa Barbara County Code (Mark-up)
- C. Resolution amending fees for Environmental Health Services (Final)
- D. Resolution amending fees for Environmental Health Services (Mark-up)
- E. Notice of Public Hearing
- F. Notice of Exemption
- G. Microenterprise Home Kitchen Operations Presentation

Authored by:

Lars Seifert, Environmental Health Services Director