



# COUNTY OF SAN DIEGO

## LAND USE AGENDA ITEM

### BOARD OF SUPERVISORS

NORA VARGAS  
First District

JOEL ANDERSON  
Second District

TERRA LAWSON-REMER  
Third District

VACANT  
Fourth District

JIM DESMOND  
Fifth District

**DATE:** November 8, 2023 and December 6, 2023

**01**

**TO:** Board of Supervisors

### SUBJECT

**LOCAL MICROENTERPRISE HOME KITCHEN OPERATION PROGRAM UPDATE AND OPTIONS FOR CONTINUED AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD OPERATION PROGRAM OPTIONS, AND RELATED CEQA EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 – Second Reading) (DISTRICTS: ALL)**

### OVERVIEW

The California Retail Food Code (State law) establishes uniform health and sanitation standards at the State level for the regulation of retail food operations (food facilities) to prevent foodborne illness. State law defines a food facility as an operation that stores, prepares, serves, sells, or otherwise provides food for human consumption at the retail level, and includes restaurants, mobile food trucks, grocery stores, delis, food carts, schools, and Cottage Food Operations. The Department of Environmental Health and Quality (DEHQ) is the local enforcement agency of State law for all 18 incorporated cities (local jurisdictions), as well as the unincorporated communities in the region. DEHQ implements a regulatory Food Program conducting inspections at more than 15,000 food facilities annually, focusing on compliance with State law and reviewing food handling practices to protect public health and prevent the incidence of foodborne illness.

Prior to 2012, California required that food sold to consumers must be produced at inspected commercial kitchens. In 2013, the California Homemade Food Act allowed certain low-risk food products not requiring refrigeration, such as bread, pie, fruit jam, and dried food, to be made in private home kitchens and sold as a fully packaged and labeled product to consumers. This operation, commonly known as Cottage Food Operation (CFO), provides an opportunity for home cooks to start a small business. In accordance with State law, DEHQ implemented a CFO program in 2013.

In 2019, the enactment of Assembly Bill 626 (AB 626), *California Retail Food Code: Microenterprise Home Kitchen Operation* established a Microenterprise Home Kitchen Operation (MEHKO) as a new type of home-based food service facility in State law. When authorized, MEHKO home cooks can prepare and sell a wide range of foods in a home kitchen (like a mini restaurant), including foods, such as meat, fish, poultry, and dairy products, that require time and temperature control in order to prevent bacteria growth that can lead to foodborne illness. State law limits MEHKO operators on the number of meals that can be prepared and sold, the type of food preparation that is allowed, as well as the maximum number of employees and gross annual

**SUBJECT: LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)**

sales. MEHKO operators cannot operate or be permitted until authorization is granted by the governing body of the local enforcement agency. The County of San Diego Board of Supervisors (Board), as the governing body of DEHQ, has the authority to authorize a local MEHKO program for the entire San Diego region, which includes both the unincorporated communities and all 18 incorporated cities.

On January 26, 2022 (3), the Board adopted an ordinance that temporarily authorized a local MEHKO Program for the region for a period of two years. This ordinance became effective February 25, 2022 and expires February 25, 2024. The Board also directed staff to implement a public education program for aspiring MEHKO operators on food safety, following the adoption of the MEHKO ordinance. Additionally, the Board directed staff to assess the temporary program by:

- Working with all jurisdictions within the region, on a voluntary basis, to gather data related to MEHKO implementation during the temporary authorization, including but not limited to potential community impacts such as traffic, noise, wastewater, and code or nuisance complaints as well as food safety related data such as number of permitted MEHKO operators, complaints or reports of foodborne illness, and retail food safety compliance.
- Providing informational/educational trainings for city staff and operational leads in all jurisdictions in the region to share best practices to reduce, prevent and/or address nuisance activity, and possible approaches related to local land use nuisance regulations.
- Analyzing potential community impacts and collect data on nuisance complaints related to impacts from MEHKO operators in the unincorporated communities.

Planning & Development Services (PDS), oversees land use compliance for MEHKO operators in the unincorporated area. While State law preempts local zoning regulations do not apply to MEHKO operators, statute does allow for enforcement of local noise and nuisance regulations as well as a prohibition on signs at a MEHKO. DEHQ and PDS have collaborated since the authorization of the temporary, local MEHKO Program. As of October 16, 2023, there are 61 permitted MEHKO operators in the region. To date, the MEHKO Program has been successful with limited concerns from community members.

Since the authorization of a temporary, local MEHKO Program in 2022, Senate Bill 972 (SB 972), *California Retail Food Code*, was enacted on January 1, 2023. SB 972 modified State law to allow home-based businesses, including CFO and MEHKO, additional opportunities to expand their businesses through the use of compact mobile food operations (carts). Per State law, these opportunities to expand CFO or MEHKO businesses, must be approved by the Board.

**SUBJECT: LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)**

Additionally, on July 21, 2023, Assembly Bill 1325 (AB 1325), *Microenterprise Home Kitchen Operation*, was enacted as urgency legislation, modifying State law again and increased the limit on the number of individual meals that a MEHKO can prepare and sell from 60 to 90 individual meals per week, and raising the maximum amount of verifiable gross annual sales that a MEHKO can have, from no more than \$50,000 to no more than \$100,000, without the Board having to take action.

Authorization for the temporary local MEHKO Program will sunset on February 25, 2024, at which point MEHKO operators will no longer be able to operate in the region if the Board takes action to decline the continuation of a local MEHKO Program. Today, staff are providing a report on the status of the temporary local MEHKO Program and related Board direction and requesting the Board provide direction regarding authorization of a local MEHKO Program. Based on input received during stakeholder outreach and data collected throughout the implementation of the temporary local MEHKO Program, staff recommends the Board authorize the continuation of a local MEHKO Program for the entire San Diego region. Additionally, staff are requesting the Board consider providing direction regarding changes to the CFO Program based on recent State law changes.

On November 8, 2023, if the Board takes action to authorize the continuation of a local MEHKO Program (Option 2a), it is requested that they also provide direction on the additional opportunities for MEHKO (Options 3 through 6). There is flexibility regarding how the Board may approach Options 5 and 6 and can provide specific direction regarding number of meals and gross annual sales limits for MEHKO operators with carts. The Board is also requested to take action on the CFO Program (Option 7). Any and all Board actions on Options 2a, 3, 4, and 7 should be included in the ordinance amending the County of San Diego Code of Regulatory Ordinances (County Code). If the Board takes action to affirmatively decline to authorize a local MEHKO Program (Option 2b), then MEHKO operators will no longer be able to operate in the region beginning February 25, 2024, and it is requested that an ordinance be adopted to remove references to a temporary MEHKO Program included in sections of Title 6 of County Code.

Adoption of any of the proposed ordinances requires two steps. On November 8, 2023, the Board is requested to approve the first reading of an ordinance. If approved, the selected ordinances will be brought back for adoption on December 6, 2023.

**RECOMMENDATION(S)  
CHIEF ADMINISTRATIVE OFFICER**

On November 8, 2023:

1. Find that the proposed activities are exempt from California Environmental Quality Act (CEQA) as specified under Section 15061(b)(3) of the State CEQA Guidelines, as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

2. Receive options for authorization of a local Microenterprise Home Kitchen Operation (MEHKO) Program and provide direction on either Option 2a or 2b.
  - a. Option 2a. Authorize a Microenterprise Home Kitchen Operation Program and approve the introduction of the Ordinance, (first reading): ORDINANCE AUTHORIZING A MICROENTERPRISE HOME KITCHEN OPERATION (MEHKO) PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO. (*Staff Recommendation*)

**OR**

- b. Option 2b. Decline to Authorize a Microenterprise Home Kitchen Operation Program and approve the introduction of the Ordinance, (first reading): ORDINANCE DECLINING TO AUTHORIZE A MICROENTERPRISE HOME KITCHEN OPERATION (MEHKO) PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO AND REMOVING PRIOR REFERENCES TO A TEMPORARY MEHKO PROGRAM.
3. If the Board selects Option 2a, consider providing direction on Option 3: whether to allow the sale of non-potentially hazardous food or produce for up to two carts operated by a MEHKO, with sales from a cart not counting towards the meal and gross annual sales limitations established in the cart and the introduction of the Ordinance, (first reading): ORDINANCE AMENDING THE REGULATORY CODE RELATING TO MICROENTERPRISE HOME KITCHEN OPERATION (MEHKO) PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO TO ALLOW THE SALE OF NON-POTENTIALLY HAZARDOUS FOOD WITH CARTS. (*Staff Recommendation*)
4. If the Board selects Option 2a, consider providing direction on Option 4: whether to allow MEHKO operators to serve as a commissary for up to two carts operated by the MEHKO, if the business can demonstrate that it is capable of supporting the preparation and storage of the food being sold from the cart and the storage and cleaning of the cart and approve the introduction of the Ordinance, (first reading): ORDINANCE AMENDING THE REGULATORY CODE RELATING TO MICROENTERPRISE HOME KITCHEN OPERATION (MEHKO) PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO TO ALLOW MEHKO TO SERVE AS A COMMISSARY. (*Staff Recommendation*)
5. If the Board selects Option 2a, consider providing direction on Option 5: whether to increase the number of individual meals a MEHKO operating a cart can prepare and sell. According to State law, MEHKO operators can serve a maximum of 30 meals per day and no more than 90 meals per week. The Board has flexibility to set a higher amount of meals per day and meals per week for MEHKO operators with carts.
6. If the Board selects Option 2a, consider providing direction on Option 6: whether to increase the amount of gross annual sales that a MEHKO operating a cart can earn from

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION PROGRAM UPDATE AND OPTIONS FOR CONTINUED AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD OPERATION PROGRAM OPTIONS, AND RELATED CEQA EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 – Second Reading) (DISTRICTS: ALL)

\$100,000 to an amount higher than allowed in State law, to a maximum amount as determined by the Board.

7. Receive option for the Cottage Food Operation (CFO) Program and consider providing direction regarding Option 7: whether to allow the sale of non-potentially hazardous food or produce for up to two carts operated by a CFO, with sales from a cart not counting towards the gross annual sales limitations established in State law of \$150,000 and approve the introduction of the Ordinance, (first reading): ORDINANCE AMENDING THE REGULATORY CODE RELATING TO COTTAGE FOOD OPERATION (CFO) PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO TO ALLOW THE SALE OF NON-POTENTIALLY HAZARDOUS FOOD WITH CARTS. (*Staff Recommendation*)
8. Waive Board Policy B-29: *Fees, Grants, Revenue Contracts - Department Responsibility for Cost Recovery* for MEHKO and CFO permit fees.

If, on November 8, 2023, the Board takes actions on the Options above then, on December 6, 2023:

1. Consider and adopt the Ordinance(s) amending the County Code of Regulatory Ordinances (second reading).

### **EQUITY IMPACT STATEMENT**

Continuing to permit and regulate home-based food business, such as Microenterprise Home Kitchen Operation (MEHKO) and/or Cottage Food Operation (CFO), in the region would result in economic benefits to local communities and home cooks from a wide variety of backgrounds. Data from Riverside County, the first county to adopt a MEHKO program, found that MEHKO operators were 85% people of color and 60% women. Currently, there are 565 CFO and 61 MEHKO home based food businesses in the San Diego region. Home based food businesses create opportunities for self-reliance and empowerment for local community members, such as immigrants, by increasing their family income and contributing positively to the local economy.

### **SUSTAINABILITY IMPACT STATEMENT**

If authorized, the local Microenterprise Home Kitchen Operation (MEHKO) would promote new, home-based businesses, supporting the County of San Diego (County) Strategic Initiative of creating policies to reduce and eliminate poverty, promoting economic sustainability for all, by providing just and equitable access to vulnerable populations in partnerships with communities. Additionally, authorizing a MEHKO Program in the region would support the County Strategic Initiative of protecting and promoting our agricultural resources by protecting the health and wellbeing of everyone in region by expanding the market for healthy, sustainable, and local food.

### **FISCAL IMPACT**

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

Funds for this request are included in the Fiscal Year (FY) 2023-24 Operational Plan in the Department of Environmental Health and Quality (DEHQ). If the Board of Supervisors (Board) authorizes Microenterprise Home Kitchen Operation (MEHKO) (Option 2a), this request will result in estimated costs and revenue of \$184,000 in FY 2023-24. It is anticipated that Options 3 through 7 will have no fiscal impact. The funding source is permit fees. There will be no change in net General Fund cost and no additional staff years associated with these options.

A waiver of Board Policy B-29 is requested because the current fees do not cover all operating costs. The total unrecovered cost, per Board Policy B-29, for these permits is approximately \$9,600 for MEHKO (\$2,004) and Cottage Food Operation (CFO) (\$7,596) in DEHQ for FY 2023-24 and, if approved, will continue to be funded with existing departmental funds.

There is no fiscal impact if the Board declines to authorize a MEHKO Program (Option 2b), and there will be no change in net General Fund and no additional staff years associated with this option. The current resources will be allocated to other food programs.

#### **BUSINESS IMPACT STATEMENT**

Due to the high start-up costs for restaurants, it is challenging for many cooks to benefit independently from their labor, skills, and limited resources, reducing an opportunity to produce a viable income. Alternatively, home cooks may choose to operate illegally, which can be treated as a criminal act. Continuing to allow home-cooked food sales through the continuation and expansion of home-based businesses, such as MEHKO and CFO Programs, will have the following positive impacts:

- Regulate unsafe private kitchen practices that may cause foodborne illness when food is cooked at unpermitted facilities;
- Promote food justice in communities that do not have access to healthy and affordable food options;
- Enable home cooks, who are mostly underrepresented groups such as women, immigrants, and people of color, to use their skills to generate income.

If continuation and expansion of home-based businesses is authorized by the Board of Supervisors, it will allow home cooks of all socioeconomic levels the opportunity to start a home-based business, preparing and serving food to the public throughout the region.

#### **ADVISORY BOARD STATEMENT**

On September 27, 2023, the Department of Environmental Health and Quality (DEHQ) presented information on the options for a local Microenterprise Home Kitchen Operation (MEHKO) Program to the Environmental Health and Quality Advisory Board (EHQAB). EHQAB unanimously voted to provide recommendation that the Board of Supervisors approve Option 2a to authorize the MEHKO Program.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

On October 3, 2023, DEHQ also presented information to the Health Services Advisory Board (HSAB). HSAB took no formal position and had no concerns that were shared during the meeting.

## **BACKGROUND**

The California Retail Food Code (State law) establishes uniform health and sanitation standards at the State level for the regulation of retail food operations (food facilities) to prevent foodborne illness. State law defines a food facility as an operation that stores, prepares, serves, sells, or otherwise provides food for human consumption at the retail level, and includes restaurants, mobile food trucks, grocery stores, delis, food carts, schools, and Cottage Food Operations. The Department of Environmental Health and Quality (DEHQ) is the local enforcement agency of State law for all 18 incorporated cities (local jurisdictions), as well as the unincorporated communities in the region. DEHQ implements a regulatory Food Program conducting inspections at more than 15,000 food facilities annually, focusing on compliance with State law and reviewing food handling practices to protect public health and prevent the incidence of foodborne illness.

Prior to 2012, California required that food sold to consumers must be produced at inspected commercial kitchens. In 2013, the California Homemade Food Act allowed certain low-risk food products not requiring refrigeration, such as bread, pie, fruit jam, and dried food, to be made in private home kitchens and sold as fully packaged and labeled products to consumers. These operations, commonly known as Cottage Food Operation (CFO), provide an opportunity for home cooks to start a small business. In accordance with State law, DEHQ implemented a CFO program in 2013. As of October 16, 2023, there has been 565 number of permitted CFO businesses.

In 2019, the enactment of Assembly Bill 626 (AB 626), *California Retail Food Code: Microenterprise Home Kitchen Operation* established a Microenterprise Home Kitchen Operation (MEHKO) as a new type of home-based food service facility in State law. When authorized, MEHKO home cooks can prepare and sell a wide range of foods in a home kitchen (like a mini restaurant), including foods, such as meat, fish, poultry, and dairy products, that require time and temperature control in order to prevent bacteria growth that can lead to foodborne illness. State law limits MEHKO operators on the number of meals that can be prepared and sold, the type of food preparation that is allowed, as well as the maximum number of employees and gross annual sales. A MEHKO cannot operate or be permitted until authorization is granted by the governing body of the local enforcement agency. The County of San Diego Board of Supervisors (Board), as the governing body of DEHQ, has the authority to authorize a local MEHKO Program for the entire San Diego region, which includes both the unincorporated communities and all 18 incorporated cities.

On September 15, 2021 (2), the Board directed staff to return with an ordinance authorizing MEHKO operations in San Diego county, consistent with State law, conduct community and local jurisdiction outreach and provide opportunities for public input in drafting the ordinance, and implement a public education program for small volume home-based retail food operations and food safety, following the adoption of a MEHKO ordinance.

**SUBJECT: LOCAL MICROENTERPRISE HOME KITCHEN OPERATION PROGRAM UPDATE AND OPTIONS FOR CONTINUED AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD OPERATION PROGRAM OPTIONS, AND RELATED CEQA EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 – Second Reading) (DISTRICTS: ALL)**

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- Working with all jurisdictions within the region, on a voluntary basis, to gather data related to MEHKO implementation during the temporary authorization, including but not limited to potential community impacts such as traffic, noise, wastewater, and code or nuisance complaints as well as food safety related data such as number of permitted MEHKO operators, complaints or reports of foodborne illness, and retail food safety compliance.
- Providing informational/educational trainings for city staff and operational leads in all jurisdictions in the region to share best practices to reduce, prevent and/or address nuisance activity, and possible approaches related to local land use nuisance regulations.
- Analyzing potential community impacts and collect data on nuisance complaints related to impacts from MEHKO operators in the unincorporated communities.

**Update on Temporary Local MEHKO Program and Related Board Direction**

*Update on the Temporary Local MEHKO Program*

DEHQ created seven documents to assist potential MEHKO operators to understand State law, the MEHKO Program, and local food safety requirements. These documents have all been translated into Spanish. DEHQ continues to work on translating the seven MEHKO Program documents into the threshold languages and will complete the translation into the remaining threshold languages by Spring 2024 if the Board takes action on November 8, 2023, to authorize the continuation of the MEHKO Program.

DEHQ held a public workshop on February 15, 2022, for potential MEHKO operators to discuss the steps needed to obtain a permit, as well as a step-by-step overview of how to complete all of the forms that need to be submitted with a MEHKO application to DEHQ. Live interpretation services were offered in Arabic, Filipino, Mandarin, Spanish, and Vietnamese. The recording of the presentation from the workshop is posted on the DEHQ's MEHKO webpage to be used as a reference guide for potential operators. DEHQ staff are available to assist in providing guidance in other languages when requested.

DEHQ also developed a dedicated Home Kitchen Operation webpage that has guidance documents and videos created by DEHQ, as well as information from other applicable agencies, to help potential operators navigate the permitting process. The webpage includes resources on local zoning requirements, Alcohol Beverage Control requirements, food waste reduction information, selling food from home information, and California Department of Public Health guidance documents. Additionally, a dedicated email account was created for current and prospective

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

MEHKO operators to directly reach staff who can assist customers with navigating permitting requirements and answering operational questions.

Since the start of the temporary program in February 2022, DEHQ has conducted outreach and provided education to various local stakeholder groups, including the MEHKO Coalition, COOK Alliance, San Diego Small Business Advisory Board, Southern California Rental Housing Association, California Municipal Revenue and Tax Association, City of San Diego Economic Development Department, and Carlsbad City Council Economic Development Subcommittee. This ongoing communication has created another method to share information on MEHKO Program by these groups with community members and other agencies they partner with. DEHQ continues to be available for all local stakeholder groups who wish to have outreach provided to their organization to assist operators starting a new MEHKO business.

DEHQ also took part in ten outreach events that were coordinated by the Logan Heights Community Development Committee and designed to provide prospective small business owners information on various business options available within the region, including MEHKO. DEHQ continues to partner with the COOK Alliance and the local San Diego MEHKO Coalition through regular communication on the MEHKO program implementation. DEHQ has participated in four outreach and training sessions held at Miramar City College that were developed to help train and educate future small business owners on the programmatic allowances and permitting requirements needed to initiate a new small scale food business, including MEHKO and sidewalk food vending operations.

As of October 16, 2023, DEHQ has issued 61 permits for MEHKO operators in the region. The 61 MEHKO are geographically located within Supervisorial District 1 (13), District 2 (13), District 3 (8), District 4 (15), and District 5 (12). Food offerings by MEHKO operators include a diverse array of cuisines from around the world including Japan, Egypt, Trinidad and Tobago, Italy, Indonesia, and Mexico.

Being able to operate a permitted and regulated home kitchen for selling homemade food to the community has been transformative for many families and individuals. The relatively low cost of entry has dismantled barriers and empowered entrepreneurs who were previously unable to be legal food business owners, providing them and their families with opportunities for increased economic sustainability.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

*Board Directed Data Collection*

Planning & Development Services (PDS), oversees land use compliance for MEHKO operators in the unincorporated area. While State law preempts local zoning regulations so that they do not apply to MEHKO operators, the MEHKO statute does allow for enforcement of local noise and nuisance regulations as well as a prohibition on signs at a MEHKO. DEHQ and the PDS have collaborated to assess the temporary, local MEHKO Program since the authorization by the Board.

To aid in information sharing, DEHQ developed a Microsoft Form for all local jurisdictions to report community complaints they receive regarding MEHKO businesses and allows DEHQ to effectively track data requested by the Board for food borne illness and retail food safety compliance.

As of October 16, 2023, the data related to MEHKO businesses that was collected can be summarized as follows:

- DEHQ received and investigated two complaints on food safety compliance for MEHKO businesses that expanded beyond the allowable scope of operation by cooking and serving on their property, outside of the permitted area of their home. All complaints were followed up on and successfully resolved.
- None of the local jurisdictions or wastewater agencies in the region have reported any community impacts, such as traffic, parking, noise, grease disposal, trash, fire or fire risk, and odors, or related complaints from MEHKO operations.
- In the unincorporated areas, PDS has received three reports of land use issues for follow-up. While State law exempts MEHKO operations from some local zoning regulations, they are still required to follow local nuisance, noise, and sign regulations. The focus of PDS is to educate MEHKO operators on these requirements and help navigate them to compliance. Of the three reports PDS received, one was outside the County's jurisdiction. One complaint involved a banner sign that was removed promptly by the operator and the other complaint involved amplified music and will continue to be monitored.

*Board Directed Trainings for Staff in Local Jurisdictions Regarding Potential Community Impacts*

Per the January 2022 Board direction, PDS collaborated with DEHQ to provide resources and training for staff in other local jurisdictions throughout the region. A MEHKO Best Practices Worksheet was developed describing possible approaches to land use nuisance issues at MEHKO businesses with an emphasis on educating operators regarding best practices to prevent potential nuisances. Trainings were held on February 11, 2022, and June 8, 2022, where best practices information and possible approaches to land use nuisance issues were discussed with local jurisdictions. PDS also provided staff contact information to local jurisdictions to assist with responses to any future complaints.

DEHQ continues to provide monthly program updates, share data, and collaborated with the local jurisdictions with the MEHKO working group that was formed prior to implementation of the local, temporary MEHKO program, that includes representatives from all local jurisdictions.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

**Changes to the *California Retail Food Code* and Impacts to MEHKO and Cottage Food Operation (CFO)**

Since the Board temporarily authorized a MEHKO program for the region, two bills were enacted into State law modifying various retail food code regulations that pertain to MEHKO businesses and compact mobile food operations (cart). These State law revisions were made by Senate Bill 972 (SB 972, January 1, 2023), *California Retail Food Code* and Assembly Bill 1325 (AB 1325, July 21, 2023), *Microenterprise Home Kitchen Operation*.

In summary, these new laws:

- Increase the limit on the number of weekly meals that a MEHKO can prepare and sell from 60 to 90 individual meals per week, without the Board having to take action.
- Increase the maximum amount of verifiable gross annual sales that a MEHKO can have, from no more than \$50,000, to no more than \$100,000 (adjusted annually for inflation), without the Board having to take action.
- Create a new type of food facility for sidewalk vendors, a cart that is nonmotorized, operates from a pushcart or stand, and is allowed to conduct limited food preparation (e.g. hot dogs, roasted corn, churros), and allows storage of carts in additional areas, including a private home when not in operation, once evaluated and approved by DEHQ (unless prohibited by a local zoning code.)
  - Allows the Board to authorize home-based businesses, including MEHKO and CFO, additional opportunities to expand their business through use of carts by allowing up to two carts to be operated by a home-based food business, serving non-potentially hazardous foods with the revenue not counting towards state law established limits.
  - Allows the Board to authorize a MEHKO to serve as a commissary, which is an approved location where food preparation occurs to support mobile food carts operated by the MEHKO.
  - Allows the Board to authorize a higher limit for the number of meals prepared and a higher amount of gross annual sales, allowed if the MEHKO also operates a cart.

Authorization of any of the opportunities enacted through the new changes in State law requires an amendment to the County of San Diego Code of Regulatory Ordinances. New options for the Board to consider as the local governing body are discussed in the “Options for Additional Opportunities for MEHKO Businesses” and “Option for Additional Opportunity for Cottage Food Operation Businesses” sections below.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

*Outreach on Authorization of a Local MEHKO Program and State Law Changes*

On November 3, 2022, DEHQ hosted a virtual meeting for staff from all 18 cities and unincorporated areas to discuss the status of the MEHKO program and potential changes as a result of SB 972. DEHQ collected information on each jurisdiction's local zoning codes to provide specific information to MEHKO operators on any limitations or prohibitions in place for the home storage of carts as allowed in the new law. Locally, El Cajon, San Marcos, and Vista prohibit the storage of carts at private residences.

DEHQ also met with the local MEHKO Coalition and COOK Alliance, and these groups voiced their support authorizing options to further support our local MEHKO operators, with one modification. The groups support increasing the gross annual sales limitation while leaving the existing number of meals allowed to be prepared as established in State law. Increasing the gross annual sales allowed for MEHKO operators that have carts could raise a MEHKO operator's income so they can better adapt to the rising costs of food and energy, while maintaining the limitation on the number of meals allowed to be prepared could protect potential community and infrastructure impacts.

In August 2023, DEHQ held two public engagement sessions to share program updates and provide an opportunity for stakeholders to comment on the options that are presented to the Board today via a public survey. DEHQ also met with local jurisdictions from August through October and sent out a survey to obtain feedback from stakeholders. From the two surveys sent, 23 responses were received from the public, and seven responses were received from jurisdictional staff in a variety of regulatory roles. Survey results from the public, that included current MEHKO operators, were all supportive to continue the program. Survey results from local jurisdiction's program staff were mixed, with some supporting, and some sharing concerns for potential costs related to code enforcement actions and limited land use authority as preempted in State law. A list of Stakeholder meetings can be found in Attachment F.

**Summary of Options and Recommendations**

Authorization for the temporary local MEHKO Program will sunset on February 25, 2024, at which point MEHKO operators will no longer be able to operate in the region if the Board takes action to decline the continuation of a local MEHKO Program. Today, staff are providing a report on the status of the temporary local MEHKO Program and related prior Board direction, and requesting the Board provide direction regarding authorization of a local MEHKO Program. Additionally, the Board is requested to provide direction based on new State law changes on additional opportunities to expand CFO businesses through the use of carts. The Board's action on the MEHKO Program (Options 2 through 6) are independent of the action on the CFO Program (Options 7).

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION PROGRAM UPDATE AND OPTIONS FOR CONTINUED AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD OPERATION PROGRAM OPTIONS, AND RELATED CEQA EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 – Second Reading) (DISTRICTS: ALL)

*Options for Authorization of a Local MEHKO Program*

- *Option 2a - Authorize a Local MEHKO Program*

Staff recommend the Board authorize the continuation of a local MEHKO Program. If the Board authorizes a local MEHKO Program for the region, the Board is requested to provide further direction on the “Options for Additional Opportunities for MEHKO Businesses” discussed below. The proposed ordinance to authorize a local MEHKO Program are found in Attachment A.1 and A.2.

**OR**

- *Option 2b - Decline to Authorize a Local MEHKO Program*

If the Board declines to authorize a local MEHKO Program, they can either take no action today and the temporary program will sunset on February 25, 2024, or affirmatively decline to authorize MEHKO businesses for the region by selecting this option and adopting an ordinance that will repeal sections of Title 6 of the San Diego County Code of Regulatory Ordinances that were previously added when the Board adopted a temporary program on January 26, 2022 (3). If the Board takes no action or declines to authorize a program, then MEHKO businesses will no longer be able to operate in the region beginning February 25, 2024 and DEHQ will conduct outreach to all of the existing permitted operations regarding the status of this program and will inactivate their health permits. The proposed ordinance declining to authorize a local MEHKO Program are found in Attachments B.1 and B.2.

The CFO Program will not be impacted by authorizing or declining to continue the MEHKO Program. The Board can still take action on Option 7 below related to CFO businesses if the Board opts to choose either Option 2a or 2b.

*Options for Additional Opportunities for MEHKO Businesses*

- *Option 3 – Authorize MEHKO Businesses to Sell Non-Potentially Hazardous Food with Carts*

Allow the sale of non-potentially hazardous foods, which do not require time or temperature control for food safety, or produce, for up to two carts operated by a MEHKO, with sales from the carts not counting towards the meal and gross annual sales limitations established in the State law. The proposed ordinance authorizing the addition of carts for MEHKO businesses are found in Attachments C1. and C2. (*Staff Recommendation*)

Should the Board decline to take action on Option 3, the sales and meals served by the MEHKO business would count towards the established limitations for a MEHKO businesses as defined in State law or per the limits set by the Board in Option 5 and/or 6.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION PROGRAM UPDATE AND OPTIONS FOR CONTINUED AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD OPERATION PROGRAM OPTIONS, AND RELATED CEQA EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 – Second Reading) (DISTRICTS: ALL)

- *Option 4 – Authorize MEHKO to Operate as Commissary for Carts*

Allow MEHKO business to serve as a commissary, a location where carts can be cleaned and stored and food can be prepared, for up to two carts operated by the MEHKO, if the business can demonstrate that it can safely support the preparation and storage of the food being sold from the carts and the storage and cleaning of the cart. The proposed ordinance authorizing MEHKO to operate as a commissary for carts are found in Attachments D1. and D2. (*Staff Recommendation*)

Should the Board decline to take action on Option 4, MEHKO businesses will not be allowed to serve as a commissary, as defined in State law, and would need to utilize a commercial kitchen for this purpose.

- *Option 5 – Increase the Number of Meals Allowed for MEHKO Businesses Operating a Cart*

According to State law, MEHKO operators can serve a maximum of 30 meals per day and no more than 90 meals per week. The Board has flexibility to set a higher amount of meals per day and meals per week for MEHKO operators with carts.

Should the Board not take any action or decline to take action on Option 5, number of meals per week, will remain at the threshold amounts defined in State law.

- *Option 6 – Increase the Gross Annual Sales Allowed for MEHKO Businesses Operating a Cart*

Increase the amount of gross annual sales that a MEHKO operating a cart can earn from \$100,000 to a maximum amount determined by the Board. The Board has flexibility to set a higher amount of gross annual sales it will allow a MEHKO operating a cart to generate.

Should the Board decline to take action on Option 6, number of gross annual sales will remain at the threshold amounts defined in State law.

*Option for Additional Opportunity for Cottage Food Operation (CFO) Businesses*

- *Option 7 – Authorize CFO Businesses to Sell Non-Potentially Hazardous Food with Carts*

Allow the sale of non-potentially hazardous food, which do not require time or temperature control for food safety, or produce, for up to two carts operated by a CFO, with sales from the carts not counting towards the gross annual sales limitations established in State law. The proposed ordinance to authorize a CFO business to sell food with the addition of carts is found in Attachments E1. and E2. (*Staff Recommendation*)

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

Should the Board decline to take action on Option 7, the sales of the CFO business would count towards the established limitations for a CFO businesses as defined in State law.

On November 8, 2023, if the Board takes action to authorize the continuation of a local MEHKO Program (Option 2a), it is requested that they also provide direction on the additional opportunities for MEHKO (Options 3 through 6). There is flexibility regarding how the Board may approach Options 5 and 6 and can provide specific direction regarding number of meals and gross annual sales limits for MEHKO operators with carts. The Board is also requested to take action on additional opportunities for the CFO Program (Option 7). Any and all Board actions on Options 2a, 3, 4, and 7 should be included in the ordinance amending the County of San Diego Code of Regulatory Ordinances (County Code). If the Board takes action to affirmatively decline to authorize a local MEHKO Program (Option 2b), then MEHKO operators will no longer be able to operate in the region beginning February 25, 2024, and it is requested that an ordinance be adopted to remove references to a temporary MEHKO Program included in sections of Title 6 of County Code. The Options for the Board's consideration can be found in Attachment G – Action Sheet.

Adoption of either of the proposed ordinances requires two steps. On November 8, 2023, the Board is requested to approve the first reading of an ordinance. If approved, the selected ordinance will be brought back for adoption on December 6, 2023.

#### **ENVIRONMENTAL STATEMENT**

Today's proposed actions are exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061(c)(3) of the State CEQA Guidelines. Section 15061(c)(3) is applicable provides that a project is exempt from CEQA review where "it can be seen with certainty that there is no possibility the activity in question may have significant effect on the environment." Today's action seeks to authorize the continuation of the existing Microenterprise Home Kitchen Operation (MEHKO) program, as well as potential changes to the MEHKO or Cottage Food Operation (CFO) Programs by allowing expansion to these home-based businesses, such as potential addition of up to two carts and an increase in the number of meals or gross sales. Any potential changes to the MEHKO or CFO Programs would be subject to strict limitations on how many meals could be prepared, cooked, and served on the same day, as well as on a weekly basis, from each home-based businesses. Therefore, the action is exempt from CEQA review because it can be seen with certainty that the project would not have a significant impact on the environment.

#### **LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN**

Today's proposed actions support the Sustainability and Community Strategic Initiatives in the County of San Diego's 2023-2028 Strategic Plan by allowing enhanced opportunities for small home businesses regardless of socioeconomic status and strengthening the local food system by potentially providing a healthy food source in areas of region identified in the Food System Action Plan as food deserts.

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

Respectfully submitted,



SARAH E. AGHASSI  
Deputy Chief Administrative Officer

**ATTACHMENT(S)**

- Attachment A.1 – Ordinance Authorizing a Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego (Strikeout/Underline)
- Attachment A.2 – Ordinance Authorizing a Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego (Clean)
- Attachment B.1 – Ordinance Declining to Authorize a Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego and Removing Prior References to a Temporary MEHKO Program (Strikeout/Underline)
- Attachment B.2 – Ordinance Declining to Authorize a Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego and Removing Prior References to a Temporary MEHKO Program (Clean)
- Attachment C.1 – Ordinance Amending the Regulatory Code Relating to Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego to Allow the Sale of Non-Potentially Hazardous Food with Carts (Strikeout/Underline)
- Attachment C.2 – Ordinance Amending the Regulatory Code Relating to Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego to Allow the Sale of Non-Potentially Hazardous Food with Carts (Clean)
- Attachment D.1 – Ordinance Amending the Regulatory Code Relating to Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego to Allow MEHKO to Serve as a Commissary (Strikeout/Underline)
- Attachment D.2 – Ordinance Amending the Regulatory Code Relating to Microenterprise Home Kitchen Operation (MEHKO) Program Throughout the County of San Diego to Allow MEHKO to Serve as a Commissary (Clean)
- Attachment E.1 – Ordinance Amending the Regulatory Code Relating to Cottage Food Operation (CFO) Program Throughout the County of San Diego to Allow the Sale of Non-Potentially Hazardous Food with Carts (Strikeout/Underline)

**SUBJECT:** LOCAL MICROENTERPRISE HOME KITCHEN OPERATION  
PROGRAM UPDATE AND OPTIONS FOR CONTINUED  
AUTHORIZATION IN SAN DIEGO COUNTY, COTTAGE FOOD  
OPERATION PROGRAM OPTIONS, AND RELATED CEQA  
EXEMPTION (11/8/2023 – Introduction and First Reading; 12/6/2023 –  
Second Reading) (DISTRICTS: ALL)

Attachment E.2 – Ordinance Amending the Regulatory Code Relating to Cottage Food Operation  
(CFO) Program Throughout the County of San Diego to Allow the Sale of Non-  
Potentially Hazardous Food with Carts (Clean)

Attachment F – Stakeholder Meetings

Attachment G – Action Sheet