

ORDINANCE NO. (NEW SERIES)

**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**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Purpose.

The purpose and intent of this Ordinance is to decline the County's previous authorization of small-scale, direct food sales from home-based food facilities designed to prioritize locally prepared foods to consumers, on a temporary basis, also known as Microenterprise Home Kitchen Operations (MEHKOs). This action will remove any and all references to this temporary MEHKO Program previously added to Title 6 of the San Diego County Code of Regulatory Ordinances.

Section 2. Section 61.102 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.102. DEFINITIONS.

The following definitions shall apply to this chapter, and to Chapter 3 of this Title:

"CRFC" means the California Retail Food Code, which is codified within the California Health and Safety Code (HSC).

"Department" means the County Department of Environmental Health and Quality.

"Director" means the Director of Environmental Health and any person appointed by the Director to enforce or administer this chapter.

"Equipment" has the same meaning as the term "equipment" in HSC section 113777.

"Expedited Plan Check Inspection" means plan check field inspection service that is provided within an accelerated time frame.

"Expedited Plan Review" means plan review service that is provided at an accelerated time frame.

"Food" has the same meaning as the term "food" in HSC section 113781.

"Food Equipment Rental Establishment" means an establishment that provides food service equipment or utensils such as dishes, tableware, pots and pans to food facilities, catering operations, or to the public. Food equipment rental establishments are food facilities under the CRFC. (HSC section 113789(a)(2).)

"Food Facility" has the same meaning as the term "food facility" in HSC section 113789, and also includes a "catering operation" or "catering facility" and a "catering host facility" as defined in Chapter 3 of this Title.

"Food Handler" means a person who prepares, handles, packages, serves or stores food or handles utensils, or assists another person in any of those tasks at a food facility that requires a permit pursuant to this chapter.

"HSC" means the California Health and Safety Code.

"Imminent Health Hazard" has the same meaning as the term "imminent health hazard" in HSC section 113810.

"Limited Beverage Service" means for the purpose of section 65.107(a), a temporary food facility operation that only serves non-potentially hazardous beverages requiring no preparation other than dispensing from the approved container or draft, directly into the consumer's beverage container. Limited beverage service does not include any operation that requires the mixing of ingredients, addition of ice or garnishes to a beverage, or the addition of any potentially hazardous ingredients.

"Minimal Low-Risk Food Facility" means for purposes of section 65.107(a):

(a) A retail food facility that is operating as defined in HSC Section 113818.

(b) A facility that only serves frozen milk products

(c) A facility that holds an Alcoholic Beverage Control license type 42 or 48 facility, as long as the facility does not engage in slicing, chopping or grinding of raw potentially hazardous foods, reheating for hot holding, washing of foods, or cooking, baking, barbecuing, broiling, frying or grilling any food.

"Minor Remodel" means the installation of new equipment to an existing facility, or the construction, building, repair, or alteration of existing areas of the facility that does not exceed 300 square feet and includes, but is not limited to, structural, plumbing, mechanical, or electrical work.

"Miscellaneous Food Facility" means a facility with 25 square feet or more of food display area (including Candy Stores, Concession Stands, Host Facilities, and Prepackaged Non-Potentially Hazardous Foods), and Catering Equipment Rentals and Retail Food Delivery (delivery of food made at a retail food facility to another location by a person other than an employee of the retail food facility where the food was prepared).

"Multiple Kitchen Complex Operation" means any establishment used as a place of business for the purpose of leasing, renting, or otherwise providing individual commercial kitchen space to independent retail food facility operations, where that space is not used or shared by another operator. Common shared infrastructure such as restroom facilities, janitorial facilities, dry food storage, and refrigerated and/or frozen food storage is provided for each individual tenant to use.

"Prepare" means to package, process, assemble, portion or engage in any operation that changes the form, flavor or consistency of food, but does not include trimming produce.

"Ready-to-Eat Food" has the same meaning as the term "ready-to-eat food" in HSC section 113881.

"Revision" means any plan submittal required for corrections identified or minor changes to the initial submittal for any New, Major Remodel, or Minor Remodel project.

"School Auxiliary Facility" means an educational facility that is serviced by a School Food Processing Facility, or other permitted food facility, and conducts processes that include but are not limited to dispensing, reheating, and storage of potentially hazardous foods. Auxiliary Facilities may open prepackaged food as necessary to stock an onsite salad bar and rinse whole uncut produce. All other food preparation, including the slicing and processing of produce, must be conducted at a School Food Processing Facility.

"School Food Processing Facility" means an educational facility that conducts full processing including, but is not limited to, handling, preparing, assembling, cooking, cooling, and reheating of potentially hazardous foods; washing and slicing of produce. This site may be a stand-alone site, or a centralized location that services multiple auxiliary kitchens.

"Tableware" has the same meaning as the term "tableware" in HSC section 113926.

"Utensil" has the same meaning as the term "utensil" in HSC section 113934.

Section 3. Section 61.107 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.107. GRADING SYSTEM FOR CERTAIN FOOD FACILITIES.

(a) The Director may adopt regulations to grade permanent or mobile food facilities that prepare food (as defined in Section 113791 of the California Retail Food Code), using a letter grade system. The grading system may be used during any inspection the Department conducts. An "A" grade shall represent a score of 90 percent or higher. A "B" grade shall represent a score of 80 to 89 percent. A "C" grade shall represent a score less than 80 percent. The Department shall issue an alphabetical grade card to each food facility graded during an inspection pursuant to this section and shall provide the permit holder with a list of deficiencies found during the grading inspection. If the Department determines from the inspection, however, that the facility presents an imminent health hazard that warrants immediate closure the Department shall not issue the facility a grade card.

(b) The Department may order a food facility permit holder receiving a grade of "B" or "C" to submit to subsequent re-grade inspections within 30 days, until the facility receives an "A" grade. The Department may also order a permit holder to correct a deficiency found during an inspection in less than 30 days. The permit holder shall pay the Department a re-grade fee at the time of each re-grade inspection, as specified in Title 6, Division 5, Section 65.107 (d).

(c) The Department may use information obtained during an inspection pursuant to this section to temporarily suspend a food facility permit and order a food facility to immediately close due to an imminent health hazard that cannot be immediately corrected. The Department may also use the information obtained during an inspection to modify, suspend or revoke the food facility's permit.

(d) If the Department determines that a food facility should be ordered to show cause at a hearing why its permit should not be suspended or revoked, the Department may require the facility to post a specified alternative notice instead of a grade card, until that hearing process is concluded and a decision concerning the permit is rendered.

(e) If the Department determines that the public should be informed of temporary conditions affecting a food facility, such as a boil water order or a closure order for only a portion of the facility, the Department may require the facility to post a specified notice, and may direct that such posting be maintained either instead of or in addition to posting a grade card.

(f) Violations of the requirements of this code related to food facility grading shall be subject to the penalties and procedures set out in Division 8 of Title 1 of this code.

Section 4. Section 61.108 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.108. ALPHABETICAL GRADE CARD TO BE POSTED.

(a) The permit holder of a permanent or mobile food facility that prepares ready-to-eat food shall post the alphabetical grade card the Department issues, or any alternative notice specified by the Department pursuant to Section 61.107, whenever the facility is open for business. The grade card or alternative notice shall be posted so that it is clearly visible to patrons of the facility so that statements on the card may be read.

(b) If the food facility is enclosed, the permit holder shall post the grade card or alternative notice: (1) in the front window of the facility, (2) in an accessible display case mounted on the outside of the front door, (3) in an accessible display case mounted on the outside front wall of the facility within five feet of the front door or (4) in some other location the Department approves. If the food facility has a drive-through feature, the permit holder shall also post the grade card or alternative notice at the drive-in pickup window of the facility.

(c) If the food facility is not enclosed, the permit holder shall display the grade card or alternative notice in a location clearly visible to any patron of the facility. The Department may require the permit holder of an unenclosed facility to display the grade card or alternative notice in a specific location.

(d) The permit holder shall protect the alphabetical grade card or alternative notice from damage by weather conditions and shall not allow the card or alternative notice to be defaced, marred, camouflaged or hidden so as to prevent the general public from observing it. The permit holder shall request a new card or alternative notice from the Department within one business day of the grade card or alternative notice being damaged, marred, altered or lost.

Section 5. Title 6, Division 1, Chapter 5 of the San Diego County Code is hereby amended to read as follows:

CHAPTER 5. [RESERVED]

Section 6. Section 61.501 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.501. [RESERVED]

Section 7. Section 61.502 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.502. [RESERVED]

Section 8. Section 61.503 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.503. [RESERVED]

Section 9. Section 61.504 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.504. [RESERVED]

Section 10. Section 61.505 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.505. [RESERVED]

Section 11. Section 61.506 of the San Diego County Code is hereby amended to read as follows:

SEC. 61.506. [RESERVED]

ATTACHMENT B.2

(Decline to Authorize a MEHKO Program (Option 2b))

Section 12. Effective Date. This Ordinance shall take effect on February 25, 2024, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY

Claudia G. Silva, County Counsel

BY: Gregory L. Lusitana, Senior Deputy County Counsel