

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, DECEMBER 06, 2023**

MINUTE ORDER NO. 1

SUBJECT: ADMINISTRATIVE ITEM:

**SECOND CONSIDERATION AND ADOPTION OF ORDINANCES:
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

On November 8, 2023 (06), the Board of Supervisors took action to further consider and adopt the Ordinances on December 6, 2023.

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 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.

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

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

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.

ACTION:

ON MOTION of Supervisor Anderson, seconded by Supervisor Montgomery Steppe, the Board of Supervisors took action as recommended, on Consent, and adopted the following:

Ordinance No. 10880 (N.S.), entitled: ORDINANCE AUTHORIZING A MICROENTERPRISE HOME KITCHEN OPERATION (MEHKO) PROGRAM throughout THE COUNTY OF SAN DIEGO;

Ordinance No. 10881 (N.S.), entitled: 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;

Ordinance No. 10882 (N.S.) entitled: 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; and,

Ordinance No. 10883 (N.S) entitled: 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.

AYES: Vargas, Anderson, Montgomery Steppe, Desmond
NOT PRESENT: Lawson-Remer

State of California)
County of San Diego)

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter