

**COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS - LAND USE  
WEDNESDAY, JANUARY 12, 2022**

**MINUTE ORDER NO. 1**

**SUBJECT: AUTHORIZING MICROENTERPRISE HOME KITCHEN OPERATIONS IN SAN DIEGO COUNTY (DISTRICTS: ALL)**

**OVERVIEW**

State law, the California Retail Food Code (CRFC), establishes uniform health and sanitation standards at the State level for the regulation of retail food operations (food facilities) to prevent foodborne illness. The CRFC 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 the CRFC for all 18 incorporated cities (local jurisdictions), as well as the unincorporated communities in the region. DEHQ implements a food program conducting inspections at more than 15,000 food facilities annually, focusing on compliance with the CRFC and reviewing food handling practices to protect the public's health and prevent the incidence of foodborne illness.

Prior to 2012, California required food sold to consumers be made 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. These operations, commonly known as cottage food operations, provide an opportunity for home cooks to start a small business.

In 2019, the enactment of Assembly Bill (AB) 626, *California Retail Food Code: Microenterprise Home Kitchen Operations* expanded the opportunity for home cooks to operate a small business. This law established a microenterprise home kitchen operation (MEHKO) as a new type of restricted food service facility in the CRFC. Once authorized, MEHKOs home cooks can prepare and sell a wide range of foods in a home kitchen (like a mini restaurant), including foods that require time and temperature control in order to prevent bacteria growth, such as meat, fish, poultry, and dairy products.

MEHKOs cannot operate or be permitted until authorization is granted by the governing body of the local enforcement agency. The County of San Diego (County) 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. If approved, the Board would be authorizing MEHKOs for both the unincorporated communities and the 18 incorporated cities in the region.

On September 15, 2021 (2), the Board directed staff to return with an ordinance authorizing MEHKOs throughout San Diego county consistent with State law (the CRFC), conduct community and local jurisdiction outreach to both the unincorporated areas and the 18 incorporated cities in the region, 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.

If authorized throughout San Diego county, MEHKOs will be subject to the requirements established in the CRFC. The CRFC exempts MEHKOs from specific standards normally required for a food facility, primarily to accommodate the differences between a home kitchen and a commercial kitchen. During community and local jurisdiction outreach, options for authorization and potential food safety components were presented for input. The food safety components supplement the CRFC and clarify requirements for MEHKOs to protect public health. The feedback received was incorporated into proposed amendments to the County of San Diego Code of Regulatory Ordinances (MEHKO ordinance). Specifically, the proposed MEHKO ordinance includes optional requirements or operational provisions in the following food safety component categories:

- Food Safety Certificate
- Allowable Food Storage Areas
- Number of MEHKOs per Residence
- Potable Water for Private Wells - Initial Testing
- Potable Water for Private Wells - Ongoing Testing

The CRFC prohibits jurisdictions from imposing restrictions on MEHKO for zoning purposes, or requiring additional permits to operate, other than a health permit. Local jurisdictions can, however, investigate and enforce their regulations. Each jurisdiction is responsible for enforcing its own related regulations, including but not limited to code compliance.

As the governing body for the unincorporated communities in the region, the County is responsible for ensuring the unincorporated communities are safe and sustainable. During community outreach, concerns for possible community impacts were raised. This item includes a summary of community concerns related to possible MEHKO impacts, as well as the existing processes to address possible impacts, and options the Board may take to further address possible impacts by MEHKOs for the unincorporated areas of the region.

Today's request is for the Board to provide direction regarding authorization of a MEHKO program for the region by selecting one of the following options:

- *Option 2a - Authorize a Microenterprise Home Kitchen Operations Program*
- *Option 2b - Decline to Authorize a Microenterprise Home Kitchen Operations Program*

If the Board selects Option 2a and authorizes a MEHKO program for the region, the Board is requested to provide direction on the type of authorization by selecting one of the following options:

- *Option 3a - Authorize a MEHKO Program by Ordinance*
- *Option 3b - Temporarily Authorize a MEHKO Program by Ordinance (for a period of two years)*

If the Board authorizes a MEHKO program, there is a request to add 1.0 staff year in DEHQ to account for the additional work associated with MEHKOs, as well as a request to waive Board Policy B-29: *Fees, Grants, Revenue Contracts - Department Responsibility for Cost Recovery* for MEHKO permit fees that do not cover the full cost of services, and a request to provide direction on the optional food safety components included in the MEHKO Ordinance.

Additionally, if the Board authorizes a MEHKO program, the Board is requested to provide direction on regulations to address potential community issues arising from MEHKOs in the unincorporated communities by either:

- *Option 9a - Continue with Existing Nuisance Regulations and Collect Data*
- *Option 9b - Amend the Regulatory Code to include Title 3 Division 8 - Regulation of Microenterprise Home Kitchen Operations*

Adoption of any of the proposed ordinances require two steps. If the Board takes action to authorize a MEHKO program by ordinance (Option 3a) or temporarily authorize a MEHKO program by ordinance (Option 3b), or adopt amendments to the regulations to address potential community issues arising from MEHKOs (Option 9b), the Board is requested to approve the first reading of the ordinance(s) on January 12, 2022. If approved, the ordinance(s) will be brought back for adoption on January 26, 2022, and be effective 30 days after adoption.

**RECOMMENDATION(S)**  
**CHIEF ADMINISTRATIVE OFFICER**

On January 12, 2022:

**OPTIONS FOR MICROENTERPRISE HOME KITCHEN OPERATIONS PROGRAM AUTHORIZATION**

See the Background Section of the Board Letter under “Options for Board Consideration for the Authorization of a MEHKO” for additional details on microenterprise home kitchen operations (MEHKO) program authorization options.

1. Find that none of the options presented to the Board today require additional environmental analysis. Option 2a will be a discretionary decision to allow a new activity. However, this option 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 kitchen operation. With those limitations, therefore, a finding can be made, with certainty, that allowing such activity would not have a significant effect on the environment pursuant to CEQA Exemption 15061(b)(3). In addition, Option 2b would affirmatively reject this new program and decisions to reject projects are exempt from CEQA review pursuant to CEQA Exemption 15270.
2. Provide direction regarding authorization of a MEHKO program for the region by selecting either option 2a or 2b.
  - 2a. *Authorize a Microenterprise Home Kitchen Operations Program.* (Staff Recommendation)
    - Waive Board Policy B-29: *Fees, Grants, Revenue Contracts - Department Responsibility for Cost Recovery* for MEHKO permit fees.
    - Approve the request to add 1.00 (one) staff year in the DEHQ to perform inspections and conduct education and outreach and direct the Department of Human Resources (DHR) to classify the position at the appropriate level.

OR

- 2b. *Decline to Authorize a Microenterprise Home Kitchen Operations Program.*
3. If 2a is selected to *Authorize a Microenterprise Home Kitchen Operations Program*, then provide direction on the type of authorization by selecting either option 3a or 3b. No staff recommendation for these options. Staff can implement either option.
  - 3a. *Authorize a MEHKO Program by Ordinance:* If the Board adopts an ordinance authorizing a MEHKO program for the region, the program will be implemented as codified in State law (CRFC), and subject to any local requirements included in the adopted ordinance, including the food safety components discussed in recommendations 4 through 8.
    - Set a hearing for January 26, 2022 for consideration and adoption of amendments to the San Diego County Code of Regulatory Ordinances.

- Approve the introduction of the Ordinance, (first reading), read title and waive further reading of the Ordinance entitled: ORDINANCE AUTHORIZING A MICROENTERPRISE HOME KITCHEN OPERATIONS PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE SECTIONS 113789, 113825, 114367, 114367.1 - 114367.6 AND 114390.

OR

- 3b. *Temporarily Authorize a MEHKO Program by Ordinance* (for a period of two years): If the Board adopts an ordinance authorizing a MEHKO program temporarily for the region for a period of two years, the program will be implemented as codified in State law (CRFC), and subject to any local requirements included in the adopted ordinance, including the food safety components discussed in recommendations 4 through 8.
- Set a hearing for January 26, 2022 for consideration and adoption of amendments to the San Diego County Code of Regulatory Ordinances.
  - Approve the introduction of the Ordinance, (first reading), read title and waive further reading of the Ordinance entitled: ORDINANCE TEMPORARILY AUTHORIZING A MICROENTERPRISE HOME KITCHEN OPERATIONS PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE SECTIONS 113789, 113825, 114367, 114367.1 - 114367.6 AND 114390

#### **OPTIONS FOR FOOD SAFETY COMPONENTS INCLUDED IN THE ORDINANCE**

See the Background Section of the Board Letter under “Community and Local Jurisdiction Outreach” for additional details on the food safety components options.

If 2a is selected to *Authorize a Microenterprise Home Kitchen Operations Program*, provide direction on the following food safety components by choosing one in each category.

4. Food Safety Certificate

*(See proposed language in San Diego County Regulatory Code Section 61.504 (a).)*

- 4a. Require a food safety certificate be submitted as part of the MEHKO application. (Staff Recommendation)

OR

- 4b. Remove proposed requirement for food safety certificate found in San Diego County Regulatory Code Section 61.504 (a). Food safety certificates will be required for MEHKO within 60 days of operation, in accordance with the CRFC.

5. Allowable Food Storage Areas

*(See proposed language in San Diego County Regulatory Code Section 61.504 (c).)*

- 5a. Only allow food storage in areas outside of the residence (including garages, outdoor sheds, workshops etc.), if stored inside a refrigerator or freezer. (Staff Recommendation)

OR

- 5b. Remove proposed operational provision found in San Diego County Regulatory Code Section 61.504(c). MEHKO food storage will be allowed anywhere outside of the residence.

6. Number of MEHKOs per Residence

*(See proposed language in San Diego County Regulatory Code Section 61.504 (d).)*

- 6a. Only allow one MEHKO to operate in each residence, in accordance with California Department of Public Health (CDPH) guidance. (Staff Recommendation)

OR

- 6b. Remove proposed operational provision found in San Diego County Regulatory Code Section 61.504 (d). No limit on the number of MEHKOs allowed at each residence.

7. Potable Water for Private Wells - Initial Testing

*(See proposed language in San Diego County Regulatory Code Section 61.504 (e).)*

- 7a. Require a full panel of testing (bacteria, metals, nitrates) results be submitted as part of the MEHKO application. This is the same testing Cottage Food Operators are currently required to submit with their permit application. (Staff Recommendation)

OR

- 7b. Only require bacteriological testing results be submitted as part of the MEHKO application.

8. Potable Water for Private Wells - Ongoing Testing

*(See proposed language in San Diego County Regulatory Code Section 61.504 (f).)*

- 8a. Require a full panel of testing results (bacteria, metals, nitrates) be submitted annually.

OR

- 8b. Require a full panel of testing results (bacteria, metals, nitrates) be submitted quarterly.

OR

- 8c. Require only bacteriological testing results be submitted annually. This is the same testing Cottage Food Operators are currently required to submit with their permit application. (Staff Recommendation)

OR

- 8d. Require only bacteriological testing results be submitted quarterly.

**OPTIONS FOR REGULATIONS TO ADDRESS POTENTIAL COMMUNITY ISSUES ARISING FROM MEHKOS IN THE UNINCORPORATED COMMUNITIES**

See the Background Section of the Board Letter “Options for Board Consideration for Regulations to Address Potential Community Issues Arising from MEHKOs in the Unincorporated Communities” for additional details on the options.

9. Provide direction regarding regulations to address potential community issues arising from MEHKOs for the unincorporated communities by selecting either option 9a or 9b.

9a. *Continue with Existing Regulations and Collect Data in Unincorporated Communities.*  
(Staff Recommendation)

OR

9b. *Amend the Regulatory Code to include Title 3 Division 8 - Regulation of Microenterprise Home Kitchen Operations in the Unincorporated Communities*: If the Board adopts this option, additional nuisance regulations would be added to County Code section 38.101. The ordinance identifies community impacts related to traffic, waste disposal, and others that may be deemed a public nuisance and subject to enforcement. The regulations would only apply to unincorporated communities.

- In accordance with State CEQA Guidelines section 15061(b)(3), find that it can be seen with certainty that there is no possibility that Option 9b may have a significant effect on the environment. Options 9b will be a discretionary decision to adopt a new ordinance. This Ordinance would not result in any new development and will allow the unincorporated County to address violations and impacts that could arise from MEHKOs through a public nuisance abatement and to ensure that MEHKOs are operating in compliance with the San Diego County Regulatory Code.
- Set a hearing for January 26, 2022 for consideration and adoption of amendments to the San Diego County Code of Regulatory Ordinances to add Title 3 Division 8.
- Approve the introduction of the Ordinance, (first reading), read title and waive further reading of the Ordinance entitled: REGULATION OF MICROENTERPRISE HOME KITCHEN OPERATIONS

If on January 12, 2022, the Board takes the actions recommended in items 3a or 3b and/or 9b above, then on January 26, 2022:

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

### **EQUITY IMPACT STATEMENT**

Authorizing microenterprise home kitchen operations (MEHKOs) 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. MEHKOs would 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.

### **FISCAL IMPACT**

Funds for this request are included in the Fiscal Year (FY) 2021-22 Operational Plan in the Department of Environmental Health and Quality (DEHQ). If the Board of Supervisors (Board) authorizes microenterprise home kitchen operations (MEHKOs) (Option 2a), this request will result in estimated costs and revenue of \$176,400 in FY 2021-22 and an increase of 1.00 full-time staff year. The funding source is permit fees. There will be no change in net General Fund cost.

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 \$13,200 in DEHQ for FY 2021-22 and, if approved, will be funded with existing departmental savings.

There is no fiscal impact if the Board declines to authorize MEHKOs (Option 2b) or for any of the options presented for Board consideration for the regulations to address potential community issues arising from MEHKOs in the unincorporated communities (Options 9a and 9b), and there will be no change in net General Fund and no additional staff years associated with these options.

## **BUSINESS IMPACT STATEMENT**

The average restaurant startup cost is \$275,000 for a leased building. It is difficult for many cooks to benefit independently from their labor, skills and limited resources, and they may miss an opportunity to make an income, or they may choose to operate illegally, which can be treated as a criminal act.

Legalizing home cooked food sales through the authorization of microenterprise home kitchen operations (MEHKOs) will:

- regulate unsafe private kitchen practices that may cause foodborne illness when food is cooked in an informal economy and 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 authorized by the Board of Supervisors, MEHKOs 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 Vargas, seconded by Supervisor Anderson, the Board of Supervisors took the following actions:

1. Found that none of the options presented to the Board today require additional environmental analysis. Option 2a will be a discretionary decision to allow a new activity. However, this option 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 kitchen operation. With those limitations, therefore, a finding can be made, with certainty, that allowing such activity would not have a significant effect on the environment pursuant to CEQA Exemption 15061(b)(3). In addition, Option 2b would affirmatively reject this new program and decisions to reject projects are exempt from CEQA review pursuant to CEQA Exemption 15270.
2. Provided direction regarding authorization of a MEHKO program for the region by selecting option 2a.
  - 2a. Authorize a Microenterprise Home Kitchen Operations Program. (Staff Recommendation)
    - Waive Board Policy B 29: Fees, Grants, Revenue Contracts Department Responsibility for Cost Recovery for MEHKO permit fees.
    - Approve the request to add 1.00 (one) staff year in the DEHQ to perform inspections and conduct education and outreach and direct the Department of Human Resources (DHR) to classify the position at the appropriate level.
3. Provided direction on the type of authorization by selecting option 3b.
  - 3b. Temporarily Authorize a MEHKO Program by Ordinance (for a period of two years): If the Board adopts an ordinance authorizing a MEHKO program temporarily for the region for a period of two years, the program will be implemented as codified in State law (CRFC), and subject to any local requirements included in the adopted ordinance, including the food safety\ components discussed in recommendations 4 through 8.
    - Set a hearing for January 26, 2022 for consideration and adoption of amendments to the San Diego County Code of Regulatory Ordinances.

- Approved the introduction of the Ordinance, (first reading), read title and waive further reading of the Ordinance entitled: ORDINANCE TEMPORARILY AUTHORIZING A MICROENTERPRISE HOME KITCHEN OPERATIONS PROGRAM THROUGHOUT THE COUNTY OF SAN DIEGO AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE SECTIONS 113789, 113825, 114367, 114367.1 114367.6 AND 114390.

Provided direction on the following food safety components by choosing one in each category.

4. Food Safety Certificate  
(See proposed language in San Diego County Regulatory Code Section 61.504 (a).)
  - 4a. Require a food safety certificate be submitted as part of the MEHKO application.  
(Staff Recommendation)
  
5. Allowable Food Storage Areas  
(See proposed language in San Diego County Regulatory Code Section 61.504 (c).)
  - 5a. Only allow food storage in areas outside of the residence (including garages, outdoor sheds, workshops etc.), if stored inside a refrigerator or freezer. (Staff Recommendation)
  
6. Number of MEHKOs per Residence  
(See proposed language in San Diego County Regulatory Code Section 61.504 (d).)
  - 6a. Only allow one MEHKO to operate in each residence, in accordance with California Department of Public Health (CDPH) guidance. (Staff Recommendation)
  
7. Potable Water for Private Wells Initial Testing  
(See proposed language in San Diego County Regulatory Code Section 61.504 (e).)
  - 7a. Require a full panel of testing (bacteria, metals, nitrates) results be submitted as part of the MEHKO application. This is the same testing Cottage Food Operators are currently required to submit with their permit application. (Staff Recommendation)
  
8. Potable Water for Private Wells Ongoing Testing  
(See proposed language in San Diego County Regulatory Code Section 61.504 (f).)
  - 8c. Require only bacteriological testing results be submitted annually. This is the same testing Cottage Food Operators are currently required to submit with their permit application. (Staff Recommendation)
  
9. Provided direction regarding regulations to address potential community issues arising from MEHKOs for the unincorporated communities by selecting option 9a.
  - 9a. Continue with Existing Regulations and Collect Data in Unincorporated Communities.  
(Staff Recommendation)
  
10. Direct the Chief Administrative Officer to work with all jurisdictions within the region, on a voluntary basis, to gather data related to MEHKO implementation during 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 MEHKOs, complaints or reports of foodborne illness, and retail food safety compliance.
  
11. Direct the Chief Administrative Officer to provide 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.

12. Direct the Chief Administrative Officer to explore options for the County to support legislative efforts for greater transparency around food delivery entities.
13. Direct the Chief Administrative Officer to remove the options not chosen from the ordinance as directed, including any option directional language, and renumber as necessary for first and second readings.

AYES: Vargas, Anderson, Lawson-Remer, Fletcher, Desmond

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