

**ORDINANCE NO. (NEW SERIES)**

**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**

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 allow for small-scale, direct food sales from home-based food facilities to prioritize locally prepared foods to consumers. This will allow small-scale entrepreneurs entry into the retail food economy and will help provide them with access to guidelines, training, and safety resources.

Section 2. Section 61.101 of the San Diego County Code is hereby amended to read as follows:

**SEC. 61.101. PURPOSE AND APPLICABILITY.**

Part 7 of Division 104 of the California Health and Safety Code (HSC) (sections 113700 et seq.), also referred to as the California Retail Food Code (CRFC), provides Statewide health and sanitation standards for retail food facilities. These sections allow a county to establish some local requirements for retail food facilities and their employees. These sections also provide that a local enforcement agency shall have primary enforcement responsibility for the State regulations in its jurisdiction. The purposes of this Division are to clarify and explain the CRFC for local implementation where necessary, to adopt additional regulations for retail food facilities and their employees to protect the public health and safety in San Diego County, to codify and amend a long-standing County program to regulate caterers, to appoint the Department of Environmental Health and Quality to enforce State and County regulations for retail food facilities and their employees.

Because they are not based on the CRFC, the food facility grading and food handler requirements in this Division (at sections [61.107](#), [61.108](#), [61.114](#) and [61.115](#)) are directly applicable only in the unincorporated portions of San Diego County. However, parallel provisions have been enacted in all of the incorporated cities in the County. Because private event catering is not retail food service as defined in the CRFC, requirements applicable to caterers when preparing and serving food at private events (in [Chapter 3](#) of this Division) are based on County general powers in the unincorporated area (California Constitution, article 11, section 7), and on parallel city ordinances and on State-law health officer powers in incorporated cities. The substantive content of those requirements is based on the CRFC.

Because the Director is the environmental health officer in all incorporated cities in the County (as authorized by State law and by agreement with each city), parallel city ordinance provisions for food facility grading, food handlers and private event caterers are also administered and enforced by the Director. All other provisions of this Division, including all provisions applicable to direct-sales caterers, implement the CRFC and apply County-wide pursuant to the CRFC. All requirements in this Division are administered and enforced by the Director.

This Division does not override any local land use requirement or limitation, or any local regulation on where mobile food facilities may operate.

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 in the California Health and Safety Code

"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.

"MEHKO" means "Microenterprise Home Kitchen Operation" as defined in HSC Section 113825.

"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. Facilities operating as MEHKOs under Chapter 5 of this Code are exempt from grading system requirements under CRFC Section 114367.1(b)(24).

(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). MEHKOs operating under Chapter 5 of this Code are exempt from grading system requirements.

(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. MEHKOs operating under Chapter 5 of this Code are exempt from grading system requirements.

(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 added to read as follows:

## **CHAPTER 5. MICROENTERPRISE HOME KITCHEN OPERATIONS**

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

### **SEC. 61.501. PURPOSE AND APPLICABILITY.**

(a) This chapter implements, and incorporates by reference, the California Retail Food Code (CRFC) as it applies to Microenterprise Home Kitchen Operations (MEHKOs) codified as California HSC Sections 113789, 113825, 114367, 114367.1 - 114367.6 & 114390. The requirements of this chapter are applicable County-wide. MEHKOs are also subject to the requirements of Chapter 1 of this division, and to the applicable requirements of the CRFC, unless specifically exempted under State law. In case of any inconsistency between a provision of this chapter and an applicable provision of the CRFC, the CRFC provision takes precedence.

(b) This chapter does not apply to the following food facility operations which are regulated under the CRFC:

- (1) Food service by a permitted temporary food facility at a community event or swap meet
- (2) Food service by a mobile food facility directly from that facility
- (3) Satellite food service by a permanent food facility
- (4) Cottage food operation
- (5) Catering operation

(c) This chapter does not apply to any operation that is expressly excluded within the definition of "food facility" in subsection (c) of Section 113789 of the HSC; or to the preparation of food by a cook-for-hire in a private home; or to the preparation or delivery of food that has been ordered by an individual consumer to that consumer at any location for his or her direct consumption.

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

### **SEC. 61.502. DEFINITIONS.**

"CRFC" means the California Retail Food Code, which is codified in the California Health and Safety Code.

"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.

"Enforcement Officer" means the Director of Environmental Health and their duly authorized designees and any person appointed by the Director to enforce or administer this chapter.

"HSC" means the California Health and Safety Code.

"MEHKO" means "Microenterprise Home Kitchen Operation" as defined in HSC Section 113825.

"MEHKO Operator" means the resident of the private home who holds the permit for the MEHKO and is responsible for the operation.

"Potable Water" means water that complies with the standards for transient noncommunity water systems pursuant to the California Safe Drinking Water Act, commencing with HSC 116270 to the extent permitted by federal law.

"Resident of a Private Home" means an individual who resides in the private home when not elsewhere for labor or other special and temporary purposes.

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

**SEC. 61.503. MEHKO FACILITY PERMIT REQUIREMENTS.**

(a) No person shall operate without a valid MEHKO permit issued by the Department. Application for permit must be made on a form or forms provided by the Department, and the applicable permit fees (if any) set out in section 65.107 of this code must be paid. A MEHKO permit shall be valid for one year, may be renewed annually, and is not transferable.

(b) The permit application for any MEHKO permit shall, at a minimum, include a listing of the equipment and standard operating procedures the MEHKO Operator proposes to use in compliance with HSC Section 114367.2(c).

(c) MEHKO permits may be modified, suspended, or revoked as provided in the CRFC.

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

**SEC. 61.504. OPERATIONAL REQUIREMENTS AND PROHIBITIONS APPLICABLE TO MEHKO OPERATORS.**

Consistent with, and in addition to, the operational requirements and exemptions set forth in California HSC Section 114367, et seq., a MEHKO shall comply with all of the following:

(a) The MEHKO Operator shall successfully pass an approved and accredited Food Safety Certification Examination, in compliance with HSC Section 113947.1, and submit proof of certification with the permit application for a MEHKO operation.

(b) Any person(s) participating in the MEHKO shall obtain a San Diego County Food Handler Certification issued by the Department within ten (10) days of such participation as specified in Health & Safety Code Section 113948.

(c) All food storage within the permitted area shall comply with Chapter 4, Article 5 of the CRFC. Any other detached rooms on the premises, including accessory buildings and garages, may be used to



*(Recommendation 3a - Authorize a MEHKO Program by Ordinance)*

store food items only if all food is stored inside of an approved refrigerator and/or freezer with a closable door/lid. Sleeping quarters or second units are not included as a permitted area.

(d) Only one MEHKO may operate per residence.

**CHOOSE ONE - POTABLE WATER - INITIAL TESTING:**

***Recommendation 7a - Require a full panel of testing results (bacteria, metals, nitrates) be submitted as part of the MEHKO application (same requirement as cottage food operations):***

“(e) MEHKO Operators whose potable water supply comes from a private well shall submit with their permit application sample results verifying the water supply meets at minimum a “Transient Non-Community Water System” standard, as defined in HSC Section 116275(o). Sample results shall include nitrate, nitrite, bicarbonate, carbonate and hydroxide alkalinity, calcium, iron, magnesium, manganese, pH, specific conductance, sodium, total hardness and bacteriological water quality.”

**OR**

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

“(e) MEHKO Operators whose potable water supply comes from a private well shall submit with their permit application sample results verifying the water supply meets at minimum a “Transient Non-Community Water System” standard, as defined in HSC Section 116275(o). Sample results shall include nitrate, nitrite and bacteriological water quality.”

**CHOOSE ONE - POTABLE WATER - ONGOING TESTING:**

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

“(f) MEHKO Operators whose permits are initially approved, shall submit annually with the MEHKO permit renewal, updated nitrate, nitrite bicarbonate, carbonate and hydroxide alkalinity, calcium, iron, magnesium, manganese, pH, specific conductance, sodium, total hardness, and bacteriological water sample results that show the water supply continues to meet “Transient Non-Community Water System” potable water standards. MEHKO served by a public water system with groundwater sources shall submit documentation that water supply meets at minimum Transient Non-Community water quality standards.”

**OR**

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

“(f) MEHKO Operators whose permits are initially approved, shall submit quarterly, updated nitrate, nitrite bicarbonate, carbonate, and hydroxide alkalinity, calcium, iron, magnesium, manganese, pH, specific conductance, sodium, total hardness, and bacteriological water sample results that show the water supply continues to meet “Transient Non-Community Water System” potable water standards. MEHKO served by a public water system with groundwater sources shall submit documentation that water supply meets at minimum Transient Non-Community water quality standards.”

**OR**

**Recommendation 8c** - Require only *bacteriological* testing results be submitted *annually* (same requirement as cottage food operations):

“(f) MEHKO Operators whose permits are initially approved, shall submit annually with the MEHKO permit renewal, updated nitrate, nitrite and bacteriological water sample results that show the water supply continues to meet “Transient Non-Community Water System” potable water standards. MEHKOs served by a public water system with groundwater sources shall submit documentation that water supply meets at minimum Transient Non-Community water quality standards.”

**OR**

**Recommendation 8d** - Require only *bacteriological* testing results be submitted *quarterly*:

“(f) MEHKO Operators whose permits are initially approved, shall submit quarterly, updated nitrate, nitrite and bacteriological water sample results that show the water supply continues to meet “Transient Non-Community Water System” potable water standards. MEHKOs served by a public water system with groundwater sources shall submit documentation that water supply meets at minimum Transient Non-Community water quality standards.”

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

#### **SEC. 61.505. INSPECTIONS.**

(a) Pursuant to the Health and Safety Code, the Department shall have the right to enter, inspect, issue administrative citations to, and secure any sample, photographs, or other evidence from any MEHKO, or any facility suspected of being a MEHKO, or a vehicle transporting food to or from a MEHKO, at any reasonable time. Unless the Department fails to provide proper identification, refusing an inspection may result in the health permit being suspended or revoked, and/or the owner or operator shall be guilty of an infraction or misdemeanor offense.

(b) The Department shall inspect MEHKO upon the initial application, as well as on an annual basis, or due to a consumer complaint, if there is reason to suspect that unsafe food has been produced, or there is another violation of this Ordinance. An inspection form provided by the Department shall be used for all inspections. An inspection will be conducted after advanced notice is given to the Resident of a Private Home and will include Permitted Areas and vehicles used for transporting food to or from a MEHKO. The Department may seek cost recovery, based on the hourly rate established in in section 65.107 of this code if additional inspections or complaint investigations are required to ensure compliance with this chapter.

(c) If the applicant refuses to allow an inspection, or is otherwise unable to allow an inspection within a reasonable time, permits may be denied, revoked, or placed on hold.

Section 11. Effective Date. This Ordinance shall take and be in force thirty (30) days after the date of its passage, 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.



**ATTACHMENT F2**

*(Recommendation 3a - Authorize a MEHKO Program by Ordinance)*

APPROVED AS TO FORM AND LEGALITY

COUNTY COUNSEL

BY

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