



Board Briefing Report

DATE: June 14, 2024
TO: Board of Supervisors
FROM: David Luchini, RN, PHN, Director, Department of Public Health
SUBJECT: Microenterprise Home Kitchen Operations

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EXECUTIVE SUMMARY

This briefing will provide information regarding Microenterprise Home Kitchen Operations (MEHKO) and its impact to current County operations. The Department of Public Health's Environmental Health Division (DPH EHD) is responsible to inspect and permit retail food facilities, mobile food vendors and cottage food operations. MEHKOs are not currently authorized to operate in Fresno County and therefore, aren't inspected or permitted by DPH EHD.

DPH EHD recommends utilizing MEHKO grant funding to research the potential opportunities and obstacles of adopting a MEHKO ordinance. Additionally, this will allow DPH EHD to develop the necessary procedures and mechanisms to understand the community's interest in MEHKOs.

HISTORY/STATUS

On September 18, 2018, Governor Jerry Brown signed Assembly Bill (AB) 626, which took effect January 1, 2019. AB 626 amended the California Health and Safety Code to include MEHKOs as a new type of retail food facility that's operated by a resident in their private dwelling where food is stored, handled, prepared, and potentially served to consumers. The bill also established requirements for internet food service intermediary (IFSI) entities, which facilitate the sale of home cooked consumables through an internet or mobile platform. MEHKO operators may use IFSIs to advertise and sell their food. IFSIs are required to obtain a registration from the California Department of Public Health – Food and Drug Branch prior to advertising or promoting MEHKOs on their internet web site or mobile application.

On October 7, 2019, AB 377 introduced minor changes to AB 626 and granted counties full discretion to authorize MEHKOs within their jurisdiction. This bill limited MEHKOs to selling no more than 30 meals per day and no more than 60 meals per week and placed a cap of \$50,000 on gross annual sales.

On September 23, 2022, Senate Bill (SB) 972 established MEHKOs as a commissary kitchen for up to two Compact Mobile Food Operations (CMFO), meaning food can be stored and

prepared in a MEHKO and served from a DPH EHD-permitted CMFO cart, stand or other non-motorized, unenclosed conveyance. SB 972 also allows MEHKOs to sell non-potentially hazardous food or produce items that do not count toward the cap on gross annual sales.

On July 21, 2023, AB 1325 was signed and took effect, increasing the cap on meal sales to 90 per week and gross annual sales to \$100,000 (adjusted based on the California Consumer Price Index). Additionally, the bill defines a “meal” to mean the amount or quantity of food that is intended to be consumed by one customer in one sitting. A meal may include one or more of any of the following:

- A main dish
- Appetizers
- Side dishes
- Beverages
- Baked goods
- Desserts

FOCUS OF STAFF ACTIVITY

Since MEHKOs have never been authorized by your Board to operate in the County, DPH EHD does not have a mechanism to collect the necessary data to determine precise staff impact; however, MEHKOs would likely require additional oversight from DPH EHD and the County Department of Public Works & Planning as well as the city in which the MEHKO is located. This oversight includes, but is not limited to, California Retail Food Code enforcement, food safety, daily and weekly meals served, gross annual income verification and foodborne illness complaints.

As of March 15, 2024, DPH EHD is responsible for inspecting and permitting 6,538 retail food facilities throughout the County. DPH EHD’s Consumer Protection Unit has 29 environmental health staff with the ability to conduct inspections and each one is assigned an average of 225 facilities. Environmental health staff are also required to follow up on every complaint DPH EHD receives. In 2023, staff responded to 342 complaints.

FISCAL CONSIDERATIONS

On February 15, 2024, DPH EHD received a grant award notification from the California Conference of Directors of Environmental Health in the amount of \$155,451.75, which will be brought before your Board for approval on June 18, 2024. The grant funding is to be used for direct support in planning for and/or implementing a MEHKO program, including program development, public outreach, staff training, offsetting permit fees and enforcement. These funds are not contingent upon your Board adopting a MEHKO ordinance.

If your Board ultimately adopts a MEHKO ordinance, DPH EHD would likely need to hire more professional environmental health staff to follow up on complaints and fulfill inspection and permitting responsibilities. Additional administrative staff may be needed to assist with increased consumer inquiries, data entry, compiling data and composing reports. In addition, Master Schedule of Fees will require updates, with approval from your Board, to include MEHKOs and the estimated DPH EHD cost to inspect and permit these facilities.

RECOMMENDATION

DPH EHD has the following concerns regarding MEHKOs being authorized to operate in Fresno County:

- Restriction on inspections
 - Generally, only one scheduled inspection is allowed per year, whereas restaurants are inspected unannounced four times per year.
 - Additional inspections may be performed in response to a complaint or suspected health concern. These inspections must be scheduled at a mutually agreed upon date and time and DPH EHD may only inspect areas of the dwelling that relate to the operation.
- Enforcing limits on meals and gross annual income
- Foodborne illness
 - MEHKOs are not required to have handwashing supplies in the kitchen and existing legislation is silent on proper utensil washing, which are two of the top five contributors to foodborne illness outbreaks^{1, 2}.
 - MEHKOs are able to prepare and/or sell high-risk foods, such as raw or undercooked meat, poultry and eggs. These are the foods most associated with food borne illness³.
- Lack of regulations regarding water supply and wastewater disposal
- Sanitation deficiencies
 - Limited food storage and preparation areas
 - Use of household equipment instead of restaurant grade
 - Control of retail food areas within the dwelling (e.g., smoking, pets, etc.)
- DPH EHD inspectors are unable to see the kitchen in operation
- Permitting and impact to cities
 - If your Board authorizes MEHKOs to operate in the County, the permit to operate would be valid in any city in the County, regardless of whether the city separately approved or prohibited MEHKOs within their jurisdiction.
 - Cities within the County also wouldn't be able to prohibit operation, require the dwelling to be re-zoned or impose any other restriction on a MEHKO in any dwelling for zoning purposes.
 - Each city would be responsible for their own existing ordinances, regulations and code compliance.
- Opposed by the majority of environmental health agencies
 - As of April 15, 2024, only 13 of the 62 jurisdictions in California have permitted MEHKOs, one of which is operating under a pilot program.

For the reasons detailed above, the recommendation is to allow more time for the Department to evaluate the impact and return to your Board by July 2025. DPH EHD will continue monitoring legislative action around MEHKOs to determine if new regulations address the concerns presented above, conduct research and survey other California counties who have authorized MEHKOs regarding their policies and procedures. The current legislation creates an inequity with restaurants and other food facilities that are held to stringent health, safety and sanitation standards to mitigate the risk of food borne illness. This encourages operators to undergo the less stringent permitting process as a MEHKO than a standard retail food facility.

CONTACT PERSON

Should your Board have any questions, please contact Vincent Mendes, DPH EHD Manager at 559-600-3048.

REFERENCES

¹https://www.cdc.gov/food-safety/prevention/?CDC_AAref_Val=https://www.cdc.gov/foodsafety/keep-food-safe.html

²<https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/food-safety-basics/cleanliness-helps-prevent>

³https://www.cdc.gov/food-safety/foods/?CDC_AAref_Val=https://www.cdc.gov/foodsafety/foods-linked-illness.html

California Department of Public Health – Food and Drug Branch

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/MicroenterpriseHomeKitchenOperations.aspx>