



ENVIRONMENTAL HEALTH

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To: General Government Committee

Subject: Recommendations to DEH to propose authorization of Micro Enterprise Home Kitchen Operations in Mendocino County (Districts: All)

Executive Summary

State law now allows for microenterprise home kitchen operations (MEHKOs), but implementation is contingent upon the local jurisdiction first opting in. The Division of Environmental Health is bringing this item forward in the hopes of implementing a program for MEHKOs in Mendocino County.

Background Legislation

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 Division of Environmental Health (DEH) is the local enforcement agency of the CRFC for all 4 incorporated cities (local jurisdictions), as well as the unincorporated communities in the county. DEH implements a food program conducting inspections 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. 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.

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.

MEHKOs cannot operate or be permitted until authorization is granted by the governing body of the local enforcement agency. The County of Mendocino (County) Board of Supervisors (Board), as the governing body of DEH, has the authority to authorize a local MEHKO program for the entire Mendocino County.

Requirements in State law (the CRFC) for MEHKOs

The CRFC specifies that MEHKOs:

- must be operated by a resident of a private home or apartment;
- must obtain a health permit, pass an initial home kitchen inspection and undergo a maximum of one routine inspection per 12 months;
- are limited to one full-time equivalent food employee, not including a family member or household member;
- must prepare, cook, and serve food on the same day;
- are limited to a maximum of 30 individual meals per day, and 60 individual meals per week;
- are restricted from specialized processes that require a Hazard Analysis Critical Control Point Plan (a written plan specifying procedures for maintaining food control throughout the entire food preparation, distribution, and storage process), or producing, serving, or selling raw milk or raw milk products;
- are restricted from producing, manufacturing, processing, freezing, or packaging milk or milk products, including, but not limited to, cheese, ice cream, yogurt, sour cream, and butter;
- are restricted from serving or selling raw oysters;
- are restricted from operating as a cottage food operator, caterer, temporary event vendor, or mobile food vendor from their home;
- must sell directly to consumers for onsite dining, delivery, or take-out; and
- are limited to maximum \$50,000 in annual gross sales, as adjusted annually for inflation based on the California Consumer Price Index.

MEHKOs are exempt from specific CRFC standards normally required for a food facility, such as a restaurant, primarily to accommodate the differences between a home kitchen and a commercial kitchen. For example, MEHKOs are exempt from:

- requirements relating to sinks for dish/utensil washing and manual sanitation, and mechanical dish machine use;
- requirements for mechanical ventilation;
- requirements pertaining to plumbing, drainage, and waste;
- limitations on the presence and handling of animals;
- limitations on consumer access to the food facility through the food preparation areas; and

The Draft MEHKO ordinance includes optional requirements or operational provisions in the following food safety component categories:

- Food Safety Certificate
- Alcohol Acknowledgement
- Number of MEHKOs per Residence
- Potable Water for Private Wells - Initial Testing
- Potable Water for Private Wells - Ongoing Testing
- Proposed Fees

Local MEHKO Program and Fees

If the Board were to authorize a MEHKO program for the county, DEH would be the local enforcement agency responsible for food safety. Prior to operating, each MEHKO would be required to submit a Standard Operating Procedure (SOP), receive an initial inspection by DEH, pay the permit fee, and obtain a health permit. Staff will review the SOP, which includes reviewing the menu, food preparation methods, and how dishes and utensils will be washed and sanitized in the home, and conduct the initial inspection, prior to issuing the initial permit. In subsequent years, the MEHKO operator would pay a renewal permit fee, receive an annual inspection, and only need to submit the SOP for review if there is a significant change in operation or menu.

Roles and Responsibilities Related to MEHKOs

While DEH is the local enforcement agency responsible for food safety, complaints or issues related to community impacts, including noise and parking, would be the responsibility of the individual incorporated city's code enforcement or corresponding compliance Division. For the unincorporated communities in the county, the Planning and Building Services Code Enforcement Division would be responsible for issues related to community impacts.

The chart below shows the roles and responsibilities for DEH, and the cities or PDS/DPW for the unincorporated communities.

Environmental Health Responsibility	Code Enforcement Responsibility (City or County)
CRFC enforcement	Local land use ordinance enforcement
Food safety	Prohibited Signage/outdoor advertising displays
Vermin in home	Noise
Food debris/food refuse buildup	Traffic/Parking
Non-food debris/refuse buildup (solid waste)	Public Nuisance Regulations
Foodborne illness complaints	Home construction/remodeling
Daily/weekly meals served	Traffic/Parking

Issues or concerns related to wastewater would be the responsibility of the MEHKO operator's local wastewater authority. If the MEHKO is supported by an on-site waste disposal system and issues or concerns arise DEH shall investigate and work with the property owner to address or abate them.

Fiscal Impact

Funds for this FY 24/25 have been awarded to the County by the MEHKO Block Grant in the award amount of \$46,645.89 through the California Conference of Directors of Environmental Health (CCDEH). An additional round of funding has been authorized and DEH intends on applying for the maximum allotment of an additional \$20,000 with BOS approval and authorization.

If the Board authorizes a MEHKO program, staff estimate permitting 20 MEHKOs in FY 2025-26, which is slightly lower than the number of cottage food operation permits in FY 2024-25. This estimate is based on the current number of Cottage Food Class B permit holders we currently have. The Cottage food program is the most similar existing permit program to the proposed MEHKOs. DEH proposes

likening the fees charged for Cottage Food Class B as they receive a single inspection a year as well as require initial and annual water testing for sites on private water supplies.

There is no fiscal impact if the Board declines to authorize MEHKOs 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, and there will be no change in net General Fund and no additional staff years associated with these options.

Recommendations to General Government Committee:

It is requested that the General Government Committee make a recommendation to the full Board regarding authorization of a MEHKO program for the county by selecting one of the following options:

- *Option A - Authorize a Microenterprise Home Kitchen Operations Program*
- *Option B - Decline to Authorize a Microenterprise Home Kitchen Operations Program*

Staff suggest the General Government Committee's recommendation should be to ***Authorize a Microenterprise Home Kitchen Operations Program***. **With the following options for food safety components included in the draft ordinance:**

1. Food Safety Certificate

- Require Food safety certificates to be required for MEHKOs **within 60 days of operation**, in accordance with the CRFC.

This is a current standard practice within the division for all new food facilities and should also be available to new MEHKOs.

2. Number of MEHKOs per Residence

- Only allow **one MEHKO to operate in each residence**, in accordance with California Division of Public Health (CDPH) guidance.

The number of MEHKOs per residence is not defined in the CRFC. DEH staff reached out to the California Division of Public Health (CDPH) seeking clarification on this topic. In November, CDPH issued a guidance document indicating that multiple people living in the same residence cannot operate multiple MEHKOs. Both Riverside County and Santa Barbara County included language in their MEHKO ordinances to limit MEHKOs to one per residence. The clarification from CDPH is in the form of guidance and not in statute or regulation. Staff recommends limiting the number of MEHKOs to one per residence. Limiting the residence to one MEHKO will limit the amount of food being stored at the residence associated with the operation. Excess food storage can lead to food being stored at unsafe temperatures in overstocked refrigerators or in areas that are more prone to contamination and vermin, such as floors and outdoor spaces. Additionally, this will limit potential community impacts related to traffic, parking, trash, and noise.

3. Potable Water for Private Wells - Initial Testing

- 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.

4. Potable Water for Private Wells - Ongoing Testing

- 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.

ATTACHMENT(S)

Attachment A - California Retail Food Code Text for MEHKOs section 4.58

Attachment B – Draft Alcohol Acknowledgment Form

Attachment C – AB 1325

Attachment D – CDPH General Permit Requirements for MEHKOs