



Legislation Text

File #: 19-807, Version: 1

Receive a presentation on Microenterprise Home Kitchen operations and provide direction to staff as deemed appropriate

Published Notice Required? Yes ☐ No ☒
Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board of Supervisors receive a presentation on Microenterprise Home Kitchen operations and provide direction to staff as deemed appropriate.

SUMMARY:

Beginning January 1, 2019, and pursuant to AB 626 the California Health and Safety Code (CalCode) was amended to include provisions for the authorization, regulation and operation of a Microenterprise Home Kitchen (MHK), which is a new type of retail food facility where a resident operates a restaurant from their home kitchen for on or off-site food sales directly to the consumer. MHKs are limited in the number of meals served and annual income received from sales. AB 626 places limitations on regulation of MHKs by environmental health, planning and building agencies. For example, this amendment restricts routine sanitation inspections to only once per year, regardless if the food being prepared and served is perishable but allows inspections in response to a complaint or if there is a specific public health concern. It also removes occupancy requirements for public access to the property for direct sales and for on-site food consumption. CalCode requires the governing body of a jurisdiction to adopt a resolution or an ordinance to "opt-in" for these provisions to become effective and for MHKs to be allowed to operate in a County or City.

During the state's legislative process prior to enactment of AB 626, the Solano County's Legislative Committee, with input from the Public Health Officer and the Environmental Health Division, recommended an oppose position to AB 626 due to various public health and other concerns. These concerns included those related to foodborne illness, sanitation, parking, water/waste water, fire hazards, ADA accessibility, housing conditions, the potential difficulty and cost to regulate private homes. The Solano County Board of Supervisors approved the oppose recommendation and provided an oppose letter to the Assembly Appropriations Committee on January 17, 2018 and a request for veto letter to the Governor on August 29, 2018. AB 626 was enacted by the Governor on September 18, 2018 with the new law becoming effective on January 1, 2019. On August 13, 2019 Supervisor Monica Brown requested that the Board discuss MHKs now that the bill has become law and directed staff to facilitate such a discussion by the Board in October 2019. The purpose of this report is to provide a general background on MHK requirements, their status in California, and options available to the Board.

A recent development is the signing of AB 377 into law by the Governor which now provides the sole authority to permit MHKs within a jurisdiction to the enforcement agency responsible for the implementation of CalCode. Within Solano County and many other County jurisdictions this authority lies with the Environmental Health Department acting as the Local Enforcement Agency, thereby preempting the cities within the County to "opt-in or out" of these provisions.

FINANCIAL IMPACT:

The cost to prepare this report is minimal and absorbed by the Departments' adopted budget. After discussion, should the Board decide to direct staff to prepare a resolution or an ordinance and allow operation of MHKs in Solano County, then additional costs associated with regulating MHKs will be incurred. It is difficult to estimate the fiscal impacts at this point since the demand for permits and the subsequent popularity of MHKs is unknown.

DISCUSSION

CalCode pursuant to AB 626 and AB 377 contains specific operational and regulatory requirements for MHKs that need to be addressed should the County give serious consideration to "opt-in" to the new program. The County is limited to accept the requirements in CalCode and cannot place additional restrictions on their operation or regulation. Below are some of the main operational and regulatory parameters:

Operational Requirements for MHKs:

- A city or county designated as the enforcement agency for retail food safety by CalCode has full discretion to authorize operation of MHKs in their jurisdiction through a resolution or ordinance but cannot adopt requirements more restrictive than CalCode. Until a county or a city authorizes these types of operations, MHKs cannot operate.
 - For Solano County this means that only the County Board may authorize the operation and permitting of MHKs and may do so on a countywide basis.
- A resident can prepare and sell up to 30 meals per day but no more than 60 meals per week from their home kitchen up to a maximum of \$50,000 gross annual sales.
- MHKs can be operated from single or multi-family homes, owned or rented.
- Home prepared meals may contain perishable food items, except for oysters and raw milk, must be made and sold the same day, and must be sold directly to the consumer either sit down on site or take out, which includes internet sales.
 - Department note: Perishable food items increase the potential for food borne illness and Solano County has had documented illnesses and a death from home prepared perishable foods.
- May have one employee in addition to family members
- Appropriate food training certification and food handling cards are required for the operator and those involved in food preparation.

Regulation requirements for MHKs:

- MHKs may have no more than one routine inspection per year, with additional inspections being allowed only to investigate a complaint or if health hazard is suspected (for example: knowledge that

operator has a communicable, food-borne, illness).

- In Solano County, typically, Environmental Health will perform two to three unannounced inspections of a commercial retail restaurant if perishable foods are prepared and served.
- To accommodate the differences between a home kitchen and a commercial kitchen, MHKs are exempted from many commercial kitchen requirements, including those related to sinks for handwashing, dishwashing, and requirements for commercial food grade construction for the facility and equipment. The presence or handling of animals in the kitchen is only restricted during the food preparation time.
- The law also exempts MHKs from any additional planning and permitting provisions of other laws as specified such as zoning requirements, noise restrictions, traffic, ADA requirements and occupancy, etc.

Status of MHKs in California:

While AB 626 originally provided authority to city and county jurisdictions to allow permitting of MHKs within their respective jurisdictions, it created confusion because the authority to enforce the provisions of CalCode and issue food facility permits only lies within the Environmental Health agencies. With the exception of a few cities that have their own Environmental Health Departments, the county Environmental Health departments act as the local enforcement agency with jurisdiction for retail food facilities. AB 377, the cleanup bill to clarify the authority to permit MHKs was signed into law by the Governor on October 7, 2019. This law provides authority to cities or counties that are authorized as enforcement agencies for CalCode to permit MHKs within the entirety of a jurisdiction. Within Solano County, this means that whatever action the County takes regarding the MHKs will also apply to all Solano Cities. As of October 7, 2019, many jurisdictions were monitoring AB 377 and awaiting the outcome of this cleanup bill.

A recent survey of all California Environmental Health agencies throughout the state provided to the Department shows that for those responding, most have not taken action to “opt-in” due to a lack of direction/interest, general concern with issues surrounding MHKs from their elected officials, or to wait for the enactment of AB 377. To date none of the seven cities in Solano County have adopted their own local resolutions or ordinances to allow MHKs. Department staff reached out to various city staff personnel to find out the interest in each city to allow MHKs. At the time of writing this report we heard from two cities, who indicated limited intent thus far to opt in. We are awaiting responses from the remaining cities.

In terms of other California Counties, the Board of Supervisors for Siskiyou County adopted Resolution 19-09 to formally prohibit MHKs and the boards for Yolo County and Butte County decided to provide no direction to staff during informational updates on MHKs at their respective board meetings, which has the same effect as not authorizing the operation of MHKs. Staff with the City of Berkeley intend to bring the matter to their council and receive direction on MHKs on October 15, 2019 with this outcome unknown at the time of writing this staff report. The County of Riverside has adopted an ordinance to authorize the permitting and operation of MHKs within its jurisdiction. County of Riverside Ordinance #949 includes provisions as required by CalCode, permit fee requirements (set at \$651.00), and enforcement provisions, including administrative and civil penalties. Between June 6, 2019, the effective date of their ordinance allowing MHKs, and October 7, 2019 the County of Riverside has permitted twenty MHKs, with the majority being issued in September 2019.

Options:

CalCode provides complete discretion to the Board on whether to allow MHKs. The Board has following options in this regard:

Option 1: Take no action at this time. This will have the effect of not allowing MHKs to operate currently in Solano County. Under this option the Board could either provide no direction to staff or ask staff to return with

additional information after further evaluation the actions of other jurisdictions throughout the state regarding MHKs now that AB 377 has been signed. This would also allow further outreach with the Cities within the County to determine their level of interest.

Option 2: Direct staff to return with a resolution to outright prohibit MHKs in Solano County.

Option 3: Direct staff to return with a resolution or an ordinance to allow MHKs in Solano County.

ALTERNATIVES:

The Board may choose not to discuss MHKs or to defer such discussion to a later date. With recent legislation becoming law, this is not advised as it is timely to address this issue for the sake of clarity to the public that may have an interest in this issue.

OTHER AGENCY INVOLVEMENT:

In obtaining information for this report, the department consulted with County Counsel, Solano County Public Health, and other environmental health agencies throughout California.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION