



Legislation Text

File #: 19-962, **Version:** 1

Receive an update from staff on possible options for allowing Microenterprise Home Kitchen Operations (MEHKHO's) in Solano County; and Provide direction to staff on the merits of proceeding with an "opt-in" ordinance if accompanied with amendments to the business license and nuisance requirements inclusive of provisions intended to address operational and safety measures for such uses

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

DEPARTMENTAL RECOMMENDATION:

The Department of Resource Management recommends that the Board:

- 1) Receive an update from staff on possible options for allowing Microenterprise Home Kitchens in Solano County; and
- 2) Provide direction to staff on the merits of proceeding with an "opt-in" ordinance if accompanied with amendments to business license and nuisance requirements inclusive of provisions intended to address operational and safety measures for such uses.

With enactment of AB626 and AB377 effective January 1, 2019, the California Health and Safety Code (CalCode) was amended to provide Local Enforcement Agencies (Primarily County Environmental Health Departments) the option of allowing (opt in) Microenterprise Home Kitchen Operations (MEHKO's) to operate within its jurisdiction. MEHKO's are residential home kitchens that can be operated and permitted as commercial food facilities. The new laws establish parameters for MEHKO's including specific provisions on how an Enforcement Agency may regulate a MEHKO on residential property. In counties where the Environmental Health Department functions as the Countywide Local Enforcement Agency, an action by the County to "opt-in" would render the new MEHKO provisions applicable to all cities in addition to the unincorporated area of the County.

The Board conducted an initial discussion of the new MEHKO provisions on October 22, 2019. A range of issues were discussed including the merits and potential concerns of allowing MEHKO's in residential areas. Possible benefits discussed included providing lower cost of entry option for someone wishing to start a small business including spouses of Travis Air Force Base personnel living off base and seeking a second income option. Such facilities may also provide a healthy meal option in circumstances where food desert conditions exist. Issues of concern included limitations under the law to address zoning, fire code and building code issues and potential increased health risks caused by the nature of MEHKO type operations and limitations on inspections. Fairness issues were also brought up relative to cost incurred by commercial restaurant operations to meet health and safety code and zoning requirements.

At the conclusion of public testimony and Board discussion, the Board directed staff to explore possible ways to address issues raised under the limitations established by the new law. The Board specifically asked that the matter be brought back for Board consideration on December 10, 2019. In response, staff has explored various options and developed a list of suggestions for Board consideration (see discussion section and attachment). The focus is on possible changes to the County's Business License requirements and additional

nuisance provisions that staff does not believe are specifically pre-empted under the new law but could be adopted by the Board should it decide to allow MEHKO's.

It is important to note that any new nuisance provisions or Business License requirements adopted by the County would apply only to unincorporated areas even though MEHKO's would be allowed Countywide if action is taken by the Board to "opt in". Individual cities could adopt similar provisions to what is being suggested in this report at their discretion or they could just defer to the requirements of State law.

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 MEHKOs in Solano County, then additional costs associated with regulating MEHKO will be incurred. It is difficult to estimate the fiscal impacts at this point since the demand for permits and the subsequent popularity of MEHKOs is unknown.

DISCUSSION

The Board has three broad options in terms of regulating MEHKOs from which to choose:

OPTION 1: Wait (Take no action). In this option the Board could provide no staff direction or direct staff to return at a future date. This would allow additional time to evaluate the implementation of MEHKO permitting activities in other jurisdictions, and/or evaluate if additional legislation should be recommended to address potential issues created by microenterprise businesses occurring in residential areas. This option would result in MEHKOs not being allowed on a countywide basis in Solano County until option 2 or option 3 occur.

OPTION 2: "OPT-IN" with no local controls. The Board could choose to adopt a resolution to allow MEHKOs to operate county-wide. In this option, only the requirements in CalCode would apply and there would be no additional local regulations or control, except for those provided in currently existing ordinances, such as Solano County Code, Chapter 14 that regulates business licensing. Under this option, only an initial permit with an initial inspection would be required per CalCode and there would be no subsequent annual permit renewal or routine inspection. Staff would still respond and inspect if a complaint were filed and evaluate the operations at that time.

Option 3: "OPT-IN" with the adoption of local controls. Under this option the Board could adopt a local ordinance and amend other existing ordinances as deemed necessary to address the issues identified by the Board on October 22, 2019 and by staff since then to the extent allowed by law. These issues fall into five broad categories as discussed below. The attached table also provides a summary of the decisions that the Board could make to address the issues within each of these categories. Once the Board decides how to pursue each issue, then staff can return with a proposed local MEHKO ordinance and amendments to other ordinances as necessary for the Board's consideration at a later date.

A. Administration: To provide additional local control for MEHKOs, the Board could choose to adopt various administrative tools in a local ordinance, including provisions for annual renewal of the permit and annual routine inspections by Environmental Health to ensure compliance with both state standards and any local controls adopted by the Board. The Board could also choose to adopt limitations on permitting, such as allowing only one permit per residence and requiring homeowner consent for rentals prior to permit issuance. The Board could also choose to amend Chapter 14 regulating business licenses to include provisions for property owner consent, if a rental, and/or to limit the number of business licenses at a residence to apply to all businesses operating in the unincorporated area. To evaluate the success of the local controls and if any changes are warranted the Board could choose to require an annual report on the MEHKO program, which is similar in concept to the annual biosolids report prepared by the Department for the Board.

B. Business Operations: The Board could choose to adopt local controls on the business aspects of a MEHKO. For example, the Board could choose to enable Environmental Health to verify CalCode limitations on gross annual income and the number of daily/weekly meals served by a MEHKO as outlined in the attached table. While Chapter 14 requires a MEHKO to have a business license if operating in the unincorporated area, MEHKOs can operate countywide. Therefore, the Board could choose to require the MEHKO operator to submit proof that a business license has been issued from the local jurisdiction prior to permit issuance in a local ordinance. Currently the Department does not capture tax payer information, review copies of tax returns, or refer businesses to the Solano County Assessor for any of the programs it implements. The Board could choose from one or more options to help ensure that MEHKO businesses are paying taxes, as outlined in the attachment. These provisions could either be added to a local MEHKO ordinance, or through amendment to the Chapter 14, or both. The Assessor's Office does have specific forms to ensure that business property is properly assessed which should capture the tax payer information.

C. Food Source: The Board could add a provision in a MEHKO ordinance for the operator to provide proof that no food used in the MEHKO is obtained from a charitable organization or government assistance program to prevent misuse of food not meant for retail sale. Verification may be provided through self-certification by the operator or from submission of proof at permit renewal or upon request at routine inspections.

D. Education: CalCode requires the MEHKO to have a least one person with a food safety certificate and all others handling food to have a food handler card and requires the certificate/card to be obtained within a certain timeframe if there are any changes. Typically, staff will check these during routine inspection. The Board could require that the operator submit required certifications and cards within 60 days of any changes to the Department so that proper training can be verified if changes occur between the annual inspection.

E. Nuisance: To address potential nuisances, the Board could include specific remedies, such as the ability to file a nuisance abatement lawsuit and/or injunctive relief and/or consider administrative fines either in a specific MEHKO ordinance or through a stand-alone nuisance ordinance. The Board could also address nuisances through the business license process by having the ability to suspend or revoke a license based on creation of a public nuisance. It is recommended that the current process of staff inspecting each complaint and determining if the condition rises to the level of creating a public nuisance be used. However, the Board could decide to define the specific conditions that constitute a public nuisance. If nuisances are defined, then they should be MEHKO specific to avoid unintended consequences on other businesses within the county due broad application of the nuisance provisions.

For example, the Board could choose to prohibit exterior signs or displays at MEHKO's. This would help reduce visual nuisances in unincorporated residential neighborhoods that would otherwise be in conflict with existing zoning restrictions.

Although these provisions may address nuisances to some degree within the County, any County ordinances applicable to nuisances will not extend to the city jurisdictions and are not enforceable within the cities. Each city has the option to enact their own nuisance provisions consistent with the provisions of CalCode applicable to MEHKO's.

Next Steps:

After the Board has made their decisions regarding the various options to regulate MEHKOs, direction can be provided to staff to return at a later date. At that time staff could present an update or proposed resolution or ordinance based on the direction from the Board.

ALTERNATIVES:

The Board may also choose to consider other concerns, options, or methods not provided in the report. This is at the Board's discretion.

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. If approved by the Board the cities in Solano County may need to amend existing nuisance ordinances and business license ordinances. Per Board direction on October 22, 2019, staff did not contact cities for their input.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION