

## Sec. 14-3-070. - Microenterprise home kitchen operations.

- (a) Background findings. The board of supervisors finds that California Health and Safety Code Section 113000 seq. (the California Retail Food Code) was amended to add microenterprise home kitchen operations as a type of food facility. Health and Safety Code Section 114367 provides the governing body of the local enforcement agency for food facilities the ability to allow microenterprise home kitchen operations within the enforcement agency's jurisdiction in accordance with the requirements of the California Retail Food Code.
- (b) Conditional authorization and non-severability. Pursuant to California Health and Safety Code section 114367, this section authorizes the permitting of microenterprise home kitchen operations, subject to the limitations in this section. This authorization applies to the unincorporated area of the county, and to all cities and towns for which the county health officer serves as the city health officer. If any subsection, sentence, clause or phrase of this section is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, or rendered invalid by any existing or subsequent state law, or stayed by any court order, this entire section shall automatically sunset unless and until further legislative action is taken by the board of supervisors. It is the intent of the board of supervisors that no further microenterprise home kitchen operations permits shall be issued in this circumstance. Nothing in this section shall be construed to vest any MEHKO permittee with rights to ongoing operations after the expiration of their permit should this section sunset.
- (c) Definitions. The following definitions apply within this section:
  - (1) "Health officer" means the health officer, director of environmental health, or the designee of either.
  - (2) "Microenterprise home kitchen operation operator" means the resident of the private home who holds the permit for the MEHKO and is responsible for the operation.
  - (3) "Microenterprise home kitchen operation" or "MEHKO" has the definition set forth in section 113825 of the California Health and Safety Code.
  - (4) "Permitted area" means a private home kitchen described and authorized in the permit for the MEHKO, on-site consumer eating area, toilet room, janitorial or cleaning facilities, refuse storage area, and attached rooms within the home that are used exclusively for food, utensil and equipment storage. Detached accessory buildings, including garages and sleeping quarters, enclosed patios or second units are not included as a permitted area. Any other detached rooms on the premises, including accessory buildings and garages, may be used to store food items for the MEHKO only if all food is stored inside of an approved refrigerator and/or freezer with a closable door/lid which will be verified upon the health officer's initial inspection.
  - (5)

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

(d) Permit and application. No person shall operate a MEHKO without holding a valid permit issued by the health officer. Application for a permit shall be made upon a form issued by the health officer and shall be accompanied by a fee established by the board of supervisors. Permits shall only be valid for the fiscal year in which they were issued, or until the health officer rescinds the permit for non-compliance with this section. Applications must include:

- (1) A determination by the applicable city or county that the proposed MEHKO Permit is not prohibited by the applicable general plan;
- (2) If the application is for a MEHKO in a leased residence, then written permission of the owner of the property to operate a MEHKO;
- (3) Standard operating procedures with a complete menu, and operational days/hours;
- (4) If the application is for a MEHKO that proposes to use well water, then all applicable public water system permits;
- (5) A business license from the jurisdiction where MEHKO activities will occur, if the jurisdiction requires a business license.

(e) Operating requirements. Consistent with the operational requirements set forth in California Health and Safety Code section 114367, et seq., a MEHKO shall comply with the following:

- (1) A MEHKO shall comply with all applicable requirements of Health and Safety Code section 113825, 114367.1, and 114367.2, and nothing in this section shall be construed as authorizing a MEHKO to operate in violation of the Health and Safety Code.
- (2) A MEHKO in a leased residence shall only operate with the written permission of the owner of the property.
- (3) A MEHKO shall not operate if it is in violation with the applicable city or county's general plan, provided however that a MEHKO Permit shall not be rescinded prior to its annual expiration solely because of a change in the applicable general plan.
- (4) A MEHKO shall comply with the requirements of Health and Safety Code section 113825, 114367.1, and 114367.2.
- (5) No MEHKO food preparation, packaging, or handling may occur concurrent with any other domestic activities, including, but not limited to, family meal preparation, guest entertaining, or dishwashing.
- (6) Other than service animals, as defined in section 35.104 of Title 28 of the Code of Federal Regulation, all animals shall be excluded from the kitchen and dining areas during food service and preparation.

(7)

Equipment and utensils used to produce MEHKO food shall be smooth, easily cleanable, and maintained in a good state of repair.

- (8) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any MEHKO food shall be washed, rinsed, and sanitized before each use.
- (9) All MEHKO food must be stored, prepared, packaged, transported and kept for sale, and served to be pure and free from adulteration and spoilage and shall be maintained protected from contamination.
- (10) All MEHKO potentially hazardous food must be stored and transported with proper internal food temperatures.
- (11) All permitted areas and vehicles used to transport shall be maintained clean, sanitary, in a good state of repair, and free of rodents and insects.
- (12) No preparation, packaging, storage, or handling of MEHKO food and related ingredients and/or equipment shall occur outside of the permitted area.
- (13) A person with a contagious illness shall not work in the MEHKO.
- (14) A person involved in the preparation or packaging of MEHKO food shall keep his or her hands and exposed portions of his or her arms clean and shall properly wash his or her hands before any food preparation or packaging activity.
- (15) Water used during the preparation of MEHKO food products shall meet potable drinking water standards. All applicable water system permits shall be obtained and complied with.
- (16) The private sewage disposal system must be adequate for the additional liquid waste.
- (17) The MEHKO Operator shall successfully pass an approved and accredited food safety manager certification examination.
- (18) Any person(s) involved with the MEHKO shall obtain a Food Handler Certification.
- (19) The MEHKO Operator shall submit and maintain standard operating procedures with a complete menu, and operational days/hours.
- (20) Only one (1) MEHKO may operate per site. A cottage food operation shall not be permitted at the same residence. A MEHKO may not serve as a commissary or mobile support unit for compact mobile food operations.
- (21) No signage or other outdoor displays advertising the MEHKO are allowed.
- (22) All MEHKO food shall be prepared, cooked, and served on the same day.
- (23) MEHKO food shall be consumed onsite at the MEHKO, offsite if the food is picked up by the consumer or delivered to the consumer. The sale of MEHKO food through an internet food service intermediary, approved by California Department of Public Health, is a direct sale. The MEHKO cannot provide food to any wholesaler or retailer for resale and is not a cottage food

operation as defined in section 113758 of the California Health and Safety Code nor a catering operation as defined in section 113739.1 subdivision (a) of the California Health and Safety Code.

- (24) A person who delivers food on behalf of a MEHKO shall be an employee, or family member or household member of the MEHKO Operator.
- (25) Only California Department of Public Health approved internet food service intermediaries may be used.
- (26) MEHKO may not engage in food processes that would require a HACCP plan as specified in section 114419 of the California Health and Safety Code, or produce, serve, or sell raw milk or raw milk products as defined in section 11380 of Title 17 of the California Code of Regulations, or serve raw oysters.
- (27) Food preparation is limited to no more than thirty (30) individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than ninety (90) individual meals per week, or the approximate equivalent of meal components when sold separately. The health officer may decrease the number of individual meals prepared based on the food preparation capacity of the MEHKO, but shall not, in any case, increase the limit of the number of individual meals prepared.
- (28) The MEHKO has no more than one hundred thousand dollars (\$100,000.00) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.
- (29) For MEHKO with cooking equipment, a properly charged and maintained minimum 10 BC-rated fire extinguisher to combat grease fires shall be readily accessible and a first aid kit shall be provided and located in a convenient, accessible area.
- (30) Grading and placarding. MEHKOs are exempt from the grading and placarding provisions of this article.

(f) Inspections. The health officer 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 article. An inspection form provided by the health officer 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.

(g) Civil enforcement. Notwithstanding the remedies set forth in California Health and Safety Code Sections 114390, 114405, and 114409, the county and health officer reserve the right to issue administrative citations in accordance with Government Code section 53069.4. The health officer may issue an administrative citation for any violation of this section pursuant to Chapter 1, section 1-7.6 of the County Code.

(h) Administrative civil penalties.

(1)

Notwithstanding Section 1-7.1 and 1-7.6, penalties assessed for each violation of this section shall not exceed the following amounts: One hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation of the same section within one (1) year; and five hundred dollars (\$500.00) for each additional violation of the same section within one (1) year.

- (2) If the violation is not corrected within one (1) day, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
- (3) Payment of the penalty shall not be construed to excuse the failure to correct the violation, nor shall it be construed to bar further enforcement action(s).
- (4) Upon request for a hearing, the hearing shall be conducted in compliance with Chapter 14 rather than Chapter 1 of the County Code. Following such hearing, the decision of the hearing officer may be appealed pursuant to Section 1-7.6.
  - (i) Nuisance. Any MEHKO, with or without a valid permit, that is in violation of this section is hereby declared to be a public nuisance and dangerous to the health and safety of Sonoma County. In any action, administrative proceeding, or special proceeding to abate a nuisance, reasonable attorneys' fees may be recovered by the prevailing party.
  - (j) Civil actions.
    - (1) Injunctive relief and abatement. Whenever, in the judgment of the health officer, any person is engaged in or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this section, or any rule, regulation, order, permit or conditions of approval issued thereunder, upon the request of the health officer, the county counsel or district attorney may commence proceedings for the abatement, removal, correction and injunction thereof, and require the violator to pay civil penalties and/or abatement costs.
    - (2) Civil remedies and penalties. Any person, whether acting as principal, agent, employee, owner, lessor, lessee, tenant, occupant, operator, contractor or otherwise, who willfully violates the provisions of this section or any rule, regulation, order or conditions of approval issued thereunder, shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000.00) for each day or portion thereof, that the violation continues to exist. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.
    - (3) Any person, whether acting as a principal, agent, employee, owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating any provisions of this section or the rules, regulations, orders, permits or conditions of approval issued thereunder, shall be liable

to the county of Sonoma for costs of abatement and any damages suffered by the county, its agents and agencies, as a result of such violations.

(k) Criminal enforcement. Any person violating any provision of this section shall be guilty of an infraction for a first offense, and thereafter shall be guilty of a misdemeanor. Such individual shall be deemed guilty of a separate offense for each day during which any violation of this section is committed or allowed to exist.

(Ord. No. 6498, § II(Exh. A), 12-3-2024)