

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

AN ORDINANCE OF THE COUNTY OF SAN BENITO)
AUTHORIZING A MICROENTERPRISE HOME KITCHEN)
OPERATIONS PROGRAM THROUGHOUT THE COUNTY) ORDINANCE NO. ____
OF SAN BENITO AND INCORPORATING BY REFERENCE)
HEALTH AND SAFETY CODE SECTIONS 113789, 113825)
114367, 114367.1 – 114367.6 AND 114390)

The Board of Supervisors of San Benito County ordain as follows:

Section 1. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to allow for small-scale, direct food sales from home-based food facilities to prioritize locally prepared foods to consumers. This entry into the food economy will help provide access to guidelines, training, and safety resources.

Section 2. AUTHORITY.

Assembly Bill 626 was passed on September 18, 2018, adding to, and amending sections of the California Health and Safety Code (HSC), relating to food safety. This ordinance is adopted in accordance with Assembly Bill 626 and pursuant to the Board of Supervisors' police powers as set forth under Article XI, section 7 of the California Constitution. This ordinance shall be administered and implemented by the San Benito County Department of Environmental Health.

Section 3. DEFINITIONS.

The definitions set forth in Health and Safety Code section 113789 are incorporated by reference in this ordinance. The following terms are consistent with California Health and Safety Code Section 113825 and shall have the following meanings:

- A. **CRFC.**
California Retail Food Code is codified in the California Health and Safety Code.
- B. **HSC.**
Means the California Health and Safety Code.
- C. **DEPARTMENT.**
San Benito County Division of Environmental Health.
- D. **DIRECTOR.**
Director of Environmental Health and their duly authorized designees.
- E. **ENFORCEMENT OFFICER.**
Means the Director of Environmental Health and their duly authorized designees and any person appointed by the director to enforce or administer this ordinance.
- F. **MICROENTERPRISE HOME KITCHEN OPERATOR (MEHKO).**
As defined by section 113825 of the California Health and Safety Code, is a food facility with gross annual sales limits set forth in subdivision (a) subsection (7) of section 113825 operated by a MEKHO Operator and having not more than one full-time equivalent food employee, not including a family member or household member of the MEHKO Operator, and conducted within the Permitted Area of a private home where the MEHKO Operator resides and where Microenterprise Home Kitchen foods are prepared or

packaged for direct sales or delivery to consumers pursuant to section 113825 subdivision (a) subsection (3) of the Health and Safety Code.

G. **PERMITTED AREA.**

A private home kitchen described and authorized in the permit for the MHKO, onsite 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.

H. **RESIDENT OF A PRIVATE HOME.**

An individual who resides in the private home when not elsewhere for labor or other special or temporary purposes.

I. **FOOD HANDLER.**

Means a person who prepares, handles, packages, serves, or stores food or handles utensils, or assists another person in any of those tasks at food facility.

Section 4. MEHKO FACILITY PERMIT REQUIREMENTS.

- A. No person shall operate without a valid MEHKO permit issued by the Department. Application for a permit must be made on a form or forms provided by the Department and the applicable permit fees set out in the master fee schedule. A MEHKO permit shall be valid for one year, may be renewed annually, and is not transferable.
- B. The permit application for any MEHKO permit shall, at a minimum, include a listing of the equipment and standard operating procedures the MEHKO Operator proposes to use in compliance with HSC Section 114367.2(c).
- C. MEHKO permits may be modified, suspended, or revoked as provided in the CRFC
- D. If the jurisdiction requires a business license, the application shall obtain a business license from the jurisdiction where MEHKO activities will occur.

Section 5. OPERATIONAL REQUIREMENTS

Consistent with, and in addition to, the operational requirements and exemptions set forth in the California HSC Section 114367, et seq., a MEHKO shall comply with all the following:

- A. The MEHKO Operator shall successfully pass an approved and accredited Food Safety Certification Examination, in compliance with HSC Section 113947.1 and shall submit proof of certification _____.

CHOOSE ONE

“With the permit application for a MEHKO operation.”

Or

“Within 60 days of operation, in accordance with the CRFC.”

- B. Any person(s) participating in the MEHKO shall obtain a Food Handler Certification within ten (10) days of such participation as specified in the HSC Section 113948.
- C. All MHKO food must be stored, prepared, packaged, transported, kept for sale, and served to be pure and free from adulteration and spoilage and protected from contamination.
- D. All food storage with the permitted area shall comply with Chapter 4, Article 5 of the CRFC. “ _____ ”

CHOOSE ONE

“Food Storage will be limited to areas inside the residence (ex. non-bedrooms, pantries, kitchen, etc.).”

Or

“Any other detached rooms on the premises, including accessory buildings and garages, may be used to store food items only if all food is stored inside an approved refrigerator and/or freezer with a closable door/lid. Sleeping quarters or second units are not included as a permitted area.”

- E. Only one MEHKO may operate per residence. *(Staff recommendation)*
- F. 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.
- G. 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.
- H. Equipment and utensils used to produce MEHKO food shall be smooth, easily cleanable and maintained in a good state of repair.
- I. 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.
- J. All MEHKO potentially hazardous food must be stored and transported with proper internal food temperatures.
- K. 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.

- L. No preparation, packaging, storage, or handling of MEHKO food and related ingredients and/or equipment shall occur outside the Permitted Area.
- M. A person with a contagious illness shall not work in the MEHKO.
- N. A person involved in the preparation or packaging of MHKO food shall keep their hands and exposed portions of their arms clean and properly wash their hands before any food preparation or packaging activity.
- O. Water used during the preparation of MEHKO food products shall meet potable drinking water standards.
- P. The private sewage disposal system must be adequate for the additional liquid waste.
- Q. No signage or other outdoor displays advertising the MEHKO are allowed.
- R. All MEHKO food shall be prepared, cooked, and served on the same day.
- S. 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 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.
- T. A person who delivers food on behalf of a MEHKO shall be an employee, family member, or household member of the MEHKO Operator.
- U. Only California Department of Public Health approved internet foodservice intermediaries may be used.
- V. 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.
- W. Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals per week, or the approximate equivalent of meal components when sold separately. The Department may decrease the number of individual meals prepared based

on the food preparation capacity of the MHKO, but shall not, in any case, increase the limit of the number of individual meals prepared.

- X. The MEHKO has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.
- Y. For MEHKO with cooking equipment, a properly charged and maintained minimum of 10 BC-rated fire extinguisher to combat grease fires shall be readily accessible. A first aid kit shall be provided and located in a convenient, accessible area.
- Z. Special accommodations may be required during a Public Health Emergency.

Section 6. INSPECTIONS.

- A. Pursuant to the Health and Safety Code, the Department shall have the right to enter inspect, issue administrative citations to, and secure any sample, photographs, or other evidence from any MEHKO, or any facility suspected of being a MEHKO, or a vehicle transporting food to or from a MEHKO, at any reasonable time. Unless the Department fails to provide proper identification, refusing an inspection may result in the health permit being suspended or revoked, and/or the owner or operator shall be guilty of an infraction or misdemeanor offense.
- B. The Department shall inspect MEHKO upon the initial application and on an annual basis, or due to a consumer complaint, if there is a reason to suspect that unsafe food has been produced or there is another violation of this ordinance. An inspection form provided by the Department 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. The Department may seek cost recovery based on the hourly rate established if additional inspections or complaint investigations are required to ensure compliance with this ordinance.
- C. If an applicant refuses to allow an inspection or is otherwise unable to allow an inspection within a reasonable time, permits may be denied, revoked, or placed on hold.

Section 7. ENFORCEMENT.

Notwithstanding the remedies outlined in California Health and Safety Code Sections 114390, 114405, and 114409, the Department reserves the right to issue administrative citations in accordance with Government Code section 53069.4. An administrative citation may be issued for any violation of this ordinance.

Section 8. The proposed ordinance is exempt under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the project will have no significant effect on the environment.

Section 9. EFFECTIVE DATE.

This ordinance shall take effect thirty (30) days from the date of its adoption, and prior to the expiration of fifteen (15) days from the adoption, thereof shall be published at least one time in a newspaper of general circulation in San Benito County, with the names of the Supervisors voting for or against the same.

In regular session of the Board of Supervisors of the County of San Benito, adopted this _____ day of _____, 2022, on regular roll call of the members of said Board by the following vote:

AYES: Supervisor(s)

NOES: Supervisor(s)

ABSENT OR NOT VOTING:

Bea Gonzales
Chair, Board of Supervisors

ATTEST:
Jennifer Frechette, Clerk of the Board

APPROVED AS TO LEGAL FORM:
San Benito County Counsel
Barbara J. Thompson

By: _____
Clerk of the Board

By: _____
County Counsel