



City of Hermosa Beach

Civic Center, 1315 Valley Drive, Hermosa Beach, CA 90254-3885

March 26, 2019

The Honorable Eduardo Garcia
California State Assembly
Capitol Office, Room 4140
P.O. Box 942849
Sacramento, CA 94249-0056

RE: AB 377 (Garcia): Microenterprise Home Kitchen Operations
NOTICE OF OPPOSITION

Dear Assemblymember Garcia:

The City of Hermosa Beach respectfully opposes Assembly Bill (“AB”) 377 concerning microenterprise home kitchen operations (“MEHKOs”). The Assemblymember’s bill allows private homes to be used in the direct sale of meals for consumer pick-up, delivery, and onsite dining—much like a restaurant. The law thus implicates both environmental health and local land use. Yet the bill negates cities’ land use authority, and its provisions for the regulation of environmental health fail to appreciate the role of cities—in partnership with county health officials—in enforcing local fire and building codes and otherwise ensuring the health, safety, and welfare of a community.

Our concerns start with AB 626, the Assemblymember’s initial legislative effort to authorize MEHKOs, which took effect January 1, 2019. This statute presents problematic ambiguities with respect to local authority. It grants cities and counties alike “full discretion” over the permitting of MEHKOs in their jurisdictions, while also providing that if a county permits them, a city has no authority to disallow them.¹

At a meeting of county health officers and city managers in January—called by the Environmental Health Division of the Los Angeles County Department of Public Health—cities were informed that the California Conference of Directors of Environmental Health (“CCDEH”) was working with the bill author to amend the current statute. The anticipated amendments were to clarify cities’ authority to opt out of a county’s MEHKO program. We are alarmed that the Assemblymember’s proposed urgency bill, AB 377, clarifies the existing ambiguity in favor of state preemption, at the expense of cities’ constitutional autonomy over matters of land use.

For nearly a century courts have held that zoning and land use are “intensely local areas of the law” subject to a city’s police powers.² This is because the validity of denying a particular development or a particular land use often comes down to whether a use is “a right thing in the wrong place”—a question that depends on the circumstances and the locality.³

¹ Cal. Health & Safety Code, § 114367, subds. (a), (b).

² *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1179; see e.g., *Village of Euclid, Ohio v. Ambler Realty Co.* (1926) 272 U.S. 365.

³ *Village of Euclid, Ohio v. Ambler Realty Co.* (1926) 272 U.S. 365, 388.



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Local authority is at its height respecting the creation and maintenance of residential zones that restrict commercial uses. Commercial uses can expose a community to significant harmful impacts. These impacts include traffic congestion and attending parking issues (as residential streets cannot accommodate the level of traffic that a business would likely attract, or hope for). Businesses also create noise impacts and, restaurants in particular, generate higher volumes of waste and require levels of ventilation that necessitate sanitation standards, building standards, and provisions for emergency services unlike what is or should be required in residential zones.

We understand, and our land use regulations reflect, that not all home businesses conflict with residential uses. This determination of compatibility, however, has long been entrusted with elected officials, commissions, and experts in city departments at the local level with public participation. Determining a neighborhood's noise tolerance, determining building code and fire hazards associated with certain uses, and anticipating the behaviors and unintended consequences of removing regulatory barriers to commercial activity all demand a level of regulatory detail and local knowledge that AB 377 fails to capture and ultimately voids.

While the City appreciates the Assemblymember's effort to support enterprising home cooks and promote the informal food economy, these goals cannot dispense with the established role of local government in regulating and balancing competing uses. As a matter of local land use and zoning, whether or not to permit MEHKOs is a determination for local officials who are steeped in their jurisdiction's rules, physical conditions, and political sensitivities. Cities like ours are best positioned to protect a community's quality of life and the health and safety of both home kitchen operators and their neighbors.

For these reasons, the City of Hermosa Beach respectfully opposes AB 377.

Sincerely,

Stacey Armato, Mayor
City of Hermosa Beach