



Legislation Details (With Text)

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Title: APPROVAL OF LETTER OPPOSING ASSEMBLY BILL NO. 377
(GARCIA): MICROENTERPRISE HOME KITCHEN OPERATIONS
(Assistant to the City Manager Nico De Anda-Scaia)

Sponsors:

Indexes:

Code sections:

Attachments: 1. 1. Draft Letter of Opposition to AB 377, 2. 2. AB 377 - Microenterprise Home Kitchen Operations, 3. 3. AB 626 - California Retail Food Code: Microenterprise Home Kitchen Operations

Date	Ver.	Action By	Action	Result
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Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of March 26, 2019

APPROVAL OF LETTER OPPOSING ASSEMBLY BILL NO. 377 (GARCIA): MICROENTERPRISE HOME KITCHEN OPERATIONS (Assistant to the City Manager Nico De Anda-Scaia)

Recommended Action:

Staff recommends that the City Council approve and authorize the Mayor to sign a letter of opposition on behalf of the City regarding Assembly Bill 377 (AB 377) related to permitting and regulation of microenterprise home kitchen operations, to be shared with key legislators and local stakeholders.

Executive Summary:

Staff recommends the City Council approve and authorize the Mayor to sign a letter of opposition to urgency bill AB 377, which, if passed, would remove the authority of the City to regulate microenterprise home kitchen operations (MEHKOs), or small restaurants and associated services run out of private homes, if permitted by the Los Angeles County Department of Public Health. AB 377 would amend state law under AB 626, which took effect January 1, 2019, and clarify the regulatory authority provided to counties and cities over MEHKOs.

Background:

The California State Assembly Committee on Health is currently considering an urgency bill (AB 377) authored by State Assemblymember Eduardo Garcia, which would remove the authority of cities to regulate microenterprise home kitchen operations or "MEHKOs".

A MEHKO is a food facility operated out of a private home. Operators may sell individual meals directly to consumers for pick-up, delivery or for dining onsite, similar to a restaurant. Among other requirements, MEHKOs are limited to one fulltime equivalent employee, not including a family or household member; and may serve no more than 30 individual meals per day and 60 meals per week, with total gross annual sales of \$50,000 or less. MEHKOs are classified and permitted separately from catering operations, which provide food for events at a location separate from where the food is prepared, and cottage food operators, preparers of “non-potentially hazardous” food from a private home-breads, cookies, candy, etc. excluding cream, custard, meat and other foods requiring time/temperature controls.

Assembly Bill 626 (AB 626), effective January 1, 2019, established MEHKOs as a permitted residential use. As enacted, the City Attorney advised the law is ambiguous as to whether a local jurisdiction may prohibit these land uses in its residential zones. The current statute states that cities and counties have “full discretion” to authorize the permitting of MEHKOs, while also providing that if a county permits them, a city has no authority to disallow them.¹

As of late March 2019, the Los Angeles County Department of Public Health has not yet commenced issuing MEHKO permits, so there are currently no MEHKOs legally operating in the City. City Attorney staff has been in contact with Los Angeles County legal counsel and has advised the Department of Public Health is expected to reach out to cities with an update on next steps.

Analysis:

Early this year, cities were notified that an ad hoc committee of an association of county health directors-the California Conference of Directors of Environmental Health (“CCDEH”)-was working with Assemblymember Garcia to pass an urgency bill that would amend the statute. The anticipated amendments were expected to include language that would clarify cities’ discretion to opt out of a county’s MEHKO permitting program.

However, contrary to expectations, the proposed urgency bill, AB 377, completely removes cities’ authority to restrict MEHKOs within their jurisdictions. Rather than clarify the existing ambiguity in the law in favor of cities’ autonomy over matters of land use, AB 377 clarifies the law in favor of state preemption. Specifically, the bill provides that county health departments may authorize the permitting of MEHKOs in the unincorporated areas and within incorporated cities-and once a county opts in, cities within the county cannot opt out.

The CCDEH has stated that this legislative change came as a surprise to its legislative committee and was entirely the decision of the bill author. It appears the intent of the change was to avoid instances where MEHKOs would be permitted in some jurisdictions, but not in others according to the local balance of competing land uses; and is documented in AB 377 as the reason for the necessity of the urgency statute.

The proposed letter of opposition (**Attachment 1**) to AB 377 addressed to Assemblymember Garcia would communicate the City's concerns over the loss of local control as a result of this legislation. As written, AB 377 would take away the City's authority over zoning and land use, potentially exposing the community to negative impacts of commercial enterprises sited in residential zones including

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

traffic congestion, parking, excessive noise, sanitation, and building/fire code issues. While appreciating the Assemblymember's effort to support home businesses and promote the informal food economy, the letter would reinforce that the regulation of MEHKOs would best be entrusted to local elected officials, commissions and staff, with public participation, who are the most knowledgeable about local compatibility and conditions. Staff recommends Council approve and authorize the Mayor to sign the letter of opposition to AB 377, to be transmitted at the earliest possible opportunity prior to the State taking up the bill for final approval.

General Plan Consistency:

This report and associated recommendation have been evaluated for their consistency with the City's General Plan. The letter of opposition to AB 377 related to microenterprise home kitchen operations would assist in fulfilling the following goals:

Governance Element

5.1 Residential and commercial compatibility. Provide a balance between residential and commercial uses and strive to ensure their compatibility.

5.2 Development decisions. Strive to conduct the development review process in a consistent and predictable manner.

Land Use Element

1.7 Compatibility of uses. Ensure the placement of new uses does not create or exacerbate nuisances between different types of land uses.

2.5 Neighborhood preservation. Preserve and enhance the quality of residential neighborhoods by avoiding or abating the intrusion of disruptive, nonconforming buildings and uses.

2.12 Design of single-family homes. Maintain and enhance the character of single-family home neighborhoods by allowing home occupations in neighborhoods so long as there is no significant impact on the surrounding residential uses.

Public Safety Element

7.1 Noise analysis and mitigation. Require all proposed development projects and modifications to existing developments to be compatible with the existing and future noise levels by using the Land Use/Noise Compatibility matrix, or equivalent city policy or code.

Fiscal Impact:

There is no fiscal impact associated with this action. If passed, AB 377 would allow the City to require MEHKOs to obtain a business license, which is anticipated to bring in a nominal amount of revenue. As written, the current law, AB 626, does not allow the City to require MEHKOs to obtain business licenses.

Attachments:

1. Draft Letter of Opposition to AB 377
2. AB 377 - Microenterprise Home Kitchen Operations
3. AB 626 - California Retail Food Code: Microenterprise Home Kitchen Operations

Respectfully Submitted by: Kevin Nagata, Management Analyst

Concur: Nico De Anda-Scaia, Assistant to the City Manager

Concur: Ken Robertson, Community Development Director

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager