

BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF LAKE REGULATING MICROENTERPRISE HOME KITCHEN OPERATIONS AND INCORPORATING BY REFERENCE HEALTH AND SAFETY CODE SECTIONS 113789, 113825, 114367, 114367.1 – 114367.6 AND 114390

The Board of Supervisors of the County of Lake County ordains 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, 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 Lake 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. Department. Lake County Department of Environmental Health.
- B. Enforcement Officer. The Director of Environmental Health and his or her duly authorized designees.
- C. Microenterprise Home Kitchen Operation Operator. The resident of the private home who holds the permit for the MHKO and is responsible for the operation.
- D. Microenterprise Home Kitchen Operation (MHKO). 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 MKHO Operator and having not more than one full-time equivalent food employee, not including a family member or household member of the MHKO Operator, and conducted within the Permitted Area of a private home where the MHKO 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.
- E. Permitted Area. A private home kitchen described and authorized in the permit for the MHKO, 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.
- F. Resident of a Private Home. An individual who resides in the private home when not elsewhere for labor or other special or temporary purposes.

Section 4. INSPECTIONS. The Department shall inspect MHKO 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 Ordinance. An inspection form provided by the

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Department shall be used for all inspections. An inspection will be conducted after reasonable 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 MHKO. The Department may seek cost recovery, based on the hourly rate established in the current version of Lake County Master Fee Schedule if additional inspections or complaint investigations are required to ensure compliance with this Ordinance.

- A. If the 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 5. OPERATING REQUIREMENTS. Consistent with the operational requirements set forth in California Health and Safety Code Section 114367, et seq., a MHKO shall comply with the following:

- A. No MHKO 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.
- B. 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.
- C. Equipment and utensils used to produce MHKO food shall be smooth, easily cleanable, and maintained in a good state of repair.
- D. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any MHKO food shall be washed, rinsed, and sanitized before each use.
- E. All MHKO 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.
- F. All MHKO potentially hazardous food must be stored and transported with proper internal food temperatures.
- G. 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.
- H. No preparation, packaging, storage, or handling of MHKO food and related ingredients and/or equipment shall occur outside of the Permitted Area.
- I. A person with a contagious illness shall not work in the MHKO.
- J. A person involved in the preparation or packaging of MHKO 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.
- K. Water used during the preparation of MHKO food products shall meet potable drinking water standards.
- L. The private sewage disposal system must be adequate for the additional liquid waste.
- M. The MHKO Operator shall successfully pass an approved and accredited food safety manager certification examination.
- N. Any person(s) involved with the MHKO shall obtain a Food Handler Certification prior to receiving a valid MHKO permit.
- O. The MHKO Operator shall submit and maintain standard operating procedures with a complete menu, and operational days/hours.
- P. Only one (1) MHKO may operate per site.
- Q. No signage or other outdoor displays advertising the MHKO are allowed.

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- R. All MHKO food shall be prepared, cooked, and served on the same day.
- S. MHKO food shall be consumed onsite at the MHKO, offsite if the food is picked up by the consumer or delivered to the consumer. The sale of MHKO food through an internet food service intermediary is a direct sale. The MHKO 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 MHKO shall be an employee, or family member or household member of the MHKO Operator.
- U. Only California Department of Public Health approved internet food service intermediaries may be used.
- V. MHKO 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 MHKO 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 MHKO 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.
- Z. Special accommodations may be required during a Public Health Emergency

Section 6. PERMIT FEES & PLAN CHECK. No person shall conduct a MHKO without holding a valid permit issued by the Department. Application for a permit shall be made upon a form issued by the Department and shall be accompanied by a fee as listed below:

- A. Annual Permit - \$256 – This fee covers annual inspections
Plan Check - \$128/hr – This fee covers the initial plan checks as well as address changes, facility remodel, or menu changes
 - A minimum of one (1) hour shall be collected at time of application. Additional time may be billed out at 15-minute increments should additional time be required.

The Annual Permit and Plan Check fee listed in this section shall be valid until such time as the Lake County Master Fee Schedule is revised to incorporate this new fee therein. Prior to incorporating these new fees into the Lake County Master Fee Schedule, a time/cost accounting study will be completed to ensure that the proposed fee is adequate and fair or adjusted accordingly. Once the Lake County Master Fee Schedule has been updated, the fee listed in this Section shall be void and the fee in the Lake County Master Fee Schedule shall be the valid fee. Any annual permit shall be valid until the end of the calendar year in which it is obtained. The application shall not be deemed as completed unless accompanied with documentation indicating that all applicable planning requirements have been met. A permit is not

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transferrable. The owner of the property, if different from the MHKO Operator, must provide written consent for the MHKO, prior to the issuance of a permit from this Department.

Prior to obtaining a MHKO permit, applicants will be required to obtain the following approvals:

- Approved Property for Use
 - Applicant shall provide proof of ownership or approval from the owner of the property where MHKO activities will occur.
- Water
 - Whether a well or a water district, water shall meet minimum requirements for use in a MHKO.
 - There may be indirect costs for using water for commercial purposes and for manufacturing consumable goods. Any additional costs related to meeting potable water standards are the responsibility of the applicant.
- Sewer
 - Whether a septic or sewer district, sewer shall meet minimum requirements for use in a MHKO, including the need for a grease trap.
 - There may be indirect costs for installing or upgrading plumbing to meet minimum requirements. Any additional costs related to meeting wastewater standards are the responsibility of the applicant.
- Permit
 - The applicant shall obtain the appropriate permit from Lake County Community Development, or city jurisdiction Planning Department, to ensure that the location is appropriate for licensing. MHKO permits are only allowed in residential districts.
 - For delivery only MHKO permits, a zoning permit from Lake County Community Development is required.
 - If applicant is located within a city jurisdiction, obtain the appropriate permit from their planning department if such permits are available
 - For curbside pickup MHKO permits, applicant may need to obtain a minor use permit due to traffic and parking.
 - If applicant is located within a city jurisdiction, obtain the appropriate permit from their planning department if such permits are available
- Business License
 - The applicant shall obtain a business license from the jurisdiction where MHKO activities will occur, if the jurisdiction requires a business license.

Section 7. PILOT PROGRAM. In order to ensure that the MHKO program will be successful, a pilot program will begin as of January 1, 2021. With any new program created, there is a learning curve from the staff and from the applicant perspective. The goal is to serve the public as best as we can to allow for applicants to obtain a permit efficiently and to ensure the safety of the products provided to the public through all MHKO.

- A. The pilot program will allow for a maximum of ten (10) permits in total with only two (2) permits approved per month.
- B. A maximum of two (2) permits per supervisorial districts will be allowed.

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- C. A review of the pilot program with possible expansion of the program will occur as of July 1, 2021.

Section 8. ENFORCEMENT. Notwithstanding the remedies set forth 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. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.

- A. Notice of Violation. If the violation is not corrected within the period stated in the notice of violation, or if the violation creates an immediate danger to health or safety, an administrative citation may be issued by the Enforcement Officer. The notice of violation shall specify the manner in which the conditions of the MHKO violate the provisions of this Ordinance and the corrective actions required to correct the condition or conduct. The notice shall also state that failure to come into compliance with this Ordinance could subject the registrant or permittee of the MHKO to administrative and criminal penalties. The failure of the notice to set forth all required contents shall not affect the validity of the proceedings.
- B. Content of Citation. The administrative citation shall be issued on a form approved by County Counsel and shall contain the information listed below. The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.
 - 1. Date, location, and approximate time the violation was observed.
 - 2. The Ordinance section violated and a brief description of the violation.
 - 3. The amount of the administrative penalty imposed for the violation.
 - 4. Instructions for the payment of the penalty, the time period by which it shall be paid, and the consequences of failure to pay the penalty within this time period.
 - 5. Instructions on how to appeal the citation.
 - 6. The signature of the Enforcement Officer.
- C. Service of Citation.
 - 1. If the registrant, permittee or other person who has violated the Ordinance is present at the scene of the violation, the Enforcement Officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
 - 2. If the registrant, permittee or other person who has violated the Ordinance cannot be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the registrant or permittee who has violated the Ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last County Equalized Assessment Roll.
 - 3. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
- D. Administrative Penalties.
 - 1. The penalties assessed for each violation shall not exceed the following amounts:
 - a. \$100.00 for a first violation;
 - b. \$200.00 for a second violation of the same Ordinance within one year; and

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- c. \$500.00 for each additional violation of the same Ordinance within one year.
 2. If the violation is not corrected, 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 excuse the failure to correct the violation nor shall it bar further enforcement action.
 4. The penalties assessed shall be payable to the County of Lake.
 5. Penalties assessed pursuant to this section shall be in addition to the recovery of costs representing staff time necessary for the investigation of violations of this Ordinance and/or its enforcement.
- E. Administrative Appeal.
1. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall contain the following information:
 - a. A brief statement setting forth the appellant's interest in the proceedings;
 - b. A brief statement of the material facts which the appellant claims supports his/her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - c. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
 - d. The notice of appeal must be signed by the appellant.
 2. Administrative Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:
 - a. Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
 - b. Hearing Officer. The administrative hearing shall be held before the Board of Supervisors, the County Hearing Officer or the County Hearing Board. The hearing officer shall not be the Enforcement Officer who issued the administrative citation or their immediate supervisor or subordinate. The Board of Supervisors, the County Hearing Officer or the County Hearing Board may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
 - c. Conduct of the Hearing. Except as may be required by the hearing officer, the Enforcement Officer who issued the administrative citation is not required to participate in the administrative hearing. The contents of the Enforcement Officer's file in the case shall be admitted as prima facie

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evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make his or her determination based on the information contained in the notice of appeal.

d. Hearing Officer's Decision. The hearing officer's decision following the administrative hearing shall be delivered to the person requesting the hearing personally or sent by mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.

F. Review of Administrative Hearing Officer's Decision.

1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the superior court. The fee for filing the notice of appeal is twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or Instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.
3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the Department. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to any manner provided by law.

Section 9. CRIMINAL PENALTIES.

- A. Any person violating any provision of this ordinance shall be guilty of an infraction or misdemeanor as hereinafter specified. Such individual shall be deemed guilty of a separate offense for each day during which any violation of this ordinance is committed or allowed to exist.
- B. Any individual convicted of a violation of this ordinance shall be:

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1. Guilty of an infraction and punished by a fine of not less than fifty dollars (\$50.00), but not exceeding one hundred dollars (\$100.00) for the first offense.
 2. Guilty of an infraction and punished by a fine of not less than one hundred dollars (\$100.00), but not exceeding two hundred dollars (\$200.00) for the second offense.
 3. The third and subsequent offenses shall constitute misdemeanor and shall be punishable by a fine of not less than five hundred dollars (\$500.00) but not to exceed one thousand dollars (\$1,000.00), imprisonment of up to six months in the county jail, or both.
 4. Notwithstanding subsections A. and B. above, the first or second offense may be charged and prosecuted as misdemeanor.
- C. Payment of any penalty herein shall not relieve any individual from the responsibility of correcting the violations as found by the enforcement officer.
- D. Any person found not in compliance with state law and/or this ordinance is subject to citation, permit suspension/revocation, lien, or other legal action as deemed necessary by the Department.

Section 10. NUISANCE DEFINED. Any MHKO, whether permitted or not pursuant to the procedures of this Ordinance, found in violation of this Ordinance is hereby declared to be a public nuisance and dangerous to the health and safety of Lake County.

Section 11. CIVIL ACTIONS.

- A. Injunctive Relief and Abatement. Whenever, in the judgment of the Enforcement 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 Ordinance, or any rule, regulation, order, permit or conditions of approval issued thereunder, upon the request of the Enforcement Officer, the County Counsel or District Attorney may commence proceedings for the abatement, removal, correction and enjoinder thereof, and require the violator to pay civil penalties and/or abatement costs.
- B. 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 Ordinance or any rule, regulation, order or conditions of approval issued thereunder, shall be liable for a civil penalty not to exceed \$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.

Section 12. COSTS AND DAMAGES. Any person, whether acting as a principal, agent, employee, Owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating any provisions of this Ordinance or the rules, regulations, orders, permits or conditions of approval issued thereunder, shall be liable to the County of Lake for costs of abatement and any damages suffered by the County, its agents and agencies, as a result of such violations.

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Section 13. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

Section 14. REMEDIES AND PENALTIES. All remedies and penalties provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of which any violation of this Ordinance or the rules, regulations, orders, Permits or conditions of approval issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and distinct offense.

Section 15. RIGHT OF INSPECTION. Pursuant to the Health and Safety Code, the Department shall have the right to enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from any MHKO, or any facility suspected of being a MHKO, or a vehicle transporting food to or from a MHKO, at any reasonable time. Unless the Department fails to provide proper identification, refusing an inspection may result in the permit being suspended or revoked, and/or the owner or operator shall be guilty of an infraction or misdemeanor offense.

Section 16. SEVERABILITY. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 17. 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 18. This ordinance shall take effect thirty (30) days after its adoption and before the expiration of fifteen days after its passage, it shall be published at least once in a newspaper of general circulation printed and published in the County of Lake.

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The Foregoing Ordinance was introduced before the Board of Supervisors on the _____ day of _____, 2020, and passed by the following vote on the ____ day of _____, 2020.

AYES:

NOES:

ABSENT OR NOT VOTING:

COUNTY OF LAKE

Chair Board of Supervisors

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT

By: _____