

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

SB 972 (Gonzalez) – As Amended June 23, 2022

SENATE VOTE: 29-5

SUBJECT: California Retail Food Code.

SUMMARY: Establishes a regulatory framework for compact mobile food operations (CMFOs). Defines CMFOs as a mobile food facility (MFF) that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. Authorizes a local enforcement agency (LEA) to inspect a CMFO during its hours of operation and other reasonable times on the basis of consumer complaint or just cause. Specifically, **this bill**:

- 1) Revises the definition of limited food preparation to include the following:
 - a) Dispensing and portioning of nonpotentially hazardous food for immediate service to a customer that has been temperature controlled until immediately prior to portioning or dispensing;
 - b) Slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility or slicing and chopping of food on a heated cooking surface during the cooking process;
 - c) Hot and cold holding of food that has been prepared at an approved permanent food facility; and,
 - d) Reheating of food that has been previously prepared at an approved permanent food facility and held at temperatures, as specified.
- 2) Deletes the following from the limited food preparation exemption: a) reheating of potentially hazardous foods for hot holding, as specified, and, b) hot holding of nonprepackaged, potentially hazardous food, as specified.
- 3) Defines a CMFO as a MFF that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.
- 4) Revises the definition of portable as an equipment that does not exceed 100 pounds (46 kg) in weight or is otherwise designed to be mobile.
- 5) Requires a CMFO to meet applicable requirements that apply to MFFs, except as specified in this bill.
- 6) Exempts any CMFO with 25 square feet or less of display area from which only prepackaged nonpotentially hazardous food and whole uncooked produce is sold from the requirements certain MFF requirements but requires CMFOs to comply with the specified requirements, including the following:

- a) Food to be free from spoilage and adulteration and obtained from approved sources, as specified;
 - b) Food storage and adequate space requirements;
 - c) Food storage requirements;
 - d) The LEA has enforcement authority over CMFOs, including impoundment; and, that an owner, manager, or operator is responsible for their employee violations; and,
 - e) Various California Retail Food Code (CRFC) requirements such as structural and sanitation requirements and inspections.
- 7) Permits a LEA to inspect a CMFO during its hours of operation and other reasonable times on the basis of consumer complaint or just cause.
- 8) Permits a LEA to recover the costs of investigation and enforcement, as specified.
- 9) Requires CMFOs to conduct only limited food preparation, as specified.
- 10) Permits a CMFO to display or sell food outdoors, if all of the following conditions are satisfied:
- a) Overhead protection are provided above all food display areas;
 - b) Food items from the outdoor display are stored at all times other than during business hours; and,
 - c) Outdoor displays comply with food safety requirements, as specified, and have been approved by a LEA if the CMFO is required to obtain a permit.
- 11) Prohibits a CMFO from selling food other than nonpotentially hazardous prepackaged food or whole produce, or conduct any food preparation, unless it meets the applicable operational requirements of this bill, including applicable requirements for integral equipment, handwashing, and restroom access.
- 12) Requires equipment that is required to be integral to a CMFO operation to either be permanently attached to the primary unit or securely fastened to the primary unit by means that would prevent unintentional removal. Permits equipment to be considered integral despite being portable or otherwise removable for cleaning, maintenance, or as part of its regular function.
- 13) Prohibits a CMFO operating as an individual from one's person from conducting any food preparation or sell foods other than nonpotentially hazardous prepackaged food or whole produce.
- 14) Permits a permitted cottage food operation (CFO) or microenterprise home kitchen operation (MEHKO) to serve as a commissary or mobile support unit for up to two compact mobile food operations if the CFO or MEHKO permit includes an endorsement from the LEA that the CFO or MEHKO is capable of supporting the preparation and storage of the food being sold from the CMFO and the storage and cleaning of the CMFO.
- 15) Requires transactions at a compact mobile food operation operated by a CFO to constitute existing "direct sales" requirements.

- 16) States that transactions at up to two CMFOs operated by a CFO to not count toward the annual gross sales restrictions that applies to CFO.
- 17) Permits food prepared in a MEHKO to be served from a CMFO operated by the MEHKO permit holder.
- 18) States that the existing meal and gross annual sales limitations for MEHKOs do not apply to the sale of nonpotentially hazardous food or produce for up to two compact mobile food operations operated by the MEHKO if the governing body has authorized this action.
- 19) Permits, with the authorization of the governing body and if the LEA determines that the operation does not pose a public health hazard, a permitted MEHKO to serve as a commissary for up to two CMFOs. Requires the existing meal and gross annual sales limitations of MEHKOs to apply unless the governing body sets a higher meal and income limitation.
- 20) Permits the governing body of a local jurisdiction that permits MEHKOs to set the meal and income limitations in existing law at a higher level for a MEHKO that operates in conjunction with a CMFO, as specified. Specifies that the income levels in effect, by statute or ordinance, as of January 1, 2023, to remain in effect until changed by the local jurisdiction.
- 21) Permits existing permanent food facilities to support the operations and storage of CMFOs, as specified.
- 22) Specifies that upon an evaluation verifying that a permanent food facility satisfies specified commissary requirements, a LEA to approve the use of a permitted permanent food facility to satisfy specific commissary requirements for a CMFO.
- 23) Requires, upon an evaluation verifying that the CMFO will be stored in a manner that protects the CMFO from contamination, and the LEA to approve the storage of a CMFO in a permitted permanent food facility.
- 24) Permits, unless a determination is made by the LEA that any nonconforming structural conditions pose a public health hazard, the LEA to approve a facility to support operations of a CMFO.
- 25) Prohibits requiring plan submission for an existing permanent food facility to support the operations of a CMFO when a determination is made by the LEA that the current operation and structural facilities of the permanent food facility can successfully provide the necessary functions of a commissary for a CMFO.
- 26) Permits, unless prohibited by local ordinance, LEA to allow the use of a private home for the storage of a CMFO if it determines, after an evaluation, that storage in the private home would not pose a public health hazard and that the CMFO will be stored in a manner that protects the CMFO from contamination.
- 27) Permits up to two CMFOs to be stored in a private home unless the LEA finds that storage of more than two compact mobile food operations in a private home would not pose a public

health hazard. Requires the storage area within the home to be designated and clearly identified upon approval and to not be relocated without the review and approval of the LEA.

- 28) Permits prepackaged nonpotentially hazardous food, whole fruits, and whole vegetables to be stored in the home prior to sale or preparation of that food in a CMFO.
- 29) Prohibits food prepared in a private home from being used or offered for sale on a CMFO unless it is a permitted CFO or MEHKO. Specifies that a violation of this may result in suspension or revocation of the permit to operate the CMFO.
- 30) Permits a LEA, for purposes of determining compliance, to access, for inspection purposes, a private home where a CMFO is stored only if the representative has, on the basis of a consumer complaint, reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or other food facility equipment in violation of this bill.
- 31) Requires, at the end of the operating day, potentially hazardous food that is prepared on or served from a CMFO to be destroyed in a manner approved by the LEA.
- 32) Requires an endorsement by the LEA to be a documented and recorded approval of compliance, as specified. Permits an endorsement to include an inspection or evaluation, but to not require a registration or permit.
- 33) Permits a LEA to collect a fee for any permit, endorsement, inspection, or evaluation issued or conducted pursuant to this bill in an amount that does not exceed the reasonable administrative costs of the LEA.
- 34) Subjects, except as provided in 35) below, a CMFO that is approved for limited food preparation that prepares raw meat, raw poultry, or raw fish to existing warewashing and handwashing facility requirements that apply to MFFs, as specified.
- 35) Permits a CMFO to satisfy the existing warewashing and sink and hand washing requirements by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks when operating at a site-specific location. Permits the auxiliary conveyance to be operated by the same or a different permitholder. Permits LEA to permit an auxiliary conveyance to serve multiple CMFOs operating in close proximity to the auxiliary conveyance, as determined by the LEA.
- 36) Requires, if an auxiliary conveyance is not operated by the permitholder of the CMFO, the operator of the auxiliary conveyance to obtain a permit from the LEA to operate the auxiliary conveyance and service CMFOs.
- 37) Requires the permit application for an auxiliary conveyance not operated by a CMFO to include a site plan and to be submitted to the LEA at least two weeks prior to the operation of any food facility in conjunction with the auxiliary conveyance.
- 38) Requires the site plan for an auxiliary conveyance not operated by a CMFO to show the proposed location and storage of the auxiliary conveyance, the proposed locations of any food facilities that will utilize the auxiliary conveyance, restrooms, refuse containers, potable

water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

- 39) Requires a CMFO that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish to do one of the following:
- a) Provide a three-compartment sink, as described;
 - b) Provide at least one two-compartment sink, as specified;
 - c) Provide a one-compartment sink with at least one integral metal drainboard, an adequate supply of spare preparation and serving utensils to replace those that become soiled or contaminated, and warewashing facilities, as specified, in reasonable proximity to, and readily accessible for use by, food employees at all times; or,
 - d) Maintain an adequate supply of spare preparation and serving utensils on the CMFO to ensure that utensils used for potentially hazardous foods are replaced with clean and sanitized utensils every four hours or as needed to replace those that become soiled or contaminated. Specifies that a CMFO that complies with this paragraph is not required to provide a warewashing sink.
- 40) Requires a CMFO that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish to provide an integral handwashing sink with at least five gallons of potable water to operate with a potable water tank with a capacity of at least five gallons for handwashing.
- 41) Allows a LEA to permit a CMFO to operate with an integral water tank smaller than required under existing law if the LEA finds that the CMFO is operating in an area and manner that would allow for replenishment of the water supply as needed during operations.
- 42) Requires a CMFO to submit to the LEA written operating procedures that include the process of filling potable water tanks if it will operate with a water tank with a capacity of less than five gallons, as specified.
- 43) Specifies that a CMFO that does not prepare raw meat, raw poultry, or raw fish is exempt from water heater or warm water requirements.
- 44) Permits a LEA, upon receipt of complete, easily readable plans drawn to scale, and specifications satisfactory to the LEA, to preapprove a standard plan for a standardized or mass-produced individual unit intended to serve as a CMFO.
- 45) Specifies that a person proposing to operate a CMFO who has acquired an individual unit for which the construction of the CMFO has been built to approved plans is not be required to submit plans for the individual unit, but instead be subject to a final inspection of the CMFO to ensure that the individual unit and proposed method of operation conforms to the standard plans preapproved pursuant to 44) above. Requires the permit application for a CMFO utilizing a preapproved individual unit to include a certification that the applicant has not substantially altered the individual units from the plans preapproved pursuant to 44). Permits the LEA to collect a fee in the final inspection in an amount that does not exceed its reasonable administrative costs.

- 46) Specifies that the repair of equipment or integral fixtures on a CMFO or the replacement of equipment and fixtures on a CMFO with substantially similar equipment or fixtures is not a remodel, and the repair or replacement of equipment or fixtures does not require the submission of plans to a LEA.
- 47) Permits a local governing body to waive or reduce a fee for the permit, registration, or related services for an applicant seeking approval of a CMFO or related operations.
- 48) Requires all new and replacement food-related and utensil-related equipment for a CMFO to be certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program, or another certification program, as specified.
- 49) Requires all new and replacement electrical appliances for a CMFO to meet applicable Underwriters Laboratories standards for electrical equipment, as specified.
- 50) Exempts a CMFO from food safety certification examination if the operator and any individual who is involved in the preparation, storage, or service of food for CMFO has obtained a food handler card, as specified.
- 51) Exempts a CMFO from existing toilet and handwashing requirements if the CMFO operates with multiple employees or operators and the CMFO may remain operable by a single individual so that employees or operators may alternate use of a restroom.
- 52) Specifies that a violation of this bill by an operator or employee of a CMFO is punishable only by an administrative fine.
- 53) Specifies that a violation of any provision of this bill or regulation by an operator or employee of a CMFO or a sidewalk vendor is not punishable as an infraction or misdemeanor, and an operator or employee is not subject to arrest except when independent grounds for that arrest exist under law.
- 54) Specifies, except as provided in 55) below, each offense by an operator or employee of a CMFO or a sidewalk vendor may only be punished by a fine consistent with the following:
- a) A notice of violation detailing the violation, as specified;
 - b) An administrative fine not exceeding one hundred dollars (\$100) for a second violation within one year of the first violation;
 - c) An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one year of the first violation; and,
 - d) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.
- 55) Specifies that if a CMFO is required to obtain a permit from the LEA, operating without a permit may be punishable by a fine not to exceed three times the cost of the permit in lieu of the administrative fines specified in 54) above. Prohibits an LEA from issuing any fines in excess of the amounts allowable in 54) above prior to January 1, 2024.
- 56) Requires, when assessing an administrative fine for a first-time offense, the hearing officer to take into consideration the person's ability to pay the fine. Requires the LEA to provide the

person with notice of their right to request an ability-to-pay determination and to make available instructions or other materials for requesting an ability-to-pay determination. Permits the person to request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

57) Requires a LEA, if the person is receiving specified public benefits or has a monthly income of 125% or less of the federal poverty level, to accept, in full satisfaction, 20% of the administrative fine imposed under this bill.

58) Permits a LEA to waive the administrative fine or offer an alternative disposition.

EXISTING LAW:

- 1) Establishes the CRFC to provide for the regulation of retail food facilities. Establishes health and sanitation standards at the state level through the CRFC, while enforcement is charged to local agencies, carried out by the 58 county environmental health departments, and four city environmental health departments (Berkeley, Long Beach, Pasadena, and Vernon).
- 2) Defines a food facility to mean an operation that stores, prepares, packages, serves, vends, or provides food for human consumption at the retail level, as specified. Includes in the definition of food facility private and public school cafeterias, commissaries, MFFs, temporary food facilities, vending machines, catering operation, fishermen's market, and host facility. Requires a food facility to obtain a valid permit from the LEA to operate.
- 3) Defines a potentially hazardous food, in part, as a food that requires time or temperature control to limit pathogenic micro-organism growth or toxin formation. Requires potentially hazardous food to be maintained at or above 135 degrees Fahrenheit, or at or below 41 degrees Fahrenheit.
- 4) Defines a MFF as any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. Requires a LEA to initially approve all MFFs. Defines "commissary" as a food facility that services mobile food facilities, mobile support units, or vending machines where any of the following occur: food containers, or supplies are stored; food is prepared or prepackaged for sale or service at other locations; utensils are cleaned; or, liquid and solid wastes are disposed, or potable water is obtained.
- 5) Defines limited food preparation, in part, as food preparation that is restricted to heating, frying, baking, roasting, popping, shaving of ice, blending, steaming or boiling of hot dogs, or assembly of nonprepackaged food, slicing and chopping of food on a heated cooking surface during the cooking process, and cooking and seasoning to order. Excludes slicing and chopping unless it is on the heated cooking surface, thawing, cooling of cooked, potentially hazardous food, grinding raw ingredients, and reheating of potentially hazardous foods for hot holding, except for hot dogs and tamales in their original wrapper.
- 6) Defines a CFO as an enterprise that prepares or packages nonpotentially hazardous foods, and includes both "Class A" CFOs, which is restricted to direct sales of food products with up to \$75,000 in gross annual sales, and "Class B" CFOs which may engage in both direct

sales and indirect sales through third-party retail food facilities with up to \$150,000 in sales. Requires the gross annual sales limits to be annually adjusted for inflation.

- 7) Defines MEHKO as a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets certain requirements, including limiting food preparation to no more than 30 meals per day, and no more than 60 meals per week, and no more than \$50,000 in annual gross sales.
- 8) Provides the governing body of a city or county with full discretion to authorize, by ordinance or resolution, the permitting of MEHKOs, and requires a permit issued by a county that has authorized the permitting of MEHKOs to be valid in any city within the county regardless of whether the city has separately enacted an ordinance or resolution to authorize or prohibit the permitting of MEHKOs within that city.
- 9) Exempts a MEHKO from a number of requirements of a restricted food service facility, including: provisions relating to sinks, warewashing machines, and manual or machine sanitation, as long as the sink in a MEHKO has hot and cold water; limitations on consumer access to the food facility; requirements pertaining to the characteristics and construction of food contact surfaces and clean-in-place equipment; limitations on the use of wood as a food contact surface; requirements relating to ventilation; and, limitations on the presence and handling of animals, as long as all animals other than service animals are kept out of the kitchen and dining room during food preparation and service.
- 10) Establishes a misdemeanor penalty for a violation of any provision of the CRFC, punishable by a fine of not less than \$25 or more than \$1,000, or by imprisonment in the county jail for up to six months, or by both fine and imprisonment.
- 11) Makes it an infraction, punishable by a fine of not more than \$100 for each day of operation in violation, to violate provisions of law requiring food facilities that prepare or serve nonprepackaged potentially hazardous foods to have an owner or employee successfully pass an approved food safety certification examination, or for food facilities that prepare or serve nonpotentially hazardous food, and all temporary food facilities, to be able to demonstrate to the enforcement officer that the employees have an adequate knowledge of food safety principles as they relate to the specific operation involved in their assigned duties.

FISCAL EFFECT: According to Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, sidewalk food vending is essential to California's economy, culture, and health. Sidewalk food vending allows low-income and immigrant workers, often excluded from other opportunities, to make a living and provide for their families, while building a successful business. Sidewalk food vendors provide healthy food in neighborhoods that lack access to healthy food retail, and they contribute mightily to our local economies.

The author further states that in 2018, the Legislature enacted SB 946 (Lara), Chapter 459, Statutes of 2018, which established parameters for local regulations concerning vending

location and manner of operations. After several years of local implementation of SB 946, it is apparent that outdated requirements found in the CRFC, including incompatible equipment and design standards, exorbitant costs, and punitive enforcement measures, are preventing the vast majority of all sidewalk food vendors from obtaining a local health permit to vend food. The author concludes, by reducing permit barriers, public health agencies will have a significantly greater ability to educate vendors and offer corrective measures to cart designs and operating procedures that will increase overall community health and safety. This bill promotes economic inclusion while improving public health by modernizing the CRFC so that sidewalk food vendors can actually obtain a permit and join the regulated vending economy.

2) BACKGROUND.

- a) **Sidewalk vending decriminalization bill.** As noted in the author's statement, SB 946 was intended by its author and proponents to help sidewalk vendors support themselves and their families by prohibiting overly restrictive local ordinances that were making it difficult to operate. Among other provisions, SB 946 prohibited a city or county from requiring sidewalk vendors to operate within specific parts of public right-of-way except where that restriction is directly related to objective health, safety, or welfare concerns. Local authorities cannot prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority unless the operator of the park has signed an exclusive agreement with a concessionaire. Local authorities cannot restrict the overall number of sidewalk vendors, nor restrict sidewalk vendors to operate only in a designated area, unless these restrictions are directly related to health, safety or welfare concerns. Local authorities are permitted to limit the hours of operation if not unduly restrictive, and require sanitary conditions be maintained. SB 946 listed other types of restrictions that a local authority can, or cannot, impose on sidewalk vendors.

Significantly, SB 946 removed criminal penalties in place of administrative penalties, in part to prevent the federal government from using a criminal history in deportation proceedings. Specifically, it restricted penalties for violating the requirements of a local authority's compliant sidewalk vending program to an administrative penalty of \$100 for a first violation, \$200 for a second violation within one year of the first violation, and \$300 for each additional violation within one year of the first violation. Administrative penalties for vending without a permit are \$250, \$500, and \$1,000, respectively. An adjudicator of these fines is required to take into account the ability of the violator to pay the fine and allows a violator to request an ability to pay determination at any point. A local authority is required to accept 20% of the fine in full satisfaction if the violator earns less than 125% of the federal poverty line. SB 946 prohibits any additional financial penalties from being imposed, prohibits penalties for violations of sidewalk vending from being infractions or misdemeanors, and prohibits sidewalk vendors from being subject to arrest except where permitted under law.

However, SB 946 did permit cities and counties to require compliance with any other licensing and permitting required by law, and specifically stated that nothing affects the applicability of the CRFC to a vendor who sells food. Therefore, a sidewalk vendor is still out of compliance, and subject to enforcement, if they are selling food without a permit as a food facility under the requirements of the CRFC.

b) June 23 Amendments. The June 23, 2022 amendments created a new Chapter (Chapter 11.7) in the CRFC for CMFOs. The Committee requested this redrafting and recasting of the previous version of this bill to achieve clarity and order on which requirements apply to CMFOs. Some of the concerns raised in this bill may have been addressed in these amendments. Some of the significant provisions of this bill include:

- i) **Food safety.** Requires CMFOs to comply with MFF requirements unless otherwise specified. CMFOs are to ensure that food is free from spoilage and adulteration, and obtained from approved sources, and to comply with food storage, space and sanitation requirements.
- ii) **Outdoor Sale.** A CMFO is permitted to display or sell food outdoors if certain requirements are met including having an overhead protection above all food display and food items are properly stored and sourced.
- iii) **CFOs and MEHKOs.** Permits a CFO or MEHKO to serve as a commissary or mobile support unit for up to two CMFO if the CFO or MEHKO permit includes an endorsement from the LEA that the CFO or MEHKO is capable of supporting the preparation and storage of the food sold from CMFO and the storage and cleaning of CMFOs. This bill also applies existing direct sales requirements to CMFOs operated by CFOs or MEHKOs.
- iv) **Permanent Food Facility.** A LEA may approve the use of a permanent food facility as a commissary for a CMFO if certain requirements including those specified in 4) of Existing Law. Allows a LEA to approve the storage of CMFO in a permanent food facility upon verification that the CMFO will be protected from contamination.
- v) **Private Home Storage.** Permits the use of a private home for storage of a CMFO after an evaluation by a LEA that the storage in the private home would not pose a public health hazard and the CMFO is protected from contamination. This bill also limits to two CMFOs that can be stored in a home but gives the LEA discretion to approve more if this does not pose a public health hazard. The storage area must be designated and identified and cannot be relocated without the review and approval of the LEA. Prepackaged nonpotentially hazardous food, whole fruits, and vegetables may be stored in the home prior to sale or preparation by a CMFO. Food prepared in the home cannot be sold on a CMFO unless the CMFO is a permitted COF or MEHKO.
- vi) **Private Home Inspection.** A LEA is authorized to enter a private home for purposes of inspection only on the basis of a consumer complaint, there is reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or equipment contrary to the requirements of this bill.
- vii) **Raw Food.** A CMFO that prepares raw meat, raw poultry or raw fish must comply with warewashing and handwashing facility requirements. The use of auxiliary conveyance (i.e. sink cart) is permitted, including shared auxiliary conveyance, if certain requirements are met.

A CMFO that does not prepare raw meat, raw poultry or raw fish must comply with

specified sink and preparation and utensil requirements. An integral handwashing sink with at least five gallons of potable water must also be provided.

- viii) Mass-Produced CMFO units. The LEA is authorized to preapprove a standard plan for standardized or mass-produced CMFO units.
 - ix) Utensils and Appliances. All new and replacement utensils must be certified or classified for sanitation by the ANSI, another certification program or standard recognized, or approved by the LEA. All new and replacement electrical appliances must meet Underwriters Laboratories standard or another certification, as specified.
 - x) Enforcement. A violation of the CRFC is a misdemeanor. A new enforcement mechanism applies to CMFO under this bill. Any violation of this bill is subject to an administrative fine. The bill also designed a fine of \$100, \$200, or \$500 depending on the number of violations. For operating without a permit, a LEA may impose a fine not to exceed three times the cost of the permit in lieu of the administrative fines but cannot exceed the administrative fines. When assessing a fine for a first-time offense, the person's ability to pay will also be considered. A person receiving public benefits or meeting specified income requirements, a LEA to accept 20% of the administrative fines.
- c) **CFO law.** AB 1616 (Gatto), Chapter 415, Statutes of 2012, enacted the regulatory structure for CFOs. This law, for the first time, permitted the preparation of food in home kitchens for sale at the retail level, and initially set the cap at \$50,000 in gross annual sales. However, cottage food is limited to non-potentially hazardous foods: foods that by definition do not require refrigeration or to be kept hot in order to prevent the growth of micro-organisms or toxins. These foods include items such as baked goods (without custard or meat fillings), candy, dried fruit, dried pasta, dried baking mixes, fruit pies, granola, herb blends, and jams or jellies, among others. The law set up two categories of CFOs: Class A operations, which are limited to direct sales to consumers, and Class B operations, which are also permitted to sell through third-party retailers such as restaurants or coffee shops. Class A operations are not subject to initial inspection, and can only be inspected following a consumer complaint about unsafe food. Class B operations are subject to an initial inspection, and thereafter no more than one inspection per year. CFOs are exempted from the definition of a food facility, and are permitted separately, but they are subject to certain specified provisions of CRFC, such as handwashing requirements and the use of gloves, among other requirements. AB 1144 (Rivas), Chapter 178, Statutes of 2021, increased the sales cap from \$50,000 for both license types to \$75,000 for Class A and \$150,000 for Class B, and required that these caps be adjusted annually for inflation.
- d) **MEHKOs.** AB 626 (Garcia), Chapter 470, Statutes of 2018, established a regulatory structure for MEHKOs. The intent of the author was to establish a legal way for home cooks to benefit from their labor and skills and promote economic development in vulnerable communities where the sale of homemade food is popular. The general structure of AB 626 was to enact a permitting process that would be overseen by the same local health agencies that oversee fully-permitted restaurants, but to exempt these MEHKOs from requirements that would be difficult to meet in a home kitchen, such as sinks with multiple compartments and multiple drainboards, requirements related to the

floor, wall and counter material, special plumbing requirements, and limitations on who could be in the food preparation area. AB 626 required jurisdictions to opt-in in order to authorize MEHKOs in any given area. There are 62 local environmental health agencies that enforce the CRFC in their respective jurisdictions (the 58 counties, plus the cities of Berkeley, Long Beach, Pasadena, and Vernon). According to the Cook Alliance, which was one of the sponsors of AB 626 and has been tracking its implementation, the following nine counties have authorized the permitting of MEHKOs: Riverside, Alameda, San Mateo, Santa Barbara, San Diego, Solano, Imperial, Lake, and Sierra. In Riverside, which was the first county to opt in, there are more than 100 permitted MEHKOs. Alameda has permitted more than 30, and the remaining counties, which opted in more recently, have fewer but are growing.

- e) **Foodborne illnesses.** According to the Centers for Disease Control and Prevention (CDC), it is estimated that each year, 48 million people (one in six) get sick from a foodborne illness each year, 128,000 are hospitalized, and 3,000 die. Although anyone can get a foodborne illness, some people are more likely to develop one, including pregnant women, young children, older adults, and people with weakened immune systems. The top five germs that cause illnesses from food eaten in the United States are norovirus, Salmonella, Clostridium perfringens, Campylobacter, and Staphylococcus aureus. Other germs that don't cause as many illnesses, but when they do are more likely to lead to hospitalization, include Escherichia coli (e. coli), Clostridium botulinum (botulism), Listeria, and Vibrio. Some foods are contaminated before they reach a kitchen, and others are contaminated by food handlers. According to the CDC, sick food handlers caused 53% of the foodborne norovirus outbreaks by contaminating food, and possibly contributed to another 29% of the outbreaks. Among the outbreaks that involved a single contaminated food, over half are produce such as leafy vegetables or fruits, which are commonly eaten raw, and are most often contaminated during preparation or service by a sick food handler.
- 3) **SUPPORT.** The sponsors and supporters state this bill removes or reduces impossible equipment requirements, making it possible for vendors and manufacturers to build carts at affordable cost that actually fit on the sidewalk; and allows LEA to approve innovative equipment designs and streamline the approval process for these new designs by allowing for the preapproval of standardized plans. Finally, this bill removes criminal penalties for violations of the CRFC by sidewalk vendors and replaces them with noncriminal administrative fines to encourage compliance. They conclude that this bill will have a transformative impact on the lives of the most vulnerable microentrepreneurs while also strengthening and revitalizing communities across California as they recover from the pandemic.
 - 4) **SUPPORT IF AMENDED.** The City of Santa Monica states it opposes the provisions of the bill that would remove the current sales caps and operation provisions of MEHKO's and CFOs, as well as the removal of the existing enforcement authority. The City is struggling to address the considerable risks to public safety, public health, and the environment posed by persistent unpermitted vending, particularly near the Santa Monica Pier. The City of Santa Monica states it has serious concerns that the removal of the local authority to meaningfully enforce food safety provisions proposed in this bill would exacerbate the impacts related to unpermitted vending.

- 5) **OPPOSE UNLESS AMENDED.** Numerous organizations have an oppose unless amended position to this bill, including the California Travel Association, Visit Sacramento, Golden Gate Restaurant Association, and San Francisco Travel Association. These organizations state this bill removes some of the limited tools local municipalities have to ensure the public's health and safety and takes away their local control and ability to help mobile vending program work, while maintaining environmental, health, and safety laws. They are requesting that existing CRFC requirements for civil enforcement authority for flagrant repeated violations (defined as four times per year). They are also asking that local authorities retain their current ability to approve, disapprove, or revoke any retail food permit based on public health risks and established due process provisions.
- 6) **OPPOSITION.** The Cities of Paramount and Whittier oppose this bill and state the following:
- a) This bill would reduce local health permit regulations for street food vendors and MEHKOs, consequently undermining the collective authority of City and County agencies to implement standardized inspections and assign accountability;
 - b) This bill would eliminate key food health and safety requirements intended to keep food safe for public consumption, such as water requirements and handwashing stations;
 - c) This bill would prohibit local agencies from pursuing criminal charges for repeat violators who operate a street food cart or home kitchen operation egregiously, illegitimately, or with gross negligence; and, would increase the number of meals that can be produced per day under the definition of a "home kitchen" when sold from a mobile food cart, effectively turning residential areas in commercial business areas.

The California Association of Environmental Health Administrators, Health Officers Association of California, California State Association of Counties, and County Health Executives Association of California have removed their opposition to this bill with the adoption of the June 23, 2022 amendments.

- 7) **RELATED LEGISLATION.** SB 1290 (Allen) allows until January 1, 2026, a local authority to impose the full amount of fines for the fourth or subsequent violations of sidewalk vending ordinances without regard of the person's ability to pay. SB 1290 is pending in the Assembly Local Government Committee.
- 8) **PREVIOUS LEGISLATION.**
- a) AB 1144 (Rivas), Chapter 178, Statutes of 2021, increased the maximum amount of gross annual sales for cottage food operations, currently \$50,000 for both "Class A" and "Class B" operations, to \$75,000 for "Class A," and \$150,000 for "Class B," and indexes these amounts to the Consumer Price Index. Additionally, required "Class B" operations to be subject to an annual inspection.
 - b) AB 377 (Garcia), Chapter 536, Statutes of 2019, clarified provisions of law governing the authorization and regulation of MEHKOs, including clarifying that only a county or one of four cities with an environmental health department can authorize MEHKOs, and if authorized by one of these jurisdictions, they are permitted in all areas of those jurisdictions.

- c) SB 946 decriminalized sidewalk vending, and established various requirements and limitations on the regulation of sidewalk vending by cities and counties. However, this bill specified that it did not affect the applicability of the CRCF to a sidewalk vendor who sells food.
- d) AB 626 established MEHKOs as a new category of retail food facility, that cities or counties would have discretion to authorize and permit, to be operated by a resident in a private home, subject to specified requirements. Subjects microenterprise home kitchens (MHKs) to the requirements of a restricted food service facility, with numerous exemptions from these requirements primarily to accommodate the differences between a home kitchen and a commercial kitchen. Limits MHKs to selling food directly to consumers, but specifies that the sale of food through an Internet food service intermediary is considered a direct sale to consumers, and establishes requirements on these intermediaries.
- e) AB 1616 enacted the California Homemade Food Act, also known as the cottage food bill, which provided a regulatory structure to allow the production and sale of nonpotentially hazardous food in a home kitchen.
- f) SB 144 (Runner), Chapter 23, Statutes of 2006, established the CRFC in order to create uniformity between California's retail food safety laws and those of other states, as well as to enhance food safety laws based on the best available science.

9) CORRECTION AMENDMENTS.

- a) Page 9, lines 1-4:

3) Transactions at up to two compact mobile food operations operated by a cottage food operator shall not count toward the annual gross sales restrictions in Section 113758 applicable to cottage food operations **if the governing body has authorized this action.**

- b) Page 11, lines 8-11 is a separate subparagraph since this provision applies to all CMFOs:

(7d) At the end of the operating day, potentially hazardous food that is prepared on or served from a compact mobile food operation shall be destroyed in a manner approved by the enforcement agency.

- c) Page 14, lines 5: Delete “compact mobile food facility” and replace with “compact mobile food operation.”

REGISTERED SUPPORT / OPPOSITION:

Support

Insurance Commissioner Ricardo Lara (cosponsor)
 Coalition for Humane Immigrant Rights (cosponsor)
 Community Power Collective (cosponsor)
 Inclusive Action for the City (cosponsor)
 Public Counsel (cosponsor)
 Western Center on Law & Poverty (cosponsor)

Eric Garcetti, Mayor of Los Angeles
Active San Gabriel Valley
African American Chamber of Commerce of San Joaquin County
Alliance San Diego
Brown Issues
California Asian Pacific Chamber of Commerce (CAPCC)
California Calls
California Coalition for Community Investment
California Community Economic Development Association (CCEDA)
California Community Foundation
California Environmental Voters (formerly CLCV)
California Hispanic Chamber of Commerce
California Immigrant Policy Center
California League of United Latin American Citizens
California Reinvestment Coalition
California State Council of Service Employees International Union (SEIU California)
Californians for Economic Justice
Cameo - California Association for Micro Enterprise Opportunity
Central American Resource Center- Carecen- of California
Central Coast Alliance United for a Sustainable Economy
City of Los Angeles
Citylab - UCLA
Climate Resolve
Community Action Board of Santa Cruz County, INC.
Community Health Councils
Comunidades Indígenas En Liderazgo (“CIELO”)
Council of Mexican Federations in North America Cofem
Courage California
Cultiva LA Salud
Drug Policy Alliance
East LA Community Corporation
Eastmont Community Center
Eastside Leadership for Equitable and Accountable Development Strategies
El Concilio California
End Poverty in California (EPIC)
Esperanza Community Housing Corporation
Having Our Say Coalition
Hispanic Chambers of Commerce of San Francisco
Housing Now! CA
Inland Coalition for Immigrant Justice
LA Mas
LAC USC Medical Center Foundation
Latino Coalition for a Healthy California
Latino Coalition of Los Angeles
Latino Community Foundation
Little Tokyo Service Center
Local Initiatives Support Corporation
Los Angeles Area Chamber of Commerce
Los Angeles Chapter National Lawyers Guild

Los Angeles Community Action Network
Los Angeles Food Policy Council
Los Angeles Walks
Los Angeles; City of
Loyola Law School, Loyola Immigrant Justice Clinic
Mission Asset Fund
Pilipino Workers Center
Pomona Economic Opportunity Center
Safe Place for Youth
Salva
San Diego Immigrant Rights Consortium
Small Business Majority
South Asian Network
Strategic Actions for a Just Economy
Thai Community Development Center
The Beverly-Vermont Community Land Trust
The People of South Gate
United Way of Greater Los Angeles
Urban Movement Labs

Opposition

City of Paramount
City of Whittier

Analysis Prepared by: Rosielyn Pulmano / HEALTH / (916) 319-2097