

ORDINANCE NO. 7,739-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 11.28 FOOD ESTABLISHMENTS TO UPDATE SECTION 11.28.010 STATUTORY PROVISIONS, SECTION 11.28.020 DEFINITIONS AND ADDING SECTION 11.28.370 MICROENTERPRISE HOME KITCHEN OPERATION (MHKO)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 11.28.010 of the Berkeley Municipal Code is amended to read as follows:

Section 11.28.010 Statutory provisions adopted.

The California Health and Safety Code, Division 104. Environmental Health, Part 7. California Retail Food Code as amended from time to time, is adopted as part of this title.

Section 2. That Section 11.28.020 of the Berkeley Municipal Code is amended to read as follows:

Section 11.28.020 Definitions.

A. "Boardinghouse" means any building or structure occupied or intended, arranged or designed for occupation by five or more guests where rooms and meals are provided for compensation. The term "boardinghouse" includes "fraternity," "sorority," "guesthouse," "residence club," "lodge," and any of its variants.

B. "Cottage Food Operation" means that as defined in the California Retail Food Code (CalCode)

C. "Employee" means any person working in an operation covered by this chapter who engages, with or without pay, in the dispensing, processing or other preparation or handling of food and beverages or in the cleaning of equipment and utensils used therein.

D. "Food establishment" means any restaurant, vehicle, itinerant restaurant, mobile food-preparation unit, vending machine, bakery, food processing establishment, delicatessen, grocery, confectionery, meat market or plant, meat jobber, food jobber, microenterprise home kitchen, cottage food operation, and any other establishment or place, or portion thereof, maintained, used or operated for the purpose of commercially storing, packaging, displaying, making, cooking, baking, mixing, processing, bottling, canning, slaughtering or otherwise preparing or handling food or beverage.

E. "Food or beverage" includes all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof for human consumption. The term "food or beverage" includes ice.

F. "Imminent health hazard" means any condition in a food establishment that can cause food infection, food intoxication, or disease transmission, including, but not limited to improper temperature controls, sewage contamination, and employees that are carriers of communicable diseases.

G. "Meat" means and shall be construed to include all sorts of meats or meat food products kept or exposed for sale for human food, such as the flesh of any cattle, hogs,

sheep, swine, goats, poultry or rabbits, or any other animal, poultry, fish or shellfish, except horsemeat.

H. "Mechanical refrigeration" means a unit which extracts heat from an area by means of liquification and evaporation of a fluid by means of compressor or flame, or by means of a thermoelectric device. Acceptable mechanical refrigeration shall also include cold plates.

I. "Microenterprise Home Kitchen Operation" means that as defined by the CalCode.

J. "Potentially hazardous food" means food or beverage which is capable of supporting rapid and progressive growth of pathogenic microorganisms which can cause food infections or intoxications, or which is otherwise subject to spoilage by reason of lack of refrigeration. "Potentially hazardous food" shall include but not be limited to custard- and cream-filled pastries; prepared salads with dressing; sandwiches using mayonnaise, salad or butter dressings; precooked meat, not hermetically sealed; fresh meats, dairy products; and all processed and packaged food and beverage labeled "frozen" or whose label indicates that the product must be kept under refrigeration.

K. "Process" means and includes the manufacture, preparation, storing, packaging, packing, making, cooking, mixing, processing, compounding, portioning, bottling, canning, slaughtering, or any similar activity related to the preparing or handling of food.

Section 3. That Section 11.28.370 is added to the Berkeley Municipal Code to read as follows:

Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO)

A. Definitions: The definitions set forth in the California Health and Safety Code 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:

1. "Enforcement Agency" means the Environmental Health Division (EHD) of the Health, Housing, and Community Services Department (the Department).
2. "Microenterprise Home Kitchen Operator" means the Resident of a Private Home that is responsible for operation and permit.
3. "Resident of a Private Home" means an individual who primarily resides in that private home.

B. Restrictions and conditions:

1. Commercial retail food establishment equipment not intended for use in a residence must first be approved by the City of Berkeley Fire Marshall.
2. As specified in the California Retail Food Code regarding MHKOs, the number of meals served per day may be restricted based on the safe food storage and holding capacity of food ingredients that are to be prepared and served the same day.
3. EHD may request the assistance of a Berkeley Fire Department (BFD) Fire Inspector and conduct a re-inspection according to CalCode section 114367.3(3) should the enforcement officer suspect a fire hazard exists.

C. Nuisances: Nuisances shall be abated according to BMC 1.24 and 1.26. In addition to the procedures outlined in BMC 1.24 and 1.26, failure to abate a nuisance may result in the suspension and/or revocation of the MHKO Operating Permit. In addition to any nuisance defined elsewhere in City ordinances or State laws, it shall be deemed a nuisance for a MHKO to:

1. Directly, or through customers and/or third-party delivery services, cause blockage and/or congestion on City thruways such that the duties of City agencies are impeded, including but not limited to maintenance, solid waste, and street sweeping, or that which results in repeated neighbor complaints by multiple neighbors, including parking congestion.

2. Store greases in such a manner as to be considered a fire hazard whether indoors or outdoors, or that which attracts vermin.

3. Dispose of greases into the municipal sewer system through a residential drain or toilet.

4. Cause a visible build-up of greases inside residential ventilation hoods and shafts, on walls, ceilings, rooftops, and/or other surfaces such that it may constitute a fire hazard or attract vermin.

5. Create nuisance smoke, odors, or noises in common areas, e.g. hallways, shared gathering areas, etc. such that multiple neighbors file complaints.

6. Operating an outdoor wood-burning oven or BBQ in a manner that may constitute a hazard, or that which creates nuisance smoke or odors to a neighboring residence.

7. Storing of refuse in an unsanitary manner or that which attracts vermin. Any refuse generated beyond the capacity of residential waste pickup shall be taken to a waste transfer facility or landfill by the MHKO Operator.

D. Permit

1. No person shall operate MHKO without holding a valid operating permit issued by the Department. Application for a permit shall be made upon a form issued by the EHD and shall be accompanied by any fees established.

2. No person shall operate a MHKO without holding a valid business license per Berkeley Municipal Code 9.04.

E. Inspections

1. The EHD shall inspect a MHKO upon the initial application, on an annual basis, due to a consumer complaint, or if there is reason to suspect that unsafe food has been produced. An inspection form provided by the EHD 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 MHKO.

2. The EHD may seek cost recovery at the current EHD hourly rate with a minimum of two hours, if additional inspections or complaint investigations are required to ensure compliance with this ordinance and/or the California Retail Food Code.

The EHD may request the assistance of the BFD to assess any conditions suspected to be a fire hazard. Such inspections shall be considered an emergency inspection as defined in the California retail Food Code with regard to MHKO inspections. BFD may seek cost recovery for such inspections.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 1, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.