
THIRD READING

Bill No: SB 972
Author: Gonzalez (D), et al.
Amended: 4/27/22
Vote: 21

SENATE HEALTH COMMITTEE: 9-1, 4/20/22
AYES: Pan, Eggman, Gonzalez, Grove, Leyva, Limón, Roth, Rubio, Wiener
NOES: Melendez
NO VOTE RECORDED: Hurtado

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: California Retail Food Code

SOURCE: California Insurance Commissioner Ricardo Lara
Coalition for Humane Immigrant Rights
Community Power Collective
Inclusive Action for the City
Public Counsel
Western Center on Law and Poverty

DIGEST: This bill establishes a new type of retail food facility called a “compact mobile food facility” as a subcategory of mobile food facility that is nonmotorized and operates from a pushcart or stand; exempts compact mobile food facilities from various provisions of the retail food code law, including certain sink requirements; prohibits criminal penalties from applying to compact mobile food facilities and instead limits enforcement to administrative penalties; and exempts sales from compact mobile food facilities from counting toward the sales limits for cottage food operators, or the sales or meal limits for microenterprise home kitchens.

ANALYSIS:

- 1) Establishes the California Retail Food Code (CalCode) to regulate retail food facilities. Health and sanitation standards are established at the state level

through the CalCode, 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). [HSC §113700, et seq.]

- 2) 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. [HSC §113781]
- 3) Defines a “mobile food facility” as any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. 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. [HSC §113831, §113751]
- 4) Defines a “cottage food operation” (CFO), for purposes of the CalCode, 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. [HSC §113758]
- 5) Defines a microenterprise home kitchen operation (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 30 meals per day, and 60 meals per week, and up to \$50,000 in annual gross sales. [HSC §113825]
- 6) 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. [HSC §114367]
- 7) 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. [HSC §114367.1]

- 8) Establishes a misdemeanor penalty for a violation of any provision of the CalCode, 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. [HSC §114395]

This bill:

- 1) Creates a new type of retail food facility, for purposes of regulation by the Cal Code, called the “compact mobile food facility” as a subcategory of a mobile food facility, and defines a compact mobile food facility as a nonpermanent food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.
- 2) Exempts compact mobile food facilities from a provision of law limiting what can be displayed or sold outdoors to only prepackaged nonpotentially hazardous food or uncut produce, and instead permits compact mobile food facilities to display or sell cut fruit and vegetables, as long as conditions that otherwise apply to outdoor displays selling nonpotentially hazardous foods are satisfied.
- 3) Limits enforcement of violations of the CalCode for compact mobile food facilities, notwithstanding the existing misdemeanor penalties for all food facilities, to be punishable only by an administrative fine, consistent with provisions of law establishing an administrative fine structure for sidewalk vendors in the Government Code, which is subject to mandatory reductions based on an individual’s ability to pay. Prohibits compact mobile food facilities from being punishable as an infraction or misdemeanor, and prohibits compact mobile food facility operators from being subject to arrest except when independent grounds for that arrest exist under law.
- 4) Revises the definition of “direct sale,” for purposes of CFOs, to include transactions at a compact mobile food facility operated by a CFO, and exempts transactions at a compact mobile food facility from counting toward the annual gross sales restrictions for CFOs.

- 5) Revises the definition of “limited food preparation” by doing the following:
 - a) Including the dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing;
 - b) Including the slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility; and,
 - c) Permitting, by repealing prohibitions on these activities from being considered part of “limited food preparation,” the reheating of potentially hazardous foods for hot holding.
- 6) Revises provisions of law governing MEHKOs as follows:
 - a) Permits food from a MEHKO to be served from a compact mobile food facility, and incorporates food sold directly from a mobile food facility operated by the MEHKO permit holder as a direct sale to consumers;
 - b) Exempts sales of nonpotentially hazardous food sold by a compact mobile food facility operated by the MEHKO permit holder from the meal and gross annual sales limitations;
 - c) Exempts sales of potentially hazardous food sold by a compact mobile food facility operated by a MEHKO permit holder, if the enforcement agency determines that the operation does not pose a public health hazard; and,
 - d) Permits the governing body of a local jurisdiction that permits MEHKOs to set meal and income limitations at a higher level.
- 7) Exempts compact mobile food facilities from the requirement that mobile food facilities operate in conjunction with a commissary, mobile support unit, or other facility approved by the enforcement agency if the compact mobile food facilities operates in conjunction with a licensed cottage food operation or a MEHKO. Requires enforcement agencies to approve the storage of compact mobile food facilities in the home of the operator or permit holder if the food facility is sanitized daily, notwithstanding a requirement that mobile food facilities be stored at commissaries or other approved locations.
- 8) 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 compact mobile food facility, notwithstanding a requirement that food for mobile food facilities be stored at a commissary or other approved facility.
- 9) Exempts mobile food facilities from the CalCode requirements if they only sell prepackaged, nonpotentially hazardous foods or whole raw fruits or vegetables.
- 10) Exempts compact mobile food facilities from a provision of CalCode requiring all food-related and utensil-related equipment to be certified for sanitation by

the American National Standards Institute if the enforcement agency determines that the equipment of the facility meets the characteristics of certified equipment (this exemption is similar to an existing exemption for restricted food serve facilities).

- 11) Permits an enforcement agency to permit a mobile food facility to operate without providing its own supply of potable water, notwithstanding a requirement that water tanks be provided for nonpermanent food facilities of sufficient capacity for food preparation, warewashing, and handwashing purposes, if alternative supplies of water are available in the planned area of operation, including, but not limited to, public faucets, bottled water sales, or bottled water carried with the vendor but stored outside of the mobile food facility. Permits a mobile food facility to operate with an integral water tank smaller than specified under existing law if the enforcement agency finds that the mobile food facility is operating in an area and manner that would allow for replenishment of the water supply as needed.
- 12) Makes the following changes to the requirement that mobile food facilities provide a three-compartment warewashing sink:
 - a) Deletes an exemption from the three-compartment sink requirement for mobile facilities that only handle nonpotentially hazardous foods that require minimal preparation, as specified, steamed or boiled hot dogs, or tamales in their original wrapper, as long as all utensils and equipment are washed and sanitized on a daily basis at the approved commissary or permanent food facility and the mobile food facility maintains an adequate supply of spare preparation and serving utensils as need to replace those that become soiled;
 - b) Deletes a provision that provided alternative options to the three compartment sink requirement for unenclosed food facilities that prepare potentially hazardous beverages for immediate service in response to an individual consumer order, including the ability to provide a one-compartment sink; and instead,
 - c) Permits a mobile food facility that is approved for limited food preparation, as an alternative to providing a warewashing sink, to not provide a warewashing sink and instead maintain an adequate supply of spare preparation and serving utensils 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.
- 13) Permits a mobile food facility to satisfy the requirement that handwashing sinks and warewashing sinks be an integral part of the primary unit or on an

approved auxiliary conveyance by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks, which may be operated by a different permitholder. Permits an enforcement agency to permit an auxiliary conveyance to serve multiple mobile food facilities operating in close proximity.

- 14) Permits a compact mobile food facility to operate without an integral handwashing sink, auxiliary sink unit, or other handwashing facility if it is equipped with a supply of clean, potable water, hand soap, a receptacle for waste water, and paper towels.
- 15) Permits an enforcement agency to waive the requirement that a mobile food facility be operated within 200 feet travel distance of an approved and readily available toilet and handwashing facility if the mobile food facility operates with multiple employees or operators and the facility may remain operable by a single employee so that employees or operators may alternate use of a restroom.
- 16) Permits an enforcement agency to approve a facility to support food facility operations, if it has determined that the proposed facility and its method of operation meets the requirements of the CalCode, unless a determination is made that the nonconforming structural conditions pose a public health hazard.
- 17) Requires an enforcement agency to approve the use of permitted permanent food facility to satisfy the requirements of a commissary for compact mobile food facilities, and to store compact mobile food facilities at a permitted permanent food facility, upon an initial inspection that the permanent food facilities satisfies specified requirements.
- 18) Permits an enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a mobile food facility. Permits the enforcement agency to require that the manufacturer of the standardized facility affix a sticker or decal to each individual unit certifying that the unit was built in accordance with the preapproved blueprints. Specifies that a person proposing to operate a mobile food facility for which plans have been preapproved is not required to submit plans for the individual unit. Specifies that the repair of this equipment or the replacement of equipment and fixtures with substantially similar equipment is not a remodel, and does not require the submission of plans to an enforcement agency.
- 19) Exempts compact mobile food facilities from a requirement that an owner or employee pass an approved food safety certification examination if they

prepare, handle, or serve nonprepackaged potentially hazardous food, and specifies that compact mobile food facilities are deemed to comply with a requirement that the owner or person in charge demonstrate that they have an adequate knowledge of food safety principles as they relate to the specific food facility operation if the compact mobile food facility carries a written copy of its standard operating procedures approved by an enforcement agency.

Comments

- 1) *Author's statement.* 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. 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 CalCode—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. 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. SB 972 promotes economic inclusion while improving public health by modernizing CalCode so that sidewalk food vendors can actually obtain a permit and join the regulated vending economy.
- 2) *Sidewalk vending decriminalization bill.* As noted in the author's statement, SB 946 was intended by the author and proponents to help sidewalk vendors support themselves and their families by prohibiting overly restrictive local ordinances that were making it difficult if not impossible 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 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. 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. 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. 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 CalCode 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 CalCode.

- 3) *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. 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.
- 4) *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, limitations

on who could be in the food preparation area, etc. 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 CalCode 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/10/22)

California Insurance Commissioner Ricardo Lara (co-source)
 Coalition for Humane Immigrant Rights (co-source)
 Community Power Collective (co-source)
 Inclusive Action for the City (co-source)
 Public Counsel (co-source)
 Western Center on Law and Poverty (co-source)
 Active San Gabriel Valley
 African American Chamber of Commerce of San Joaquin County
 Beverly-Vermont Community Land Trust
 Brown Issues
 California Asian Pacific Chamber of Commerce
 California Association for Micro Enterprise Opportunity
 California Calls
 California Community Economic Development Association
 California Community Foundation
 California Environmental Voters
 California Immigrant Policy Center
 California Reinvestment Coalition
 Californians for Economic Justice
 Central Coast Alliance United for a Sustainable Economy
 cityLAB UCLA
 Climate Resolve
 Community Action Board of Santa Cruz County, Inc.
 Community Health Councils
 Comunidades Indígenas en liderazgo
 Council of Mexican Federations in North America
 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
Esperanza Community Housing Corporation
Having Our Say Coalition
Hispanic Chambers of Commerce of San Francisco
Housing Now!
LA Más
LAC+USC Medical Center Foundation
Latino Coalition for a Healthy California
Latino Community Foundation
Local Initiatives Support Corporation
Los Angeles Area Chamber of Commerce
Los Angeles Food Policy Council
Los Angeles Walks
Loyola Immigrant Justice Clinic
Mayor of Los Angeles, Eric Garcetti
National Lawyers Guild, Los Angeles Chapter
Pilipino Workers Center
Pomona Economic Opportunity Center
Safe Place for Youth
San Diego Immigrant Rights Consortium
Small Business Majority
South Asian Network
Strategic Actions for a Just Economy
Thai Community Development Center
TransLatin@ Coalition
UCLA Center for Labor Research and Education
United Way of Greater Los Angeles
Urban Movement Labs
10 individuals

OPPOSITION: (Verified 5/10/22)

California Association of Environmental Health Administrators
California State Association of Counties
County Health Executives Association of California

County of Santa Barbara
Health Officers Association of California

ARGUMENTS IN SUPPORT: This bill is co-sponsored by the Coalition for Humane Immigrant Rights, Community Power Collective, Inclusive Action for the City, Public Counsel, California Insurance Commissioner Ricardo Lara, and the Western Center on Law and Poverty. The sponsors, part of a California Street Vendor Campaign, state that immigrant and low-income workers face unjust criminalization and barriers to economic opportunity across the state, and are sponsoring this bill to continue their support for low-income sidewalk food vendors as they seek to be included in the formal economy. The sponsors state that the CalCode provisions governing “mobile food facilities” were adopted when small-scale sidewalk vending was still banned across California. As a result, the requirements were designed with large-scale facilities in mind. Small-scale food vendors of tacos, elotes, fresh fruit and other iconic street foods are largely unable to comply with these unsuitable provisions, and are therefore unable to operate legally. This frustrates the purpose of SB 946, impedes local permitting and regulation of sidewalk vending, unfairly exposes vendors to harassment and criminalization, and undermines public health by keeping food vendors out of formal health regulation structures. The sponsors state that this bill takes a number of steps to address the gaps that are currently trapping vendors in a cycle of noncompliance, including:

- 1) Enhancing vendors’ ability to provide healthy food to their communities by removing the prohibition on slicing and chopping of fresh fruit on site;
- 2) Encouraging safe food preparation by enabling proper reheating and hot holding of food previously prepared at an approved kitchen facility;
- 3) Removing or reducing impossible equipment requirements; making it possible for vendors and manufacturers to build carts at an affordable cost that actually fit on the sidewalk;
- 4) Allowing local health departments to approve innovative equipment designs if, in their expert opinion, that equipment is safe for vendors to use;
- 5) Creating new opportunities for food vendors to make use of existing legal programs for home kitchens and reduce barriers to accessing commissary space; and,
- 6) Removing criminal penalties for violations of the CalCode and replacing them with noncriminal administrative fines.

ARGUMENTS IN OPPOSITION: The California Association of Environmental Health Administrators, the Health Officers Association of California, the County Health Executives Association of California, and the

California State Association of Counties jointly write in opposition unless amended to restore a number of core public health provisions that it removes from the CalCode. These opponents state that they recognize the need for updating our street food vending laws, and remain committed to finding a safe and equitable solution to the problem that this bill seeks to address. However, any expansion of street vending needs to be done safely, and they oppose this bill unless certain public health protections are reinstated.

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
5/11/22 15:08:30

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