

SENATE THIRD READING

SB 972 (Gonzalez)

As Amended June 30, 2022

Majority vote

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.

COMMENTS

June 23 Amendments. The June 23, 2022 amendments created a new Chapter (Chapter 11.7) in the California Retail Food Code (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:

- 1) 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.
- 2) 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.
- 3) Cottage Food Operations (CFO) and Microenterprise Home Kitchen Operation (MEHKO). Permits a CFO or MEHKO to serve as a commissary or mobile support unit for up to two CMFOs 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.
- 4) Permanent Food Facility. A LEA may approve the use of a permanent food facility as a commissary for a CMFO if certain requirements are met. Allows a LEA to approve the storage of CMFO in a permanent food facility upon verification that the CMFO will be protected from contamination.
- 5) 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.

- 6) 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.
- 7) 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.

- 8) Mass-Produced CMFO units. The LEA is authorized to preapprove a standard plan for standardized or mass-produced CMFO units.
- 9) Utensils and Appliances. All new and replacement utensils must be certified or classified for sanitation by the American National Standards Institute, 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.
- 10) 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.

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.

Arguments in 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.

Arguments in 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.

Arguments in Opposition

The Cities of Paramount and Whittier oppose this bill, and they oppose because 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; eliminate key food health and safety requirements intended to keep food safe for public consumption, such as water requirements and handwashing stations; and, 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.

Arguments in Opposition 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.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor and absorbable costs to the Department of Public Health.

VOTES

SENATE FLOOR: 29-5-6

YES: Allen, Archuleta, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Dahle, Glazer, Grove, Melendez, Nielsen

ABS, ABST OR NV: Atkins, Hertzberg, Hueso, Jones, Min, Ochoa Bogh

ASM HEALTH: 12-1-2

YES: Wood, Aguiar-Curry, Arambula, Carrillo, Maienschein, Mayes, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Akilah Weber

NO: Waldron

ABS, ABST OR NV: Bigelow, Flora

ASM APPROPRIATIONS: 11-4-1

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

ABS, ABST OR NV: Eduardo Garcia

UPDATED

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