

REPORT TO THE PLANNING COMMISSION



DATE: October 8, 2019

TITLE: An Ordinance of the City Council of the City of Desert Hot Springs, Amending Chapter 17.108 (Home Occupancy Permits) of Title 17 (Zoning) of the Desert Hot Springs Municipal Code to Adopt Regulations for Microenterprise Home Kitchen Operation

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RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Public Testimony;
- 5) Close the Public Hearing;
- 6) Planning Commission discussion and questions to Staff; and
- 7) That the Planning Commission recommend to the City Council, adoption of "An Ordinance of the City Council of the City of Desert Hot Springs, Amending Chapter 17.108 (Home Occupancy Permits) of Title 17 (Zoning) of the Desert Hot Springs Municipal Code to Adopt Regulations for Microenterprise Home Kitchen Operations."

BACKGROUND

Chapter 17.108 of the Desert Hot Springs Municipal Code ("DHSMC") regulates Home Occupancy Permits.

On September 18, 2018, California passed Assembly Bill 626 ("AB 626"). AB 626 took effect on January 1, 2019 and establishes new regulations for a new type of business called microenterprise home kitchen operations.

Under AB 626, a microenterprise home kitchen operation is now included in the definition of food facility regulated by state law. This means residents in a private home may operate a food facility in their home, including storing, handling, preparing, and serving food to customers. The operation may not have more than one full-time employee and no more than \$50,000 in gross annual sales.

Microenterprise home kitchen operations are subject to operating standards under AB 626. This includes complying with local permitting systems. On May 7, 2019, the County of Riverside passed Ordinance 949 to permit and regulate microenterprise home kitchen operations. According to AB 626, a valid permit issued by a county is valid in every city within that county, regardless of whether the city has separately enacted an ordinance to regulate microenterprise home kitchen operations. (Health and Safety Code Sect. 114367). Under the terms of AB 626, microenterprise home kitchen operations with a permit issued by the County of Riverside are authorized to operate within the City of Desert Hot Springs.

Further, cities and counties may not "prohibit the operation of, require a permit to operate, require a rezone of the property for, or levy any fees on, or impose any other restriction on, a microenterprise home kitchen operation in any residential dwelling for zoning purposes." (Health and Safety Code Sect. 114367.4). Thus, it is likely that requiring a permit for home occupation, which is for zoning purposes, is not allowed by AB 626.

However, these operations are not entirely free from city regulations. Microenterprise home kitchen operations must abstain from posting signage or other outdoor advertising displays and be in compliance with noise ordinances. Further, AB 626 does not supersede or otherwise limit the investigative and enforcement authority of the city, county, or city and county with respect to violations of its nuisance ordinances.” (Health and Safety Code Sect. 114367.4(a)(B)(2)).

Currently, Chapter 17.108 regulates home occupations, but does not address microenterprise home kitchen operations.

The proposed ordinance seeks to amend Chapter 17.108 of the DHSMC to regulate, to the extent allowed by AB 626, microenterprise home kitchen operations.

DISCUSSION

The proposed ordinance would regulate microenterprise home kitchen operations under Chapter 17.108. The proposed ordinance would add a new section under 17.108.045, which outlines the conditions in which microenterprise home kitchen operations may operate in the City. This includes obtaining a permit from the County of Riverside, and complying with all applicable public nuisance ordinances. Microenterprise home kitchen operations would also comply with existing operating standards under Section 17.108.030, except for the standards related only to zoning purposes or prohibited by AB 626.

The proposed ordinance would also delete language in section 17.108.020 that conflicts with permit requirements for in-home educational activity. The deleted language may also conflict with the new section 17.108.045 due to its broad application.

By regulating microenterprise home kitchen operations and ensuring that they comply with all existing public nuisance ordinances, the City may mitigate the undesirable effects of operating food facilities within residential zones, while staying in compliance with AB 626.

FISCAL IMPACT

None.

EXHIBIT(S)

- 1) Proposed Ordinance