

**SOPHIE HAHN**

Berkeley City Council, District 5  
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CONSENT CALENDAR  
December 19, 2017

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn  
Subject: Requesting Amendments to AB 626 California Retail Food Code:  
Microenterprise Home Kitchen Operations

**RECOMMENDATION**

That the Berkeley City Council send an "oppose unless amended" letter regarding AB 626 to Assemblymember Tony Thurmond, Senator Nancy Skinner, Assembly Speaker Anthony Rendon, Senate President Pro-Temp Kevin de Leon, Assembly Appropriations Chair Lorena Gonzalez Fletcher and Governor Jerry Brown, urging that the bill be amended to promote food safety and economic opportunity for home cooks, and to ensure that tech platforms do not wield excessive control over our rapidly changing food system.

**BACKGROUND*****Legalizing the Homemade Food Industry***

In 2012 the California Legislature passed the California Homemade Food Act (AB 1616, Gatto), also commonly known as California's "cottage food law." This legalized the sale of low-risk "not potentially hazardous" foods to be made in a home kitchen and offered for sale, subject to certain requirements including health permits and food safety training for cooks. The Homemade Food Act only permits the sale of shelf-stable foods such as breads, pies, fruit jams, and certain dried foods. The law still prohibits sales of more perishable homemade foods including hot meals, green salads, and frozen foods. Many consumers and food producers alike would prefer a more permissive homemade food law that would allow sales of hot meals and other perishable foods.

Although the California Homemade Food Act does not allow for sales of homemade hot meals, numerous technology start-ups are actively operating apps that advertise home-cooked meals for sale. Some offer consumers the chance to dine at the cook's home, while others invite consumers to pick up a take-out meal from the cook's home. Some tech platforms are focused on providing deliveries of food in general, especially food from popular restaurants (examples: Uber Eats, Postmates).

Some have called these platforms "Airbnb for food" or "Uber for food." Many of these start-ups have received large investments from private investors who likely hope to receive large profits from the enterprise.

One of these tech companies called Josephine received cease and desist letters from local health regulators in Spring 2016, as did home cooks who were using the Josephine app to sell food. Even before tech start-ups were in the business of selling homemade food, sales of homemade food has long been commonplace, including in immigrant communities. Many stakeholders have identified the need to rethink the law around homemade food in California,

and representatives of the California Conference of Directors of Environmental Health (the association of environmental health department directors in California) have been engaging in numerous discussions around this topic with other stakeholders to identify possible legislative solutions to these challenges. For two years in a row (2016 and 2017) a bill has been introduced in the California Legislature to open up legal channels for selling homemade food, including hot meals.

#### AB 626: A Crossroads for the Homemade Food Industry

This is a crossroads moment for the homemade food industry. Many examples of technology-backed activity in the "gig economy" have raised serious concerns about exploitation of service providers, unfair competition with established businesses, evasion of safety, tax, and employment laws, and concerns related to gentrification, displacement, and exacerbating wealth inequality in the Bay Area and beyond.

In February 2017, California State Assemblymember Eduardo Garcia introduced Assembly Bill 626, a bill to greatly expand the scope of legal sales of homemade food. The bill is sponsored by tech company Josephine.

In response, numerous community groups in the Bay Area are rallying behind a policy proposal that would not only promote food safety and economic opportunity for home cooks, but also ensure that tech platforms do not wield excessive control over our rapidly changing food system.

#### **Community groups are requesting that AB 626 or any future homemade food legislation:**

- 1) expand the scope of foods that can be made in a home kitchen and offered for sale with appropriate food safety requirements (such as food safety training and health permits), **and**;
- 2) that the state limit the kinds of third-party intermediaries involved in advertising, transacting money for, or otherwise facilitating the sales of homemade food to those entities that are wholly owned by nonprofit organizations, cook-owned cooperatives, eater-owned cooperatives, or local government agencies.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse effects on the environment.

#### CONTACT PERSON

Councilmember Sophie Hahn     District 5     (510) 981-7151

#### ATTACHMENT

1. Letter to Assemblymember Tony Thurmond, Speaker Anthony Rendon, Senator Nancy Skinner, Senate President Kevin de Leon, Assembly Appropriations Chair Lorena Gonzalez Fletcher



December 19, 2017

**SUBJECT: Oppose Unless Amended: AB 626 should not enable the uberization of homemade food**

Dear Assemblymember Tony Thurmond, Senator Nancy Skinner, Assembly Speaker Anthony Rendon, Senate President Pro-Temp Kevin de Leon, and Assembly Appropriations Chair Lorena Gonzalez Fletcher, and Governor Jerry Brown.

The City of Berkeley respectfully requests that you amend AB 626 to ensure it creates uplifting economic opportunities for home cooks while also preventing possibly exploitation by third party web platforms facilitating sales of homemade food. While California should further legalize sales of homemade food, management of third-party intermediaries (such as web apps) in this market should be operated as cook or eater - owned cooperatives, nonprofits, or local government agencies, as numerous community groups have proposed. Such a proposed policy would essentially take existing California certified farmers' market regulations and adapt them to the internet age and to the homemade food economy.

If passed, AB 626 would be a dramatic shift in how food is regulated. Most states (including California) currently allow the sale of very low-risk "not potentially hazardous" foods such as breads, jams, and dried foods made in a home kitchen. AB 626 would allow an extremely broad scope of hot meals made in home kitchens to be sold. This legislation presents exciting possibilities for the creation and legalization of small food enterprises and local economic development; however, the potential unintended consequences must be carefully considered.

Tech start-ups are already operating web platforms to facilitate sales of hot meals made in home kitchens, despite a lack of legal clearance. If California legalizes sales of homemade hot meals, it could lead to a greater proliferation of tech platforms operating in this sector and greater investment in tech platforms selling food, among possible rippling impacts on food policy nationwide.

**At this critical time in the development of the homemade food industry, we hope that the California legislature will take bold action to prevent the 'Uberization' of the homemade food economy. We must ensure that control and profits in this industry remain in the hands of cooks, eaters, and communities--not absentee shareholders and tech company executives.**

Once wealthy and powerful corporations such as Uber and Lyft grow and control much of the market, it becomes nearly impossible for community-based solutions, such as user-owned platform cooperatives, to emerge and thrive. Public policy is needed to prioritize community-driven economic development.

Sincerely,  
Berkeley City Council

