

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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### Micro-Enterprise Home Kitchen (AB 626) FAQ

AB 626 established “micro-enterprise home kitchens” (MHKs) as a new category of retail food facilities. The Department has received a number of inquiries about whether MHKs are eligible for licensure under the Alcoholic Beverage Control Act (“ABC Act”) and what activities pertaining to alcohol are permitted in MHKs. There are a number of factors that are considered when licensing any business for the sale or consumption of alcoholic beverages, and there are various restrictions on what licensed and unlicensed businesses are permitted to do. This FAQ endeavors to address several of the key issues, but this is not a comprehensive review or analysis of the law and any person seeking to sell or provide alcoholic beverages, or to allow the consumption of alcoholic beverages on the premises, should obtain independent legal advice.

#### Do I need a license from ABC?

The laws concerning the regulation of alcoholic beverages may be found in the ABC Act (starting with section 23000 of the Business and Professions Code). The circumstances under which a license is required to be obtained from ABC are very broad, and encompass all situations in which alcoholic beverages are sold. This includes the common circumstances whereby alcoholic beverages are sold for consideration (typically money), but also includes where the price of a meal (for example) includes alcoholic beverages or when a business allows customers to bring their own alcohol for consumption.

#### If I don't get a license from ABC can I let people bring their own alcohol?

No. As indicated above, if a business, such as a MHK, provides a place for people to bring their own alcoholic beverages to consume in conjunction with a meal sold under the MHK permit, a license is required from ABC.

#### What type of license do I need?

California law provides two types of licenses allowing for the consumption of alcoholic beverages on the licensed premises in connection with the operation of a restaurant. One license allows for the sale or consumption of beer and wine; the other allows for distilled spirits in addition to beer and wine.

#### Is a MHK eligible for an ABC license?

Whenever an application for an ABC license is made, the Department conducts an investigation to determine if both the person and the location meet the necessary licensing requirements. There are a number of factors involved, so it is not possible to determine whether any particular person or location may be eligible to hold a license prior to the completion of the investigation or, often, an administrative hearing. However, in addition to other things, a business operating a restaurant, such as in the case of a MHK, must minimally meet the requirements of operating a “bona fide eating place.” The general

requirements for this may be found in Business and Professions Code section 23038. Some of the requirements are that the business be “kept open for the serving of meals to guests” in a regular and bona fide manner. In addition, the premises must have “suitable kitchen facilities” and “conveniences for cooking an assortment of foods which may be required for ordinary meals.” Given the statutory requirements for the operation of a MHK, it is possible that such businesses may be eligible to hold a license issued by ABC. This does not mean, however, that every such business will be approved for such a license. As indicated, the Department will evaluate each application on a case-by-case basis.

If I obtain an ABC license, will there be any restrictions?

The ABC Act requires licensees and licensed locations to comply with many statutory provisions. In addition, if a MHK is approved for an ABC license, the Department may include conditions that could restrict the operation of the business beyond those statutory requirements. If you do choose to obtain an ABC license, you need to understand that the premises is licensed all the time, 24/7/365. This means that you are required to comply with the laws applicable to licensed businesses at all times, in the same manner as other licensees and licensed locations (such as “regular” bars or restaurants). Even though MHKs are operated in peoples’ homes, if an ABC license is obtained they must comply with the laws applicable to the license issued. For example, if the MHK is licensed to sell beer and wine, no distilled spirits are permitted on the premises (except for brandy, rum, or liqueurs used solely for cooking purposes) at any time. Similarly, no alcoholic beverages may be consumed on the licensed premises between the hours of 2 AM and 6 AM, or as otherwise limited by a condition on the license.

If I am not actually operating the business, do I still need to comply with the rules on my ABC license?

Yes. As indicated above, once licensed, the premises is subject to the laws governing the licensed business and location at all times, even if meals are not being offered or sold under the MHK. As a consequence, if you license part of your residence so you can offer alcoholic beverages in conjunction with the meals sold and served under your MHK permit, that licensed area will be subject to the license restrictions even when you return it to regular use as a residence.

What would happen if I don’t get a license but include alcohol or allow people to bring their own alcohol?

Either situation is a violation of several different laws, including, for example exercising privileges for which a license is required without holding a license (Business and Professions Code sections 23300 and 23355), operation of a “bottle club” (Business and Professions Code section 25604), or creating a public or private nuisance under the Unlawful Liquor Sale Abatement Law (Penal Code sections 11200 to 11207). Such violations could subject you to criminal prosecution, a civil action for damages, or loss of your permit to operate a MHK.