

DEPARTMENT: Public Health BY: Charles B. Mosher, MD, Health Officer PHONE: 966-3689

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes\_x No\_\_)

Recommend resolution approving Health Department approach to issuing permits to temporary food facilities.

Recommend the Board authorize the approach suggested by the Health Department as a practical approach to balancing responsibilities under the State Food Facilities Regulations, legitimate Public Health concerns, and staffing limitations at the Health Department.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

SEE PAGE TWO FOR CONTINUATIONS

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- 1. To not address by permit some of those events identified as "higher risk" may pose a health hazard to the public consuming food at those events, and raises an issue of responsibility for enforcing the State regulations on the part of the County.
2. To hold under permit all events, including those categorized as "lower risk" (including most one day events) cannot be accomplished with the current staff level.

COSTS: (x) Not Applicable
A. Budgeted current FY \$
B. Total anticipated costs \$
C. Required additional funding \$
D. Internal transfers \$

SOURCE: ( ) 4/5ths Vote Required
A. Unanticipated revenues \$
B. Reserve for contingencies \$
C. Source description:
Balance in Reserve for Contingencies, if approved: \$

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

CLERK'S USE ONLY:
Res. No.: 97-226 Ord. No.
Vote - Ayes: Noes:
Absent: Abstained:
( ) Approved ( ) Denied
( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date:
ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:
Recommended
Not Recommended
For Policy Determination
Submitted with Comment
Returned for Further Action
Comment:
A.O. Initials: [Signature]

**BACKGROUND AND HISTORY OF BOARD ACTIONS: (CONTINUED FROM PREVIOUS PAGE)**

1. Traditionally, the Mariposa County Health Department has not regulated temporary food facilities at events of duration of three or fewer days. It has, however, offered education regarding food handling to all events of this nature where an assemblage permit is required.
2. Some changes were recently made to the State regulations regarding food facilities and this prompted a thorough review of the State regulations by staff. These issues were also discussed with County Counsel. It is staff's interpretation that the Health Department has a responsibility, under the law, to regulate some events which in the past have not been regulated including some with duration of operation under three days.

Basically, law requires permitting a temporary food facility if it will be open to the public under two circumstances:

- a. If it will be open to the public, no matter what the duration of the event, or
  - b. If it is open only to members and guests of the non-profit organization sponsoring the event and if the event will occur on more than three days in any 90 day period.
3. It is the policy of Mariposa County Health Department not to issue permits without inspection and, therefore, permitting a temporary food facility implies the following:
    - a. Education of the food handlers involved.
    - b. Inspection of the temporary food facility for compliance with regulations, and
    - c. Permit fees per County Ordinance.
  4. The potential impact for permitting events, not historically permitted in this County, is as follows: The staff has identified approximately 37 events occurring on an annual basis within the County where temporary food facilities will be established. These range in complexity from the annual County Fair to various fund raising pancake breakfasts. Of those 37 events, those operating more than one day are approximately 11 in number. Examples include the Fair, the recently completed Civil War Re-Enactment, the Modified Motorcycle Association Rally, the Coyote Howl, the annual Native American Pow Wow, and others.
  5. The issues of significance are as follows:
    - a. Public Health. The major concern for foodborne illness is bacterial growth to a level such that the bacteria in the food can cause an infection in a person or that the bacteria have secreted some toxins into the food (as a by-product of their metabolism) and the toxins make people ill. Factors which allow this bacterial growth include keeping food at the wrong temperature, keeping the food too long, contaminating the food when it is handled, and the

kind of food it is. For instance, pancakes are exceedingly low risk. Pancake batter won't sit around very long, any bacteria in the pancake batter would be killed by the high temperatures when cooking the pancakes, and the pancakes are consumed very soon after cooking. On the other hand, chicken is notorious for its contamination with salmonella, chicken juice dripping onto other food can contaminate the other food, inadequately cooked chicken can make people sick, and chicken held over for long periods of time, (including periods in excess of one day), can continue to grow bacteria under ideal circumstances.

- b. Money. There are fees associated with permitting temporary food facilities. By ordinance, they are \$30 per event, or \$45 annually.
- c. Many of the event sponsors and providers of temporary food facilities at events are not accustomed to being regulated by permit in this County and a period of education and adjustment is to be expected.
- d. It appears by regulations that the County has responsibility to permit temporary food facilities, including a number of them that have not historically and previously been permitted in Mariposa County. Other counties throughout the State implement this requirement in various ways ranging from not permitting temporary food facilities, except for very high profile events of several days duration where a large number of people may be exposed (for instance, the County Fair) to permitting every single event, including pancake breakfast type fund raisers.
- e. Workload on County staff. Routine food facility inspections (restaurants), septic system installations, septic system repairs, well installations, assisting with failing sewage systems, assisting with contaminated water problems, inspection of underground tanks, etc. is so great that it is unrealistic to plan to permit and inspect every single event where temporary food facilities occur.

#### RECOMMENDATION:

The Health Department recommends the following approach:

- a. Registered Environmental Health Specialists should evaluate the risk of foodborne illness at all events and prioritize them into higher risk and lower risk.
- b. The Health Department will permit food facilities at events where the risk is high which would include the following:
  - 1. Those open to the public where the event is occurring for two or more days, and
  - 2. Those open only to members and guests where the event is occurring for four or more days in any 90 day period (per State regulation), and

3. Only those one day events where food handling poses a "higher risk".

c. For the time being, manage events occurring for one day only with education as requested by the event's sponsors.

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

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TO: DR. MOSHER, Health Officer  
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*  
SUBJECT: PERMITTING TEMPORARY FOOD FACILITY; RES. 97-226

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THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on June 10, 1997

ACTION AND VOTE:

Dr. Mosher, Health Officer;

A) Resolution Approving Health Department Approach to Issuing Permits to Temporary Food Facilities (Continued from Policy on May 13, 1997) (Continued from 5/20/97); and

B) Discussion and Direction to Staff Regarding Requests for Exemption from Fees of Temporary Food Facilities (Continued from Policy on May 13, 1997) (Continued from 5/20/97)

**BOARD ACTION:** Discussion was held with Dr. Mosher and Dave Conway/Health-Sanitarian. (M)Reilly, (S)Balmain, Res. 97-226 adopted approving the Health Department's approach to issuing permits to temporary food facilities, as recommended. Motion was tabled pending consideration of the requests for exemptions from fees. Further discussion was held concerning the proposed policy and fees and alternatives. Dr. Mosher noted that the State law exempts veterans from the fees and Resolution No. 91-305 provides exemption for pre-packaged and non-perishable foods under certain conditions. Supervisor Reilly suggested that consideration be given to the County covering a portion of the permit fee for non-profit organizations. Supervisor Parker suggested that the fee issue be sent back to staff with direction for Dr. Mosher to bring back recommendations based on the issues raised and taking into consideration the possibility of categorizing organizations for reduced fees or exemptions, and looking at the possibility of setting a fee for large events to help reduce individual vendor costs; and keeping the suggestion of an annual permit fee for organizations that put on two or more functions a year. Previous motion was amended, agreeable with maker and second, to include direction for Health Officer to bring back specific alternatives for changes to the fee structure/Ayes: Unanimous. (Note: Supervisor Balmain changed his vote on this matter to "no" prior to voting on the next motion) (M)Parker, (S)Pickard, Board denied the requests for exemption from fees for temporary food facilities. Supervisor Balmain asked about rescinding his second and changing his vote on the previous motion. Jeff Green, County Counsel, advised that the procedures only allow for changing a vote prior to the next vote. Supervisor Balmain changed his vote to "no" on the previous motion for adopting the permit issuance policy. Vote on the motion to deny requests for fee exemptions/Ayes: Reilly, Stewart, Parker, Pickard; Noes: Balmain.

§ 113915. Editorial Note

**Operative Effect**

*Stats.1995, c. 415 (S.B.1360), provided for repeal of § 27550 and addition of this similar section. Stats.1995, c. 852 (S.B.396), § 28 amended § 27550. Subordination of legislation by Stats.1995, c. 415 (S.B.1360), see § 173 of that Act.*

**Historical and Statutory Notes**

Subordination of legislation by Stats.1995, c. 415 (S.B.1360), to other 1995 legislation, see Historical and Statutory Notes under Health and Safety Code § 100.

Section 113915, as added by Stats.1995, c. 415 (S.B.1360), § 6, reads:

"A person proposing to build or remodel a food facility shall submit complete plans and specifications to the local enforcement agency for review and approval pursuant to the re-

quirements of this chapter. The plans shall be approved or rejected within 20 working days after receipt by the local enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the local enforcement officer."

**§ 113920. Permits; fees; posting**

(a) A food facility shall not be open for business without a valid permit.

(b) A permit shall be issued by the local enforcement agency when investigation has determined that the proposed facility and its method of operation will conform to the requirements of this chapter. A permit, once issued, is non-transferable. A permit shall be valid only for the person, location, type of food sales, or distribution activity approved and, unless suspended or revoked for cause, for the time period indicated.

(c) Any fee for the permit and related services shall be determined by the local governing body. Fees shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting and impounding any utensil suspected of releasing lead or cadmium in violation of Section 108860 as authorized by Section 113930. All moneys collected as fees shall be expended in carrying out this chapter.

(d) A permit shall be posted in a conspicuous place in the food facility or in the office of a vending machine business.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

**Historical and Statutory Notes**

**Derivation:** Former § 27551, added by Stats. 1984, c. 256, § 1, amended by Stats.1986, c. 712, § 15; Stats.1990, c. 1269, § 3.

Former § 28864, added by Stats.1970, c. 649, p. 1274, § 1, amended by Stats.1974, c. 545, p. 1300, § 124.

Former §§ 28866, 28867, added by Stats. 1970, c. 649, p. 1274, § 1.

by Stats.1996, c. 1023 (S.B. Statutory Notes under Business

Subordinate legislation by Stats.1996, c. 1023 (S.B. 1497), see Historical and Statutory Notes under Business and Professions Code § 690.

### § 113777. Food contact surface

"Food contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

(Formerly § 27519.2, added by Stats.1995, c. 852 (S.B.396), § 14. Renumbered § 113777 and amended by Stats.1996, c. 1023 (S.B.1497), § 255, eff. Sept. 29, 1996.)

### Historical and Statutory Notes

#### 1995 Legislation

For legislative intent of Stats.1995, c. 852, regarding minimum knowledge and expertise requirements, and regulation of mobile food service mechanisms, see Historical and Statutory Notes under Health and Safety Code § 113.

Subordination of legislation by Stats.1996, c. 1023 (S.B. 1497), see Historical and Statutory Notes under Business and Professions Code § 690.

#### 1996 Legislation

Legislative findings, declaration and intent relating to Stats.1996, c. 1023 (S.B.1497), see Historical and Statutory Notes under Business and Professions Code § 690.

### § 113780. Food establishment

"Food establishment" means any room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food at the retail level. "Food establishment" includes a restricted food service transient occupancy establishment, as defined in Section 113870.

"Food establishment" does not include a commercial food processing establishment as defined in Section 111955, at the wholesale level, a \* \* \* mobile food facility, vending machine, satellite food distribution facility, temporary food facility, open-air barbecue, certified farmers' market, stationary mobile food preparation unit, or mobile food preparation unit.

(Amended by Stats.1996, c. 1048 (A.B.2349), § 9.)

### § 113785. Food facility

(a) "Food facility" means all of the following:

(1) Any food establishment, \* \* \* mobile food facility, vending machine, produce stand, swap meet prepackaged food stand, temporary food facility, satellite food distribution facility, stationary mobile food preparation unit, and mobile food preparation unit.

(2) Any place used in conjunction with the operations described in paragraph (1), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(3) A certified farmers' market, for purposes of permitting and enforcement.

(b) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food, or a private home, church, private club, or other nonprofit association that gives or sells food to its members and guests at occasional events, as defined in Section 113825, or a for-profit entity that gives or sells food at occasional events, as defined in Section 113825, for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition for participating in the event.

(2) Premises set aside for winetasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage is offered for sale for onsite consumption.

(Amended by Stats.1996, c. 1048 (A.B.2349), § 10.)

### § 113795. Frozen food

"Frozen food" means a food maintained at a temperature at which all moisture therein is in a solid state.

(Formerly § 27523, added by Stats.1984, c. 256, § 1. Amended by Stats.1995, c. 852 (S.B.396), § 15. Renumbered § 113795 and amended by Stats.1996, c. 1023 (S.B.1497), § 256, eff. Sept. 29, 1996.)

Additions or changes indicated by underline; deletions by asterisks \* \* \*

§ 113820. Multiservice utensil

"Multiservice utensil" means a utensil manufactured and approved for use more than one time.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

Historical and Statutory Notes

Derivation: Former § 27527, added by Stats. 1984, c. 256, § 1, amended by Stats.1986, c. 712, § 8.

§ 113825. Occasional event

"Occasional event" means an event that occurs not more than three days in any 90-day period.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

Historical and Statutory Notes

Derivation: Former § 27528, added by Stats. 1984, c. 256, § 1.

Notes of Decisions

Eligibility 1

1. Eligibility

A nonprofit association which sells food to the public at events sponsored by the county, such

as county historical celebrations, is not eligible for the "occasional events" exemption of the California Uniform Retail Food Facilities Law. 73 Ops.Atty.Gen. 414 (1990).

§ 113830. Open-air barbecue facility

"Open-air barbecue facility" means an unenclosed facility for barbecuing food, where the food is prepared out of doors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method approved by the state department, on equipment suitably designed and maintained for use out of doors, that is operated by a food establishment, stationary mobile food preparation unit, or temporary food facility.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

Historical and Statutory Notes

Derivation: Former § 27528.5, added by Stats.1984, c. 256, § 1, amended by Stats.1986, c. 712, § 9; Stats.1993, c. 150, § 1. Former § 28537, added by Stats.1983, c. 831, § 1.

§ 113835. Permit

"Permit" means a written authorization to operate issued by a local enforcement officer.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

Historical and Statutory Notes

Derivation: Former § 27529, added by Stats. 1984, c. 256, § 1.

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