



Creating Community Owned Food Systems Through Homemade Food Policy

How to Prevent the Uberization of Food

A Proposal By the Sustainable Economies Law Center

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Executive Summary

Momentum has been building to further legalize sales of homemade food in California and Assembly Bill 626 was introduced in February to add a new type of legal home-based food operation to the California Health and Safety Code. **At this critical time in the development of the homemade food industry, we propose a policy to prevent the 'Uberization' of the homemade food economy, and instead to ensure that control and profits in this industry remain in the hands of cooks, eaters, and local organizations - not absentee shareholders and tech company executives.** The state of California should further legalize sales of homemade food, however, 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. This policy would essentially take existing certified farmers' market regulations and adapt them to the internet age and to the homemade food economy.

Background

In 2012 the Sustainable Economies Law Center along with numerous active partners successfully advocated for the passage of the California Homemade Food Act (AB 1616, Gatto), also commonly known as California's "cottage food law." Thousands of small food businesses were formed under the law during just its first year of implementation. However, the Homemade Food Act only allows certain "non-potentially hazardous" foods such as breads, pies, fruit jams, and numerous dried foods to be made in a home kitchen and offered for sale. Selling hot meals, green salads, frozen foods, and many other foods prepared in a home kitchen are not allowed under the law. These foods must be made in an inspected commercial kitchen. The California Retail Food Code (found within the Health and Safety Code) does not allow a home kitchen to be used as a commercial kitchen except under the parameters of the Homemade Food Act and very narrow occasional exceptions for bake sales organized by charitable organizations. Many consumers and food producers alike would prefer for the law to allow sales of homemade foods that are currently not allowed under the Homemade Food Act.

Numerous technology start-ups have developed web-based platforms 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 -- whether homemade or not.

These platforms have been called "the Airbnb of food" or "the Uber for food" such as [in *The Atlantic*](#). Many of these start-ups have received large investments from private investors who hope to receive large profits from their investment.

Last year home cooks using one such web platform - at Josephine.com - received cease and desist letters from local health regulators as did Josephine the enterprise. Many stakeholders have identified the need to rethink the law around homemade food in California with an eye for legalizing and regulating homemade food, not criminalizing it.

The Sustainable Economies Law Center supports the growth of small-scale enterprises, including homemade food enterprises, as a means for providing localized economic empowerment and increasing the availability of locally produced, fresh foods from diverse sources. Yet, many examples of technology-based approaches to scaling up "peer to peer" economic activity do not achieve these goals. The service models of online platforms such as Airbnb, Uber, and Lyft have raised serious questions about exploitation of service providers, evasion of safety, tax, and employment laws, and inadequate safety mechanisms to protect users and the community.

We propose a regulatory scheme that will 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.

Certified Farmers' Markets in California: A Model for Building Transparent and Community-Serving Food Systems

The policy proposal below was inspired in part by the recent flourishing of farmers' markets. In California, farmers' markets are regulated to ensure food safety and to ensure transparent and direct, farmer-to-consumer transactions. Among numerous rules in California, a certified farmers' market may only be operated by farmers, by a nonprofit organization, or by a local government agency ([see California Code of Regulations Title 3 §1392.2 \(a\)](#)). In other words, the central organization or enterprise that manages a certified farmers' market must be a government agency, a nonprofit, a farmer, or a group of farmers. No other entities are allowed to operate a certified farmers' market in California.

This policy proposal includes a regulatory scheme for sales of homemade foods inspired in part by the community-driven nature of farmers' markets in California.

Policy Proposal For Legalizing Sales of Homemade Food in California

Without altering the regulatory framework already established by the California Homemade Food Act for "cottage food" enterprises, the state Health and Safety Code could additionally allow homemade food to be offered for sale under a separate but similar regulatory framework designed for sales of hot meals and other more perishable foods as discussed in Part A below. In addition, the state would regulate and provide permits to third party web platforms that exist primarily to facilitate transactions of homemade food as discussed in Part B below.

Part A: Regulating Sales of Homemade Food

Like under the existing law, environmental health departments would provide permits to home cooks that would ensure any cook has undergone robust safe food handling training and that their home kitchen is maintained in a sanitary condition. This regulatory oversight would ensure the following:

Food Safety Training: Each home food enterprise owner-operator would be required to complete the Food Safety Manager course before selling any food, and if the home cook has any family or household members helping out in the kitchen, helpers would need to obtain the simpler Food Handlers' Card. This requirement is parallel to regular restaurant and other retail food facility kitchens, and a step above current Cottage Food Operation requirements which simply need a Food Handler Card.

Sanitation Requirements: The sanitation requirements of the current "cottage food law" would apply to home cooks under this new law. These requirements include basic sanitation practices such as hand washing, utensil washing, and keeping food in covered containers during storage, etc.

Kitchen Inspections: Prior to selling home cooked meals, the local environmental health department may choose to require that the cook submit to a home kitchen inspection to ensure compliance with the sanitation requirements. This inspection procedure would be very similar to the process that already exists for home kitchens.

Allowed Foods: This new class of home food preparation would allow any foods to be prepared, with just a few exceptions. Certain especially risky foods and processing practices, such as whole animal butchering and canning of acidified foods or low acid foods, would be prohibited.

Selling through web platforms: If a home cook sells meals through a third-party web platform, it must be one that is permitted and described in the following part (B).

Part B: Regulating Web Platforms

Require that the ownership and governance of the web platforms designed to facilitate sales of homemade food lie within a community of stakeholders, not absentee investors. Each web platform would be organized as one of the following:

Worker cooperative

Consumer cooperative

Nonprofit mutual benefit corporation

Nonprofit public benefit corporation

Regular shareholder-owned corporations would not be permitted to operate web platforms dedicated to selling homemade food, unless as a wholly owned subsidiary of one of the above allowed entities.

Note: these restrictions would apply to web platforms designed specifically for the promotion, payment processing, or other facilitation of sales of homemade foods. This section would not apply to home cooks using ordinary communication (i.e. word of mouth, email) to spread the word about their food offerings.

Why prohibit web platforms from operating as regular for-profit enterprises?

In the tech economy, third party web intermediaries tend to hold a large amount of power over both workers and consumers, particularly because the dominant business model of tech companies is to grow rapidly to control the lion's share of their market. This keeps competition at bay and provides lucrative return to shareholders.

Typical for-profit intermediaries have both an incentive and the leverage to raise fees and set uniform standards, taking from both consumers and workers, who often have very little power to negotiate better terms for themselves. Workers can be terminated without recourse, particularly in the absence of an employment relationship, as is the case in many web platform economies. By contrast, in a nonprofit or cooperative there is little or no incentive to squeeze more value from workers and consumers. The intermediary acts primarily as a pass-through, meaning that prices and terms of work are determined solely by the needs of workers and consumers, not by the wants of shareholders.

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