

**B5940**

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## Cooks First or Rules First? Josephine.com's Regulatory Struggles in the Shared Economy (B)

### What Happened?

After consulting with various investors and advisors, Matt and the Josephine team decided to pursue all three strategies:

1. **Change operations.** In Alameda County, they turned Josephine from an open marketplace, where anyone could sign up to sell or buy meals, to a closed private club. This allowed them to make the (debatable) legal argument that their hosts complied with the existing home-cooked food laws. Matt described their approach:

"We did not want to pursue a 'scorched earth' strategy in fighting the regulators and leaving cooks to fend for themselves. Instead we did several things. We met with affected cooks one-on-one and agreed internally to stand by cooks if they faced any legal action. We then shut down our public marketplace (on the web site), so that there was no longer a public face of Josephine. Because so many cooks depended on Josephine as a significant source of income, we let cooks continue selling to their existing customers. New customers could only place orders if they had been invited directly by cook."

They also helped cooks comply with the health code by offering free commercial kitchen space and get proper food-handling licenses. As Matt recalls, though, "Out of the hundreds of cooks we had in the Bay Area, only a couple dozen took advantage of the commercial kitchen training and fewer than ten used the space for ongoing business. For most, cooking out of their homes was uniquely well-suited to our cooks' interests and life constraints, which is a large part of what had attracted them to Josephine in the first place."

As the result of these changes, the business shrank by nearly 90% in the months immediately following the cease and desist order in Alameda County.

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Lecturer Molly Turner prepared this case, with assistance from case writer Dickson L. Louie, as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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2. **Launch in new markets.** They looked at a variety of different markets, and even put out a “call” to mayors of cities around the country to gauge interest. They spoke with dozens of mayors’ offices and a few were seriously interested, but all demurred after they realized they’d have to lobby their state governments to change the law. Josephine decided to launch in two markets at the same time. Matt explains their thinking: “We ultimately decided to prioritize two markets—Portland and Seattle—primarily due to the number of interested cooks who had already signed up in each market. A secondary rationale was that both markets had different regulatory context so we could try slightly different policy approaches.” Within the span of a few weeks they launched in both cities.

In Portland, they reached out to the mayor’s office, which expressed an appreciation for their business model and suggested they launch and grow quietly so that they could bide some time until the state would be willing to amend regulations. That turned out to be true. Over the course of the first 18 months they grew by 20% month over month.

While the regulatory environment was more attractive in Portland, “we didn’t want to put all our eggs into one basket, so we also went to Seattle, where the regulation was tougher,” Matt recalled. “[We took a more conservative approach in Seattle. Instead of going straight to regulators to ask permission, we built relationships with economic development and local food justice organizations. We then met individually with friendly members of the Seattle City Council, who ultimately helped us set up a state-level “Home Foods Advisory Committee” to investigate potential legal pathways with the Washington State Health Authority.”

Alas, that strategy backfired. With Josephine growing over 20 percent per month for over a year in Seattle, press attention grew as well. Regulators participating in the Home Foods Advisory Committee group had full evidence of Josephine’s operations in the state and felt they could not sit passively as the business continued. Several local regulators participating in the state committee with Josephine ultimately asked the Washington State Attorney General to intervene, and on December 4, 2017 Josephine received its final regulatory notice, a subpoena and monetary fine that required them to shut down operations throughout the state. Despite having just raised a significant portion of a \$1 million bridge round of funding, Josephine decided to shut down operations everywhere, for good. They didn’t have the stamina to continue.

3. **Lobby for a new California state law.** While launching new markets in Oregon and Washington, Matt decided to continue lobbying in California. In January 2016 Josephine set up a coalition of cooks and food and labor justice organizations to sponsor legislation that would legalize the sale of any kind of home-cooked food, if certain safety precautions were followed in the home. They were able to collaborate with the California Conference of Directors of Environmental Health, whose members had shut down Josephine but also saw the need for new legal pathways given increasing awareness of the issue. He found a champion of the legislation in Assembly member Eduardo Garcia from the Coachella Valley. Garcia represented a low-income and heavily Latino district that relied on a long-standing informal food economy and was fearful of the legal repercussions for undocumented entrepreneurs, among others. Garcia introduced AB 626 on February 14, 2017. Thanks to significant grassroots support from across the state (including 60,000 petition signatures and nearly 100 co-sponsoring organizations), the State Assembly and Senate both passed the Homemade Food Operations Act unanimously, and Governor Brown signed it into law on September 18, 2018. The law

legalized Josephine's business model throughout the entire state of California almost exactly six months after the company shut down.

The new law went into effect on January 1, 2019 and, not surprisingly, a slew of new startups started to emerge—though none of them were led by Matt or Charley. Instead, Matt formed a nonprofit organization called the C.O.O.K Alliance (Creating Opportunities, Opening Kitchens) to continue advocating for home-cooked food policies and representing home cook interests across the country. Matt does not regret shutting down the business: “Looking back, I wish that we had become a nonprofit sooner. Three years ago, one of our advisors suggested that we shut down our business and relaunch it as a nonprofit. We could have made the pivot two years ago. I'm happy that as a nonprofit we only have one stakeholder now—the cooks—and no longer have to worry about investor returns. Rather than trying to ‘win’ this new industry, we can focus on shaping it in the interests of home cooks and their communities. Even so, we know this creates a huge new opportunity for for-profit ventures, so an important part of our role will be to set norms and standards that are as equitable and inclusive from the outset.”

Charley reflects on his experience leading Josephine and offers some useful advice to these new for-profit ventures: “I would have raised more patient money. I didn't understand that venture capital comes with expectations of not just scale, but momentum. The type of thoughtfulness and empathy we had built the company on were threatened by the ‘winner take all’ mentality of the business world. Ultimately I believe that our successes were mostly due to our willingness to be slow and deliberate, and our failures were primarily the result of rushing to grow or show progress.”