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July 6, 2007

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H. 
Director and Health Officer

SUBJECT: **SLIDING SCALE FEE FOR A TOBACCO RETAIL LICENSE**

On June 5, 2007 the Board approved a motion by Supervisor Yaroslavsky which instructed the Department of Public Health, in conjunction with the Chief Executive Officer, County Counsel, the Treasurer and Tax Collector, and the Los Angeles County Business License Commission, to develop for Board review and approval within 120 days an ordinance for a tobacco retail license program for the unincorporated areas of Los Angeles County. An amendment introduced by Supervisor Burke and approved by the Board, instructed the Director of Public Health to 1) evaluate a sliding scale license fee based on the volume of sales of tobacco and/or other criteria that may be applicable, and 2) review and report back in 30 days with recommendations from cities that already have a sliding scale model in place. This report describes the results of this evaluation.

Information Sources

The Department of Public Health's Tobacco Control and Prevention Program contacted nine local jurisdictions in California which have adopted and implemented a tobacco retail licensing program, including the counties of Contra Costa, Kern, Riverside, Sacramento, San Francisco, and Yolo, and the cities of Los Angeles, Long Beach and Pasadena. The program also contacted representatives from the California Department of Health Services Tobacco Control Section, the Technical Assistance Legal Center, the Los Angeles City Attorney's Office's Tobacco Enforcement Program, the American Lung Association's Center for Policy and Organizing, and the Treasurer and Tax Collector.

Findings

Of the 26 counties and cities in California which have adopted a tobacco retail licensing ordinance, none have implemented a sliding scale for the license fee. The cities, counties, and other sources listed above provided the following reasons for not implementing a sliding scale fee:

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- A sliding fee based on the amount of tobacco-related revenue would be very difficult to implement because records of tobacco related-sales are not readily available at the retail level. To determine the amount of tobacco-related revenue, a monitoring system would need to be developed and maintained by the administering agency. In addition, this system would likely impose an unintended burden on small businesses by requiring maintenance and disclosure of tobacco revenue records for review.
- Underreporting or misreporting revenue from tobacco product sales could complicate the administering agency's efforts to accurately track tobacco sales and enforce the license.
- Tracking store and/or tobacco revenue would require additional resources within the administering agency and, thus, raise the annual fee charged for the tobacco license for this service. Since this is a 100% cost recovery program, additional staff required to administer the sliding scale would increase the cost of the licensing fee across the board.
- Determining a sliding fee based on the square footage of a tobacco retailer would not be equitable because a retailer with less square footage (e.g., a small tobacco shop) could sell more tobacco than a larger one.
- Under Title 7 of the County's business licensing code, there are no license fees that are currently assessed on a sliding scale. Thus, if imposed, this would be the only business practice under Title 7 with a sliding scale fee.

Conclusions and Recommendation

The results of this evaluation indicate that a sliding scale fee is not a feasible option for a tobacco retail license in the unincorporated areas of the County. In addition, the implementation of such a fee could impose a hardship on small businesses by increasing the cost of the license and the added time these retailers would need to spend maintaining records related to tobacco revenue.

The Department of Public Health concurs with the recommendation of the Business License Commission, in its report to the Board on April 25, 2007, that all retailers be assessed the same licensing fee. We will work with the departments and the Business License Commission and return with an ordinance for Board consideration by October 5, 2007. In the meantime, if you have any questions or need additional information, please let me know.

JEF:lma
PH:706:001

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Business License Commission