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April 12, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AN ORDINANCE TO AMEND LOS ANGELES COUNTY
CODE TITLE 8 - CONSUMER PROTECTION AND BUSINESS
REGULATIONS AND TITLE 20 - UTILITIES, TO BE EFFECTIVE JULY 1,
2011
(ALL DISTRICTS) (3 VOTES)**

SUBJECT:

Approval to adopt an ordinance to amend Los Angeles County Code Title 8 - Consumer Protection and Business Regulations and Title 20 - Utilities.

IT IS RECOMMENDED THAT FOLLOWING THE PUBLIC HEARING YOUR BOARD:

Adopt the attached ordinance (Exhibit A) amending Los Angeles County Code (LACC) Title 8 – Consumer Protection and Business Regulations, and LACC Title 20 – Utilities to implement new and revised public health fees and modify business category definitions, effective July 1, 2011.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

EH is a regulatory agency within DPH that performs mandated services including, but not limited to, inspections and investigations related to food, housing, drinking water, water pollution, solid waste, and vector management. State and local health and safety codes provide EH authority to carry out regulatory activities to ensure a safe and healthy environment. These regulatory activities are principally offset by the collection of fees for licenses/permits and other services.

Approval of the recommended action will effectively adjust existing public health license, permit, and service fees revenue, and implement new fees imposed by the Department of Public Health (DPH), Environmental Health (EH) Division to recover costs for services rendered in fiscal year (FY) 2011-12. These fee changes are recommended based on a detailed methodology which was designed to capture the true costs of providing environmental health services in the fee structure. Additionally, approval of the recommended action will amend LACC Titles 8 and 20 with the updated fees as well as make technical and conforming changes to codify public health license, permit, and service fees, and applicable business category definitions consistent with the definitions found in State laws and regulations.

EH is proposing changes to the method used in determining charitable exemption status. These changes include restricting the granting of fee exemptions to businesses that comply with the federal tax code for charitable exemption and operate exclusively to provide free meals, free housing, or free animal therapy services.

EH is proposing to add a service which will allow businesses to request an expedited review of construction plans. This service will be offered at a rate of 1.5 times the normal plan review cost and will be completed by staff working overtime to prevent disruption of normal plan review activities.

EH is updating definitions for existing services to reflect the proposed new fee structures. Definitions are being added for existing services that are currently mandated under California law but are not currently charged a fee.

Overall, the current fee structure will be revised to:

- Increase fees charged for 108 service categories which affect 99,000 entities;
- Decrease fees charged for 57 service categories which affect 64,500 entities; and
- Establish 37 new fee service categories affecting 10,800 entities that currently are not assessed any fee.

The last fee increase adopted by your Board was for FY 2007-08. At that time, your Board directed DPH to study the methodology for the public health fees. Subsequent to that action, and due to staffing vacancies, revenues from the fees were not fully used and remained in the Environmental Health Trust Fund. DPH increased hiring to meet program needs, which resulted in a reduction in the Trust Fund balance. These actions, as well as normal salary growth (i.e., step increases and Board-approved salary and employee benefit increases subsequent to 2007) for the existing workforce and

operating cost increases (e.g., fuel) will result in a projected depletion of the Trust Fund balance by the close of FY 2010-11. The existence of a balance in the Trust Fund was the basis for not seeking a fee increase since FY 2007-08.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness; Goal 4, Health and Mental Health; and Goal 5, Public Safety, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

Historically, across-the-board, annual fee adjustments based upon changes to EH's total operating costs were recommended to and approved by your Board.

During FYs 2007-08, 2008-09, and 2009-10, EH's annual fee/revenue collections remained constant at approximately \$69 million. EH expenditures were \$66.7 million in FY 2007-08. Because of the actions and issues noted above, EH expenditures increased by \$5.4 million in FY 2008-09, \$5.6 million in FY 2009-10, \$1.8 million in FY 2010-11, and are projected to increase \$2.1 million in FY 2011-12. Over this period, EH has taken steps to improve program efficiencies, including consolidating food and housing bureaus and reducing local district offices from 21 to 16; reducing the use of paid overtime; establishing workload estimates to determine actual costs and appropriate fees; and reducing duplication of efforts within multiple EH programs.

Approval of the recommended actions would increase the projected revenue to \$82.4 million for FY 2011-12. If the recommended ordinance is not adopted by your Board, DPH will face an operating deficit of \$12.5 million for FY 2011-12.

Comparing the new methodology to prior methodologies, DPH identified that many of the current fees do not adequately reflect actual costs of services. For example, in the area of restaurant inspections, current fees are solely based on the number of seats, yet actual inspection frequency and intensity are highly related to the types of food (i.e. prepackaged vs. prepared, raw foods) in the establishment. The new methodology addresses this issue by factoring-in the true cost of the inspection considering the food safety risk. Determining fees in this manner ensures that each individual fee is aligned with the true cost of the service provided

An additional outcome of the fee study was the identification of 37 services currently provided to responsible parties without a fee, and absent any other measure in which to recover the associated costs. Accordingly, the establishment of new fee categories applicable to these services is included in the recommended actions.

FACTS AND PROVISIONAL/LEGAL REQUIREMENTS

On July 24, 2007, following a public hearing, your Board approved fee increases for DPH EH's regulatory and inspection activities and an ordinance amendment to LACC, Title 8 and Title 20, for FY 2007-08. At that time, the Board requested that, prior to any future increases, the Chief Executive Officer (CEO) report back to your Board on whether DPH EH was operating cost effectively and whether yearly increases were disproportionately harmful to small locally owned restaurants.

On July 22, 2008, the CEO reported to your Board that an evaluation of EH operations had determined that a fee increase was not necessary for FY 2008-09 and that DPH would return to your Board for approval 60 days prior to the next proposed fee increase. In addition, the CEO reported that a rate analysis would be conducted to determine the appropriateness of any proposed fee increases.

In April 2010, DPH utilized the Auditor Controller's Master Agreement process to contract with MGT of America, Inc. (MGT) to develop a methodology to determine the actual cost of services provided by EH. The resulting methodology allows DPH to determine fees consistent with actual costs. The cost for each service provided by EH is individually determined based on a calculation of the associated workload, e.g., "*time required for a high-risk restaurant inspection,*" multiplied by "*annual frequency of inspection,*" multiplied by "*number of high-risk restaurants in the County*".

Pursuant to California Government Code, Section 66018, a local agency must hold a public hearing as part of a regularly scheduled meeting of the Board of Supervisors, before adopting an ordinance, resolution, or other legislative enactment adopting a new fee, and shall publish notice of the public hearing in a newspaper in accordance with Government Code Section 6062a.

The Auditor Controller has reviewed and approved the proposed fees as to reasonableness. County Counsel has reviewed and approved the proposed ordinance as to form.

EH will inform industry of the fee adjustments by holding meetings with the major industries affected by the fee adjustments. Additionally, EH will post information and frequently asked questions regarding the fee adjustment on the DPH website and will include an informational insert with each FY 2011-12 Public Health Permit/License bill.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

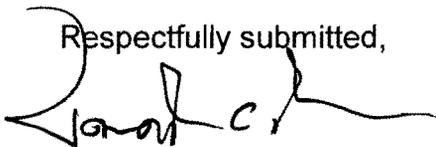
If adopted, the ordinance will allow DPH to adjust EH fees to reflect the actual cost of the services provided. If the recommended ordinance is not adopted, DPH will face an annual operating deficit in EH beginning in FY 2011-12. Without sufficient funding, EH will be forced to freeze positions and curtail services. This will likely result in a delay or reduction of services in the following areas:

- Inspections of high risk food facilities;
- Enforcement activities against illegal food vendors;
- Complaint investigations and enforcement activities at unlicensed housing sites and other unlicensed facilities;
- Complaint investigations at licensed facilities; and
- Plan check approvals for new or modified food facilities, swimming pools, septic systems, wells, and solid waste processing facilities.

CONCLUSION

The recommended ordinance supports the implementation of an activity-based fee structure to recover the costs of services provided by DPH EH, including enforcement of health and safety code requirements. The changes in definitions will help reduce confusion by referring to facilities permitted by the County with the same terms used in State laws and regulations where the regulatory language is present.

Respectfully submitted,



for JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JEF:ev
BL#01668

Enclosure (1)

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Auditor-Controller