



# CITY ATTORNEY DENNIS HERRERA

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
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## Restaurant surcharge fraud crackdown includes one-time amnesty, enforcement

### ***Illegal business practices of 'relative handful' of worst-offenders require tough enforcement initiative, Herrera says***

SAN FRANCISCO (Jan. 25, 2013)—City Attorney Dennis Herrera today launched a tough new enforcement initiative to remedy consumer fraud by restaurants and other businesses that imposed surcharges on customers to cover the cost of compliance with San Francisco's universal healthcare law, but that used little or none of the funds they collected to provide health care benefits to their employees. Assemblymember Tom Ammiano, Supervisors David Campos and David Chiu, and San Francisco restaurant representatives and workers joined Herrera at a City Hall news conference today to announce the enforcement program, which includes a one-time partial amnesty offer for errant businesses that voluntarily come into legal compliance and immediately cooperate with city investigators.

Terms of the surcharge fraud enforcement program were detailed in a target letter Herrera issued today to several dozen San Francisco establishments under investigation as likely serious offenders: restaurants that collected significantly more in surcharges beyond what they actually spent on employee health care benefits in 2011, according to data collected by the city's Office of Labor Standards and Enforcement. San Francisco claims more than 3,500 restaurants citywide, and is reported to rank first in the nation in the number of restaurants per capita.

"The enforcement program we're launching today isn't simply to protect employees and consumers from surcharge fraud—it's also to protect the vast majority of competing restaurants that follow the law and provide health care benefits to their workers," said Herrera. "We San Franciscans take great pride in a vibrant local restaurant scene that enriches our neighborhoods, employs thousands of our residents, and serves millions of tourists each year. And it's unfortunate that the illegal business practices of a relative handful of bad actors require the creation of this enforcement initiative. The proposal we're offering to worst-offenders today is eminently fair. It offers partial amnesty for past violations, in exchange for cooperation and compliance moving forward. It avoids ongoing costs for investigation and litigation. It does right by workers, by customers and also by law-abiding competitors. And it assures taxpayers that our public health safety net won't be abused to subsidize businesses that break the rules. But the leniency reflected in this program is short-lived—and San Francisco will crack down hard on businesses that continue to flout the law. I appreciate the continued efforts of our partners from the San Francisco Office of Labor Standards Enforcement, under the leadership of Donna Levitt. I am very grateful for the leadership of Assemblymember Tom Ammiano, who authored San Francisco's groundbreaking Health Care Security Ordinance. Thanks to Supervisor David Campos and Board President David Chiu for their longstanding leadership to address enforcement problems, and to fulfill the promise of San Francisco's

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universal healthcare program. And finally, I want to express my appreciation to the Golden Gate Restaurant Association for sharing their input about this program. With the policy and legal disputes now behind us, I'm confident we can continue moving forward with a productive dialogue to assure fair and even-handed enforcement of the law."

Herrera assured businesses on the target list that they would have every opportunity to confidentially share information about their surcharge collections and health care expenditures in order to either prove they should no longer be a target of the investigation or to meet the program's conditions. In addition, the City Attorney assured businesses that are not currently on the enforcement target list that they would be extended the same protections afforded by the one-time amnesty and enforcement program for voluntarily coming forward to remedy their own possible past violations. Herrera developed the enforcement program with extensive input from City policymakers as well as the Golden Gate Restaurant Association, or GGRA, the non-profit trade association for the San Francisco Bay Area restaurant industry.

"We agree with the City Attorney that the vast majority of businesses are not misrepresenting information to their customers. We also agree that a small minority of businesses may have misrepresented their surcharges, but we are also concerned that some businesses receiving this letter are doing so solely because they were confused about how to correctly fill out the City's forms," said Rob Black, GGRA Executive Director. "The GGRA is glad that the City Attorney's office has committed to a fair and efficient process that allows businesses who may have made inadvertent reporting errors to be cleared from the enforcement target list."

The City Attorney's target letter outlined conditions worst-offender restaurants must take steps to meet by a deadline of April 10, 2013 to come into legal compliance, and avoid civil litigation by Herrera's office for pocketing customer surcharge money intended to fund employee health care benefits.

- Worst-offenders must provide an accounting to City Attorney investigators for all health care surcharges collected during the period from 2009 to 2011, along with health care expenditures pursuant to the Health Care Security Ordinance, or HCSO, for that time period.
- Worst-offenders must distribute 50 percent of unallocated health care surcharge funds to employees who worked for the company during the time surcharges were imposed on customers, covering the years 2009 to 2011, in accordance with City Attorney instructions.
- Worst-offenders must remit amounts unredeemed by their eligible employees to the San Francisco City Attorney's Office for the purpose of funding future enforcement of the HCSO and other consumer protection laws.
- Worst-offenders must attest that they will refrain from committing further consumer fraud and remain in full compliance in good faith with the HCSO going forward, in accordance with City Attorney instructions.

Herrera said that restaurants and other businesses found to have committed HCSO-related surcharge fraud during the years 2009 to 2011 that fail to come forward voluntarily will risk being sued for full restitution of the amount of surcharges collected during that period, plus substantial penalties. State law provides for penalties of up to \$2,500 per customer in such consumer protection lawsuits, with offenders additionally liable for costs and attorneys' fees incurred by the City to pursue the litigation.



DENNIS J. HERRERA  
City Attorney

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January 24, 2013

«Company\_Name»  
«MailAddr1»  
«MailAddr2»  
«MailCity», «MailSt» «MailZip»

Re: Health Care Security Ordinance

Dear «Company\_Name»:

Since 2008, employers in San Francisco have had an obligation to comply with the Health Care Security Ordinance (“HCSO”), which established San Francisco’s groundbreaking universal health care program and imposed an employer spending requirement. Many companies, including yours, have chosen to impose health care surcharges on their customers, purportedly to cover the cost of HCSO compliance. Despite representing to their customers that the surcharge will be used to fund employee health care, some companies have not used the excess funds for this purpose. This is consumer fraud, and it is punishable by severe financial penalties.

You are receiving this letter because we have received evidence from the Office of Labor Standards Enforcement as part of our ongoing investigation indicating that you have imposed health care surcharges on your customers well in excess of the amount you have actually spent on employee health care.

In an effort to remedy the widespread fraud committed against San Franciscans in connection with health care surcharges, I have created a fraud enforcement program. **This program will allow companies to significantly limit past liability by coming forward voluntarily.** Any company that failed to spend its 2009-2011 surcharge money on employee health care will not be sued by the City in connection with the imposition of health care surcharges in excess of health care expenditures, so long as the company voluntarily meets the following conditions:

- The company must submit the enclosed form – and supporting evidence, if requested – to the City Attorney’s Office summarizing all health care surcharges collected during the period from 2008-2011, as well as all health care expenditures made pursuant to the HCSO for that time period.
- To the extent the company has collected health care surcharges from customers in an amount exceeding the dollars actually spent to comply with the HCSO, the company must distribute 50% of that amount to employees who worked for the company during the time the surcharge was imposed, covering the years 2009-2011, in accordance with instructions that will be provided by my office.
- Any amounts that are not redeemed by these employees will revert to the City Attorney’s Office, for the purpose of funding the City’s future enforcement of the HCSO and other consumer protection laws.
- The company must comply in good faith with the HCSO going forward, in accordance with instructions that will be provided by my office.

Letter to «Ownership\_Name» «Mailing\_Name»  
January 25, 2013

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If a company that has committed HCSO surcharge-related consumer fraud during the years 2009-2011 fails to come forward, it will risk being sued for full restitution of the amount of surcharges collected during that period, plus up to \$2,500.00 in penalties for each customer who was defrauded during that period. The company also risks liability for all costs and attorneys' fees incurred by the City in such a lawsuit.

If you are receiving this letter, you also have an obligation to immediately take steps to preserve all records pertaining to health care surcharges you have imposed on customers. You are under this obligation whether or not your company chooses to participate in the compliance program outlined above.

If you wish to be considered for participation in the program, please fill out the enclosed form and mail it to Deputy City Attorney Sara Eisenberg at Office of the City Attorney, 1390 Market Street, 7th Floor, San Francisco, CA 94102. If the information that you provide in the form indicates that your company did not commit HCSO surcharge-related consumer fraud during the years 2009-2011, you will be given an opportunity to provide us with evidence that your company should no longer be a target of our investigation. **To be eligible to participate in the surcharge fraud enforcement program, your form must be postmarked by April 10, 2013.** Upon receipt of the completed form, a member of my staff will contact you to discuss next steps.

In addition, if you have any questions about the form or the program, you should feel free to call the surcharge fraud enforcement program hotline at 415-355-3269. You will not be required to provide your name (or the name of your business) before receiving answers to your questions.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



STATEMENT OF ZAZIE RESTAURANT OWNER JEN PIALLAT IN SUPPORT OF  
DENNIS HERRERA'S SURCHARGE FRAUD ENFORCEMENT PROGRAM

In 2008, I began collecting a benefits surcharge of \$1.00 per person. I estimated that the money collected from these surcharges would pay for full health insurance for each employee who worked even one day per week at the restaurant. Zazie then purchased Kaiser insurance for our employees, and paid 100% of the cost, with no employee contribution.

At the end of the year, I discovered that our surcharge collections slightly exceeded the cost of the health insurance. After discussing the issue with my employees, I used the money to provide two more benefits – dental insurance and chiropractic coverage. As a result, our employee health care costs began to exceed our surcharge collections by a small amount.

Each year I adjust the surcharge and benefits to be as close to parallel as possible, so that when our guests are told they are contributing to our employees, they are not being misled.

Unfortunately, many restaurants have unfairly profited from health care surcharges. This is especially true when restaurants set up HRAs rather than providing real health insurance. Companies knew full well that their employees would not be able to use most of the HRA money, and that most money would revert back to the business. Yet these restaurants often ask their customers to pay a 4-5% health care surcharge, under the pretense that the money would actually be spent on employee health care.

This practice of collecting health care surcharges from customers under false pretenses puts law-abiding restaurants like mine at a competitive disadvantage. It makes my customers suspicious about our benefits surcharge- they assume that we, like too many restaurants in SF, are pocketing the money as profits. It is unfair and duplicitous to customers, and totally disrespectful towards employees, who are being used as an excuse to increase profits rather than getting the true health coverage they sorely need. I therefore strongly support Dennis Herrera's decision to take enforcement action against restaurants and other companies that have unfairly profited from health care surcharges.

Jennifer Piallat, owner, Zazie  
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