



City Attorney Dennis Herrera News Release

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Final tally on Herrera's restaurant surcharge amnesty: \$2 million for workers, 0 lawsuits

Online video segment touts success of year-long Healthy San Francisco Surcharge Enforcement Program, as 57 restaurants came through with 100 percent participation

SAN FRANCISCO (Dec. 30, 2013)—City Attorney Dennis Herrera today released an online video segment announcing the successful conclusion of his office's "Healthy San Francisco" surcharge fraud enforcement program. The year-long effort sought to remedy shortfalls between amounts charged to restaurant customers to cover the cost of complying with the City's universal healthcare law, and funds actually expended to provide healthcare benefits to employees. Some 57 of the restaurants that took part in the City Attorney's investigation and enforcement program have either reached voluntary settlements under the terms of Herrera's one-time offer of 50 percent amnesty, or have been cleared of wrongdoing for discrepancies resulting from their inadvertent reporting errors. Not a single lawsuit has been filed.

Herrera announced the results this morning in a video segment for his office's new social media program, entitled "Case-by-Case," which offers online viewers periodic news reports and behind-the-scenes perspectives about high-interest cases on which the City Attorney's Office works.

The video is on the City Attorney's YouTube channel at <https://www.youtube.com/SFCityAttorney>, or can be accessed directly at: <http://youtu.be/2Vn3jvUqzxs>.

Accounting for all settlements since Herrera launched the enforcement program in January, the City Attorney's effort netted a total of at least \$2,085,915 to be distributed to nearly 4,000 eligible employees by 38 different dining establishments. (Interest may accrue on some of the settlements negotiated.) Two additional establishments reached non-monetary settlements that assure compliance with employer spending requirements of San Francisco's Health Care Security Ordinance, or HCSO.

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Another 17 businesses targeted for investigation by the City Attorney's Office on the basis of the health care expenditure shortfalls they reported to San Francisco's Office of Labor Standards Enforcement, or OLSE, received "clean bills of health." The letters absolved recipients of wrongdoing after evidence provided in the course of the City Attorney's investigation found that no surcharge-related consumer fraud occurred during the relevant time periods. In most instances, shortfalls reported to OLSE by businesses that received "clean bills of health" were attributable to restaurants' accounting or reporting errors.

In addition to his on-camera comments for the "Case-by-Case" video, City Attorney Herrera added: "The success of this enforcement program owes in large part to good faith efforts by restaurants to honor the intent of fees paid by their customers, and to do right by their employees. I'm grateful to these businesses for understanding our duty to enforce the law even-handedly, and for working cooperatively with us to either reach settlements or identify the errors responsible for their reported discrepancies. I also want to express my appreciation to Rob Black and the Golden Gate Restaurant Association for sharing their input about our program. I think their engagement was important to helping us resolve the legal issues without needing to file a single lawsuit."

Surcharge Fraud Enforcement Program background

Herrera announced the restaurant surcharge fraud enforcement program at a City Hall news conference on Jan. 25 with Assemblymember Tom Ammiano, Supervisors David Campos and David Chiu, and representatives from San Francisco restaurants and the Office of Labor Standards Enforcement. Ammiano first authored legislation in 2005 as a member of the Board of Supervisors that would ultimately lead to the City's Health Care Security Ordinance, or HCSO, which passed in 2007 with key policy input from then-Mayor Gavin Newsom. Board President Chiu and Supervisor Campos have both been active in subsequent proposed amendments to strengthen and improve the law. In launching the enforcement and amnesty program, Herrera credited the Golden Gate Restaurant Association for working productively to share its input, even after years of legal disputes over the law's validity, which ultimately ended in the U.S. Supreme Court.

The enforcement program included a one-time 50 percent amnesty offer for establishments with significant shortfalls—provided that they fully cooperate with city investigators; agree to good faith compliance with the employer spending requirement of San Francisco's HCSO moving forward; and directly compensate their current and former employees who were the intended beneficiaries of the surcharges paid by customers. All agreements announced under the program resolve potential disputes with the City over collected surcharges without admissions of liability.

Complete documentation from City Attorney Herrera's Restaurant Surcharge Enforcement Program is available in the major cases section of the City Attorney's website at the following URL: <http://www.sfcityattorney.org/index.aspx?page=574>.

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