KING COUNTY BOARD OF HEALTH
999 Third Avenue, Suite 1200
Seattle, Washington 98104-4039

Carolyn Edmonds, *Board of Health Chair*

KING COUNTY BOARD OF HEALTH
MEETING PROCEEDINGS

July 21, 2000
9:30 AM to 12:00 PM
King County Council Chambers

Roll call

- Greg Nickels
- Ava Frisinger
- Richard Conlin
- David Irons
- Maggi Fimia
- Karen VanDusen
- Dan Sherman
- Alvin Thompson
- Louise Miller
- Alonzo Plough
- Joe Pizzorno

Call to order

Chair Greg Nickels called the meeting to order at 9:46 AM.

Announcement of Alternates

Mr. Nickels acknowledged Mayor Ava Frisinger from the City of Issaquah, who served as an alternate. Mr. Nickels also welcomed Councilmember Richard Conlin and Councilmember Maggi Fimia, who served as an alternate for County Councilmember David Irons. Some members were absent, because of a memorial service for Mr. Bernie Whitebear, who was for many years, a very important community activist in the Native American community and larger community in Seattle. At least one or two of the County Councilmembers and Seattle City Councilmembers were attending that service.

The approval of the minutes was held off until later in the meeting when a quorum was present.

General Public Comments

No one signed up for general public comment.

Chair's Report

Mr. Nickels was informed by the Seattle City Council that they're going to appoint Councilmember Nick Licata, replacing Councilmember Heidi Wills, as their third member of the Board of Health. Executive Sims is re-appointing Mayor Dave Hutchinson and Councilmember Dan Sherman to the Board to serve one year terms. Mayor Ava Frisinger and Councilmember Steve Caldwell are also being re-appointed as alternates with one year terms. These appointments are subject to approval under the new ordinance by the County Council, and it is anticipated that the approval process will progress fairly quickly. At the end of those terms, the Executive's office is planning to accept nominations for the positions and appoint, or re-appoint members, based on those nominations as called out in the ordinance that re-established the Board of Health.

Change to the Proposed Operating Rules

There is a change to the proposed operating rules, which will allow the Board to conform to the new enabling ordinance. The changes are being proposed and a summary has been provided along with the proposed revision. The substantive changes are on page three, where it reflects the change in the way that the elected suburban members are appointed. On page four, it reflects the change that allows the non-voting health professional to serve as an alternate if one of the voting health professionals is not present. On page nine, there is a change that specifies the Board members, who are "subject to the King County Board of Ethics filing requirements" for financial disclosure; not all members are required to file. Those are the three substantive proposed changes. A motion to adopt the changes to the operating rules was approved with eight members in favor and one opposed.

Ms. VanDusen suggested a change on page two under, "Materials to Board Members," where it states, "The materials shall be sent to the Board members at least seven days in advance." Ms. VanDusen stated that she does not often get her Board of Health materials quite that far in advance, and recommended changing "shall" to "should."

Mr. Nickels deferred to Dr. Plough or Ms. Beatty regarding the feasibility of producing materials at least seven days in advance of the Board of Health meetings. Since the Board is adopting regulations, Mr. Nickels believes it is important that all members of the Board, who have to vote on a regulation, have sufficient time to review the actual language. Ms. Beatty stated that it is often a rush to get the Board packets out seven days in advance of the meeting, but she has met that obligation for the last two years she has worked on the Board. The difficulty is that it takes a couple of days for mailing packets to the members who are not in the downtown Seattle area, whereas, packets are hand delivered to the County Council member representatives and City Council member representatives. Dr. Plough concurred with Ms. Beatty that the seven day time frame motivates sending materials out in a quick time. Dr. Plough assured that Board staff will utilize other delivery services for producing materials to people who are not in either Council.

Adoption of the Minutes

Mr. Nickels requested a motion to approve the minutes of the June 16th meeting, although there are some changes: on page three, the second paragraph, which states, "The first year 50 million was allocated." It should read, "15 million." Mr. Nickels requests that the correction be made. Page three, the third paragraph, "There are approximately 3 to 3 1/2 million that will be distributed." It should have read, "2.6 to 3 million." There was a court reporter at that

meeting and the acoustics were such that the court reporter had a difficult time following the discussion.

VanDusen requested one change on page 15, second paragraph, in the middle, where it discusses Ms. VanDusen not recalling how she voted regarding fees. Ms. VanDusen stated that she voted against the fees and requests deleting the sentence that states, "Ms. VanDusen does not recall how she voted." Mr. Nickels proposed deleting the sentence if there was no objection.

Mr. Thompson noted a change on page 7, in the middle of the last paragraph, addressing the book, *Shadowland*. He recalled 25 years ago that it was Manchester, but it indeed was William Arnold.

The June 16, 2000 meeting minutes of the Board of Health were approved as corrected.

Rulemaking on Suspending Regulations Restricting Tobacco Advertising in Public Places

Mr. Nickels recounted the recent legal history on the tobacco advertising regulations. It was last fall that the 9th Circuit Court of Appeals ruled that the Tacoma Pierce County regulations violated Federal law because of a preemption on local jurisdictions restricting tobacco advertising for health reasons. The 9th Circuit decision appeared to also apply to the King County Board of Health's regulation, as well as a similar regulation in Snohomish County. The Snohomish County Board of Health responded by undoing their regulation.

In light of the Court of Appeals decision, Mr. Nickels suggested a proposal to suspend King County's outdoor tobacco advertising regulation enforcement. The suspension will cause the health code provision to be "inoperative" and of no effect, but would leave it in the health code. That way, if there are any changes in federal law, or a court decision that changes the effect on local regulation, the provision could be amended, removing the suspension, and replacing the existing regulation.

Mr. Nickels further stated that this is an area where the local boards of health have a very important role and need to spend a fair amount of time not only convincing the legislature that local preemption is inappropriate public policy, but Congress as well. If Congress is unable to step up and adopt a national tobacco settlement that has been negotiated by the Attorney Generals of the United States, put on a silver platter and wrapped up in a bow, it may be difficult to have them realistically adopt tough regulations on tobacco advertising directly. It certainly is appropriate for them to recognize that local boards of health reflect local constituencies; local communities have the right and ability to protect public health. Mr. Nickels stated that the action of suspending the regulation gives a very clear example to Congress, and others, of where local regulation can help protect public health, but cannot, due to the preemption in federal law.

Mr. Nickels further stated that suspending the regulation also communicates to local businesses that perhaps they should think twice before they resume outdoor tobacco advertising; keeping the policy on the books continues to provide local businesses notice of their potential liability. Mr. Nickels pledged to organize pickets in his neighborhood if outdoor advertising resumes.

Ms. Miller expressed support for suspending the regulation. Drawing upon her experience teaching school, Ms. Miller stated that preventing tobacco use should be focused on young

people and peer programs. Ms. Miller stated the importance of involving students from probably grade five or six, up through high school, as to the best ways to invest tobacco settlement money in preventing people from starting smoking. Ms. Miller encouraged emphasizing the health consequences of smoking among students and involving local school programs in determining how tobacco settlement dollars may best be used for smoking prevention.

At the very beginning of the regulation, a section will be added that states the suspension language. It would be the first thing a person would read in Chapter 19.08 of the Health Code. The statement would indicate that based upon the decision of the 9th Circuit Court of Appeals in Lindsay v. Tacoma Pierce County Health Department, the operation and effect of Chapter 19.08 is suspended pending further review by the King County Board of Health.

Ms. Fimia cautioned that the national government is negotiating free trade agreements that may contain language which supercedes local jurisdiction authority on everything from labor to health to environmental laws. Ms. Fimia requested that through legal means, resources at Public Health, and U.S. Public Health, that the Board find out what is being proposed at free trade agreement negotiations. Although free trade is wonderful, the fine print is not being scrutinized by local governments. Ms. Fimia offered to provide local and national resources on free trade.

Ms. Fimia also recommended some kind of incentive recognition program for those businesses voluntarily choosing not to advertise tobacco. Ms. Fimia suggested posting a list of businesses not advertising tobacco on the Board of Health web page. The Board should consider partnering with youth councils in this county to explore recognizing businesses that do not advertise tobacco.

Mr. Nickels recommended following up with the tobacco prevention staff to see if there is some incentive or recognition for retailers voluntarily withholding and refraining from advertising tobacco products.

Ms. VanDusen also supported Ms. Fimia's suggestions and further recommended an editorial from someone, or some agency, strongly attuned to the tobacco issues, denouncing R.J. Reynolds' television promotional advertisements about how wonderful they are.

Dr. Pizzorno questioned whether all of the constitutional issues had been adequately addressed allowing the federal government to supersede public health. The courts have consistently upheld that the federal government cannot regulate the practice of medicine; that is delegated to each state. Dr. Pizzorno asked how public health differs from the practice of medicine and suggested challenging the constitutionality by organizing a coalition of those counties and states throughout the country that have been impacted by the federal government superseding local governments.

The Board went into executive session to discuss the legal ramifications of the tobacco advertising decision of the 9th Circuit Court of Appeals.

Mr. Nickels suggested conducting legal research on the issue in combination with some of the advocacy groups, as the Board previously did when it adopted the five point agenda on tobacco. Mr. Conlin suggested following up on Boardmember VanDusen's comment to do some media outreach in connection with what the Board of Health is compelled to do at this point regarding suspending the tobacco advertising regulation. There is a balancing act to advising small store owners who might not otherwise realize that they can advertise tobacco products.

Dr. Thompson recommended a three part series article entitled, "Public Health and the Law," in the June 7, 14, and 21, 2000 Journal of the American Medical Association. Mr. Nickels requested copies of that article be reproduced for Board members.

Public Hearing

Aaron Paston indicated that he is an anti-tobacco advocate. This suspension of the regulation and proposed amendment to Title 19 is a result of the decision handed down by the 9th Circuit, overturning Judge Robert J. Bryan's ruling for the defendant in Lindsay v. Tacoma Pierce County Health Department. It is Mr. Paston's opinion that Judge Bryan was correct in ruling in favor of the defendant, because restricting the location of tobacco advertising is not a prohibition of advertising. The Board of Health has the authority, by law, to enact and enforce local rules and regulations to preserve, promote, and improve public health. It is this authority that led to the adoption of the Truth in Outdoor Tobacco Advertising Regulation (TOTAR), which set up King County's model to ban outdoor tobacco advertising. From a legal standpoint, Judge Bryan found that the plaintiff's motives do not preempt TOTAR. In the 9th Circuit Court of Appeals, Judge Brunetti disagreed and found that the motion regarding Federal Cigarette Labeling and Advertising Act, FCLAA, was preempted and therefore reversed Judge Bryan's decision.

Mr. Paston disagrees with Judge Brunetti's decision and sides with Judge Bryan's decision and wants the Board to know that he is not alone in siding with Judge Bryan. Of sixteen federal judges in the 2nd, 4th, 7th, and 9th Circuits who have heard cases regarding restriction on tobacco advertising and dealt with related preemptive issues, ten found no grounds for preemption, more than 60 percent. Although it is worth taking this fight to the Supreme Court, it is probably not prudent at this time. In all likelihood, it will be taken to the Supreme Court by the 2nd Circuit, New York, or the 7th Circuit, Chicago. A positive ruling by the Supreme Court in favor of the defendant would result in overturning the 9th Circuit's decision. Therefore, Mr. Paston agrees with the Board that it should not repeal Title 19, rather, suspend it and wait for an overruling of the 9th Circuit Court of Appeals.

Sheryl Belcher expressed disappointment in the Board's proposal to suspend tobacco advertising in public places. Over the years, Ms. Belcher has witnessed the Durn Good Grocery, which is on the corner of Wallingford and 40th, from being blanketed with tobacco advertising to just the black and white and the tombstone advertising. Ms. Belcher knows that the grocery store has been in compliance with tobacco checks, because there is a letter attesting to that inside the store.

Rulemaking on Suspending Regulations Restricting Tobacco Advertising

The public hearing was closed and there was a motion to adopt the proposed rule on tobacco advertising, which was seconded. A discussion on the motion ensued.

Ms. Fimia stated that she authored a paper on the morality of cigarette advertising in 1985 for an ethics class in speech communication. She discovered that in 1970, the Federal Legislature passed a ban on cigarette advertising in broadcast media. Not all advertising was banned, because cigarette companies voluntarily agreed to restrict print advertising to those ads which would not suggest that smoking is essential to social prominence, distinction, success, or sexual attraction. Also, the ads would not show any smoker participating in a physical activity requiring stamina or athletic conditioning beyond the

normal recreation. For every minute of tobacco promotion, television stations were required to provide a minute of non-promotion and attack. Consequently, tobacco companies were glad to remove television ads and poured their money into other forms of advertising. Ms. Fimia suggested a legal evaluation as to why this advertising ban has not been enforced.

Ms. Fimia suggested additional incentive measures for those retailers electing not to advertise tobacco products. A local contest for youth in King County to create a logo that would go on a sign that could be posted in a window of a business voluntarily not advertising cigarettes. Four times per year, recognition would be listed in local papers commending businesses voluntarily not advertising tobacco products. Ms. Fimia suggested developing a program using grant dollars form King County for youth groups and schools to produce and implement smoking cessation programs for their peers. This may require an investment of approximately $20,000 to $30,000 per year.

A motion to accept the proposal to suspend regulations restricting tobacco advertising was approved with nine in favor and none opposed. This did not require special majorities, so the rule was adopted.

Rulemaking to Revise Food Service Establishment Fees

Mr. Nickels briefly reviewed previous Board of Health meetings discussing revisions to the food service establishment fees. In November of 1999, the Board of Health adopted Regulation 99-7, which increased the Food Protection Program fees to replace motor vehicle excise tax funding that was lost due to Initiative 695. The Board of Health stated an intent, and this was contained within the rule that was adopted, to reconsider the fees in the food program if the State Legislature fully restored motor vehicle excise funding for Public Health in King County. In May of 2000, the State Legislature restored approximately 50% of the motor vehicle excise tax revenue for calendar year 2000 and approximately 90% from January 1-31, 2001. In 1999, Public Health received $10.5 million in motor vehicle tax revenue. In the year 2000, the replacement funding will be approximately $5.2 million, and in the year 2001, it will be $9.4 million. There is uncertainty regarding the ability to adopt fees in the future. One of the requirements of Initiative 695 was for any fee increase to be approved by the voters; that issue is in litigation. It was set aside by Superior Court decisions in King County and Walla Walla County and is scheduled to be decided by the Washington State Supreme Court. At their June, 2000 Board of Health meeting, Boardmembers requested that Public Health seek legal counsel on two issues: (1) can the Board of Health reduce fees? (2) can the Board of Health reduce fees temporarily until the court has ruled on the voter approval requirement? In other words, set aside the fees, but have the ability to reinstate the fees if the court decision does not allow future fee increases. The King County Prosecuting Attorney's office advised Public Health that fees may be reduced; Initiative 695 does not prohibit a reduction in fees. If the voter approval requirement is upheld, the King County Prosecuting Attorney's office advised Public Health that any type of fee reduction may be permanent rather than temporary.

In addition, Initiative 722, if adopted, would roll back fees adopted after July of 1999. That would eliminate the ability to increase fees without a popular vote and would reverse the Board's November, 1999 fee increase decision. Initiatives 695 and 722 both challenge the authority of the Board of Health to increase fees to cover inflation or other program costs currently, as well as in the future.

The Public Health Department submitted its year 2000 budget, which includes significant program reductions proposed in response to the County Executive's direction to the

Department to find reductions across the board. The Board of Health has a number of options in considering this issue, including taking no action and making no change. The Board could decide to choose to respond to the provision in the rule by reducing fees equivalent to just the motor vehicle replacement dollars that have been received. Fees could be reduced that would be equivalent to the current expense dollars that were then taken and used to offset other motor vehicle tax revenue reductions. Or the Board could choose to reduce the fee equivalent to both of those since there was a connection between those in the fee action.

Dr. Plough introduced a panel, comprised of Kathy Uhlorn, Public Health's Administrative Manager, Todd Yerkes, Environmental Health Supervisor, and Phil Holmes, Environmental Health Sr. Administrative Assistant. Dr. Plough discussed the issue of fair fees grounded in the cost of the programs doing business. All of the Health Department's programs operate on fair fees charges and reimbursement from a variety of other sources, supplemented by very, very little local governmental dollars, particularly very little CX. Dr. Plough reminded the Board of the regulatory uncertainty around the ability to ever raise fees again and stated that the cost recovery basis for the fees previously raised were in the context of 1999 costs. These fees are already inconsistent with the cost pressures for the year 2000 and will be more so in 2001. The Health Department's current expense base has been eroded and any decisions that further erode the current expense base beyond what it is now will require decisions to reduce services in the highest priority areas.

Mr. Pullen thanked Dr. Plough for an excellent job outlining the policy issues and reminded the Board to maintain honor and credibility in the context of evaluating revisions to the fees.

Ms. VanDusen expressed concern that the Public Health operations are predominantly fee supported, not supported out of County government fees or budgets. Of all the things that government is set up to do, public health is the most fundamental. Ms. VanDusen stated that the Board should make recommendations to County government, which establishes budgets, to say, "What are you doing with public health?" Ms. VanDusen stated that the Board needs to make a strong statement and recommendation for the County to take another look about money going into County-based Public Health programs. It is the responsibility of County government to make sure programs receive adequate funding.

Mr. Conlin remarked that the language of the Board of Health stated, "An intent to reconsider, if the State Legislature fully restored MVET funding for Public Health in King County." The Legislature has not fully restored MVET funding for Public Health in King County, since there was substantial restoration, it is appropriate to have this discussion, but there is no promise to reduce fees.

Kathy Uhlorn, Administrative Services Manager for Public Health, presented information regarding food program fee options.The Board evaluated four different options. The sheet containing three colored boxes shows the amount of local support. That is referred to as percentage of tax support. If fees are not changed in the 2001 budget, the percentage of local tax support would be approximately 15%. If the 90% MVET replacement option is chosen, it would go up to 19%. In the 90% CX option, it would go up to 25%, and both together would make it about 29% of the food program. That analysis was in response to the question asked regarding the amount of local support.

At the June, 2000 Board of Health meeting, Boardmember Conlin requested a summary of program costs and a restaurant association representative expressed a willingness to pay a fee that covers actual food inspection program activities. A chart was prepared by Public Health summarizing the 2000 food protection program costs. The current fee structure

supports food inspection activities. If food program fees are reduced, tax support will partially fund the inspection cost. The chart outlines various activities that are performed by staff who work in the food protection program. The activities are under the service column, the plan number, upon which the budget is based, is in the second column, the cost of each of those activities in the third, and finally, the total cost of that activity.

Mr. Nickels reiterated that if the court does rule that I-695 is constitutional, a fee reduction or rebate might be problematic, but there is no way to know until the court rules exactly what types of fees are covered by I-695.

Dr. Pizzorno agreed with Ms. VanDusen's comment that Public Health funding is a city responsibility, not just a fee-based responsibility.

Mr. Nickels noted that when he first came on the Council in 1988, contracts were generating $3 million or $4 million per year in revenue from the suburban cities and generating $10 million or $12 million worth of ill will. There was a joint effort to try and find a replacement for that money. The City of Seattle has been in a different situation; the City has had an historic commitment to Public Health. Public Health historically has been a joint department and the City of Seattle has funded various Public Health Department services. Mr. Nickels cautioned that attempting to re-establish a system of contracts would be very problematic; the cities do not have a lot of excess revenue. Many of the cities rely on a sales tax equalization scheme that I-695 played havoc with. Public Health did receive 90% replacement funding from the Legislature, although it was not an ongoing, dedicated revenue as the motor vehicle tax had been. Many current members of the Legislature expressed their belief that this was an ongoing responsibility that they were prepared to support in future appropriations and future sessions. It is Mr. Nickels' perspective that a local contracting process is unlikely to be successful.

Mr. Irons questioned what would be the proposal if a fee reduction did not occur and a net gain was realized. Dr. Plough responded that the King County Executive is in support of the current fee structure, and in an ideal situation, there would be a larger local funding base for the Department. Approximately 75% of the Health Department is based on fees, charges, grants, and third party reimbursement. Public Health services in King County are delivered through these largely entrepreneurial means. Therefore, local funds have simply been subsidies and in no way represent the entire cost of doing business. The past and future CX scenario has been nothing more than a series of cuts between 5% and 10% per annum. Dr. Plough explained that $750,000 in CX would go into critical Public Health programs, such as infectious disease control, public health nursing, women and infant feeding programs; the very short list of core Public Health services where CX is kept. The Health Department only has approximately $12 million of CX, $5 million of which is restricted to mandated programs and other charges. Approximately $6 million is actually flexible and allows for allocation. Anything that removes, $750,000 of CX removes the Department's ability to do core public health. Dr. Plough reminded the Board that the food program fees established for 1999 are already outdated in terms of the increased cost of doing business. Ms. Uhlorn reiterated that as discussed in the June, 2000 Board of Health meeting, the Department is confronting significant staff salary increases in the 2001 budget, well beyond the normal 3% or 4% inflationary rate due to the class comp settlements, and it represents approximately 9% of next year's budget. The Health Department will have increased expenditures.

Ms. Uhlorn explained the color-coding of the charts relating to different options:a 90% reduction of fees that would equal 90% of the MVET replacement are all yellow. Different color coding depicts the exact cost per activity in the food program that would be replaced by

90% of MVET replacement, 90% of CX replacement or the combination of the two. Blue is 90% CX replacement and pink is the combination of the two.

Mr. Nickels clarified that the motor vehicle fees revenue went into a number of different Public Health categories, 90% of which was replaced for 2001. Mr. Nickels further explained that last year, fees were raised to replace not only the motor vehicle revenue, but current expense was then shifted out to other Public Health programs. So, those other Public Health programs have received 90% of the motor vehicle revenue. In theory, those dollars could flow back into the program. The King County Executive will make a proposal that the Council will consider in the fall. Mr. Nickels reiterated that the Health Department is largely driven by revenues and reminded the Board to consider the current expense and the old MVET as the subsidies that moved around from year-to-year based upon shortfalls and an ability of a program to raise funds in other ways.

Mr. Nickels called to order the public hearing on the proposed regulation.

Kit Hawkins, lobbyist for the Restaurant Association, 3300 Meridian Avenue North, Seattle. Mr. Hawkins appeared at the June, 2000 Board of Health meeting, and subsequent to that, the Restaurant Association sent a formal communication regarding the fee issue. Mr. Hawkins stated that on a proportional basis, fees should be reduced accordingly. It is recognized that Public Health has a valid funding problem and the Restaurant Association wants to cooperate in a solution, but requires some assurance, that over the next two or three years, there is legitimacy to the fees that are being charged.

Mr. Hawkins hypothetically stated that if a fee prior to November of 1999 was $100, the Restaurant Association believes that that fee should be rolled back to the point where the Association would now be charged 150% of what was being charged prior to November of 1999. For the 2001, the Restaurant Association envisions something on the order of 110% as being reasonable. In other words, the base would be the fee prior to November of 1999. One of the things that the Restaurant Association is absolutely dependent upon is public confidence that it is safe to eat in restaurants and the Association has a vested interested in a fully funded, adequate inspection program in food establishments. The Restaurant Association must be convinced that the fees are truly legitimate. As an issue of fairness, the Restaurant Association would like the fees to be set at the rates reflected prior to November of 1999.

Mr. Pullen requested that Mr. Hawkins direct his comments specifically to the three funding options: the yellow option, the 90% MVET option; the blue packet, which is the 90% CX option; and the pink version which is the 90% MVET and CX. Mr. Hawkins responded that he is not totally familiar with CX funding and where the MVET dollars actually went in terms of the various program allocations within Public Health. However, the Restaurant Association fee that was charged prior to November of 1999 must have borne some relationship to the cost of running the inspection program and the Association is seeking a proportional share of fees based upon the actions of the Legislature.

Mr. Nickels closed the public hearing and indicated to the Board that they had before them the issue of reducing permit fees for food establishments. Mr. Nickels reminded the Board that the County Council restored some of the current expense dollars that had been reduced in order to ensure that Public Health continue to meet the standards that the Board of Health established in response to the outbreak of E. coli and the Kingdome food safety issues in past years. Despite a very difficult budget, restoring the current expense money for food safety was a unanimous vote of the County Council during budget deliberations. This

demonstrates a strong commitment on the Council's part, and a strong commitment from the Board of Health, to a food safety program that protects the public.

In response to Initiative 695, the County Council aggressively stepped in during November of 1999 to make sure that finances were available to continue the Public Health's program in this area and a number of others. Fees were significantly raised. Although no promise was made to roll back the fees, the Board of Health made a commitment to revisit the fees once the Legislature had a chance to respond to Initiative 695. Mr. Nickels recommended that the Board consider and adopt the pinkish-purple option, which represents a 90% reduction of the fee. It is the largest of the three reductions and it recognizes that the motor vehicle excise tax revenue was restored at 90% in 2001, and that the current expense dollars that were put into other Public Health programs in order to help alleviate the motor vehicle tax revenue reduction is also restored at 90%. It would reduce the fees by $723,000. Mr. Nickels stated that this is a very good faith response to the attempt that was stated by the Board in adopting the fee increase.

Mr. Nickels referred to the chart that is called "Environmental Health Food Program Revenue Budget - Percent of Tax Support, 1997-2000." Under the pinkish-purple proposal, which is the maximum proposal, the revenue that would come from fees would be $3.6 million. In 1999, the revenue from fees was $3.1 million. So it does have a substantial increase in the revenue coming from fees, which reflects the fact that Public Health was not fully reimbursed by the State and their costs have gone up as well. Mr. Nickels suggested that is the fairest proposal, and in the long term, allows the Board to demonstrate to the public that these fees are fair and equitable. Mr. Nickels pledged to fight vigorously for the food safety program, as well as other basic Public Health programs.

Mr. Pullen stated his support of Mr. Nickels' explanation and reiterated that this fee reduction is a reasonably balanced approach, taking into account the promises that were made. Mr. Pullen reinforced the importance of maintaining the Board's credibility, as well as providing good health services and protecting the public. Mr. Pullen urged the Board to vote in favor of a fee reduction.

Ms. VanDusen stated that she also felt that the fee reduction is very appropriate and wanted to call the Board's attention to a document entitled, "Food Protection Program Fee History," which shows how fees have tended to increase through the years.

Mr. Sherman recommended that along with Chair Nickels' proposal, Mr. Sherman would make an amendment that any fees reduced below the 1999 rates be adjusted to at least the 1999 rates.

Phil Holmes, from the Health Department, explained the calculation of reduced fees was determined on a pro rata basis across the entire fee schedule where the increases to fees made in 1999 was not done on a straight percentage basis. It was a variable rate increase that occurred. Some fees had no increase originally, and then when the fee schedule was adjusted again to take into account the MVET reduction and the CX / MVET replacement, those other categories in the fee schedule did get a change. When they are all reduced it is looking at the total for the fee schedule. Some fees may be less than what the original 1999 charge was, and it was not intentional, it was just the formula.

Mr. Sherman rescinded his earlier suggestion for an amendment if the pink sheet is a more accurate statement, i.e., if the current fee schedule represents more accurately the actual costs.

Mr. Conlin expressed his opinion that when the MVET was taken away, there was an immediate scramble to replace funding and it was also a wake-up call that asked, "Should we really be investing taxpayers' money in the support of what is the cost of doing business for a company?" Mr. Conlin indicated that he would be very leery about reducing any fees right now given the climate of uncertainty regarding what may ultimately happen with I-695 and I-722. It is uncertain whether fees may be raised in the future and there are no guarantees about CX in 2001. There are no guarantees from the Legislature about the 90% replacement, even the 90% replacement beyond 2001. Mr. Conlin stated he was very sympathetic to the comments that Dr. Pizzorno and Boardmember VanDusen made about Public Health and public funding. One of the principles that is very important is that businesses should pay the cost of doing business. A fee reduction in this situation is subsidizing those businesses that are being inspected because they are posing a concern for public health. Those businesses are being subsidized with money from property taxes or other tax revenues. If the fees are not changed, businesses will be subsidized by approximately $750,000 dollars, because that's the CX revenue that is assumed.

Mr. Conlin appreciated the concerns expressed by the Restaurant Association and encouraged the Restaurant Association to work with the Health Department to reduce the cost of the program. If there are ways in which the industry and the Health Department can work together to make this program cost less, then it would be feasible to reduce the fees to the restaurant industry. But at this point, Mr. Conlin cannot support a fee reduction in the climate of uncertainty, given the fact that the fees involved represent the cost of doing business.

Mr. Irons reiterated that the fee increases were not made under long deliberation having to do with the philosophical point of full fee capture or not. It was made with the idea surrounding I-695 and how to balance the budget.

Mr. Nickels expressed concern regarding a long-term challenge in funding Public Health. If Public Health has to respond to an emergency outbreak, it will not be able to respond as effectively as five or ten years ago, and that is a great concern. The Board of Health, and in a larger context, the County, City and other governmental units, need to re-establish trust with the public. For a number of reasons that trust has been called into question and undermined in many different ways. The Board of Health has an opportunity, through one small action, to reinforce the Board's tradition of very high integrity and serving the public interest. By adopting this proposal, the Board will have kept faith with the restaurant industry that has tried very hard in the last few years to work with Public Health. The restaurants were not anxious to see fees increased in 1998 and 1999, when Public Health believed it was important to increase the food inspection program to meet standards. The Restaurant Association indicated a willingness to work with The Board and Public Health.

Mr. Nickels believes that protecting food safety is a fundamental responsibility of the Department of Public Health and of the local Board of Health. The Board has made conscious decisions in the past to underwrite the cost of charitable organizations that have food booths at fairs and bazaars and use that as a temporary and intermittent fundraising method. To some extent, the cost of the overall inspection program has been underwritten recognizing that it is not just a benefit to the particular business, but also a benefit to the public to have a food program in which people have confidence. Mr. Nickels urged the Board to vote in favor of reduction of food service establishment fees.

The rule to revise the food service establishment fees was adopted by a vote of seven in favor, and one opposed.

Director's Report

Dr. Plough introduced John Wiesman, who is the Health Department's new Prevention Division Manager. Mr. Wiesman worked thirteen years for the Tacoma - Pierce County Health Department serving as the manager of most of their major Public Health Prevention programs. Dr. Plough thanked Dr. Gary Goldbaum for acting as the interim Prevention Manager.

Bioterrorism and Biological Disaster Preparedness

Dr. Jeff Duchin, Public Health's Chief of Communicable Disease Division, and Byron Byrne, King County Emergency Medical Services' Bioterrorism Response Coordinator, discussed the importance and emerging role of bioterrorism and biological disasters.

Dr. Duchin explained the rationale describing why bioterrorism and biological disaster preparedness has become a national priority. The U.S. civilian population is vulnerable to a bio-terrorist action. This conclusion has been drawn based on recognition of the extensive bio-weapons programs of other countries, most notably the former Soviet Union and Iraq, documented in repeated attempts to acquire biological agents by militants and also the ease with which these agents can be weaponized and disbursed. Also, the public health system and medical systems in particular are not prepared to handle a disaster of this magnitude and nature. These facts resulted in the 1998 Presidential Decision Directive or PDD #62, which is designed to enhance civilian bioterrorism preparedness and that resulted in three agencies (Health and Human Services, CDC, and Department of Defense), initiating the Office of Emergency Preparedness. The City of Seattle Fire Department and Public Health were recipients of funding. That funding initially was focused on preparing a fire department or first responders with HAZMAT capability to respond to a chemical or explosive event. Recently, an extension of that contract initiated planning for bioterrorism preparedness. CDC has started a new office of bioterrorism preparedness and response and the Department of Defense has done a tabletop exercise in what they consider to be high priority cities.

Bioterrorism differs from conventional terrorism in several ways. The most notable is that bioterrorism or biological disasters are covert events and there is no warning. The first sign of this will usually be an increased demand on the medical sector for health care services among persons with an identified illness, which then rapidly progresses to a fatal, overwhelming illness. Therefore, the medical community and not our traditional first responders, are the first to be impacted by a bioterrorist event or biological disaster. This results in a potentially overwhelming and very rapid impact on the health care system and potential for thousands of casualties associated with civil unrest. There is also a need for technical information about unusual biological agents, treatment of these agents, prevention and infection control. These are not routine health department or medical system functions.

Features that make particular agents likely to be used in a bioterrorist attack include the ability to be easily disseminated and potentially transmitted from person to person. Agents cause high mortality with major public health impact and it has been estimated that 50 kilograms, about 110 pounds, of anthrax spores disseminated over a 2 kilometer line upwind of a city the size of Seattle would result in approximately 95,000 deaths and 125,000 casualties. Those illnesses would initially appear as a flu-like syndrome, but it would be overwhelming numbers of patients coming in with these illnesses that would rapidly progress to an untreatable infection. The problem is differentiating an intentional event from a naturally occurring biological event. This type of event would cause profound panic, social and economic chaos, and intense psychological impact on the community which will last,

according to experts, for many, many years. And these agents are attractive to bioterrorists, because they require special action for public health and community preparedness. The current County infrastructure does not have the capability to handle these types of events. The agents most likely to be used in a bioterrorist attack include anthrax, smallpox, plague, and botulism.

Dr. Duchin emphasized that the Health Department has been identified as the central agency in detecting, analyzing, and identifying a bioterrorist event, and then, in collaboration with other key partners, responding and planning effectively for this type of event. The Health Department is currently charged with coordinating County-wide preparedness and response, and this again depends on collaboration with key community partners. The detection and evaluation of a biological disaster requires a very robust surveillance, epidemiology or analytical and disease investigation infrastructure, plus new detection methods; these diseases are not necessarily reportable in the form in which they first present. A flu-like illness is not reportable. New surveillance systems need to be developed in order to detect these types of events. Public Health needs to facilitate the medical management of exposed persons including treatment, as well as provide infection control advice and information to health professionals, government leaders, and the public.

The preparedness that is proposed in order to be ready for a biological terrorist event actually are apropos to any biological disaster, which might include the inevitable occurrence of pandemic influenza, the last major outbreak of which killed many thousands of people worldwide. Large outbreaks of recognized diseases such as E- coli, meningococcal meningitis, or the constant challenge of new and emerging infections, require coordination of resources.

Regional preparedness and planning priorities are focused on coordination of the regional medical disaster management and first responder resources. Plans need to be developed addressing deficiencies in regional resources, such as hospital response, capacity and preparedness, emergency medical system, mass treatment, health response, mortuary capacity, and law enforcement. Protocols need to be developed to coordinate and engage state and federal resources, as well as educate government and community leaders.

Byron Byrne, Public Health's Bioterrorism Preparedness Coordinator, and Kevin Kearns, Manager of the King County Disaster Management program, commented on bioterrorism preparedness activities that they have been involved with locally. Mr. Byrne called attention to two really important issues: (1) biological disasters do not observe geographical or political boundaries; (2) regional plans will be dependent on State and Federal resources to respond to a large-scale incident. State resources are the most immediately available. Federal resources are several days out.

Mr. Kearns reiterated the extremely important role of Public Health in leading disaster preparedness activities. The challenge is to work in very close cooperation with partners in this business, including local jurisdictions of the cities, the fire districts, the school districts, and governmental agencies from local through state and federal, non-governmental organizations, private parties, the charitable organizations and private industry. Emergency Management helps bring all of those disciplines and interests together on a common path, so that when an event occurs, the right portions of those resources are directed.

Mr. Kearns recounted previous international incidents of bioterrorism to illustrate the potential for these events to occur in the local region.Biological agents are relatively easy to handle, which makes them attractive weapons. Many of them are in spore form of the infectious agent.

Mr. Byrne requested that the Board consider a resolution to support regional involvement in bioterrorism planning, because it involves the collaboration among the Health Department, the fire department, and other local public safety agencies. A resolution will be drafted and brought back to the Board for consideration.

Alcohol Impact Areas

Mr. Nickels introduced Patrick Vanzo, Chief of the Crisis section of the King County Department of Community and Human Services, who presented a truncated report on alcohol impact areas. This presentation revisited actions the Board had already taken regarding alcohol impact areas. In 1998, the Board adopted a resolution recommending state rule making around the sale of special alcohol products which are almost solely used by chronic public inebriates. The State Liquor Control Board adopted such ruling to treat those impact areas.

Mr.Vanzo reported on actions taken in furtherance of a resolution the Board passed in March of 1998 and addressed some of the prime features of the pending Alcohol Impact Area Ordinance that the City Council is scheduled to vote on in mid August. The Washington Administrative Code allows a municipality or county to define a geographic area and determine if there is an adverse impact from oversell of certain alcohol products. If so, the Liquor Control Board may enforce a different standard in that particular area. The City of Seattle is enacting the legislation that will define the greater Pioneer Square area as an alcohol impact area. Data is being collected in that area regarding adverse impacts of alcohol sales and service. Different standards may include hours of operation, product packaging, refrigeration, etc. The Alcohol Impact Area Ordinance would be the first one in Washington. Tacoma and other areas are looking very closely at that this ordinance, so it can be replicated.

Morbidity and Mortality Reports

Dr. Plough acknowledged that the Center for Disease Control released their morbidity and mortality reports. Included in that was an article from Public Health CDC staff on the troubling increase in heroin related deaths in this region. Also in this issue was an article from Multnomah County, Portland, with unfortunately, the same kind of problem. There has been a threefold increase in unintended death from heroin overdose in Seattle and King County from numbers of approximately 40-45 in the early 1990s to 140 deaths per year in 1998, and 120 deaths per year in 1999. This shows a sense of comparison for 1998 and 1999; the number of AIDS deaths was 88 and 39, respectively. This represents more than the number of deaths among King County residents from auto safety fatalities. More aggressive prevention, more access to treatment, and dealing with the criminal justice system, are recommended strategies for reducing these unintended deaths. Currently, 600 people are on a waiting list in King County for methadone treatment, and those treatment slots are just not available. The King County Executive and the City of Seattle Mayor have convened a task force evaluating this issue trying to develop a new approach to the whole continuum of services that will help reduce mortality and morbidity from heroin use.

Mr. Nickels reminded the Board that they had received materials regarding the Ad Hoc Committee on natural medicine integration, which should be brought back for further consideration. Also, Ms. VanDusen called attention to a Seattle Times article concerning federal legislation that would bar states from imposing food safety and labeling standards that are more stringent than those of the Food and Drug Administration. That bill is known as the National Uniformity for Food Act of 2000.

Mr. Nickels recognized Dr. Plough for receiving a Sustained Exemplary Achievement Award for the year 2000 from the Evergreen Chapter of the American Society for Public Administration. Mr. Nickels quoted from the ceremony that recognized Dr. Plough's work, "Dr. Plough is a well known visionary and transformational leader in public health service. His accomplishments include numerous innovative, collaborative efforts to improve public service effectiveness and responsiveness. His reduced health disparities and discrimination in public health care developed the King County Health Action Plan and chaired a nationally recognized public/private partnership that has created opportunity for systems change to improve managed care. His efforts to improve citizen knowledge of public health include developing heroin overdose messages that were televised on MTV." Mr. Nickels thanked Dr. Plough for his extraordinary work on behalf of Public Health - Seattle & King County.

KING COUNTY BOARD OF HEALTH

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s/Greg Nickels/s, Adopted September 15, 2000