



MEMO

To: Local Public Health Authorities

From: Danna Drum, Local and Tribal Public Health Manager
Erica Van Ess, Manager, Food, Pool & Lodging Health and Safety Program

Date: March 16, 2023

Re: Delegation and Contracting of Environmental Health Services

This memo provides guidance to Local Public Health Authorities (LPHA) regarding compliance with requirements related to delegation and contracting of Environmental Health (EH) Services.

Under state law a person must obtain a license from OHA to operate a food service facility¹, public pool or spa² or a tourist facility.³ OHA delegates its licensing authority for EH Services to the LPHA for each jurisdiction⁴. This delegation occurs through an Intergovernmental Agreement (IGA) between OHA and each LPHA.

A LPHA that has been delegated authority for EH Services by OHA may not delegate that authority to another governmental or private entity. Although an LPHA cannot delegate EH Services authority, it can contract with another public or private entity for non-governance functions as stated in the EH IGA:

If LPHA intends to contract with a person to perform services or activities required under this Agreement, such person may not perform any function, duty or power of the LPHA related to governance as that is described in OAR 333-014-0580. LPHA must provide notice to OHA in accordance with OAR 333-014-0579(2) and (5) and subcontracts must

¹ ORS 624.010 to 624.121, 624.310 to 624.430.

² ORS 448.005 to 448.090.

³ ORS 446.310 to 446.350.

⁴ ORS 624.510 requires OHA to delegate to the LPHA; ORS 448.100 requires OHA to delegate to the Board of County Commissioners; ORS 446.425 requires OHA to delegate to the County.

comply with OAR 333-014-0570(4) and any other provisions required of subcontractors in the EH IGA.

A LPHA contractor cannot exercise governance functions such as signing an EH license, taking enforcement action on a license, adopting ordinances or rules or adopting fees. A LPHA must retain its governance functions, which includes enforcement. While a LPHA is authorized under ORS 190.110 to enter into an agreement with another governmental entity for the performance of a duty imposed upon it, the more specific statute, ORS 431.413(3), prohibits the LPHA from entering into a contract with anyone, including another governmental entity, to perform the LPHA’s governance functions. Each LPHA must maintain governmental accountability to the EH Services applicants and licensees within its jurisdiction.

The remainder of this memo provides guidance on the types of EH Services functions or activities that can or cannot be contracted.

Governance Function or Activity	Governance function?	Can be contracted?	Notes
Adopting EH ordinances or rules	Yes	No	
Adopting EH fees	Yes	No	
Issuing licenses	Yes	No	Only a LPHA or county employee who has the authority to issue licenses can sign a license. Permitting a contractor to sign a license would be an unlawful delegation of authority.
Conducting EH inspections	No	Yes	A contractor can conduct inspections, but only the LPHA can take enforcement actions on a license based on results of the inspection. EH Services contracts must specify how the LPHA will coordinate to ensure that enforcement actions resulting from an inspection are taken only by an LPHA employee.
Conducting licensing enforcement	Yes	No	See table below
Collecting fees and remitting to OHA	No	Yes	Any licensing fees retained by the contractor may only be used for licensing related work, and the contractor must keep clear financial records.

Function or Activity	Governance function?	Can be contracted?	Who can perform function?	Description of function	Applies to
<i>Please note: All governance functions must be done under the authority of the LPHA jurisdiction in which the facility is located.</i>					
Issue Failed to Comply Sticker	No	Yes	Can be contracted to another entity – as a best practice, LPHA should be notified by contractor prior to issuing	A semi-annual inspection that results in a score of below 70 will result in a Failed to Comply (FTC) being issued to the establishment.	Restaurants, bed and breakfast facilities, commissaries, mobile units and warehouses
Require Closure	Yes	No	Cannot be contracted to another entity – LPHA should be contacted by contractor prior to closure; LPHA must approve closure, and closure order must be signed by LPH Administrator or other LPHA government official	A facility can be closed if there is an imminent health hazard.	Food, pool and lodging facilities.
Require Embargo	Yes	No	Cannot be contracted to another entity – LPHA must be contacted prior to embargo to approve and embargo order must be signed by LPH Administrator	If the person in charge will not agree to destruction of contaminated food, an embargo order will be placed on the food or beverage.	Food service establishments

Function or Activity	Governance function?	Can be contracted?	Who can perform function?	Description of function	Applies to
			or other LPHA government official.		
Levy Civil Penalties	Yes	No	Cannot be contracted to another entity – LPHA must be entity to levy and issue civil penalties.	A monetary penalty assessed for operating a food service facility without a license or for failure to cease operation as the result of a closure notice.	Food, pool and lodging facilities
Issue Criminal Penalties	Yes	No	Cannot be contracted to another entity – Local law enforcement, county counsel or district attorney must take this action.	A violation of any rule in the restaurant program is a misdemeanor.	Food, pool and lodging facilities
Levy Fines	Yes	No	Cannot be contracted to another entity – LPHA government official must issue fines.	Senate Bill 90 authorizes fines for the third violation of the plastic straw ban.	Food service establishments
License suspension, revocation, and/or denial	Yes	No	Cannot be contracted to another entity – LPHA government official must take action on a license, not a contractor.	Licenses can be suspended, revoked or denied subject to an administrative hearing if requested.	Food, pool and lodging facilities
License Issuance	Yes	No	Only a LPHA government official from the	Licenses must be issued from the LPHA in which the	Food, pool and lodging facilities

Function or Activity	Governance function?	Can be contracted?	Who can perform function?	Description of function	Applies to
			jurisdiction in which a facility is located can sign a license	facility is located. Thus, that LPHA's logo must be on licenses and LPH Administrator or other LPHA government official from that jurisdiction can sign license.	

All LPHAs, including any that currently delegate or contract for EHS, must comply with the provisions outlined in this memo. LPHAs that contract for EH Services must also comply with:

- Subcontractor monitoring requirements, as described in [Guidance for Local Public Health Authorities on Monitoring of Subcontractors](#), including participation in the EH Services triennial review conducted by OHA.
- Requirements described in [OAR 333-014-0570\(2\) Notification of intent to contract for Public Health Services](#)

See Attachment for responses to questions OHA has received from LPHAs regarding EH services contracting. If an LPHA has other questions about EH Services contracting, please contact Erica Van Ess at erica.vaness@oha.oregon.gov or 971-673-0446 or Danna Drum at danna.k.drum@oha.oregon.gov or 503-957-8869.

The following are responses to questions OHA has received from LPHAs regarding contracting of EH services.

1. How do we handle temporary events where there is no cell reception?

The Local Public Health Authority (LPHA) must perform governance roles within its jurisdiction, and these roles cannot be delegated to non-LPHA employee, such as a contracted Registered Environmental Health Specialist (REHS). The LPHA and their contracted REHS should develop a policy to follow if enforcement action is required in a remote location. For example, the policy could state that the REHS will take any immediate action necessary to protect public health, including closing a restaurant, and contact the LPHA as soon as cell reception is available. The REHS could then document the steps taken to ensure they followed the established policy.

In general, LPHAs should have standard operating protocols for when a local public health administrator or other LPHA official cannot be reached. LPHAs may want to consider having delegations of authority documents in place with multiple officials identified and the order in which they should be contacted in the event the previously identified officials on the list cannot be reached within a specific timeframe. Such delegations are a best practice for public health emergencies, but also can be useful if the LPH administrator is on vacation, unable to be contacted, incapacitated, or otherwise unavailable due to an emergency.

2. How to handle the signing of temporary restaurant licenses? Can they be pre-signed by the LPH Administrator? Can the contracted REHS sign them?

Signing a license is a governance function and cannot be delegated to a contracted REHS. However, licenses can be pre-signed by an LPHA and issued by a contracted REHS. Pre-signed paper temporary restaurant licenses (at the bottom of the temporary restaurant inspection report) can be used if necessary. The LPHA may want to have a standard operating procedure indicating how the pre-signed licenses will be used/issued.

3. Can HealthSpace print or email a closure letter with the appropriate LPHA signature on it?

HealthSpace can use the appropriate LPHA signature on closure letters. However, the system is not currently set up this way. Any changes would be system wide, and OHA would need to work with all users to ensure this is a change that would benefit all. Pre-signed paper closure letters can be used in the interim.

4. Can a county judge sign a closure form?

If the LPHA is a county jurisdiction, then a county judge, as a county official, may sign a closure form or any other license or enforcement documents.

5. Do these delegation requirements apply to DEQ programs, i.e.; sub-surface?

Guidance in this document pertains specifically to the local public health authority statutes and administrative rules for which the Oregon Health Authority has responsibility in consultation with the Oregon Health Authority's Oregon Department of Justice counsel. Questions regarding governance functions related to programs for which the Oregon Department of Environmental Quality (DEQ) has responsibility should be referred to the DEQ for consideration and response.

6. Why is this change being communicated now?

In 2015, the Oregon Legislature amended the Oregon Revised Statutes (ORS) to eliminate the provision that a county could delegate local public health authority to a private individual or organization. The ORS still allows a local public health authority to contract out non-governance public health functions, but governance functions must be performed by the governmental jurisdiction with the local public health authority for that jurisdiction. Over the last seven years, OHA has been working to identify areas of public health practice and governance that need to come into alignment with this statutory change. Once OHA became aware that private contractors and non-LPHA specific governmental jurisdictions were performing governance functions, OHA recognized that specific guidance related to some specific environmental public health functions was needed. Guidance was initially drafted in 2019 but due to other needs during the COVID-19 response has not been finalized until now. Language related to contracting of EH services and governance functions was added to the EH IGA between OHA and each LPHA effective June 30, 2021.

7. What if the temporary restaurant at an event does not want to pay the license or shut down?

It is recommended that LPHAs include this type of scenario in their policy and procedure documents. The following are best practices that the LPHA may consider including in their policy and procedures: If a temporary restaurant does not want to pay a license fee or close, the REHS should first report this to the event organizer and explain the non-compliance issue. If this is not possible or effective, call law enforcement and explain the situation. If cell service is not available, the call may have to be delayed until service is available. Alternatively, if the REHS is deputized by law enforcement, issue a citation. (The process of being deputized may vary by county; please consult with county officials if there are questions.) Violation of the food code requirements is a Class C misdemeanor.

8. Closure or embargo requires immediate action. How is this accomplished if the LPH Administrator must be involved?

Occasionally, REHSs are required to take enforcement action such as embargo or closure of a food establishment. These actions need to be taken immediately to protect public health. If the LPHA is not reachable when such an enforcement action is needed, the LPHA should have a policy and procedure in place that dictates the steps the REHS must follow. This could include closing a restaurant and contacting the LPHA as soon as reasonably possible. It could also include a requirement to reach an official of the LPHA prior to taking enforcement action. The REHS could carry closure forms and embargo tags that have been pre-signed by a representative of the LPHA in case enforcement action is required.

9. What if the local public health administrator does not feel comfortable signing an environmental health license or enforcement action?

ORS 431.150 (2) states "A local public health administrator shall administer and enforce ORS 431.001 to 431.550 and 431.990 and any other public health law of this state within the jurisdiction of the local public health authority supervised by the local public health administrator." Enforcing public health laws, including those pertaining to environmental public health is a core part of the local public health administrator roles and responsibilities.

- 10. Is it possible to add a comment box in HealthSpace to indicate when the REHS has spoken with the LPH Administrator to get a verbal approval for closure, embargo, etc.?**

HealthSpace already has a “comments box” that populates at the bottom of the inspection report. This area can be used to capture information such as when the REHS connected with the LPHA, received verbal approval for embargo, closure, etc.