

The Fresno County Civil Grand Jury

2023-2024

Eat At Your Own Risk:

The Quiet Reality of Health Inspections in Fresno County

(INSERT DATE OF RELEASE)

Table of Contents

Summary.....	3
Introduction.....	4
Methodology.....	5
Discussion.....	5
Conclusion.....	17
Findings.....	18
Recommendations.....	19
Request for Responses.....	21
Disclaimer.....	22
Appendix A.....	23

Summary

The Fresno County Civil Grand Jury received a citizen complaint regarding unsanitary conditions at several local restaurants. An investigative committee was formed and began by reviewing inspection reports for the restaurants cited in the complaint followed by a random sampling of food establishments in the county. Several areas of concern surfaced: a lack of violation enforcement; inconsistency in code enforcement; a failure to collect fees for permits and re-inspections; facilities operating without a current permit; and facilities lacking a Food Safety Certification or Food Handler Card compliance.

In considering these concerns, the Grand Jury identified deficiencies in the current processes and procedures within the Fresno County Department of Public Health's Environmental Health Division (EHD), and the recommendations in this report respond to those deficiencies. The Grand Jury's objective is to promote accountability and transparency in the EHD, with the goal of increasing food safety and public health.

Some of the important deficiencies we found were the following:

- The software system currently used does not meet the needs of EHD and does not perform as promised;
- The number of food inspectors has not kept up with the exponential increase in the number of food establishments;

- The fees charged for operating permits, inspections, and re-inspections appear to be inadequate to cover their costs.
- A lack of standardization and supervisor support leads to subjective and inconsistent enforcement;
- EHDs' website is difficult for the public to locate and navigate. Restaurant inspections themselves are extremely hard to find. Some reports are not up-to-date, have no inspection information, or show "No Data Returned."

INTRODUCTION

"Foodborne illness in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The food industry and regulatory authorities share responsibility for ensuring that food provided to the consumer is safe and does not become a cause of disease outbreak or contribute to the transmission of communicable diseases. This shared responsibility extends to ensuring that consumer expectations are met and that the food is unadulterated, prepared in a clean environment, and honestly presented." (California Retail Food Code preface January 2022)

Every day countless individuals go to eating establishments in Fresno County whether they are sit-down restaurants, drive-through facilities, county fairs, food trucks, or other venues. The public eats out, relying on the assumption that the Environmental Health Division of the Fresno County Department of Public Health protects us from

unsafe conditions. But how well does the EHD do its job? The Fresno County Civil Grand Jury considered that question in the course of investigating the EHD.

METHODOLOGY

In conducting its investigation, the Grand Jury interviewed persons who are knowledgeable of the food inspection process, accompanied several food inspectors on inspections of food facilities, and reviewed other California counties' public health or environmental health websites that describe that county's food safety programs, policies, and restaurant inspections.

DISCUSSION

Fresno County's Department of Public Health is divided into several divisions, including the EHD, which is responsible for the inspection and oversight of approximately 11,000 facilities. The EHD is not only charged with inspecting food establishments but also swimming pools, water wells, landfills, hazardous materials handlers, underground storage tanks, and above-ground storage tanks that come under Certified Unified Program Agency (CUPA) authority.¹ EHD conducts more than 18,000 inspections each year both in the course of its regular business and in response to consumer complaints. The Grand Jury's investigation focused only on EHD's responsibilities related to restaurant facilities, not on mobile food units or cottage food facilities or any other of the other industries in EHD's area of responsibility.

¹ Certified Unified Program Agency (CUPA): A state agency authorized to carry out several of the various hazardous materials, above and underground storage tanks, regulatory programs administered by the state and city. (resource Cal CUPA)

Software System

One of the biggest frustrations for EHD inspectors is the inability of the software to live up to the requirements of the EHD inspector program, and the Grand Jury has noted frustrations expressed by inspectors with regard to the currently utilized system. Fresno County EHD purchased the software program in 2020. While some of the software issues have been addressed and fixed at a significant cost to Fresno County, many needed functions are not in the program and continue to frustrate inspectors and administrative personnel.

The software system was intended to enable food inspectors to complete their reports in real time while doing the inspection, which does not appear to happen. Completing the inspection form on the software system takes up to twice the time it takes to complete a handwritten report. Moreover, the software only works on Wi-Fi and not cellular data. More often than not, the software will not load to the tablets supplied by EHD, so food inspectors must complete the food inspection reports at a later time. When the software does load, inspectors often have to use their cell phones as Wi-Fi hotspots to get internet access. Additionally, for at least a year after it went live, the software system would not generate bills to food facilities for the annual permit fees, so fees went unpaid. This issue was fixed, but in 2023, the software system began to double-bill facilities but not bill at all for re-inspections. As a result, some of the legitimate fees were forgiven at a substantial cost to EHD. The double billing problem caused confusion and ill-will among food facility operators and led to more unnecessary confrontations with inspectors.

Food inspectors were told the software system would provide a calendar and a calendar tickler system, so inspectors were alerted when food facilities were due for an inspection or reinspection and could plan their time accordingly. It appears, however, that the software system was not programmed to perform that task, a potential efficiency that is currently unrealized.

Finally, the software system only provides an electronic copy of the inspection report, not a hard copy. This is problematic because the California Retail Food Code requires that a copy of the inspection report be available at the restaurant location. According to the California Retail Food Code, every restaurant is required to post a sign stating that their latest EHD inspection report is available and on file for the consumer's viewing. Since a paper report is no longer generated, the consumer is not able to view a copy of the inspection report unless the food operator has taken the initiative to print it out. In some instances, the report is sent to a corporate office and not available at the local food facility inspected. Without an in-facility copy, the retail food facility is challenged to meet the State notification requirement.

As discussed above, the current software system used by the EHD is a significant impediment to the important work EHD inspectors perform. The fact that the system is only 3-4 years old adds to the concern, and the vendor contract doesn't expire until December 2028. Whether the dysfunction is the responsibility of the vendor or lies elsewhere was beyond the scope of the Grand Jury's investigation, but the challenges associated with the software platform will need to be addressed if improved accountability and performance are to be achieved.

Food Inspectors

EHD has approximately 75 staff members. Of that number, 22 are dedicated primarily to the inspection of food facilities. Food inspectors must have a Bachelor of Science degree and pass an exam to be certified by the State of California as a Registered Health Specialist. A 600-hour internship is a prerequisite to the exam. Once hired by EHD, a food inspector has an additional 6-8 weeks of training with a senior food inspector, plus time spent in the office learning policy and procedure before conducting inspections on their own. To maintain certification, food inspectors are required to have 24 hours of continuing education every two years.

Food inspectors in Fresno County are hired at Level I, with a current annual income level of \$57,252 to \$69,576. By comparison, a fast-food employee working full time can make \$42,000 a year. After at least one year of experience, a food inspector may be promoted to Level II, earning \$64,350-\$78,208 annually. A food inspector with at least two years of experience is eligible to be elevated to Level III, with an annual salary of \$70,876-\$86,138. According to our internet research of similarly populated counties in California, the average salary of a food inspector is \$58,986.00 for level 1, \$77,048.00 for Level 2, and \$90,348.00 for Level 3. Additionally, Fresno County retirement benefits are less competitive than some other employers. For example, newly hired employees do not receive a cost-of-living allowance. For a person with the educational background of a food inspector, private industry is far more lucrative, and ongoing staff shortages are due partly to the non-competitive salary extended to food inspector applicants.

Since 1990, the number of restaurants in Fresno County (not including mobile units) has increased exponentially, as has Fresno County's population. There are currently more than 11,000 food facilities that EHD must regularly inspect, yet the number of food inspectors has remained the same since 1990. The workload for food inspectors is burdensome, and there are not enough food inspectors to keep up with the current number of food facilities in the County.

Food inspectors are tasked to conduct not only regular inspections of restaurants, fast food facilities, and other establishments in their census districts (which they refer to as their "inventory") but also must perform required re-inspections of the facilities that are cited with violations of the California Retail Food Code. Significantly, the re-inspections must occur within five days of the original inspection. Adding to this already heavy workload, inspectors are also asked to inspect public swimming pools which may be located in hotels, apartments, and other facilities. Inspections take anywhere from one to four hours to complete, not including travel time.

While there is no quota, EHD expects a food inspector to visit 4-5 facilities each day and inspect each food facility in the assigned census area four times each year. The expectation may not, in itself, seem unreasonable; however, a large sampling of inspection reports available online indicates few food facilities, if any, receive four routine inspections per year, and some facilities have not been inspected for a year or more. Doing the math regarding the expectation of food inspectors to inspect each facility four times a year, food inspectors can't possibly complete this requirement as well as complete re-inspections and pool inspections. With 11,000 food facilities and 22

food inspectors, an inspector would have to inspect 6.2 restaurant facilities each work day of the year (including holidays and no time off or vacation), to do the required four inspections a year. That expectation is unrealistic based on the current number of EHD inspectors.

In addition to the regular inspections, the food inspectors must re-inspect food facilities that have been cited for violations of the California Retail Food Code. Violations occur in about 33% of the inspections, and the reinspection must occur within five days for the County to collect a reinspection fee. Food inspectors face the difficult task of scheduling re-inspections. They juggle regular inspections, pool inspections, and inspections prompted by consumer complaints of foodborne illness, as well as other issues that must be addressed within five days.

Beyond restaurant inspections, food inspectors review blueprints for new restaurants, restaurant remodels, and additions to current restaurants. They inspect mobile units and the cottage food industry²; and they take steps to regulate hundreds--perhaps thousands--of unpermitted food vendors that cost the County significant tax revenue and licensing fees.

Food inspectors are sometimes the subject of threats and harassment by facility operators just for doing their jobs and have requested law enforcement assistance when conducting unlicensed food vendor inspections to ensure their safety. Conversely, the inspectors make difficult decisions knowing their immediate concerns may be

² A food industry wherein non-potentially hazardous foods can be prepared in a private home kitchen and sold either directly or indirectly to the public.

overridden by a supervisor who rarely visits the locations and may not have the urgency resulting from first hand observation of unsafe conditions the inspector has.

Despite all of the challenges, EHD strives to ensure the safety of the public. Food inspectors are exceptionally dedicated to keeping Fresno County residents safe from tainted and adulterated food. The Grand Jury found the food inspectors to be knowledgeable of the requirements of the California Retail Food Code, and professional while performing their duties. In the Grand Jury observations, food inspectors greet facility operators with their business cards and explain clearly their purpose. Inspectors try to remain as unobtrusive as possible during their inspections, and they speak to facility operators with respect. The food inspectors also work very hard to maintain the balance of keeping citizens safe from health hazards and are cognizant that closing a food facility affects the livelihood of many people--not just the owners of the facility.

EHD's Utilization of County Automobiles

Given the large number of inspection stops food inspectors must make each day, efficiency and cost of travel are important considerations. The five-day turnaround requirement for re-inspections lends an element of unpredictability to their travel scheduling and makes vehicle cost and time spent on travel difficult to manage. However, one area of potential cost savings may be in the use of the County vehicles available to EHD. The Grand Jury learned that there are County cars available to EHD but only some of the vehicles are used during the work week-- on a rotation basis so it appears vehicles are regularly used. The County mileage rate of \$.67 per mile may

create an incentive for the use of personal vehicles, increasing cost to EHD in the cases where County vehicles are unused.

Permit Fee Schedule and Collection.

EHD charges eat-in food facilities an annual permit fee to certify the facility's compliance with the California Retail Food Code based on the number of seats in the facility. The annual permit fee for other types of food facilities (bakery, bar, market, etc.), and restaurants without seating is determined by square footage. The current fee schedule dates to October 2021 (see Appendix A).

In addition to the annual permit fee, food facilities are subject to unannounced inspections by EHD. If there are violations to be corrected, the first reinspection is currently conducted at no cost. If a food facility requires subsequent re-inspections to correct a violation, EHD charges a re-inspection fee of \$109, which is assessed only after a failed first reinspection. If the re-inspection is not completed within 5 days, EHD cannot bill for the reinspection. This same fee is charged for each reinspection thereafter until the violation is corrected.

The Grand Jury believes that the EHD reinspection fee charged for food facility violations is far too low to incentivize the facility operator to correct the violations. A food facility that might earn \$109 from a bill for two diners or a single bar tab has little incentive to correct its issues. Additionally, this fee is not commensurate with other County reinspection rates, or, indeed, other government agency inspection rates (e.g., Fresno Fire Department charges \$161 to inspect two fire extinguishers at a fourplex

apartment). An internet review of similarly situated counties shows the disparity in reinspection fees:

San Joaquin County	\$165 an hour, with a 1-hour minimum
Tulare County	75% of the permit fee
Kings County	\$226 flat rate
Madera County:	\$135 plus penalties on past due balances
Stanislaus County	\$126 flat rate
San Diego County	\$184 an hour, with the no-permit penalty assessed at 300% of the permit fee plus the cost of the permit fee itself.

Re-inspection fees appear low and have not been updated since 2021; moreover, the collection rates for annual permits and re-inspections are less than industry standards. A random review of the food inspection reports on the EHD's website indicates that a good number of food facilities are delinquent for months (and sometimes years) without having a permit to operate or paying the permit or re-inspection fees. The Grand Jury found some restaurants owe over \$1,000 for inspection and re-inspections. These food facilities are allowed to continue to operate in violation of a California Retail Food Code that calls for immediate closure of expired permits or unpermitted facilities. Fees charged by EHD should incentivize businesses and make the department self-perpetuating.

Subjectivity of Inspections Leads to Inconsistent Enforcement of Violations

All food inspectors receive the same training and materials to do their job. They each receive an annually updated copy of the “California Retail Code Book” and a copy of the PowerPoint entitled, “New Inspection Report and Marking Guideline Training,” which provides photos of what to look for when conducting an inspection. Together, these resources contain the procedures, statutes and regulations food inspectors should follow when they inspect a food facility. Additionally, all new hires shadow Level III food inspectors for some time until the new hire feels confident enough to inspect on their own.

Despite common training and resources, the Grand Jury identified instances of inconsistent enforcement. For example, potentially hazardous food must be maintained at a temperature of 41 degrees Fahrenheit or lower. One food inspection report we reviewed—which has apparently been removed from the EHD website—showed a significant quantity of butter sitting out at a temperature of 75 degrees Fahrenheit; nevertheless, the food facility was allowed to put the butter back into the refrigerator to use another time. A food inspection report at a different food facility found a significant quantity of butter at a lower temperature, 68 degrees Fahrenheit, but required it to be discarded.

The California Retail Food Code requires a food facility that lacks a valid permit to be subject to immediate closure. Our review found many food facilities operating without a current permit, though some permits may have been incorrectly reported due

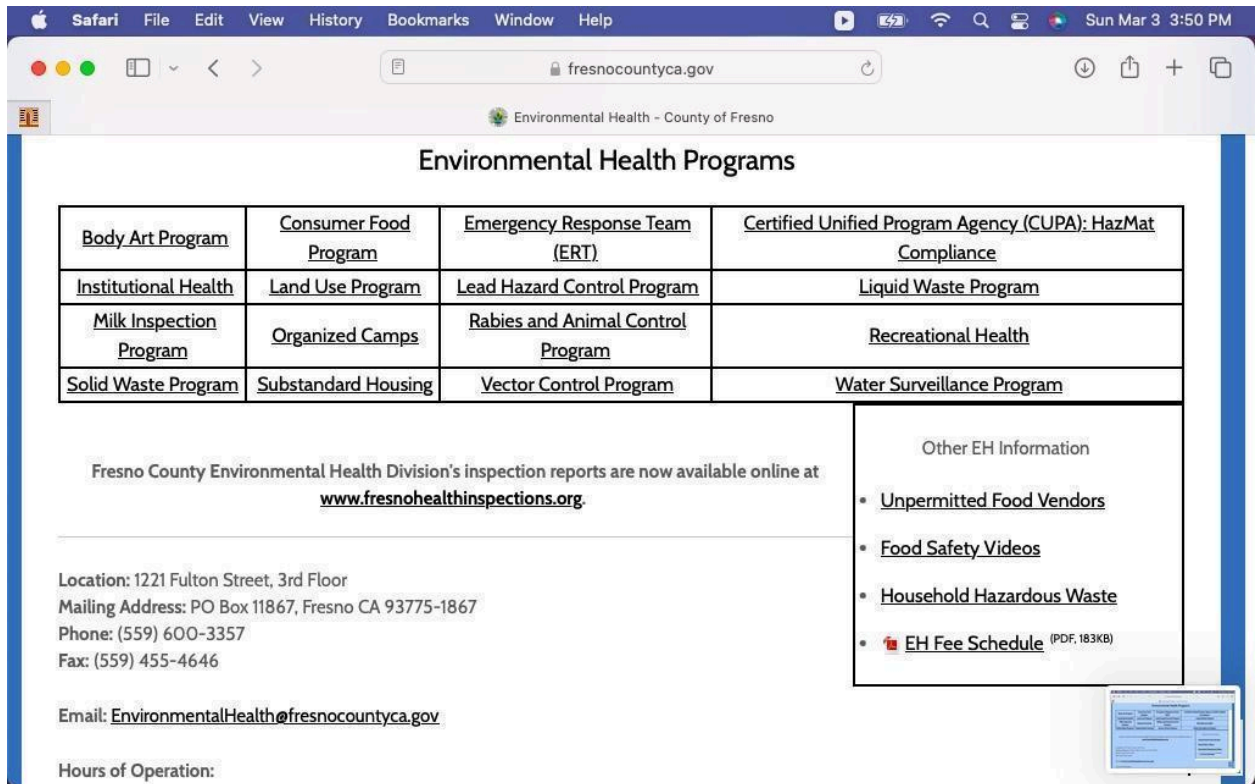
to issues with the software system. However, even after the software glitch was reportedly fixed, many food facilities that are not up to date on their permit fees remain unpaid.

Food facilities are also required by the California Retail Food Code to have an employee or owner who has a ServSafe certificate and employees who are Food Handler-certified if they handle food of any type other than prepackaged food³. We found that this requirement is inconsistently enforced and food facilities have been allowed to continue operating without the properly credentialed employees. This inconsistency in enforcement may lead to disregard for the law, may put the public at risk, and may create a liability for Fresno County.

EHD's Website

The homepage of EHD's website contains information about various departments within EHD and how to pay permit and reinspection fees. The food inspection link, labeled only as "Fresno County Environmental Health Division's Inspection Reports", lacks visibility and is buried mid-page in small type (see below).

³ To be certified a person must demonstrate the skills and knowledge required of a food manager by passing this accredited exam which is offered online ([ServSafe® Product Details](#)). Anyone handling food must have a Food Handler Card unless the product is pre-packaged



(EHD home page, accessed on March 3, 2024)

Clicking the link leads to a page entitled “Search for a Facility.” The search form requests the name and address of the food facility, the particular documents desired, and the period for which documents are requested. When searching for a food facility, the program doesn’t appear to use any type of search logic. Unless you have the exact name of the food facility, no data will be retrieved. For example, if you type in *McDonalds* the response is “No data returned”; however, if you type in *McDonald’s* (with the apostrophe) you will get a list of all of the McDonald’s food facilities in Fresno County that have been inspected. Spelling issues aside, the average consumer may be unaware of the legal name of a food facility, or the facility may be listed under a

corporate name or a “Doing Business As” (DBA) name. The database is not searchable by location.

While the website has valuable information, it is cumbersome, difficult to navigate, and a challenge to find the most current food inspection report. Some website reports do not appear to be timely. Other facilities completely lack inspection reports or have had no reports for several years. Inspection reports are sometimes modified after the fact or removed completely.

CONCLUSION

No doubt EHD has a dedicated staff that works hard to accomplish its mission of ensuring food safety, but it also faces numerous obstacles in doing so, which have been discussed in this investigative report. From the preponderance of the evidence presented, obtained through ride-along inspections with EHD inspectors, interviews conducted during the investigation, and document and website reviews, the Grand Jury has concluded that EHD cannot always assure food safety in Fresno County restaurants. The subjectivity and inconsistency apparent in restaurant inspections, as well as an overwhelming workload for Food Inspectors contribute to our conclusion, as does the apparent difficulty of closing restaurants in violation of the Food Code, a process made more challenging by the requirement to obtain a supervisor’s approval, even though an imminent health hazard exists.

As a final note, the Grand Jury observes that Fresno County does not include letter grades in the restaurant inspection reports, though many California counties do.

Letter grades are not mandated by the State, though the Grand Jury believes assigning a letter grade increases transparency as well as provides an incentive for local food businesses to strive for excellence, to properly and safely prepare food in a clean and sanitary environment.

FINDINGS

California Penal Code Section 933(a) mandates that a grand jury report issue findings and recommendations.

F1 The current software system used by food inspectors is functionally inadequate and an impediment to meeting the EHD mission of ensuring restaurant safety.

F2 Due to a variety of factors, EHD does not currently employ enough inspectors to realistically meet all of its many obligations.

F3 Salaries for food inspectors appear to be low, given the required educational background and compared to average salaries in similarly situated counties.

F4 Food inspectors have an overly broad “inventory” of facilities, and the requirement to inspect facilities other than food establishments dilutes the effort to ensure food safety.

F5 Permit, food inspection, and reinspection fees appear to be low when compared to similar inspection fees charged elsewhere, including those charged by the City of Fresno and other Fresno County departments.

F6 Subjectivity and inconsistency in inspections are an impediment to the mission of ensuring food safety within Fresno County.

F7 Code violation enforcement and fine collection appear to be inconsistent and based on the subjectivity of individual inspectors and supervisors.

F8 EHD's website is difficult to navigate, not always current, and is a barrier to consumers.

F9 EHD appears to be without a policy for its Food Inspectors on the standard use of County automobiles for travel to inspect food facilities.

RECOMMENDATIONS

The Grand Jury recommends that the Fresno County Board of Supervisors and the Director of the Environmental Health Division do the following:

R1 Within 180 days, develop a plan to achieve a functional software system that fully meets inspector needs and commit to the plan's implementation as soon as financially practicable. (F1)

R2 Within 180 days align current EHD food inspector positions with the department's goal of inspecting each restaurant four times a year and commit to a staffing plan to realistically achieve that alignment. (F2, F3, F4)

R3 Conduct a salary study with comparable counties to see if wage adjustments are needed at the various levels of food inspectors and commit to competitive salary levels by not later than 180 days from the day of publication of this report. (F2, F3)

R4 Reorganize EHD so food inspectors inspect only food facilities, mobile food units, cottage food industry, etc., and not swimming pools, landfills, CUPA, etc. by not later than 180 days from the day of publication of this report. (F4)

R5 Implement a fee structure that makes EHD a self-supporting division of the County Health Department no later than 180 days from the day of publication of this report. (F5, F6)

R6 Enforce and collect the permit and inspection/reinspection fees already imposed on food facilities that violate the California Retail Food Code by not later than 180 days from the day of publication of this report. (F5, F6)

R7 Within 180 days, implement deliberative measures such as random sampling of food inspection reports or inspector norming of reports to reduce subjectivity and increase consistency of evaluations. (F6, F7)

R8 Re-work EHD's website so that the food inspection reports are easier for consumers to access by no later than 180 days from the day of publication of this report. (F8)

R9 Require food inspection reports to be complete, timely and regularly updated on the website no later than 180 days from the day of publication of this report. (F8)

R10 Within 180 days, implement an efficient vehicle use policy that ensures 100% of the County cars allocated to EHD for inspectors are used every day instead of the apparent rotation policy used now or transfer them to other County Departments. (F9)

REQUESTS FOR RESPONSES

Pursuant to California Penal Code Section 933.05 the 2023-2024 Fresno County Civil Grand Jury requests responses to each of the specific findings and recommendations, pursuant to California Penal Code Section 933(c), required responses from elected County Officers or agency heads are due within **60 days** of the receipt of this report and **90 days** from the governing body of a public agency.

REQUIRED RESPONDENT

The following is required to respond:

Fresno County Board of Supervisors

INVITED RESPONDENTS

The following are invited to respond:

Director of Fresno County Department of Public Health

Division Manager of Environmental Health Division

County Administrative Office

DISCLAIMER

Reports issued by the Fresno County Grand Jury do not identify the individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

Appendix A

	Level 1	Level 2	Level 3	Level 4
Fresno County	\$57,252-\$69,334	\$64,350-\$78,209	\$70,876-\$86,138	NA
San Joaquin County	\$78,540	\$95,011	\$104,166	NA
Tulare County	\$57,802	\$77,450	NA	NA
Kings County	NA	\$71,489	\$78,977	\$87,256
Madera County	NA	\$57,079-\$69,380	NA	NA
Merced County	\$56,888-\$69,201	\$62,732-\$76,315	\$73,028-\$88,836	NA
Stanislaus County	\$57,241-\$69,596	\$66,123-\$80,371	\$70,948-86,236	NA
Sacramento County	\$64,073	\$73,372	\$96,006	NA
Kern County	\$77,008	\$116,949	\$132,026	NA
San Luis Obispo County	\$58,000	\$70,000	\$85,000	NA
Monterey County	\$82,748	\$105,408	\$121,245	NA