



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Agricultural
Commissioner
Department No.: 051
For Agenda Of: February 7, 2012
Placement: Departmental
Estimated Time: 30 minutes on 2/7/12
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Cathleen M. Fisher, 681-5600
Director(s)
Contact Info: Guy Tingos or Kendra Stites, 681-5600
SUBJECT: Revision of the County Weights and Measures Ordinance and Adoption of Agricultural
Commissioner's Revised Fee Schedule

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

1. Set hearings to consider recommendations regarding the revision of County Ordinance 34-C, Weights and Measures, as follows:
 - a. Set first hearing on the departmental agenda for February 7, 2012 (Estimated Time 20 minutes) to consider the introduction (first reading on the departmental agenda) of a revision to Ordinance 34-C, Weights and Measures; and
 - b. Set second hearing on the administrative agenda for February 14, 2012 to consider the adoption of revised Ordinance 34-C, Weights and Measures.
2. Set hearings to consider recommendations regarding an ordinance amending the Agricultural Commissioner's fee schedule, as follows:
 - a. Set first hearing on the departmental agenda for February 7, 2012 (Estimated Time 20 minutes) to consider the introduction (first reading on the departmental agenda) of an ordinance entitled "Ordinance Amending the Agricultural Commissioner's Fee Schedule"; and

Auditor-Controller Concurrence

As to form: Yes

- b. Set the second hearing on the administrative agenda for February 14, 2012 to consider the adoption of an ordinance entitled “Ordinance Amending the Agricultural Commissioner’s Fee Schedule”; and
3. Approve the attached Notice of Exemption.

Summary Text:

The Division of Weights and Measures conducts inspections that assure equity in the marketplace. The consumer is protected by ensuring that the sales price they are asked to pay is calculated fairly and accurately. Likewise, businesses are protected from unfair business practices that put them at a competitive disadvantage. The ability for the County Board of Supervisors to establish Device Registration Fees to help fund device inspection and quantity control (QC) inspection programs was first passed by the legislature in 1982. These registration fees have been at their current level since 1994, and currently generate approximately \$72,000 annually to fund our device inspection program. The existing fee schedule does not allow for collecting fees for scanners or packers to fund the quantity control program.

Due to budget constraints, the department was forced to eliminate 1 Weights and Measure position eleven years ago and another position 7 years ago and it has been unable to recover the eliminated positions. The department currently has only 3 inspectors in the Weights and Measures Division. There are 19,942 devices and approximately 1,707 locations with scanners throughout the county, and due to inadequate staffing levels, the department conducts most of the inspections of these, only in response to consumer and business complaints. The increased revenue will allow the department to proactively inspect point-of-sale systems and increase its regulatory presence.

In accordance with the Board’s approved fee policy, the Agricultural Commissioner’s Office reviewed the cost of conducting business, specifically for conducting mandated inspections related to the Weights and Measures program. Revenue existing level only recovers 14% of costs. The proposed fee increase will bring the county’s fees in line with state law and most other counties in the state, allow an increase in staff to proactively inspect devices and scanners, and recover 100% of the costs of these inspections.

Background: In November 2010, the California Department of Measurement Standards along with Santa Barbara County inspectors conducted a county-wide price verification survey which revealed that consumers are almost 3 times as likely to be overcharged for purchases in Santa Barbara County when compared to the State average for pricing errors on similar items. Overall, the inspectors were overcharged on 7.33% of the items compared to the State-wide average of 2.6%. Counties *with* scanner ordinances and on-going monitoring programs had an overcharge rate of only 1.92%. The proposed ordinance amendment incorporates an on-going point-of-sale (scanner) inspection program and a packer inspection program to help rectify the situation. Counties that have a scanner ordinance in place have found that store managers make proper maintenance of pricing a higher priority. 70% of counties throughout California have already adopted scanner ordinances including the counties of Ventura, Orange, Los Angeles, San Bernardino, Riverside, Imperial and San Diego.

The ability to make changes in the department’s Weights and Measures fees was accomplished by the passage of AB-889 in 2005. It was signed by the Governor and was effective January 1, 2006. This bill

was sponsored by the California Agricultural Commissioners and Sealers Association and its passage was made possible after a great deal of work to get industry to support the bill or at the very least, remove opposition. Most major industry groups supported it, recognizing that the protections provided for both industry and the consumer were eroding rapidly due to lack of funding for local Weights & Measures programs. In supporting the legislation, industry has made it clear that they expected the additional fees to generate an improved level of inspection. The passage of AB-889 led to the development of Business & Professions Code 12240-12246 which gives the Board of Supervisor, by ordinance, the authority to charge an annual registration fee to recover the costs of inspecting or testing weighing and measuring devices required of the county Sealer. The necessity for the County Board of Supervisors to establish adequate device registration fees to help fund the device inspection and quantity control inspection programs is critical in carrying out the important goals of consumer protection and equity in the marketplace.

Changes to the department fee schedule will also include a mandated State Division of Measurement Standards annual administrative fee on registered businesses operating commercial weighing, measuring, and counting devices. The fee is based on device type and is applicable for every commercial device registered with each county office of weights and measures. California Code of Regulations Title 4; Section 4075 will require each county office of weights and measure to collect the administrative fee for the Department and submit it to the State, less a 15% collection fee.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The total FY 11-12 expenditure budget for the Weights & Measures division is \$412,018. Total General Fund contribution for the Weights & Measures division in FY 11-12 is \$327,018. Total revenue projected for the Weights & Measures division is \$85,000.

Fees are collected on a calendar year basis. The estimated revenue generated by the new ordinance based upon the estimated number and type of devices and scanners in the county is an additional \$460,000. There will also be \$860 of revenue generated due to the 15% overhead received from the State for handling the State administrative device fee for a total of \$460,860. The increased revenue will enable the department to staff the program at a level that will allow for enhanced protection for consumers and businesses. It will also allow the department to replace outdated and failing equipment.

Special Instructions:

1. After the January 10 hearing, direct the Clerk of the Board to publish a Notice of Public Hearing pursuant to Section 6062a of the Government Code.
2. After the February 14 hearing, direct the Clerk of the Board to send an original adopted ordinance and a minute order to Cathleen M. Fisher, Agricultural Commissioner's Office and publish a copy of the ordinance or a summary with names of the members of the Board of Supervisors voting for or against the Ordinance.

Attachments:

1. Chapter 34-C, Weights and Measures
2. Fee Ordinance
3. CEQA Exemption

Authored by: Guy Tingos