



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: March 20, 2012
Placement: Set Hearing
Estimated Time: 30 minutes on 4/3/2012
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 Chapter 34-C of the County Code, Weights and Measures, 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 hearing to consider recommendations regarding the revision of Chapter 34-C of the County Code, Weights and Measures, as follows:
 - a. Consider the introduction (first reading) of an Ordinance Revising Chapter 34-C of the County Code, Weights and Measures, on April 3, 2012 (Estimated Time 30 minutes; departmental agenda); and
 - b. Set hearing on the administrative agenda of April 10, 2012 to consider the following recommendations regarding the revision of Chapter 34-C of the County Code, Weights and Measures:
 - i. Consider the adoption (second reading) of an Ordinance Revising Chapter 34-C of the County Code, Weights and Measures; and
 - ii. Approve the attached Notice of CEQA exemption.
2. Set hearing to consider the following recommendations regarding the revision of the Agricultural Commissioner's fee schedule, as follows:

Auditor-Controller Concurrence

As to form: Yes

- a. Consider the introduction (first reading) of an Ordinance Amending the Agricultural Commissioner's Fee Schedule on April 3, 2012 (Estimated Time: 30 minutes; departmental agenda); and
- b. Set hearing on the administrative agenda of April 10, 2012 to consider the following recommendations regarding the revision of the Agricultural Commissioner's Fee schedule:
 - i. Consider the adoption (second reading) of an Ordinance Amending the Agricultural Commissioner's Fee Schedule; and
 - ii. Approve the attached Notice of CEQA Exemption.

Summary Text:

Device Inspection Program: Pursuant to State law, the department must inspect all commercial weighing and measuring devices in Santa Barbara County each year. Device owners pay an annual registration fee to help offset the costs of these inspections. The device registration fees in Santa Barbara County have been at their current level since 1994 and generate approximately \$72,000 each year. The department's 3 Weights and Measures inspectors verify the accuracy of almost 6000 commercial devices each year.

In accordance with the Board's approved fee policy, the Agricultural Commissioner's Office reviewed the cost of conducting these state-mandated inspections. Current revenue recovers only 16% of the device program costs. The proposed device registration fee increase is estimated to recover 66% of the device inspection program's costs.

The Board of Supervisors directed staff to explore the possibility of creating an exemption or reduced device registration fee for a specific device type, water vending machines. There are 213 retail water vending machines in Santa Barbara County. Totally exempting them from device registration fees would result in a \$25,560 loss in revenue. Reducing the location fee by fifty percent on such devices would result in a \$10,650 loss in revenue. Staff recommends adhering to the device registration fee schedule developed by the State of California.

Price Verification (Scanner) Program: The Division of Weights and Measures also makes test purchases at retail stores to ensure that the prices being charged are calculated fairly and accurately. These inspections protect the consumer from overcharges and also assure equity in the marketplace for businesses by detecting unfair business practices that create competitive disadvantages.

There are approximately 1940 retail business locations with price scanners throughout the county and no fee program associated with them. With no revenue source, the department can only respond to consumer complaints after an overcharge has already occurred. The proposed revenue for this program will allow the department to proactively inspect point-of-sale systems and increase its regulatory presence. The proposed fees for the price verification program are estimated to recover 75% of the program's costs.

On February 7, 2012, the Board of Supervisors directed staff to look at potential small business exemptions for the scanner program. As such, the Agriculture Commissioner's Office proposes a Small Business Allowance Program as part of the price scanner program proposal. A business that meets all of the following conditions may remit forty dollars which is one-half of the annual price scanner registration fee:

- the business has a single location in the county that has 1-3 price scanning stations;
- the business has gross sales in the amount of \$200,000 or less for the latest year;
- the business verifies the qualifying gross sales by including a signed copy of their latest Internal Revenue Service tax filing for the qualifying business with their reduced payment.

Background: Device Inspection Program: 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. 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. 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 State statute also specifies the amount of the fees that can be charged for each type of device. The necessity for the County Board of Supervisors to establish adequate device registration fees to help fund the device inspection program 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.

Price Verification (Scanner) Program: 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% 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. Seventy percent 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 proposed Small Business Allowance Program will affect approximately 793 business that meet the criteria, or 62% of the businesses with 1-3 scanners. The Program will result in an estimated loss of \$31,720 annually to the scanner program.

Fiscal and Facilities Impacts:

Budgeted: No

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 FY 11-12 revenue projected for the Weights & Measures division is \$85,000.

Device Inspection Program: Revenue generated from the current device registration fees is \$72,000 annually. The proposed device registration fees are expected to generate an additional \$235,555 for a total of \$307,555 annually.

Price Verification (Scanner) Program: Currently, there are no fees associated with price verification (scanner) inspections so there is no current revenue. The projected revenue for this program including the Small Business Allowance Program is \$184,200.

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 \$491,755. There will also be \$860 of revenue generated from the 15% overhead received from the State for handling the State administrative device fee for a total of \$492,615. The increased revenue will enable the department to staff the program at a level that will allow for enhanced protection for consumers and businesses.

Special Instructions:

- A. That the Clerk of the Board publish notice of this hearing, per the attached Public Notice, in a newspaper of general circulation in Santa Barbara County 10 days prior to the hearing and again 5 days prior to the hearing.
- B. That the Clerk of the Board request the Planning and Development Department to post the Notices of Exemption for the ordinances in the County Planning and Development Department at least six days prior to consideration of the activity by the Board of Supervisors to comply with the County CDQA guidelines.
- C. That the Clerk of the Board provide one of each of the two adopted ordinances and a copy of the minute order to the department. When ready for pick-up, please notify guy@agcommissioner.com.

Attachments:

1. Chapter 34-C, Weights and Measures
2. Fee Ordinance
3. Device Registration Revenue Comparison
4. Price Scanner Revenue Proposal
5. CEQA Exemption
6. Public Notice

Authored by: Guy Tingos