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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Greg Clark for Whitmer, David - Agricultural Commissioner
Agricultural Commissioner
REPORT BY: Greg Clark, Assistant Agricultural Commissioner/Sealer, 253-4357
SUBJECT: Second Reading of Ordinance re Fees for Services by Ag Commissioner/Sealer and Adoption of Resolution re Fees

RECOMMENDATION

Agricultural Commissioner/Sealer of Weights and Measures requests the following:

1. Second reading and adoption of an ordinance amending Chapter 5.52 of the Napa County Code as it relates to weights and measures, establishing a registration and inspection program and fees for retail point-of-sale (bar code scanner and price lookup) systems, and establishing fees for such services;
2. Adoption of a Resolution establishing, increasing, and decreasing fees for services provided by the Agricultural Commissioner/Sealer.

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

EXECUTIVE SUMMARY

County weights and measures device inspection is mandated by state law. Section 12240 of the Business and Professions Code authorizes county weights and measures departments to charge a device registration fee to provide recovery of some program costs. Section 12240 also sets the maximum allowable fee which weights and measures department may charge. The recent passage of Assembly Bill 889 modified Business and Professions Code Section 12240 and increased the maximum allowable fee. In addition, legal authority was given to Boards of Supervisors to establish a Point of Sale (barcode and scanner) inspection program and charge a fee for the registration and inspection of Point of Sale systems.

FISCAL IMPACT

Is there a Fiscal Impact? Yes

Is it currently budgeted?	Yes
Where is it budgeted?	The Agricultural Commissioner/Sealer's FY 2006/2007 approved budget provided funding for a new Weights and Measures Inspector and other associated expenses necessary for the establishment of a retail point-of-sale inspection program. Additionally, the approved budget included revenue reflecting increases in annual device registration fees. However, the annual device registration fees were not amended nor was the point-of-sale inspection program implemented. The Board of Supervisors is now being asked to make these changes that will be come effective in FY2007/2008.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Sealer of Weights and Measures is required to inspect all commercial weighing and measuring devices, however, increases to the annual device registration and inspection fees as allowed by Assembly Bill 889 are discretionary. The Board of Supervisors sets the fee amounts. The fees may be increased to more closely recover the cost of inspection, but the Board has the authority to raise, lower, or leave the fees at the current rate. Similarly, the Board may use its discretion as to whether or not to establish a retail point-of-sale inspection program, including the levying of fees to fund the program. The point-of-sale inspection program is one of the best ways to ensure equity in the marketplace, both for buyers and sellers. The current level of inspection is inadequate given the number, size, and volume of business conducted in Napa County. It is in the public's interest to identify, inspect, and register price verification systems to protect the consumer and create fair competition. The proposed program will allow commerce to occur with both buyers and sellers having confidence that pricing is accurate and people are getting what they pay for.
Is the general fund affected?	Yes
Future fiscal impact:	An increase to the annual device registration and inspection fees is intended to have the fees more closely pay for the actual cost of inspection. Since the weights and measures program is partially funded by the General Fund, it is possible that the General Fund contribution to the department could be reduced. However, since the enacting legislation included a sunset provision and a set maximum fee amount, the cost of conducting device inspections will again exceed fee revenues unless legislation is reenacted in future years. As a result, the County will have to continue to provide a General Fund contribution in future years.
Consequences if not approved:	The County would continue to use a General Fund contribution to help pay for the Sealer's annual device registration and inspection activities. The contribution would increase in future years since the salary and benefit costs of conducting the program would continue to increase over time. If establishment of a retail point-of-sale inspection program is not approved, the department would continue to perform a minimal level of inspection based upon complaints and state surveys. In addition, consumers would not benefit from more accurate pricing that would occur from such an inspection program.
Additional Information:	

ENVIRONMENTAL IMPACT

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BACKGROUND AND DISCUSSION

On October 5, 2005, AB 889 (Ruskin) - Weights and Measures was chaptered after being signed by the Governor. The legislation amended the fee schedule used by counties to set the annual registration fees paid by the commercial users of weighing and measuring devices. The law was broadly supported by county boards of supervisors, county sealers of weights and measures, the California Division of Measurement Standards, and retail business associations, such as the California Retailers Association and California Grocers Association. In addition, support of AB 889 was part of Napa County's legislative platform and the Board authorized the addition of a weights and measures inspector to the list of allocated positions for the Agricultural Commissioner/Sealer during approval of the FY2006/2007 Final Budget.

Device registration fees are utilized by County Weights and Measures Departments to fund consumer protection regulatory programs that involve the testing and inspection of commercially-used weighing and measuring devices. Local Boards of Supervisors may set registration fees as listed in law. The current fees approved by the Napa County Board of Supervisors are insufficient to cover the entire cost of the Sealer's activities, with the programs primarily funded by the County General Fund. And while using the General Fund is prudent and a benefit to all county residents and businesses, the Board is being requested to amend the current maximum fee amounts contained in Napa County Ordinance 5.52 Weighing and Measuring Device Registration.

In addition, the Board is being asked to authorize the establishment of a price verification or Point-of-Sale (POS) inspection program and fees. In FY 2005/2006, Napa County's device registration fees amounted to \$50,768 or only 36% of the \$141,301 annual cost of the device inspection program. The balance of the program was funded by a county general fund contribution of \$90,533. The increase in annual fees authorized under Business and Professions Code Section 12240 provided for a phased-in implementation over a three-year period, at 60%, 80% and 100% of the maximum fees specified for 2008. The Napa County Device Registration Fees for FY2007/2008 will be set at 80% of the maximum starting on July 1, 2007. The fees for FY2008/2009 will be set at 100% of the maximum effective on January 1, 2008, but not used until after July 1, 2008 at which time the annual device registration and point of sale systems billing would be done. Under the 80% adjustment provided by AB 889, revenue received from device registration would be approximately \$134,184 with a general fund contribution of \$7,117. Under the 100% adjustment effective January 2008, device registration revenue will come close to covering the costs of the program with a minimal general fund contribution.

This new fee structure addresses long-standing inequities in the current fee ranges which are based on the number of devices. The ranges (1-3 devices, 4-9 devices, etc.) resulted in businesses at the lower end of each range paying a disproportionately higher fee than businesses at the high end with more devices. Additionally, the new fee schedule addresses businesses with devices requiring the use of specialized inspection equipment and/or very technical testing procedures. Under the previous law it was difficult to recover the actual costs of the county inspection. The new per-location, per-device registration fee will make adjustments that ensure each business is assessed for the actual number and types of devices inspected at each location.

AB889 authorizes County Boards of Supervisors to establish programs to inspect the pricing accuracy of retail point-of-sale (POS) and price look up (PLU) systems. Bar code scanners and price look up systems are the most common and familiar types of POS systems. The Board of Supervisors is also authorized to establish fees to

recover the full cost of the uniform inspection procedure. A reinspection fee can also be charged for those business locations that fail the 98% compliance rate on the initial inspection. The reinspection fee serves to ensure that violators pay the cost of additional inspections necessary to verify corrections. This price verification inspection program would apply to any business using equipment that is capable of recovering electrically stored price information that is used to charge consumers for the purchase of commodities. The local price verification inspection program would be modeled after the National Institute of Standards and Technology (NIST) Handbook 130 and the language contained in Assembly Bill 889. A random sampling procedure that is contained in Handbook 130 is also used. Businesses are categorized based upon the number of POS devices in use as are the test purchase sample sizes. A random sample of twenty-five items is collected for businesses with one to three POS devices. For those businesses with four or more POS devices, the sample size increases to fifty items. Handbook 130 also describes how to obtain a random sample of merchandise, including which aisles or rows are selected, departments, shelf placement, etc. The logic behind the sample sizes and number of POS devices relates to the generalization that the more POS devices a business has, the larger the number of items available for purchase. Similarly, the greater the number of items pulled for inspection, the greater the time needed to perform the price verification inspection. It is estimated that there are approximately 270 business locations within Napa County that have 1-3 point of sale stations or checkout counters where purchases occur. There are approximately 75 business locations with 4 or more sales stations or checkout counters.

The attached spreadsheet provides information used to calculate POS inspection program activities and determine the POS registration fees as well as costs associated for reinspections done to verify correction of violation or inaccuracies in pricing.

The fees that the Board is being asked to authorize will not recover 100% of program costs. The Agricultural Commissioner/Sealer wants to ensure that the program is operating effectively and efficiently, as well as validating the data and assumptions used to determine workload and costs, before setting fees at a level that will more closely recover costs of the program. In addition, the fees are similar to fees charged by area counties that have established price verification inspection programs as a result of AB 889. The Agricultural Commissioner has discussed both the amended fees and establishment of the price verification program, including written correspondence to device owners, meeting with locals chambers of commerce, and other business groups.

The Agricultural Commissioner/Sealer believes that amending Chapter 5.52 of the Napa County Code increasing fees for the registration and inspection of weighing and measuring devices; and establishing a registration and inspection program and fees for retail point-of-sale (bar code scanner and price lookup) systems, will provide for fair competition and equity in the marketplace and ensure that the interests of the buyer and seller are protected.

On June 5, 2007, the Board opened the public hearing and introduced the ordinance, read the title, waived reading the balance of the ordinance and declared its intention to adopt the ordinance on June 12, 2007. The ordinance is now before the Board for formal adoption.

County Counsel recommends adoption of the Ordinance and Resolution.

SUPPORTING DOCUMENTS

- A . Ordinance
- B . Resolution

CEO Recommendation: Approve

Reviewed By: Helene Franchi