COUNTY OF LOS ANGELES

Department of Agricultural Commissioner/ Weights and Measures

Kurt E. Floren
Agricultural Commissioner/
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Robert G. Atkins
Chief Deputy

Agenda Date: November 29, 2005

November 15, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

WEIGHING AND MEASURING DEVICE REGISTRATION FEES AND PRICE VERIFICATION STORE REINSPECTION FEE (ALL DISTRICTS - 3 VOTES)

IT IS RECOMMENDED THAT THIS BOARD ADOPT THIS FEE AT THE CONCLUSION OF THE PUBLIC HEARING:

Approve the accompanying ordinance amending Title 2 – Administration of the Los Angeles County Code to:

1. Amend Los Angeles County Code § 2.40.090 to continue the authority to assess commercial weighing and measuring device registration fees and to increase these fees to the maximum level authorized by the Business and Professions Code (B & P) § 12240 as amended by Assembly Bill 889 (Ruskin), effective January 1, 2006;

2. Amend Los Angeles County Code § 2.41.080 to clarify the citations and to establish a new fee to recover costs of reinspection of any store at which Weights and Measures inspectors had discovered overcharge violations during a prior standard inspection within the previous three months, as provided in B & P § 13350 (e) as added by Assembly Bill 889 (AB 889), effective January 1, 2006.

3. Introduce, waive reading, and adopt the enclosed Ordinance.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Prior to the chaptering of AB 889 (Chapter 529, Statutes of 2005), the maximum fees authorized under B & P § 12240 provided only partial funding for the costs of inspecting commercial weighing and measuring devices. The Legislature first granted counties the authority to collect such fees in 1982 and established maximum fee levels in B & P § 12240. These fees have not been increased since 1994. At current funding and staffing levels, the Department of Agricultural Commissioner/Weights and Measures (ACWM) is able to inspect only 60% of the commercial devices in the County each year. State law (B & P §12212) and State regulation (Title 4 CCR, Division 9, Chapter 3, Article 1, § 4070) requires that the majority of these devices be inspected each year.

AB 889 was signed into law by the Governor on October 5, 2005. The bill reflected a consensus agreement between County officials and retailers. Both the California Retailers Association and the California Grocers Association registered support for AB 889, as amended. The new law, in part, increases the maximum device registration fees counties may charge. The authorized fee increases are to be phased in over three years, beginning in 2006. By increasing registration fees to the maximum levels permitted by law, ACWM will be enabled to staff the program appropriately and increase inspection frequency. Increased regulatory oversight will improve compliance, protecting both consumers and device users from negligent and dishonest operators.

AB 889 also adds new sections to the B & P governing the methodology of counties' inspections of price accuracy at stores using automated point-of-sale (scanner) check-out systems. B & P § 13350(e) authorizes county boards of supervisors, by ordinance, to charge a reinspection fee to any store that fails a standard inspection, as defined. The charge may not exceed the County's total cost of the reinspection. The reinspection fee may be charged only to a store whose price accuracy rate, based upon the initial inspection, is less than 98%. The reinspection fee serves to ensure that violators pay the cost of additional inspections necessary to verify corrections.

Implementation of Strategic Plan Goals

Increasing device registration fees supports the County Strategic Plan goals of Service Excellence (Goal 1) and Fiscal Responsibility (Goal 4). County residents and competing businesses, alike, benefit when commercial weighing and measuring devices, such as gasoline pumps and market scales, are inspected more frequently, identifying incorrect devices and requiring repair before further use. The ACWM's fiscal soundness is improved as annual revenues increase to meet the staffing costs relative to the actual workload. Revenues are anticipated to increase from the current level of $1.5 million to $2.9 million in 2006 and, ultimately, to $4.7 million in 2008.

Adoption of reinspection fees to be charged to stores found to have price accuracy rates below 98% similarly supports Fiscal Responsibility (Goal 4). It is appropriate and

equitable that persons responsible for the need for increased enforcement should pay the County for the additional costs associated with reinspections to confirm compliance. Reinspection fees also support Service Excellence (Goal 1), providing means to adequately staff the program to perform follow-up inspections, providing added protection to consumers and competing businesses and acting as a deterrent to poor price accuracy practices.

FISCAL IMPACT/FINANCING

Current revenues derived from device registration total $1.5 million. Program costs, as currently staffed with 18 device inspectors, are $2.4 million. The existing 18 inspectors are sufficient to test only 60% of the weighing and measuring devices in the County. With implementation of the revised fees, revenues are expected to reach $2.9 million in 2006 and $4.7 million in 2008. The funding will, over the 3-year phase-in period, enable growth to 38 inspectors to comply with annual inspection requirements.

ACWM is also responsible for enforcement of commodity package labeling and content laws. Presently, five full-time equivalents are assigned the task of inspecting over 1700 packers, 1900 wholesale distributors, and over 1100 retail businesses that package and sell products from the store locations. Current package inspection staffing is only sufficient to inspect less than 30% of the packer and distributor businesses each year. To secure regulatory oversight of these businesses, ACWM intends to apply sufficient device registration revenue each year, as authorized by B & P § 12240, to fund continued inspections of packaged goods to assure accurate labeling of quantity (e.g.: If labeled "One Pound," the package content is tested to verify that the package contains one full pound of commodity).

The new law amends the structure of device registration fees. The fees include, as a first component, a "location" fee designed to offset the costs of dispatching an inspector to the device site and general operational costs. The second component consists of a per-device fee to offset average time expenditure costs of the on-site inspection of the device. Both components are designed to be phased in over the course of three years. For most device owners/operators, annual registration fees will be as follows:

$60 per location	plus	$12 per device
$80 per location	plus	$16 per device
$100 per location	plus	$20 per device

Per-device fees for devices requiring more time-intensive testing and specialized test equipment will be charged appropriately higher fees, specifically permitted under revised B & P § 12240.

Increases to device registration fees to the maximum values allowed by B & P § 12240 are projected to result in an additional $1.4 million in 2006, resulting in total device

registration revenue of $2.9 million. In 2007, the maximum fee levels are expected to produce approximately $3.8 million in revenues, an increase of nine-hundred thousand dollars. In 2008, the final year of the fee phase-in, revenues are expected to increase by another nine hundred thousand dollars to $4.7 million. This will offset the costs of a total of 38 device inspectors and five package inspectors.

In regard to automated point-of-sale system (scanner) inspections, ACWM has been, since June 1, 2005, inspecting stores according to the sampling regimen required by AB 889. Projections from the results of the three-month test period indicate that approximately 90 reinspections would be conducted during an average year as follow-ups to failed inspections. While reinspection times will vary, an average 1.5 hour inspection time appears to be a reliable estimate. The rate will be developed by ACWM and approved by the Auditor/Controller.

Upon the Board's approval of the requested amended Ordinance, the Department of Agricultural Commissioner/Weights and Measures will submit a request for appropriate Budget Adjustment.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Los Angeles County Director of Weights and Measures is charged with inspecting each commercial weighing and measuring device within his jurisdiction. State regulation requires that these devices be tested annually with the only exception regarding utility submeters (natural gas, water, and electric meters used to bill tenants for utilities), tested at ten-year intervals. Ten percent of such submeters are tested each year to maintain the inspection frequency. At current funding levels, ACWM staff is sufficient to test only 60% of the commercial device population each year. Weighing and measuring devices are currently inspected at an average frequency of approximately 20 months rather than 12 months. Increased revenues and staffing will enable ACWM to meet its legal obligation to conduct annual inspections and to keep pace with rising residential population and increasing numbers of commercial meters and scales in the County.

As noted previously, B & P § 12240 provides that device registration fees may be used by counties to offset the costs of the inspection of packaged commodities for accurate net quantity labeling. Consumers increasingly purchase commodities in pre-measured or pre-weighed containers. Under-filling, failing to deduct tare (package material) weight, and improper labeling are common problems found among packaged commodities. As Los Angeles County is a major international port, is home to thousands of commercial manufacturers and packers, is one of the world's largest hubs for product distribution, and has a population that consumes significant volumes of both domestic and imported goods, the regulatory work of the inspectors protects local and global businesses from unfair competition from negligent or unscrupulous packers, foreign and domestic. Maintained staffing of the package inspection program,

supported by increased device registration fees, will secure ACWM's ability to monitor packaging practices of manufacturers selling products in the County.

Pursuant to Government Code Section 66018, a public hearing must be held by the local authority prior to the adoption of a new fee or increase of existing fees. Notice of the public hearing shall be published in accordance with the Government Code Section 6062a.

IMPACT ON CURRENT SERVICES (OR PRODUCTS)

Approving the ordinance to fully utilize the authority to fund weighing and measuring device inspection programs will significantly improve County services. Increased funding will allow for the hiring of additional field inspectors to bring staffing levels for the weighing and measuring device inspection program to appropriate levels to conduct annual inspections for the first time in more than two decades. The increased inspection and testing frequency will improve the overall accuracy of commercial scales, meters, and packaged commodities.

Reinspection fees applicable to retail businesses that have failed a standard, routine price verification inspection will compel stores to improve the accuracy of their prices. These reinspection fees will also recover the costs incurred by ACWM for the additional enforcement work required for enforcement.

Upon the Board's approval of the requested amended Ordinance, the Department of Agricultural Commissioner/Weights and Measures will submit a request for appropriate Budget Adjustment.

The accompanying ordinance has been approved as to form by County Counsel.

Respectfully submitted,

KURT E. FLOREN
Agricultural Commissioner/
Director of Weights and Measures

Attachment (1)

KEF:RGA:JNH:awp

c: Chief Administrative Officer
County Counsel
Auditor-Controller

ANALYSIS

The primary purpose of the ordinance amendments is to bring Title 2 - Administration, Chapter 2.40, Department of Agricultural Commissioner/Weights and Measures (17), and Chapter 2.41, Consumer Protection Registration Certificate, into compliance with Assembly Bill 889, which will take effect January 1, 2006, and to appropriately adjust fees to enable the Department to comply with State requirements regarding enforcement and inspection of weighing and measuring devices.

The changes to state law renew the authorization for county boards of supervisors to establish and charge device registration fees. AB 889 also amends Section 12240 of the Business and Professions Code by establishing a revised fee structure that includes a per-location registration fee, in addition to the per-device registration fee. The maximum fees are increased under AB 889 over a three year phase–in period beginning in January 2006.

RAYMOND G. FORTNER, JR.
County Counsel

By
DIANE C. REAGAN
Principal Deputy County Counsel
Health Services Division

[240090DRCC]

ORDINANCE NO. _____

An ordinance amending Title 2 - Administration of the Los Angeles County Code, to bring Chapter 2.40, Department of Agricultural Commissioner/Weights and Measures (17), and Chapter 2.41, Consumer Protection Registration Certificate into compliance with Assembly Bill 889, which will take effect January 1, 2006.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.40.090 is hereby amended to read as follows:

2.40.090 Commercial weights and measures -- Registration certificate fees.

A. Both the initial registration certificate fee and the annual renewal registration certificate fee shall be ~~as is prescribed~~ assessed at the maximum amount authorized in Section ~~12441(b)~~ 12240 of the California Business and Professions Code. ~~In addition to such fee,~~ If the registration or renewal payment is late, there shall also be assessed ~~a~~ the late registration penalty fee set forth ~~in those instances and in such manner as is prescribed~~ in Section 2.40.100.

B. Initial registration certificate fee payments must be received by the commissioner/director by no later than the thirtieth day following the certificate's date of issuance. Annual renewal fee payments must be received by the commissioner/director by no later than January 31st of the year to which the renewal applies. A registration certificate for which timely payment has not been made shall cease to be valid until

such time as such payment, together with applicable penalty fees, has been received by the commissioner/director.

SECTION 2. Section 2.41.080. is hereby amended to read as follows:

2.41.080. Fees.

A. Registration certificate fees shall be based upon the number of point of sale stations at each retail location. Payment shall be made to the Department according to the following schedule:

Number of Point of Sale Stations	Fee
1-3	$160.00
4-9	$240.00
More than 10	$300.00

B. Fees shall be paid to the Department, and shall only be used for the enforcement of California Business and Professions Code, Division 5, Weights and Measures, Section 12001 et seq. and Title 2 of the Los Angeles County Code, Section 2.40.010 et seq.

C. The reinspection fee authorized by California Business and Professions Code Section 13350(e) shall be billed at an hourly rate set and reviewed annually by the Office of the Los Angeles County Auditor-Controller. The reinspection fee shall be paid within 60 days after the date billed by the Department.