

County of Santa Clara
Consumer and Environmental Protection Agency



24-3361

DATE: February 27, 2024 (Item No. {{item.number}})
TO: Board of Supervisors
FROM: Edgar Nolasco, Director, Consumer and Environmental Protection Agency
SUBJECT: Hearing for Ordinance Amendment Relating to Weighing and Measuring Device Fees

RECOMMENDED ACTION

Public hearing to amend Sections B30-1 through B30-4 of Chapter I of Division B30 of the Santa Clara County Ordinance relating to Weighing and Measuring Device fees. (Consumer and Environmental Protection Agency)

Possible action:

- a. Open public hearing and receive testimony.
- b. Close public hearing.
- c. Introduce and preliminarily adopt Ordinance No. NS-300.982, an Ordinance of the Board of Supervisors of the County of Santa Clara amending Sections B30-1 through B30-4 of Chapter I of Division B30 of the Santa Clara County Ordinance Code relating to fees for weighing and measuring devices.

FISCAL IMPLICATIONS

The Weights and Measures Division of the Consumer and Environmental Protection Agency (CEPA) has not proposed updates to weighing and measuring device registration fees in over ten years. The State legislature sets a cap on fees the County can charge, but had not passed legislation allowing for fee modifications since 2013. As a result, the County General Fund has, in effect, offset the total cost of mandated weighing and measuring inspection services as fees have not kept pace with the full cost of services. However, in October, 2023, Governor Newsom signed legislation increasing the cap on fees (AB 1304), thus permitting fee revision at the local level.

The County's primary role is as a safety net provider of services. Weighing and measuring inspections ensure our community receives accurate pricing and maintains fairness in the marketplace. These essential and mandated services protect the community's economic health by preserving and maintaining confidence in the accuracy of weighing and measuring

instruments, product standards, and business practices used in commerce. Due to State law, the County has not been able to incrementally increase weighing and measuring inspection fees to achieve full cost recovery, and thus fewer General Fund resources are available for the County's core mission. Total program costs for weighing and measuring inspections has increased by about 92% since 2014.

The Fiscal Year (FY) 2024-2025 General Fund budget shortfall is currently estimated to be around \$250 million. County Administration is reviewing all revenue opportunities to avoid direct service reductions and employee impacts and has requested that departments County-wide review their operational functions to find efficiencies and review fees and charges to ensure they are achieving full cost recovery. County departments received their reduction targets on November 3, 2023, and CEPA's Primary Target is \$1 million. County departments have undertaken formal reviews of revenues and expenditures to prepare budget proposals to meet their assigned reduction target.

CEPA recommends approving fees at the level allowed by law and annualizing the estimated revenue in the FY 2024-2025 base budget. Achieving better cost recovery would result in a net positive fiscal impact to the General Fund in the form of a reduced General Fund obligation to support the mandated weighing and measuring inspection operations. The proposed fee increase is necessary to recover a greater percentage of the costs of services since the State last permitted an increase to the cap on fees.

The budgeted revenue from weighing and measuring inspection fees in the current fiscal year is approximately \$603,000. If the Board adopts the recommended fee modifications effective July 1, 2024, it is estimated that an additional \$594,000 in revenue may be collected in FY 2024-2025. This would increase the cost recovery level for the Weights and Measures Division in FY 2023-2024 from 53% (estimate based on the FY 2023-2024 Adopted Budget) to 70% in FY 2024-2025, which is the average of the cost recovery rates that follow.

The level of cost recovery varies by device fee. At FY 2024-2025 program costs, the highest cost recovery rate is 94% for water meters, 87% for vapor meters, 38% for computing scales, and 83% for devices not otherwise specified.

In the absence of increasing fees to the limits allowed under State law, it would be necessary for CEPA to propose additional expenditure reductions to meet the budget reduction target to support County-wide efforts to close the FY 2024-2025 budget shortfall. Like many County departments, CEPA maintains services to the community with direct employee support. The proposed revenue increase from the fees would offset about 58% of CEPA's FY 2024-2025 \$1 million budget reduction Primary Target.

For CEPA to reduce the budget by 58% (\$580,000) without fee increases, cost reductions would likely come from the elimination of three to four full-time equivalent (FTE) unfilled and potentially filled positions, along with a decrease in all services provided by CEPA. Such a decrease would be a substantial reduction to CEPA's staff resources. Reductions within the Weights and Measures Division would impact the economic health of working families by putting them at risk of being overcharged for essential goods, such as, food, gasoline, and other commodities sold by weight or volume. Reductions elsewhere within CEPA would result in a variety of negative impacts, including increased public exposure to pesticides, increased incidents of agricultural pests, decreased agriculture-related revenues, increased fines paid by the County for failing to meet stormwater capture goals, failing to meet waste diversion goals, and euthanizing pets in our shelter that would otherwise be able to be placed with families.

REASONS FOR RECOMMENDATION AND BACKGROUND

Fees for weighing and measuring device inspections have not increased since 2013 when the last State statute setting the cap on fees was passed. Assembly Bill (AB) 1304 (Papan) was signed by Governor Newsom on October 8, 2023, and amends Sections 12240 and 12246 of the California Business and Professions Code (BPC) to increase the cap on annual weights and measures device registration fees. Section 12240 extends local authority to the Board of Supervisors to establish annual device registration fees and increase the fees to help to recover the costs related to inspecting or testing commercial weighing and measuring devices.

Many other counties throughout the state have increased their weights and measures device fees or have initiated the process as allowed under AB 1304 to recover the costs related to the inspection and testing of weighing and measuring devices.

Ordinance No. NS-300.982 would amend Sections B30-1 through B30-4 of Chapter I of Division B30 of the Santa Clara County Ordinance Code to reflect the proposed fee increases, with the new fees effective July 1, 2024. These fees represent the maximum annual fees allowed under State law and will bring the program to 70% cost recovery, a significant increase from the current cost recovery rate of 53%. The individual device fees vary, depending on the type of device, the complexity of testing and the frequency of testing requirements.

The proposed fee modification has been reviewed by the Controller-Treasurer Department to ensure the fees submitted for authorization comply with cost accounting guidelines.

In accordance with the California Environmental Quality Act (CEQA), the fee increase is not subject to CEQA pursuant to Section 15061(b)(3) and 15309 of the State CEQA Guidelines.

In 1984, the Board of Supervisors adopted an ordinance establishing an annual device registration fee for certain businesses that use commercial weighing and measuring devices and that are required to be tested and certified by the County Sealer of Weights and Measures. Those fees were authorized under State legislation to help offset costs to local governments of maintaining Weights and Measures Inspection Programs.

In 1989, 1992, and 1994, the ordinance code was amended by the Board of Supervisors to incorporate additional State legislative changes that expanded the devices subject to the fees, changed the fee schedule for certain devices, and increased the fee schedule.

In 2006, Assembly Bill 889 (Ruskin) amended the existing law by extending the sunset provision for the annual registration fees for five years, established a revised registration fee structure that includes both a per-location and a per-device fee, and increased the maximum annual fees over a three-year period. In 2006, 60% of the maximum annual fees were allowed, in 2007, 80% and in 2008, 100%. The individual device fees varied, depending on the type of device, the complexity of testing and the frequency of testing requirements. All fees established in AB 889 were maximum charges that may be established by local governments.

The Board of Supervisors adopted ordinance amendments permitted under AB 889 on three occasions:

- April 11, 2006, with adjusted fees effective July 1, 2006;
- April 10, 2007, with adjusted fees effective July 1, 2007; and
- April 28, 2008, with adjusted fees effective July 1, 2006.

Lastly, in 2013, AB 1623 further extended the authority to charge fees and revised the caps on device fees. Fees were subsequently increased to their current levels, effective July 1, 2013.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve the recommended action may impact the ability of the Department to provide mandated inspection services and not realize approximately \$590,000 in potential on-going revenue for the device inspection program. It will also adversely impact the Department's ability to approach full cost recovery, add to the General Fund obligation to support the services provided by the Department, and may require consideration of staff reductions.

STEPS FOLLOWING APPROVAL

The Clerk of the Board of Supervisors will send notification of completed processing to Adriana Lopez in the Consumer and Environmental Protection Agency.

ATTACHMENTS:

- BP 12240
- California-2023-AB1304-Chaptered
- W_M Ordinance Change REDLINE VERSION
- W_M Ordinance Change
- W_M Fee Approval Checklist
- Proof of Publication