

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

746



FROM: Executive Office

SUBMITTAL DATE:
July 21, 2009

SUBJECT: Response to the Grand Jury Report: Riverside County Business Registration and Licensing Program (Building and Safety Department)

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding the Riverside County Business Registration and Licensing Program (Building and Safety Department).
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On June 23, 2009, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding the Riverside County Business Registration and Licensing Program (Building and Safety Department).

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.


GARY CHRISTMAS
Chief Deputy County Executive Officer

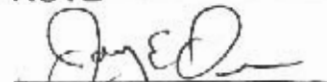
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FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

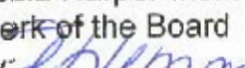
BY: 
Jay E. Orr

County Executive Office Signature

~~MINUTES OF THE BOARD OF SUPERVISORS~~

On motion of Supervisor Buster, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley
Nays: None
Absent: None
Date: July 21, 2009
xc: E.O., Grand Jury, Presiding Judge, Bldg. & Safety, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

Prev. Agn. Ref.: 3.12 – 06/23/09

District:

Agenda Number:

3.101

Dept Recomm: Consent Policy
Per Exec. Ofc.: Consent Policy

Departmental Concurrence

SPECIFIC FINDINGS AND RECOMMENDATIONS

BUSINESS REGISTRATION AND LICENSING PROGRAM

DEPARTMENT OF BUILDING AND SAFETY

FINDINGS:

Finding Number 1:

The intended application of BRLP is to register businesses in the unincorporated areas of Riverside County. The intent went further by expecting, but not requiring, other county departments to input their permitting information. This would result in the capture of fees not currently collected by the county.

Response:

-X- Respondent disagrees wholly with the finding.

This statement is incorrect based on the Feasibility Report which was presented to the Board on March 21, 2006. The Feasibility Report outlined the pertinent NPDES regulatory and compliance issues, with respect to the requirements of developing a data base and inspection program for commercial/industrial facilities. This report was prepared with input from TLMA, County Counsel, County Executive Office, Fire Department, Economic Development Agency (EDA), Department of Environmental Health, Agricultural Commissioner's Office and the Sheriff's Department. The Business Registration and Licensing Program (BRLP) was a natural outgrowth of the research conducted.

In November of 2006, the Board of Supervisors adopted Ordinance No. 857 establishing a business registration and licensing program. The program was implemented by the Department of Building and Safety with the help of the Executive Office and County Council.

In an attempt to provide a starting point, lists from the Department of Environmental Health, Agricultural Commissioner's Office and the County Treasurer/Tax Collector were utilized to establish a database. A registration application was developed and sent to all known businesses in the unincorporated regions of the County. In addition, as part of the development review process, a condition for new businesses to register was required. It is a misconception that a significant capture of fees not currently collected would be realized from this effort. Each "fee-for-service" department utilizes various tools and techniques to collect recalcitrant fees and locate un-registered businesses.

Unlike most cities that utilize the business licensing program as a revenue generating entity, the County of Riverside chose to enact a multi-tier revenue

neutral program for the registration of businesses in the unincorporated portion of the county. The tiered fee system easily accommodates the Municipal Separate Storm Sewer System (MS4) requirements of San Diego Regional Water Quality Control Board (San Diego RWQCB) Order R9-2004-0001. Once a business files an application, it is reviewed and based upon the business's Standard Industrial Code (SIC), it is categorized into three MS4 categories (high, medium and low), and a supplemental fee is collected based upon the hourly rate to perform an MS4 industrial/commercial inspection.

Finding Number 2:

As it now exists, the BRLP does not serve the purpose for which it was intended. This causes many instances of duplication of effort or no action at all, resulting in unnecessary expense and/or loss of revenue. Investigation has shown there is little or no utilization of the program to notify other county agencies, which may have an interest in features of the same business.

-X- Respondent disagrees with the finding.

Based on the September 12, 2006, report which addresses the issues related to both the BRLP and MS4 commercial/industrial compliance program, the BRLP was initiated in response to the MS4 permit requirements issued by the San Diego RWQCB. They have mandated that specific business types be identified, prioritized and inspected for municipal stormwater management requirements and ensure that those business entities have implemented Best Management Practices (BMP's) to prevent illicit discharges into the stormwater system that could ultimately impair water quality. The BRLP provides a low cost mechanism that provides the information it is required to collect based on the report.

Based on the number of departments, agencies, and services each provides, it is unrealistic to think that one database will meet the needs of multiple county departments that serve a population of over 2 million people. County departments have made significant investments in specialized data collection systems for land use and development, Environmental Health, Public Health (Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (HIPAA) compliance required), Riverside County Regional Medical Center (RCRMC) (HIPAA compliance required), Sheriff, District Attorney, Public Social Services, Human Resources, etc.

Granted, the information collected through the BRLP should be better utilized by fee generating/inspection oriented departments, but only as a tool as field verification is necessary to ensure regulatory compliance with mandated programs. Once verified, updates can be made that are database specific. An effort will be made to better distribute the data collected to other departments.

Finding Number 3:

The BRLP is designed as a two-tier system, the first tier of which contains only information that is not of a personal nature. The casual seeker of information can retrieve no more than the name of the business, address, telephone number and type of business in which it is engaged. The second tier, which is only accessible to personnel of the BRLD, contains much more data protected by privacy statutes. This tier's data is only given to those who make a formal request to BRLD and can show a legitimate need for the information. The program requires several follow-up efforts via telephone and/or e-mail to finally obtain the necessary data.

-X- Respondent disagrees wholly with the finding.

There is a balance between freedom of information and data that needs to be protected by privacy statutes and trade secret protection. The general need-to-know requires a higher standard. For example, if a business handles hazardous materials, the community has the "right to know" the hazards associated with living near such a facility. However, the proprietary and trade secret information associated with the process that the hazardous material is used in, is protected. As a further explanation, public safety first responders (Fire, Health, Medical) need information to make informed decisions on mitigating on-site spills, fires, off-site discharges, and need access to maps, inventories, and to key personnel.

The expectation by an individual person to get immediate and unobstructed access to government files is irrational. A citizen making a public inquiry to local government as it relates to a business has restrictions and, therefore, it takes time by the public agency to provide only that information that is allowed by law. These laws are in place to protect sensitive information from getting into the hands of terrorists or people who have deceitful intent. Again, the use of the BRLP data base by other departments is only a tool not a proprietary instrument.

Finding Number 4:

Due to lack of direction by the Riverside County Board of Supervisors and the County Executive Officer to the implementation of BRLP, the result is an ineffective system, which does not fulfill its original intent.

-X- Respondent disagrees wholly with the finding.

The Board of Supervisors is a policy making body; Ordinance No. 857 was enacted by the Board of Supervisors and the responsibility for implementation was assigned to the Department of Building and Safety. The Transportation and Land

Management Agency which serves as the overarching agency for transportation and land management issues went through a significant reorganization in early 2007, during which time the Code Enforcement Division of the Department of Building and Safety was elevated to a stand alone department. This change in program focus and transfer of personnel resulted in a slower than anticipated program implementation.

The Executive Office and County Counsel were instrumental in helping the Department of Building and Safety in developing Ordinance No. 857 and provided significant resources to ensure that those aspects of the program related to procedures, the development of a database, prioritization of businesses, and instituting an industrial and commercial MS4 inspection program were in place that met with the intent of the San Diego RWQCB Board Order R9-2004-0001.

The Grand Jury's Report is a general overview of the BRLP. However, it really fails to address and detail the complicated intricacies of local government organizations. The added cost to re-engineer a database management system and the retraining of all data entry staff on a one-size-fits-all database management system that will meet the needs of a multi-dimensional government structure is an insurmountable task and a budgetary "black hole". The fees needed to implement such a program would be a detriment to the BRLP as well as local businesses already struggling through these economic times.

The original intent of the Grand Jury's recommendation for a business licensing program failed to address the primary intent of such a program; the County took the initiative to develop a low cost program that meets the immediate and long term needs as it relates to the ultimate use by the County.

In conclusion, the Transportation and Land Management Agency disagrees with the Grand Jury findings. The original purpose of the Grand Jury recommendation would have been costly to the tax payers of Riverside County to implement. The County took appropriate initiative to provide a cost effective, fee neutral program that provides the information necessary to meet the regulatory intent of San Diego RWQCB Board Order R9-2004-0001.

As with any program in its infancy, program evaluation and constructive criticism is important to ensure improvement. Strides will be taken to make refinements to enhance and better use the BRLP.

RECOMMENDATIONS:**Recommendation Number 1:**

When this system is properly implemented, its use must be mandated by the Board of Supervisors to enable all county departments and agencies to develop data and share appropriate information with other agencies having similar needs.

-X- The recommendation will not be implemented because it is not warranted or is not reasonable.

The Building and Safety Department implemented the BLRP under Board of Supervisors direction to minimize impacts to the regulated community and keep fees at a level to maintain revenue neutrality. As stated above, It is an unrealistic expectation to design one database system that can accommodate the needs of all county departments and agencies. Certain aspects of the data collection is protected by privacy laws and not subject to review by the general public, nor should some allied county department have access to some of the data that is sensitive in nature. The cost associated with developing a database management system that the Grand Jury is envisioning is cost prohibitive and would be difficult to administer.

See comments to Recommendations 2, 3 and 4 for additional detail.

Recommendation Number 2:

Redesign or replace the BRLP with software providing the necessary data required by all county agencies to meet the needs for which it was originally intended. It is essential that all permitting departments of the county government, which have legal requirements, enter data into and retrieve data from the system on a timely basis.

-X- The recommendation requires further analysis.

The Department of Building and Safety is in the process of re-establishing contacts with County Executive Office, Fire Department, Economic Development Agency (EDA), Department of Environmental Health, Agricultural Commissioner's Office and the Sheriff's Department. The goal is to obtain input from these departments on the information they would like to see added or changed in BRLP data base. Once this has been analyzed and the information is reviewed by County Counsel the data will be posted to an intranet site so the data can be accessed by other County Departments. The data base is scheduled to be posted no later than January 1, 2010.

Recommendation Number 3:

Redesign or replace BRLP to allow direct access to the second tier by those agencies which, require specific information for their operations, which would be more cost effective.

-X- The recommendation requires further analysis.

As the department of Building and Safety gathers the input and recommendations from the departments previously identified, analysis of the data will be needed from County Counsel in order to ensure privacy laws are followed. This must be done prior to sharing the data with other County Departments. In addition, the data which is currently made available via the internet will be reviewed to see if any additional information can be added for improved use by the public. The revised data base should be made available no later than January 1, 2010.

Recommendation Number 4:

The Riverside County Board of Supervisors and County Executive Officer must be more active in the implementation and monitoring of the previously approved countywide computer system.

-X- The recommendation will not be implemented because it is not warranted or is not reasonable.

The recommendations by the Grand Jury, implementation of a County wide Business Licensing Program cannot be done with out substantial costs, additional staffing, training and impacts to county businesses. This cost would have to be supported by increased registration fees, which will directly impact businesses currently registered or require additional general fund support. Neither of these is a viable option at this time. However, the County agrees that collaboration and information sharing with other county departments is an essential component toward reaching program efficiencies. The increased collaboration, improvements to the data and greater access to the information will provide the needed improvements to this program.