

ORDINANCE NO. 10200 (N.S.)

**AN ORDINANCE AMENDING THE
SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES
RELATING TO POINT-OF-SALE SYSTEMS**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that there are a significant number of persons using point-of-sale (POS) systems for commercial purposes. The Board further finds that the testing and inspection program for the POS system protects the consumers in the County of San Diego. The Board further finds that currently all annual registrations of commercial POS systems pose a problem for all businesses that have paid their registration fees, but have lost, misplaced or have not received the certificate through the mail, and causes the Department of Agriculture, Weights and Measures (AWM) to print and mail thousands of these documents. The Board further finds that a person who has completed a registration on file and have paid the appropriate fee will have a valid registration. The Board further finds that not printing and mailing registrations would allow AWM to provide consistent high-level customer service, as well as save resources by not printing and mailing over 12,000 thousand pieces of paper annually. The Board further finds that it is necessary to clarify other ordinance provisions to specify that it is the responsibility of the business owner/operator to apply for a POS system registration, and to make other clarifications that the ordinance provisions govern the registration, not the use, of the POS system.

Section 2. Section 21.2001 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2001. PURPOSE AND AUTHORITY.

Retail establishments primarily use automated checkout systems, called "point-of-sale systems," to calculate the prices consumers pay for commodities. When these systems are inaccurate, consumers may be overcharged and unaware they have paid more than an advertised or quoted price. Business and Professions Code sections 13350 et seq. were enacted to provide criteria for counties that adopt ordinances to inspect point-of-sale systems. The Board of Supervisors finds and declares it is in the public interest for the County Sealer of Weights and Measures to register and inspect point-of-sale systems. This chapter provides a regulatory program for the County Sealer to register and inspect

automated point-of-sale systems to protect San Diego consumers and to recover the County's regulatory costs. This chapter also makes it unlawful to fail to register a point-of-sale system used for commercial purposes.

Section 3. Section 21.2002 of the San Diego County Code is hereby amended to read as follows:

The following definitions shall apply to this chapter:

- (a) "Commercial purposes" means determining the price consumers pay for retail products.
- (b) "Commodity" means any product sold at retail to a consumer.
- (c) "Point-of-sale system" has the same meaning as "point-of-sale system" in the Business and Professions Code section 13352.
- (d) "Point-of-sale station" means a checkout counter or other place in a retail establishment where a transaction occurs between a retailer and a consumer using a "point-of-sale system" to determine the price a consumer pays for an item.
- (e) "Sealer" means the County Sealer of Weights and Measures, a Deputy Sealer or an inspector employed by the County Department of Agriculture, Weights and Measures for the purpose of enforcing this chapter.

Section 4. Section 21.2003 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2003. REGISTRATION REQUIRED.

A person who owns or operates a point-of-sale system used for commercial purposes shall be currently registered with the Sealer under this chapter. A separate registration shall be required for each business location. It shall be unlawful for a person to fail to register with the Sealer before using a point-of-sale system for commercial purposes. This registration shall be in addition to any other registration, license or permit which may be required by the County or any other public entity.

Section 5. Section 21.2004 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2004. APPLICATION FOR REGISTRATION.

An application for an initial or renewal registration shall be submitted to the Sealer on a form prescribed by the Sealer. The registration shall be deemed granted and become effective upon the Sealer's receipt of a completed application and the fee prescribed by this chapter or upon receipt of just the fee when no application is required.

Section 6. Section 21.2005 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2005. TERM AND TRANSFERABILITY OF REGISTRATIONS.

(a) Registrations are grouped into quarterly periods. The registration periods under this chapter are from January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31. A registration is valid for up to one year. A registration that is granted during any one of these registration periods expires on the first day of the same registration period of the following year. For example, a registration that is completed on March 3, 2011 expires on January 1, 2012.

(b) Renewal of a registration is the responsibility of the person who owns the business location that uses a point-of-sale system and shall be made in a manner similar to the original registration.

(c) A registration shall not be transferable from one person to another person or from one business location to another business location.

Section 7. Section 21.2006 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2006. REGISTRATION, RENEWAL, RE-INSPECTION FEES AND LATE PENALTIES.

(a) A registration fee and a re-inspection fee for a person utilizing a point-of-sale system shall be established, from time to time, by the Board of Supervisors, in accordance with applicable provisions of law, in amounts not to exceed the costs incurred by the County in performing the inspection, re-inspection, testing and registration functions to which the fees relate. The registration fee for a point-of-sale system to be used for commercial purposes at the business location shall be as prescribed in County

Administrative Code section 364.3 and is due on the first day of the applicable registration period.

(b) A person who fails to register a business location that has a point-of-sale system used for commercial purposes shall be in violation of this chapter. A person required to register under this chapter shall be subject to a late penalty of 50% of the registration fee if the person fails to register within 30 days of the due date. Additional late penalties of 50% of the registration fee shall be levied for each 30 days thereafter that the business location remains unregistered, up to a maximum late penalty of 200%.

(c) A person required to renew a registration for a business location under this chapter shall be subject to a late penalty of 50% of the registration fee if the person fails to register the business location within 30 days of the registration renewal date. Additional late penalties of 50% of the registration fee shall be levied for each 30 days thereafter that the registration is not renewed, up to a maximum late penalty of 200%.

(d) The Sealer may charge a re-inspection fee to recover the Sealer's cost for re-inspecting a point-of-sale station that failed the prior inspection. The fee shall be as prescribed in Administrative Code Section 364.3.

(e) Nothing in this section limits the County's right to prosecute and/or pursue civil penalties against an owner or operator of a business location who uses a point-of-sale system for commercial purposes in violation of this chapter.

Section 8. Section 21.2008 and 21.2009 of the San Diego County Code is hereby repealed as follows:

SEC. 21.2008. Repealed.

SEC. 21.2009. Repealed.

Section 9. Section 21.2010 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2010. POSTING OF NOTICE TO CONSUMERS.

(a) Every person who is required to register under this chapter shall post the following Attention Consumers at each point-of-sale station:

"ATTENTION CONSUMERS

Check your receipt and notify store management immediately of any overcharge.

Consumers are entitled to pay no more than the lowest posted, advertised, or quoted price for any commodity offered for sale at a retail establishment.

For information or to file a complaint, contact:

County of San Diego

Department of Agriculture, Weights and Measures at: 1-888-TRUE-SCAN (1-888-878-3722) or www.sdcawm.org"

The end of the Attention Consumers shall list the phone number and website address provided by the Sealer.

(b) Each Attention Consumers shall be posted so that it is conspicuous and easily read from a typical customer position at each point-of-sale station. The notice shall contain the wording required in subsection (a) above, be printed in English in letters at least 1/16 of an inch high, be legible and a color that contrasts with the background color of the notice.

(c) The Sealer shall provide a copy of the Attention Consumers upon request to any person required to be registered under this chapter. Alternatively, a Attention Consumers not prepared by the Sealer, may be used provided it contains the wording required in subsection (a) above and is printed in English in letters that are at least 1/16 of an inch high, are clearly legible and are in a color that contrasts with the background color of the notice.

Section 10. Section 21.2011 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2011. POSTING OF NOTICE OF FAILED INSPECTION.

(a) If the Sealer finds during an inspection under this chapter that a person is overcharging more than \$1.00 on a single item or overcharging on 2 or more items, without regard to the amount and the person's conduct results in a criminal conviction, civil penalty or administrative civil penalty, the Sealer may require the person to post a "Notice of Failed Inspection." If the Sealer requires a Notice of Failed Inspection, the Sealer shall provide the notice with final Notice of Decision on the violation. This is in

addition to any fines that are authorized pursuant to Business and Professions Code Section 12024.2 et seq.

(b) A person who receives a "Notice of Failed Inspection" shall post the notice within 24 hours of receiving it and shall post it for 10 consecutive days from the date first posted in the required location. The person shall post the notice so that it is clearly visible to any customer entering the business. The notice shall be posted at each entrance through which customers may enter the business or on a window facing outward, within three feet of any entrance, no lower than four feet off the ground and no higher than five feet off the ground. If the Sealer determines that the person has not properly placed the notice, the person shall relocate the notice as directed by the Sealer.

(c) It shall be unlawful for the a person to fail to post the "Notice of Failed Inspection" or for a person, other than the Sealer, to cause the notice to be removed, covered, hidden or altered while it is required to be posted.

Section 11. Section 21.2012 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2012. POSTING OF NOTICE OF PASSING INSPECTION.

If a person passes an inspection under this chapter the Sealer shall offer to provide a "Notice of Passing Inspection." If a person requests the Sealer to provide a notice under this section, the notice shall only be posted for 10 days and shall only be a notice prepared by the Sealer.

Section 12. Section 21.2013 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2013. Repealed.

Section 13. Section 21.2014 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2014. Repealed.

Section 14. Section 21.2015 of the San Diego County Code is hereby amended to read as follows:

SEC. 21.2015. Repealed.

Section 15. This ordinance shall take effect and be in force and effect 30 days after its passage, and before the expiration of 15 days after its passage, a summary hereof shall be published once with the names of the members of the Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 14th day of March, 2012.