

ORDINANCE NO. 9004 (N.S.)

AN ORDINANCE ADDING CHAPTER 20 TO DIVISION 1 OF TITLE 2 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCE RELATING TO AUTOMATED POINT-OF-SALE STATIONS AND CONSUMER PROTECTION.

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

Section 1. The Board of Supervisors finds and determines that it is in the public's interest to identify, inspect, and register automated point-of-sale stations, commonly known as "price scanners," used for commercial purposes and to monitor persons utilizing such devices. The additions made by this ordinance are intended to authorize the Department of Agriculture, Weights and Measures to identify, inspect, and register automated point-of-sale stations and to monitor persons utilizing such devices.

Section 2. Chapter 20, entitled "CONSUMER PROTECTION," is added to Division 1 of Title 2 of the San Diego County Code of Regulatory Ordinances, to read as follows:

CHAPTER 20. CONSUMER CONFIDENCE PROTECTION ACT

SEC. 21.2001. PURPOSE AND AUTHORITY.

Under Business and Professions Code section 12024.2, it is unlawful to compute at the time of sale of a commodity a value that is not a true extension of a price per unit or to charge a value that is more than the price that is advertised, posted or quoted. The purpose of this Chapter is to prevent violations of Business and Professions Code section 12024.2 by establishing a system to identify, inspect, and register automated point-of-sale stations used for retail commodity sales and to recover the cost of the testing and inspection of these regulatory activities. The authority for this Chapter is Business and Professions Code section 12103.5.

SEC. 21.2002. DEFINITIONS.

For the purpose of this Chapter, unless the context otherwise requires, the following words and phrases are defined and shall be construed as having the following meaning:

- (a) The term "Department" shall mean the County of San Diego Department of Agriculture, Weights and Measures.
- (b) The term "Person" shall have the same meaning assigned to it by Business and Professions Code Section 12011.
- (c) The term "Sell" shall have the same meaning assigned to it by Business and Professions Code Section 12009.

- (d) The term “commodity” shall mean any article of commerce or anything that is bought or sold.
- (e) The term “Point-of-Sale Station” or "price scanners" shall mean each individual, separate location where consumers are charged for the purchase of commodities by using equipment that is capable of recovering electronically stored price information by reading a bar code printed on the product or on a label. The term "Point-of-Sale Station" shall include, but is not limited to; equipment that use Universal Product Code scanners; price look-up codes; or any other system that relies on the retrieval of electronically stored information to complete a transaction of commerce between a retailer and a customer.
- (f) The term “Location” shall mean any room, enclosure, building, vehicle, space or area that contains a point-of-sale station.
- (g) The term “Commercial Purpose” includes any sale of a commodity or thing by a person to a consumer.
- (i) The term “re-inspection” shall mean the re-testing or re-examination of a point-of-sale station after the Department has determined that a violation of this Chapter, and applicable State law existed and ordered to be corrected.

SEC. 21.2003. PERMIT CERTIFICATE REQUIREMENT/EXEMPTIONS.

(a) It shall be unlawful for a person to use a point-of-sale station for commercial purposes without first obtaining a permit in accordance with the provisions of this Chapter. A separate permit shall be required for each establishment location.

(b) A person using a point-of-sale station for commercial purposes in an establishment of 3,500 square feet or less of enclosed retail structure and with commercial devices validly registered with the county sealer pursuant to Chapter 17 of Division 1 of Title 2 of the San Diego County Code of Regulatory Ordinances shall be exempt from the fee requirements of this Chapter.

SEC. 21.2004. APPLICATION FOR PERMIT.

An application for a permit must be submitted to the Department in the form prescribed by the Department. The Department shall issue the permit upon receipt of a completed application and the payment of all-applicable fees and late penalties as set forth in Section 21.2006 of this Chapter.

SEC. 21.2005 DURATION AND TRANSFERABILITY OF PERMIT.

(a) All permits issued pursuant to this Chapter shall be valid for one year beginning September 1<sup>st</sup>, except as otherwise provided in Section 21.2006 (c) of this Chapter. Renewal of a permit is the responsibility of the permittee and shall be made in a manner similar to the issuance of the original permit.

(b) Permits shall not be transferable between persons or establishment locations.

(c) Permittees shall not lease, sublet, subcontract, or in any manner to permit any person or entity to engage in activities regulated under the permit, except as an employee of the permittee.

SEC. 21.2006 FEES AND PENALTIES.

(a) A re-inspection fee, the permit fee and all applicable penalties for any person utilizing a point-of-sale station shall be established, from time to time, by the Board of Supervisors by resolution, 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 permitting functions to which the fees relate. The fees and penalties shall be reviewed not less than every five- (5) years.

(b) Any registration certificate for which the fees have not been paid within thirty (30) days, from the date such payment is due, is subject to a penalty accruing each thirty (30) days which elapse without payment received, up to a maximum one-hundred percent (100%) of the original amount due.

(c) Upon implementation of this section, the Department may collect the initial permit fee for a period of eighteen (18) months, in which case the fees shall not exceed one and one-half (1 ½) times the amount of an annual fee. Thereafter, the Department may collect the permit fee annually, to be due and payable each first day of September.

SEC. 21.2007 PERSONS TO WHOM PERMIT ISSUED.

A permit may be issued to a corporation or association duly authorized to transact business in this state, or to a person operating under a fictitious name who has complied with all of the provisions of Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code. Otherwise all such permits shall be issued in the true name of the applicant. Except as provided above, no business, occupation or activity for which this Chapter requires a permit may be conducted under any false or fictitious name. A permit issued to a corporation shall designate such corporation by the exact name as it appears in the Article of Incorporation of such corporation.

SEC. 21.2008 LOST CERTIFICATE.

If a current permit has been lost, the person to whom it was issued may obtain a replacement permit from the Department upon request and payment of a nominal replacement fee.

SEC. 21.2009 POSTING PERMIT.

At each establishment location, the applicable permit shall be conspicuously posted at all times on the premises for which it was issued and shall be available to any official of the Department.

SEC. 21.2010 VIOLATIONS.

It shall be unlawful for any person or permittee, employee or agent thereof to do any of the following:

- (a) Use a point-of-sale station without a current permit.
- (b) Fail to post the current permit as required.
- (c) Fail to comply with applicable State laws regarding point-of-sale stations.

SEC. 21.2011

Prior to the refusal to grant or renew any such permit, and prior to revocation or suspension of such permit, the applicant or permittee shall be entitled to a hearing in accordance with Business and Professions Code Section 12015.3.

SEC. 21.2012 RESTORATION OF SUSPENDED/REVOKED PERMIT.

A suspended or revoked permit shall be restored or reissued by the Department when the applicant or permittee has corrected all violations to the satisfaction of the Department and is in full compliance with applicable State law and with this Chapter.

SEC. 21.2013 RE-INSPECTION FEE.

For the purpose of defraying additional inspection costs incurred by the Department when a point-of-sale station used by a person fails an inspection, the Department may charge a re-inspection fee to the person upon return to verify that the violation has been corrected. The re-inspection fee shall include, but is not limited to, inspector costs, mileage, etc.

SEC. 21.2014 VIOLATION – INFRACTION – MISDEMEANOR.

- (a) Except as provided in Subsection (b), any person violating any provision of this Chapter shall be deemed guilty of an infraction.
- (b) A person convicted of a second or subsequent violation of this Chapter within two years from the date of the first conviction shall be guilty of a misdemeanor punishable by a fine not to exceed five-hundred (\$500) dollars or by imprisonment for a period

of not more than six (6) months in the County jail or by both such fine and imprisonment.

(c) Each day or portion thereof a violation exists or continues shall be a new and separate offense.

(d) Payment of any imposed fine or service of a jail sentence shall not relieve a person from the responsibility of correcting the condition resulting from the violation.

(e) In addition to the above fines, the court may order that the guilty party shall reimburse the County for all costs incurred in the investigation, and prosecution of the enforcement action against the guilty party. The court shall fix the amount of such reimbursement upon the submission of proof of such costs by the County.

SEC. 21.2015. OPERATIVE DATE OF CHAPTER

This Chapter shall become operative at 12:01 a.m., on March 1, 1999.

PASSED, APPROVED, AND ADOPTED this 2nd day of February, 1999.