

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 30, ARTICLE I OF THE SONOMA COUNTY CODE

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

SECTION I.

(a) Pursuant to the Business and Professions Code, the County Sealer is charged with the inspection and testing of weighing and measuring devices and point-of-sale pricing systems.

(b) Sections 12240 and 13350 of the Business and Professions Code permit the County to recover through registration fees and re-inspection fees the costs of such inspection and testing, subject to the limitations set forth in those sections.

(c) Sections 12440 and 13350 were amended effective January 1, 2006, necessitating certain amendments to Chapter 30, Article I of the Sonoma County Code.

SECTION II.

Chapter 30, Article I of the Sonoma County Code, pertaining to the inspection and testing of weighing and measuring devices and point-of-sale pricing systems, is amended to read as follows:

Division A. Inspection and Testing of Weighing and Measuring Devices

Sec. 30-1. Purpose and authority.

The purpose of this article is to establish a system for registering commercial weighing and measuring devices and to recover the costs of inspecting and testing such devices by the County Sealer pursuant to California Business & Professions Code Division 5, Section 12210 and to recover the cost of carrying out Section 12211.

Sec. 30-2. Definitions.

(a) "Division of Weights and Measures" means the Office of the Agricultural Commissioner-Sealer of Sonoma County and its agents and employees duly authorized to act on behalf of said Office.

(b) “Weighing and measuring devices” means the devices specified in Section 12210 of the Business & Professions Code.

(c) “Business Location” has the meaning set forth in Section 12240(o) of the Business & Professions Code or its successor provision.

(d) “Sealer of Weights and Measures” or “Sealer” means the Sonoma County Agricultural Commissioner-Sealer and his or her duly authorized agents.

Sec. 30-3. Device registration.

No person shall use any commercial weighing or measuring device without first registering the device with the Division of Weights & Measures. The registration shall be in addition to any other certificate, license, or permit which may be required by the county or any other public entity.

Sec. 30-4. Application for registration.

Applications for device registration and renewals thereof shall be filed with the Sealer upon such form as he or she may prescribe.

Sec. 30-5. Term of registration.

A registration shall be valid for the 12-month term set by the Sealer.

Sec. 30-6. Fees.

(a) The annual fee for registering weighing and measuring devices to be used for a fixed location throughout the term of the registration shall be set by the Board from time to time by ordinance.

(b) The annual fee for registering weighing and measuring devices set by the Board pursuant to Section 30-6(a) shall be consistent with the provisions of Section 12240, Division 5, California Business & Professions Code, and its successor provisions.

(c) Should Section 12240 not be effective after January 1, 2011, the Sealer shall submit and the Board of Supervisors shall adopt by ordinance a schedule of registration fees for weighing and measures devices consistent with the provisions of applicable law and sufficient to cover the costs of carrying out Division 5

(d) The Sealer may recover his or her costs for testing or re-testing devices found in violation of Section 12107, Division 5, California Business & Professions Code.

(e) The revenue from the fees charged pursuant to this section shall be placed in the general fund of the county and used solely for activities substantially related to inspection and testing of weighing and measuring devices, within the limits of applicable state law as provided in Section 12240, California Business & Professions Code.

Sec. 30-07. Late Registration Fees.

In accordance with section 30-6, any registration fee not paid within 30 days of the date when due is delinquent. The original fee remains due and shall be subject to a penalty of 50% of the original fee, and fees not paid within 60 days past the original due date shall be subject to a penalty amount equal to 100% of the original fee to cover the additional costs associated with late registration.

Sec. 30-8. Transfer of Registration.

A registration certificate is not transferable from one person to another, and is only valid for the specific devices, and, if the devices are to be used at a fixed location, for the location for which it is issued.

Sec. 30-9. [Deleted]

Division B. Automated Point of Sale Station Registration.

Sec. 30-10. Purpose and Authority.

It is unlawful to charge, at the time of sale, a price that is more than the price that is advertised or posted. Pursuant to California Business and Professions Code sections 12024.2, 12024.6, and 12103.5 the purpose of this Chapter is to ensure that the advertised or posted price of a commodity is the correct price charged for that commodity.

The Board of Supervisors finds and determines that it is in the public's interest to identify, register, and inspect automated point-of-sale systems, commonly known as "scanners," and to monitor the accuracy of such systems.

This Chapter (1) establishes a system to identify, register and inspect point of sale stations in retail commodity sales; (2) authorizes a registration fee to offset the expense of inspection of point of sale stations; (3) authorizes a re-inspection fee, equal to the registration fee, to offset the expense of re-visiting and inspecting locations found out of compliance; and (4) provides penalties for failure to register or for late registration and for violations.

Authority to administer this chapter shall be vested in the Office of the Agricultural Commissioner – Sealer of Weights and Measures.

The standards for inspection and methods to gain compliance to insure accurate pricing shall be found in Division 5 of the California Business and Professions Code and Title 4 of the California Code of Regulations.

Sec. 30-11. Definitions.

For the purpose of this Division, the following words and phrases are defined and shall be construed as having the following meaning:

(a) “Division of Weights and Measures” means the Office of the Agricultural Commissioner-Sealer of Sonoma County and its agents and employees duly authorized to act on behalf of said Office.

(b) “Person” shall mean any person, firm, corporation, business, or association.

(c) “Sell” includes barter, exchange, trade, keep for sale, offer for sale or expose for sale in any of their variant forms.

(d) “Point of sale station” shall mean individual and separate equipment that is capable of recovering electronically stored price information that is used to charge consumers for the purchase of commodities. “Point of sale stations” shall include, but is not limited to, equipment that uses Universal Product Code scanners, price look-up codes, or any other system of commerce between a retailer and consumer.

(e) “Commercial purpose” includes any sale of a commodity or thing by a person to a consumer. “Commercial purpose” in this Division does not include the sale of any item by a government entity.

(f) “Commodity” shall mean any article of commerce or anything that is bought or sold.

(g) “Advertise” shall mean a notice to attract public attention or identify a commodity for sale.

(h) “Term of Registration” shall mean any twelve (12) month period determined by the Sealer.

Sec. 30-12. Registration Requirements.

It shall be unlawful for a person to use a point of sale station for commercial purposes without first registering the system in accordance with the provisions of this Chapter. Separate registration shall be required for each business location. This registration shall be in addition to any other certificate, license, or permit which the County or any public entity may require.

Sec. 30-13. Duration; Prohibition on Transfer of Registration.

(a) All registrations shall be valid for up to one year and expire on the last day of the term of the registration. Renewal of a registration shall be made in a manner similar to the issuance of the original registration. Registrations not renewed 30 days from the due date shall be considered expired until such time as the Division of Weights and Measures has received the fee and the applicable penalty fee.

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

(c) In the case where a holder of a registration leases, sublets, subcontracts, or in any manner allows any other person or entity to engage in activities regulated, all point of sale stations remain the responsibility of the registrant. Otherwise the other person or entity shall obtain a separate registration in accordance with the provisions of this Chapter.

Sec. 30-14. Annual Registration Fee.

An annual registration fee is required of each business location in the County that operates a point of sale system for commercial purposes. The annual registration fees are as follows:

1 to 3 Point of Sale Stations: 25 Sample Lot -- \$150.00 per business location

4 or more Point of Sale Stations: 50 Sample Lot -- \$220.00 per business location

Sec. 30-15. Registration Fee, Penalty Fee, Payment and Use.

(a) The registration fees required by section 30-14 shall be due and payable at the commencement of each term of registration. For businesses commencing operations during the term of registration, the fees shall be due and payable as of the date of commencement. Fees are not pro-rated for portions of the term of registration.

(b) The Sealer may charge a re-inspection fee, equal to the County's cost of re-inspection or retesting, as determined by the Board of Supervisors annually by resolution, for retail establishments that fail a standard inspection as defined in Section 13350, Division 5, California Business and Professions Code and its successor provisions.

(c) The fees collected shall be placed in the general fund of the county and used solely to recover the costs of registration and inspection of point of sale systems.

Sec. 30-16. Late Registration Fees.

In accordance with sections 30-14 and 30-15, any registration or re-inspection fee not paid within 30 days of the date when due is delinquent. The original fee remains due and shall be subject to a penalty of 50% of the original fee, and fees not paid after 60 days past the original due date shall be subject to a penalty amount equal to 100% of the original fee to cover the additional costs associated with late registration or payment.

Division C. Penalties for Violations of Registration Provisions.

Sec. 30-17. Penalties for Violations.

(a) It shall be unlawful for any person, or any registrant, employee, or agent thereof to violate the provisions of this Chapter, and specifically it shall be unlawful to use unregistered weighing and measuring devices or unregistered point of sale stations.

(b) Unless otherwise provided, any person failing to comply with the registration provisions of this Chapter shall be guilty of an infraction or misdemeanor as hereinafter specified:

(1) A first offense shall be charged as an infraction. If convicted, the offense shall be punishable by a fine not exceeding one hundred dollars (\$100). Notwithstanding the foregoing, if the violation appears to be unknowing and the offender corrects the violation promptly upon notification, the Sealer may, in lieu of recommending criminal prosecution, accept payment of the original fee and late fee charge, and the additional payment of \$100 additional processing fee. A subsequent violation will be treated as a second offense, punishable as set forth in paragraph 2 below.

(2) Any subsequent offense shall be charged as a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars (\$1,000) and not less than five hundred dollars (\$500), or any other penalty imposed by a court, or both.

(c) Payment of any fine or other penalty imposed by a court shall not relieve a person from the responsibility of registering a weighing or measuring device or a point of

sale station and paying the applicable registration fee, as required by Sections 30-3, 30-6, 30-12, and 30-14 of this Chapter.

(d) In addition to all other remedies provided by this Chapter or state law, the Department may seek injunctive relief to restrain continuing violations of the provisions of this Chapter. Nothing in this chapter shall preclude the Sealer from seeking civil penalties pursuant to Business and Professions Code sections 12015.3 or 12024.2, or pursuing any other remedy available to the Sealer under Division 5 of the Business and Professions Code.

SECTION III. Effective as of January 1, 2007, the annual fee for registering weighing and measuring devices to be used for a fixed location throughout the term of the registration shall be as set forth below, provided, however, that in no event shall the annual registration fee exceed \$1,000.00 for each business location:

	Device		
Device Type	Code	<i>Effective Jan. 1, 2007</i>	
		Location Fee	Device Fee
			per # of device
Retail Motor Fuel	8	\$70.00	\$14.00
Wholesale Meter	16	\$70.00	\$17.50
Vehicle Meter	14	\$70.00	\$17.50
Retail Water Meter	10	\$70.00	\$14.00
Taxi	12	\$70.00	\$14.00
Fabric/Cord/Wire	3	\$70.00	\$14.00
Liquid Petroleum Gas	5	\$70.00	\$122.50
MHP Electric	2	\$70.00	\$2.00
MHP Vapor	13	\$70.00	\$2.00
MHP Water	15	\$70.00	\$2.00
Vehicle Scale	28	\$70.00	\$175.00

Hopper (10,000 lbs)	22b	\$70.00	\$175.00
Crane	20	\$70.00	\$105.00
Hopper (2,000-10,000 lbs)	22a	\$70.00	\$105.00
Monorail	25	\$70.00	\$105.00
Dormant	21A	\$70.00	\$105.00
Animal	24c	\$70.00	\$105.00
Livestock (10,000 lbs)	24a	\$70.00	\$105.00
Livestock (2,000-10,000 lbs)	24b	\$70.00	\$70.00
Retail Computing	18	\$70.00	\$14.00
Platform	21B	\$70.00	\$14.00
Counter	19	\$70.00	\$14.00
Jewelers	26	\$70.00	\$14.00
Hanging	23	\$70.00	\$14.00

For a Sonoma County Certified Agricultural Producer who uses a weighing or measuring device solely to sell at a Sonoma County Farmer's Market, the annual device and registration fee for such weighing or measuring device shall be 50% of the amount shown above.

These fees shall remain in effect until changed by an ordinance adopted pursuant to Section 30-6 of the Sonoma County Code, as set forth in Section II above. Registration fees in effect as of the effective date of this Ordinance shall remain in effect until December 31, 2006.

SECTION IV. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence,

clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION V. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in The Press Democrat, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this ___ day of _____, 2006, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

BROWN _____ KERNS _____ SMITH _____ REILLY _____ KELLEY _____

AYES _____ NOES _____ ABSTAIN _____ ABSENT _____

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of Supervisors