

ORDINANCE NO.: 10482 (N.S.)

AN ORDINANCE AMENDING CHAPTERS 17 AND 20 OF
DIVISION 1 OF TITLE 2 OF THE SAN DIEGO COUNTY
CODE OF REGULATORY ORDINANCES, RELATING TO
COMMERCIAL WEIGHING AND MEASURING
INSTRUMENTS AND AUTOMATED POINT-OF-SALE
STATIONS AND CONSUMER PROTECTION.

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

Section 1. The Board of Supervisors finds and determines that there is a significant number of weighing and measuring instruments and point-of-sale systems registered for commercial use in the County. The Board determines that the annual registration fee for businesses with one or more weighing or measuring devices shall be assessed at the maximum amount authorized in Section 12240 of the Business and Professions Code. The Board also determines that it is necessary to revise the language from “late penalties” to “delinquent fees”. The Board also finds and determines that a revision is needed to reduce registration delinquent fees from 50% of the registration fee after 30 days and an additional 50% thereafter every thirty days to a maximum late penalty of 200% to a one-time delinquent fee of 50% of the registration fee. The Board further authorizes the waiver of the delinquent fee if caused by an error made by the Department of Agriculture, Weights and Measures (Department). The Board further finds that it is necessary to amend the ordinance to specify that it is the responsibility of the owner/operator to notify the Department of any changes to contact information. The Board further finds and determines that a revision is needed to add a subsection which makes it unlawful to remove, cover, or alter “Attention Consumer Notices”. The Board also finds and determines that it is necessary to revise the Point-of-Sale Program to remove the posting requirement on passed or failed scanner inspections. The amendments made by this ordinance are intended to improve the efficiency and effectiveness of the Department’s Device and Point-of-Sale (scanner) Programs.

Section 2. Chapter 17, Division 1 of Title 2 of the San Diego County Code of Regulatory Ordinances is hereby amended to read as follows:

CHAPTER 17. REGISTRATION OF COMMERCIAL WEIGHING AND MEASURING INSTRUMENTS*

SEC. 21.1701. PURPOSE AND AUTHORITY.

Business and Professions Code sections 12210 et seq. provide that the sealer of each county shall inspect and test all weighing and measuring instruments used for commercial purposes within its jurisdiction. Business and Professions Code section 12501.1 requires any weighing or measuring instrument to be tested and sealed before being used for commercial purposes. Business and Professions Code sections 12240 et seq. provide that a sealer may recover the cost of inspecting or testing these weighing and measuring instruments by charging an annual registration fee for each business location at which an instrument used for commercial purposes is located and for

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each instrument used for commercial purposes at the business location. This chapter establishes a system whereby the County Sealer of Weights and Measures annually registers a business location that uses weighing or measuring instruments for commercial purposes and all instruments used for commercial purposes at the business location. This chapter also provides a system for the Sealer to recover its costs to inspect and test the instruments and makes it unlawful to fail to register an instrument used for commercial purposes.

(Amended by Ord. No. 8036 (N.S.), effective 4-2-92; amended by Ord. No. 9514 (N.S.), effective 12-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10156 (N.S.), effective 7-29-11; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

State law reference(s)--Instrument inspection and testing, Business and Professions Code, § 12210; authority for article, Business and Professions Code, §§ 12210 et seq., 12240.

SEC. 21.1702. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Business location" has the same meaning as the term "business location" in Business and Professions Code section 12240(u).

(b) "Commercial purposes" has the same meaning as the term "commercial purposes" in Business and Professions Code section 12500(e).

(c) "Instrument" means a "weighing instrument" as defined in Business and Professions Code section 12500(a) or a "measuring instrument" as defined in Business and Professions Code section 12500(b).

(d) "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.

(e) "Weighmaster" has the same meaning as the term "weighmaster" in Business and Professions Code sections 12700-12702.

(Amended by Ord. No. 6708 (N.S.), effective 2-2-84; amended by Ord. No. 8036 (N.S.), effective 4-2-92; amended by Ord. No. 8316 (N.S.), effective 11-25-93; amended by Ord. No. 9514 (N.S.), effective 12-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

Cross reference(s)--Definitions, § 12.101 et seq.

SEC. 21.1703. REGISTRATION REQUIRED.

(a) A person that owns or operates a business which contains one or more instruments to be used for commercial purposes shall register each business location and all instruments used commercially with the Sealer. It shall be unlawful for a person to fail to register an instrument with the Sealer before using it for commercial purposes. This registration shall be in addition to any other registration, certificate, license or permit which may be required by the County or any other public entity.

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(b) A registration pursuant to this chapter shall not be transferable from one person to another person or from one location to another business location.

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10156 (N.S.), effective 7-29-11; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1704. 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.

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10156 (N.S.), effective 7-29-11; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1705. TERM OF REGISTRATION.

A registration shall expire in accordance with the following provisions:

(a) With the possible exception of the initial registration, a registration shall be valid for one calendar year beginning on the first day of the month that the registration is effective. The initial registration may be valid for a prorated period of less than one year, as determined by the Sealer, to stagger the annual renewal dates for all registered instruments.

(b) A registration shall be renewed annually if the instrument(s) for which the registration was granted will continue to be used for commercial purposes.

(c) The business owner/operator is responsible for renewing the registration on an annual basis.

(Amended by Ord. No. 7309 (N.S.), effective 7-2-87; amended by Ord. No. 9514 (N.S.), effective 12-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10156 (N.S.), effective 7-29-11; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1706. REGISTRATION FEE AND DELINQUENT FEE.

(a) The registration fee for a business with one or more instruments at the business location to be used for commercial purposes shall be assessed at the maximum amount authorized in Section 12240 of the Business and Professions Code and is due on the first day of the applicable registration period.

(b) Any person who fails to register a business with one or more instruments used for commercial purposes shall be in violation of this chapter. If the registration fee is not received by the department within 30 days of the due date, any person required to register under this chapter shall be subject to a delinquent fee of 50% of the registration fee.

(c) Nothing in this section limits the County's right to prosecute and/or pursue civil penalties against an owner or operator who uses an unregistered instrument for commercial purposes in violation of this chapter.

(d) The delinquent fee may be waived by the Sealer if an error is made by the Department of Agriculture, Weights and Measures staff.

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(Amended by Ord. No. 7309 (N.S.), effective 7-2-87; amended by Ord. No. 9514 (N.S.), effective 2-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

State law reference(s)--Fees, Business and Professions Code, § 12240.

SEC. 21.1707. [RESERVED.]

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1708. [RESERVED.]

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1709. [RESERVED.]

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1710. INSTRUMENTS USED BY WEIGHMASTERS.

No person shall act as a weighmaster unless currently licensed by the Secretary of Food and Agriculture pursuant to Business and Professions Code sections 12704 et seq. No weighmaster shall issue a weighmaster certificate pursuant to Business and Professions Code section 12711 et seq. based upon an instrument unless it has been tested and bears a current seal placed by the Sealer. If an instrument a weighmaster intends to use to issue weighmaster certificates does not pass a Sealer's inspection, a weighmaster shall be subject to a re-inspection fee prescribed by section 364.3 for each re-inspection of the instrument the Sealer performs.

(Added by Ord. No. 8036 (N.S.), effective 4-2-92; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

State law reference(s)--Reinspection, Business and Professions Code, §§ 12210.5, 12717.

SEC. 21.1711. INSPECTION APPOINTMENT.

The Sealer may schedule an appointment, to inspect and test an instrument at a time mutually agreed upon by the Sealer and a business owner or operator. The business owner or operator shall give the Sealer at least 24 hours notice to cancel the appointment or pay the reschedule fee provided by section 364.3 before a new appointment shall be scheduled.

(Added by Ord. No. 8036 (N.S.), effective 4-2-92; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 21.1712. REQUESTS FOR TEST.

The Sealer, pursuant to Business and Professions Code section 12210(b), shall upon written request, calibrate, test, weigh, measure and certify the accuracy of non-commercial weights and measures and instruments, tools and accessories. The person requesting this service shall pay the fee provided by section 364.3.

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(Amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 21.1713. LABELING AN INSTRUMENT NOT REGISTERED WITH THE COUNTY SEALER.

(a) If the Sealer finds that a business location has an instrument used for commercial purposes that does not have a current registration, the Sealer may label the instrument "Not Registered with the County Sealer for Commercial Use" until the instrument is registered and sealed by the Sealer.

(b) It shall be unlawful for any person other than the Sealer to remove, conceal, alter or tamper with a label placed by the Sealer on any instrument.

(Amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10156 (N.S.), effective 7-29-11; amended by Ord. No. 10199 (N.S.), effective 4-13-12)

SEC. 21.1714. STANDBY FEES.

The Sealer may charge a standby fee as provided in section 364.3 to an owner or operator of an instrument who requests that the Sealer stand by during the time the owner or operator needs to put an instrument into the proper condition to be inspected or tested. The fee shall cover the Sealer's costs to stand by.

(Added by Ord. No. 8036 (N.S.), effective 4-2-92; amended by Ord. No. 8316 (N.S., effective 11-25-93; amended by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 21.1715 NOTICE OF CHANGE IN BUSINESS CONTACT.

(a) The registrant shall, in case of any change in mailing address or business telephone number, notify the Sealer in writing.

Section 3. Chapter 20, Division 1 of Title 2 of the San Diego County Code of Regulatory Ordinances is hereby amended to read as follows:

CHAPTER 20. CONSUMER CONFIDENCE PROTECTION ACT*

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.

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(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2002. DEFINITIONS.

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 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.
- (d) "Point-of-sale system" has the same meaning as "point-of-sale system" in Business and Professions Code section 13352.
- (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.

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

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.

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9577 (N.S.), effective 8-8-03; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 9954 (N.S.), effective 9-5-08, operative 10-1-08; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

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.

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

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.

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9514 (N.S.), effective 12-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2006. REGISTRATION, RENEWAL, RE-INSPECTION FEES AND DELINQUENT FEES.

(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) Any 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. If the registration fee is not received by the department within 30 days of the due date, any person required to register under this chapter, shall be subject to a delinquent fee of 50% of the registration fee.

(c) 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.

(d) 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.

(e) The delinquent fee may be waived by the Sealer if an error is made by the Department of Agriculture, Weights and Measures staff.

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9514 (N.S.), effective 12-13-02; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2007. SEALER AUTHORIZED TO CONDUCT INSPECTIONS.

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(a) The Sealer shall inspect all point-of-sale systems in retail establishments in San Diego County to determine the pricing accuracy of the systems, under a schedule determined by the Sealer. The Sealer shall follow Business and Professions Code sections 13350 et seq. when conducting inspections under this chapter.

(b) It shall be unlawful for any person using a point-of-sale system at a retail establishment for commercial purposes in San Diego County to refuse to allow the Sealer to conduct an inspection or to interfere with a Sealer's inspection under this chapter.

(Added by Ord. No. 9889 (N.S.), effective 10-26-07)

SEC. 21.2008. [RESERVED.]

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2009. [RESERVED.]

(Added by Ord. No. 9004 (N.S.), effective 3-4-99; amended by Ord. No. 9264 (N.S.), effective 11-24-00; amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10200 (N.S.), effective 4-13-12)

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 Notice 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”

(b) Each Attention Consumers Notice shall be posted so that it is conspicuous and easily read from a typical customer position at each point-of-sale station or at a location approved by the Sealer. 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 Notice upon request to any person required to be registered under this chapter. Alternatively, an Attention Consumers Notice not prepared by the Sealer, may be used provided it contains the wording required in subsection

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(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.

(d) Unless authorized by the Sealer, it shall be unlawful for a person to fail to post the Attention Consumers Notice or cause the notice to be removed, covered, or altered.

(Added by Ord. No. 9597 (N.S.), effective 10-17-03; amended by Ord. No. 9889 (N.S.), effective 10-26-07; amended by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2013. [RESERVED.]

(Added by Ord. No. 9597 (N.S.), effective 10-17-03; amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2014. [RESERVED.]

(Added by Ord. No. 9597 (N.S.), effective 10-17-03; amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2015. [RESERVED.]

(Added by Ord. No. 9597 (N.S.), effective 10-17-03; amended by Ord. No. 9889 (N.S.), effective 10-26-07; repealed by Ord. No. 10200 (N.S.), effective 4-13-12)

SEC. 21.2016. NOTICE OF CHANGE IN BUSINESS CONTACT.

(a) The registrant shall, in case of any change in mailing address or business telephone number, notify the Sealer in writing.

Section 5. This ordinance shall take effect and be in force on July 1, 2017, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY: Justin Crumley, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 26th day of April, 2017.



DIANNE JACOB
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Jacob, Gaspar, Roberts, Horn
ABSENT: Cox

ATTEST my hand and the seal of the Board of Supervisors this 26th day of April, 2017.

DAVID HALL
Clerk of the Board of Supervisors

By 
Teresa Zurita, Deputy



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