

1 [Establishing Automated Point-of-Sale Systems Registration, Inspection and Reinspection
2 Requirements and Fees]

3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 115,**
4 **Sections 115 through 115.8, to establish registration, inspection and reinspection**
5 **requirements and fees for automated point-of-sale ("scanner") systems to ensure**
6 **compliance with California Business and Professions Code sections 12024.2, 12024.6**
7 **and 12103.5, and making environmental findings.**

8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strike-through italics Times New Roman*~~.
10 Board amendment additions are double-underlined;
11 Board amendment deletions are ~~strike-through normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. The Planning Department has determined that the actions contemplated in
14 this Resolution are in compliance with the California Environmental Quality Act (California
15 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
16 Board of Supervisors in File No. _____, and is incorporated herein by reference.

17 Section 2. The San Francisco Administrative Code is hereby amended by adding
18 Chapter 115, Sections 115 through 115.8, to read as follows:

19 **SEC. 115. TITLE AND PURPOSE.**

20 *This Ordinance shall be known as the "Automated Point of Sale Station Registration and*
21 *Inspection Ordinance." It is unlawful under California Business and Professions Code sections*
22 *12024.2, 12024.6, and 12103.5 to charge, at the time of sale, a price that is more than the price that is*
23 *advertised or posted. The purpose of this Chapter is to ensure that the advertised or posted price of a*
24 *commodity is the correct price charged for that commodity.*

25 *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

1 sale stations; (3) authorizes a re-inspection fee, equal to the registration fee, to offset the expense of re-
2 visiting and inspecting locations found out of compliance; and (4) provides penalties for failure to
3 register or for late registration and for violations.

4 The Sealer of the Weights and Measures Division for the City and County shall administer and
5 enforce this Chapter.

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

9
10 **SEC. 115.1. DEFINITIONS.**

11 (a) "Division of Weights and Measures" means the Sealer of the Weights and Measures
12 Division of the City and County and its agents and employees duly authorized to act on behalf of said
13 Division.

14 (b) "Person" means any person, firm, corporation, business, or association.

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

17 (d) "Point of sale station" means individual and separate equipment that is capable of
18 recovering electronically stored price information that is used to charge consumers for the purchase of
19 commodities. "Point of sale stations" shall include, but is not limited to, equipment that uses Universal
20 Product Code scanners, price look-up codes, or any other system that relies on the retrieval of
21 electronically stored information to complete a transaction of commerce between a retailer and
22 consumer.

23 (e) "Commercial purpose" includes any sale of a commodity or thing by a person to a
24 consumer.

25 (f) "Commodity" means any article of commerce or anything that is bought or sold.

1 (g) "Advertise" means a notice to attract public attention or identify a commodity for sale.

2 (h) "Term of registration" means any twelve (12) month period determined by the Division
3 of Weights and Measures.

4
5 **SEC. 115.2. REGISTRATION REQUIREMENTS.**

6 It shall be unlawful for a person to use a point of sale station for a commercial purpose without
7 first registering the system in accordance with the provisions of this Chapter. Each business location
8 must have a separate registration for each separate point of sale station. The registration under this
9 Chapter shall be in addition to any other certificate, license, or permit which the City and County or
10 any public entity may require.

11
12 **SEC. 115.3. DURATION- PROHIBITION OF TRANSFER OF REGISTRATION.**

13 All registrations shall be valid for up to one year and expire on the last day of the term of
14 registration. The person holding the registration shall renew it in a manner similar to the issuance of
15 the original registration. The Division of Weights and Measures shall consider registrations not
16 renewed within thirty (30) days after the last day of the term of registration as expired, until such time
17 as the Division receives the renewal fee and the applicable penalty fee.

18 Registrations may not be transferred between persons or locations. In the case where a holder
19 of a registration leases, sublets, subcontracts, or in any manner allows any other person or entity to
20 engage in activities regulated, all point of sale stations remain the responsibility of the registrant.
21 Otherwise, the other person or entity must obtain a separate registration in accordance with the
22 provisions of this Chapter.

1 **SEC. 115.4. ANNUAL REGISTRATION FEE.**

2 *Each person registering a point of sale system for a business location in the City and County*
3 *shall pay an annual registration fee. The Board of Supervisors must ratify by resolution any changes to*
4 *the registration fee schedule. The annual registration fees are as follows:*

5 <u>1 to 3 Point of Sale Stations</u>	<u>\$189.00 per business location</u>
6 <u>4 to 9 Point of Sale Stations</u>	<u>277.00 per business location</u>
7 <u>10 or more Point of Sale Stations</u>	<u>297.00 per business location</u>

9
10 **SEC. 115.4. REGISTRATION FEE, PENALTY FEE, PAYMENT AND USE.**

11 (a) The registration fees required by Section 115.3 shall be due and payable at the
12 commencement of each term of registration. For businesses commencing operations during the term of
13 registration, the fees shall be due and payable as of the date of commencement. Fees are not pro-rated
14 for portions of the term of registration.

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

19 (c) The fees collected shall be used by the Division of Weights and Measures solely to
20 implement and enforce this Chapter .

21
22 **SEC. 115.5. LATE REGISTRATION FEES.**

23 In accordance with Sections 115.3 and 115.4, any registration or re-inspection fee not paid
24 within thirty (30) days after the last day of the term of registration is delinquent. The original fee
25 remains due and shall be subject to a penalty of fifty percent (50%) of the original fee, and fees not

1 paid after sixty (60) days past the original due date shall be subject to a penalty amount equal to one
2 hundred percent (100%) of the original fee to cover the additional costs associated with late
3 registration or payment.

4
5 **SEC. 115.6 VIOLATIONS**

6 It shall be unlawful for any person or any employee or agent thereof to use point of sale stations
7 without obtaining and maintaining a current registration.

8
9 **SEC. 115.7. ENFORCEMENT.**

10 In order to protect the public from point of sale stations that are inaccurate or defective, the
11 Division of Weights and Measures will enforce violations of this Chapter pursuant to the penalty
12 provisions below and pursuant to all applicable federal and state law, including, but not limited to
13 Division 5 of the California Business and Professions Code (Sections 12001 et seq.) and Title 4,
14 Division 9 of the California Code of Regulations.

15
16 **SEC. 115.8. PENALTIES.**

17 The City and County shall impose penalties for failure to obtain a registration certificate or
18 failure to have a valid current registration certificate as follows:

19 (a) Unless otherwise provided, any person violating any provision of this Chapter shall be
20 guilty of an infraction or misdemeanor as hereinafter specified.

21 (b) Any person so convicted shall be:

22 1. Guilty of an infraction offense and punished by a fine not exceeding one hundred
23 dollars (\$100.00) and not less than fifty dollars (\$50.00) for a first violation of the Chapter ;

1 2. Guilty of an infraction offense and punished by a fine not exceeding two hundred
2 dollars (\$200.00) and not less than one hundred dollars (\$100.00) for a second violation of the same
3 provision of the Chapter within a 12-month period ;

4 3 Guilty of a misdemeanor for the third and any additional violation of the same
5 provision of the Chapter within a 12-month period and punished by a fine not exceeding one thousand
6 dollars (\$1,000.00) and not less than five hundred dollars (\$500.00) or six months in jail, or both.

7 (c) Notwithstanding the above, a first or second offense may be charged and prosecuted as
8 a misdemeanor.

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

11 (e) In addition to the above penalties, the court may order that the guilty party reimburse
12 the City and County for all its costs of investigating, analyzing and prosecuting the enforcement action
13 against the guilty party. The court shall fix the amount of such reimbursement upon submission of proof
14 of such costs by the City and County

15 (f) In addition to all other remedies provided by this Chapter or state law, in the event of
16 continuing violation of the provisions of this Chapter, the Division of Weights and Measures may seek
17 injunctive relief to restrain further violation.

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19
20 APPROVED AS TO FORM:

21 DENNIS J. HERRERA, City Attorney

22
23 By: _____
24 Terence J. Howzell
25 Deputy City Attorney