

File No. 100725

Committee Item No. 10

Board Item No. 31

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date: June 28, 2010

Board of Supervisors Meeting

Date: 7.13.10

Cmte Board

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OTHER

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Completed by: Andrea S. Ausberry

Date Friday, June 25, 2010

Completed by: AA

Date 7.6.10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

FILE NO. 100725

ORDINANCE NO.

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

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

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike-through italics Times New Roman~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The Planning Department has determined that the actions contemplated in this Resolution are in compliance with the California Environmental Quality Act (California Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100725 and is incorporated herein by reference.

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

SEC. 115. TITLE AND PURPOSE.

This Ordinance shall be known as the "Automated Point of Sale Station Registration and Inspection Ordinance." It is unlawful under California Business and Professions Code sections 12024.2, 12024.6, and 12103.5 to charge, at the time of sale, a price that is more than the price that is advertised or posted. 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.

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

Mayor Newsom
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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 (i) "Business Location" means each business location that uses point of sales
5 stations and requires the use of specialized testing equipment and that necessitates not more
6 than one inspection trip by a weights and measures official.

7
8 **SEC. 115.2. REGISTRATION REQUIREMENTS.**

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

14
15 **SEC. 115.3. DURATION- PROHIBITION OF TRANSFER OF REGISTRATION.**

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

21 Registrations may not be transferred between persons or locations. In the case where a holder
22 of a registration leases, sublets, subcontracts, or in any manner allows any other person or entity to
23 engage in activities regulated, all point of sale stations remain the responsibility of the registrant.
24 Otherwise, the other person or entity must obtain a separate registration in accordance with the
25 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 1 to 3 Point of Sale Stations	\$189.00 per business location
6 4 to 9 Point of Sale Stations	277.00 per business location
7 10 or more Point of Sale Stations	297.00 per business location

8
9 The annual registration fee shall be seventy five dollars (\$75) per business location, plus
10 fourteen dollar (\$14) fee for each point of sale station. The point of sale station fee shall not
11 exceed seven hundred and seventy three dollars (\$773) per business location.

12
13 **SEC. 115.4. REGISTRATION FEE, PENALTY FEE, PAYMENT AND USE.**

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

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

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

24
25 **SEC. 115.5. LATE REGISTRATION FEES.**

1 In accordance with Sections 115.3 and 115.4, any registration or re-inspection fee not paid
2 within thirty (30) days after the last day of the term of registration is delinquent. The original fee
3 remains due and shall be subject to a penalty of fifty percent (50%) of the original fee, and fees not
4 paid after sixty (60) days past the original due date shall be subject to a penalty amount equal to one
5 hundred percent (100%) of the original fee to cover the additional costs associated with late
6 registration or payment.

7
8 **SEC. 115.6 VIOLATIONS**

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

11
12 **SEC. 115.7. ENFORCEMENT.**

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

18
19 **SEC. 115.8. PENALTIES.**

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

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

24 (b) Any person so convicted shall be:
25

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

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

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

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

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

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

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

20
21 APPROVED AS TO FORM:

22 DENNIS J. HERRERA, City Attorney

23
24 By:

25 
Terence J. Howzell
Deputy City Attorney

Mayor Newsom
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Establishing Automated Point-of-Sale Systems ("Scanner") Registration, Inspection and Reinspection Requirements and Fees.]

Ordinance amending the San Francisco Administrative Code by adding Chapter 115, Sections 115 through 115.9, to establish registration, inspection and reinspection requirements and fees for automated point-of-sale ("scanner") systems to ensure compliance with California Business and Professions Code sections 12024.2, 12024.6 and 12103.5, and making environmental findings.

Existing Law

It is unlawful under State law to charge, at the time of sale, a price that is more than the price that is advertised or posted.

Amendments to Current Law

The amendment would establish a system to identify, register and inspect automated point-of-sale systems ("scanners") in retail commodity sales; authorize a registration fee to offset the expense of inspection of point-of-sale systems; authorize a re-inspection fee, equal to the registration fee, to offset the expense of re-visiting and inspecting locations found out of compliance; and provide penalties for failure to register or for late registration and for violations.



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *GC* Mayor Gavin Newsom *ST*
RE: Establishing Automated Point-of-Sale Systems ("Scanner")
Registration, Inspection and Reinspection Requirements and Fees
DATE: June 1, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is the ordinance amending the San Francisco Administrative Code by adding Chapter 115, Sections 115 through 115.8, to establish registration, inspection and reinspection requirements and fees for automated point-of-sale ("scanner") systems to ensure compliance with California Business and Professions Code sections 120242, 12024.6 and 12103.5, and making environmental findings.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

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