

**AN ORDINANCE ADDING CHAPTER 3.72 TO TITLE 3 OF THE ORDINANCE  
CODE OF THE COUNTY OF ALAMEDA ADOPTING A  
PRICE VERIFICATION PROGRAM REGULATING  
AUTOMATED POINT OF SALE TERMINALS**

The Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I**

Chapter 3.72 is added to Title 3 of the Ordinance Code of the County of Alameda to read as follows:

**Sections:**

**3.72.010 Introduction**

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

**3.72.020 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 12103.5, 12024.2 and 12024.6, the purpose of this Chapter is to ensure that the advertised or posted price of a commodity is the price charged for that commodity. A location shall not be required to sell at a price incorrectly stated in an advertisement which is incorrect as a result of a typographical error or other inadvertent misprint and may also correct pricing errors resulting from the misplacement of merchandise by consumers.

This Chapter establishes a system to identify, register and inspect point of sale terminals in retail commodity sales in order to verify their accuracy. In addition, this Chapter authorizes cost recovery for the testing and inspection of these point of sale terminals, penalties for failure to register or for late registration.

**3.72.030 Definitions**

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

A. "Department" shall mean the Department of Agriculture/Weights and Measures of the Community Development Agency of the County of Alameda.

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 terminal" shall mean individual and separate equipment that is capable of recovering electrically stored price information that is used to charge

consumers for the purchase of commodities. "Point of sale terminals" shall include, but is not limited to, equipment that uses Universal Product Code, 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 consumer.

E. "Location" shall mean a premise on which a single business operates point of sale terminals.

F. "Commercial purpose" includes any sale of a commodity or thing by a person to a consumer.

G. "Commodity" shall mean any article of commerce or anything that is bought or sold.

H. "Advertise" shall mean to give a notice to attract public attention.

#### **3.72.040 Registration Certificate Requirements**

A. It shall be unlawful for a person to use a point of sale terminal for commercial purposes without first obtaining a registration certificate in accordance with the provisions of this Chapter. A separate certificate shall be required for each location.

B. Registration certificates shall be issued by the Department upon payment of all applicable fees and late penalties as set forth in Section 3.72.060 of this Chapter.

C. At each location, the applicable registration certificate shall be posted so that it may be accurately read from a reasonable consumer position.

#### **3.72.050 Duration and Transferability of Scanner Registration Certificate**

A. All certificates shall be valid for up to one calendar year. Renewal of a certificate shall be made in a manner similar to the issuance of the original certificate.

B. Certificates shall not be transferable between persons or locations.

C. In the case where a holder of a registration certificate leases, sublets, subcontracts, or in any manner allows any other person or entity to engage in activities regulated under the certificate, all point of sale terminals must be the responsibility of the certificate holder, unless the other person or entity obtains a separate registration certificate in accordance with the provisions of this Chapter.

#### **3.72.060 Fees**

A. The scanner registration certificate fee for any person operating or utilizing a point of sale terminal shall be as follows:

Convenience/small retail stores, 1 - 3 scanners	\$150.00
All others, 4 or more scanners	\$225.00

B. The failure to renew a scanner registration certificate within 60 days of the date of this Department's invoice will result in the imposition of a delinquent fee of

\$40.00 or 20% of the unpaid balance owed, whichever is more.

**3.72.070 Violations**

It shall be unlawful for any person or any employee or agent thereof to use point of sale terminals without a current certificate.

**3.72.080 Enforcement**

In order to protect the public from automated point of sale terminals that are defective, the Department will enforce violations of this Chapter 3.72 pursuant to the penalty provisions below and pursuant to all applicable federal and state law, including, but not limited to Division 5 of the California Business and Professions Code (Sections 12001 et seq.) and Title 4, Division 9 of the California Code of Regulations.

**3.72.090 Penalties**

Penalties for failure to obtain a registration certificate or failure to have a current registration certificate shall be imposed as follows:

- A. Unless otherwise provided, any person violating any provision of this Chapter shall be guilty of an infraction or misdemeanor as hereinafter specified.
- B. Any person so convicted shall be:
  - 1. guilty of an infraction offense and punished by a fine not exceeding one hundred dollars (\$100.00) and not less than fifty dollars (\$50.00) for a first offense;
  - 2. guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) and not less than one hundred dollars (\$100.00) for a second offense;
  - 3. guilty of a misdemeanor for the third and any additional offenses and punished by a fine not exceeding one thousand dollars (\$1,000.00) and not less than five hundred dollars (\$500.00) or six months in jail, or both.
- C. Notwithstanding the above, a first or second offense may be charged and prosecuted as a misdemeanor.
- D. Payment of any 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 premises, the court may order that the guilty party reimburse the County for all its costs of investigating, analyzing and prosecuting the enforcement action against the guilty party. The court shall fix the amount of such reimbursement upon submission of proof of such costs by the County.
- F. In addition to all other remedies provided by this Chapter or State Law, in the event of continuing violation of the provisions of this Chapter, the Department may seek injunctive relief to restrain further violation.

SECTION II

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on August 9, 2005 by the following called vote:

AYES:  
NOES;  
EXCUSED:

\_\_\_\_\_  
KEITH CARSON  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA, Clerk  
of the Board of Supervisors, County of Alameda

By \_\_\_\_\_

CDA78

Approved at to Form:  
Richard E. Winnie, County Counsel

By: \_\_\_\_\_  
Brian Washington  
Assistant County Counsel

Date: \_\_\_\_\_