ORDINANCE NO. _____

ORDINANCE ESTABLISHING THE RULES AND PENALTIES FOR WEIGHTS AND MEASURES

WHEREAS, it is the policy of the State of Indiana and the County of Lake to protect all consumers by ensuring the accuracy of their commercial transactions involving weights and measures; and

WHEREAS, by protecting consumers in the transaction of their commercial transactions involving weights or measures, the State of Indiana and County of Lake is preserving, protecting and promoting[1] commerce within the state and the county; and

WHEREAS, pursuant to I.C. 24-6-3-5 the County of Lake must inspect on at least an annual bases all measuring and weighing devices; and

WHEREAS, all goods and commodities offered for sale in the State of Indiana and the County of Lake shall be offered using the legal method of selling as required by the State of Indiana and the National Conference on Weights and Measures Handbook 130; and

WHEREAS, to ensure enforcement of all weights and measures laws within the County, the Lake County Council desires to establish an Ordinance setting forth rules and penalties.

NOW, THEREFORE, LET IT BE ORDAINED AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of the Ordinance is to protect and promote commerce within the State of Indiana, County of Lake and to protect all consumers by insuring the accuracy of commercial transactions involving weights, measures, and packaged commodities, and to assure compliance with State laws and the National Conference on Weights and Measures Handbooks 44 and 130.

SECTION 2. DEFINITIONS

A. "County Inspector" shall be the person or persons duly authorized to inspect goods and commodities and weighing or measuring instruments in Lake County.

B. "Person" shall include but not be limited to, any corporation, partnership, sole proprietorship, agent, lessee, individual, or employee placing in service, using or employing a weighing or measuring instrument or who is engaged in selling, buying, bartering or exchanging of goods or commodities within the County.

C. "Repairman" shall be an individual engaged in the business of repairing or installing weighing or measuring instruments used within the County.

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D. "Instrument" shall be any scale, beam, measure or weighing or measuring device of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories connected with any or all such instruments or measurements subject to regulation by the County Department of Weights and Measures.

E. "Goods and Commodities" shall refer to all items of merchandise, supplies, raw materials, or finished goods and those things, which are useful or serviceable, particularly articles of merchandise movable in trade. This definition includes but is not limited to all packaged items.

F. "Major Repair" shall mean work done where the integrity of the instrument is compromised and shall include, but not be limited to, a broken lead and wire seal, a scale adjustment due to inaccurate readings, and a gasoline dispenser shut down because of leaks.

G. "Package" or "Packaged Item" shall mean any commodity:

i. enclosed in a container or wrapped in any manner in advance of wholesale or retail sale, or

ii. whose weight or measure has been determined in advance of wholesale or retail sale. An individual item or lot of any commodity on which there is a selling price based on an established price per unit of weight or a measure or of measure.

SECTION 3. WEIGHING AND MEASURING INSTRUMENTS

A. No person shall use or employ within the County an instrument to determine the size, quantity, extent or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person for sale, for hire or award in his/her business operations if such instrument does not meet the standards established by the State of Indiana or the National Conference on Weights and Measures Handbook 44, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices. A person who violates this section shall be fined Fifty ($50.00) Dollars per instrument.

B. A person placing an instrument:

i. previously rejected or condemned by the County or State Inspector until the County Inspector has been notified of the location of said instrument, the instrument has been inspected, and any tags, stickers, security seals, etc., if any, are replaced on the instrument by the County or State Inspector; or permission is given by the County Inspector if immediate resealing is impractical.

ii. in service after a repairman has broken and replaced the seal on the instrument and/or performed a major repair on the instrument shall mail the repairman's report to the County's Weights and Measures Department within two working days after the seal was replaced and/or the major repair was performed.

A person who violates this section shall be fined Fifty ($50.00) Dollars per day for each instrument until the County Inspector is informed as required by this section. In

enforcing this subsection, the person shall allow the County Inspector to view the repair records on site and mail to the County Inspector a copy of the repair records by U.S. mail within two (2) business days after repairs are made. Failure to submit repair records shall result in an additional Five Hundred ($500.00) Dollar fine plus One Hundred ($100.00) Dollars per day until the records are received.

C. A person who opens a new business or assume operations of an existing business shall not operate a weighing or measuring instrument until the County Inspector is informed of the location of said instruments and inspected said instruments prior to usage. In enforcing this subsection, the person shall provide the County Inspector with business records showing the date of opening.

   A person who violates this section shall be fined Fifty ($50.00) Dollars per instrument per day from the first day of operations until the County Inspector is informed as required by this section.

   A person who fails to submit business records on site shall send the requested records by U.S. mail within two (2) business days after the request was made. Failure to submit business records shall result in an additional Five Hundred ($500.00) Dollar fine plus One Hundred ($100.00) Dollars per day until the records are received. The maximum fine under this section shall not exceed Ten Thousand ($10,000.00) Dollars.

D. If any person fails to present a non-mobile instrument or instruments operated at only one location for the County Inspector's annual or random inspection, or fails to allow a County Inspector to conduct an inspection on the premises, the County Inspector may condemn the instrument or otherwise render the instrument inoperable by utilizing the same procedures he/she would use if the instrument were found to be false or fraudulent.

   A person who violates this section shall immediately be fined Two Hundred ($200.00) Dollars. The County Inspector shall note on the citation a date and time ordering the person owning or operating the instrument to present the instrument for inspection by the County Inspector. If the person owning or operating the instrument refuses to allow the ordered inspection, the person shall be fined Four Hundred ($400.00) Dollars for the second violation plus One Hundred ($100.00) per day from the date the instrument was not presented for the first inspection to the date the inspection takes place. A citation shall be issued for each day the violation occurs and each citation shall be considered a separate violation. The maximum fine under this section shall not exceed Ten Thousand ($10,000) Dollars.

   If the person does not pay the fine to the Lake County Clerk within ten (10) business days after the citation is issued, the matter shall be set for court. If the court rules in favor of the County Inspector, the person shall make payment by the court's stipulated date. If payment is not made by the court's due date, the County Inspector shall suspend the license and may request the County Sheriff to close the person's business.

E. For mobile instrument or instruments otherwise operated at more than one location, the instrument shall be presented for inspection on the date, location and hours specified for the inspection. If a person fails to present an instrument for inspection on the specified date, time and location:

i. The person shall be immediately fined Two Hundred ($200.00) Dollars per instrument for the first day;
ii. The County Inspector shall establish a second date, place and time for the inspection.
iii. The person failing to present the instrument for the second pre-scheduled inspection shall be fined Four Hundred ($400.00) Dollars plus One Hundred ($100.00) Dollars per day per instrument from the date the of the first scheduled inspection until the inspection takes place. Each citation shall be considered a separate violation.

If the person does not pay the fine to the Lake County Clerk within ten (10) business days after the citation is issued, the matter shall be set for court. If the court rules in favor of the County Inspector, the person shall make payment by the court's stipulated date. If payment is not made by the court's due date, the County Inspector shall suspend the person's license and may request the Lake County Sheriff to close all of the person's business locations to prevent any use of the mobile instrument.

SECTION 4. COMPLIANCE WITH FEDERAL AND STATE STANDARDS REQUIRED (INSTRUMENTS AND COMMODITIES)

A. No person engaged in the business of selling, buying, exchanging goods or commodities by weight, measurement or volume shall use an instrument in his business operations for such purpose if such instrument does not meet the standards established by the Federal Government, State of Indiana, Weights and Measures Division of the State Department of Health, and the National Conference on Weights and Measures including Handbook 44. A person who violates this section shall be fined Fifty ($50.00) Dollars per instrument.

B. No Person shall offer commodities for sale unless they comply with State law, the Weights and Measures Division of the State Department of Health, and the Method of Sale of Commodities and Packaging and Labeling Regulations as contained in the National Conference on Weights and Measures Handbook 130. A person who violates this section shall be fined Fifty ($50.00) Dollars per instrument or commodity plus an additional Ten ($10.00) Dollars) for each package or edible item.

SECTION 5. SECURITY SEALS

A. Any person who owns or operates more than one instrument of a particular type at a business location shall serially number each instrument in such a manner that each instrument may be readily distinguished from all other such instruments of that type present at that location.

B. A weighing or measuring instrument designed to be security sealed shall not be used in the business of selling, buying, bartering or exchanging of goods or commodities unless the instrument is sealed.

C. No security seal shall be valid in the County except a seal approved or affixed by the State or County Inspector.

D. Once sealed, the security seal on a weighing or measuring instrument shall not be cut, severed or removed unless permission has been granted by a State or County Inspector.

If permission is granted to remove the seal for repairs, the repairman is required to reseal the instrument upon completion. The person is required to submit a copy of the repair report to the County Inspector by U.S. mail within two (2) business days after repairs are made.

E. A person who violates this section shall be fined Five Hundred ($500.00) Dollars plus One Hundred ($100.00) Dollars for each day the repair records have not been received as required by this section.

SECTION 6. INSTRUMENT REPAIR AND INSTALLATION

A. Any person engaged in the business of repairing or installing devices shall have all equipment inspected and certified by a State Metrology Lab before engaging in said business. All such equipment shall conform to the requirements of the National Institute of Standards and Technology. All volumetric test measures shall be inspected and re-certified at least one (1) time each year. All weights are required to be re-certified once every two (2) years. A copy of any such certification shall be filed with the County Inspector if requested.

B. Any person engaged in the business of repairing or installing devices shall have a current knowledge of the state rules and regulations concerning tolerances and standards for devices and shall comply with the state rules and regulations.

C. Prior to delivery of an instrument to a repairman for major repairs, a person shall during normal business hours of the County:

   i. notify the County Inspector of the instrument to be repaired and the serial number of the instrument.

   ii. the County Inspector shall issue the person a repair confirmation number.

   iii. the person may then deliver the instrument to the repairman.

   iv. the person shall send a copy of the repairman's report to the County Inspector by U.S. mail within two (2) business days after repairs are made.

   A person who violates this section shall be fined Five Hundred ($500.00) Dollars plus One Hundred ($100.00) per day per instrument from the time of delivery to the time the County Inspector is informed or receives the repairman's report as required by this section.

SECTION 7. COMMODITY REGULATIONS

A. Any person engaged in the selling, buying, bartering or exchanging of goods or commodities must sell, buy, barter or exchange the goods or commodities using the legal method of selling, buying, bartering or exchanging such goods or commodities as required by the State of Indiana, the Weights and Measures Division of the State Health Department, and the National Conference on Weights and Measures Method of Sale of Commodities Regulations contained in Handbook 130. As required by State law, the County Inspector is responsible for checking commodities, including but not limited to,

packaged items whether or not the person has instruments requiring inspection by the County Inspector.

B. All goods and commodities when offered for sale in a package shall meet all packaging and labeling requirements as required by the National Conference on Weights and Measures Uniform Packaging and Labeling Regulations. All commodities offered for sale shall meet the requirements of the State of Indiana and the Uniform Regulation for the Method of Sale of Commodities as contained in Handbook 130.

C. All commodities required to be sold by weight must be sold by net weight and all commodities that may be sold by measure or count shall be accurate as required.

D. A person who violates this section shall be fined Fifty ($50.00) Dollars per commodity plus an additional Ten ($10.00) Dollars for each package or edible item.

SECTION 8. LICENSES

A. A license shall be required at any location using an instrument or engaged in the buying, selling, bartering or exchanging of goods or commodities. Locations engaged in selling, bartering or exchanging packaged food items that are enclosed in a container or wrapper in any manner in advance of retail sale are also required to obtain a license. The County Inspector shall issue a license to applicants qualifying under this ordinance. A license issued under this ordinance is only valid for the calendar year unless revoked or suspended by the County Inspector and is not transferable.

B. A person doing business at two (2) or more locations shall obtain a separate license for each location. Where multiple persons operate at the same street address, each person using an instrument shall obtain a license. Only one license shall be required for persons located at the same address if multiple persons use and share the same instrument and benefits from the items sold.

SECTION 9. REGISTRATION

A. An applicant for a license to use an instrument under this section must submit proof to the County Inspector of the appointment of an agent for service of process in Indiana if the applicant is:

   i. a person whose principal place of residence is outside Indiana; or

   ii. a person, other than an individual, that has its principal place of business outside Indiana.

B. To obtain or renew a license under this section, a person must:

   i. submit a new application for each location; and

   ii. pay a license fee for each application by check or money order. Checks are to be payable to the Lake County Auditor and submitted with the license application to the Lake County Weights and Measures Department.

LICENSE FEE SCHEDULE:

Location Device Type	Per Unit Cost
Small Capacity Scale (0 to 350 lbs.)	$ 40.00
Medium Capacity Scale (51 to 999 lbs.)	$ 90.00
Large Capacity Scale (1,000 lbs. & Up)	$ 250.00
Gasoline, Kerosene, Diesel Pump (Each Brand)	$ 40.00
Bulk Oil Pumps	$ 40.00
High Flow Diesel Pumps	$ 100.00
Vehicle Tank Meters	$ 100.00
L.P. Gas Meters	$ 50.00
Wire Measure Meters	$ 50.00
Taxi Meters	$ 50.00
Laudromat Dryers	$ 30.00
Automated Car Wash	$ 30.00
Miscellaneous Devices	$ 50.00
Packaged Food Items – No Scale	$ 50.00

NEW BUSINESS LICENSE FEES:
The license fee for a new business that opens during the calendar year shall be Prorated. Payment amounts are calculated as follows:

January 1 to March 31	-	Full Amount
April 1 to June 30	-	¾
July 1 to September 30	-	½
October 1 to December 31	-	¼

OTHER LICENSE FEES:
The license fee for farm stands or seasonal businesses that are open three months or less each year shall be assessed at one fourth (1/4) of the applicable amount.

C. Each license must be numbered, show the name and address of the business name, the name and address of the applicant, and the County Inspector may require any other information as necessary. The license shall be posted in a conspicuous place at the place of business for which it is issued.

D. The Auditor's Office shall place payments received by the Weights and Measures Department into the Weights and Measures User Fee Fund as required by the Lake County Council.

E. The County Inspector shall not issue a person a license or the renewal of an existing license if the person has amounts owing and outstanding with the County Inspector unless the person has challenged these same amounts owing and outstanding and the matter is pending before a court where both parties are awaiting final disposition.

The County Inspector shall suspend the license should the person fail to make full payment to the County Clerk within the deadline set by the court. If within the court's deadline the person files an appeal of the decision with a higher court, the license shall be reinstated pending the higher court's ruling.

F. A person having been issued and having received a license from the County Inspector who fails to conspicuously post the license shall be fined Two Hundred ($200.00) Dollars.

G. A person failing to possess a license from the County Inspector as required by Section 9 shall:

i. pay the annual license fee as provided under Section 9.B for each year a license was was required but not possessed.

ii. be fined as a penalty an amount equal to the annual license fee as provided in Section 9.B for each year the person failed to possess the license. No additional fines shall be assessed under this subsection upon the person filing an application with the County Inspector and paying the accompanying license fee as provided under Section 9.B**.**

iii. remain liable for any other fines assessed by the County Inspector under this ordinance even though a license application and payment has been submitted to the County Inspector.

SECTION 10. ENFORCEMENT

The County Inspector shall have the sole, discretionary power to impose on any person violating this ordinance any one or more of the following actions:

A. The County Inspector may issue to the violator a citation that shall be written on a citation ticket and one copy kept on file in the County Weights and Measure's office and a second copy kept on file in the County Clerk's office. The County Inspector shall determine a preset fine as set forth in this ordinance.

B. If the violator pays the fine assessed by the County Inspector and corrects the conditions of the violation within ten (10) days, the County Inspector shall issue no further citations for the same infraction.

C. If the violator corrects the conditions of the violation but fails to pay the fine assessed by the County Inspector within ten (10) days of the citation being issued, the County Inspector shall request the County Clerk to issue a summons to be sent to the violator and assign a court date for trial.

D. If the violator fails to correct the conditions of the violation within ten (10) days:

i. the County Inspector shall continue to assess the violator additional fines under this ordinance until the conditions of the violation are corrected. Fines shall be assessed for each day of the ten (10) days the violator had been allowed to correct the violations but failed to do so. Each day the violation continues constitutes a separate violation and the fine doubles.

ii. the County Inspector shall request the County Clerk to issue a summons to be sent to the violator and assign a court date for trial. The County Attorney shall request the court to take whatever action is deemed necessary to prevent the instrument

from being used or the commodity from being sold, including but not limited to, issuing a warrant for the individual owning or managing the business and/or barring the business from conducting any and all business.

E. All fines received at the County Clerk's office shall be placed into Lake County Weights and Measures User Fee Fund as required by the Lake County Council. The Clerk's Office shall provide the Weights and Measures Department with a weekly printout of all fines received.

F. The County Inspector may decline to provide the violator with the opportunity to prepay and may proceed with civil action or any other procedure or remedy available by law or granted in this Ordinance against the violator.

G. Any fines assessed by the County Inspector under this Ordinance shall be doubled if within the past twelve (12) month period from the time the citation is issued a person receives a second citation for violations.

H. The County Inspector may temporarily suspend a license and request the County Sheriff to close a person's business or businesses for violations of this ordinance to protect the consumers of Lake County from fraudulent activity of the person, or where the person has amounts exceeding Five Hundred ($500.00) Dollars owing and outstanding with the County Inspector.

I. This ordinance shall take effect on the date of its passage by the Lake County Council.

SECTION 10. BUSINESS RECORDS

A. In enforcing this ordinance, a person shall make available to the County Inspector during normal business hours all records, including but not limited to, business and financial records, ownership date, repair records, checks, vendor invoices, purchase order and/or work orders. A person shall send by U.S. mail records requested by the County Inspector within two (2) business days from the date they were requested or from the date stipulated in this ordinance.

B. A person who violates this section shall be fined Five Hundred ($500.00) Dollars) when access to records is first denied or when records are not mailed as required, and then One Hundred ($100.00) Dollars per day for each additional day access is denied or records have not been received by U.S. mail.

SECTION 11. PENALTIES

A. It shall be a defense to a violation that the violation constitutes a misdemeanor or infraction under the laws of the State of Indiana.

B. The defendant in any civil action brought by the County through its Department of Weights and Measures pursuant to the provisions of this ordinance shall pay all court cost incurred by the County in the prosecution of said action in the event said defendant is found to have violated any one (1) or more of the provisions of this ordinance.

This ordinance rescinds Ordinance 1258C passed on December 14, 2004.

SO ORDAINED THIS _____ DAY OF _____, 2005.

_____
WILLIAM A. SMITH JR., President

_____	_____
RON TABACZYNSKI	LARRY BLANCHARD
_____	_____
THOMAS O'DONNELL	CHRISTINE CID
_____	_____
ELSIE FRANKLIN	DONALD POTREBIC

Members of the Lake County Council