

## **Title 8 – Health and Sanitation**

### **CHAPTER 2 Weights and Measures**

#### **SEC. 8-2-1 FEDERAL STANDARDS, STATE STATUTES AND ADMINISTRATIVE CODE ADOPTED BY REFERENCE.**

The subsequent federal standards, Wisconsin Statutes, the Sections thereof, and Wisconsin Administrative Rules are adopted by reference and shall be enforced under this Chapter with violations of same subject to penalties set forth in Section 1-1-7.

- (a) Chapter 98, Wisconsin Statutes, "Weights and Measures."
- (b) Chapter ATCP 90, Wisconsin Administrative Code, "Fair Packaging and Labeling."
- (c) Chapter ATCP 91, Wisconsin Administrative Code, "Selling Commodities by Weight, Measure or Count."
- (d) Chapter ATCP 92, Wisconsin Administrative Code, "Weights and Measures."
- (e) Chapter ATCP 93, Wisconsin Administrative Code, "Department of Agriculture, Trade and Consumer Protection."
- (f) Chapter ATCP 100, Wisconsin Administrative Code, "Marketing; Trade Practices."
- (g) Chapter ATCP 136, Wisconsin Administrative Code, "Mobile Air Conditioners, Reclaiming or Recycling Refrigerant."
- (h) NIST Handbook 44, 112, 130, 133, U.S. Department of Commerce, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices."

#### **SEC. 8-2-2 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise:

- (a) **WEIGHTS AND MEASUREMENTS.** Weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories used with any or all such instruments and devices, except meters for the measurement of electricity, gas (natural or manufactured) or water when the same are operated in a public utility system.
- (b) **SELL, SALE, PURCHASE AND SOLD.** Includes barter or exchange, and any offering or exposing for sale or possession with intent to sell or purchase.
- (c) **SEALER AND DEPUTY SEALER.** A Sealer of Weights and Measures in the City of Menasha.
- (d) **WEIGHT.** Net weight when used in reference to a commodity.
- (e) **INCORRECT.** As applied to weights and measures and commodities includes any failure to comply with the requirements of this Chapter or rules issued thereunder.

#### **SEC. 8-2-3 SEALER OF WEIGHTS AND MEASURES.**

- (a) **APPOINTMENT.** The Sealer of Weights and Measures shall be appointed by the Mayor with the confirmation of the Common Council. Such person, before entering upon the duties of his office, shall take and subscribe an oath to faithfully perform his duties.
- (b) **SALARY.** The Sealer of Weights and Measures shall receive a salary to be fixed by the Common Council.

(c) **ENFORCEMENT AUTHORITY.**

- (1) There is conferred upon the Sealer of Weights and Measures police power. Such Sealer of Weights and Measures shall be provided with a suitable badge or insignia of authority and in the exercise of his functions shall exhibit the same, upon demand, to any person questioning his powers.
- (2) The Sealer of Weights and Measures may enter and go into or upon any structure or premises, and may stop any person or vehicle for the purpose of enforcing this Chapter. He shall inspect and test any weights or commodities which are sold, purchased or used commercially as often as necessary to secure compliance with this Chapter. The Sealer of Weights and Measures shall approve for use and may seal or mark with appropriate devices such weights and measures as found upon inspection and test to be correct, and shall reject and mark or tag as rejected such weights and measures found to be incorrect, but which in his best judgment are susceptible of satisfactory repair. Weights and measures that have been rejected or condemned may be confiscated and may be destroyed by the Sealer if not corrected as required by the Sealer, or if used or disposed of contrary to this Chapter.
- (3) The Sealer of Weights and Measures shall have the power to issue stop orders, stop-sale orders, and disposal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-sale orders and disposal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this Chapter he deems it necessary or expedient to issue such orders. No person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-sale order, or disposal order issued under the authority of this Chapter.
- (4) The Sealer or his designee shall investigate complaints made to him concerning violations of the provision of this Chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this Chapter, and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

- (d) **REPORT.** The City Sealer shall keep a complete record of the work done as required by law.

**SEC. 8-2-4 FIELD STANDARDS AND EQUIPMENT; SPECIFICATIONS AND TOLERANCES.**

- (a) There shall be supplied by the City such "field standards" and such equipment as may be found necessary to carry out the provisions of this Chapter. The field standards shall be verified by the State of Wisconsin Department of Agriculture, Trade and Consumer Protection – Metrology Lab as required by law.
- (b) The specifications, tolerances and regulations for commercial weighing and measuring devices issued by the National Bureau of Standards shall apply in this City except as modified by rules issued by the State Department of Trade and Consumer Protection.

**SEC. 8-2-5 RESPONSIBILITIES OF EQUIPMENT OWNERS OR USERS.**

The owner, operator or user of any commercial weights and measures equipment, devices or associated equipment is responsible for the accuracy and maintenance of same.

- (a) It shall be the duty of every owner, operator or user to notify the Sealer in writing of the acquisition of any commercial weighing device, whether new, rebuilt or used. Said notification shall be accomplished within seventy-two (72) hours of the introduction into use of said device.
- (b) Commercial weights and measures devices regulated by this Chapter shall bear security seals appropriately affixed to any adjustment mechanisms designed to be sealed. The security seals shall bear the mark or imprint of the Sealer, or other weights and measures official, or service person authorized by the Sealer. Said security seal may only be removed to facilitate repairs of devices. Any service person who removes a security seal shall replace it and reseal the device with his own imprint. The Sealer shall be notified of said repairs and removal of the seal within seventy-two (72) hours of removal, or of the introduction of a new, rebuilt or used device per Subsection (a) above so that said device may be re-inspected.

**SEC. 8-2-6 BULK DELIVERIES SOLD TO AND DELIVERED BY VEHICLE TO THE ULTIMATE CONSUMER.**

All heating oils and motor fuels shall be sold by liquid measure or by net weight. In the case of each delivery of liquid fuel not in package form, and in an amount greater than ten (10) gallons in the case of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;
- (d) The unit price (the price per gallon or per pound, as the case may be) of the fuel delivered;
- (e) In the case of sale by liquid measure, the liquid volume of the delivery, together with the print meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and
- (f) In the case of sale by weight, the net weight of the delivery, together with any scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

**SEC. 8-2-7 MOTOR FUEL, HEATING OILS AND OTHER SOLVENTS SALES ON PREMISES OF SELLER.**

Every wholesaler, retailer, and every other person selling or distributing motor fuel, heating oil or solvents in the City of Menasha shall keep posted in a conspicuous place at his place of business, and on every pump from which delivery is made, a placard, sign or the like clearly stating the identity of each product dispensed, including the grade, blend or mixture of the product, the net selling price, and the amount of all taxes per gallon. No such placard shall be required on a computer pump whereon the aforementioned information is legibly shown on the face. All motor fuel pumps shall be marked conspicuously to indicate the blend or mixture so contained.

**SEC. 8-2-8 PRESUMPTIVE EVIDENCE.**

For the purpose of this Chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand or vehicle, in which or from which it is shown that buying or selling is commonly carried on, shall in the absence of evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

## **SEC. 8-2-9 FEES FOR WEIGHTS AND MEASURES.**

- (a) No person, firm or corporation shall operate weights and measures, weighing or measuring devices and systems and accessories relating thereto, which are used commercially within the City of Menasha in determining the weight, measure or count unless licensed pursuant to the provisions of this ordinance. The annual licensing year shall commence July 1 and end June 30 the following year. No license fee shall be refunded if a license or permit is revoked for cause.
- (b) **DEFINITIONS.** Commercial weighing or measuring devices are those used or employed in establishing the size, quantity, extent, area or measurement of quantities, things, produce or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure. This includes the use of bar code scanning to determine price.
- (c) **APPLICATION.** The application for a weighing or measuring license shall be made in writing on a form provided for such purpose by the City Sealer. Such application shall state the type and number of weighing and measuring devices to be licensed, the business address where the devices are located, the applicant's full name, signature, and post office address and whether such person is an individual, firm, corporation, or partnership. The names and addresses of all officers or partners shall be included.
- (d) **ISSUANCE AND FEES.** The City Sealer shall issue a license to the applicant based on the total number of weighing and measuring devices operated by the applicant if the requirements of this ordinance have been complied with and upon payment to the City the fees required.
- (e) **PERMIT REQUIREMENTS AND FEES.** The application for permit or the request for renewal of permit covered in this Section shall be accompanied with an appropriate fee to be established annually by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department. Items requiring fees are:  
Scales, estimate only scales, point of sale systems, prepack scales, weight, rules/tapes, timing devices, pumps (LMD), vehicle tank and bulk plant meters, scanners, high accuracy scales (pharmaceuticals, jewelers or precious metals) linear (fabric, wire, rope meters), vehicle scales, taximeters, electric pill counters, recycling machines, high speed diesel fuel dispensers, all other non-categorized devices.
  - (1) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
  - (2) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if such establishment opens for business or installs and uses a new weighing and measuring device for commercial transactions without submitting the application, submitting fees and having the equipment tested. The Public Health Director, or designee, may also order such establishment to close until the fee is paid.

- (f) **SPECIAL FEES.** Notwithstanding the provision for the requirement of an annual license for weighing and measuring devices, whenever a special request is made for consultation or the inspection or testing of a non-categorized weighing or measuring device, the actual expenses may be charged to the person or firm receiving the service. Such payment or charge shall be based on the current hourly rate.
- (g) **DISPLAY OF LICENSE.** All persons licensed under the provisions of this ordinance shall immediately post their license upon some conspicuous part of the premises on which the business is conducted and said license shall remain posted for the period the license is in force.
- (h) **SUSPENSION OF LICENSE.** Notwithstanding the other provisions of this ordinance, whenever the City Sealer finds that business on any licensed premises is conducted or managed in such a manner that there are serious or repeated violations of any ordinances or regulations of the City of Menasha, the laws of the State of Wisconsin, or regulations of the National Institute of Standards and Technology relating to weights and measure, the City Sealer may without warning, notice or hearing, issue a written notice to the license holder, operator or employee in charge of the licensed premises citing such condition and specifying the corrective action to be taken. If deemed necessary such order shall state that the license is immediately suspended and all weighing and measuring operations are to be discontinued. Any person to whom such an order is issued shall comply immediately but upon written petition to the Board of Health shall be afforded a hearing within 20 days of such petition. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension.
- (i) **REVOCATION OF LICENSES.** For serious or repeated violations of any of the requirements of this ordinance, or for interference with the City Sealer in the performance of his/her duties, the City Sealer may permanently revoke the license. Prior to such action, the City Sealer shall notify the license holder in writing, stating the reasons for which the license is subject to revocation, and advising that the license shall be permanently revoked at the end of five (5) days following service of such notice unless a request for a hearing is filed with the Board of Health by the license holder within such five (5) day period.
- (j) **TRANSFER OF LICENSES.** No license may be transferred unless otherwise provided for by the ordinances of the City. No license shall be issued to or used by any person acting as agent for or in the employ of another.
- (k) **HEARINGS.** The hearings provided for in this section shall be conducted by the Board of Health at a time and place designated by the Health Director. Based upon the record of such hearing, the City Sealer shall be charged with enforcing the decisions of the Board. A written report of the hearing decision shall be furnished to the license holder by the Health Director.

#### **SEC. 8-2-10 PROHIBITED ACTS; PENALTIES.**

- (a) Whoever does any of the following acts shall be in violation of this Chapter and shall be subject to forfeiture as prescribed in Section 1-1-7.
  - (1) Hinders, obstructs or impersonates a sealer or inspector.
  - (2) Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure.
  - (3) Represents in any manner a false quantity in connection with the purchase of sale, or any advertising thereof, or any commodity, thing or service.

- (4) Uses or disposes of any rejected weight or measure, or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from a sealer or inspector working in the State of Wisconsin.
- (5) Uses or disposes of any rejected weight or measure or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from the Sealer.
- (6) Uses any weighing or measuring device in determining the quantity of any commodity or service to be sold or purchased without having said device approved and sealed by the Sealer and the proper certificate obtained in accordance with Section 8-2-5.
- (7) Deals in or installs new or used weighing or measuring equipment or represents such equipment to be properly repaired following official rejection, if said equipment is inaccurate on inspection.
- (8) Uses or employs any commercial weighing or measuring device in establishing the size, quantity, extent, area or measurement of quantities, things, produce or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure without first obtaining a license from the City of Menasha. This section includes the installation and use of price scanning systems used to compute price for commercial transactions.