

CHAPTER 22

WEIGHTS AND MEASURES AND MARKETING

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CITY SEALER

- 22.01 Appointment
- 22.02 Powers
- 22.03 Duties
- 22.04 Definitions
- 22.05 Adoption of State and Federal Standards

MEASURES

- 22.06 Testing, Sealing, and Certificates
- 22.07 Peddlers to Have Certificates

SALE OF COMMODITIES

- 22.08 Commodities Offered for Sale to be Weighed or Measured
- 22.09 Misrepresentation of Price

PENALTIES

- 22.10 Penalties Specified

CITY SEALER

22.01 **APPOINTMENT.** The Director of Planning shall appoint a full-time Sealer of Weights and Measures (hereafter "City Sealer" or "Sealer") from among those persons certified by the State Department of Administration as eligible for such position. The City Sealer shall receive a salary to be fixed by the Council.

22.02 **POWERS.** The Sealer shall exercise those powers and that authority as set forth in §§98.05(1) through (4), Wis. Stats. which is hereby adopted and incorporated as if fully set forth herein.

22.03 **DUTIES.**

(1) **INSPECTION.** At least once annually, and more often if in the Sealer's judgment such inspection is warranted, the Sealer shall inspect, test, try, and correct, if need be, any measure or commodity, either in the place of business where the same is used or at the Sealer's office or other place as the Sealer deems more advisable. Such inspection shall also be made whenever any measure is installed, renewed, or altered in any specified stand, store, conveyance, or establishment or whenever any written request to examine any particular measure is filed in the Sealer's office.

(2) **GENERAL SUPERVISION.** The Sealer shall have general supervision over all sales of commodities within the City, shall re-weigh or re-measure packages in accordance with this chapter whenever the Sealer may have reason to suspect the perpetration of fraud in transactions and shall enforce the laws of the State and ordinances of the City so that fraud may be eliminated insofar as it is possible.

(3) **RECORDS AND REPORTS.** The City Sealer shall keep a complete record of the work done and shall make an annual report to the Mayor, which report shall be filed with the City Clerk. An annual report, duly sworn to, shall also be sent to the Department of Agriculture.

(4) **ARREST AND CONFISCATION.** The Sealer, by virtue of the office, shall arrest or cause to be arrested all violators of this chapter and shall seize any false measure or false quantities of commodities found in the possession of the person so arrested and deliver the same to the magistrate before whom the person so arrested is required to be taken and, if no arrest is made, shall seize and destroy any false measure or shall condemn the same according to the rules and regulations of the State Department of Agriculture, Trade and Consumer Protection. The owner shall not use any measure of which such disposition is made until it has been sealed.

(5) **SEALER NOT TO SELL MEASURES.** The Sealer shall not act as agent for or sell any measure or offer or expose the same for sale in the City or charge or receive any article of value for repairing any measure. The Sealer shall not seal any measure without first making an actual inspection and proof of the same for each measure so marked.

(6) **FEES.** The City shall assess fees on any person or business that receives services under the weights and measures program. The fees shall be established by the City Sealer and set by resolution of the Common Council.

22.04 **DEFINITION.**

(1) As used herein, "measure" means any device or adjunct used to ascertain the weight, size, quantity, or other dimension of any liquids, solids, or other articles and includes computing attachments to scales or capacity measures. "Commercial weighing or measuring devices" means those devices 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.

(2) COMMODITY means any product or commodity that is sold, offered for sale, or held or distributed for sale in this state. "Commodity" includes a consumer commodity.

(3) CONSUMER COMMODITY means any of the following:

- (a) Food as defined under s. 97.01 (6), Stats. except alcohol beverages.
- (b) A drug as defined under 21 USC 321 (g) (1), except biological animal products, antibiotics, drugs dispensed by prescription and drugs containing insulin.
- (c) A device as defined under 21 USC 321 (h).
- (d) A cosmetic as defined under 21 USC 321 (i).
- (e) Customarily produced and distributed for retail sale to consumers.
- (f) Used by consumers for purposes of consumption, personal care or the performance of household tasks.

(4) PERSON. The term "person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

22.05 **ADOPTION OF STATE AND FEDERAL STANDARDS.** The following federal standards, Wisconsin Statutes sections and state rules are adopted by reference and shall be enforced under this chapter, with violations of such provisions subject to the penalties set forth in Section 22.10.

- (1) Chapter 97, Wis. Stats. – Food Regulation
- (2) Chapter 98, Wis. Stats. – Weights & Measures
- (3) Chapter 100, Wis. Stats. – Marketing; Trade Practices
- (4) Chapter ATCP 90, Wis. Admin. Code - Packaging and Labeling.
- (5) Chapter ATCP 91, Wis. Admin. Code - Method of Sale of Commodities.
- (6) Chapter ATCP 92, Wis. Admin. Code - Weights And Measures.
- (7) Chapter ATCP 109, Wis. Admin. Code - Freezer Meat and Food Service Plan Trade Practices.
- (8) Chapter ATCP 124, Wis. Admin. Code - Price Comparison Advertising.
- (9) Department of Commerce, Comm. 10 – Flammable and Combustible Liquids
- (10) NIST Handbook 44, 130, 133 U.S. Department of Commerce; Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices.

MEASURES

22.06 TESTING, SEALING, AND CERTIFICATES.

(1) MEASURES TO BE TESTED. Any person using scales or measures for the buying or selling of any commodity within the City shall bring such scales or measures to the City Sealer to have them tested unless the Sealer tests them at the place of business. No person shall sell, offer for sale, or give away within the City any measure unless the same has been tested and sealed by the Sealer.

(2) ALL MEASURES TESTED TO BE MARKED. All measures tested by the Sealer and found to conform to the legal standards shall be marked sealed or in such other manner as the State Department of Agriculture, Trade and Consumer Protection may direct.

(3) CERTIFICATE OF INSPECTION. In addition, the Sealer shall give to each person from whom any measure has been tested a certificate, properly dated, showing in detail for what measure such certificate is given and the result of the test; and a duplicate thereof shall be retained by the Sealer and kept on file in the office.

(4) RESPONSIBILITY 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 the same. All commercial weighing and measuring devices must be maintained in the same condition as when said device was manufactured.

(a) It shall be the duty of every owner, operator, or user to notify the Sealer, in writing, of acquisition of any device, whether new, rebuilt, or used, or of the major repair, conversion, or calibration of any device already in use.

(b) Notice of any acquisition, major repair, conversion, calibration, or seal removal must be reported to the City Sealer or Deputy City Sealer orally or in written form within 24 hours of such activity.

(c) Commercial weights and measures devices regulated by this ordinance shall bear security seals appropriately affixed to any adjustment mechanisms designed to be sealed. The security seal shall bear the mark or imprint of the Sealer or Deputy Sealer, or other weights and measures official, or service person authorized by the State of Wisconsin. Said security seal only may be removed to facilitate repairs of devices.

22.07 PEDDLERS TO HAVE CERTIFICATES. No license shall be issued under the provisions of §6.04, Green Bay Municipal Code, to any hawker, peddler, vendor, or dealer unless such person presents a certificate from the Sealer showing that the measures used by such person have been properly inspected, tested, and sealed immediately preceding the issuance of such license.

SALE OF COMMODITIES

22.08 COMMODITIES OFFERED FOR SALE TO BE WEIGHED OR MEASURED. No person shall sell or offer for sale within the City any fruits, vegetables, berries, or grain of any description, any article of dry measurement or any ice, coal, or any other goods, wares, merchandise, commodities, or produce without having first correctly weighed or measured the same in the amount ordered or purchased by the buyer.

22.09 MISREPRESENTATION OF PRICE.

(1) Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

(2) CASH REGISTERS AND SIMILAR DEVICES. Prices generated by a device such as a cash register or scanning system are also affected under this section. The sealer shall inspect and test such systems and monitor pricing declarations made by or relative to them, such as pricing signs, shelf tags, or individually price-marked units, to ensure agreement of all prices. Prices generated by these systems shall wholly agree with posted or pre-marked prices for the item being sold.

(3) CASH REGISTERS. Each cash register used in buying and selling transactions shall be maintained in proper operating condition by its owner. All components, attachments and functions of the register shall be operating correctly as designed. All pricing representations shall be accurate.

(4) UPC, SCANNING AND POINTS OF SALE SYSTEMS. Pricing systems utilizing a scanning device, such as a hand-held gun or wand or counter-mounted scanner units at retail checkouts which read universal product code symbols or other bar code labels and the like, shall be maintained in proper operating condition and be so calibrated to accurately read the intended symbols and then generate the proper description and price for the given code.

PENALTIES

22.10 PENALTIES SPECIFIED.

(1) Any person who violates any provision of this chapter, except as otherwise provided, or who uses in the buying or selling of any commodity or thing, for hire, reward, or otherwise, or possesses any false or condemned measure, any weighing machine which does not balance or any measure which has not been sealed by the Sealer within one year, except as expressly provided by Statute, or any person who sells or offers to sell any weight or measure which has not been sealed by the Sealer, or who sells or offers or exposes for sale or keeps for the purpose of sale a lesser quantity of any commodity than such quantity is represented to be or any person who is guilty of giving false or insufficient weight or measure of commodities, of taking or attempting to take false or overweight measure of commodities when in the custom of trade, or any buyer or an agent who does the weighing or measuring of or selling of commodities in a manner contrary to law shall upon conviction forfeit not less than \$25 nor more than \$500 for each offense, together with the costs of prosecution, and in default of the payment thereof, shall be imprisoned in the county jail not to exceed 90 days, or until such forfeiture and costs are paid. Each violation and each day a violation continues or occurs shall constitute a separate offense. This section shall not preclude the City from maintaining any appropriate action to prevent or remove a violation of this chapter.

(2) PRIMA FACIE EVIDENCE OF FALSE WEIGHT. The possession of any false or insufficient weight or measure shall be prima facie evidence that the same was intended to be used or sold in violation of this chapter.