

CHAPTER 32

SOUTH MILWAUKEE

PROPOSED WEIGHTS AND MEASURES ORDINANCE

32.01 Definitions.

- (a) **“City” shall mean the City of South Milwaukee.**
- (b) “City Sealer” shall mean the Sealer of Weights and Measures in the City.
- (c) “Department” shall mean the Environmental Health Consortium consisting of the Cudahy, St. Francis and South Milwaukee Health Departments.
- (d) “Duplicate Permit Fee” shall mean a fee for the replacement of the original permit.
- (e) “Governing Body” shall mean the local health department in that city in which the business is located **or its successor organization if any, or in its absence, the Public Health Administrator.**
- (f) “Late Fee” shall mean a fee for failure to pay established fees by June 30 or the due date.
- (g) “Permit/License” shall mean the document issued by the regulatory authority that authorizes a person to operate a weighing and measuring device. **The words “permit” and “license” as used throughout this chapter shall be interchangeable.**
- (h) “Reinspection Fee” shall mean a fee for the third (3rd) and subsequent inspections needed to address compliance issues with the statutes, administrative codes and city ordinance.
- (i) “Weight” shall mean net weight when used in reference to a commodity.
- (j) “Weights and measures” shall mean any device 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.

32.02 Adoption of state and federal standards.

The following federal standards, Wisconsin Statutes and state rules are adopted by reference and shall be enforced under this chapter.

- (1) Wisconsin Statutes Chapter 98, Weights and Measures.
- (2) Wisconsin Administrative Code, Chapter ATCP 90, Package and Labeling.
- (3) Wisconsin Administrative Code, Chapter ATCP 91, Methods of Sale and Commodities.
- (4) Wisconsin Administrative Code, Chapter ATCP 109, Freezer Meat and Food Service Plan Trade Practices.
- (5) Wisconsin Administrative Code, Chapter ATCP 92, Scales and Scale Pits.
- (6) Wisconsin Statutes Chapter 97 Food Regulation.
- (7) Wisconsin Statutes Chapter 100 Marketing; Trade Practices.
- (8) NIST handbook 44, U.S. Department of Commerce, Specifications, Tolerances and Other Technical Requirements and Commercial Weighing and Measuring Devices.
- (9) Wisconsin Administrative Code, Chapter ATCP 124, Price Comparison Advertising.

32.03 Field standards and equipment.

There shall be supplied by the Department such field standards and such equipment as may be found necessary to carry out the provisions of this chapter. The field standards shall be certified by the State Weights and Measures office as provided by 98.04 (1) Wis. Stats.

32.04 City sealer.

- (1) **Appointment; Compensation.** The City Sealer shall be appointed by the Mayor, subject to confirmation by the Council. The Sealer shall be allowed a salary as determined by the Council.
- (2) **General powers and duties.** The Sealer shall have the custody of the City standards of weight and measure and of the other standards and equipment provided for by this chapter and shall keep accurate records of the same. The Sealer shall enforce the provisions of this chapter and of the State Weights and Measures Act. He shall have and keep a general supervision over the weights and measures offered for sale, sold or in use in the City. The sealer shall keep a complete record of its work and annually shall file a report thereof with the State Department of Agriculture, Trade and Consumer Protection and the Common Council.

(3) Specific powers and duties.

(a) Testing at City –supported institutions. The Sealer shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which monies are appropriated by the Council, reporting his findings in writing to the executive officer of the institution concerned.

(b) General testing.

1. When not otherwise provided by law, the Sealer may inspect and test, to ascertain if they are correct, all weights and measures kept, offered or exposed for sale. The Sealer shall at least once within a 12-month period, and as more frequently as he may deem necessary, inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) In determining the weight, measurement or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure or of count.

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

2. With respect to single-service devices, that is, devices to be used commercially only once and to be then discarded, and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

(c) Investigations. The Sealer shall investigate complaints made to him concerning violations of the provisions 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) Inspection of packages. The Sealer shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether the same contain the amounts represented and are

kept, offered or exposed for sale or sold in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered or exposed for sale in violation of law, the Sealer may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this paragraph, the Sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from the representative of such lot.

(e) **Disposition of correct and incorrect apparatus.** The Sealer shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection and test to be correct and shall reject and mark or tag as “rejected” such weights and measures as he finds, upon inspection or test, to be incorrect, but which in his best judgment can be satisfactorily repaired. The Sealer shall condemn, and may seize and destroy, weights and measures found to be incorrect that in his best judgment cannot be satisfactorily repaired. Weights and measures that have been rejected may be confiscated and destroyed by the Sealer if not correct, or if used or disposed of contrary to this chapter.

(f) **Police powers; Right of entry and stoppage.** With respect to the enforcement of this chapter and any ordinance or State statute dealing with weights and measures that he is or may be empowered to enforce, the Sealer is vested with special police powers and may arrest, without formal warrant, any violator of this chapter, ordinance or statute, and seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered or exposed for sale or sold in violation of law. In the performance of his official duties, the Sealer may enter or go into or upon, without formal warrant, any structure or premises and stop any person and require him to proceed, with or without any vehicle of which he may be in charge, to some place which the Sealer may specify.

32.055 Obstruction of City Sealer.

No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the City Sealer or authorized agent in the performance of his or her duties under this section, nor shall the operator give false information with the intent to mislead the City Sealer or authorized agent.

32.05 Licensing

No person shall operate weights and measures, weighing or measuring devices and systems and accessories relating thereto, which are used commercially within the city in determining the weight, measure or count of commodities or thing sold or purchased or offered or exposed for sale on the basis of weight, measure or count, unless licensed pursuant to the provisions of this ordinance. Transients operating as a city farm market are exempted from this license.

32.06 Application

All applicants must apply on forms furnished by the Department. All applications for permits shall be made in writing to the local governing body where the business is located. All applications shall list the true, legal names of the owners or operators of the business, whether person, firm, partnership or corporation, address. All corporations applying for licensure shall be registered with the State and the name of the registered agents shall be placed on the application. The agent's name and address shall be kept current. The applicant shall provide documents, which reflect the aforementioned registration to the Department. The **Department** shall either approve the application or deny the permit with thirty (30) days after receipt of a complete application.

32.07 Appeal. Any person refused or denied a license may appeal the denial through the appeal procedure provided under the provisions of Secs. 68.07 through 68.16 Wis. Stats.

32.08 Issuance; license fees.

The City Sealer shall issue a license under this article to the applicant based on the total number of weighing and measuring devices operated by the applicant if the requirements of this chapter have been complied with and upon payment to the City of the applicable fee. The fee for licensing of weighing and measuring devices shall be on file with the City Clerk.

32.09

Procedure for issuing new or renewal license. The Department or authorized agent shall issue a license to each applicant for a new or renewal license that meets all the requirements of this section and has paid to the city the fee required in the City Fee Schedule. A licensee must get approval from the City Common Council in which the business is located if its license has been suspended or revoked within the last three years.

32.10 Display

All persons licensed under the provisions of this ordinance shall immediately post their license upon some conspicuously part of the premises on which the business is conducted and the license shall remain posted for the period the license is in force.

32.105 Changes to be reported.

a. A licensee shall notify the Department whenever there is a change in any information that is reported in the application form. The licensee shall make this notification in writing within 5 days after the change occurs.

b. The owner of any premises for which a license has been granted shall promptly notify the Department in writing of his or her intention to cease operations.

32.11 Transfer; issuance to agent or employee.

No license issued under this articles may be transferred unless other wise provided for by the ordinances of the City. No license shall be issued to or used by any person acting for or in the employ of another.

32.12 Insufficiency of fund; non-payment of fees.

- a) If funds are to be found insufficient, lack of payment or any other reason the funds are not honored, the license will be null and void. Upon notification, the permit must be submitted to the Department for retainment until the time of re-issuance. A license will not be issued until all applicable fees, late fees and processing charges are paid.**
- b) Any individual or corporation that owes the city for unpaid property taxes, late fees, or license fees relating to a current or previous weight and measures license shall pay all such outstanding fees, before a license is issued.**

32.13 Inspection and reinspection.

- a) One copy of the inspection report shall be given to the owner, operator or employee of the establishment and another copy shall remain on file at the Department.
- b) As a condition of license renewal, all establishments licensed under this Chapter shall consent to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspections and compliance with these regulations.
- c) Whenever an order or directive is issued by the City Sealer which requires a reinspection to determine compliance, 2 reinspections shall be made without charge and documented by the department following the time period given in the order or directive
- d) If, upon the second reinspection, the order or directivities is found not to have been complied with and additional reinspections are required, a fee shall be assessed the responsible party for each additional reinspections to compensate for the costs of such reinspections. Payment is due on written demand from the Department.

32.14 Duty of owners of incorrect apparatus.

Weights and measures that have been rejected under the authority of the Sealer shall remain subject to his control until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weight and measure shall cause the same to be made correct within 30 days or such longer period as may be authorized by the Sealer or, in lieu of this, may dispose of the same in such manner as is authorized by the Sealer. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct or until specific written permission for such use is issued by the Sealer.

32.15 Construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 98.02, Wis. Stats. and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

32.16 Sale of commodities ordered off sale prohibited. No person shall, except with the specific approval of the Sealer, in any manner:

(1) Sell, keep, offer or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this chapter until such package or amount of commodity has been brought into full compliance with all legal requirements.

(2) Dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this chapter and that has not been brought into compliance with legal requirements.

32.17 Misrepresentation of price. 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. Whenever an advertised, posted or labeled price per unit of weight, measure or count include a fraction of a cent, all elements of the fractions shall be prominently displayed, and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one half the height and width of the numerals representing the whole cents.

32.18 Violations.

No person shall violate any provisions of this chapter.

1. Enforcement. The Department or its designee shall enforce any provision of this chapter.
2. Enforcement Procedure.
 - (a) Inspection. If, upon inspection, the Department or designee finds that any licensed or unlicensed place is conducted or managed in violation of the ordinances or regulations of the City, laws of the State or regulations of any agency of the State prescribing standards of weights and measures, the department or designee shall service a written order upon the licensee, his agent or employee in charge, of the premises, or the person responsible for the violation, notifying him of such violations.
 - (b) Noncompliance With Order. If a person does not comply with a written order from the department or designee, the person may be subject to one or more of the following actions, and/ or penalties.
 1. The issuance of a citation.

2. A reinspection fee.
3. Suspension of license.
4. Revocation of license.
5. Commencement of legal action against the person seeking a court imposed forfeiture and/ or imprisonment.
6. Commencement of legal action against the person seeking an injunction to stop, abate the violations and/or correct the damage created by the violation.
7. Any other action authorized by this chapter or by other applicable laws as deemed necessary by the Department or designees.
8. The initiation of one action or penalty under this section does not exempt the apparent violator from any additional actions and/ or penalties listed in this section.

32.19 Suspension.

Notwithstanding any other provisions of this chapter, whenever the City Sealer finds that business on any premises licensed under this article is conducted or managed in such a manner that there are serious or repeated violations of this chapter, or violation of any ordinances or regulations of the City, the laws of the state or regulations of the National Institute of Standards and Technology relating to weights and measures, he may, 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 that all weight and measuring operations are to be discontinued. Any person to whom such an order is issued shall comply immediately.

32.20 Reinstatement of a suspended license. The license holder whose license has been suspended may at any time, make application for reinstatement of the license. Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the City Sealer shall make a reinspection and thereafter as many additional reinspections as he deems necessary to assure himself that the applicant has complied with the requirements. If the finding indicates compliance the Department may reinstate the license.

32.21 Revocation.

For serious or repeated violations of any of the requirements of this chapter or for interference with the City Sealer in the performance of his duties, the City Sealer may permanently revoke the license issued under this article. Prior to

such action, the City Sealer shall notify the license holder in writing, stating the reasons for which the license is revoked. The license holder shall comply immediately.

32.22 Appeal. Any person whose license has been revoked may appeal the denial through the appeal procedure provided under the provisions of Secs, 68.07 through 68.16, Wis. Stats.

32.23 Offenses subject to penalty.

- (a) The use or possession for the purpose of using for any commercial purpose specified in 32.04 (3) (b) 1., or the sale or offering or exposing for sale or hire, or having in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.
- (b) The use or possession for the purpose of current use for any commercial purpose specified in 32.04 (3) (b) 1. a weight or measure that does not bear a seal or mark such as is specified in 32.04 (3) (e), unless such weight or measure has been exempted from testing by the provisions of 32.04 (3) (b) 2.
- (c) The disposal of any rejected or condemned weight or measure in a manner contrary to law or regulation.
- (d) The removal from any weight or measure, contrary to law or regulation, of any tag, seal or mark placed thereon by the appropriate authority.
- (e) Selling or offering or exposing for sale less than the quantity he represents of any commodity, thing or service.
- (f) Taking more than the quantity her represents of any commodity, thing or service when, as a buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.
- (g) Keeping for the purpose of sale or advertising or offering or exposing for sale or selling any commodity, thing or service in a condition or manner contrary to law or regulation.
- (h) The use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, of a weight or measure that is not so positioned that its indications may be accurately read and the weighting or measuring operation observed from some position which reasonably be assumed by a customer.

- (i) Violating any provision of this chapter or the regulation promulgated under the provision of this chapter for which a specific penalty has not been prescribed.

32.24 Presumptive evidence.

For the purpose of this chapter, proof of the existence of a weight or measure or a weighing or measure 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 conclusive 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.

32.25 Fees.

- a. The fees for services and activities performed by the Department in carrying out its responsibilities under this code shall be determined by resolution of the Common Council and published in the Administrative Fee Schedule.
- b. Fees to Accompany Application. License fees imposed under this chapter shall accompany the license application. If a license is granted, the Department shall issue the applicant a receipt for his license fee.
- c. No Proration. There will be no proration for license fees.
- d. Refunds. No license fee paid shall be refunded, unless a refund is requested prior to an inspection.
- e. Late Fees. A late fee, as enumerated in the Administrative Fee Schedule, shall be charged for all licenses issued under provision of this chapter.
 - 1. This shall apply when an application is not renewed before the expiration date, unless waived by the Department.
 - 2. A late fee shall also apply to a new establishment or any establishment with a new operator who does business before obtaining the required licenses, as provided for in this chapter.
- f. Duplicate License Fee. A duplicate licensed fee as enumerated in the Administrative Fee Schedule shall be charged to duplicate any licensed provided for in this chapter.

- g. License Fees. License fees, as enumerated in the Administrative Fee Schedule.
- h. All fees shall be accounted for separately and applied to the expenses under Chapter 32.**
- i. Reinspection.
 - 1. A reinspection fee shall be charged as enumerated in the Administrative Fee Schedule.

32.26 Expiration Date. The license issued under provisions of this chapter shall expire, unless otherwise ordered by the Department or authorized agent on June 30.

32.27 Renewal

- a. Renewal notices shall be furnished by the department prior to the expiration date. It is the responsibility of the owner/operator to complete the application form and pay the appropriate fee before the expiration date of such license.
- b. Uncooperative, habitual violators may be refused license renewal.

32.28 Whenever conflicts between these rules and regulations and other City ordinances or State and Federal regulations occur, the most stringent rule shall apply.

32.29 Penalty for violation. Any person, partnership, firm or corporation who fails to comply with the order of the Health Officer or its designee shall be subject to a forfeiture of not less than \$50.00 and not more than \$500.00 per day for each day the condition ordered corrected continues uncorrected after the expiration of the time period stated in the order, together with the costs of the action.