

CHAPTER XXI
CONSUMER PROTECTION AND
WEIGHTS AND MEASURES

21.001 FEDERAL STANDARDS, STATE STATUTES
AND RULES ADOPTED BY REFERENCE

The following Federal standards, Wisconsin Statutes and sections thereof, and Wisconsin Rules are adopted by reference and shall be enforced under this Ordinance with violations of same subject to penalties set forth in §21.34 of this Ordinance:

A. Chapter 98, Wisconsin Statutes, "Weights and Measures".

B. Chapter Ag 53, Wisconsin Administrative Code, "Packaging and Labeling".

C. Chapter Ag 54, Wisconsin Administrative Code, "Method of Sale of Commodities".

D. Sections of Chapter 100, Wisconsin Statutes, pertaining to advertising as follows: 100.18(6) and (8) "Fraudulent Advertising" and 100.183 "Fraud, Advertising Foods", and 100.184 "Advertising Foods for Sale".

E. National Bureau of Standards (NBS) Handbook 44, U.S. Department of Commerce, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices".

21.01 MEANING OF TERMS

When used in this Chapter:

A. The term "**commodity in package form**" shall be defined as in §Ag 53.02, Wisconsin Administrative Code.

B. The term "**Health Department Administrator or his agent**" shall be construed to mean a sealer of weights and measure of the City.

C. "**Incorrect**" as applied to weights and measures and commodities includes any failure to comply with the requirements of this Chapter or rules issued thereunder.

D. The term "**intrastate commerce**" shall be construed to mean any and all commerce or trade that is begun, carried on and completed wholly within the limits of the State of Wisconsin, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the State, the delivery being made either directly to

the purchaser or to a common carrier for shipment to the purchaser.

E. The word "**person**" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

F. "**Sell**", "**sale**" and "**sold**" include barter or exchange, and any offering or exposing for sale or possession with intent to sell.

G. The term "**vending machine**" shall be construed to mean a device designed to be released for service by the insertion of money to make deliveries of a product or service. Parking meters are hereby specifically excepted from this definition.

H. "**Weight**" means net weight when used in reference to a commodity.

I. "**Weights and Measures**" means 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 and manufactured) or water when the same are operated in a public utility system.

21.02 SYSTEMS OF WEIGHTS AND MEASURES

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems shall be used for all commercial purposes in the City of Kenosha. The definitions of basic units of weight and measures, the tables of weight and measures, and weights and measures equivalents, as published by the National Bureau of Standards, are recognized and shall govern weighing and measuring equipment and transactions in the City.

21.03 DEFINITIONS OF SPECIAL UNITS OF MEASURE

The term "**Barrel**", when used in connection with fermented liquor, shall mean a unit of 31 gallons. The term "**ton**" shall mean a unit of 2,000 pounds avoirdupois weight. The term "**cord**" when used in connection with wood intended for fuel purposes, shall mean the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

21.04 FIELD STANDARDS AND EQUIPMENT

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 weights and measures office upon their initial receipt and at least once each five (5) years thereafter.

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 Agriculture.

21.05 GENERAL POWERS AND DUTIES OF SEALER

The Health Department Administrator, or his or her agent, 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 Health Department Administrator, or his or her agent, shall enforce the provisions of this Chapter and of the State Weights and Measures Act. He or she shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the City. He or she shall annually make to the Wisconsin Department of Agriculture a report on all of the activities of his or her office as required by law.

21.06 WEIGHING AND MEASURING DEVICE LICENSE

A. Definitions. "Commercial Weighing" and "Measuring Devices" shall mean 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.

B. License Required. No person, party, firm or corporation shall operate or maintain 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 things sold or offered or exposed for sale on the basis of weight, measure or count unless licensed by a weighing or measuring device license issued pursuant to the provisions of this Ordinance.

C. License Application. The application for a weighing or measuring device license shall be made in writing on a form provided for such purpose by the Health Administrator. Such application shall state the type and number of weighing and measuring devices to be licensed, the location of the devices, the applicant's full name and post office address and whether such person is an individual, firm or

corporation and if a partnership, the names of partners together with their addresses and the signatures of the applicant or applicants.

D. License Issuance, Term & Fees. The Health Administrator shall issue a license to the applicant for the period July 1 through June 30 based on the total number of weighing and measuring devices operated by the applicant if the requirements of this Ordinance have been complied with upon payment to the City Treasurer of the fee required in the following fee schedule:

- 1. Scales 0-30 pounds \$20 per scale
- 2. Scales over 30 pounds \$30 per scale
- 3. Scales, Farmer's Market . . . \$10 per scale
- 4. Fuel Pumps \$20 per pump
- 5. Fuel Truck Meter \$45 per meter
- 6. Late Renewal Fee \$10

E. Suspension for Nonrenewal. It shall be the duty of the Health Administrator to notify the appropriate City officials and to order the immediate enforcement of the provisions of this Ordinance in cases involving failure to renew a weighing or measuring device license. Said licensee shall be prohibited from operating or maintaining a weighing or measuring device until such time as a valid license has been applied for and obtained under the provisions of this Ordinance.

F. Display Of License. All persons licensed under the provisions of this Ordinance shall immediately post their license upon such conspicuous part of the premises on which the business is carried on and the same shall remain posted during the period for which the license is in force.

G. Suspension of Licenses. Notwithstanding the other provisions of this Ordinance, whenever the Health Administrator finds that any licensed premises is conducted or managed in such a manner that there are serious or repeated violations of this Ordinance or violation of any of the Ordinances or regulations of the City, the laws of the State of Wisconsin or regulations of the National Bureau of Standards relating to weights and measure, he/she 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 and 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 Health Administrator, shall be afforded a hearing before the Licensing/Permit Committee within twenty (20) days of such petition. Failure to allow an

inspector immediate access to the premises to determine whether such grounds exist shall also be grounds for suspension.

H. Revocation of Licenses. For serious or repeated violations of any of the requirements of this Ordinance, or for interference with the Health Administrator, or designees thereof in the performance of their duties, the license may be permanently revoked after an opportunity for a hearing has been made by the Licensing/Permit Committee prior to such action, the Health Administrator 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 the service of such notice, unless a request for a hearing is filed with the Health Administrator, by the license holder within such five (5) day period.

I. Hearings. The hearings provided for in this Section shall be conducted by the Licensing/Permit Committee at a time and place designated by it. Based upon the record of such hearing, the Health Administrator 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 Administrator.

J. Other Weighing or Measuring Device Fees. Notwithstanding the provision for the requirement of an annual license for weighing and measuring devices, whenever a special request is made for the inspection or testing of a noncategorized weighing or measuring device or a consultation, the actual expenses of same may be charged to the person or firm receiving the service. Such payment or charge shall be based on the current hourly rate, plus fringe benefits, of the person providing the service.

21.07 GENERAL TESTING

When not otherwise provided by law, the Health Department Administrator, or his or her agent, shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the Health Department Administrator, or his or her agent, to inspect and test, to ascertain if they are correct, all weights and measures commercially used **(1)** 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, or **(2)** in computing the basic charge or payment for services rendered on the basis of weight, measure or of count; provided, that with respect to single service devices, that is, devices designed 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 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.

21.08 INVESTIGATIONS

The Health Department Administrator, or his or her agent, shall investigate complaints made to him/her concerning violations of the provisions of this Chapter, and shall, upon his/her 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.

21.09 INSPECTIONS OF PACKAGES

The Health Department Administrator, or his or her agent, 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 whether they be 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 Health Department Administrator, or his or her agent, 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 Section, the Health Department Administrator, or his or her agent, 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 and representative of such lot. No person shall **(1)** sell, or 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 Section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or **(2)** dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this Section and that has not been brought into compliance with legal requirements, in any manner except with the specific approval of the Health Department Administrator, or his or her agent.

21.10 ENFORCEMENT AUTHORITY

A. There is hereby conferred upon sealers and inspectors of weights and measures, police power; such sealers and inspectors shall be provided with suitable badges or insignia of authority and in the exercise of their functions shall exhibit the same, upon demand, to any person questioning their powers, and they are hereby empowered and authorized to make arrests, with or without formal warrant, of any persons violating any statute relating to weights and measures.

B. Sealers or inspectors 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. They shall inspect and test any weights and measures or commodities which are sold or used commercially as often as necessary to secure compliance with this Chapter, and may seize any evidence, or reject and mark or tag as "rejected" those which are incorrect. A representative sample may be used as the basis to determine whether any lost is incorrect.

C. Weights and measures and commodities that have been rejected may be confiscated and destroyed by a sealer or inspector if not corrected within thirty (30) days or such longer period as he or she may authorize, or if used or disposed of without his or her written authorization.

D. Sealers or inspectors may seal or mark with appropriate devices such weights and measures as are found upon inspection and test to be in conformance with this Chapter.

21.11 VENDING MACHINES

A. Notice Posting of Machines Not Operating Properly. Whenever upon inspection of any vending machines it shall be found that such vending machine is not operating properly, the Health Department Administrator or his or her agent, shall cause the vending machine to be placed in a nonvending condition by covering the coin insert slot or other mechanism with the notice prescribed and furnished by the Health Department Administrator, or his or her agent.

B. Responsibility. All vending machines in commercial use shall have conspicuously displayed thereon, or immediately adjacent thereto, adequate information detailing the method for the return of monies paid when the product or service cannot be obtained.

C. Maintenance. All vending machines in commercial service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating

condition throughout the period of such service.

21.12 METHOD OF SALE OF COMMODITIES

A. Commodities in liquid form shall be sold by liquid measure and commodities not in liquid form shall be sold by weight, but liquid commodities may be sold by weight and commodities not in liquid form may be sold by count or measure if such methods are in general use and given accurate information as to the quantity of commodity sold.

B.1. Berries and small fruits may be sold by measure only if in containers having capacities of one-half dry pint, one dry pint or one dry quart.

2. If a commodity is packaged in an aerosol container, it shall be sold by weight (including the propellant).

3. This Section shall not apply to commodities sold in compliance with a State or Federal law which prescribes another method of sale, or to commodities sold for immediate consumption on the premises where sold.

21.13 DECLARATION OF QUANTITY

A. No commodity which is marked, tagged or labeled, or for which a sign is displayed, with a selling price, shall be sold unless the weight, measure or count of the commodity is conspicuously declared on the commodity or its tag, label or sign, but a declaration of count is not required if the selling price is for a single unit, or a set or combination of commodities customarily sold to and understood by consumers as a single unit.

B. No commodity shall be wrapped or its container made, formed or filled so as to mislead the purchaser; nor shall the qualifying term "when packed", or the terms "jumbo", "giant" or "full", or words of similar import that tend to mislead the purchaser as to the amount of the commodity, be used in connection with a declaration of quantity.

C. Variations from Declared Quantity. The magnitude of permitted variations from declared quantity shall be determined by rules set forth by the Wisconsin Department of Agriculture, Trade and Consumer Protection and the facts in the individual case.

21.14 DECLARATIONS OF UNIT PRICE ON RANDOM WEIGHT PACKAGES

In addition to the declarations required by **§21.13** of this Chapter, any commodity in package form, the package being one of a lot containing random

weights of the same commodity and bearing to total selling price of package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

21.15 MISLEADING PACKAGES

No commodity in package form shall be so wrapped nor shall it be in a container so made, formed or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Health Department Administrator, or his or her agent.

21.16 ADVERTISING COMMODITIES FOR SALE

Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package.

21.17 BREAD

Each loaf of bread and each unit of a twin or multiple loaf of bread, made or produced for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced shall be one of the following weights and no others: one-half pound, one pound, one and one-half pounds, or multiples of one pound avoirdupois weight, within variations or tolerances prescribed in this Chapter. Provided, that the provisions of this Section shall not apply to biscuits, buns or rolls, weighing 4 ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of §21.13 shall not apply to unwrapped loaves of bread.

21.18 BULK DELIVERIES SOLD IN TERMS OF WEIGHT AND DELIVERED BY VEHICLE

When a commodity in bulk is delivered by vehicle to an individual purchaser and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment: **(1)** the name and address of the vendor; **(2)** the name and address of the purchaser; and, **(3)** the net weight of the delivery expressed in pounds, but where milk is picked up at farms, only the identity of the vendor and the net weight need be stated. If the net weight is derived from determination of gross and tare weights, such gross and tare weights also shall be

stated in terms of pounds on the ticket. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand to the inspector or sealer, who, if he/she desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser. If the purchaser himself carries away his/her purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him or her. If the commodity is to be weighed by the purchaser, the purchaser shall furnish the vendor the duplicate delivery ticket provided for herein.

21.19 HEATING OIL AND MOTOR FUEL

Heating Oil. All heating oil 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 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either **(1)** at the time of delivery, or **(2)** 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 (that is, 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 printmeter 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 weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

21.20 PROHIBITED ACTS

- A.** Hinders, obstructs or impersonates a sealer or inspector.
- B.** Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure or causes a weight or measure to be incorrect.
- C.** Represents in any manner a false quantity in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service.
- D.** 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.

21.21 PRESUMPTIVE EVIDENCE

For the purposes 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.

21.22 PENALTY

Any person, firm, corporation or organization found guilty of a violation of any section of this Chapter for which a specific penalty is not herein provided shall, upon conviction thereof, be fined the sum of not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars, together with the costs of the prosecution, and in default of payment thereof, shall be imprisoned until such forfeiture and cost are paid, but not to exceed thirty (30) days.

Each and every twenty-four (24) hours such violation shall continue, except as otherwise provided in this Chapter, shall constitute a separate offense.

21.23 SEPARABILITY PROVISION

If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

21.24 REPEAL OF CONFLICTING LAWS

All City Chapters and parts of Chapters contrary to or inconsistent with the provisions of this Chapter, and specifically **§13.12** of the Code of General Ordinances, Kenosha, Wisconsin, are repealed insofar as they might operate in the future; but as to offenses committed liability incurred, and claims now existing thereunder, the existing law shall remain in full force and effect.

21.25 CITATION

This Chapter may be cited as the Consumer Protection and Weights and Measures Chapter of the Code of General Ordinances, Kenosha, Wisconsin.