

CHAPTER 9

WEIGHTS AND MEASURES

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9.01 State Statutes and Regulations Adopted. Chapter 98 of the Wisconsin Statutes entitled "Weights and Measures," and provisions of the Wisconsin Administrative Code adopted pursuant thereto, both so far as applicable and as from time to time amended, revised or modified are hereby adopted by reference and incorporated as part of the City of Manitowoc Municipal Code. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this section.

9.02 Enforcement. The Mayor and Common Council are authorized to enter into contracts with the State of Wisconsin for the purpose of enforcing this Chapter as authorized by Chapter 98 of the Wisconsin Statutes. In order to assure compliance with this section, the City hereby grants the authority and duties of sealers and inspectors required by this section, to the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection.

9.03 Definitions.

(1) Commercial Weighing or Measuring Devices. 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) Weights and Measures Program. The program that includes administration and enforcement of this section, Chapter 98 Wisconsin Statutes, applicable Administrative Code provisions, and any related actions.

9.04 License.

(1) Commercial Weights & Measures. Except as provided in (b), no person shall operate or maintain any commercial weighing or measuring devices, or any other weights and measures, or systems and accessories related thereto which are used commercially within the City of Manitowoc for determining the weight, measure or count unless each such device is licensed as issued pursuant to the provisions of this chapter.

(2) Exemptions. Sales permitted at a Farmers Market or sales permitted by Direct Sellers and Transient Merchants are exempt from licensing under this section.

(3) **Transfer of License.** No license may be transferred unless otherwise provided for by the ordinances of the City.

(4) **Application.** An application for a weights and measures license shall be made in writing on a form provided for such purpose by the City Clerk and shall be signed by the owner of the commercial business, or by its authorized agent. Such applications shall state the type and number of weighing and measuring device(s) to be licensed, location of the devices, the applicant's full name and post office address, and whether such applicant is an individual, partnership, limited liability company, corporation or other entity. If the applicant is a partnership, the application shall state the names and addresses of each partner. If the applicant is a corporation or limited liability company, the application shall state the name and address of all officers and agents of the applicant, including the registered agent thereof.

(5) **Issuance of License and Fees.** Upon compliance with this section, the City Clerk shall issue a license to the applicant upon payment of an annual license fee set by the City Council. Each store or other business location shall require a separate license. The license fee shall not be prorated for a partial year.

(6) **License Term.** A license issued under this section shall run from January 1 and expire on December 31 of each year. Each Licensee is prohibited from operating or maintaining a weighing or measuring device until such time as a valid license has been obtained under the provisions of this section.

(7) **Enforcement for Non-Renewal.** It shall be the duty of the City Clerk to notify and to order the enforcement of the provisions of this chapter in cases involving failure to renew a weights and measures license.

(8) **Display of License.** All persons licensed under the provisions of this ordinance shall immediately post their license upon a conspicuous part of their premises upon which the business is conducted and the same shall remain posted during the period for which the license is enforced.

9.05 Non-Issuance, Suspension, or Revocation of License.

(1) **License Regulated.** The Public Utilities and Licensing Committee may deny, grant, suspend, revoke or choose not to renew any license issued pursuant to this chapter for violations of ordinances or laws regulating the licensed activity and for other good cause.

(2) **Effect of Delinquent Taxes, Assessments or Special Charges.** Unless otherwise specifically provided, licenses required under the provisions of this chapter shall not be issued:

(a) **Premises.** For any premises for which taxes, assessments or special charges are delinquent and unpaid.

(b) **Persons.** To any person who is delinquent in the payment of taxes, assessments or special charges related to the business or property for which the license is sought.

(3) **Automatic Revocation.** The license of any establishment is automatically revoked when the business is not operated for thirty (30) days or longer, unless it is seasonal. Except for seasonal businesses, when an establishment is closed for a period of more than thirty (30) days, and the establishment reopens, it shall be considered a new establishment and may not be reopened until granted a new license in accordance with this Ordinance.

(4) **Reinstatement of License.** Any establishment, the license of which has been suspended, may at any time make application for reinstatement of the license. After the receipt of a satisfactory application accompanied by a signed statement by the applicant and any applicable proof that the violated provision or provisions of this Chapter have been conformed with, the Building Inspector shall

make an inspection of the premises to ensure compliance. If the applicant is complying with the requirements of this Chapter, the Public Utilities and Licensing Committee may reinstate the license.

(5) Appeal.

(a) Within thirty (30) days of the date after issuing a written notice to suspend, revoke or non-renewal of a license, any aggrieved party may make a written request for a hearing. The Public Utilities and Licensing Committee shall set a date and time for a hearing on the matter, not less than three (3) days nor more than fifteen (15) days after receiving the written request for a hearing. At the hearing, the complainant and a representative of the City may be represented by counsel, may present evidence and call and examine witnesses and cross examine witnesses of another party. Such witnesses shall be sworn or affirmed by the City Clerk. The Public Utilities and Licensing Committee shall act as the decision maker. Within ten (10) days of the hearing, the City Clerk shall issue the written determination of the Public Utilities and Licensing Committee specifying the reasons for the decision and shall mail it to all interested parties.

(b) Within thirty (30) days from the date of notice of the Public Utilities and Licensing Committee determination on the parties from the hearing, any person aggrieved thereby may appeal such decision to the Common Council.

(c) Appeals shall be taken by filing a notice of appeal specifying the grounds therefore with the City Clerk. On Appeal the Public Utilities and Licensing Committee shall forthwith transmit all papers relating to such appeal to the City Clerk. The Clerk shall give notice of the appeal to the Common Council at its next regular meeting. The Council shall then fix a reasonable time for hearing of the same and give public notice thereof, as well as notice to the parties interested, and shall promptly decide the appeal.

(d) Any party to the proceeding or their counsel who may be adversely affected by a decision of the Public Utilities and Licensing Committee may appear and present oral arguments and evidence to the Common Council. In addition, the Council may request briefs from the parties and examine such other persons as it may deem necessary for a fair and impartial hearing of the appeal. The Clerk shall swear or affirm all persons testifying before the Council in regard to the appeal, and shall maintain a record of all testimony and other evidence as may be presented.

(e) The Council may reverse, affirm or modify the decision of the Public Utilities and Licensing Committee, and to this end may direct issuance or non-issuance of any license. Within ten (10) days after the decision on any appeal, the City Clerk shall cause due notice thereof in writing to be mailed to all parties to the appeal. Such notice shall specify the grounds for the decision.

(f) Any applicant aggrieved by the decision of Common Council or any person so aggrieved may seek such other legal relief as may be available.

9.06 Fee Assessment.

(1) Annual Assessment. The City shall annually assess fees to each licensee based on the number and types of weighing and measuring devices licensed as of the first day of each year. The fee for each license shall be established by Resolution of the Common Council based upon the annual assessment of fee to each

licensee as determined by the number and types of weighing and measuring devices licensed.

The total of the fees assessed and the fees collected shall not exceed the actual costs of the Weights and Measures Program.

(2) Clerk to Prepare Assessment Schedule. The City Clerk shall at least annually prepare a proposed schedule of assessments and the City Clerk's proposed schedule shall be submitted to the Common Council. A copy of the proposed schedule together with notice of the date and time at which the Common Council will consider the assessments shall be mailed to each licensee.

(3) Common Council Determines Assessment. At least 10 days after such mailing, the Common Council shall consider the City Clerk's proposed schedule of assessments and determine the schedule of assessments on a reasonable basis. The City Clerk shall mail to each licensee an invoice for the amount of the fee assessed to the licensee as determined by the Common Council and each licensee shall pay the fee assessed within 30 days after the date the invoice is mailed.

(4) Failure to Pay Assessment. If the assessed fee is not paid within 30 days of the date of mailing of the invoice, an additional administrative collection charge of 10% of the fee shall be added to the amount due, plus interest shall accrue thereon at the rate of 1% per month or fraction thereof until paid. If the licensee is the owner of the real estate premises where the licensed weights and measures devices are located, any delinquent assessment shall be extended upon the current or the next tax roll as a charge against the real estate premises for current services, as provided in Section 66.0627 Wis. Stats. No licenses shall be issued or renewed under this section if the licensee is delinquent in the payment of a fee assessed under this section.

(5) Mailing of Notices. Schedules, notices and invoices shall be considered mailed to a licensee when mailed by first class mail, postage prepaid, to the licensee at the licensee's address as shown on the application form.

(6) Change of Ownership. If the ownership of a commercial business licensed under this section is transferred during a license year, the new owner of the business shall be obligated to apply to the City for a license.

(7) Penalty Fee for Use of Unregistered Devices. Failure to make notification to the City within seventy-two (72) hours of the addition or replacement of any new or used weights and measures equipment, including any scale, pump, meter, etc., shall lead to a penalty of triple the device fee as established by the Common Council for the year in which the failure to make said notification occurs. Payment of any fee mentioned in this subsection, however, shall in no way relieve any person or firm of the penalties that may be imposed for violation of this Chapter.

9.07 Penalty. Any person who fails to comply with the provisions of this ordinance shall forfeit not less than \$250 nor more than \$500 for each offense. Each day a violation exists or continues shall constitute a separate offense.

9.08 All ordinances or parts of ordinances in conflict herewith are hereby repealed. Should any portion of this ordinance be declared invalid, such decision shall not affect the validity of the remaining portions of this ordinance.