



AN ORDINANCE: By Public Services & Safety
Committee
Re: Amending Ch. 4, Art. II relating to updating
Weights & Measures code sections

ORDINANCE NO. 2014-16
Introduced: November 5, 2014

Committee/Commission Action:
RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Section 4-19 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-19. - Regulated.

The following ~~federal standards~~, State statutes and Wisconsin Administrative Code provisions are hereby adopted by reference:

- (1) Wis. Stats. ch. 98, Weights and Measures.
- (2) Wis. Admin. Code [ATCP](#) ch. 90(~~ATCP~~), Fair Packaging and Labeling.
- (3) ~~Chapter Wis. Admin. Code~~ [ATCP](#) ch. 91, ~~Wisconsin Administrative Code, M~~ Selling commodities by weight, measure or count.
- (4) Wis. Admin. Code [ATCP](#) ch. 109(~~ATCP~~), Freezer Meat and Food Service Plan Trade Practices.
- (5) Wis. Admin. Code [ATCP](#) ch. 92(~~ATCP~~), Weights and Measures.
- (6) Wis. Stats. ch. 97, pertaining to food regulation, as follows: Wis. Stats. § 97.03, Standards, Misbranding; Wis. Stats. § 97.07, Interpretation; Wis. Stats. § 97.09, Rules; Wis. Stats. § 97.12, Enforcement.
- (7) Wis. Stats. § 100.18, Fraudulent Advertising; Wis. Stats. § 100.183, Fraud, Advertising Foods.
- (8) Wis. Admin. Code [ATCP](#) ch. 124(~~ATCP~~), Price Comparison Advertising.

Section 2. Section 4-20 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-20. - Sealer of weights and measures.

The City Sealer of Weights and Measures shall be appointed by the ~~Health Officer~~Director of Community Development and Assessment. The Sealer shall keep a complete record of ~~his~~ work and shall file reports as required with the Common Council.

Section 3. Section 4-21 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-21. - Enforcement authority.

- (a) There is conferred upon the Sealer of Weights and Measures police power.
- (b) The Sealer may enter and go into or upon any structure or premises, and may stop any person or vehicle for the purpose of enforcing this ~~article~~Article. ~~They~~ Sealer 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 ~~article~~Article. The Sealer shall approve for use and seal or mark ~~with appropriate devices~~ such weights and measures ~~as~~ found upon inspection ~~and or~~ test to be correct, and shall reject and mark or tag as "rejected" such weights and measures ~~as~~ found, upon inspection or test, to be incorrect, but which in their Sealer's best judgment are ~~susceptible of satisfactory~~ repair able. 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 ~~article~~Article.
- (c) The Sealer 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 their Sealer's enforcement of the provisions of this ~~article~~Article ~~they the Sealer~~ deems it necessary or expedient to issue such orders, and 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 ~~section~~Article.
- (d) The Sealer shall investigate complaints made to him concerning violations of the provisions of this ~~article~~Article, 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 ~~article~~Article and to promote the general objection of accuracy in the determination and representation of quantity in commercial transactions.

Section 4. Section 4-22 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-22. - 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 the same.

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

notification shall be accomplished within 72 hours of the introduction or reintroduction into use of said device.

- (2) ~~Commercial w~~Weights and measures ~~devices~~ regulated by this ~~article~~Article shall bear security seals appropriately affixed to any adjustment mechanisms, which are designed to be sealed. The security seals shall ~~bear the mark or imprint of the Sealer, or other weights and measures official, or identify the service persons authorized by the Sealer~~company and individual technician by name, initials or other unique identifier. Said security seal only may be removed to facilitate repairs of devices. The Sealer shall be notified of said repairs and removal of the seal within 72 hours of removal or of the introduction of a new, rebuilt or used device per Subsection (1) of this section ~~so that said devices may be sealed or resealed.~~
- (3) Transient merchants ~~or sellers of farm produce and seafood~~pur~~chasing or selling commodities or services by weight or measure either from bulk or in packaged form shall notify the Sealer and receive the approval of the Sealer before purchasing or selling activities may be commenced. At the Sealer's discretion, the transient merchant may be approved for a calendar year and the subsequent notification requirement may be waived. Sellers of farm produce and seafood vendors~~ operating from other than a continuous, permanent location shall also meet these requirements ~~of this section.~~

Section 5. Sections 4-23 through 4-28 of the Code of Ordinances of the City of Neenah are repealed as repetitive of adopted state statutes and state administrative code under Section 4-19 of the Code of Ordinances of the City of Neenah.

Section 6. Section 4-29 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-23 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-2923. - Devices, license permit required, application for permit.

- (a) ~~License Permit required.~~ No ~~person, firm or corporation shall operate~~ weights and measures, ~~weighing or measuring devices and systems and accessories relating thereto, which are used commercially as defined in Wis. Stat. §98.01(7), may be operated~~ within the City ~~in determining the weight, measure or count unless licensed without a permit issued~~ pursuant to the provisions of this ~~article~~Article. All ~~permit shall be required and all~~ permits issued under this Article shall expire or terminate on June 30 of each year. No permit fee shall be refunded if a 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.~~

~~(c)~~(b) Application. The application for a weighing or measuring permit under this Article shall be made in writing on a form provided for such purpose by the ~~Health Department~~ of Community Development and Assessment. Such application shall state the type and number of ~~weighing and measuring devices~~ weights and measures to be ~~licensed~~ permitted, the ~~business~~ address where the ~~devices~~ weights and measures are located, the applicant's full name, the applicant's signature (or that of the applicant's legal representative), and ~~post office~~ the applicant's billing address

and ~~whether such person is an individual, firm, corporation, or partnership~~the organizational structure of the applicant. The names and addresses of all officers or partners of the applicant, as well as the name and address of the applicant's legal representative and the relationship to the applicant, shall be included if applicable.

Section 7. Section 4-30 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-24 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~30~~24. - Issuance of permit, fees.

The City Sealer shall issue a permit to the applicant based on the total number of ~~weighing weights~~ and ~~measuring measures devices operated~~downed by the applicant if the requirements of this ~~article~~Article have been complied with and upon payment to the City the fees established by the Common Council.

(1) The permit fee for a new device installed after six full months of the applicable permit year has passed shall be 50% of the annual permit fee.

(2) The permit fee for any device found in operation without a permit by the Sealer shall be 200% of the annual permit fee.

Section 8. Section 4-31 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-25 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~31~~25. - Special request fees.

Notwithstanding the provision for the requirement of an annual ~~license permit~~ for ~~weighing weight~~ and ~~measuring-measure devices~~, whenever a special request is made for consultation or the inspection or testing of a ~~noncategorized uncategorized weighing weight or and measuring-measure device~~, the actual expenses may be charged to the ~~person or firm owner of the device~~ receiving the service. Such payment or charge shall be based on the current hourly rate.

Section 9. Section 4-32 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-26 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~32~~26. - Display of permit.

All persons licensed under the provisions of this articlePermits issued under the provisions of this Article shall be immediately posted ed their license upon some conspicuous part of the premises on at which the business is conductedpermitted devices are located and said permit shall remain posted for the period the license permit is in force.

Section 10. Section 4-33 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-27 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~33~~27. - Suspension of permit.

(a) Notwithstanding the other provisions of this ~~article~~Article, 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 this ~~article~~Article, or violation of any ordinances or regulations of the City, the laws of the State, or regulations of the National Bureau of Standards relating to weights and measures, he may without warning, notice or hearing, issue a written notice to the permit holder, operator or employee in charge of the ~~licensed premises~~devices citing such condition and specifying the corrective action to be taken. If deemed necessary, such order shall state that the permit 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 Common Council shall be afforded a hearing before a committee designated by the Common Council within 20 days of such petition.

(b) Failure to allow an inspector immediate access to the premises to determine whether ~~such~~ grounds under subsection (a) exist shall be independent grounds for suspension.

Section 11. Section 4-34 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-28 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~34~~28. - Revocation of permits.

For serious or repeated violations of any of the requirements of this ~~article~~Article, or for interference with the City Sealer in the performance of his duties, the City Sealer may permanently revoke the permit ~~holder~~ in writing, stating the reasons for which the permit is subject to revocation, and advising that the permit shall be permanently revoked at the end of five days following service of such notice unless a request for a hearing is filed with the ~~Common Council~~City Clerk by the permit holder within such five-day period.

Section 12. Section 4-35 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-29 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~35~~29. - Transfer of permits.

No permit may be transferred unless otherwise provided for by the ordinances of the City. No permit shall be issued to or used by any person acting as agent for or in the employ ~~of~~of another.

Section 13. Section 4-36 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-30 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~36~~30. - Hearings.

The hearings provided for in this section shall be conducted by a standing committee designated by the Common Council at a time and place designated by the Committee Chairman. At the conclusion of the hearing, the Committee shall recommend action to the Common Council which shall act based on the record of the hearing. Based upon the record of such hearing, ~~the~~ City Sealer shall be charged with enforcing the

decisions of the ~~board~~[Common Council](#). A written report of the hearing decision shall be furnished to the permit holder by the Committee Chairman.

Section 14. Section 4-37 of the Code of Ordinances of the City of Neenah is renumbered as Section 4-31 and is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 4-~~37~~[31](#). - Prohibited acts, penalty.

Whoever violates any of the foregoing provisions of this ~~article~~[Article](#) or does any of the following acts shall be subject to the penalty provisions contained in Section 1-~~7-20~~ of this Code. Any condition caused or permitted to exist in violation of the provisions of this section, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist. Additional acts prohibited:

- (1) Hinders, obstructs or impersonates the ~~sealer~~[Sealer](#).
- (2) Uses or has in possession ~~for use in buying or selling any commodity or service, or sells,~~ any incorrect weight ~~or and~~ measure.
- (3) Represents in any manner a false ~~quantity weight and measure~~ in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service.
- (4) Uses, ~~or~~ disposes ~~or sells of~~ any rejected weight ~~or and~~ measure, ~~or~~ commodity or removes therefrom any official tag, seal, stamp or mark, without written authority from the Sealer.
- (5) Uses any ~~weighing or measuring device in determining the quantity of any commodity or service to be sold or purchases~~[weight and measure](#) without having said device approved and sealed by the Sealer and the proper ~~certificate permit~~ obtained in accordance with ~~Section 4-22~~[this Article](#).

Section 15. Section 4-32 of the Code of Ordinances of the City of Neenah is created to read as follows:

Sec. 4-32. Record Retention

The Sealer shall keep a complete record of his work and shall file reports as required with the Common Council. Records kept by the Sealer shall be maintained in accordance with the requirements of Section 2-115, subject to the following modifications:

- (1) Records of routine inspections in which weights and measures are found in full compliance with law shall be retained for a period of three (3) years from the date of the inspection.
- (2) Records of routing inspection in which weights and measures are incorrect shall be retained for a period of (5) years from the date of the inspection.
- (3) Records of complaints and resulting inspections and actions shall be retained for a period of seven (7) years from the date of the complaint, resulting inspection and action.

Section 16. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent

provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 17. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Bates/Pollnow

Adopted: November 5, 2014

Approved: 9-0 November 5, 2014


Published: November 10, 2014

Approved:



Dean R. Kaufert, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
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