

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2018-0003

Sponsored by: <b>County Executive Budish/Department of Consumer Affairs</b>  Co-sponsored by: <b>Councilmembers Simon, Brown, Jones, Miller and Brady</b>	<b>An Ordinance</b> enacting Title 13, Chapter 1302 of the Cuyahoga County Code to establish the Cuyahoga County Weights and Measures Code.
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WHEREAS, County Council deems it necessary to adopt the regulations governing the County's Department of Consumer Affairs, Division of Weights and Measures; and

WHEREAS, the need to promote honest and fair business practices; and the protection of the citizens of and visitors to Cuyahoga County from unfair and deceptive practices and acts is in the best interest of the public; and

WHEREAS, the public health, safety and welfare of the residents of the County will best be served by enacting a Cuyahoga County Weights and Measures Code that provides for enforcement by the Department of Consumer Affairs through many means.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Title 13, Chapter 1302 of the Cuyahoga County Code is hereby enacted as follows:

### **Title 13: Commercial Regulation**

#### **Chapter 1302 Weights and Measures**

##### **Section 1302.01: Definitions**

As used in Chapter 1302:

- (A) "Correct" shall mean conformance to all applicable requirements of this Chapter.
- (B) "Department" shall mean the Cuyahoga County Department of Consumer Affairs.
- (C) "Director" shall mean the Director of the Department of Consumer Affairs.

- (D) “Package” shall mean any commodity enclosed in a container or wrapped in any manner in advance of wholesale or retail sale. An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure shall be considered a package or packages.
- (E) “Person” shall mean any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust partnership, association, cooperative, or other legal entity.
- (F) “Primary standards” means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.
- (G) “Secondary standards” means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and rules.
- (H) “Sale from Bulk” shall mean the sale of commodities when the quantity is determined at the time of the sale.
- (I) “Seal” shall mean any official tag, seal, wire, or mark of the Cuyahoga County Department of Consumer Affairs, Weights and Measures Division, indicating a device has been inspected.
- (J) “Sealer” shall mean the Cuyahoga County Fiscal Officer. When in this Chapter the words “Sealer” are used, they shall mean the Fiscal Officer, or any of his or her delegates duly authorized to perform the duties of such officer.
- (K) “Short-weight Packages” shall mean any “standard pack” or “pre-pack commodity” whose net contents is not equal to or exceed the labeled or advertised quantity at the retail outlet.
- (L) “Weight” means as used in connection with any commodity or service net weights. “Net weight” means the weight of a commodity, excluding any materials, substances, or items not considered to be a part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons.
- (M) “Weight(s) and/or Measure(s)” shall mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

### **Section 1302.02: Filing Consumer Complaints**

The obligations and prohibitions in this Chapter shall supplement and be consistent with any and all State, rules, regulations, and procedures governing weights and measures. Any person who feels they have been subjected to unfair or deceptive practices or

unconscionable consumer sales acts or practices directly related to any violation of this Chapter, the Ohio Revised Code, or the Ohio Administrative Code related to weights and measures laws may file a complaint in writing with the Cuyahoga County Department of Consumer Affairs. The complaint should be filed at any time within two (2) years from the date of the alleged violation or within a reasonable time after the consumer discovers or should have discovered the violation, whichever is later. Filing a complaint pursuant to this Chapter does not toll the statute of limitations for any other action before another entity or court. The complaint should state enough details of the incident to allow the Department to investigate the circumstances surrounding the incident, and at a minimum, the complaint should state the name and address of the person alleged to have committed the violation, the details of the violation, and any other information the Department deems necessary.

### **Section 1302.03: Standards for Weights and Measures**

(A) The systems of weights and measures.

The definitions of basic units of weight and measure, the tables of weights and measures, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and adopted by the Department and shall govern weighing and measuring equipment and transactions in the county.

(B) Technical requirements for weighing and measuring devices.

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the county, except insofar as modified or rejected by applicable provisions of the Ohio Revised Code or Ohio Administrative Code.

(C) Information required on packages.

Except as otherwise provided in this Chapter or by regulation promulgated pursuant hereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container.
- (2) The net quantity of the contents in terms of weight, measure or count.
- (3) The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale or sold in any place other than on the premises where packed.

(D) Declarations of unit price on random weight packages.

In addition to the declarations required in Section 1302.05(I) of this Chapter, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

(E) Advertising packages for sale.

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulations to appear on the package. Where a dual declaration is required, the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

(F) Prohibitions.

No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any seal from any weight or measure device without specific written authorization from the proper authority.
- (3) Hinder or obstruct any Weights and Measures' official in the performance of his or her duties.
- (4) Sell, offer or expose, use or keep to be used, any weight or measure for weighing or measuring any article bought, sold, offered or exposed for sale, which is liable to indicate false or inaccurate weight or measure, or which does not conform to the standard established by law.
- (5) Sell, offer or expose any weight or measure for weighing or measuring of products for sale without said weight and measure having been tested, marked and sealed by weights and measures official.
- (6) Misrepresent the price of any commodity or service, sold, offered, exposed or advertised for sale by weight, measure or count, or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

#### **Section 1302.04: Duty of Testing and Sealing**

(A) When necessary for the enforcement of this Chapter, the Sealer is hereby:

- (1) Authorized to enter any commercial premises during normal business hours, except in the event such premises are not open to the public.
- (2) Empowered to issue violations and condemned orders with respect to any weights and measures commercially used, and issue violations and off sale orders with respect to any packaged commodities or bulk commodities, kept, offered or exposed for sale.
- (3) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this Chapter.
- (4) With respect to the enforcement of this Chapter, the Sealer is hereby vested with the authority and is to investigate any commercial vendors within the county found to possess weighing and/or measuring devices which are in violation of this Chapter.

#### **Section 1302.05: Equipment**

- (A) Suitability of equipment.

Commercial equipment shall be suitable for the service in which it is used with respect to elements of its design, including but not limited to its weighing capacity (for weighing devices), its computing capability (for computing devices), its rate of flow (for liquid measuring devices), the character, number size, and location of its indicating or recording elements, and the value of its smallest unit and unit prices.

- (B) Accessibility for testing purposes.

A device shall be so located or such facilities for normal access thereto shall be provided to permit inspecting and testing the device; inspecting and applying security seals to the device, and readily bringing the testing equipment of the Weights and Measures official to the device by customary means and in the amount and size deemed necessary by such official for the proper conduct of the test. Otherwise, it shall be the responsibility of the device owner or operator to supply such special facilities, including such labor as may be needed to inspect, test, and seal the device, and to transport the testing equipment to and from the device, as required by the Weights and Measures official.

- (C) Method of operation.

Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment.

(D) Installation.

A device shall be installed in accordance with the manufacturer's instructions, including any instructions marked on the device. A device installed in a fixed location shall be so that neither its operation nor its performance will be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.

(E) Position of equipment.

A device or system equipped with a primary indicating element and used in direct sales, except for prescription scales, shall be positioned so that its indications may be accurately read and the weighing or measuring operation may be observed from some reasonable "customer" and "operator" position. The permissible distance between the equipment and a reasonable customer and operator position shall be determined in each case upon the basis of the individual circumstances, particularly the size and character of the indicating element.

(F) Maintenance of equipment.

All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall be continuously maintained in proper operating condition throughout the period of such service. Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device user shall not be considered "maintained in a proper operating condition."

(G) Requirements for the method of sale of commodities.

The Uniformed Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the county, except insofar as modified or rejected by applicable provisions of the Ohio Revised Code or Ohio Administrative Code.

(H) Requirements for packaging and labeling.

The Uniform Packaging and Labeling Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to packaging and labeling in the county, except insofar as modified or rejected by regulation.

(I) Requirements for price verification.

The Examination Procedures for Price Verification as adopted by the National Conference on Weights and Measures and published in the National Institute of

Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to price verification in the county, except insofar as modified or rejected by regulation.

(J) Itinerant vendor.

All itinerant vendors using a weighing or measuring device in the county shall have that device inspected and tested by the Weights and Measures officials at the point of sale.

(K) Obstructing county weights and measures inspector prohibited.

No person shall obstruct or hinder County Weights and Measures inspectors in the performance of any of the duties imposed upon him or her by the provisions of this Chapter.

### **Section 1302.06: Deceptive Practices Prohibited**

No person shall do any of the following:

- (A) Sell, offer, or expose for sale less than the quantity he represents;
- (B) Take any more than the quantity he represents when, as a buyer, he furnishes the weight or measure by means of which the quantity is determined;
- (C) Represent the quantity he sells or offers or exposes for sale in any manner tending to mislead or in any way to deceive.

### **Section 1302.07: Remedies**

- (A) Upon finding a violation of this Chapter, the Director shall expeditiously cause the same to be corrected or where there is evidence of intent to defraud commence a civil action in the name of the county to recover a civil penalty in the amounts prescribed. In lieu of instituting or continuing a cause of action for recovery of such civil penalty may be released, settled or compromised by the Director.
- (B) Seek injunctive relief as a means of enforcing this Chapter. Said injunctive relief may include, but is not limited to, an Assurance of Voluntary Compliance prohibiting the alleged violator from engaging in an unfair or deceptive practice; stipulation for payment of penalty and/or investigative costs. Any settlement shall be in writing and made a matter of public record.
- (C) Violation of an assurance entered pursuant to this section shall be treated as a violation of this Chapter and shall be subject to all the penalties provided therefor.
- (D) In enforcing this Chapter, the Director shall be subject to the jurisdiction, investigation, and enforcement provisions and procedures in Chapter 1301 of the

Cuyahoga County Code, as long as it does not conflict with any other weights and measures laws enacted by other political subdivisions within the County.

- (E) A violation of any provision of this Chapter shall be punishable by a payment of a civil penalty in the sum of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00). Subsequent violations shall be punishable by a payment of a civil penalty of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00).

**Section 1302.08: Price Refunds; Price Information**

- (A) A person who uses an electronic scanner to record the price of a commodity or thing and who sells the commodity or thing at a price higher than the posted or advertised price of that commodity or thing at least shall refund to a person who purchases the commodity or thing the difference between the posted or advertised price of the commodity or thing and the price charged at the time of sale.
- (B) A person who sells a commodity or thing and who uses an electronic scanner to record the price of that commodity or thing shall display, in a conspicuous manner, a sign stating the requirement of this section.
- (C) Whoever violates any provisions of this Section may be subject to penalties provided in Section 1302.07.

**Section 1302.09: Sales of Petroleum Products**

- (A) Definition.

For the purpose of this Chapter, “petroleum products” includes all liquid products having a predominant content of derivatives of petroleum and customarily used in motor vehicles.

- (B) Posting of petroleum product prices.

Street signage is not required. However, when street signage is used, the sign shall match the product price at which the product is displayed. The signs must be visible to the motorist before entering the station to purchase fuel. The conditions applicable to the sale of the fuel at the advertised price must also be on the advertising sign (i.e., full service or self-service and cash price or credit price). The total size of the figures indicating a fractional or decimal number which is part of the price shall be at least forty percent the size of the largest figure in the whole number accompanying said fractional or decimal number.



(C) Retail dispenser labeling.

All retail dispensing devices must identify conspicuously the type and price of product, the particular grade of the product, and the applicable automotive fuel rating.

(D) Prohibited advertising practices.

No person shall advertise in and about the premises where the petroleum product is sold, whether by display, sign or otherwise, the sale of petroleum products to be sold or delivered by means of a device of the computing type at a price less than that for which said computing device has been set.

(E) Penalties.

Whoever violates any provisions of this Section may be subject to penalties provided in Section 1302.07.

**SECTION 2.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Brady, seconded by Ms. Brown, the foregoing Ordinance was duly enacted.

Yeas: Schron, Conwell, Jones, Brown, Houser, Simon, Baker, Miller, Tuma, Gallagher and Brady

Nays: None

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County Council President                      Date

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County Executive                                      Date

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Clerk of Council                                      Date

First Reading/Referred to Committee: February 13, 2018  
Committee(s) Assigned: Education, Environment & Sustainability

Additional Sponsorship Requested: April 4, 2018

Committee Report/Second Reading: April 10, 2018

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