

90-12 Liquor and Tavern Regulations

d-2. At the meeting of the common council, the chair shall allow oral argument by an applicant or complainant who has timely submitted a written statement in response to the recommendations of the licensing committee. The city attorney shall also be permitted a statement. Oral arguments shall not exceed 5 minutes on behalf of any party. Applicants shall appear only in person or by counsel. Corporate applicants shall appear only by the agent or by counsel. Partnerships shall be represented only by a partner or by counsel. Limited liability companies shall be represented only by the agent or by counsel. Complainants shall appear only in person or by counsel. Any person making an appearance before the council pursuant to this subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

d-3. Prior to voting on the committee's recommendation, all members of the council who are present shall signify that they have read the recommendation and report of the licensing committee and any written statements in response that have been filed thereto. If they have not, the chair shall allocate time for the members to do so. If they have read the report and recommendation, then a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the vote taken by the common council.

3. REQUEST TO SURRENDER A LICENSE. See s. 85-17 for provisions relating to the surrender of licenses and the return of surrendered licenses.

90-12. Revocation or Suspension of Licenses. **1. CAUSES.** Any license issued under this chapter may be suspended or revoked for cause by the common council after notice to the licensee and a hearing. Such licenses shall be suspended or revoked for the following causes:

a. The making of any material false statement in any application for a license.

b. The conviction of the licensee, his agent, manager, operator or any other employe for keeping a gambling house or a house of prostitution or any felony related to the licensed operation.

c. A showing that such licensee has violated any state law or city ordinance prohibiting the sale of intoxicating liquors or fermented malt beverages to underage persons, or to any person intoxicated or bordering on the state of intoxication.

d. The violation of the provisions in ss. 90-7 through 90-10 and 90-13 through 90-31.

e. The violation of any of the excise laws of this state.

f. The licensed premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on the licensed premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood; or

g. If the licensee is a corporation or licensed limited partnership, the conviction of the corporate agent, officers, directors, members or any shareholder holding 20% or more of the corporation's total or voting stock, or proxies for that amount of stock, of any of the offenses enumerated in s. 125.12(2)(ag), Wis. Stats., as amended.

h. Failure of the licensee to operate the premise in accordance with the floor plan and plan of operation submitted pursuant to s. 90-5-1-c.

i. For any other reasonable cause which shall be in the best interests and good order of the city.

3. STATE LAW APPLICABLE. Except as hereinafter provided, the provisions of ss. 125.12(2)(ag) to (c), Wis. Stats., shall be applicable to proceedings for the suspension and revocation of all licenses granted under this chapter.

4. COMMENCEMENT OF PROCEEDINGS. Suspension or revocation proceedings may be instituted by the licensing committee of the common council upon its own motion, or upon sworn written charges made and filed with the city clerk by the chief of police or upon a sworn written complaint filed with the city clerk by any city resident.

5. PROCEDURES FOR REVOCATION OR SUSPENSION. a. Complaint; Summons; Report.

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a-1. Whenever either sworn written charges or a sworn written complaint are filed with the city clerk setting forth specific charges against a licensee involving conduct which would violate statutes or ordinances that are grounds for revocation or suspension of a license, the city clerk shall issue a summons, as authorized by Wisconsin statutes, demanding that the licensee appear before the licensing committee, not less than 3 days nor more than 10 days from the date of issuance, to show cause why the license should not be revoked or suspended.

a-2. A police officer shall serve the summons upon a licensee in accordance with Wisconsin statutes, and shall also serve a copy of the complaint with a copy of this subsection upon the licensee.

a-3. The chief of police shall prepare a report with information relating to the allegations contained in the written charges or complaint. The report shall first state whether the chief of police has information relating to the allegations contained in the written charges or complaint. The report may be offered and made part of the permanent record of the hearing without motion. Information contained in the report shall be admissible and may be considered by the committee as a public record to the extent that the information in the report sets forth the activities of department personnel, or provides information about matters observed by police personnel under a duty imposed by law, or contains factual findings resulting from an investigation made under authority of law, unless the sources of information or other circumstances indicate lack of trustworthiness. A copy of the report shall be provided to the licensee at least 3 days prior to the time scheduled for appearance upon the summons and complaint.

b. Committee Hearing. b-1. Upon receipt of evidence that the summons has been served, the licensing committee shall convene at the date and time designated in the summons for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the full common council in connection with the proposed revocation or suspension.

b-2. If the licensee appears before the committee at the time designated in the summons and denies the charges contained in the complaint, an evidentiary hearing in connection with the revocation or suspension

shall be conducted by the committee at that time. If the licensee does not appear, or appears but does not deny the charges contained in the complaint, the complaint shall be taken as true and the committee shall hear the arguments of the city attorney and the licensee in connection with the revocation or suspension.

b-3. The procedure at evidentiary hearing shall be as follows:

b-3-a. The chief of police or complainant shall first present evidence in support of the complaint. The chief of police or complainant may offer the report prepared under par. a-3.

b-3-b. After the chief of police or complainant rests, the licensee may present evidence in opposition to the written charges or complaint.

b-3-c. The chief of police or complainant and the licensee may subpoena and present witnesses. All witnesses shall testify under oath and shall be subject to cross-examination.

b-3-d. The chief of police or complainant and the licensee shall each be limited to 30 minutes for testimony and oral presentation unless the chair, subject to approval of the committee, extends the time to assure a full and fair presentation.

b-3-e. Questions by committee members and responses to members' questions shall not be counted against the time limitations.

b-3-f. At the close of the testimony, the chief of police or complainant and the licensee shall be given a reasonable time to make arguments upon the evidence produced at the hearing.

b-4. The chair of the licensing committee shall be the presiding officer. The chair shall direct that oaths be administered and subpoenas issued upon request of either side. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this subsection. The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members present and voting.

b-5. At all stages of the proceedings before the committee or before the common council, the licensee shall be entitled to appear both in person and by an attorney.

b-6. A record shall be made of all licensing proceedings before the committee and before the common council as provided in s. 85-4-3.

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c. Committee Report. c-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the licensee and transmit a copy thereof to the city attorney. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. The report shall be distributed to each member of the common council.

c-2. The committee shall provide the licensee, and the complainant, if any, with a copy of the report. The licensee and complainant may file a written statement or response including objections, exceptions and arguments of law and fact to the report to the common council. A written statement or response must be filed with the city clerk before the close of business on a day that is at least 3 working days prior to the date set for hearing by the common council.

c-3. Any written statement or response to the report and recommendations of the committee shall be filed by the close of business on the day that is 3 working days prior to the date on which the matter is to be heard by the common council. Copies of written statements shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

d. Council Action. d-1. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendations. Not less than 5 working days prior to the hearing before the common council, the city clerk shall notify the licensee and complainant by United States first class mail, postage prepaid, sent to the last known address of the licensee and complainant, and shall also notify the city attorney, of the time and place that the common council will convene. Each member of the common council shall be asked to affirm that he or she has read the report and recommendations of the committee. When written statements or responses are timely filed to a committee report and recommendations that the license be suspended or revoked, each member of the common council shall be asked to affirm that he or she has read the statements or responses. If members of the council have not read the recommendations and report of the committee and any statements or responses that have

been filed, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendations presented by the city attorney, oral argument on behalf of the licensee in opposition to the report and recommendations and oral argument by the complainant objecting to the report and recommendations shall be permitted where written statements or responses have been timely filed. Argument shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendations and the written exceptions. Licensees shall appear only in person or by counsel. Corporate licensees shall appear only by the agent or by counsel. Partnerships shall be represented only by a partner or by counsel. Limited liability companies shall be represented only by the agent or by counsel. Complainants shall appear only in person or by counsel. Any person making an appearance before the council pursuant to this subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

d-2. The common council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the committee. Such vote shall be a roll call vote. If the common council finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation with the committee's report and recommendation and in accordance with Wisconsin statutes, the city clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked. If the common council finds the complaint to be untrue, the proceedings shall be dismissed without cost to the accused.

7. REQUEST TO SURRENDER A LICENSE. See s. 85-17 for provisions relating to the surrender of licenses and the return of surrendered licenses.

90-13. Alterations to Premises. Except as provided in s. 200-26-6-b, any alteration, change or addition resulting in expansion of a licensed premises shall be approved by the licensing committee prior to issuance of a permit pursuant to s. 200-24 by the department of neighborhood services. An applicant whose license application has been denied by the committee may appeal the decision to the common council.

108-9 Public Entertainment Premises

108-9. Renewal Of Licenses.

1. **PROCEDURE FOR RENEWAL.** Applications for the renewal of a public entertainment premises license shall be made to the city clerk. The clerk shall refer the application for license renewal to the chief of police and the commissioner of neighborhood services for review. If the chief of police and the commissioner of neighborhood services indicate that the applicant still meets the licensing qualifications, the application shall be referred to the common council for approval unless a written objection has been filed with the city clerk at least 45 days prior to the date on which the license expires, provided that the renewal was filed by the date established by the city clerk. If the applicant fails to file within the time frame established by the city clerk, an objection may be filed within 10 days of the filing of the renewal application. An objection may be filed by any interested person. If a written objection is filed, or if a determination is made that the applicant no longer meets the licensing qualifications, the application shall be forwarded to the licensing committee for its recommendation to the common council.

2. **Procedure for Nonrenewal.** If there is a possibility that the licensing committee will not renew the license, the procedures for notice and committee hearing and for the committee report, recommendations and common council consideration provided in ss. 85-3 to 85-5 shall govern.

108-11. Nonrenewal, Revocation or Suspension of Licenses.

1. **PROCEDURE.** a. **Procedures for Revocation or Suspension.** Any license issued under this chapter may be revoked or suspended for cause by the common council. Suspension or revocation proceedings may be instituted by the licensing committee upon its own motion, or upon sworn written charges made and filed with the city clerk by the chief of police, or upon a sworn written complaint filed with the city clerk by any interested party.

b. **Due Process Hearing and Common Council Review.** If there is a possibility that the licensing committee will not recommend renewal of the license, or if revocation or suspension proceedings are initiated, the procedures for notice and committee hearing and for the committee report, recommendations and common council consideration provided in ss. 85-3 to 85-5 shall govern.

2. **REQUEST TO SURRENDER A LICENSE OR WITHDRAW A RENEWAL**

APPLICATION. Whenever any licensee wishes to surrender a license or withdraw a renewal application, the procedures for disqualification of a license provided in s. 85-13 shall apply.

3. **GROUND FOR NONRENEWAL, SUSPENSION OR REVOCATION.** The recommendation of the committee regarding the licensee shall be based on evidence presented at the hearing. Probative evidence concerning nonrenewal, suspension or revocation may include evidence of circumstances cited in s. 85-4-4.

4. **COUNCIL ACTION.** Following the receipt of a report and recommendation of the committee, the common council shall consider the report and recommendations pursuant to the procedures provided in s. 85-5.

5. **WHEN ALCOHOL BEVERAGE LICENSE SUSPENDED.** If a retail alcohol beverage license for a premises is suspended and the licensee also holds a public entertainment premises license for the premises, the public entertainment premises license shall be suspended for the same time period as the alcohol beverage license.

108-12. Appeal Rights. Any aggrieved applicant for, or holder of, a public entertainment premises license may seek judicial review to appeal the common council's denial of a new license or license transfer, or the suspension, nonrenewal or revocation of an existing license pursuant to s. 68.13, Wis. Stats.

108-14. Standards for Festivals. All festivals shall meet the following standards:

1. No festivals, including those identified in s. 108-5-2-h to k, may be approved or held unless they meet the requirements of the health department specified in ch. 68, and the requirements of the department of public works, specified in ss. 105-55.5 to 105-59, and have obtained the necessary licenses or permits required by city code.

2. The festival use of land or buildings shall be a permitted use within the district as regulated by ch. 295.

3. The festival use of land or buildings shall not include rummage sales or the retail sales of any used goods or secondhand merchandise.

4. Each temporary public entertainment premises permit application for a festival shall contain a statement that: "The applicant agrees to indemnify and save harmless the city from and against all liabilities, claims, demands, judgments, losses and all

permitted to present the applicant's own witnesses, subject to cross-examination.

e. Committee members may ask questions of witnesses.

f. The applicant shall be permitted a brief summary statement.

4. RECOMMENDATION. The recommendation of the committee regarding the applicant shall be based on evidence presented at the hearing. Probative evidence concerning whether or not the license should be granted may be presented on the following subjects:

a. Whether or not the applicant meets the municipal requirements.

b. The appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application.

c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present.

d. The applicant's record in operating similarly licensed premises.

e. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for.

f. Any other factors which reasonably relate to the public health, safety and welfare.

5. FACTORS NOT CONSIDERED FOR RECOMMENDATION. The recommendations of the committee regarding the applicant shall not be based on evidence presented at the hearing related to the type or content of any music, or the actual or likely financial or non-financial effects on actual or potential competitors.

6. Committee Decision. The committee may make a recommendation immediately following the hearing or at a later

date. Written notice of the committee's decision will be provided if the decision is made at a later date or if the applicant was not present or represented. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

7. DOCUMENT. If the common council grants the application for a license, the city clerk, or other city official or department authorized by the code to issue licenses, shall issue an appropriate document to the applicant confirming that fact. The document shall also contain any restrictions or conditions which the common council may place on approval.

85-3. Notice and Service. 1. NOTICE OF POSSIBLE NON-RENEWAL, SUSPENSION OR REVOCATION. a. Unless otherwise provided, the city clerk, or other city official or department authorized by the code to receive applications for licenses or permits, shall provide written notice of the possibility of non-renewal, or of suspension or revocation of a license or permit to the applicant addressed to the person or agent at the address most recently provided by the applicant.

b. Written notice of possible non-renewal, suspension or revocation shall include:

b-1. The date, time and place of a hearing to be held by the committee.

b-2. A statement of the common council's intent to revoke, suspend or not renew the license or permit if objections, charges or allegations are found to be true.

b-3. A statement of the specific reasons for revocation, suspension or non-renewal.

b-4. A statement that an opportunity will be provided to respond to and challenge the reasons for revocation, suspension or non-renewal, and to present witnesses under oath and to confront and cross-examine witnesses under oath.

b-5. A statement that the applicant may be represented by an attorney of the applicant's choice at the expense of the applicant.

b-6. A statement that, if the applicant requires the assistance of an interpreter, the applicant may employ an interpreter at the expense of the applicant.

b-7. A statement that, upon conclusion of a hearing before the committee, the committee will prepare a written report and recommendation to the common council, and shall provide a copy of the report and recommendation to the applicant.

85-4 License and Permit Procedures

2. SERVICE OF DOCUMENTS.

Service of notices of meetings and service of other documents including committee reports and recommendations shall be made upon any party entitled to such notice and service by placing the same in the United States first class mail, postage prepaid.

3. OBJECTIONS. a. How Made.

Notice of an objection to the renewal of a license or in support of suspension of a license or permit by an interested party shall not be included in the notice of hearing if the objection has not been received by the city clerk within 45 days of the expiration of the license. Failure to timely submit an objection shall not be a bar to testimony or other evidence that relates to any matter actually identified in the notice of hearing as a basis for nonrenewal or suspension. An objection shall include information that could form the basis of a license nonrenewal or suspension and may be transmitted in writing or by electronic means. Any city official, or the official's delegate, shall forward an objection from an interested party, or from a resident as provided in s. 90-1-19, to the city clerk. The information provided by an official or the official's delegate to the city clerk shall include the name of the objector, contact information for the objector, and information known to the objector that may form a basis for nonrenewal or suspension. The submission by a city official or the official's delegate of a written summary of the objection to the city clerk shall be treated in the same manner as other objections. The city clerk is authorized to establish forms for the purpose of assisting persons wishing to submit an objection.

b. Exception. If application for renewal is filed with the city clerk after the deadline for renewal application established by the city clerk and prior to the expiration of the license, an objection may be submitted in fewer than 45 days prior to the expiration of the license and may be considered at a regularly scheduled meeting of the licensing committee provided sufficient and timely notice is given.

85-4. Hearing Procedure; Non-Renewal, Suspension or Revocation.

1. AUTHORITY OF COMMITTEE. The committee shall conduct hearings with respect to the non-renewal, suspension or revocation of a license or permit pursuant to this section. The chair of the committee shall be the presiding officer.

1.5. MULTIPLE LICENSE TYPES.

When the committee conducts a hearing relating to the possible denial, non-renewal, suspension

or revocation of a business type license and the licensee holds one or more other types of licenses or permits issued by the city clerk for the same premises, the committee shall also consider possible non-renewal, suspension or revocation of the other licenses or permits at the same hearing. Notice of possible denial, non-renewal, suspension or revocation of the non-alcohol beverage licenses or permits shall be provided in accordance with s. 85-3.

2. COMMITTEE HEARING

PROCEDURE. a. The chair shall advise the applicant of the right to proceed to a due process hearing represented by counsel with all testimony, both direct and cross examination, under oath or that the applicant may simply make a statement to the committee.

b. The chair shall direct that oaths be administered and subpoenas issued upon request of any party.

c. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this section. The chair shall open the hearing with a statement that a notice was sent to the applicant, and, if the applicant appears, shall further inquire whether the notice was received. Unless expressly provided elsewhere in this code, the chair shall advise the licensee and parties seeking nonrenewal, suspension or revocation of the license that each side will be limited to 30 minutes for testimony and oral argument. This time may be extended by the chair, subject to approval by the committee, if additional time is necessary for a full and fair presentation of the facts and arguments. When permitted by the chair, questioning by committee members and relevant responses shall not count against the time limitation. In the event that the applicant does not admit receipt of the notice and also denies knowledge of the contents of the notice, the chair shall ascertain whether the applicant wishes to immediately proceed to a full hearing or whether the applicant wishes the matter to be held to the call of the chair or to a time certain. The decision to proceed or to hold the matter shall be made by the committee.

d. The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members.

3. RECORD. An electronic or stenographic record shall be made of all licensing proceedings before the licensing committee and the common council. An

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electronic record shall audibly, accurately and completely reflect the testimony and statements made by participants in the proceedings. Recordings shall be maintained in a manner prescribed by the city clerk. An electronic record shall be made available for stenographic transcription or for transcription by other means at the expense of the person or party seeking the transcription of all or any portion of the record.

4. GROUNDS FOR NON-RENEWAL, SUSPENSION OR REVOCATION. The recommendations of the committee regarding the applicant shall be based on evidence presented at the hearing. Unless otherwise specified in the code, probative evidence concerning non-renewal, suspension or revocation may include evidence of:

- a. Failure of the applicant to meet municipal qualifications.
- b. Pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed or permitted activity, by the applicant or by any employe or other agent of the applicant.
- c. If the activities of the applicant involve a licensed premises, whether the premises tends to facilitate a public or private nuisance or has been the source of congregations of persons which have resulted in any of the following:

- c-1. Disturbance of the peace.
- c-2. Illegal drug activity.
- c-3. Public drunkenness.
- c-4. Drinking in public.
- c-5. Harassment of passers-by.
- c-6. Gambling.
- c-7. Prostitution.
- c-8. Sale of stolen goods.
- c-9. Public urination.
- c-10. Theft.
- c-11. Assaults.
- c-12. Battery.
- c-13. Acts of vandalism including graffiti.
- c-14. Excessive littering.
- c-15. Loitering.
- c-16. Illegal parking.
- c-17. Loud noise at times when the licensed premise is open for business.
- c-18. Traffic violations.

- c-19. Curfew violations.
- c-20. Lewd conduct.
- c-21. Display of materials harmful to minors, pursuant to s. 106-9.6.
- c-22. Any other factor which reasonably relates to the public health, safety and welfare.
- c-23. Failure to comply with the approved plan of operation.

5. HEARING OFFICER. Where it is impractical for the committee to hold an evidentiary hearing, the committee may employ a hearing officer for the purposes of taking testimony and rendering recommended findings of fact and conclusions of law to the committee. When such hearing officer is employed, he or she shall prepare written findings of fact and conclusions of law which shall be simultaneously transmitted to the committee as well as to the applicant, the applicant's agent, manager, operator or any other employe of the applicant, and to the person bringing the complainant or objector. The chair of the committee shall schedule a hearing on the receipt of the report of the hearing officer in not more than 30 days from receipt of the report. Notice of the committee hearing on the report shall be given to all parties. The committee may take and reserve additional evidence at the time of said hearing. The committee may accept or reject the report of the hearing officer or make any changes to the report which are warranted by the circumstances, the evidence presented and any arguments of the parties who appeared before the hearing officer and the committee. The committee shall transmit its recommendation to the common council for action as provided in sub. 6.

6. COMMITTEE REPORT. The committee may make a report and recommendations immediately following the hearing or at a later date. The committee may recommend that the license or permit be renewed, not renewed, suspended or revoked. In addition, if the committee determines that circumstances warrant, the committee may recommend that the license or permit be renewed conditioned upon a suspension of the license or permit for a defined period of time. When the committee elects to recommend that a license or permit be renewed with a period of suspension, the license or permit may be suspended for a period of not less than 10 days and no more than 90 days.

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85-5. Council Action. 1. REPORT TO BE PROVIDED. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation upon the applicant and upon the complainant or objector, if any. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. A copy of the report shall be distributed to each member of the common council.

2. FILING WRITTEN STATEMENTS OR RESPONSES. Following a recommendation by the committee that the license or permit not be renewed, or that the license or permit be revoked or suspended, the applicant may submit a written statement including objections, exceptions and arguments of law and fact. When the proceedings have been commenced upon the complaint or objection of an interested party who has appeared and offered evidence, the complainant or objector may also submit a written statement in response. Written statements shall be filed with the city clerk before the close of business on a day that is at least 3 working days prior to the date set for hearing by the common council.

3. COPIES TO BE PROVIDED TO COMMON COUNCIL MEMBERS. A copy of any statement in response to the report and recommendations of the committee that is timely filed shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

4. PROCEDURE AT MEETING OF THE COMMON COUNCIL. a. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendations. The city clerk shall notify the applicant, and the complainant or objector, if any, by United States first class mail, postage prepaid, 5 working days prior to the hearing before the common council, and shall also notify the city attorney, that the council will convene to act upon the report and recommendations.

b. Each member of the common council shall be asked to affirm that he or she has read the report and recommendations of the committee. When a written statement has been timely filed by the applicant, or by a complainant or objector, each member of the common council shall be asked to affirm that he or she has read the statement. If members of the council have not read the recommendation and report of the committee and any statement in

response that has been timely filed, the chair shall allocate time for the members to do so.

c. Oral argument on behalf of the applicant, and oral argument by the complainant or objector, if any, shall be permitted only to those parties having timely filed a written statement. Oral argument shall be limited to 5 minutes. The city attorney shall also be permitted to make an oral presentation of not more than 5 minutes.

d. Applicants shall appear only in person or by counsel. Corporate applicants shall appear only by designated agents or counsel. Partnerships shall be represented only by a partner or counsel. Limited liability companies shall be represented only by designated agents or counsel. Complainants and objectors shall appear only in person or counsel. Any person making an appearance before the council who requires the services of an interpreter shall obtain one at his or her own expense.

e. The common council shall determine by a majority roll call vote of those in attendance and voting whether to adopt the recommendation of the committee. The city clerk shall provide written notice of the decision to the applicant, and to the complainant or objector, if any, including a written statement or summary of the reasons for the decision.

f. Unless otherwise expressly provided, the revocation of a license or permit shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for revocation shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for renewal shall be effective on the date the common council takes action to suspend the license or permit, or on the date of the expiration of the license or permit, whichever is later. A license or permit may be suspended for not less than 10 days and no longer than 90 days.

g. If a retail alcohol beverage license for a premises is suspended and the licensee also holds a public entertainment premises license for the premises, the public entertainment premises license shall be suspended for the same time period as the alcohol beverage license.

125.105 Impersonating an officer.

- (1) No person may impersonate an inspector, agent or other employee of the department or of the department of justice.
- (2)
 - (a) Whoever violates sub. (1) with the intent to mislead another may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.
 - (b) Whoever violates sub. (1) to commit, or abet the commission of, a crime is guilty of a Class H felony.

History: 1989 a. 253; 1997 a. 283; 2001 a. 109.

125.11 Penalties.

- (1) **GENERAL PENALTY.** Any person who violates any provision of this chapter for which a specific penalty is not provided, shall be fined not more than \$1,000 or imprisoned for not more than 90 days or both. Any license or permit issued to the person under this chapter may be revoked by the court.
- (2) **FELONY.** If a person is convicted of a felony under this chapter, in addition to the penalties provided for the felony, the court shall revoke any license or permit issued to the person under this chapter.

History: 1981 c. 79; 1985 a. 120, 302; 1989 a. 253.

125.115 Responsibility for commission of a crime.

- (1) A person may be convicted of the commission of a crime under this chapter only if the criteria specified in s. 939.05 exist.
- (2) This section does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

History: 1985 a. 47.

125.12 Revocations, suspensions, refusals to issue or renew.

- (1) **REVOCAION, SUSPENSION, NONISSUANCE OR NONRENEWAL OF LICENSE.**
 - (a) Except as provided in this subsection, any municipality or the department may revoke, suspend or refuse to renew any license or permit under this chapter, as provided in this section.
 - (b)
 1. In this paragraph, "violation" means a violation of s. 125.07 (1) (a), or a local ordinance that strictly conforms to s. 125.07 (1) (a).
 2. No violation may be considered under this section or s. 125.04 (5) (a) 1. unless the licensee or permittee has committed another violation within one year preceding the violation. If a licensee or permittee has committed 2 or more violations within one year, all violations committed within one year of a previous violation may be considered under this section or s. 125.04 (5) (a) 1.
 - (c) Neither a municipality nor the department may consider an arrest or conviction for a violation punishable under s. 101.123 (8) (d), 945.03 (2m), 945.04 (2m), or 945.05 (1m) in any action to revoke, suspend, or refuse to renew a Class "B" or "Class B" license or permit.
- (2) **REVOCAION OR SUSPENSION OF LICENSES BY LOCAL AUTHORITIES.**
 - (ag) *Complaint.* Any resident of a municipality issuing licenses under this chapter may file a sworn written complaint with the clerk of the municipality alleging one or more of the following about a person holding a license issued under this chapter by the municipality:
 1. The person has violated this chapter or municipal regulations adopted under s. 125.10.
 2. The person keeps or maintains a disorderly or riotous, indecent or improper house.
 3. The person has sold or given away alcohol beverages to known habitual drunkards.

4. The person does not possess the qualifications required under this chapter to hold the license.
 5. The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.
 - 5m. The person has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.65.
 6. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.
 - 6m. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine.
 7. The person received the benefit from an act prohibited under s. 125.33 (11).
- (ar) *Summons.* Upon the filing of the complaint, the municipal governing body or a duly authorized committee of a city council shall issue a summons, signed by the clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the municipal governing body or the committee on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served on the licensee at least 3 days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under ch. 801 for service in civil actions in circuit court.
- (b) *Procedure on hearing.*
1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the municipal governing body or the committee finds the allegations sufficient, the license shall be revoked. The clerk shall give notice of the revocation to the person whose license is revoked.
 2. If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the municipal governing body and the complaint is found to be true, the license shall either be suspended for not less than 10 days nor more than 90 days or revoked, except that, if a complaint under par. (ag) 4. is found to be true with respect to a license issued under s. 125.51 (4) (v), the license shall be revoked.
 3. If the hearing is held before a committee of a city council, the committee shall submit a report to the city council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the city council should take with respect to the license. The committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the city council. The city council shall determine whether the arguments shall be presented orally or in writing or both. If the city council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided under subd. 2.
 4. The municipal clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.

5. If the municipal governing body finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the municipal governing body finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The municipal governing body or the committee may require the complainant to provide security for such costs before issuing the summons under par. (ar).
- (c) *Effect of revocation.* When a license is revoked under this subsection, the revocation shall be recorded by the clerk and no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded.
- (d) *Judicial review.* The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The municipal governing body, applicant or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.
- (3) REFUSALS BY LOCAL AUTHORITIES TO RENEW LICENSES. A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2) (ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in sub. (2) (b) and judicial review shall be as provided in sub. (2) (d). If the hearing is held before a committee of a city council, the committee shall make a report and recommendation as provided under sub. (2) (b) 3. and the city council shall follow the procedure specified under that subdivision in making its determination.
- (3m) REFUSALS BY LOCAL AUTHORITIES TO ISSUE LICENSES. If a municipal governing body or duly authorized committee of a city council decides not to issue a new license under this chapter, it shall notify the applicant for the new license of the decision not to issue the license. The notice shall be in writing and state the reasons for the decision.
- (4) SUSPENSION OR REVOCATION OF LICENSES ON COMPLAINT OF THE DEPARTMENT.
- (ag) *Complaint.* A duly authorized employee of the department may file a complaint with the clerk of circuit court for the jurisdiction in which the premises of a person holding a license issued under this chapter is situated, alleging one or more of the following about a licensee:
1. That the licensee has violated this chapter.
 2. That the licensee keeps or maintains a disorderly or riotous, indecent or improper house.
 3. That the licensee has sold alcohol beverages to known habitual drunkards.
 4. That the licensee has failed to maintain the premises in accordance with the standards of sanitation prescribed by the department of health services.
 5. That the licensee has permitted known criminals or prostitutes to loiter on the licensed premises.
 6. That the licensee does not possess the qualifications required under this chapter to hold the license.
 7. That the licensee has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m); or of possessing, with intent to manufacture,

distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

- 7m.** That the licensee has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.
- 8.** That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.
- 8m.** That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine.
- (ar) Summons.** Upon the filing of the complaint, the clerk of the court shall issue a summons commanding the licensee to appear before the court not less than 20 days from its date of issuance and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served at least 20 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for civil actions in circuit court.
- (b) Procedure on hearing.** If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the court finds the allegations sufficient, it shall order the license either suspended for not more than 90 days or revoked, except that, for allegations under par. (ag) 6. with respect to a license issued under s. 125.51 (4) (v), it shall order the license revoked. The clerk of the court shall give notice of the suspension or revocation to the person whose license is suspended or revoked. If the licensee appears and answers the complaint, the court shall fix a date for the hearing not more than 30 days after the return date of the summons. The hearing shall be had before the court without a jury. If upon the hearing the court finds the allegations of the complaint to be true, it shall order the license either suspended for not more than 90 days or revoked, except that, if upon the hearing the court finds allegations under par. (ag) 6. to be true with respect to a license issued under s. 125.51 (4) (v), the court shall order that license revoked. If the court finds the allegations of the complaint to be untrue, the complaint shall be dismissed.
- (c) Effect of revocation or suspension.** When a license is revoked or suspended under this subsection, the clerk of court shall notify the authority which issued the license. If the license is revoked, no other license may be issued under this chapter to the person whose license was revoked or to any person related to him or her as owner, lessor, bailor or lender, within the 12 months after the date of revocation and no other license may be granted for the premises covered by the revoked license within 60 days of the date of revocation. The findings and order of the court shall be filed within 10 days after the hearing and the order shall be final unless appeal is taken to the court of appeals. If an appeal is taken from a revocation, any period during which the order is stayed shall be added to the 12 months and 60 days, respectively. No part of the fee paid for any license which is revoked may be refunded. Whenever any court has revoked or suspended any license under this subsection, no further proceedings shall be commenced under this subsection except upon grounds arising after the original revocation or suspension.
- (5) REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY THE DEPARTMENT.** The department may, after notice and an opportunity for hearing, revoke, suspend or refuse to renew any retail permit issued by it for the causes provided in sub. (4) and any other permit issued by it under this chapter for any violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or 139.035, the department shall revoke the license or permit. A revocation, suspension or refusal to renew is a contested case under ch. 227.
- (6) REVOCATION OR SUSPENSION OF INTOXICATING LIQUOR WHOLESALERS' PERMITS FOR CERTAIN VIOLATIONS.**
- (a)** Any person may file a sworn written complaint with the department alleging that an intoxicating liquor wholesaler has violated s. 125.54 (7) (a). The complaint shall identify the

specific legal basis for the complaint and sufficient facts for the department to determine whether there is cause to find that a violation has occurred. The department shall provide a copy of the complaint to any wholesaler against whom allegations are made, along with notice of the time period under par. (b) to show cause why the wholesaler's permit should not be revoked or suspended or to request a hearing.

- (b) Within 30 days of receiving a copy of the complaint under par. (a), any wholesaler against whom allegations are made may file a sworn written response or a written request for an evidentiary hearing before the department under s. 227.44.
- (c) Subject to pars. (d) 1. and (dm), if no request for an evidentiary hearing is made under par. (b), within 60 days of receiving any response under par. (b) or, if no response is made, within 60 days of the date on which a response or request for hearing is due under par. (b), the department shall make a written decision as to whether a violation has occurred and either dismiss the complaint or take action under par. (e). Any decision under this paragraph shall include findings of fact and conclusions of law and shall state all reasons for the decision. The department shall provide a copy of the decision to the complainant and to any wholesaler against whom allegations are made.
- (cm) Subject to pars. (d) 2. and (dm), if a request for an evidentiary hearing is made under par. (b), the hearing shall be conducted in the manner specified for a contested case under ss. 227.44 to 227.50, except that the hearing shall be conducted within 45 days of receiving the request for hearing under par. (b) and the department shall make its written decision, including whether a violation has occurred and whether the complaint is dismissed or action is taken under par. (e), within 15 days after the hearing. In addition to service of the decision as provided under s. 227.48, the department shall provide a copy of the decision to the complainant.
- (d)
 - 1. If no request for an evidentiary hearing is made under par. (b), within 60 days of receiving any response under par. (b) or, if no response is made, within 60 days of the date on which a response or request for hearing is due under par. (b), the department may extend the time period for making a decision under par. (c) by an additional 60 days if the department provides notice within the time period specified in par. (c) that an additional 60 days is necessary for investigation.
 - 2. If a request for an evidentiary hearing is made under par. (b), within 45 days of receiving the request for hearing under par. (b), the department may extend the time period for conducting the hearing by an additional 45 days if the department provides notice within 45 days of receiving the request for hearing under par. (b) that an additional 45 days is necessary for investigation.
- (dm) Within 45 days of receiving any response or request for hearing under par. (b) or, if no response or request for hearing is made, within 45 days of the date on which a response or request for hearing is due under par. (b), the department may elect to file a complaint in circuit court under sub. (4) that includes all allegations of the complaint under par. (a) for which the department determines there is cause to find that a violation of s. 125.54 (7) (a) has occurred. If the department files a complaint in circuit court as provided under this paragraph, the department shall not conduct a hearing under par. (cm) or make a written decision under par. (c), but shall proceed with the matter as provided under sub. (4).
- (e) If the department finds the allegations under par. (a) true and sufficient, the department shall either suspend for not less than 10 days nor more than 90 days or revoke the wholesaler's permit, and give notice of the suspension or revocation to the wholesaler.
- (f) A revocation or suspension proceeding under this subsection is a contested case under ch. 227, except that ss. 227.44 to 227.50 apply to a proceeding under this subsection only if a request for an evidentiary hearing is made under par. (b).

History: 1981 c. 79; 1983 a. 516; 1987 a. 93; 1993 a. 98; 1995 a. 27 s. 9126 (19); 1995 a. 417, 448; 1997 a. 27, 35, 166, 187; 1999 a. 9; 2005 a. 14, 25, 442; 2007 a. 20 s. 9121 (6) (a); 2007 a. 85; 2009 a. 12.

Due process and equal protection rights of licensees are discussed. *Tavern League of Wisconsin v. City of Madison*, 131 Wis. 2d 477, 389 N.W.2d 54 (Ct. App. 1986).

A license never should have been issued when a notice of application had not been published as required under s. 125.04 (3) (g), and a license issued without publication is void under s. 125.04 (2). Selling liquor under a void license constitutes a violation of s. 125.66 (1). Under s. 125.12, a renewal licensee, if refused,

is guaranteed a right to be heard by the municipality, and the municipality must show cause for refusal, but a new licensee, if refused, has no such guarantee. When an original license is void, the applicant is a new licensee. *Williams v. City of Lake Geneva*, 2002 WI App 95, 253 Wis. 2d 618, 643 N.W.2d 864, 01-1733. Notices sent by the city did not violate the requirement in sub. (3) that the "council shall notify the licensee in writing of the municipality's intention not to renew the license" because they stated that "there is a possibility that your application may be denied." As the matter cannot be affirmatively decided before the hearing, it is of course only a possibility that the applicant's license will not be renewed at the time the notice is sent. *Questions, Inc. v. City of Milwaukee*, 2011 WI App 126, 336 Wis. 2d 654, 807 N.W.2d 131, 10-0707.

A town must renew a license, if the proper application is made and the fees are paid, unless it revokes, suspends, or non-renews the license, following the procedures outlined in this section. Section 125.10 (1) does not give towns the authority to unilaterally modify the described premises in an individual license upon renewal of that license. A town must either pass a regulation or an ordinance under s. 125.10 or it must find grounds for revocation or nonrenewal under this section. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350, 815 N.W.2d 690, 10-2900.

Acting upon a citizen complaint to revoke a liquor license that was not sworn, as required under sub. (2) (ag), constituted a fundamental error that deprived the licensing committee of jurisdiction over the matter. *Park 6 LLC v. City of Racine*, 2012 WI App 123, 344 Wis. 2d 661, 824 N.W.2d 903, 11-2282.

Certiorari is the correct standard of review for a court to apply when, pursuant to sub. (2) (d), it reviews a municipal decision not to renew an alcohol license. *Nowell v. City of Wausau*, 2013 WI 88, 351 Wis. 2d 1, 838 N.W.2d 852, 11-1045.

Sub. (2) (a) 2.'s prohibition of operating a disorderly house was not unconstitutionally vague as applied in this case. The statute's legislative purpose concerns the health and safety of the public and its enforcement is aimed at public health. There was no doubt that the conduct cited in this case was disorderly, riotous, indecent, or improper. Such behavior falls squarely within the ambit of the statute, particularly given the public health and safety concerns involved. *Scott Hegwood v. City of Eau Claire*, 679 F.3d 600 (2012).

125.13 Report of suspension, revocation or imposition of penalty. Whenever a municipal governing body or court revokes or suspends a license or permit or imposes a penalty on a licensee or permittee for the violation of this chapter, the clerk of the municipality or court revoking or suspending the license or imposing the penalty shall, within 10 days after the revocation, suspension or imposition of penalty, mail a report to the department at Madison, Wisconsin, giving the name of the licensee, the address of the licensed premises and a full description of the penalty imposed.

History: 1981 c. 79.

125.14 Enforcement provisions.

- (1) **ARREST.** Subject to s. 175.38, any peace officer may arrest without warrant any person committing in his or her presence a violation of this chapter or ch. 139 and may, without a search warrant, seize any personal property used in connection with the violation.
- (2) **CONFISCATION; DISPOSAL.**
 - (a) *Contraband.* All alcohol beverages owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this chapter or ch. 139 and all personal property used in connection therewith is unlawful property and may be seized by any peace officer. Any peace officer confiscating personal property under this section may proceed under this section.
 - (c) *Identification.* Any person seizing alcohol beverages or personal property and electing to dispose of it under this subsection shall exercise reasonable diligence to ascertain the name and address of the owner of the alcohol beverages or property and of all persons holding a security interest in the property seized. The person shall report his or her findings in writing to the department.
 - (d) *Order.* Upon conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting alcohol beverages in violation of this chapter or ch. 139, the court shall order part or all of the alcohol beverages or personal property seized to be destroyed if it is unfit for sale. Alcohol beverages and other personal property fit for sale shall be turned over to the department for disposition. Upon receipt of the confiscated property, the department shall exercise reasonable diligence to ascertain the names and addresses of all owners of the property and of all persons holding a security interest in the property. If a motor vehicle is confiscated, the department shall obtain the written advice of the department of transportation as to the ownership of the motor vehicle and shall make a reasonable search for perfected security interests in the vehicle.

In re the Class "B" Tavern license and Public Entertainment Premises license of:

J. JESUS GAMEZ

as the Licensee for the licensed premises
known as Palomas Place, located at
1905 S. 6th Street, Milwaukee, Wisconsin

SWORN CHARGES BY CHIEF OF POLICE FOR REVOCATION OF LICENSES

Pursuant to Wisconsin Statutes Section 125.12 and Sections 90-12, 108-11 and 85-4, Milwaukee Code of Ordinances ("MCO"), Chief of Police Edward Flynn, a City of Milwaukee resident and interested party, by Captain Heather Wurth, Commander of Police District 2, City of Milwaukee resident and interested party, being first duly sworn and upon her oath, respectfully charges the following based upon review of official Milwaukee Police Department ("MPD") reports drafted in the ordinary course of business, review of documents received by MPD District 2 and communication with other police, law enforcement and municipal officials:

1. J. Jesus Gamez (DOB 2/25/1959) (hereinafter, the "Licensee") is the holder of a Class "B" Tavern license and a Public Entertainment Premises ("PEP") license for the licensed premises known as Palomas Place located at 1905 S. 6th Street, Milwaukee, Wisconsin. Mr. Gamez is also the sole owner of the building at 1905 S. 6th Street and the building next door located at 1901 S. 6th Street. Upon information and belief, the Licensee resides at 1901 S. 6th Street.

2. Upon information and belief, Hector Martinez (DOB 10/19/67) is an employee of the Licensee who bartends and assists the Licensee on maintenance projects at Palomas Place.

3. Upon information and belief, Reyes Munoz (DOB 1/6/81) is an employee of the Licensee who bartends at Palomas Place.

4. Upon information and belief, Silvino Martinez (DOB 7/10/50) is an employee of the Licensee who bartends at Palomas Place and assists with day-to-day operations when the Licensee is unavailable. Silvino Martinez has a Class "D" Operator's license, with a mailing address of 1905 S. 6th Street. Upon information and belief, he resides at 1901 S. 6th Street.

5. On January 22, 2015, Hector Martinez sold two (2) corner cut baggies of cocaine, weighing .221 grams and .303 grams, for a total of \$40 to a confidential informant and an undercover MPD officer inside Palomas Place. After the confidential informant asked Hector Martinez to purchase cocaine, Hector Martinez walked over to a small room along the north wall of the bar and entered the room for about a minute. After returning, he approached the confidential informant and undercover MPD officer and sold to the confidential informant the two corner cut baggies of cocaine in exchange for \$40. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit A**.

6. On January 30, 2015, Hector Martinez sold three (3) corner cut baggies of cocaine, weighing .253 grams, .266 grams and .238 grams, for a total of \$60 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon their entry, Hector Martinez approached the confidential informant and undercover MPD officer to offer to sell cocaine. Upon the confidential informant agreeing to buy cocaine, Hector Martinez walked over to a small room along the north wall of the bar and entered the room for a couple minutes. After returning, he approached the confidential informant and undercover MPD officer and sold to the confidential informant the three (3) corner cut baggies of cocaine in exchange for \$60. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit B**.

7. On February 12, 2015, Hector Martinez sold three (3) corner cut baggies of

cocaine, weighing .303 grams, .308 grams and .313 grams, for a total of \$60 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry, Hector Martinez stopped playing pool with Silvino Martinez and approached the confidential informant and undercover MPD officer. The confidential informant asked Hector Martinez to purchase cocaine. Upon agreeing to sell cocaine, Hector Martinez reached into the pocket of the jacket he was wearing and withdrew a matchbox. Upon opening the matchbox, Hector Martinez took out three (3) clear plastic corner cut baggies of cocaine. There were three (3) additional corner cut baggies of cocaine inside the matchbox. Hector Martinez sold to the confidential informant the three (3) corner cut baggies of cocaine in exchange for \$60 and then returned to playing pool. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit C**.

8. On March 2, 2015, Hector Martinez sold five (5) corner cut baggies of cocaine, weighing .323 grams, .310 grams, .316 grams, .257 grams and .306 grams, for a total of \$100 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry, Hector Martinez approached the confidential informant and undercover MPD officer to offer to sell cocaine. Upon agreeing to buy cocaine, Hector Martinez walked over to a small room along the north wall of the bar and entered the room for a couple minutes. After returning, he approached the confidential informant and undercover MPD officer and sold to the confidential informant the five (5) corner cut baggies of cocaine in exchange for \$100. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit D**.

9. On March 20, 2015, MPD and the Department of Neighborhood Services (“DNS”) conducted a licensed premises investigation at Palomas Place. MPD observed an

expired State of Wisconsin Seller's Permit. MPD spoke with Reyes Munoz, who stated he was a bartender at the location. Upon request, Mr. Munoz failed to provide a bartender's license, stating that he also works at the Little Whiskey Bar. MPD made contact with the Little Whiskey Bar licensee, Luis Garcia, and Mr. Garcia stated he did not recognize Reyes Munoz and was fairly certain he did not employ anyone by that name. Upon information and belief, Reyes Munoz did not have a Class "D" Operators license at the time of the inspection nor does he have one at the time of the filing of this sworn complaint. In addition, MPD observed five (5) amusement machines, whereas the PEP license only permits three (3) amusement machines. The Licensee was not available because, according to Mr. Munoz, he was in Mexico. The Licensee was cited for responsible person upon premises required (MCO 90-8-1). On September 8, 2015, the Licensee was found guilty (Case # 15036380).

10. During the March 20, 2015 licensed premises inspection, Reyes Munoz stated that Silvino Martinez was assisting with the day-to-day operations until the Licensee returned.

11. On April 13, 2015, Silvino Martinez sold five (5) corner cut baggies of cocaine, weighing .237 grams, .255 grams, .250 grams, .231 grams and .195 grams, for a total of \$100 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry, Silvino Martinez approached the confidential informant and undercover MPD officer and revealed a matchbox in his hand. From the matchbox, Silvino Martinez withdrew five (5) corner cut baggies of cocaine and sold them to the confidential informant in exchange for \$100. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit E**.

12. On April 16, 2015, members of Wisconsin High Intensity Drug Trafficking Area (HIDTA), including the Wisconsin State Patrol and MPD, and the Department of Revenue

executed a search warrant at Palomas Place based on five (5) undercover buys of cocaine at Palomas Place. The Licensee, Hector Martinez and Silvino Martinez were present at the tavern along with four other individuals. Silvino Martinez admitted to MPD that he had “something” in his front left pants pocket. MPD obtained a matchbox in Silvino Martinez’s pants pocket and, upon opening the matchbox, observed five (5) corner cut baggies containing suspected cocaine weighing a total of 1.27 grams. Silvino Martinez was arrested for possession with intent to deliver cocaine. The Licensee stated that Hector Martinez assists him on maintenance projects at Palomas Place. Hector Martinez admitted that he did participate in the sale of cocaine and relayed that he was compensated by either being paid \$5-\$10 or given beer.

13. During the April 16, 2015 execution of the search warrant, the following drug-related evidence was found inside Palomas Place:

- a. One (1) small plastic bag found in the hall on the floor near stairs to the basement containing ten (10) baggies containing a white, powdery substance.
- b. Five (5) small plastic baggies containing a white, powdery substance found in a matchbox in Silvino Martinez’s front pants pocket.
- c. One (1) Coca-Cola “California safe” found on the east end of Palomas Place near a liquor shelf.¹
- d. One Bud Light (1) “California safe” containing ten (10) small plastic baggies containing a white, powdery substance found in the hall near stairs to the basement. The “California safe” was mixed with a stack of Bud Light beer cases and bottles.
- e. One (1) plastic baggie containing a white, powdery substance found in the

¹ “California safe” is a nickname for a common household object that can be used to conceal drugs and drug paraphernalia.

rafters on the east wall of Palomas Place.

- f. One (1) small piece of yellowish rock type material inside a sandwich baggie found in the rafters in the basement of Palomas Place.

For pictures of the cocaine seized in Palomas Place and “California safes”, see attached **Exhibit F**. For pictures of the cocaine and matchbox seized from Salvino Martinez, see attached **Exhibit G**.

14. The white, powdery substance and yellowish rock type material referenced in ¶ 13 above tested positive for cocaine and methamphetamine, respectively.

15. The baggie of cocaine found in the hall on the floor near stairs to the basement weighed .281 grams. The five (5) corner cut baggies of cocaine found on Silvino Martinez weighed .274 grams, .258 grams, .308 grams, .204 grams and .226 grams. The ten (10) small plastic baggies of cocaine found in the hall near stairs to the basement weighed .210 grams, .269 grams, .223 grams, .286 grams, .303 grams, .210 grams, .258 grams, .201 grams, .243 grams and .231 grams for a total net weight of 2.434 grams. The methamphetamine weighed 3.729 grams.

16. During the April 16, 2015 execution of the search warrant, the following US currency was found in Palomas Place and Silvino Martinez’s next door residence at 1901 S. 6th Street:

- a. *At Palomas Place:*
 - i. \$848 (found on the Licensee)
 - ii. \$319 (found in the bottom drawer of an end table)
- b. *At Silvino Martinez’s apartment at 1901 S. 6th St. #3:*
 - i. \$3,560 (found in a cereal box in the pantry)
 - ii. \$12,000 (found in a blue bag behind a dresser)

iii. \$266 (found in the top dresser drawer)

iv. \$36 (found in a wallet)

17. On April 17, 2015, MPD deployed a drug detection canine on the U.S. currency obtained during the execution of the search warrant, as described in ¶ 16 above. The canine gave a positive alert response to the odor of narcotics for the \$848 found on the Licensee, the \$319 found in the bottom drawer of an end table in Palomas Place, the \$3,560 found in a cereal box in the pantry at 1901 S. 6th St., the \$12,000 found in a blue bag behind a dresser at 1901 S. 6th St., the \$266 found in the top dresser drawer northeast bedroom at 1901 S. 6th St. and the \$36 found in a wallet in the northeast bedroom at 1901 S. 6th St.. The positive alert indicates that the currency had recently been intermingled with a substantial amount of narcotics in order to produce the level of odor necessary for the canine to alert to.

18. The individual corner cut baggies of cocaine found in Palomas Place during the execution of the search warrant and on Silvino Martinez were consistent with the way they were tied, their weight and their appearance when compared to the cocaine that was purchased during the five (5) controlled buys referenced above.

19. During the April 16, 2015 execution of the search warrant, DOR determined there were several 1.75 liter bottles of alcohol that were not accounted for with appropriate receipts. DOR confiscated twenty nine (29) bottles of liquor (opened and sealed) because there were no corresponding invoice to prove they were purchased legally.

20. By April 17, 2015, Palomas Place was engaged in the sale of cocaine once again.

21. On June 4, 2015, Hector Martinez sold five (5) corner cut baggies of cocaine, weighing .244 grams, .245 grams, .255 grams, .218 grams and .221 grams, for a total of \$100 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry,

Hector Martinez approached the confidential informant and the confidential informant asked Hector Martinez for six (6) baggies of cocaine for \$100. Hector Martinez stated “no” and that he would sell *five* (5) baggies of cocaine for \$100. The confidential informant agreed and Hector Martinez walked towards the bartender and spoke to the bartender briefly. After a few moments, the bartender unlocked and opened the door located at the west end of Palomas Place along the southern wall. Both the bartender and Hector Martinez walked through that door. When Hector Martinez returned, he sold to the confidential informant five (5) corner cut baggies of cocaine in exchange for \$100. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit H**.

22. On June 16, 2015, Reyes Munoz was cited for operating without a Class “D” Operators license. He has failed to appear for arraignment and the citation is in warrant status.

23. On July 2, 2015, Reyes Munoz sold five (5) corner cut baggies of cocaine, weighing .292 grams, .324 grams, .287 grams, .296 grams and .294 grams, for a total of \$100 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry, the undercover MPD officer observed the Licensee walk behind the bar and grab a couple of beverages, take money from under the change tray in the cash register and count it, pull something out of his pocket, close the cash register drawer, retrieve the two beverages from the end of the bar and leave the immediate area. After ordering a drink from Reyes Munoz, who was bartending at the time, the confidential informant asked Reyes Munoz for “six for one hundred,” meaning six (6) twenty dollar bags of cocaine for one hundred dollars. Reyes Munoz stated he could not do that without the boss giving him the okay and that the boss had just left. Upon information and belief, the “boss” referenced is the Licensee. Reyes Munoz then walked over to the cash register, opened the cash drawer, took out the change tray and placed the change tray on

top of the register. He then grabbed what appeared to be five (5) \$20 dollar baggies of cocaine from the front left side of the drawer. Reyes Munoz then placed the baggies of cocaine into a white paper napkin and sold it to the undercover MPD officer in exchange for \$100. Reyes Munoz was also the bartender working during previous undercover purchases of cocaine detailed above. Upon information and belief, Reyes Munoz is a relative of the Licensee. The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit I**.

24. On September 25, 2015, Hector Martinez sold five (5) corner cut baggies of cocaine, weighing .320 grams, .234 grams, .241 grams, .276 grams and .245 grams, for a total of \$100 to a confidential informant and an undercover MPD officer inside Palomas Place. Upon entry, the undercover MPD officer observed Silvino Martinez working as a bartender and Hector Martinez sitting on the west end of the bar. After the confidential informant ordered beverages from Silvino Martinez, the confidential informant asked Silvino Martinez for some cocaine. Silvino Martinez told the confidential informant he does not do that because he had been arrested earlier in the year regarding. Silvino Martinez then directed the confidential informant to Hector Martinez, who was sitting at the end of the bar and that Hector Martinez could help the confidential informant out. The confidential informant approached Hector Martinez and asked for "six for one hundred." Hector Martinez stated he could not do that but he could do "five for one hundred." The confidential informant agreed and returned to sit next to the undercover MPD officer. Hector Martinez followed the confidential informant and sold to the confidential informant five (5) corner cut baggies of cocaine. The confidential informant gave the undercover MPD officer the suspected cocaine and the undercover MPD officer gave Hector Martinez \$100. As the confidential informant and undercover MPD officer walked toward the front door of

Palomas Place, the Licensee entered Palomas Place. The confidential informant greeted the Licensee asked the Licensee about getting “six for one hundred.” The Licensee replied “tomorrow.” The purchased substance tested positive for cocaine. For pictures of the cocaine purchased, see attached **Exhibit J**.

25. On October 1, 2015, HIDTA, MPD and DOR executed a second search warrant at Palomas Place based on the aforementioned three (3) undercover buys of cocaine at Palomas Place. An MPD officer made contact with a patron, Maria Nevajar (DOB 4/7/73), who was found in possession of .584 grams of cocaine. Ms. Nevajar admitted that she bought cocaine about three (3) days before from inside Palomas Place. During the execution of the search warrant, seventeen (17) small plastic baggies containing a white, powdery substance were recovered in a coat pocket in Palomas Place.

26. During the October 1, 2015 execution of the search warrant, the following drug-related evidence was found inside Palomas Place:

- a. Two (2) small plastic baggies containing a white, powdery substance found in the purse of Maria Nevajar.
- b. Seventeen (17) small plastic baggies containing a white, powdery substance found wrapped in a paper towel in the pocket of a coat.
- c. One (1) small plastic baggie containing a green leafy substance in Hector Martinez’s pants pocket.
- d. One (1) bottle of “Now” inositol powder.

27. Inositol powder is used to “cut” or manufacture cocaine for sale.

28. The white, powdery substance referenced found in the coat pocket as referenced above tested positive for the presence of cocaine and weighed a total of 5.216 grams. The

individual corner cut baggies of cocaine found in Palomas Place were consistent with the way they were tied, their weight and their appearance when compared to the cocaine that was purchased during the eight (8) controlled buys referenced above. The green leafy substance referenced above tested positive for the presence of tetrahydrocannabinol (“THC”, commonly known as marijuana) and weighed a total of 1.318 grams. For pictures of the seventeen (17) small plastic baggies of cocaine, the marijuana and the bottle of inositol powder obtained during the execution of the search warrant, see attached **Exhibit K**.

29. During the execution of the October 1, 2015 search warrant, Hector Martinez was detained and interviewed. Hector Martinez stated he has been employed at Palomas for two (2) to three (3) years and works as a bartender. He admitted to drug dealing and stated the cocaine is supplied to him to sell by Silvino Martinez. Hector Martinez further stated he typically works five to six days a week and sells approximately twenty (20) \$20 packets of cocaine daily between 1-9 pm. He also stated the Licensee has been present during some of these transactions.

30. During the execution of the October 1, 2015 search warrant, Reyes Munoz was detained and interviewed. He admitted he worked as a bartender at Palomas Place for approximately the past seven (7) months. He admitted he was a cocaine user and would sell cocaine to random people at the bar.

31. During the execution of the October 1, 2015 search warrant, the Licensee failed to provide DOR with any invoices for liquor purchased for the establishment. Therefore, a total of 99 bottles of various types of liquor was confiscated by DOR.

32. Palomas Place is a building or structure used to facilitate the delivery, distribution or manufacture of a controlled substance, via the Licensee and his agents, and is a location where those acts take place; therefore, it is a public nuisance.

33. Palomas Place has had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood.

BASED UPON the undercover purchases of cocaine from Palomas Place employees in Palomas Place on January 22, 2015, January 30, 2015, February 12, 2015, March 2, 2015, April 13, 2015, June 4, 2015, July 2, 2015 and September 25, 2015, the drugs and drug paraphernalia obtained, as well as DOR violations found, during the execution of search warrants on April 16, 2015 and October 1, 2015, and the licensing violations found during the March 20, 2015 licensed premises investigation, which has cumulatively had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood;

THE CHIEF OF POLICE, by his designee, respectfully requests the immediate revocation of the Class "B" Tavern license and Public Entertainment Premises license relative to the above-referenced Licensee and licensed premise, Palomas Place, because:

1. Pursuant to Wis. Stat. Sec. 125.12(2)(ag)1., the Licensee has violated Ch. 823, Wis. Stats. and municipal regulations;
2. Pursuant to Wis. Stat. Sec. 125.12(2)(ag)2., the Licensee keeps or maintains a disorderly or riotous, indecent or improper house;
3. Pursuant to Wis. Stat. Sec. 125.12(2)(ag)6., the Licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog;
4. Pursuant to MCO 90-12-1-d, the Licensee has violated the responsible person upon

licensed premises requirement (MCO 90-8-1);

5. Pursuant to MCO 90-12-1-e, the Licensee has operated in violation of excise laws of this state, including but not limited to Wis. Stat. Secs. 125.69(6) and 139.11(1);
6. Pursuant to MCO 85-4-4-c, 90-12-1-f, and 108-11-3, Palomas Place is operated in such a manner that it constitutes a public or private nuisance and that conduct at Palomas Place, including but not limited to the repeated sale of cocaine inside Palomas Place by Palomas Place employees, the failure to have a responsible person on premises, and the violation of excise laws, has had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood; and
7. Pursuant to MCO 85-4-4-c-22, 90-12-1-i and 108-11-3, there are other reasonable causes which are in the best interests, public safety, welfare and good order of the City of Milwaukee, including:

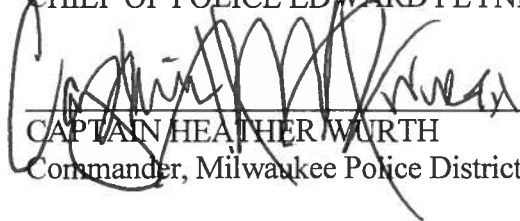
- a. **Failure to Abate Drug Activity:** By no later than April 16, 2015, the Licensee was aware of both the illegal drug activity and law enforcement's investigation into the illegal drug activity at Palomas Place. However, the Licensee maintained the same or similar staff, including Silvino Martinez who was arrested for possession with intent to deliver cocaine. The confidential informant and undercover MPD officer were able to successfully complete a purchase of five (5) corner cut baggies of cocaine forty-nine (49) days after the execution of the April 16, 2015 search warrant.
- b. **Active Participation of the Licensee:** Based upon actions observed by and comments made to the undercover MPD officer, as well as statements made by Palomas Places employees to law enforcement during the execution of the search

warrants, the Licensee has actively participated in the drug activity.

- c. **Storage of Drugs:** Based on the location of drugs found throughout Palomas Place during the execution of the two search warrants and the practice of employees entering a side room or opening the cash register before selling cocaine to the confidential informant and undercover MPD officer, Palomas Place has been used as a location to conceal and store large quantities of drugs for the purpose of delivery, distribution or manufacture of a controlled substance.

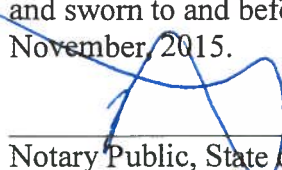
Dated at Milwaukee, Wisconsin this 24th day of November, 2015.

CHIEF OF POLICE EDWARD FLYNN, by



CAPTAIN HEATHER WORTH
Commander, Milwaukee Police District 2

The foregoing complaint seeking revocation of the Class "B" Tavern license and Public Entertainment Premises license was subscribed and sworn to and before me this 24th day of November, 2015.



Notary Public, State of Wisconsin
My commission is permanent

Drafted by:
NICHOLAS P. DESIATO
Assistant City Attorney
SBN: 1068916



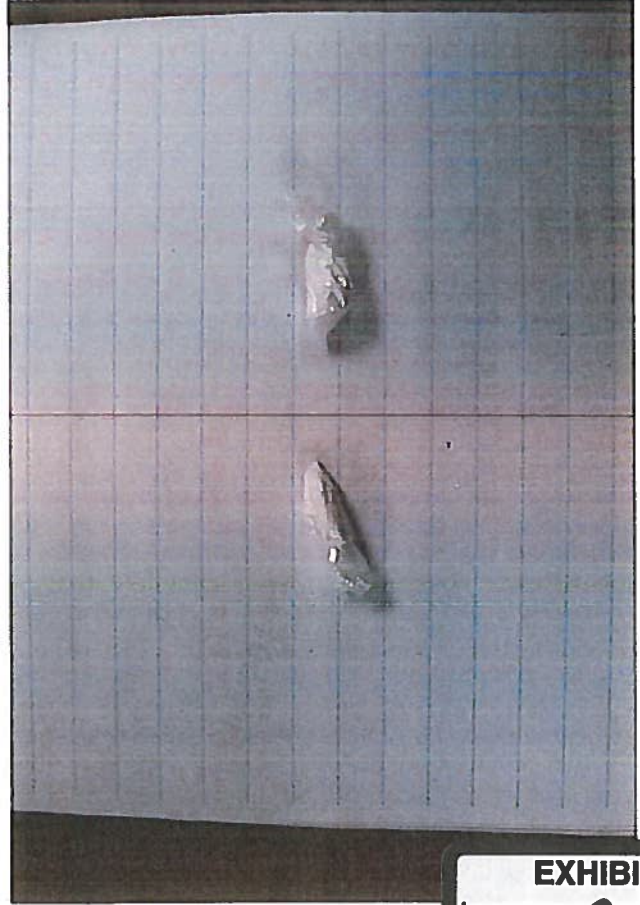
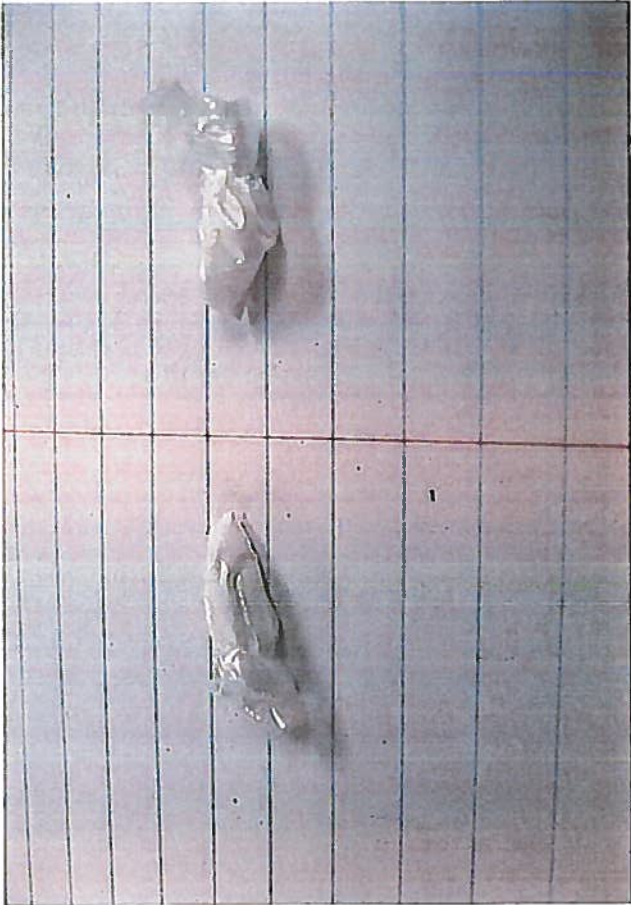
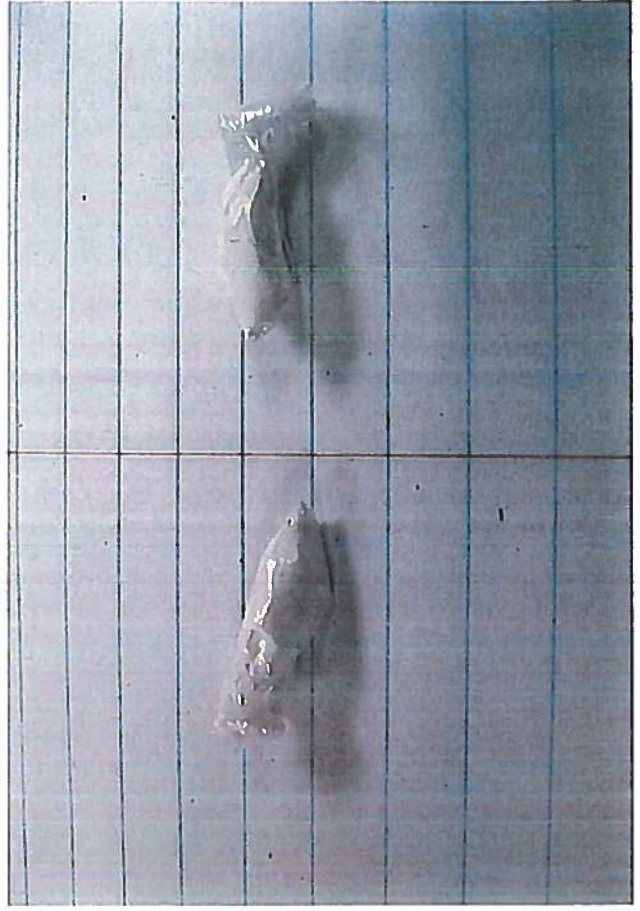
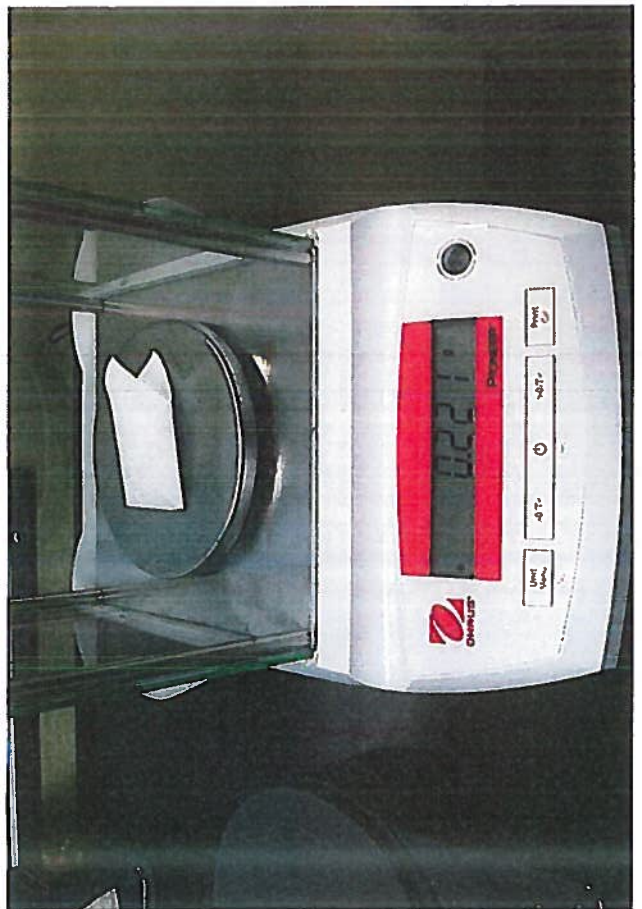


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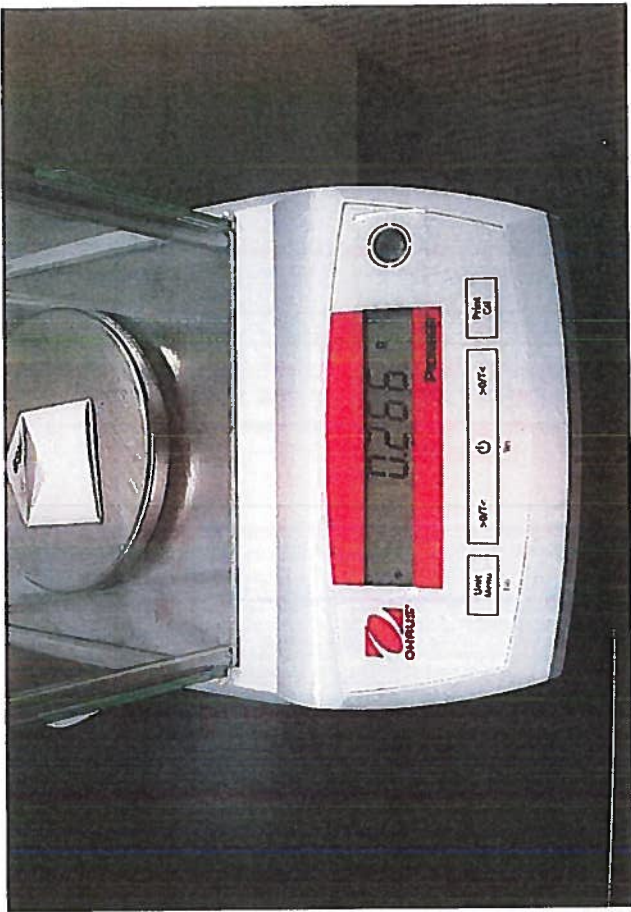
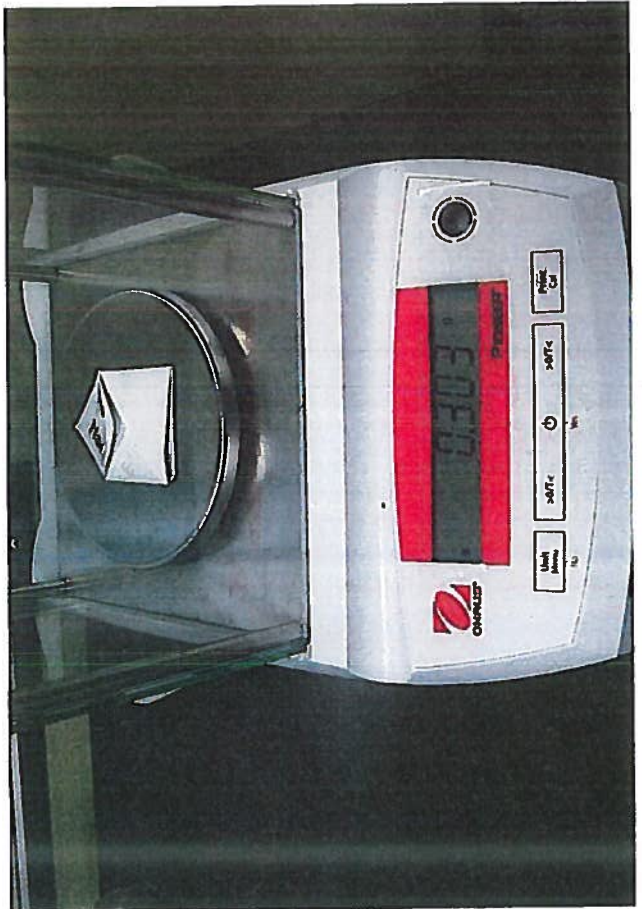
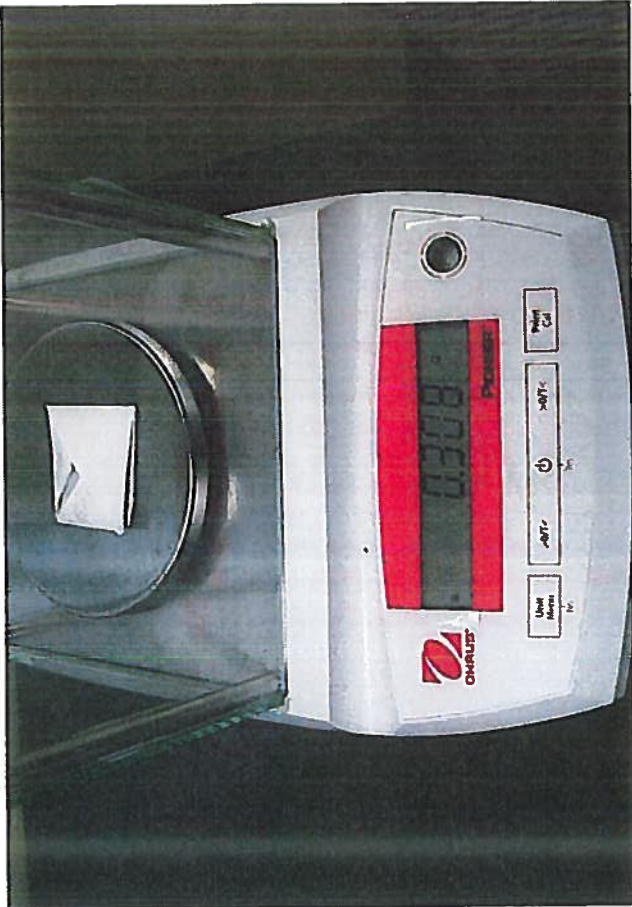
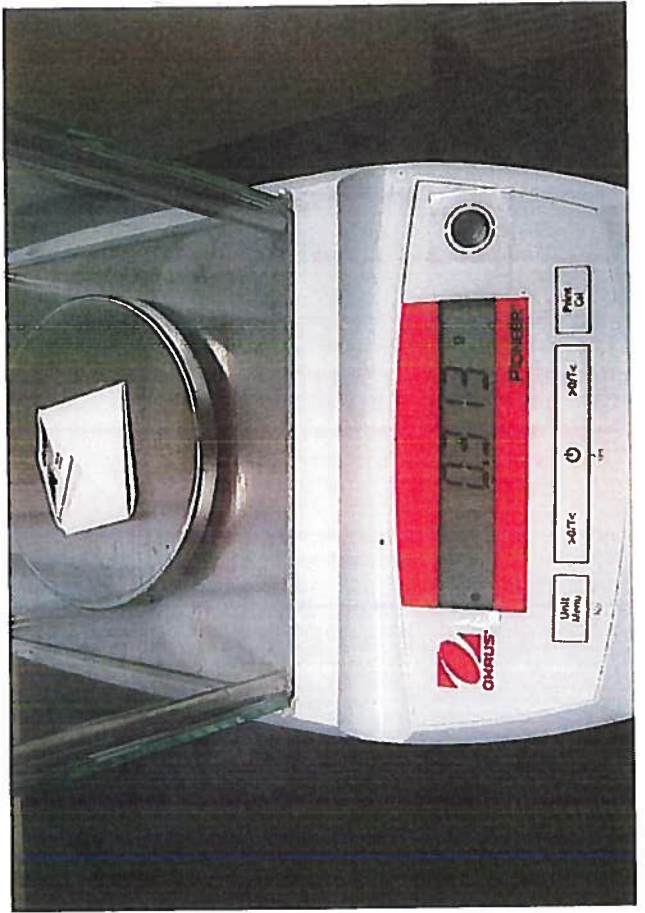


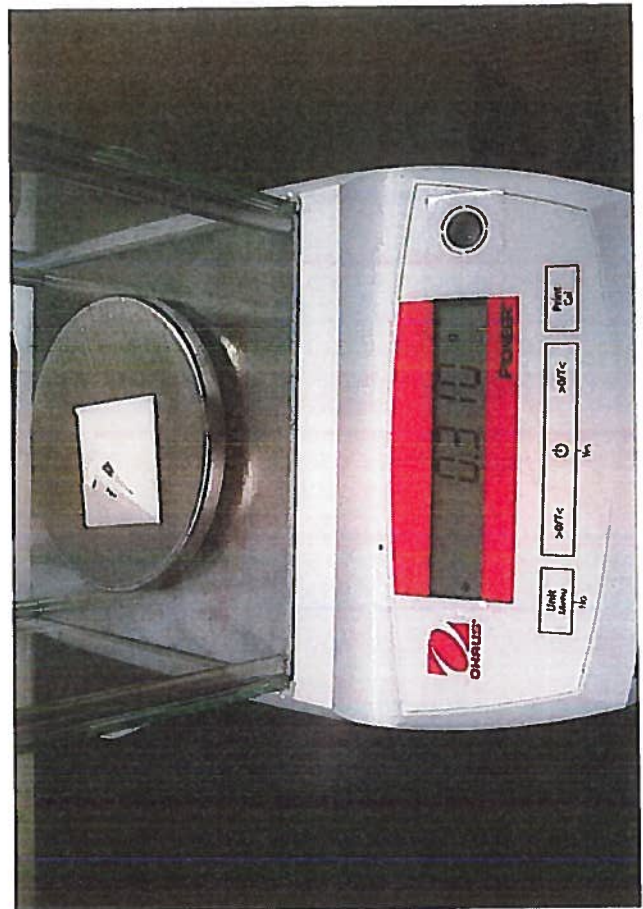
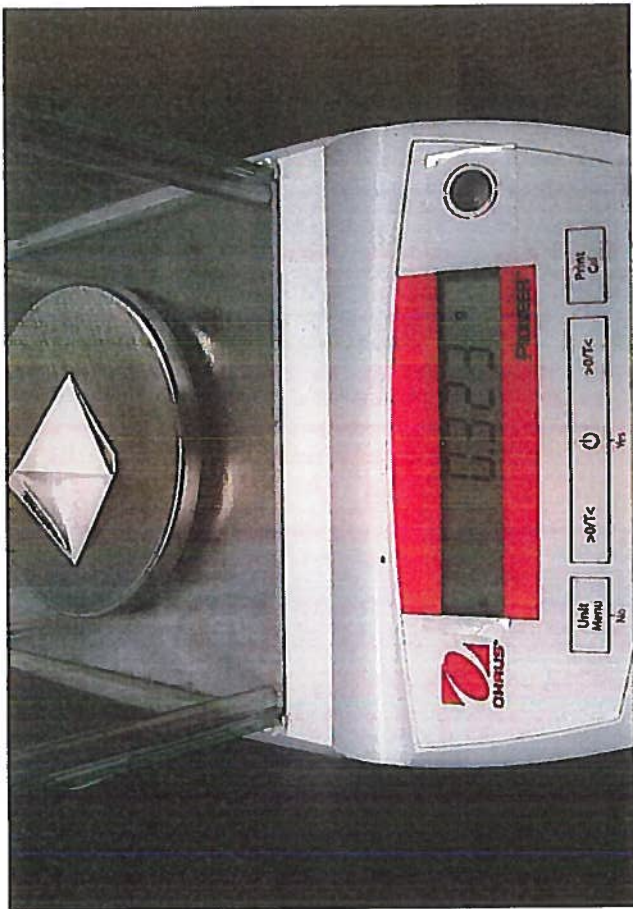
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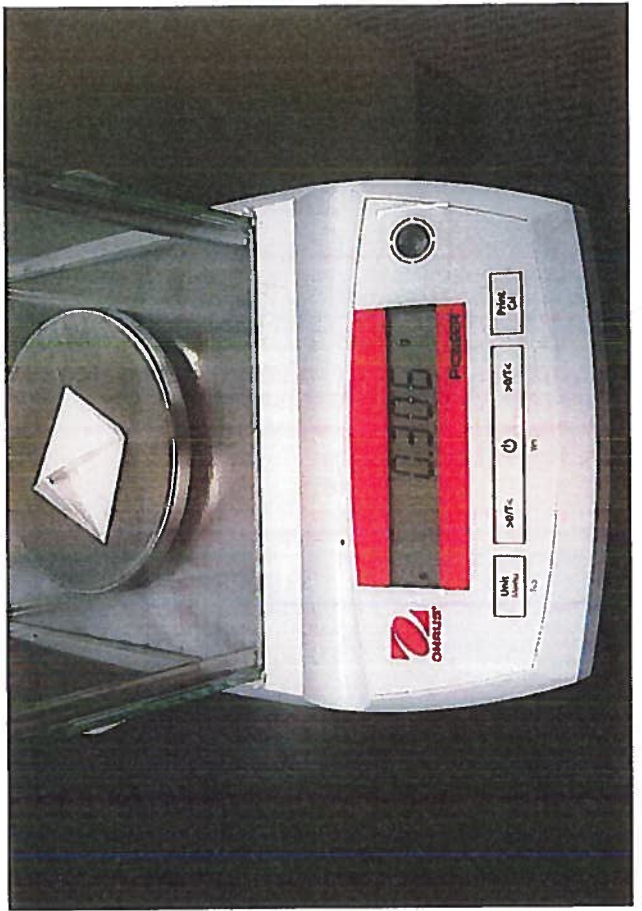
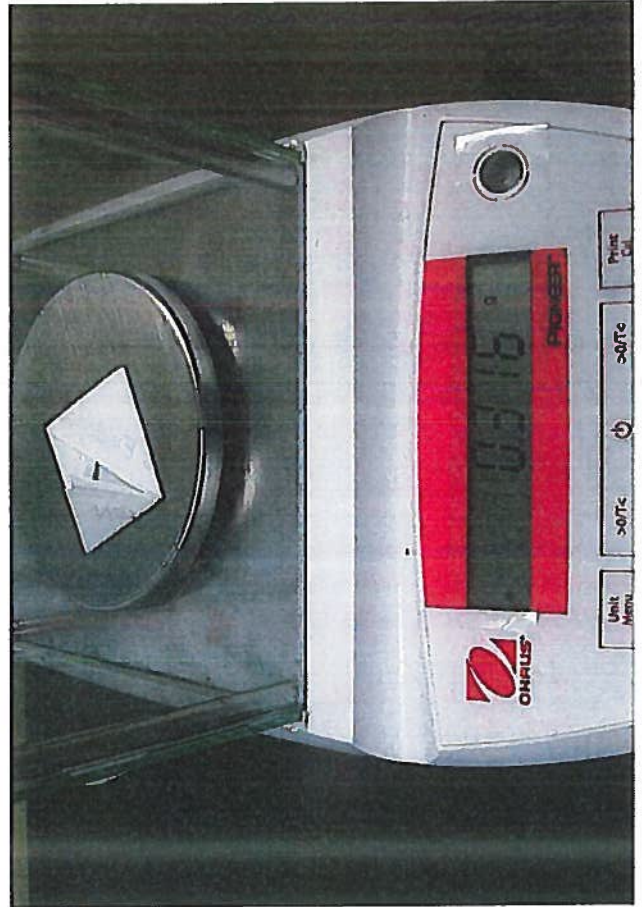
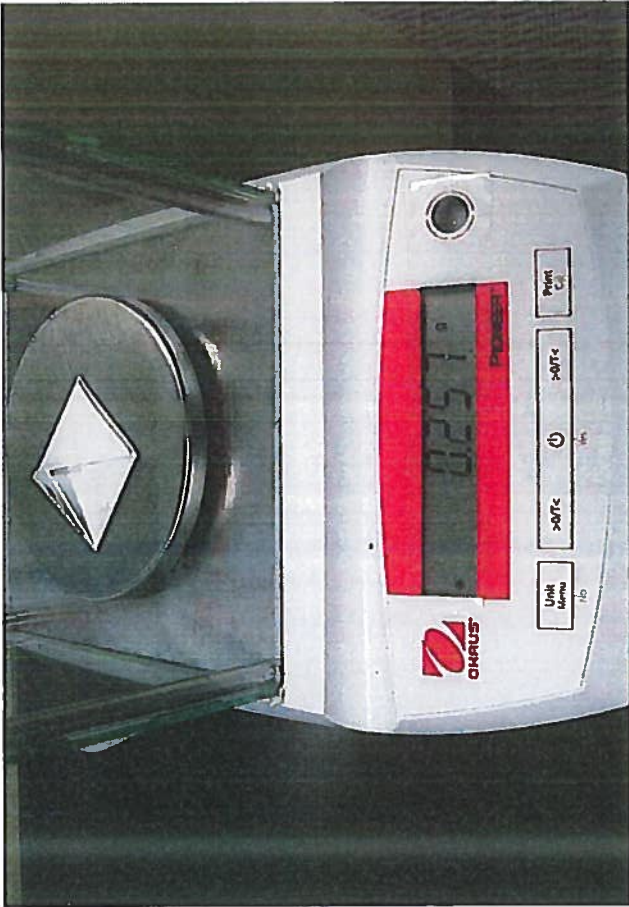


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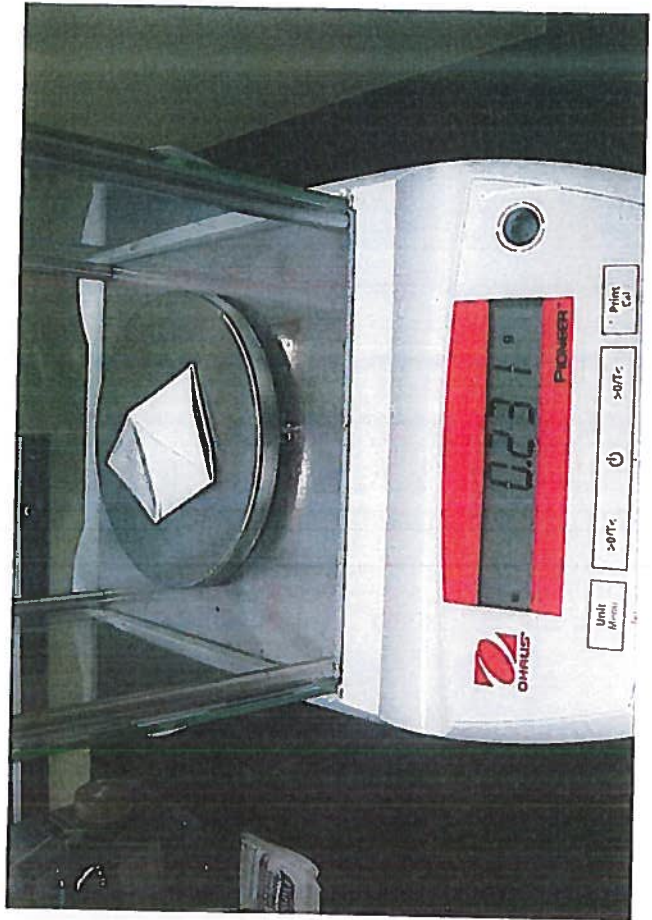
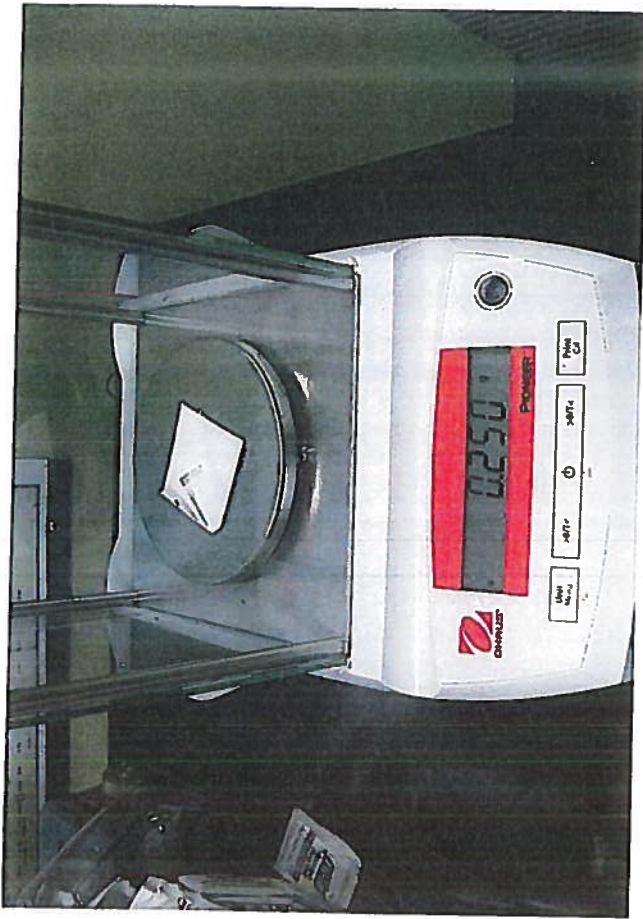
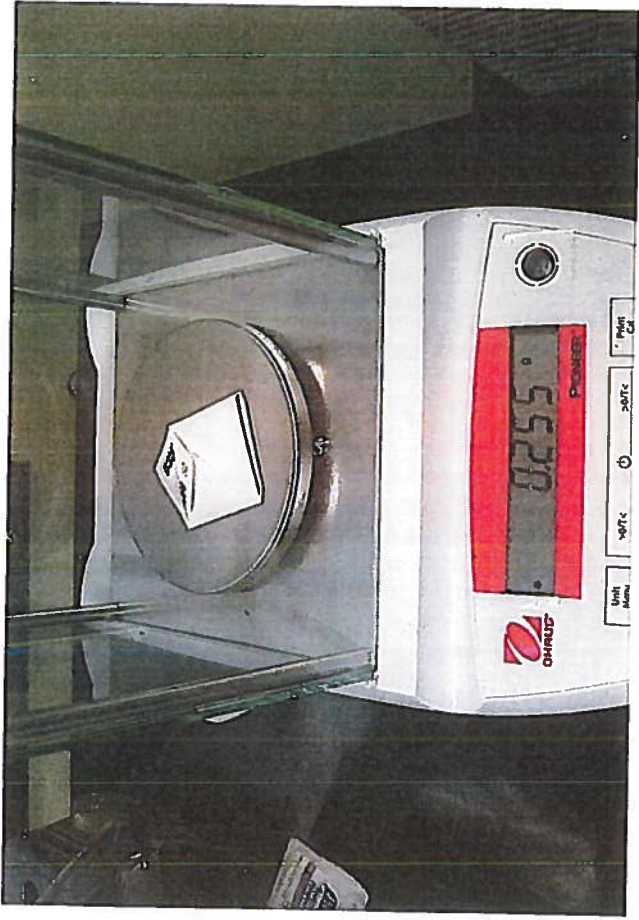
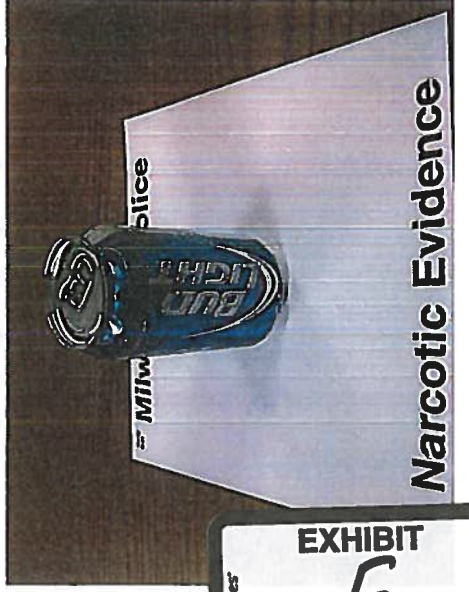
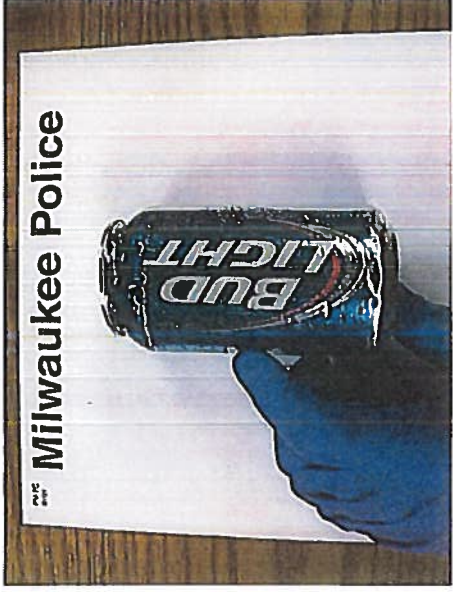
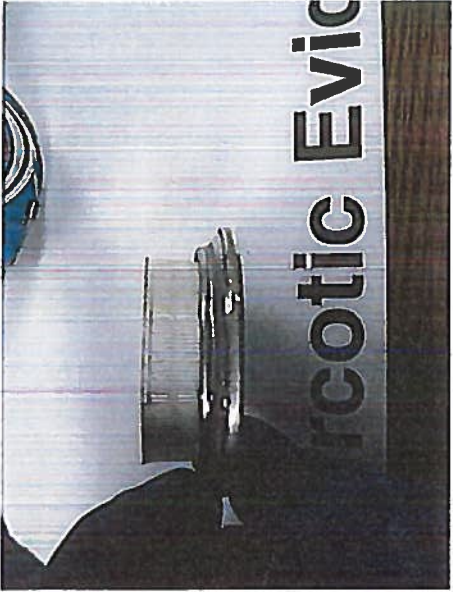
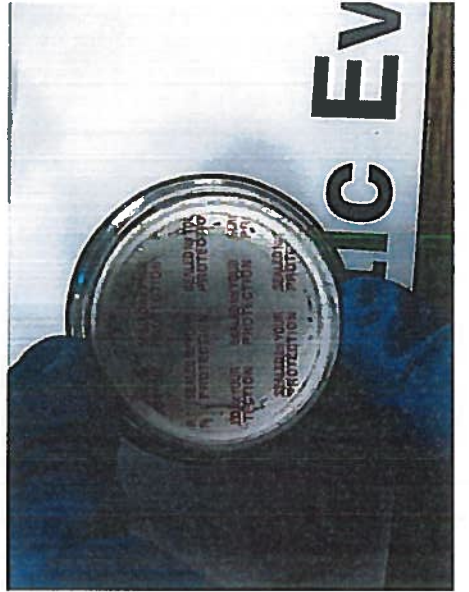
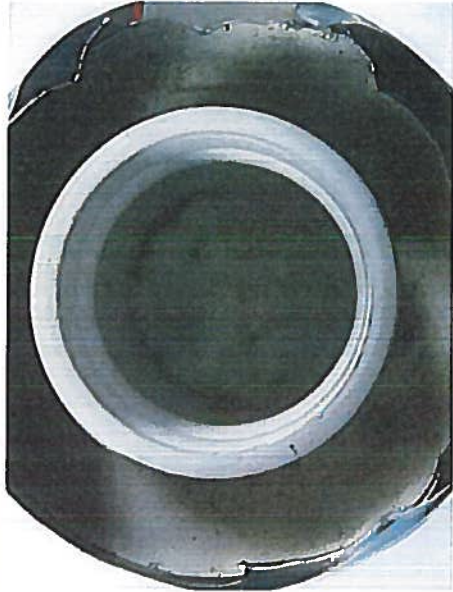
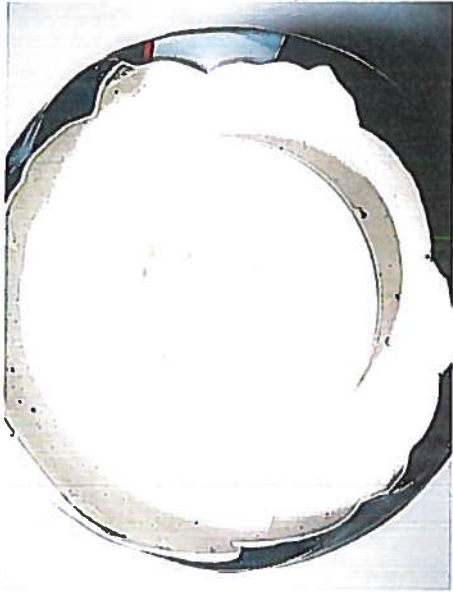
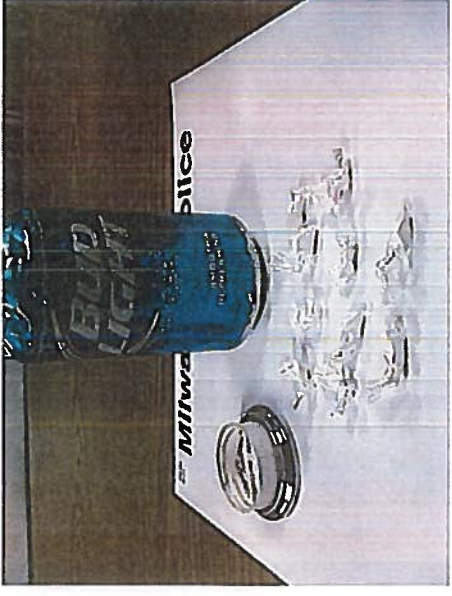
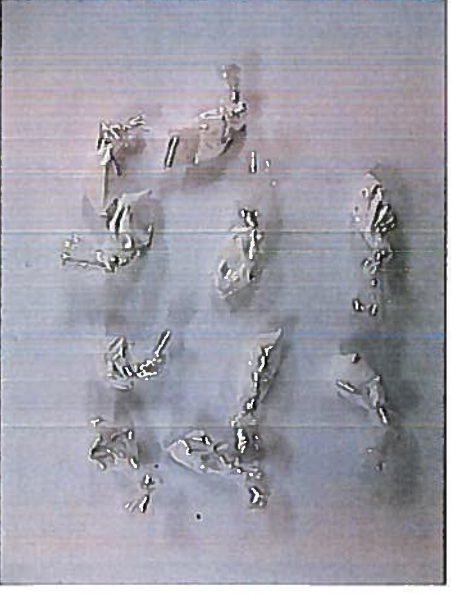
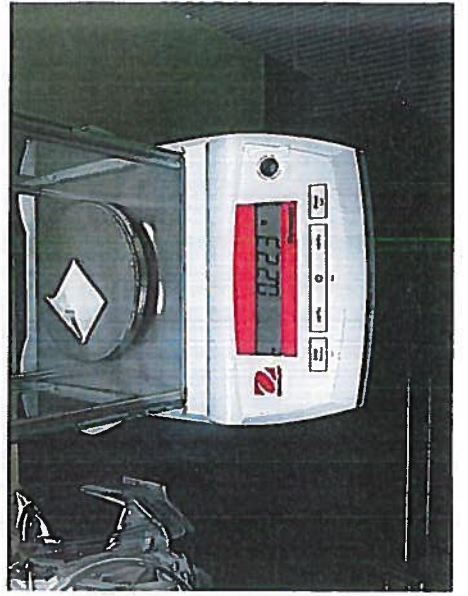
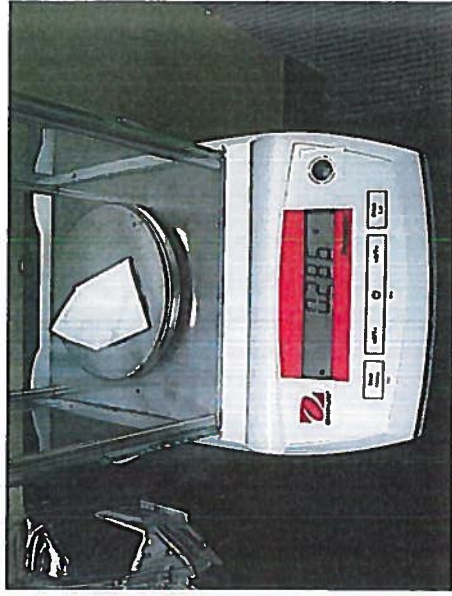


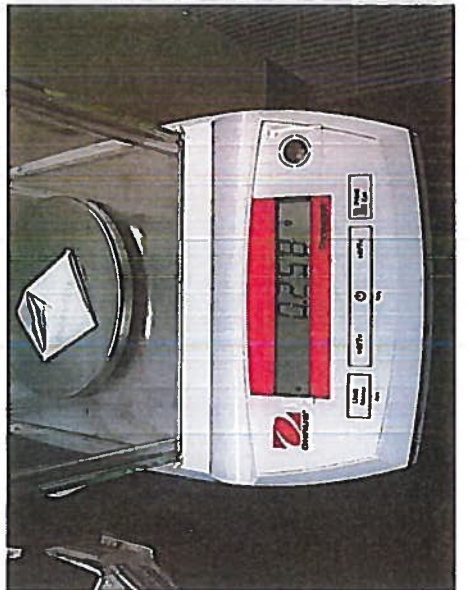
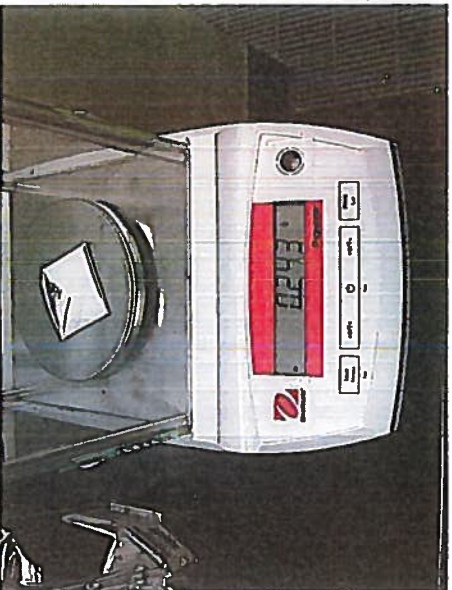
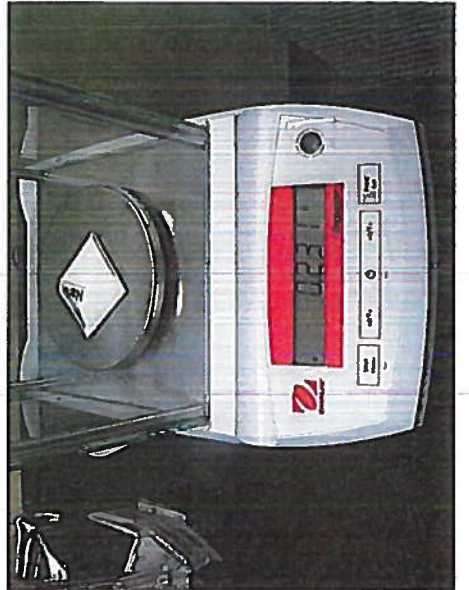
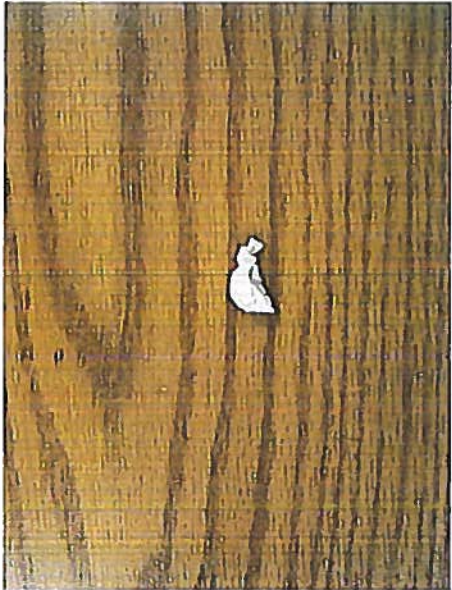
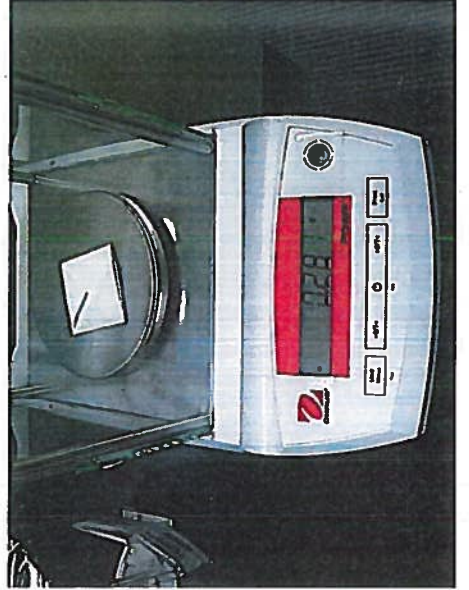
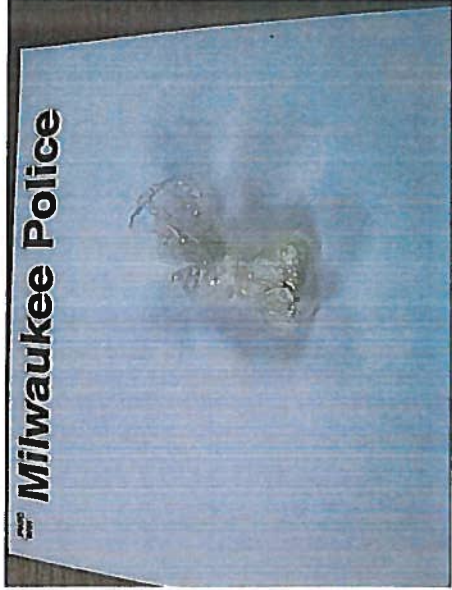
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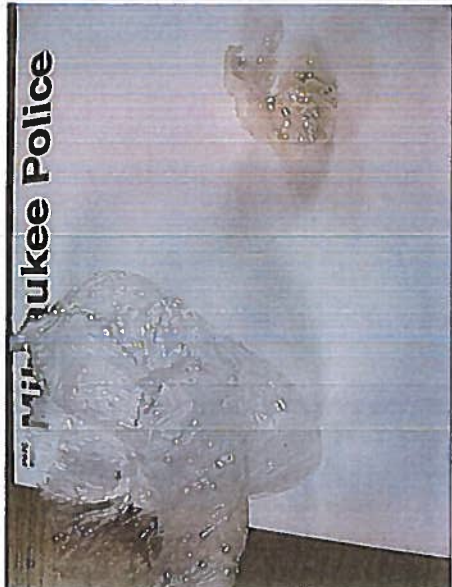
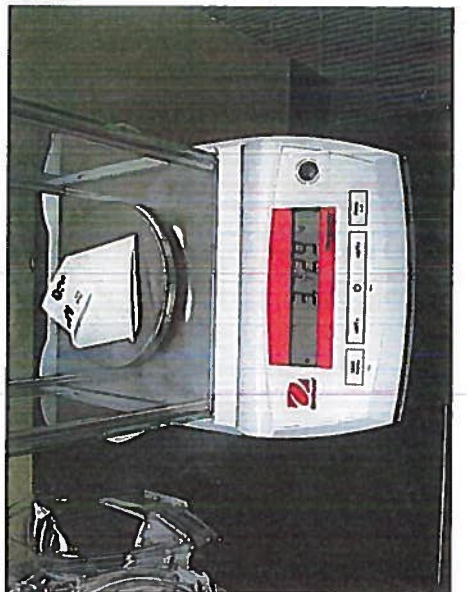
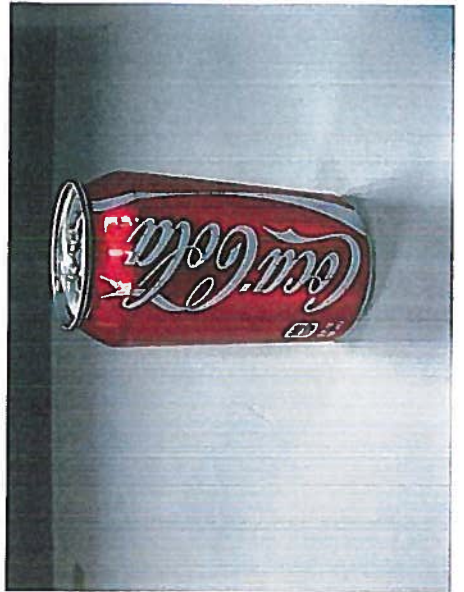
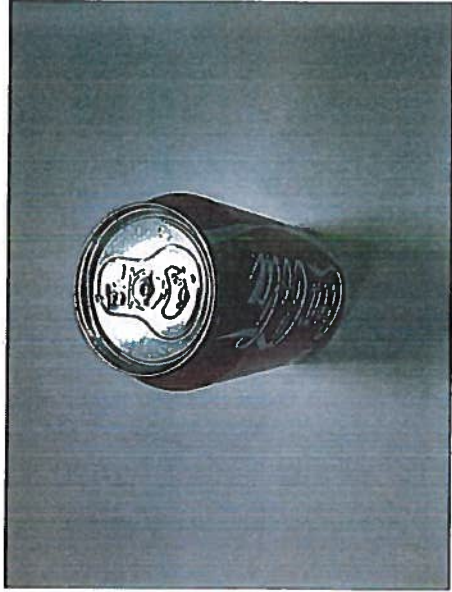


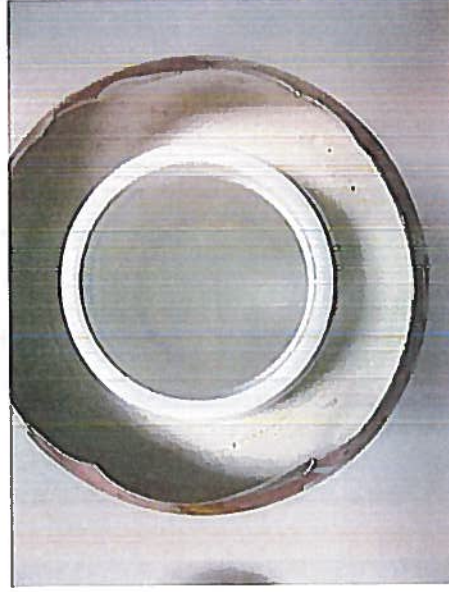
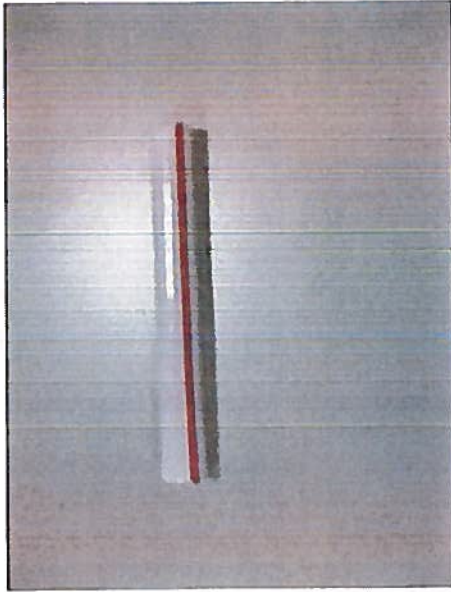
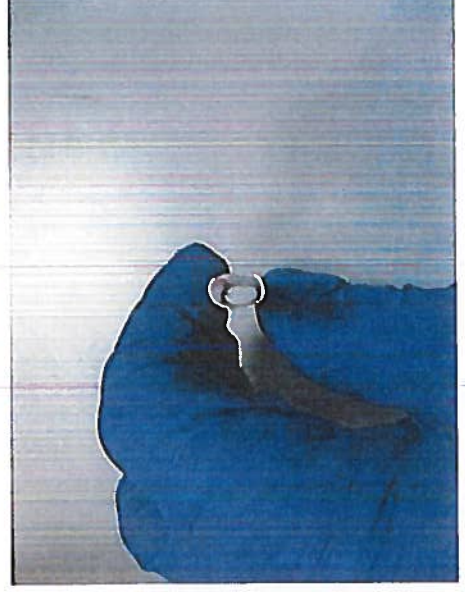
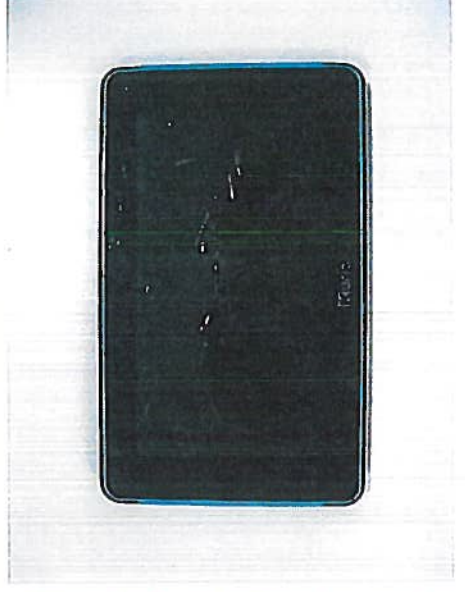
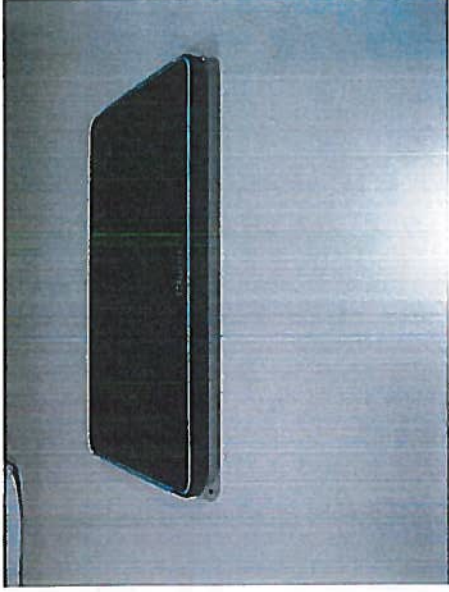


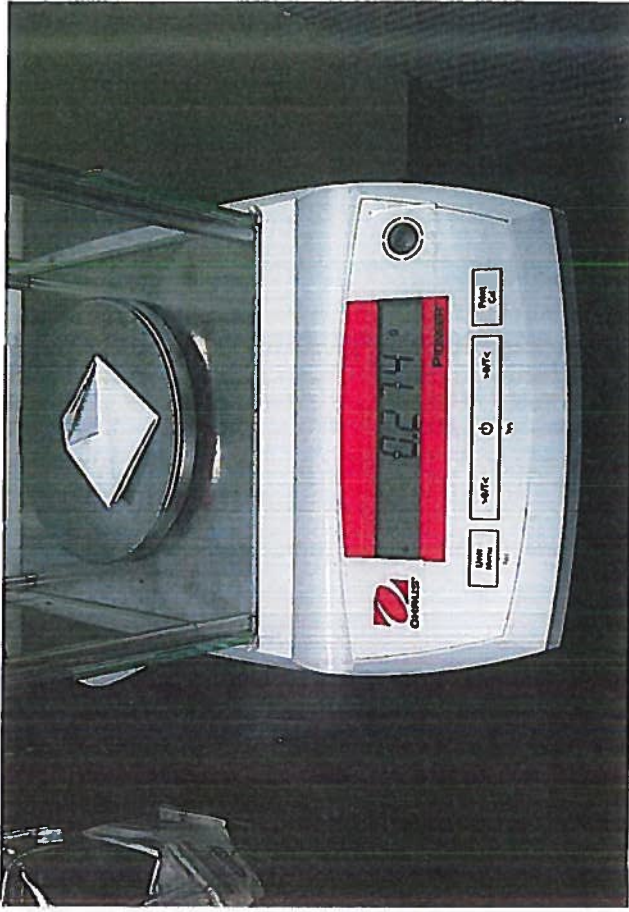
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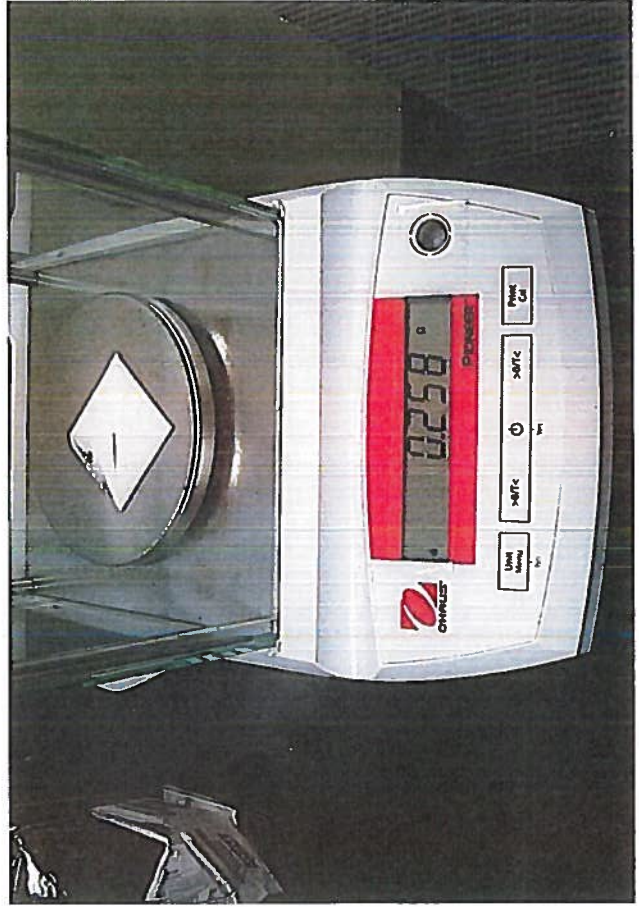
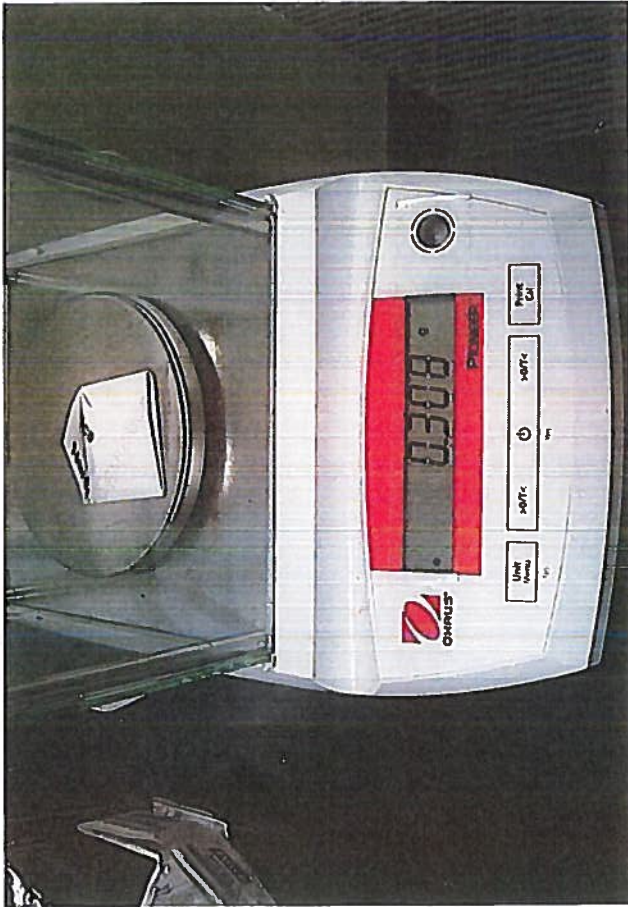
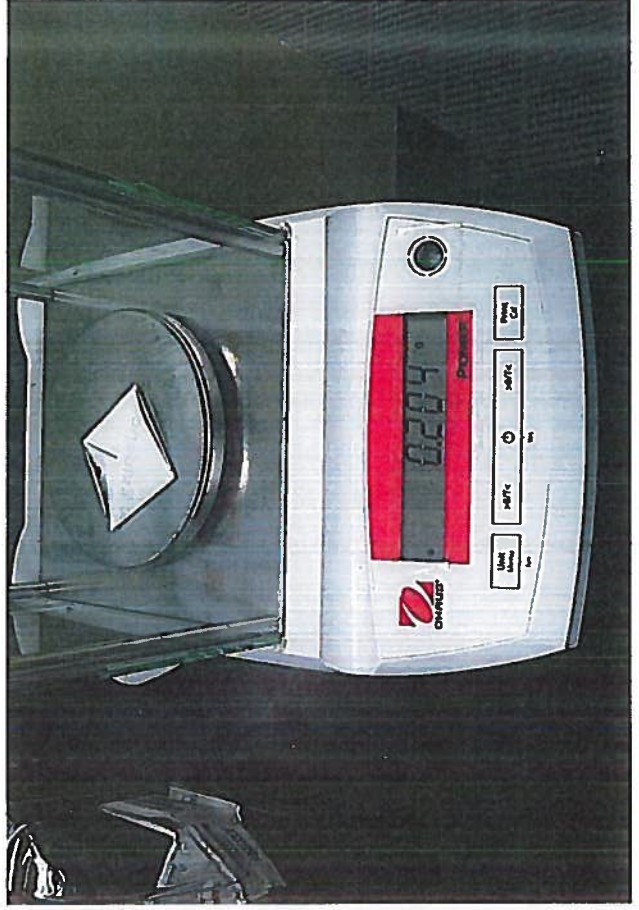
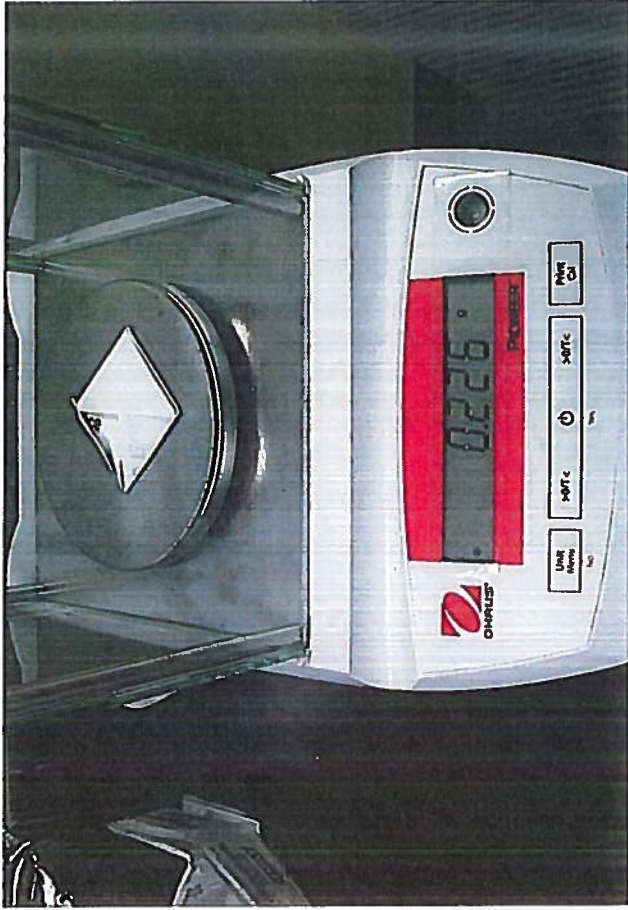


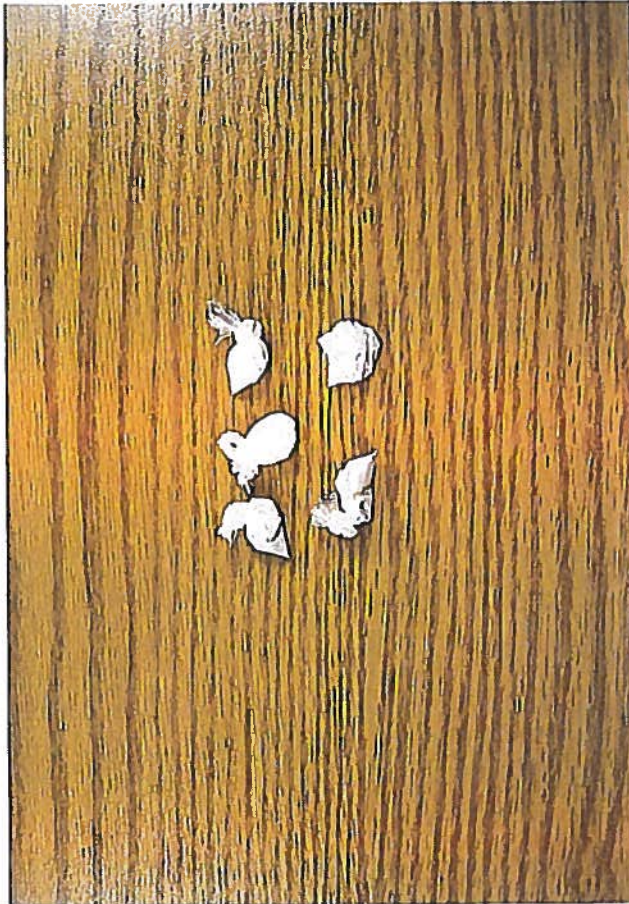
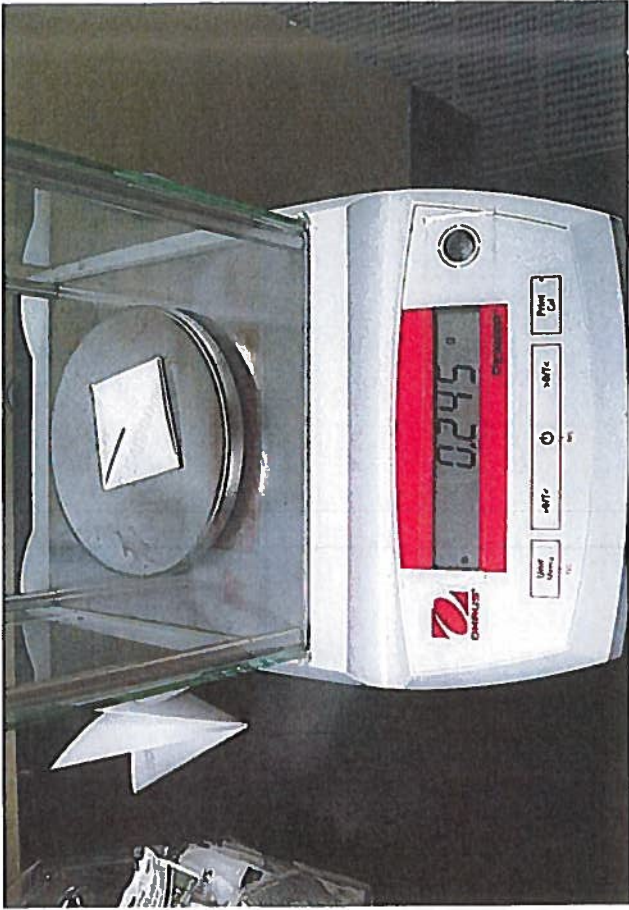




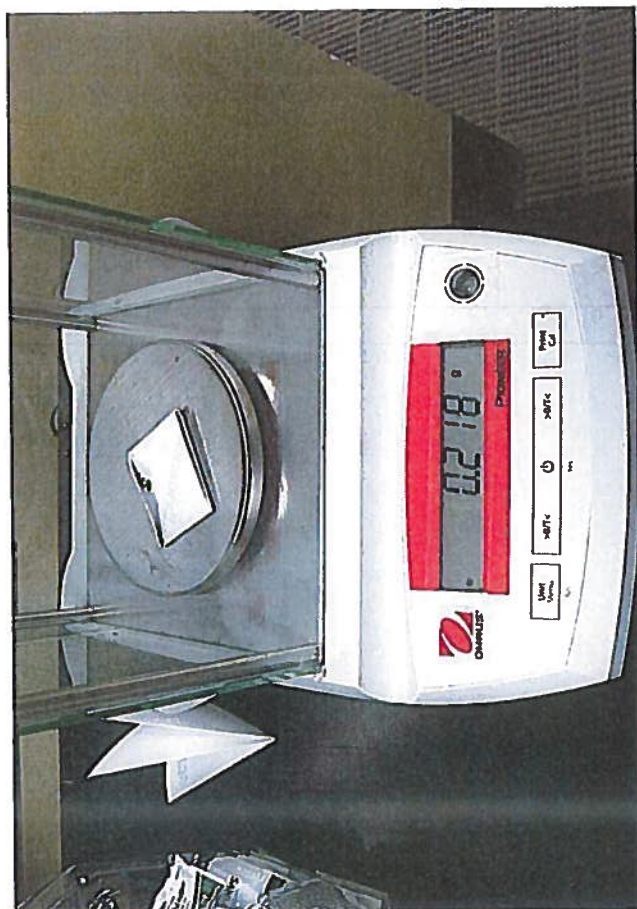
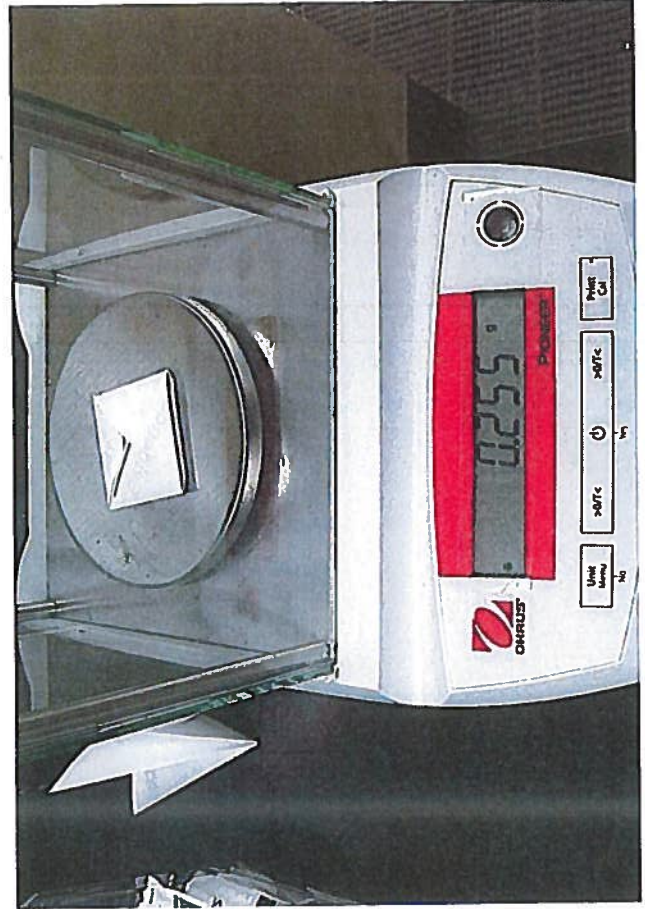
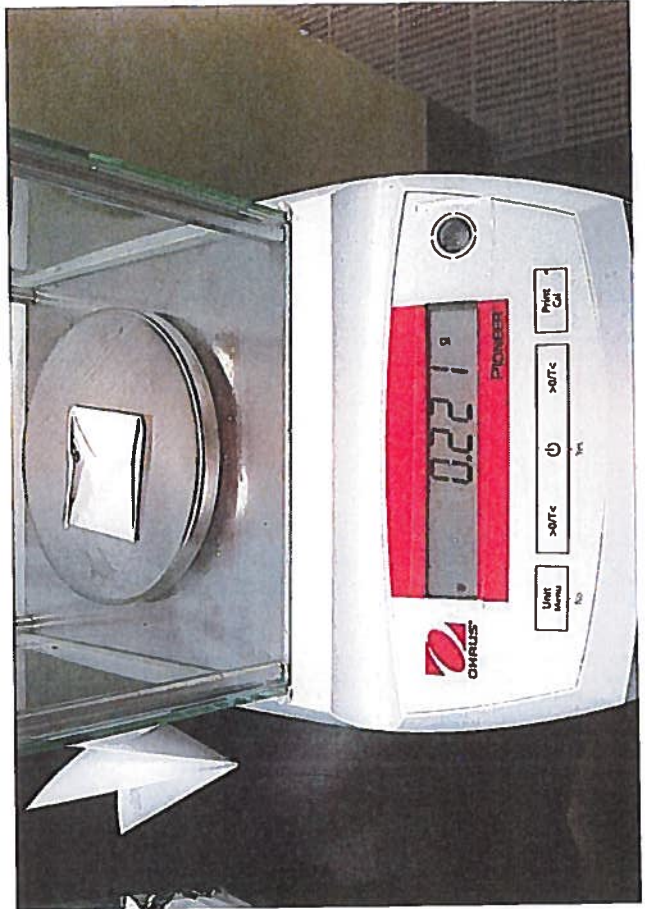


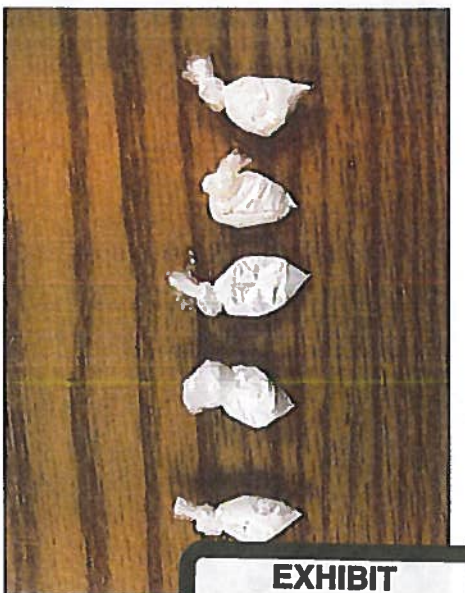
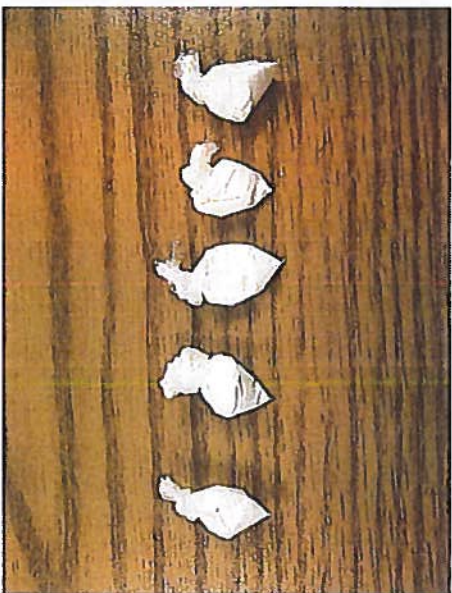
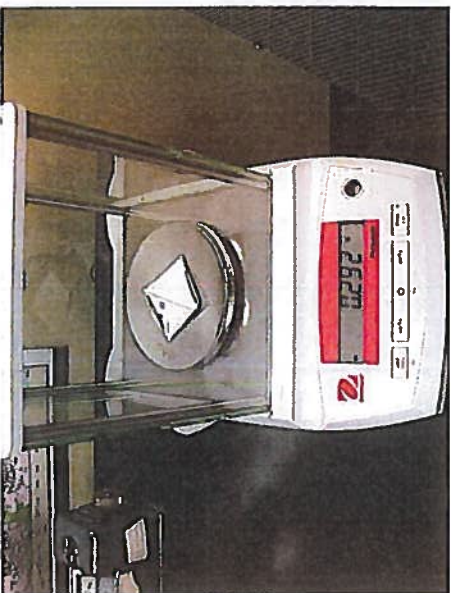
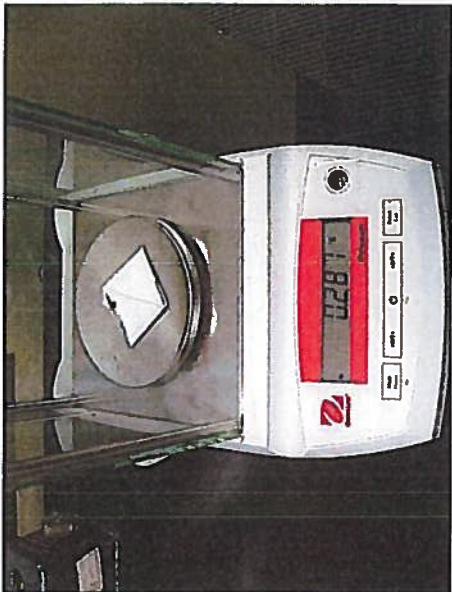
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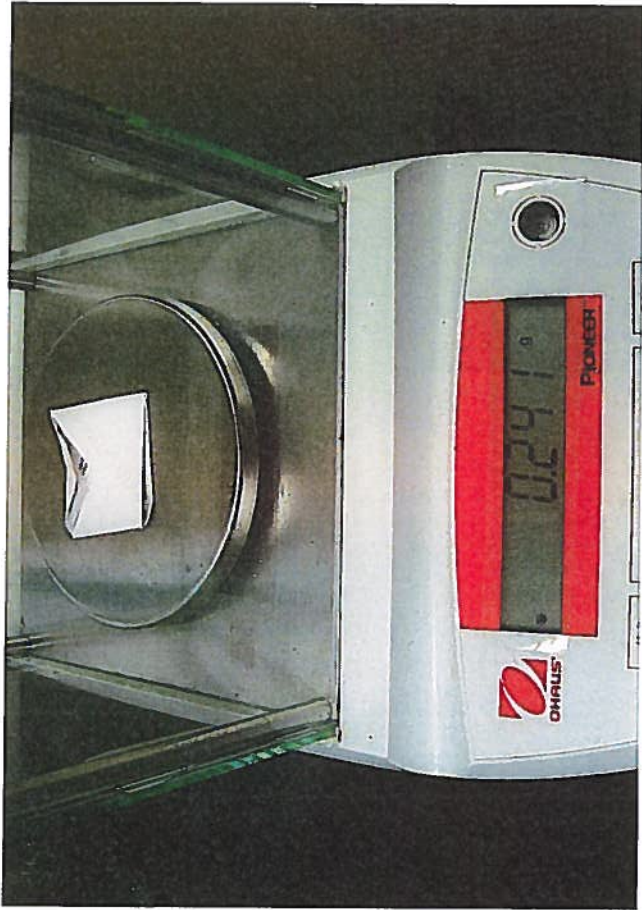


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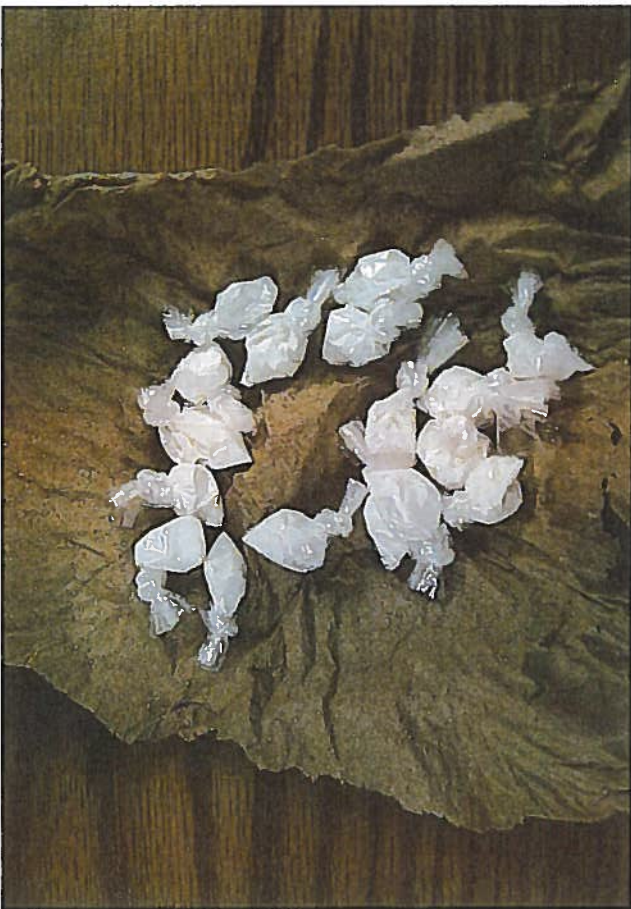


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