



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Common Council Members
From: Richard L. Withers, Legislative Fiscal Analyst ext. 8532
Date: 2013, November 25, 2013
Subject: Drafter's Notes: File Number 130903

The following notes have been prepared to assist Common Council Members in review of Substitute 1, Common Council File Number 130903, recommended for passage by the Public Safety Committee on November 19, 2013.

Usage of the phrase “shall issue” in drafting.

At the hearing before the Public Safety Committee, Ald. Witkowski, Chair, asked for clarification of the use of the phrase “shall issue” as it appears in Part 6, p. 6 (s. 100-50-4-a-3) which begins, “Not more than 100 new taxicab permits shall be issued....”

The phrase “shall issue” refers to the action of the City Clerk upon approval of an application by the Common Council authorizing the issuance of a license or permit. Unless and until the Common Council authorizes issuance of a permit, the City Clerk is not empowered to issue the permit. If passed, the proposed ordinance establishes a process for receiving and acting upon applications for new taxicab permits. It does not require the approval and subsequent issuance of 100 new permits, but prohibits the City Clerk from issuing more than 100. The Common Council could actually approve more than 100 applications; the ordinance requires the City Clerk to issue “not more” than 100.

If the legislative intent were, in fact, to require issuance of 100 new permits, the plain language to accomplish this would be, “100 new taxicab permits shall be issued.” Inclusion of the words “not more than”, given common meaning, does not imply “and not less than”.

Further, consistent with the Wisconsin Bill Drafting Manual, s. 2.01(7) “Permissive or Mandatory Actions”, the use of the term “may” is inappropriate in reference to the action of the City Clerk to issue a permit once approved and authorized by the Common Council. Usage of the term “shall issue” is also consistent with other licensing and permitting provisions in ss. 85-12.5 and 85-24 of ch. 85, License and Permit Procedures, and s. 90-6-10, ISSUANCE OF LICENSE BY THE CITY CLERK.

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