



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Ald. Tony Zielinski, Chairman
Licenses Committee

From: Richard L. Withers, Legislative Fiscal Analyst ext. 8532

Date: May 4, 2012

Subject: File Number 110384: A substitute ordinance relating to regulation of precious metal and gem dealers.

The following is a summary description of the hearing held February 13, 2012, a subsequent written opinion provided by the City Attorney, and the revised draft attached to the File and identified as PROPOSED SUBSTITUTE A.

Committee Hearing, February 13, 2012

Appearing before the Licenses Committee on February 13, 2012 were Ald. Joe Davis, 2nd Aldermanic District, Officer Jeff Thiele and Sgt. Chad Raden, Milwaukee Police Department, and Richard Withers, Legislative Reference Bureau.

Ald. Davis described problems with secondhand jewelry business operations conducted door-to-door in his district and across the City.

Assistant City Attorney Adam Stephens summarized the proposed ordinance (Version: Substitute 2, currently in the File). He noted a significant loophole in the ordinance that, as long as there was no fixed place of business, one could buy gold from door to door with no license or regulation. The current ordinance regulates only fixed businesses engaged in precious metal and gem dealings.

The new ordinance will require anyone licensed by the City to buy or sell secondhand gold or jewelry to maintain a fixed location where all transaction records are kept. Applicants must submit a plan of operation on their application to the committee for review and approval.

Ald. Bohl noted that the proposed ordinance allows a person to go door to door, but licensees must adhere to record-keeping and reporting requirements.

Ald. Coggs expressed concern that legalizing mobile precious gem dealers would still present issues in neighborhoods. She stated opposition to mobile operations.

Officer Thiele provided details of incidents involving unlicensed dealers. He suggested the possibility of requiring all operations to be conducted at a fixed location. Ald. Bohl expressed concern that such a broad and prohibitive measure may be illegal in terms of restraint of trade.

Ald. Bohl requested that an opinion be given by the City Attorney's Office to determine if limiting this type of business to a fixed location is legal and enforceable and is not an illegal restraint of trade.

City Attorney's Opinion – March 28, 2012

The City Attorney's Office provided an opinion dated March 28, 2012, on the question whether the City "...may require commercial transactions subject to precious metal and gem (PM&G) license to be conducted solely from a fixed business location."

The City Attorney noted that such a requirement would address 2 important issues: first, it would provide the City with assurance that required records would be available and accessible; and, second, it would reduce the risk of robbery to which mobile dealers are at significant risk.

The City Attorney concluded that the City may prohibit licensees (both City and outside licensees) "...from conducting mobile secondhand jewelry transactions involving service from motor vehicles, hotel conference rooms, and door-to-door salesmen."

The Revised Draft

PROPOSED SUBSTITUTE A has been attached to the file following consultation with the City Attorney's Office. The draft closes the potential loophole for unlicensed mobile businesses. Other changes involve unrelated intervening revisions of procedures for investigation of applicants and transfer of licenses.

The revised draft does not include a prohibition of mobile sales except to the extent that these activities must be identified in a City licensee's plan of operation and approved by the Common Council.

The proposed draft does not require that records be maintained at a fixed location by licensees from outside jurisdictions. Additional regulations may, of course, be considered upon motion to amend.

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