



Legislation Text

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990593

SUBSTITUTE 2

990343

ALD. GORDON

A substitute ordinance relating to enforcement of tattooing and body-piercing regulations.

75-51 rc

- Analysis -

This ordinance authorizes the health department to enforce state statutes and regulations of tattooists and body piercers and their establishments, pursuant to an agency agreement between the health department and the Wisconsin department of health and family services. The health department is authorized to license tattooing and body piercing establishments, to deny new or renewal establishment applications and to suspend or revoke licenses for specified reasons. Persons whose applications are denied or whose licenses are suspended or revoked may appeal to the environmental health board for a due process hearing on the department's action.

The ordinance authorizes the department to impose an immediate emergency suspension on a licensee because the licensee's activities constitute an immediate danger to public health. An emergency suspension cannot exceed 14 days unless the immediate danger continues. The environmental health board is required to hold a due process hearing on any emergency suspension.

The penalty for tattooing a person under 18 is a forfeiture not to exceed \$200. Any other violation of the ordinance is punishable by a forfeiture not to exceed \$500. Both penalties are pursuant to state statute. The ordinance may be enforced by the health department and the police department. The ordinance includes common council findings.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 75-51 of the code is repealed and recreated to read:

75-51. Tattooing and Body-Piercing. 1. COMMON COUNCIL FINDINGS. The common council finds that:

- a. It is important to the health, safety and welfare of all residents of Milwaukee to promote safe and adequate care and treatment for individuals who receive tattoos or body piercing.
- b. Tattooing and body piercing can expose individuals to communicable disease or infection unless great care is taken to ensure the cleanliness of the instruments and techniques used.
- c. Some tattooing and body-piercing activities may be performed in such a dangerous and unsafe manner that protection of public health and safety requires the city to immediately abate the danger and suspend the activities without notice.

2. DEFINITIONS. In this section:

- a. "Body piercer" means a person who performs body piercing on another.
- b. "Body piercing" means perforating any human body part or human tissue, except an ear, and placing a foreign object in the perforation in order to prevent the perforation from closing.
- c. "Dentist" means an individual licensed under s. 447.03(1), Wis. Stats.
- d. "Department" means the health department.
- e. "Physician" means an individual licensed to practice medicine and surgery under s. 448.03(1), Wis. Stats.
- f. "Tattoo" has the meaning given in s. 948.70(1)(b), Wis. Stats.
- g. "Tattooist" means a person who tattoos another.

3. STATE STATUTES AND ADMINISTRATIVE CODE ADOPTED. The city of Milwaukee adopts ch. HFS 173, Wis. Adm. Code, as amended, as part of this code. The city of Milwaukee adopts ss. 252.23, 252.24, 252.245 and 948.70, Wis. Stats., as part of this code.

4. DEPARTMENT AS AGENT OF STATE. The department is authorized to act as an agent of the Wisconsin department of health and family services, as authorized under ss. 252.23, 252.24 and 252.245, Wis. Stats., and ch. HFS 173, Wis. Admin. Code. The department is authorized, as agent of the state, to enforce the tattooing and body-piercing regulations of ss. 252.23, 252.24, 252.245 and 948.70, Wis. Stats.,

and ch. HFS 173, Wis. Adm. Code.

5. LICENSE REQUIRED. a. Except as provided in par. b, no person may tattoo or attempt to tattoo another, designate or represent himself or herself as a tattooist or use or assume the title "tattooist" and no tattoo establishment may be operated unless the person and the establishment are licensed under this section. No person may pierce the body of or attempt to pierce the body of another, designate or represent himself or herself as a body piercer or use or assume the title "body piercer" and no body-piercing establishment may be operated unless the person and the establishment is licensed under this section or applicable Wisconsin statute.

b. The licensure requirement of par. a does not apply to a dentist or to a physician who, in the course of the dentist's or physician's professional practice, tattoos or offers to tattoo an individual or who pierces the body of or offers to pierce the body of an individual.

6. LICENSING APPLICATION. A person seeking a license under this section shall apply to the department on a form prepared and furnished by the department, and shall comply with the requirements established under Wisconsin statutes, the Wisconsin administrative code and this section for that license.

7. FEE. Each license applicant shall pay the appropriate license fee or fees provided in ch. HFS 173, Wis. Adm. Code.

8. NOTICE AND INVESTIGATION OF APPLICATION. a. Upon receipt of an application for a new or renewal license, the department shall furnish notice of the application to the chief of police and the commissioner of neighborhood services.

b. The chief of police and the commissioner of neighborhood services shall cause an investigation to be made and report the findings to the department.

9. GRANTING OR DENIAL OF LICENSE APPLICATION. a. The department shall review each license application and the reports of the chief of police and the commissioner of neighborhood services to determine whether to grant or deny the application.

b. The department may deny an application for a new or renewal license for any of the following reasons:

b-1. The applicant is not of good character.

b-2. The applicant has not complied with the requirements of this section.

b-3. The applicant has been convicted of a violation of statutory or Wisconsin administrative code provisions that is substantially related to the circumstances of the licensed activity.

b-4. The applicant has been convicted of a violation of this section.

b-5. The applicant's previous license as a tattooist or body piercer or for a tattoo establishment or body-piercing establishment has been revoked or not renewed for any reason whatsoever.

b-6. The applicant has been successfully sued for activities that are substantially related to the circumstances of the licensed activity, regardless of whether an appeal is pending or the time for an appeal has run.

b-7. The applicant's failure in the past or refusal in the future to act in accordance with this section, with an order issued under this section or with statutory or Wisconsin administrative code provisions that are substantially related to the circumstances of the licensed activity.

c. Whenever the department denies an application, the department shall either personally serve the applicant with written notice of the denial or mail the notice by certified mail, return receipt requested. Mailed notice shall be sent to the address on the application or a more recent address furnished in writing by the applicant to the department, which shall constitute service on the applicant or the applicant's agent. The notice shall state all of the following:

c-1. The specific reasons for the denial of the application.

c-2. That the applicant may file a written appeal of the denial with the environmental health board.

c-3. That an appeal shall be delivered to the environmental health board no later than 10 working days after the date on which the notice of denial is mailed.

c-4. The location where the appeal shall be filed.

10. RENEWAL OF LICENSE. A licensee may renew a license as provided in this section.

11. REVOCATION OR SUSPENSION OF LICENSE. a. The department may revoke a license or suspend a license for a period not to exceed 90 days for any of the following reasons:

a-1. Conviction of a violation of this section.

a-2. A finding by the department that the licensee has violated this section but has not been convicted of the violation.

- a-3. Conviction of violation of a criminal statute, the circumstances of which are substantially related to the circumstances of the licensed activity.
- a-4. Violation of an ordinance, statute or provision of the Wisconsin administrative code where such violation is substantially related to the circumstances of the licensed activity.
- a-5. Loss of a civil suit in which the licensee was the defendant and the activities on which the case was based are substantially related to the circumstances of the licensed activity, regardless of whether an appeal is pending or the time for an appeal has run.
- a-6. Failure to obtain a license required under this ordinance or employing an unlicensed person who is required to be licensed under this section.
- a-7. A finding by the department that the applicant knowingly made a material misrepresentation connected with his or her application for a license.
- a-8. A finding by the department that the licensee has willfully refused to comply with an order issued by the department under this section.
- b. Whenever the department determines that a license is subject to suspension or revocation under this subsection, the department shall either personally serve the licensee with written notice of intent to suspend or revoke or mail the notice by certified mail, return receipt requested. Mailed notice shall be sent to the address on the application or a more recent address furnished in writing by the applicant to the department, which shall constitute service on the licensee or the licensee's agent. The notice shall state all of the following:
- b-1. Whether the license will be suspended or revoked and, if suspended, the duration of the suspension.
- b-2. The date on which the suspension or revocation shall begin, which shall be not less than 20 working days after the date on which the notice of intent is mailed.
- b-3. The specific reasons for the suspension or revocation.
- b-4. That the licensee may file a written appeal of the suspension or revocation with the environmental health board.
- b-5. That an appeal shall be delivered to the environmental health board no later than 10 working days after the date on which the notice of intent to suspend or revoke is mailed.
- b-6. The location where the appeal shall be filed.
- c. Whenever a licensee appeals a suspension or revocation under this subsection, the suspension or revocation shall not begin until after the environmental health board has held a hearing and upheld the suspension or revocation, in whole or in part.
12. EMERGENCY SUSPENSION. a. Whenever the department finds that the activities of a licensee constitute an immediate danger to public health, the department may immediately act to abate that danger and may immediately suspend without notice a license issued under this section. Activities that constitute an immediate danger to public health include, but are not limited to, use of unsterile needles or instruments, lack of properly operating sterilization equipment on the premises or infections that the department has attributed to the activities of the licensee.
- b. b-1. An emergency suspension shall be for no longer than 14 calendar days. The department may, before expiration of an emergency suspension, determine that the immediate danger to public health continues to exist, and that the temporary order shall remain in effect after the expiration date of the original emergency suspension until a hearing has been concluded and the environmental health board has made a decision on the matter.
- b-2. The department may inform the licensee in writing, at the time the suspension is imposed or at any later time prior to the expiration of the emergency suspension, that the suspension may be continued after the expiration date if the department determines that the immediate danger to public health continues to exist.
- c. Whenever an emergency suspension is imposed, the department shall at the same time provide written notice to the licensee that the environmental health board shall hold a hearing on the suspension. The notice shall specify either the date of the hearing or a telephone number and address where this information can be obtained. The notice shall state that a written notice of hearing shall be mailed to the licensee.
- d. The board, by certified mail, return receipt requested, shall mail a written notice of hearing to a licensee whose license has been suspended under this subsection. The notice shall be mailed to the address on the application or a more recent address furnished in writing by the licensee to the department, which shall constitute service on the licensee or the licensee's agent. The notice shall be sent to the applicant so that the applicant has at least 4 calendar days' notice of the hearing. The notice shall specify the date, time and location of the hearing. The notice shall state that the licensee shall be given an opportunity to respond to and challenge any reason for suspension, to present witnesses under oath and to confront and cross-examine opposing witnesses under oath. The notice shall state that the licensee may be represented by an attorney of the licensee's choice at the licensee's expense, if the licensee so wishes.

e. The board shall hold a hearing on the suspension not more than 14 calendar days after the imposition of the suspension. After the hearing, the board shall determine whether the suspension shall be discontinued or continued. The hearing shall be a due process hearing under sub. 14.

f. The hearing under par. e need not be held if the licensee and the department mutually agree that no purpose would be served by a hearing.

13. APPEAL. Any person aggrieved by the action of the department in denying an application for a new or renewal license or in providing notice of intent to suspend or revoke a license may appeal in writing to the environmental health board no later than 10 working days after receipt of the notice of the action being appealed. The appeal shall specify the reasons that the appeal is being made. After receiving an appeal under this subsection, the environmental health board shall set a time and place for hearing the appeal. The notice shall be sent to the appellant so that the person has at least 4 calendar days' notice of the hearing. After the hearing, the environmental health board may sustain, modify or reverse the decision of the department.

14. DUE PROCESS HEARING. a. At the hearing, the board chairperson shall open the meeting by stating that a notice was sent and shall make the notice part of the record. The chairperson shall advise the appellant that the appellant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the appellant may simply make a statement to the board.

b. A due process hearing shall be conducted in the following manner:

b-1. All witnesses shall be sworn in.

b-2. The chairperson shall ask the department to proceed first.

b-3. The appellant shall be permitted an opportunity to cross-examine.

b-4. After the conclusion of the department's testimony, the appellant shall be permitted to present the appellant's own witnesses, subject to cross-examination.

b-5. Board members may ask questions of witnesses.

b-6. Both the department and the appellant shall be permitted brief summary statements.

c. The decision of the board regarding the appellant shall be based only on evidence presented at the hearing. Probative evidence concerning whether or not the appeal should be upheld may be presented on the factors enumerated in sub. 9-b or 11-a, whichever is applicable.

d. The board may decide whether the department's decision shall be upheld, modified or reversed immediately following the hearing or at a later date. Written notice of the board's decision, including the specific reasons for the decision, shall be mailed to the appellant. The notice shall be mailed to the address on the application or a more recent address furnished in writing by the appellant to the department.

15. ENFORCEMENT. a. The department is authorized to enforce this section by issuance of orders and citations. A citation may be issued for a violation of this section without prior issuance of an order for that violation.

b. The police department is authorized to enforce this section by issuance of citations.

16. PENALTIES. a. Except as otherwise provided in par. b, a person who violates this section or fails to comply with an order issued under this section is subject to a forfeiture not to exceed \$500 for each violation or failure to comply.

b. Any person who tattoos or offers to tattoo a person under 18 years of age is subject to a forfeiture not to exceed \$200.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

99252-8

CW

6/22/00