



Legislation Text

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011237
SUBSTITUTE 2

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A substitute ordinance relating to the disqualification of an applicant for a public dance hall license.
108-3 rc

This ordinance mandates that whenever an applicant for a new public dance hall license has had his or her application denied for a reason relating to the fitness of the location of the premises, no application shall be made within 3 years for the location, unless certain criteria are met. The ordinance also sets standards for fitness of location (whether the location will create undesirable neighborhood problems, whether there is an overconcentration of licensed establishments in the neighborhood, etc.) and provides that notice shall also be sent to the owner of the premises when the possibility of denial relates to the fitness of the location.

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

Part 1. Section 108-3 of the code is repealed and recreated to read:

108-3. Issuance of License.

1. INVESTIGATION.

a. Whenever any applicant for a license as provided for in this chapter shall have complied with all the conditions and regulations relative to the filing of the application, the application shall be referred to the utilities and licenses committee.

b. All applications shall be referred to the chief of police, the commissioner of neighborhood services and the commissioner of health, all of whom shall cause an investigation to be made and report their findings to the proper licensing committee of the common council.

2. COMMITTEE ACTION. a. Notice.

a-1. The utilities and licenses committee shall hold a hearing on whether or not to issue each new license. If there is a possibility of denial, no hearing shall be heard unless the city clerk's office has provided written notice to the applicant and building owner under subd. a-2-b and sub. 3-a. The notice shall be served upon the applicant so that the applicant has at least 3 days' notice of the hearing.

a-2. The notice shall contain:

a-2-a. The date, time and place of the hearing.

a-2-b. A statement to the effect that the possibility of denial of the license application exists and the reasons for possible denial. If the possibility of denial is based on the fitness of the location of the

premises to be licensed, the notice shall also be served upon the owner of the premises so that the owner has at least 3 days' notice of the hearing.

a-2-c. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for denial and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

a-2-d. A statement that the applicant may be represented by an attorney of the applicant's choice at the applicant's expense, if the applicant so wishes.

a-3. If it appears for the first time at the hearing that there will be objections, then the matter will be laid over until the next meeting, prior to which proper notice will be given.

b. Hearing. b-1. If there is a possibility of denial, at the hearing the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that the applicant 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 applicant may simply make a statement to the committee.

b-2. A due process hearing shall be conducted in the following manner:

b-2-a. All witnesses shall be sworn in.

b-2-b. The chair shall ask those opposed to the granting of the license to proceed first.

b-2-c. The applicant shall be permitted an opportunity to cross-examine.

b-2-d. After the conclusion of the opponent's testimony, the applicant shall be permitted to present the applicant's own witnesses, subject to cross-examination.

b-2-e. Committee members may ask questions of witnesses.

b-2-f. Both proponents and opponents shall be permitted brief summary statements.

c. Recommendations. c-1. The recommendations 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:

c-1-a. Whether or not the applicant meets the statutory and municipal requirements.

c-1-b. The appropriateness of the location and premises to be licensed.

c-1-c. Whether such location will create undesirable neighborhood problems.

c-1-d. Whether there is an overconcentration of licensed establishments in the neighborhood.

c-1-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 licensed

activity.

c-1-f. Any other factors which reasonably relate to the public health, safety and welfare.

c-2. 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.

3. DISQUALIFICATION.

a. Whenever an applicant for a new license has had his or her application denied for a reason relating to the fitness of the location of the premises to be licensed, no other application for a public dance hall license for such location shall be recommended for approval by the utilities and licenses committee within 3 years of the date of the denial unless the applicant has demonstrated a change of circumstances since the prior denial. Before the committee considers any such application, the applicant shall file with the city clerk a written statement setting forth the change in circumstances relating to the fitness of the location of the proposed licensed premises since the prior denial. In considering whether changed circumstances exist, the committee shall consider, among other factors:

a-1. A change in the number of licensed public dance halls in the neighborhood.

a-2. A change in zoning applicable to the subject property.

a-3. New developments of land uses in the vicinity of the subject property.

b. Whenever an application accompanied by a written statement of changed circumstances is filed, the committee shall hold a hearing to determine if changed circumstances exist. At the hearing, testimony shall be limited to that of the applicant and the applicant's attorney with respect to demonstration of a change in circumstances. If the committee determines that the applicant has failed to demonstrate that a sufficient change in circumstances exists to justify a new hearing on the merits, the committee shall recommend that the application be denied. If the committee determines that a sufficient change in circumstances has been demonstrated to justify a new hearing on the merits, the committee shall schedule a separate hearing on whether the application should be recommended for approval or denial.

4. RENEWAL.

a. No license shall be renewed except after inspection of the premises as herein provided for and no alterations, changes or additions shall be made to the licensed premises without obtaining the necessary permits from the commissioner of city development.

b. Applications for renewal of licenses, if favorably recommended by the departments of fire, neighborhood services and police, shall be automatically renewed upon receipt by the city clerk.

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: _____

LRB02182-3

RGP

5/13/02