



Legislation Text

File #: 051418, **Version:** 2

051418
SUBSTITUTE 2

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A substitute ordinance relating to procedures for denial, renewal, non-renewal, suspension and revocation of junk dealer and junk collector licenses.

92-3-5 rc
92-3-7 rn
92-3-7 cr
92-3-8 rn
92-3-9 rn
92-3-9 rc

This ordinance establishes the following as grounds for non-renewal, suspension and revocation of a junk dealer or junk collector license:

1. Failure of the licensee to meet municipal qualifications.
2. 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 activity, by the licensee, his or her employes, or frequenters.
3. Failure to abide by any restrictions or conditions imposed by the common council.
4. Failure to abide by provisions of building and zoning code relating to the deposit or storage of junk and the parking of commercial vehicles.
5. Neighborhood problems due to management or the appropriateness of the location and premises where the principal place of business or added storage yard is located.
6. A showing that the premises where the principal place of business or added storage yard is located has been the source of one or more of the following:
 - a. Disturbance of the peace.
 - b. Sale or purchase of stolen goods.
 - c. Excessive littering.
 - d. Loud noise at times when the operation is open for business.
 - e. Traffic violations.
7. Any other factor or factors which reasonably relate to the public health, safety and welfare or which demonstrate that the premises where the principal place of business or added storage yard is located has generated the undesirable secondary effects.

In conjunction with establishing these causes for non-renewal, suspension and revocation of a junk dealer or junk collector license, the ordinance also establishes new procedures for the denial, non-renewal, suspension or revocation of such licenses 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 resident. The licensee shall be summoned to appear at an evidentiary hearing of the licensing committee. The committee shall receive testimony

from both sides and make a report (findings of fact) and a recommendation to the common council. The licensee shall have an opportunity to file written objections to the committee's report and recommendation prior to the council meeting and to present an oral argument in opposition to the report and recommendation at the council meeting.

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

Part 1. Section 92-3-5 of the code is repealed and recreated to read:

92-3. Junk Collectors and Dealers.

5. INVESTIGATION; HEARING. Applications shall be referred to the chief of police, commissioner of neighborhood services and commissioner of health, all of whom shall cause an investigation to be made and report their findings to the common council licensing committee.

a. For applications relating to junk dealer licenses, the report to the common council licensing committee by the commissioner of neighborhood services shall include information related to the zoning district in which the principal place of business of the junk dealer is to be located.

b. All applications shall be referred to the licensing committee. If there is a possibility of denial of an application, the licensing committee shall hold a hearing on whether or not to grant the new license, except that no hearing shall be held unless the city clerk's office has provided written notice to the applicant. The notice shall be served upon the applicant so that the applicant has at least 5 working days' notice of the hearing. The notice shall contain:

b-1. The date, time and place of the hearing.

b-2. 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 maintained as the principal place of business, the notice shall also be served upon the owner of the premises so that the owner has at least 5 working days' notice of the hearing. Notice to the owner of the premises shall contain the same information and statements included under this paragraph related to the notice to the applicant.

b-3. 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.

b-4. 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.

c. 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 an attorney, with all testimony both direct and cross-examination under oath, or that the applicant may simply make a statement to the committee.

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

d-1. All witnesses will be sworn in.

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

d-3. The applicant shall be permitted an opportunity to cross-examine.

d-4. After the conclusion of the opponent's testimony, the applicant shall be permitted to present the applicant's own witnesses, subject to cross-examination.

d-5. Committee members may ask questions of witnesses.

d-6. Both proponents and opponents shall be permitted a brief summary statement.

e. The recommendations of the committee regarding the applicant must 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:

- e-1. Whether or not the applicant meets the municipal requirements.
- e-2. The appropriateness of the location and premises to be maintained as the principal place of business and whether the premises will create undesirable neighborhood problems.
- e-3. Whether there is an over-concentration of businesses licensed under this section in the neighborhood such that the concentration will have an adverse impact upon the public health, safety and welfare of the neighborhood.
- e-4. The applicant's record in operating similarly licensed businesses.
- e-5. 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.
- e-6. Any other factors which reasonably relate to the public health, safety and welfare.
- f. If the possibility of denial is based on the fitness of the location of the premises to be maintained as the principal place of business, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant under this subsection.
- g. 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.
- h. If the common council grants the application for a junk dealer or junk collector license, the city clerk shall issue a license to the applicant in accordance with this section.
 - h-1. The license shall contain any restrictions or conditions the common council may place on approval.
 - h-2. Licenses issued to junk collectors shall contain the vehicle information and the location where the vehicle is to be parked.

Part 2. Section 92-3-7 to 9 of the code is renumbered to 92-3-8 to 10.

Part 3. Section 92-3-7 of the code is created to read:

- 7. DISQUALIFICATION.**
- a. Whenever an applicant for a new license has had his or her application denied for a reason not relating to the fitness of the location of the premises to be maintained as the principal place of business, it shall be entered on the record by the city clerk and no junk dealer or junk collector license shall be granted to the same person for a period of 12 months following the date of denial.
 - b. Whenever an applicant for a new junk dealer license has had his or her application denied for a reason relating to the fitness of the location of the premises to be maintained as the principal place of business, no other application for a junk dealer license involving the location shall be recommended for approval by the licensing committee within 3 years of the date of the denial unless the applicant or the owner of the premises has demonstrated a change of circumstances since the prior denial. Before the committee considers any application, the applicant or the owner of the premises 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 principal place of business since the prior denial. In considering whether changed circumstances exist, the committee shall consider, among other factors:
 - b-1. A change in the number of businesses licensed under this section in the neighborhood.
 - b-2. A change in zoning applicable to the subject property.
 - b-3. New developments of land uses in the vicinity of the subject property.
 - c. Hearing. c-1. 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.

c-1-a. 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.

c-1-b. 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.

c-2. Whenever the owner of the premises has filed a written statement of changed circumstances and no application for a junk dealer license involving the premises to be maintained as the principal place of business has been filed, the committee shall hold a hearing to determine if changed circumstances exist. At the hearing, testimony shall be limited to that of the owner of the premises and the owner's attorney with respect to demonstration of a change in circumstances.

c-2-a. If the committee determines that the owner of the premises has failed to demonstrate that a sufficient change in circumstances exists, no application for a junk dealer license involving the location shall be recommended for approval by the licensing committee within 3 years of the date that the application for a junk dealer license for the location was denied for a reason relating to the fitness of the location of the premises to be maintained as the principal place of business.

c-2-b. If the committee determines that a sufficient change in circumstances has been demonstrated, an application for a junk dealer license involving the location may be recommended for approval by the licensing committee.

Part 4. Section 92-3-9 of the code is repealed and recreated to read:

9. PROCEDURES FOR RENEWAL, NON-RENEWAL, REVOCATION OR SUSPENSION.

a. Renewal. Applications for the renewal of a junk dealer or junk collector license shall be made to the city clerk. The clerk shall refer the application to the chief of police, the commissioner of neighborhood services and the commissioner of health for review. If the chief of police, the commissioner of neighborhood services and the commissioner of health indicate that the applicant still meets the licensing qualifications, the application shall be referred to the common council for approval unless an objection, written or otherwise, has been filed with the city clerk at least 60 days prior to the date on which the license expires. Any interested person may file this objection. If an 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 a hearing on whether the application should be recommended for approval or denial to the common council.

b. Non-renewal. b-1. Notice. If there is a possibility that the committee will not renew a license, a motion should be entertained to hold the application in committee and instruct the city clerk to forward proper notice to the applicant, unless such proper notice has already been sent, in which case the hearing shall proceed.

b-2. Context of Notice. Prior to the date set for the hearing, the city clerk's office shall forward notice to the applicant so that the applicant has at least 5 working days' notice of the hearing. The notice shall contain:

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

b-2-b. A statement of the common council's intention not to renew the license or suspend the license in the event any objections to renewal are found to be true.

b-2-c. A statement of the reasons for non-renewal. If the possibility of denial is based on the fitness of the location of the premises maintained as the principal place of business, the notice shall also be served upon the owner of the premises so that the owner has at least 5 working days' notice of the hearing. Notice to the owner of the premises shall contain the same information and statements included under this paragraph related to the notice to the applicant.

b-2-d. A statement that an opportunity will be given to respond to and challenge such reasons for non-renewal and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

b-2-e. 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.

b-3. Hearings. b-3-a. All hearings held and committee recommendations prepared shall be conducted as set forth in par. d.

b-3-b. If the possibility of non-renewal is based on the fitness of the location of the premises maintained as the principal place of business, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant as set forth in par. d.

b-4. Disqualification. b-4-a. Whenever any license is denied renewal for a reason not relating to the fitness of the location of the premises maintained as the principal place of business, it shall be entered on the record by the city clerk and no junk dealer or junk collector license shall be granted to the same person for a period of 12 months following the date of non-renewal.

b-4-b. Whenever any license is denied renewal for a reason relating to the fitness of the location of the premises maintained as the principal place of business, it shall be entered on the record by the city clerk and no other application for a junk dealer license involving the location shall be recommended for approval by the licensing committee within 3 years of the date of the denial unless the applicant or the owner of the premises has demonstrated a change of circumstances since the prior denial as set forth in sub. 7.

b-5. Surrender. When any license is surrendered in lieu of a pending non-renewal proceeding, no other junk dealer or junk collector license shall be granted to the same person for a period of 12 months following the date of its surrender.

c. Revocation or Suspension. c-1. Any license issued under this section may be suspended or revoked for cause by the common council after notice to the licensee and a hearing.

c-2. Suspension or Revocation Proceedings. 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 city resident.

c-3. Content of Notice. 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 ordinances that are grounds for revocation or suspension of a license, the city clerk shall issue notice to the licensee of the licensing committee's intention to hear the matter. The notice shall be served upon the licensee so that the licensee has at least 10 working days' notice of the hearing. The notice shall contain:

c-3-a. The date, time and place of the hearing.

c-3-b. A statement to the effect that the possibility of suspension or revocation of the license exists and the reasons for possible revocation or suspension.

c-3-c. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for revocation or suspension and to present witnesses under oath and to cross-examine opposing witnesses under oath.

c-3-d. A statement that the licensee may be represented by an attorney of the licensee's choice at the licensee's expense, if the licensee so wishes.

c-4. Findings of Fact. The licensing committee shall convene at the date and time designated in the notice for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the common council in connection with the proposed revocation or suspension.

c-5. Evidentiary Hearing. If the licensee appears before the committee at the time designated in the notice 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 complaints and the licensee in connection with the revocation or suspension.

c-6. Hearings. c-6-a. All hearings held and committee recommendations prepared pursuant to this subsection shall be conducted as set forth in par. d.

c-6-b. If the possibility of revocation is based on the fitness of the location of the premises maintained as the principal place of business, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant as set forth in par. d.

c-7. Disqualification. c-7-a. Whenever any license is revoked for a reason not relating to the fitness of the location of the premises maintained as the principal place of business, it shall be entered on the record by the city clerk and no junk dealer or junk collector license shall be granted to the same person for a period of 12 months following the date of revocation.

c-7-b. Whenever any license is revoked for a reason relating to the fitness of the location of the premises maintained as the principal place of business, it shall be entered on the record by the city clerk and no other application for a junk dealer or junk collector license involving the location shall be recommended for approval by the licensing committee within 3 years of the date of the revocation unless the applicant has demonstrated a change of circumstances since the prior revocation as set forth in sub. 7.

c-8. Surrender. When any license is surrendered in lieu of a pending revocation or suspension proceeding, no other junk dealer or junk collector license shall be granted to the same person for a period of 12 months following the date of its surrender.

d. Hearing Procedure. d-1. Authority of Licensing Committee. The licensing committee shall conduct hearings with respect to the non-renewal, suspension or revocation of a junk dealer or junk collector license pursuant to this paragraph. The chair of the licensing committee shall be the presiding officer.

d-2. Committee Hearing Procedure. d-2-a. The chair shall direct that oaths be administered and subpoenas issued upon request of either side.

d-2-b. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this paragraph.

d-2-c. 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.

d-2-d. 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.

d-3. Record. A stenographic record shall be made of all proceedings before the committee and before the common council when written exceptions have been filed. Any interested party may at any stage of the proceedings order a copy of the transcript of the record or portions thereof at his or her own expense.

d-4. Grounds for Non-renewal, Suspension and Revocation. The recommendation of the committee regarding the licensee must be based on evidence presented at the hearing. Probative evidence concerning non-renewal, suspension or revocation may include evidence of:

d-4-a. Failure of the licensee to meet the municipal qualifications or any of the terms of this section.

d-4-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 activity, by the licensee, his or her employees, or frequenters.

d-4-c. Failure to abide by conditions imposed by the common council pursuant to sub. 5-h-1.

d-4-d. Failure to abide by provisions of building and zoning code relating to the deposit or storage of

junk and the parking of commercial vehicles.

d-4-e. Neighborhood problems due to management or the appropriateness of the location and premises where the principal place of business or added storage yard is located.

d-4-f. A showing that the premises where the principal place of business or added storage yard is located has been the source of one or more of the following:

d-4-f-1. Disturbance of the peace.

d-4-f-2. Sale or purchase of stolen goods.

d-4-f-3. Excessive littering.

d-4-f.4. Loud noise at times when the operation is open for business.

d-4-f-5. Traffic violations.

d-4-g. Any other factor or factors which reasonably relate to the public health, safety and welfare or which demonstrate that the premises where the principal place of business or added storage yard is located has generated the undesirable secondary effects.

d-5. Committee Report. The committee may make a recommendation immediately following the hearing or at a later date. The committee may recommend that the license be renewed, not renewed or revoked. In addition, if the committee determines that circumstances warrant it, the committee may recommend that the license be renewed conditioned upon a suspension of the license for a defined period of time. When the committee elects to recommend that a license be renewed with a period of suspension, the license may be suspended for not less than 10 days and no longer than 90 days. All non-renewals, suspensions and revocations shall be effective upon service of notice of the non-renewal, suspension or revocation upon the licensee or person in charge of the premises maintained as the principal place of business at the time of service.

d-6. Council Action. d-6-a. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the licensee. 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.

d-6-b. If the committee recommends that the license not be renewed, be revoked or suspended, then within 7 days of the receipt of the report and recommendation of the committee, the licensee may file written exceptions to the report and recommendations of the committee.

d-6-c. Any exceptions filed by the licensee to the report and recommendations of the committee 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-6-d. 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 recommendation. Not less than 5 days prior to the hearing before the common council, the city clerk shall notify the licensee and complainant by certified mail and also notify the city attorney 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 recommendation of the committee. When written exceptions are filed to a committee report and recommendation that the license be suspended or revoked or non-renewed, each member of the common council shall be asked to affirm that he or she has read the exceptions. If members of the council have not read the recommendation and report of the committee and any exceptions that have been filed thereto, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendation presented by the city attorney, oral argument on behalf of the licensee in opposition to the report and recommendation and oral argument by the complainant objecting to the report and recommendation shall be permitted only at the discretion of the chair. If argument is permitted by the chair, argument shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation 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 subdivision and who requires the services of an interpreter shall obtain one at his or her own expense.

d-6-e. The common council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the committee. The 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 non-renewal, suspension or revocation with the committee's report and recommendation, the city clerk shall give notice of each nonrenewal, suspension or revocation to the person whose license is not renewed, suspended or revoked. If the common council finds the complaint to be untrue, the proceedings shall be dismissed without cost to the accused.

d-7. Request to Surrender a License. If a licensee wishes to surrender his or her license after receiving a notice for a hearing on non-renewal, revocation or suspension, the licensee must request, in writing, permission from the licensing committee to do so prior to the commencement of the hearing. The committee may approve the request, or deny the request and proceed with the hearing.

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: _____

LRB06059-3

TWM:mbh

2/23/2006