



Legislation Text

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941470
SUBSTITUTE 3

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A substitute ordinance relating to the licensing of temporary help services.

81-126.5 cr

91 cr

- Analysis -

This ordinance requires any person who wishes to operate a temporary help service to obtain a license from the city. License applications are to be submitted to the city clerk, who forwards copies to the chief of police, the commissioner of building inspection, the commissioner of health and the local common council member. The ordinance provides for temporary help service licenses to be issued by the city clerk. A fee of \$100 shall be paid at the time of application. Licenses are valid for 2 years and expire on March 31 in odd-numbered years.

If a written objection to a new or renewal temporary help service license is filed with the city clerk, the proper licensing committee of the common council shall hold a public hearing on the license application. The ordinance specifies the grounds for denial or nonrenewal of a license by the common council, which include inappropriateness of a proposed or existing location, evidence that a temporary help service at the proposed location would threaten the health, safety and welfare of the surrounding neighborhood, and a history of criminal acts committed by employees of the business or persons seeking employment at the business.

The ordinance also provides that the common council may suspend or revoke a temporary help service license. Suspension or revocation proceedings may be initiated by the proper licensing committee of the common council or by the filing of a sworn, written complaint with the city clerk by any city resident. The ordinance also specifies the causes for suspension or revocation, which are similar to the causes for denial or nonrenewal.

When denial, nonrenewal or revocation of a license occurs, no temporary help service license may be granted to the applicant during the 12-month period following the date of denial, nonrenewal or revocation. If the reason for denial, nonrenewal or revocation is location-related, no other temporary help service license for that location may be granted during the 12-month period following the date of denial, nonrenewal or revocation.

Whereas, Temporary employment services, particularly those which deploy workers on a daily basis, have, in some cases, been found to negatively impact Milwaukee neighborhoods by attracting individuals who congregate in front of these establishments, consume intoxicating beverages in public, harass and intimidate pedestrians, sleep in automobiles or under private porches, urinate in public and litter public and private property; and

Whereas, Temporary help services which deploy workers at all hours of the day can be particularly disruptive to surrounding neighborhoods; and

Whereas, These problems undermine the integrity, stability and quality of life of surrounding residential and commercial neighborhoods and may ultimately trigger the departure of long-time businesses and residents and the depression of property values; now, therefore

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

Part 1. Section 81-126.5 of the code is created to read:

81-126.5. Temporary Help Service License. 1. Each temporary help service license shall be issued for a 2-year period, expiring on March 31 in odd-numbered years.

2. The fee for each license shall be \$100. (See s. 91-9.)

Part 2. Chapter 91 of the code is created to read:

CHAPTER 91 TEMPORARY HELP SERVICES

91-1. Definition. TEMPORARY HELP SERVICE shall mean a for-profit or nonprofit public or private establishment which places its employees with or leases its employees to one or more other employers who control the employees' work activities and compensate the establishment for the employees' services, regardless of the duration of such services.

91-3. License Required. No individual, firm, partnership, association or corporation may operate a temporary help service in the city unless that individual, firm, partnership, association or corporation holds a valid license for a temporary help service issued by the city clerk. If an individual, firm, partnership, association or corporation operates more than one temporary help service in the city, a separate license shall be required for each location.

91-5. Application for License. Application for a temporary help service license shall be made to the city clerk upon forms provided by the city clerk for such purpose. The application shall be accompanied by the fee required in ch. 81, signed by the applicant, if an individual, or by a duly authorized agent or officer if the applicant is a firm, partnership, association or corporation, and sworn to by the applicant or authorized agent or officer. Each application for a license shall state:

1. The name and permanent street address of the applicant. An address consisting solely of a post office box number shall not be acceptable.
2. The trade name and street address of the temporary help service for which the license is sought.
3. If the applicant is a corporation, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and street addresses of each of its officers, directors, and designated manager(s), if any; the application shall be verified by any officer of the corporation. Addresses consisting solely of post office box numbers shall not be acceptable.
4. If the applicant is a partnership, the application shall set forth the name and street address of each of the partners, including limited partners, and the application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partners. Addresses consisting solely of post office box numbers shall not be acceptable.
5. If the applicant is an association or other organization which is neither a corporation nor a partnership, the applicant shall set forth the exact name and street addresses of all officers and be verified by an officer of the association or organization. Addresses consisting solely of post office box numbers shall not be acceptable.
6. The name and street address of the person or persons designated as on-site manager or managers of the temporary help service location for which the license is sought. An address consisting solely of a post office box number shall not be acceptable.
7. Such other reasonable information as the city clerk or the proper licensing committee of the common council may from time to time require.

91-7. Processing of Application. 1. DISTRIBUTION OF APPLICATION. Upon receipt of an application for a temporary help service license, the city clerk shall provide copies of such application to the chief of police, the commissioner of building inspection, the commissioner of health and the common council member in whose district the temporary help service is located or is proposed to be located.

2. POLICE INVESTIGATION. The chief of police shall perform a criminal background investigation of the applicant, including all officers, directors, managers or partners if the applicant is a corporation, partnership or association, as well as an investigation of the designated on-site manager or managers. In the case of a license renewal request, the chief of police shall also investigate the history of criminal activity at or in close proximity to the location of the temporary help service, while in the case of an application for a new license, the chief of police shall investigate the history of criminal activity at other temporary help services operated by the applicant elsewhere in the city. The chief of police shall furnish the city clerk with a written report of the findings of such investigation.

3. BUILDING INSPECTION REPORT. The commissioner of building inspection shall provide the city clerk with a written report indicating whether there are any outstanding building code violations on the proposed temporary help service premises, whether the applicant has applied for or obtained a certificate of occupancy and whether the zoning of the proposed location allows such location to be used as a temporary help service.

4. HEALTH REPORT. The commissioner of health shall provide the city clerk with a written report indicating whether there are any health-related code violations on the proposed temporary help service premises.

91-9. Issuance of License. 1. ISSUANCE. The city clerk shall issue a license for a temporary help service provided that the commissioner of building inspection has found that the premises to which the license would apply is in compliance with the building and zoning code, the commissioner of health finds that said premises is in compliance with all health-related provisions of this code and no written objection to the issuance of such license has been filed with the city clerk by the chief of police, the commissioner of building inspection, the commissioner of health, the common council member in whose district the temporary help service is located or is proposed to be located, or any other interested person.

2. PROCEDURE FOR DENIAL OR NONRENEWAL. a. Notice. If there is an objection to the issuance or renewal of a temporary help service license, the proper licensing committee of the common council shall hold a public hearing on the license application. No hearing shall be held unless the city clerk's office has provided written notice of the hearing to the applicant. The notice shall be served upon the applicant by first-class, pre-paid mail in such manner that the applicant has at least 3 business days' notice of the hearing. Such notice shall contain:

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

a-2. A statement to the effect that the possibility of denial of the license application exists and the reasons for possible denial, including a

description of any written objections to issuance or renewal of the license that have been filed with the city clerk by the chief of police, the common council member in whose district the temporary help service is located or is proposed to be located, or any other interested person.

a-3. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for denial or nonrenewal, to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

a-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.

b. **Hearing.** Whenever the licensing committee holds a public hearing on an application for issuance or renewal of a temporary help service license, the committee chairperson shall open the meeting by stating that a notice was sent and by reading the notice into the record unless the applicant admits notice. The chairperson 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. A due process hearing shall be conducted in the manner provided in s. 90-8-b-2. c. **Recommendation.** The recommendation of the licensing committee regarding the application for issuance or renewal of the temporary help service license shall be based on evidence presented at the hearing. Probative evidence concerning whether the license should be granted may be presented on the following subjects:

c-1. A falsified or incomplete license application.

c-2. In the case of a new license, the inappropriateness of the location or premises with respect to its occupancy by a temporary help service, including inappropriateness in terms of the scale of the business, incompatibility with surrounding land uses, or hours of operation of the business.

c-3. In the case of a new license, evidence that a temporary help service at the proposed location would create a threat to the health, safety and welfare of the surrounding neighborhood.

c-4. A history of illegal acts or ordinance violations reportedly committed by employees of the temporary help service or by persons who seek or receive employment placement at the temporary help service, as testified to by the police department or members of the general public. Such acts may include, but shall not be limited to, disorderly conduct, public consumption of alcohol beverages, littering, public urination, loitering and trespassing.

c-5. Conviction of the applicant, partner of a partnership applicant, employe of an applicant, or corporate officer, director or member owning more than 10% of the outstanding stock of a corporate applicant of any felony, misdemeanor, municipal offense or any other offense, the circumstances of which substantially relate to the operation of a temporary help service.

c-6. Any other factors which reasonably relate to the public health, safety and welfare.

d. **Appearance of Applicant.** The licensing committee may recommend denial or nonrenewal of a temporary help service license if the applicant for such license fails to appear in person at the committee's hearing on the license application.

e. **Committee Action.** The licensing committee may make a recommendation immediately following the hearing or at a later date. If the committee's recommendation is made at a later date, written notice of the committee's recommendation shall be provided to the applicant and to any individuals who objected to issuance or renewal of the license. No such notice shall be provided if the hearing pertained to an application for a new license and the applicant failed to appear at the hearing. If the hearing pertained to a license renewal application and the applicant failed to appear at the hearing, the committee shall draft findings of fact to that effect, recommend nonrenewal based on the applicant's failure to appear at the hearing and provide the applicant with a copy of the written findings of the committee. The committee shall forward its recommendation in writing to the full common council for consideration and vote at the council's next meeting.

f. **Council Action.** The common council's consideration of, and voting on, any recommendation of the licensing committee regarding issuance or renewal of a temporary help service license shall proceed in the manner described in s. 90-11-7-d.

91-11. **Revocation or Suspension of License.** 1. **CAUSE FOR REVOCATION OR SUSPENSION.** Any license issued under this chapter may be revoked or suspended for cause by the common council after notice to the licensee and a hearing. Such licenses may be suspended or revoked for any of the following causes:

a. The license application contains falsified information.

b. The applicant has been convicted of a felony, misdemeanor, municipal offense or any other offense, the circumstances of which substantially relate to the operation of a temporary help service.

c. Conduct of employes of the licensed establishment or persons seeking or receiving employment placement at such establishment has a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood, as testified to by the police department or members of the general public. Said conduct may include, without limitation by enumeration, such activities as disorderly conduct, public consumption of alcohol beverages, littering, public urination, loitering and trespassing.

d. Any other cause which reasonably relates to the public health, safety and welfare.

2. COMMENCEMENT OF PROCEEDINGS. Revocation or suspension proceedings may be initiated by the proper licensing committee of the common council upon its own motion, upon receipt of a written complaint from the chief of police, commissioner of building inspection or commissioner of health filed with the city clerk, or upon receipt of a sworn, written complaint filed with the city clerk by any city resident.

3. PROCEDURES FOR REVOCATION OR SUSPENSION. The procedures for revocation or suspension of a temporary help service license shall be the same as the procedures for revocation or suspension of an alcohol beverage license, as described in s. 90-12-5.

4. REQUEST TO SURRENDER A LICENSE. In the event that a licensee wishes to surrender his or her license after receiving a notice for a hearing on revocation or suspension pursuant to this section, the licensee must request, in writing, permission to do so from the proper licensing committee of the common council prior to commencement of the hearing. The committee may approve the request or deny the request and proceed with the revocation or suspension hearing.

91-13. Disqualification for License. 1. DISQUALIFICATION OF APPLICANT OR FORMER LICENSE HOLDER. The denial, nonrenewal or revocation of a license shall be entered upon the records of the city clerk. No license shall be granted to the person whose application was denied, or to the former license holder, as the case may be, within 12 months from the date of denial, nonrenewal or revocation.

2. DISQUALIFICATION OF LOCATION. If the reasons for denial, nonrenewal or revocation of a license relate to the location of the temporary help service or the impact of such business on the surrounding neighborhood, including but not limited to ss. 91-9-2-c-2 and 3 and 91-11-1-c, no other license for a temporary help service at that location shall be granted within 12 months from the date of denial, nonrenewal or revocation of the license.

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: _____

LRB95003.3

JDO

9/25/97