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Title: A substitute ordinance relating to regulation of secondhand motor vehicle dealers and auto wreckers.

Sponsors: ALD. BOHL, Fredrick Gordon

Indexes: MOTOR VEHICLES, SECONDHAND DEALERS

Attachments: 1. Fiscalnote.pdf, 2. Cancel Notice.PDF, 3. Cancel notice.pdf, 4. Letter re: scheduling of file.PDF, 5. City Attorney's Opinion.PDF, 6. City Attorney's 2nd Opinion.PDF

Date	Ver.	Action By	Action	Result	Tally
3/26/2002	0	COMMON COUNCIL	ASSIGNED TO		
5/9/2002	1	CITY CLERK	DRAFT SUBMITTED		
6/6/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/11/2002	1	LICENSES COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
6/19/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/19/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/19/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
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6/19/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/19/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/26/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/26/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
6/27/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
7/1/2002	2	CITY CLERK	DRAFT SUBMITTED		
7/2/2002	1	LICENSES COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	3:0
7/18/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
7/23/2002	1	LICENSES COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	4:0
9/6/2002	3	CITY CLERK	DRAFT SUBMITTED		
9/9/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
10/17/2002	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
10/22/2002	5	LICENSES COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	3:2
10/23/2002	4	CITY CLERK	DRAFT SUBMITTED		
10/24/2002	5	CITY CLERK	DRAFT SUBMITTED		
11/6/2002	5	COMMON COUNCIL	REFERRED TO		

11/8/2002	5	CITY ATTORNEY	DISAPPROVED	Pass	
3/19/2003	6	CITY CLERK	DRAFT SUBMITTED		
3/19/2003	6	LICENSES COMMITTEE	HEARING NOTICES SENT		
3/27/2003	6	LICENSES COMMITTEE	HEARING NOTICES SENT		
4/1/2003	7	LICENSES COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
4/1/2003	7	CITY CLERK	DRAFT SUBMITTED		
4/15/2003	7	COMMON COUNCIL	REFERRED TO		
4/24/2003	7	LICENSES COMMITTEE	HEARING NOTICES SENT		
4/25/2003	8	CITY CLERK	DRAFT SUBMITTED		
4/29/2003	9	LICENSES COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
4/29/2003	9	CITY CLERK	DRAFT SUBMITTED		
5/13/2003	9	COMMON COUNCIL	PASSED	Pass	17:0
5/15/2003	9	MAYOR	SIGNED		
5/29/2003	9	CITY CLERK	PUBLISHED		
9/24/2013	6	COMMON COUNCIL	HEARING NOTICES SENT		
10/15/2013	1	COMMON COUNCIL	HEARING NOTICES SENT		
4/2/2014	1	COMMON COUNCIL	HEARING NOTICES SENT		

011725

SUBSTITUTE 9

ALD. BOHL AND GORDON

A substitute ordinance relating to regulation of secondhand motor vehicle dealers and auto wreckers.

81-9-4 cr

81-104.6-0 am

81-104.6-4 cr

81-130-0 am

81-130-1 am

81-131 rn

81-131 cr

93 rc

This ordinance repeals and recreates chapter 93 dealing with the licensing of secondhand motor vehicle dealers, used bike, tires and battery dealers, and auto wreckers. It updates the text of the chapter (portions date back to 1937) and provides uniformity with respect to licensing procedures and various regulations for operating businesses licensed under the chapter. It also establishes due process hearing procedures, similar to those used for alcohol beverage licenses, for the granting of new licenses, and license nonrenewal, suspension and revocation of licenses.

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

Part 1. Section 81-9-4 of the code is created to read:

81-9. Auto Wrecker's License.

4. License renewal applications must be filed at least 45 days before the date on which the license expires. There shall be an additional fee for the filing of a late renewal application in the amount of

\$30.

Part 2. Section 81-130-0 and 1 of the code is amended to read:

81-130. Used Bicycle, ~~[[Tires]]~~ >>Tire<< or Battery Dealer's License.

1. Each used bicycle, ~~[[tires]]~~ >>tire<< or battery dealer's license shall be issued for a 2-year period, expiring on March 31 in even-numbered years.

Part 3. Section 81-131 of the code is renumbered 81-104.6 and 81-104.6-0 is amended to read:

81-104.6. ~~[[Used]]~~ >>Secondhand<< Motor Vehicle Dealer's License.

Part 4. Section 81-104.6-4 of the code is created to read:

4. License renewal applications must be filed at least 45 days before the date on which the license expires. There shall be an additional fee for the filing of a late renewal application in the amount of \$30.

Part 5. Section 81-131 of the code is created to read:

81-131. Used Motor Vehicle Dealer-Parts Only License.

1. Each used motor vehicle dealer-parts only license shall be issued for a 2-year period, 1)expiring March 31 in even- numbered years.

1. The fee for each license shall be \$228.

2. 2. 2. 2. 4. 3. License renewal applications must be filed at least 45 days before the date on which the license expires. There shall be an additional fee for the filing of a late renewal application in the amount of \$30.

Part 6. Chapter 93 of the code is repealed and recreated to read:

**CHAPTER 93
SECONDHAND MOTOR VEHICLES AND AUTO WRECKERS**

93-1. Definitions. In this chapter:

1. AUTO WRECKER means every person who buys any motor vehicle for the purpose of dismantling or disassembling, or who dismantles or disassembles any such motor vehicle whether for the purpose of dealing in the parts thereof.

2. BICYCLE means every vehicle propelled by the feet acting upon pedals and having wheels any 2 of which are not less than 14 inches in diameter.

3. BUSINESS means engaging in activities for the purpose of earning a livelihood or a profit therefrom on a full or part time basis.

4. MOTOR VEHICLE has the meaning given in s. 340.01(35), Wis. Stats., as amended.

5. RETAIL means the business of buying and selling, exchanging or dealing motor vehicles and bicycles and used or secondhand parts of motor vehicles or bicycles and used or secondhand tires and batteries to the public, including businesses operated on lots licensed for that purpose.

6. SECONDHAND means previously owned by a member of the general public on a retail basis.

7. USED means something which has endured use.

8. WHOLESALE means the business of buying and selling, exchanging or dealing motor vehicles and bicycles and used or secondhand parts of motor vehicles or bicycles and used or secondhand tires and batteries to a licensed retailer or to another person who holds a permit or license or to the end user, but not operating a lot licensed for that purpose.

93-3. Purpose.

It is determined and declared that it is necessary to license and regulate businesses specified in s.93-5-2 for purposes of minimizing any adverse impact that such businesses may have on the public health, safety and welfare of the

neighborhood in which such businesses are located. It is further determined and declared that regulations in this chapter relating to recording of sales are specified for purposes of suppression and prevention of crime. It is further declared and determined that the provisions of this chapter are supplemental to statutory provisions dealing with businesses licensed in this chapter.

93-5. License Required.

1. **REQUIRED.** It shall be unlawful for any person, firm or corporation to engage in the business of buying, selling, exchanging or dealing in used or secondhand motor vehicles and bicycles, and used or secondhand parts of motor vehicles and bicycles, and used or secondhand tires and batteries, or engaging in the business of an auto wrecker without first having obtained a license.
2. **CLASSIFICATION.** Licenses issued pursuant to this chapter shall be divided into the following classes:
 - a. **Used Bike, Tire and Battery License.** A used bike, tire and battery licensee shall buy, sell, exchange or deal in used or secondhand bicycles, bicycle parts, tires, and batteries, either retail or wholesale.
 - b. **Secondhand Motor Vehicle Dealer.** A secondhand motor vehicle dealer's licensee shall buy, sell, exchange or deal in used or secondhand motor vehicles and motor vehicles parts, either retail or wholesale.
 - c. **Used Motor Vehicle Dealer- Parts Only License.** A used auto dealer - parts only licensee shall buy, sell, exchange or deal exclusively in used or secondhand motor vehicle parts, either retail or wholesale.
 - d. **Auto Wrecker -** An auto wrecker licensee shall buy motor vehicles for purposes of dismantling or disassembling vehicles for the purpose of dealing in the parts thereof.
3. **EXCEPTION.** Licensees applying for or holding a license issued under sub. 2-b to d are not required to obtain a used bike, tire and battery license.

93-7. Application.

1. **TO BE FILED.** Written application for licenses issued under this chapter shall be filed with the city clerk.
2. **CONTENTS OF APPLICATION.** The application shall be signed by the applicant, if an individual, or by an agent or officer of the corporation, and sworn to by the applicant. Each application for a license shall state:
 - a. The type of license applied for.
 - b. Whether the application is for wholesale or retail.
 - c. The address and location of the premises to be licensed.
 - d. The name and home address of the applicant.
 - e. The date of birth of the applicant.
 - f. If the applicant is a corporation or limited liability company:
 - f-1. The names, home addresses, and dates of birth of all officers.
 - f-2. The names and home addresses of managers or persons in charge, to be designated by the applicant.
 - f-3. The state of incorporation, if applicable.
 - g. Whether the applicant has ever had a license relating to the activities licensed in this chapter denied, not renewed, suspended or revoked, with a brief statement of the circumstances associated with such event, and the jurisdiction in which such event occurred. This information shall also include a record of any actions from the state departments of transportation and financial institutions relating to suspensions, revocations, forfeitures and warnings imposed by these departments relating to the operation of any automotive sales business by the applicant.
 - h. A completed plan of operation on a form provided by the city clerk. The plan of operation shall require:
 - h-1. The planned hours of operation of the premises.
 - h-2. What plans, if any, the applicant has to insure that all motor vehicles associated with the business will be stored on the licensed premises; that all maintenance and repair work related to these vehicles will be confined to the licensed premises, and will not violate any code provisions relating to littering of the public right-of-way.
 - i. All convictions, including ordinance violations, excluding traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the conviction occurred.
 - j. Such other reasonable and pertinent information as the common council may from time to time require.
3. **FINGERPRINTING.** All applicants shall be fingerprinted. If the applicant is a corporation, the agent and all the officers and directors as well as the stockholders owning 20% or more of the stock of the corporation shall be fingerprinted. If the applicant is a partnership, each partner shall be fingerprinted. The requirement that an applicant be fingerprinted shall not apply to a person already permitted by the city when that person is renewing a license.
4. **TRUTH OF STATEMENTS AND AFFIDAVITS; PENALTY.**
 - a. All matters submitted in writing to the city by any applicant or licensee pertaining to licenses issued under this chapter shall be true. Any person who submits in writing any untrue statement or affidavit to the city in connection with any such license or application shall be subject to a forfeiture of not more than \$500 or in default of payment thereof shall be imprisoned in the county jail or house of correction of Milwaukee county for not more than 20 days; and that license, if granted, shall be subject to revocation and no license of any kind or nature issued under this chapter shall thereafter be granted to such a person for a period of one year from the date of such revocation.
 - b. There shall be contained on each individual application of any kind information to the effect that a penalty is provided

for any false statement or false affidavit supplied by any such applicant or licensee.

5. INVESTIGATION. Applications shall be referred to the chief of police, the commissioner of neighborhood services and the commissioner of health, all of whom shall investigate and report their findings within 15 days to the utilities and licenses committee of the common council.

93-9. Committee Action .

1. NOTICE.

a. 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. The notice shall be served upon the applicant so that the applicant has at least 10 working days' notice of the hearing.

b. 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 licensed, the notice shall also be served upon the owner of the premises so that the owner has at least 10 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.

b-5. 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.

2. HEARING.

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

b-1 All witnesses will be sworn in.

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

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

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

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

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

3. RECOMMENDATIONS.

a. 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:

a-1. Whether or not the applicant is 18 years of age or older.

a-2. Whether the applicant has made a material misstatement in application for the license.

a-3. Whether or not the applicant meets the statutory and municipal requirements.

a-4. The appropriateness of the location and premises to be licensed. Probative evidence relating to these matters may be taken from the plan of operations submitted pursuant to s.93-7-2-h.

a-5. Whether such location will create undesirable neighborhood problems.

a-6. Whether there is an overconcentration of businesses licensed under ch. 93 in the neighborhood such that the concentration will have an adverse impact upon the public health, safety and welfare of the neighborhood. Among factors to be considered in terms of impact are litter, noise and traffic.

a-7. The applicant's record in operating similarly licensed premises based on application information submitted pursuant to s. 93-7-2-g.

a-8. 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, other than those specified in s. 218.0116, Wis. Stats., as amended.

a-9. Whether or not the applicant has had an application denied, pursuant to s. 218.0116, Wis. Stats., as amended.

a-10. Any other factors which relate to the public health, safety and welfare of the community.

b. 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. If the possibility of denial is based on the fitness of the location of the premises to be licensed, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant under this subsection.

4. DISQUALIFICATION.

a. Whenever an applicant for a new license has had his or her application denied for reasons relating to the fitness of the location of the premises to be licensed, no other application for that particular class of license for such location shall be recommended for approval by the licensing committee within 3 years of the date of denial unless the applicant or owner of the premises has demonstrated a change of circumstances since the prior denial. Before the committee considers any application, the applicant or 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 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 type of license sought by an applicant.

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-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.

b-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.

b-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.

b-2. Whenever the owner of the premises has filed a written statement of changed circumstances and no application for a license issued pursuant to this chapter for the location 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.

b-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 license issued pursuant to this chapter for the location shall be recommended for approval by the licensing committee within 3 years of the date that the application for a license for the location was denied for a reason relating to the fitness of the location of the premises.

b-2-b. If the committee determines that a sufficient change in circumstances has been demonstrated, an application for a license issued pursuant to this chapter for the location may be recommended for approval by the licensing committee.

5. ISSUANCE OF LICENSE. The city clerk shall, whenever a license shall have been granted by the common council and the applicant shall have produced and filed with the city clerk a receipt showing payment of the sum required for such license to the city treasurer, prepare and deliver to the applicant a license in accordance with this chapter. The license shall specify the specific premises where the business of buying, selling, exchanging or trading in used or secondhand motor vehicles and bicycles, or used or secondhand parts of motor vehicles and bicycles is to be conducted, whether business is conducted retail or wholesale, and if there is a parts only restriction. It shall not be issued to the benefit of any person other than the licensee therein named. It shall not authorize the carrying on of any business other than the business of buying, selling, exchanging or trading in used or secondhand motor vehicles and bicycles, or used or secondhand parts of motor vehicles and bicycles in any other place or premises than that specified in the license. It shall bear the signature of the city clerk and the corporate seal of the city.

6. TERM AND FEE. The fee for each license shall be payable for the entire license period. See ch. 81 for the required license fee.

93-11. Renewal of License.

1. APPLICATION FOR RENEWAL. Application for renewal of a license shall be made to the city clerk and forwarded to the to the utilities and licenses committee for its recommendation to the common council after reports, to be issued within 15 days, by the police department, the department of neighborhood services and the health department indicating that the applicant still meets all of the licensing qualifications.

2. PROCEDURE FOR NON-RENEWAL. a. Notice.

a-1. The utilities and licenses committee shall be responsible for holding hearings regarding the nonrenewal of licenses. 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. The notice shall be served upon the applicant so that the applicant has at least 10 working days' notice of the hearing.

a-2. Prior to the date set for the hearing, the city clerk's office shall forward notice to the applicant which shall contain:

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

a-2-b. A statement to the effect that there is a possibility of nonrenewal or suspension. If the possibility of nonrenewal or suspension 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 10 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.

a-2-c. A statement of the reasons for nonrenewal.

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

a-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. Hearing. b-1. At the committee hearing, the chair shall open the hearing by stating that a notice was sent, and shall read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that he or she has an option to proceed with a hearing, represented by counsel, with all testimony under oath, or he or she can make a statement.

b-2. If the applicant selects a hearing:

b-2-a. The chair shall order all witnesses sworn in.

b-2-b. The chair shall then ask those opposed to the renewal of the license to present their case in opposition to renewal.

b-2-c. The applicant shall then be permitted an opportunity to cross-examine witnesses in opposition to the renewal.

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

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

b-2-f. Both sides shall be permitted a brief summary statement.

b-2-g. Stenographic records of all committee hearings shall be made.

b-2-h. If the possibility of nonrenewal or suspension is based on the fitness of location, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant set forth in this paragraph.

c. Recommendation. c-1. The recommendation of the committee regarding the applicant must be based on evidence presented at the hearing. Probative evidence concerning nonrenewal may include evidence of:

c-1-a. Failure of the applicant to meet the statutory and municipal license qualifications.

c-1-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, on behalf of the licensee, his or her employees, or patrons, other than those specified in s. 218.0116, Wis. Stats., as amended.

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

c-1-d. Neighborhood problems due to management or location.

c-1-e. The licensed premises is operated in such a manner that it constitutes a public or private nuisance or that the conduct on the licensed premises has had an adverse effect on the neighborhood, including but not limited to failure to maintain property in accordance with the board of zoning appeals and department of neighborhood services guidelines.

c-1-f. Failure to abide by the plan of operations submitted pursuant to s. 93-7-2-h.

c-1-g. If the licensee is a firm, corporation, or limited liability company, it shall be sufficient cause for denial, suspension or revocation of a license that any officer, director, trustee or manager of the firm, corporation or limited liability company, or any member in the case of a partnership, has been guilty of any act or omission which would be cause for nonrenewal, suspension or revocation of a license to that party as a individual. Each licensee shall be responsible for the acts of any or all of his or her employees while acting as his or her agent.

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

d. The committee may make a recommendation immediately following the hearing or at a later date. The committee may recommend that the license be renewed or not renewed. 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. The suspension shall commence on the effective date of the license renewal. Following the hearing, the committee shall submit a report to the common council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the council should take. The committee shall provide the complainant and applicant with a copy of the report. The applicant may file a written objection to the report and shall have the opportunity to present arguments in writing supporting the objection to the common council. The objections shall be filed with the city clerk at least 2 days prior to the date set for hearing by the common council.

e. Council Action.

e-1. The applicant shall be given 5 working days' notice of the date set for hearing by the common council.

e-2. At the meeting of the common council, the chair, in his or her discretion, may allow oral argument by an applicant or complainant who has presented written objections to the recommendations of the utilities and licenses committee. The city attorney shall also be permitted a statement. Oral arguments shall not exceed 5 minutes on behalf of any party.

Applicants shall appear only in person or by counsel. Corporate applicants 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 subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

e-3. Prior to voting on the committee's recommendation, all members of the council who are present shall signify that they have read the recommendation and report of the utilities and licenses committee and any objections that have been filed thereto. If they have not, the chair shall allocate time for the members to do so. If they have read the report and recommendation, a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the vote taken by the common council.

3. DISQUALIFICATION FOR LICENSE - RENEWAL.

a. Whenever any licensee is denied renewal, it shall be so entered on the record by the city clerk and no other license in this chapter shall be so granted to the person for that location within 12 months of the date of nonrenewal.

b. If the license renewal was denied for a reason relating to the fitness of the location, no other application for that particular class of license shall be recommended for approval by the licensing committee within 3 years from the date of the nonrenewal to any applicant at that location unless the applicant or owner of the premises has demonstrated a change of circumstances since the prior denial as set forth in s. 93-9-4.

c. When any license is surrendered in lieu of pending nonrenewal proceedings, no other license in this chapter shall be granted to such person within 12 months of the date of its surrender.

93-13. Revocation or Suspension of Licenses.

1. CAUSES. Any license issued under this chapter may be suspended or revoked for cause by the common council after notice to the licensee and a hearing. Such licenses shall be suspended or revoked for causes listed in s. 93-11-2-c-1-a to h.

2. COMMENCEMENT OF PROCEEDINGS. Suspension or revocation proceedings may be instituted by the utilities and licenses 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.

3. PROCEDURES FOR REVOCATION OR SUSPENSION.

a. Complaint; Summons.

a-1. 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 statutes or ordinances that are grounds for revocation or suspension of a license, the city clerk shall issue a summons, as authorized by Wisconsin statutes, demanding that the licensee appear before the utilities and licenses committee.

a-2. A police officer shall serve the summons upon a licensee in accordance with Wisconsin statutes, and shall also serve a copy of the complaint with a copy of this subsection upon the licensee. The summons shall be served upon the licensee so that the licensee has at least 10 working days' notice of the hearing.

b. Committee Hearing.

b-1. Upon receipt of evidence that the summons has been served, the utilities and licenses committee shall convene at the date and time designated in the summons 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. b2. If the possibility of revocation is based on the fitness of location of the licensed premises, the owner of the premises shall have the same rights related to a due process hearing provided to the applicant as set forth in this section.

b-3. If the licensee appears before the committee at the time designated in the summons 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 complainant or representative thereof and the licensee in connection with the revocation or suspension.

b-4. At any evidentiary hearing required by this subsection, the complainant or representative thereof shall first present evidence in support of the complaint. After the city attorney rests, the licensee shall present evidence in opposition to the complaint. Each may subpoena witnesses. All witnesses shall testify under oath and shall be subject to cross-examination under oath. At the close of the testimony, each shall be given a reasonable time to make arguments upon the evidence adduced at the hearing.

b-5. The chair of the utilities and licenses committee shall be the presiding officer. The chair shall direct that oaths be administered and subpoenas issued upon request of either side. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this subsection. 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.

b-6. At all stages of the proceedings before the committee or the common council, the licensee shall be entitled to appear both in person and by an attorney.

b-7. A stenographic record shall be made of all proceedings before the committee and 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.

c. Committee Report.

c-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the licensee and transmit a copy thereof to the city attorney. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. The report must be based on evidence presented at the hearing. Probative evidence may include evidence pursuant to s. 93-11-2-c. The report shall be distributed to each member of the common council.

c-2. If the committee recommends that the license be revoked or suspended, then within 7 days of the receipt of the report and recommendation of the committee, the licensee shall file written exceptions, if any, to the report and recommendations of the committee.

c-3. 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. Council Action.

d-1. 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. If written exceptions are filed, the hearing shall be at the time set for such proceedings by the council's rules. 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, each member of the common council shall be asked to affirm that he or she has read the exceptions. If members 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 subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

d-2. 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 suspension or revocation with the committee's report and recommendation and in accordance with Wisconsin statutes, the city clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked. If the common council finds the complaint to be untrue, the proceedings shall be dismissed without cost to the accused. If the common council finds the complaint to be malicious and without probable cause, the cost shall be paid by the complainant upon invoice from the city.

e. Effective Date of Suspension or Revocation. All suspensions and revocations shall be effective upon service of notice of the suspension or revocation upon the licensee or person in charge of the licensed premises at the time of service.

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, the licensee shall request, in writing, permission from the utilities and licenses 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 suspension or revocation hearing.

5. DISQUALIFICATION FOR LICENSE.

a. Whenever any license is revoked it shall be so entered of record by the city clerk and no other license in this chapter shall be granted to such person within 12 months of the date of its revocation nor shall any part of the money paid for any license so revoked be refunded.

b. No other license in this chapter shall be issued to any other person on the premises operated by the licensee whose license has been so revoked within 12 months from the date of the revocation.

c. When any license is surrendered in lieu of pending revocation or suspension proceedings, no other license in this chapter shall be granted to such person within 12 months of the date of its surrender nor shall any part of the money paid for any license that has been surrendered be refunded.

93-15. Changes in Business Operations. If after a license has been granted or issued pursuant to this chapter, a licensee wishes to substantially deviate from the business operations (from retail to wholesale, or wholesale to retail) that were listed on the original application, the licensee must file a sworn, written request with the city clerk which states the change in the type of business operation. No change in business operation shall take place until the common council has approved the request. The common council's approval may be given only if it determines that the new type of business operation is basically compatible with the normal activity of the neighborhood in which the licensed premises is located.

93-17. Transfer of License. Every license issued under this chapter may, upon authority so granted to the common council and upon payment as specified in ch.81, be transferred from one premises to another within the city, but no licensee shall be entitled to more than one transfer in any one license period. The application and proceedings for the transfer shall be made in the same manner and form as the original application.

93-19. Record to be Kept on Trade-ins. Any person, firm or corporation licensed under this chapter whenever a secondhand motor vehicle is taken in trade as part of a transaction, shall maintain records of the transaction pursuant to ch. Trans 138, Wis. Adm. Code, as amended. With respect to bicycles taken in trade as part of a transaction, records shall be maintained pursuant to s. 102-12 and all records referenced in this section shall be made available to the police department.

93-21. Record to be Kept on Sales. Any person, firm or corporation licensed under this chapter to buy, sell or exchange or trade in secondhand motor vehicles shall furnish, upon the sale of a secondhand motor vehicle the information required pursuant to ch. Trans 139, Wis. Adm. Code, as amended. With respect to sale of used bicycles, a licensee shall furnish information, to the purchaser on the serial number, factory number, frame number, color, type, model, frame size, wheel size, name of brake and other marks of identification.

93-23. Auto Wrecker Record Regulations.

1. RECORD OF PURCHASES. a. Records. Every licensed auto wrecker shall keep a log approved as to type and form by the chief of police with certification of such approval endorsed therein over the signature of a member of the police department designated for that purpose by the chief of police, in which shall be recorded, at the time of each purchase, a full, true, and complete description of the automobile or wrecked automobile purchased or received. The record kept under the provisions of s. Trans 9.03, Wis. Adm. Code, as amended, shall be satisfactory compliance under this section and shall at reasonable times be open to the inspection of the chief of police, or any member of the police force designated by the chief of police for such purpose, and exchange of any automobile or wrecked automobile shall be regarded as a purchase and sale of the respective automobile or wrecked automobile exchanged.

b. Open to Inspection. Every auto wrecker shall keep a log approved as to type and form by the chief of police with certification of such approval endorsed therein over the signature of a member of the police department designated for that purpose by the chief of police, in which shall be recorded, at the time of each purchase, a general description of every purchase made of any used motor vehicle parts or accessories after buying or receiving the same, except that no such reports shall be required for purchases from licensed dealers. Such report shall contain a full, true, and complete description of said motor vehicle parts or accessories so purchased or received. Such report shall contain the name and address of the person from whom purchased or received, the make, motor number and serial number, if any, and manufacturer's name and number, if any, of such motor vehicle parts or accessories purchased or received. This record shall at reasonable times be open to the inspection of the chief of police or any member of the police force designated by the chief of police for such purpose, and exchange of any automobile or wrecked automobile parts or accessories shall be regarded as a purchase and sale of the respective automobile or wrecked automobile parts or accessories exchanged.

2. REPORTS. The chief of police shall designate the dates on which a photocopy of the records required in sub. 1-a shall be picked up or submitted to the police department. It shall be the duty of every auto wrecker to make out and deliver to the police department in the form provided for this purpose by the chief of police, a complete and correct copy of the records required by sub. 1-a of all purchases coming into the wrecker's possession, together with the date when the same were received or purchased, an accurate and true description of the motor vehicle, the true name of the person dealt with as nearly as known, as well as his or her place of residence and other description sufficient to identify the person.

3. GOODS HELD FOR IDENTIFICATION. The chief of police may, in his order discretion, cause any such article as is referred to in sub. 1 which he or she shall have reason to believe was sold or exchanged by some person, other than the lawful owner thereof, to be held for the purpose of identification by its lawful owner for such reasonable length of time as the chief shall deem necessary.

4. NOT TO CREATE NUISANCE. None of the materials associated with the business of an auto wrecker shall be sorted in a public street, alley, or sidewalk. All materials shall be kept within a building or enclosure or site approved by the department of neighborhood services, fire department, police department and health department, unless the health department has delegated its authority under this subsection to the department of neighborhood services by a memorandum of understanding.

5. PURCHASE FROM MINORS PROHIBITED. No auto wrecker shall purchase any motor vehicle, for the purpose of dismantling or disassembling, from any minor under 18 years of age without the written consent of the parent or guardian of such minor.

93-25. Spill Light Illumination from Lots Used for the Retail Sale of Motor Vehicles or Other Merchandise.

1. RESTRICTIONS. All lights used to illuminate lots operated for the retail sale of motor vehicles or other merchandise shall be shielded and directed away from public streets and residential properties in such a way as not to create a glare into the public street or surrounding premises used for residential purposes, or to disturb the comfort of persons living across therefrom or on adjacent property. However, in no case shall such lighting exceed 2 horizontal foot-candles measured at a point on the ground at the lot line. The lights shall not be located less than 3 feet from any abutting property line. The lighting shall be extinguished not later than 10:00 p.m. each night except for security lighting, which shall not exceed 1.0 horizontal candles.

2. EXCEPTIONS. This section shall not apply to lots used for retail sales for a period of 30 days or less.

93-27. No Sale on Sundays. It shall be unlawful for any license holder to sell, barter, exchange, demonstrate or loan any motor vehicle, whether new or secondhand, on Sunday.

93-29. Penalty. Any person, firm or corporation violating any provision of this chapter, except s.93-7-3, shall upon conviction thereof be subject to a forfeiture not more than \$250 and, in default of payment, shall be committed to the county jail or house of correction of Milwaukee county for a period not to exceed 10 days.

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: _____

License Division

LRB02139-13

BJZ/cac/corrected copy due to technical corrections

5/29/2003