



Legislation Details (With Text)

File #:	031134	Version:	1
Type:	Ordinance	Status:	Passed
File created:	11/25/2003	In control:	LICENSES COMMITTEE
On agenda:		Final action:	7/27/2004
Effective date:			
Title:	Substitute ordinance relating to procedures for denial, non-renewal, revocation and suspension of home improvement contractor and salesperson licenses.		
Sponsors:	ALD. BOHL		
Indexes:	DIRECT SELLERS, LICENSES		
Attachments:	1. Fiscal Note.pdf, 2. Notice Published on 8-12-2004.PDF		

Date	Ver.	Action By	Action	Result	Tally
11/25/2003	0	COMMON COUNCIL	ASSIGNED TO		
7/9/2004	1	CITY CLERK	DRAFT SUBMITTED		
7/9/2004	1	LICENSES COMMITTEE	HEARING NOTICES SENT		
7/13/2004	1	LICENSES COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
7/27/2004	1	COMMON COUNCIL	PASSED	Pass	15:0
8/5/2004	1	MAYOR	SIGNED		
8/12/2004	1	CITY CLERK	PUBLISHED		

031134

SUBSTITUTE 1

ALD. BOHL

Substitute ordinance relating to procedures for denial, non-renewal, revocation and suspension of home improvement contractor and salesperson licenses.

95-14 rc

This ordinance repeals and recreates current code provisions related to home improvement contractor and salesperson licenses, and establishes procedures for granting, denial, renewal, non-renewal, revocation and suspension of the licenses to make them uniform with other code licensing provisions.

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

PART 1. Section 95-14 of the code is repealed and recreated to read:

95-14. Home Improvement Contractor and Salesperson Licenses.

1. DEFINITIONS. In this section:

a. "Person" means any person, firm, partnership, corporation or limited liability corporation.

b. "Contractor" means any person engaged in the business of installing, repairing, servicing, improving or remodeling any permanent installation or improvement attached to an existing home or building used for residence purposes but not exceeding 6 living units, accessory buildings, or any

appurtenance thereto, or any sidewalks, driveways or other approaches to such building. This shall include, but not be limited to, roofing, walls, siding, windows, doors, floors, partitions, ceilings, porches, awnings, heating, furnace cleaning, air conditioning, chimneys, water softeners, humidifiers, purifiers, electrical installations, plumbing installations, concrete work, painting and sheet metal work.

c. "Salesperson" means any person who solicits or sells at any place within the city, other than within a building or structure used as a place of business, any home improvement or permanent installation or similar improvement attached to an existing home or building used for residence purposes, but not exceeding 6 living units, accessory buildings, or any appurtenance thereto, or any sidewalks, driveways, or other approaches to such building. This shall include, but not be limited to, roofing, walls, siding, windows, doors, floors, partitions, ceilings, porches, awnings, heating, furnace cleaning, air conditioning, chimneys, water softeners, humidifiers, purifiers, electrical installations, plumbing installations, concrete work, painting and sheet metal work. Any person performing emergency services requiring the installation of parts where the total cost does not exceed \$100 shall not be considered a salesperson under this section.

2. LICENSE REQUIRED. a. Requirement. No person shall within the city engage in the business of salesperson or act as a contractor without first having obtained a contractor or salesperson's license as provided in this section.

b. Exemptions. b-1. Licensed master plumbers licensed under the statutes of the state of Wisconsin and licensed electrical contractors licensed by the city need not obtain contractors' and salespersons' licenses, but shall in all other respects comply with this section.

b-2. Individuals, corporations which include only one person, or limited liability companies having only one member, which have been issued a contractor's license as provided in this section, need not have a salesperson's license, but shall in all other respects comply with this section.

b-3. Any company or industry regulated under ch. 196, Wis. Stats., and any persons who are employees thereof shall be exempt from this section.

3. APPLICATION. a. Applications for new and renewal contractor or salesperson licenses shall be filed with the city clerk on forms provided therefore. The application shall be signed by the applicant, if an individual, or by a duly authorized agent or officer of a corporation or limited liability corporation, and sworn to by the applicant.

b. The application shall require:

b-1. The name and permanent address of the applicant.

b-2. The name and permanent address of the applicant's employer.

b-3. If the applicant is a corporation or limited liability 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 permanent addresses of each of its officers, directors and designated managers, if any; the application shall be verified by an officer of the corporation. If one or more of the officers is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate officers.

b-4. If the applicant is a partnership, the application shall set forth the name and permanent address of each of the partners, including limited partners, and each partner shall verify the application. 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.

b-5. If the applicant is a club, association or other organization that is neither a corporation nor partnership, the application shall set forth the exact name of the entity together with the names and permanent addresses of all officers and be verified by an officer of the club, association or organization.

b-6. All convictions, including ordinance violations exclusive of traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the conviction occurred.

b-7. The dates of birth of the applicants.

b-8. Whether the applicant has prior to the date of application been licensed in this city as a contractor or salesperson as defined in this section.

b-9. Such other reasonable and pertinent information the common council or the proper licensing committee may from time to time require.

c. Post office box numbers shall not be acceptable for addresses required on applications for home improvement contractor and salesperson licenses.

d. Identification. Each applicant shall present to the clerk for examination a driver's license or some other proof of identity as may be reasonably required.

e. Photos. Each individual applicant or partner for a home improvement or salesperson license shall present 2 recent photographs to the city clerk suitable for inclusion on the applicant's official certificate. One photograph shall be attached to the license when issued, and the other photograph shall be filed with the application with the city clerk.

f. Fingerprinting. f-1. Each new applicant for a home improvement or salesperson license shall be fingerprinted by the police department. 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.

f-2. Exemptions. The requirement that an applicant be fingerprinted shall not apply to a person already licensed by the city when that person is renewing the license.

f-3. Duplicate Sets Not Required. If a set of fingerprints is on file with the police department, an additional set shall not be required unless expressly requested by the police department for purposes of verification.

g. Changes to be Reported. All persons licensed under this section shall notify the city clerk whenever there is a change in any information that is reported in the application form or renewal application form within 5 days after the change occurs.

4. LICENSE FEE; PERIOD. All applications shall be accompanied by the fee specified in s. 81-60. See s. 81-60 for the required license fees and the date of expiration.

5. BONDS AND INSURANCE. Upon application, every person applying for a contractor's license shall file with the city clerk a performance bond in the sum of \$1,000 annual aggregate of all losses and a certificate of insurance as provided in pars. a and b.

a. Performance. The performance bond shall be conditioned that the applicant will perform and sufficiently complete all work engaged in as a result of being granted a contractor's license and

guarantee that the contractor will perform in accordance with all the provisions of this section and all other ordinances of the city. The bond shall extend for the same period for which the license is issued and shall not be cancelled except on at least 20 days' written notice to the city clerk. The form of such bond shall be prepared and furnished by the city clerk.

b. **Liability and Property Damage.** The certificate of contractor's general liability and property damage insurance shall be in the sum of not less than \$25,000 per person, \$50,000 per accident, bodily injury liability, and \$10,000 property damage liability, and shall provide that the company will give 10 days' written notice to the city clerk of cancellation, expiration or notice of the company's intent not to renew; otherwise such insurance shall continue in full force and effect.

c. **Cancellation or Nonrenewal.** In the event of a cancellation or nonrenewal of either the performance bond or the certificate of insurance, the contractor's license shall be automatically suspended. The suspension shall terminate upon presentation of a certificate of insurance or performance bond that evidences that the policies required under this subsection have been issued or reissued to the contractor. All bonds and certificates shall be executed by a corporate surety or insurance company licensed to do business in the state of Wisconsin and shall have affixed thereto an affidavit of no interest. All such bonds and certificates shall be approved as to form and execution by the office of the city attorney before the same shall be accepted by the city clerk.

6. INVESTIGATION. All applications shall be referred to the chief of police who shall cause an investigation to be made and report his or her findings to the city clerk. If the chief files no written report summarizing the arrest and convictions of the applicant which could form a basis for denial, the city clerk shall issue the license. If the chief files a written report summarizing the arrest and convictions of the applicant which could form a basis for denial, the application shall be forwarded to the proper licensing committee of the common council for its recommendation as to whether or not each certificate should be issued.

7. COMMITTEE ACTION. a. **Notice.** a-1. If there is a possibility of denial of any license regulated by this section, no hearing shall be heard unless the city clerk's office has provided written notice to the applicant so that the applicant has at least 3 days' notice of the hearing.

a-2. The notice shall contain:

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

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

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

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

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

b. **Hearing.** b-1. If there is a possibility of denial, at the hearing the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that the applicant has an option to proceed with a

due process hearing, represented by legal counsel, with all testimony both direct and cross-examination under oath, or that the applicant may simply make a statement to the committee.

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

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

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

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

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

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

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

c. Recommendations. c-1. The recommendations of the committee regarding the applicant must be based on evidence presented at the hearing. Probative evidence concerning whether or not the certificate should be granted may be presented on the following subjects:

c-1-a. Whether the applicant is of good professional character or has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the particular activity for which the license is issued.

c-1-b. Whether the applicant has violated any of the required and prohibited practices set forth in this section.

c-1-c. Whether the applicant's previous license has not been renewed, suspended or revoked for any reason whatsoever.

c-1-d. Whether there is an inability of the applicant to substantially understand the required business regulations set forth in this section.

c-1-e. Whether the applicant has failed in the past to act in accordance with this section.

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

c-2. The recommendations of the committee regarding the applicant must not be based on evidence presented at the hearing related to the quality of any workmanship.

c-3. 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.

d. Disqualification. Whenever an applicant for a new license has had his or her application denied, it shall be entered on the record by the city clerk and no home improvement contractor or salesperson license shall be granted to the same person for a period of 12 months following the date of denial.

8. ISSUANCE OF LICENSE. a. If the common council grants the application for a home improvement contractor or salesperson license, the city clerk shall issue an appropriate document to the applicant confirming that fact. The license shall contain the person's true first name, surname and

middle initial, the picture of the applicant if individual or partnership, the number of the license, the period of time for which the license is valid, and a statement that issuance of the license does not constitute an endorsement by the city of the person or product. The license shall be in such form as to avoid alteration.

b. The license shall be carried on the person of the salesperson or contractor and shall be exhibited to any person requesting to see the same at any time while the person is engaged in selling or soliciting business.

9. RENEWAL OF LICENSE. a. Procedure for Renewal. Applications for renewal shall be made to the city clerk. The clerk shall refer the application to the chief of police for review. If the chief indicates that the applicant still meets the licensing qualifications, the city clerk shall issue the license unless a written objection has been filed with the city clerk at least 45 days prior to the date on which the license expires. Any interested person may file the objection. If a written 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 its recommendation to the common council.

b. Procedure for Non-Renewal. b-1. 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. Prior to the date set for the hearing, the city clerk's office shall forward notice to the applicant which 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 in the event any objections to renewal are found to be true.

b-2-c. A statement of the reasons for non-renewal.

b-2-d. A statement that an opportunity will be given to respond to and challenge the 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.

c. Hearings. All hearings held and committee recommendations prepared pursuant to this subsection shall be conducted as set forth in sub. 11.

d. Disqualification. Whenever any license is denied renewal, it shall be entered on the record by the city clerk and no home improvement or salesperson license shall be granted to the same person for a period of 12 months following the date of non-renewal.

e. Surrender. When any license is surrendered in lieu of a pending non-renewal proceeding, no other home improvement or salesperson license shall be granted to the same person for a period of 12 months following the date of its surrender.

10. REVOCATION OR SUSPENSION OF LICENSE. a. Procedure. Any License issued under this section may be suspended or revoked for cause by the common council after notice to the license holder and a hearing.

b. 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. Whenever either sworn written charges or a sworn written complaint are filed with the city clerk setting forth specific charges against a license holder involving conduct which would violate provisions that are grounds for revocation or suspension of a license, the city clerk shall issue notice to the license holder of the licensing committee's intention to hear the matter. The notice shall be served upon the license holder so that the license holder has at least 3 working days' notice of the hearing. The notice shall contain:

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

c-2. 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. A statement that an opportunity will be given to the license holder to respond to and challenge any reason for revocation or suspension and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-4. A statement that the license holder may be represented by an attorney of the license holder's choice at the license holder's expense, if the license holder wishes.

d. 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.

e. If the license holder appears before the committee at the time designated in the notice and denies the charges contained in the complaint, the committee shall conduct an evidentiary hearing in connection with the revocation or suspension at that time. If the license holder 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 complainants and the license holder in connection with the revocation or suspension.

f. Hearings. f-1. All hearings held and committee recommendations prepared pursuant to this section shall be conducted as set forth in sub. 11.

g. Disqualification. Whenever any license is revoked, the city clerk shall enter it on the record and no home improvement or salesperson license shall be granted to the same person for a period of 12 months following the date of revocation.

h. Surrender. When any license is surrendered in lieu of a pending revocation or suspension proceeding, no other home improvement or salesperson license shall be granted to the same person for a period of 12 months following the date of its surrender.

11. HEARING PROCEDURE. a. Authority of Licensing Committee. The licensing committee shall conduct hearings with respect to the non-renewal, suspension or revocation of home improvement contractor and salesperson licenses pursuant to this subsection. The chair of the licensing committee shall be the presiding officer.

b. Committee Hearing Procedure. b-1. The chair shall direct that oaths be administered and subpoenas issued upon request of either side.

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

b-3. 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 a ruling only upon the vote of a majority of its members.

b-4. At all stages of the proceedings before the committee or before the common council, the license holder shall be entitled to appear both in person and by an attorney.

c. 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. Grounds for Non-Renewal, Suspension or Revocation. The recommendation of the committee regarding the license holder shall be based on evidence presented at the hearing. Probative evidence concerning non-renewal, suspension or revocation may include evidence of:

d-1. Failure of the license holder to meet the statutory and municipal qualifications or any of the terms of this section.

d-2. Pending charges against or the conviction of the license holder, or his or her employees, of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the particular activity for which the license is issued.

d-3. Failure to obtain any permit required under the ordinances of the city or laws of the state of Wisconsin, or employing persons not authorized to do any specific work as required under the ordinances of the city or laws of the state of Wisconsin.

d-4. Whether the license holder, or his or her employees, has violated any of the required and prohibited practices set forth in this section.

d-5. Any other factor or factors which reasonably relate to the public health, safety and welfare.

e. The recommendations of the committee regarding the license holder must not be based on evidence presented at the hearing related to quality of workmanship.

f. 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, suspended 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 certificate be renewed with a period of suspension, the certificate 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 license holder or person in charge of the premises at the time of service.

g. Council Action. g-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the license holder. 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.

g-2. 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 license holder may file written exceptions to the report and recommendations of the committee.

g-3. Any exceptions filed by the license holder 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.

g-4. 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 license holder and complainant by 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 certificate 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 certificate holder 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 argument shall be limited to the subject matter of the report and recommendation and the written exceptions. License holders shall appear only in person or by legal counsel. A corporate license holder shall appear only by the agent or by legal counsel. A partnership shall be represented only by a partner or by legal counsel. A limited liability company shall be represented only by the agent or by legal counsel. Complainants shall appear only in person or by legal 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.

g-5. 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 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. 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.

h. Request to Surrender a License. If a license holder wishes to surrender his or her license after receiving a notice for a hearing on non-renewal, revocation or suspension, the license holder 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.

12. REQUIRED AND PROHIBITED PRACTICES. All persons licensed under this section shall:

a. Pay All Subcontractors. Pay all subcontractors and material suppliers so that no liens are filed against the owner of the property to whom the sale has been made, and furnish such owner waivers of liens from material suppliers and subcontractors within 30 days of completion of any job; except that where any subcontractor or material supplier's bill is the subject of a bona fide dispute in a legal

action, no waivers need be furnished until the determination of such action. Legal action in this section shall include any type of arbitration or 3rd party determination of the dispute recognized by the trade.

b. **Furnish Copies of All Written Documents.** Furnish to the purchaser a copy of all written documents which the purchaser is requested to sign at the time of signing.

c. **Written Agreements.** Before starting work of any kind, enter into a contract or firm agreement with the purchaser as to price and the work to be done, provided that no written contract shall be required where the work to be done is of an emergency nature and the total cost does not exceed \$100. Any such agreement shall include therein a complete statement as to:

c-1. The specific work to be done.

c-2. The material to be used, describing it by brand name, if possible, and by weight, size and color.

c-3. Guarantees and warranties made or represented to buyer in writing, setting forth by whom guaranteed or warranted, and any and all exclusions and limitations as to cost of repair, replacement of parts, service charges and labor charges.

c-4. The time in which the work is expected to be completed.

c-5. All financing, including the initial cost, any time charges, interest, etc., and the total cost including such charges, together with the amount of payment, the time at which the payments will begin, and the length of time for which they will continue.

c-6. A statement agreeing to restore and repair any part of the property of the purchaser destroyed or damaged, where such damage results from the negligent acts of the contractor, his or her agents or subcontractors.

c-7. A statement of the fact that the contractor or salesperson has a license from the city does not constitute an endorsement of the person or product by the city.

d. **Other Regulations.** No contractor or salesperson obtaining a license under this section shall:

d-1. Imply that having a license constitutes an endorsement or recommendation of the city. No person shall advertise in any manner that they have obtained a license from the city.

d-2. Use any false or deceptive inducements or misrepresent or falsely state to a prospective customer that his or her dwelling or building is to serve as a "prospective buyer" lure or "model home" or "advertising job," and that he or she will be paid a commission or other compensation for any other sales the seller may make in the vicinity or within a specified distance from the customer's location, and in that way lead the customer to believe that the cost of the improvement or installation will be fully paid or reduced by reason thereof.

d-3. Misrepresent to a prospective customer that he or she is being given a special, introductory, confidential, close-out, factory or wholesale price or discount, or any other concession; or that this price or discount or any other concession is made due to materials left over from a nearby job or a test of the local market or market survey.

d-4. Misrepresent that anyone, whether connected with the seller or not, is especially interested in seeing that the prospective customer gets a bargain, special price, discount or any other concession.

d-5. Substitute any product or material, or deliver or install or apply a product of different brand, grade

or quality from that represented by any sample, illustration or model.

d-6. Misrepresent or mislead prospective customers into believing that:

d-6-a. Fire resistant materials are incombustible or fire-proof.

d-6-b. The product needs no periodic repainting, refinishing, maintenance or any other service.

d-6-c. The product is of a specific or well known brand name or manufacture, or that the product is nationally advertised.

d-6-d. The product meets or exceeds minimum municipal, state, federal or other applicable standards or requirements.

d-6-e. The product is of a specific size, weight, grade or any other identifiable character.

d-6-f. The product is approved or recommended by any government agency, or other applicable organizations, or that they are the users of said product.

d-6-g. The product is or will be custom-built or specially designed for the needs of the customer.

d-6-h. The buyer need not obtain any permit, authorization or approval from any municipal, state or federal government agency to apply or install the product, or that the seller has or will obtain such permission or approval.

d-6-i. The product will not be damaged by hail or other storm.

d-7. Give any guarantee that is not specific, clear and definite or which shall misrepresent or lead the customer to believe that the manufacturer or anyone else is the guarantor of the product, or give any guarantee unless the same is given in writing.

d-8. Start installation or apply a small portion of the product with the misrepresentation that it is a tryout or test, or any other reason, where in fact it is done so the seller can claim partial performance or that work has actually begun on the job, and induce or force the purchaser into the terms of the contract.

d-9. Misrepresent or mislead the prospective customer into believing that insurance or some other form of protection will be given if the customer in any way is unable to make the payments agreed upon.

d-10. Misrepresent or mislead the customer into believing that the signing of any completion slip, financial statement, advertising agreement, contract, bond or promissory note, or any other document, either before or after completion of the job, will impose no obligation upon the customer, or that such signing will relieve or end some or all of the obligations of the seller.

d-11. Ask or require the customer to sign a completion slip before the installation or job is completed in accordance with the terms of the contract.

d-12. Gain entry or access into the prospective customer's home or into his or her property under the guise of any governmental inspection right or duty, or the misrepresentation that the seller has such authority, or under the guise that the seller is an employee or represents a public utility.

d-13. Misrepresent or lead the customer to believe that some product or part is unavailable or that there will be a long delay in manufacture, delivery or service, in order to induce or force a customer to

buy a product from the seller.

d-14. Fail to disclose in advertising that the advertised prices or offer does not include delivery or installation, if such is the fact.

d-15. Fail to disclose in writing all financial arrangements, interest, service fees, credit investigation costs, and building or installation permit fees, or that the promissory note or any other similar instrument will be placed with a financial institution for collection.

d-16. Misrepresent through the use of any picture, drawings or illustrations, scare tactics, demonstration devices or claims which threaten or imply any physical, mental or bodily harm.

d-17. Misrepresent that the seller is an employee, officer or representative of a manufacturer, importer or any other person, firm, or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract.

d-18. Misrepresent that maintenance, service or repairs, and replacement parts will be readily available within the customer's immediate trade area.

d-19. Disparage or degrade any of the seller's own advertised products or services, in order to induce or attempt to induce the customer to buy higher priced products or materials from the seller.

d-20. Misrepresent to the purchaser that his or her property is or will be condemned if no work is done.

d-21. Promise or give any money as an inducement for making the sale.

d-22. Represent to the purchaser that his or her taxes or insurance rates will or will not be affected as a result of the sale or installation.

d-23. Use a contract of any other person when not properly authorized.

13. CONTRACTOR'S RESPONSIBILITY FOR SALES PERSONNEL. Each contractor obtaining a license shall be responsible for the acts of his or her salesperson regardless of whether the same be his or her employees, agents or subcontractors, and shall be subject to all the penalties to which the salesperson shall be subject, if the salesperson violates this section, including revocation of his or her license.

14. PENALTY. a. Any person acting as a salesperson or contractor without having obtained a license so to act or violating any other provision of this section shall be punished by a forfeiture of not less than \$250 nor more than \$3,000. On default of payment thereof, such person shall be committed to the county jail or house of correction for not less than 10 days nor more than 90 days. Each day in which any person shall operate as a salesperson or contractor without having obtained a license, or after revocation or suspension of the same, shall constitute a separate offense.

b. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department of neighborhood services may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating sub. 2. The police department is also authorized to issue citations for violations of sub. 2.

APPROVED AS TO FORM

Date: _____
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____
LRB03545-2
RGP
7/7/04