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190796
SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to mobile and secondhand sales licensing.

81-74.5 cr
81-88 rp
81-99.5 rp
81-104 rc
81-104.5 rp
81-104.6-2 am
85-12-3 cr
92 rc
95 (title) rc
95-1 rp
95-2 rp
95-15 rp

This ordinance reorganizes various chapters of the code pertaining to secondhand and mobile sales into one chapter, corrects errors, clarifies language and eliminates obsolete provisions.

This ordinance also consolidates several license types into two “umbrella” licenses. Specifically, this ordinance combines:

1. Pawnbroker’s, secondhand dealer’s, and precious metal and gem dealer’s licenses into one “secondhand dealer’s” license.

2. Direct seller's (including door-to-door solicitors) and transient merchant's licenses into one "mobile seller's" license.

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

Part 1. Section 81-74.5 of the code is created to read:

81-74.5. Mobile Seller's License. 1. Each license shall be valid for one year from the date of issuance.

2. a. The fee for each license shall be \$130, except as provided in par. b.

b. The fee for each license for a nonprofit organization shall be \$15.

3. a. The fee for the renewal of a license shall be \$50, except as provided in par. b.

b. There shall be no fee for the renewal of a license for a nonprofit organization.

4. Any disabled veteran, as defined in s. 230.03(9m), Wis. Stats., upon presenting proof to the city clerk that he or she satisfies these conditions, shall be exempted from payment of any fee under this section.

(See subch. 1 of ch. 92.)

Part 2. Section 81-88 of the code is repealed.

Part 3. Section 81-99.5 of the code is repealed.

Part 4. Section 81-104 of the code is repealed and recreated to read:

81-104. Secondhand Dealer's License. 1. Each license shall be valid for 2 years from the date of issuance.

2. a. The fee for each license shall be \$275, except as provided in par. b.

b. The fee for each license for businesses dealing exclusively in secondhand bicycles shall be \$75.

(See subch. 2 of ch. 92.)

Part 5. Section 81-104.5 of the code is repealed.

Part 6. Section 81-104.6-2 of the code is amended to read:

81-104.6. Secondhand Motor Vehicle Dealer's License.

2. The fee for each license shall be \$290.

[[~~(See s. 93-5.)~~]] >>(See subch. 3 of ch. 92.)<<

Part 7. Section 85-12-3 of the code is created to read:

85-12. Contents of Application.

3. PROOF OF IDENTITY; AGE REQUIREMENT. a. Every applicant shall present to the city clerk for examination a driver's license, Milwaukee municipal identification card, or some other proof of identity as may be reasonably required.

b. Every applicant shall be at least 18 years of age at the time of application, unless otherwise specified in this code.

Part 8. Chapter 92 of the code is repealed and recreated to read:

Chapter 92
MOBILE AND SECONDHAND SALES

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SUBCHAPTER 1 MOBILE SALES

92-1. Definitions. In this subchapter:

- 1. DIRECT SELLER** means any person who sells goods or takes sales orders for the later delivery of goods on any public way or other public premises, and includes solicitors.
- 2. GOODS** means personal property of any kind and includes goods provided incidental to services offered or sold.
- 3. OTHER PUBLIC PREMISES** means any premises controlled by the city, county, state, or any board or other instrumentality or agency thereof, and dedicated for use by the public generally. This term includes public buildings and premises appurtenant thereto.
- 4. PERMANENT MERCHANT** means any person who operates a fixed place of business in the city for which a final certificate of occupancy has been issued.
- 5. PERSON** means a natural person.
- 6. PUBLIC WAY** means any public thoroughfare dedicated, condemned, acquired or created in accordance with state statutes and city code for street, alley or pedestrian-way purposes.
- 7. PUSH CART** means any apparatus on wheels whose primary manufacture, design and purpose is for vending.
- 8. SOLICITOR** means any person who goes from house to house, from place to place or from street to street selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise, including books, periodicals, magazines or personal property of any nature for future delivery.
- 9. STREET FESTIVAL** means any celebration taking place on any public way or other public premises and permitted by the city as a special event. This definition does not include a parade, procession, or bicycle or foot race.
- 10. TRADE SHOW OR CONVENTION** means a temporary exhibition, show or meeting held by persons or organizations who are engaged in a particular business, occupation, profession or activity.
- 11. TRANSIENT MERCHANT** means any person who engages in the business of selling merchandise at any fixed place in the city temporarily, and is not a permanent merchant of the city of Milwaukee.

92-3. License Required; Exceptions. 1. LICENSE REQUIRED. No person may engage in the business of a direct seller, transient merchant or solicitor within the limits of the city without first obtaining a mobile seller's license under this subchapter.

2. EXCEPTIONS. The following shall be exempt from licensure, but shall not be exempt from the regulations provided in ss. 92-13-4 and 5-a to k:

- a. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- b. Any person selling goods at wholesale to dealers in such goods.
- c. Any person solely selling food and licensed under ch. 68, or exempted from licensing under ch. 68.
- d. Any permanent merchant or employee thereof who sells or takes orders away from the established place of business for goods regularly offered for sale by such merchants within the city.
- e. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
- f. Any person holding a sale required by statute or by order of any court, any person conducting a bona fide auction sale pursuant to law, or any person registered as an auctioneer under ch. 480, Wis. Stats.
- g. Any home improvement salesperson licensed under s. 95-14 or any alarm sales personnel registered under s. 105-75-14.
- h. Any person engaged in political or fundraising activities for a campaign committee or political organization duly registered with a federal, state, county or city election board.
- i. Any person who sells goods or takes orders for the later delivery of goods, including any solicitor, within the barricaded area of any city-permitted street festival, provided the person is registered and operating with the permission of the respective festival organization.
- j. Any person reselling tickets to entertainment or sporting events at or below face value.
- k. Any person who purchases or sells comic books or collectible toys.
- L. Any farmer or gardener who sells or disposes of, or offers to sell or dispose of, the products of the farm or garden occupied and cultivated by the farmer or gardener.
- m. Any artist who offers for sale creations of art or craft, whether paintings, drawings, photographs, pottery, leather goods or similar works of art, provided that such creations may be sold only by the creating artist.
- n. Any member of an event being held at any venue owned or operated by the Wisconsin center district.
- o. Any person, firm or corporation that is selling goods or taking orders on the premises of the Henry

W. Maier festival park grounds with the express written consent of the custodian of such premises.

p. Any permanent merchant conducting a temporary sidewalk sale.

q. Any person operating under the immediate supervision of a licensed seller or solicitor.

3. NONPROFIT ORGANIZATIONS. a. An employee, officer, or agent of a nonprofit organization, as defined in s. 101-23.7-1-c, applying for a license under this subchapter shall be exempt from the requirements of ss. 92-5-2 and 3, provided both of the following requirements are met:

a-1. There is submitted to the city clerk proof that the nonprofit organization is registered under s. 181.0501, Wis. Stats., or proof that the nonprofit organization is exempt from registration as a nonprofit organization under this statute.

a-2. All sales are performed by persons who are unpaid for their services and who remit all proceeds from sales to the organization to be used for the purposes of the organization.

b. Any employee, officer, or agent of a nonprofit organization licensed under this subchapter who does not meet both requirements in par. a shall be subject to all provisions of this subchapter in the same manner as any other licensee.

92-5. Application. 1. CONTENTS. Application for a mobile seller's license shall be filed with the city clerk on forms provided therefor. In addition to the information specified in s. 85-12, the application shall require the following information:

a. Name, permanent address and telephone number, and temporary address, if any.

b. Name, address and telephone number of the person that the applicant represents or is employed by, whose merchandise or services are being sold or offered, or for whom merchandise is being purchased.

c. Nature of business to be conducted, including a brief description of the goods or services intended to be bought, sold, offered, disposed of or contracted for.

d. Make, model and license number of any vehicle to be used by the applicant in the conduct of the business.

2. PHOTOGRAPH OF APPLICANT. Every applicant shall file with the application one recent photograph suitable to the city clerk for inclusion on the applicant's official license, except as provided in s. 92-3-3.

3. FINGERPRINTING. Every applicant for a mobile seller's license shall be fingerprinted as provided in s. 85-21-1, except as provided in s. 92-3-3.

4. FEE. Each license application shall be accompanied by the fee specified in s. 81-74.5.

92-7. Investigation; Issuance. 1. Each application for a license shall be referred to the chief of police, who shall make and complete an investigation of the applicant's criminal history in accordance with s. 85-21-2. If the chief of police files no written report summarizing the arrest and convictions of

the applicant which could form the basis for denial of the application, the city clerk shall issue the license.

2. If the chief of police files a written report summarizing the arrest and convictions of the applicant which could form the basis for denial of the application, except as provided in sub. 3, the application shall be forwarded to the licensing committee for its recommendation as to whether or not a license should be issued. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

3. If the chief of police files a written report summarizing the arrest and convictions of the applicant which could form the basis for denial of the application, the city clerk shall, in lieu of forwarding the application to the licensing committee for a hearing under sub. 2, issue the license with a warning letter to the applicant whenever all of the following are true:

a. The applicant has no more than one pending charge for a misdemeanor offense, and the pending charge is related to a nonviolent offense.

b. The applicant has not, within 12 months of the date of application, been convicted of any misdemeanor offense related to a violent offense.

c. The applicant has not, within 12 months of the date of application, been convicted of more than one misdemeanor offense or municipal code violation.

d. The applicant has not, within 3 years of the date of application, been convicted of more than 3 misdemeanor offenses and municipal ordinance violations.

e. The applicant has not, within 5 years of the date of application, been convicted of more than one felony offense and has not within 5 years of the date of application served probation or been imprisoned for any felony conviction.

f. The applicant has not, within 10 years of the date of application, been convicted of a second or subsequent offense related to operating a motor vehicle while intoxicated.

4. In determining the eligibility of the applicant to be issued a warning letter under sub. 3, the city clerk shall not consider either of the following:

a. Any pending charges or convictions of any misdemeanor or felony offenses related to failure to pay child support.

b. Any one conviction of a misdemeanor offense or municipal ordinance violation related to retail theft for which the applicant was not imprisoned.

5. In determining the number of pending charges under par. 3-a and convictions under par. 3-b to f, any pending charges or convictions arising out of the same incident or occurrence shall be counted as one pending charge or conviction.

6. Notwithstanding the provisions of subs. 3 and 4, an applicant who meets the criteria of those subsections shall have his or her application forwarded to the licensing committee if a written objection to the application is filed by any interested party.

92-9. Transfers and Changes. See ss. 85-19 and 85-35 for provisions relating to the transfer of licenses and changes to applications.

92-11. Renewal, Non-renewal, Suspension or Revocation. 1. RENEWAL. The application and proceedings for a renewal application shall be made in the same form and manner as the original application.

2. NON-RENEWAL, SUSPENSION OR REVOCATION. Any license issued under this section may be not renewed, suspended or revoked for cause by the common council. Nonrenewal, 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 interested person.

3. DISQUALIFICATION. Whenever any application is denied, or a license is not renewed, revoked or surrendered, the procedures provided in ss. 85-13, 85-15 and 85-17 shall apply.

92-13. Regulations. 1. LICENSE TO BE CARRIED. Any license issued under this subchapter shall be carried on the person of the licensee 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.

2. TRANSACTION REQUIREMENTS. a. Every licensee shall expressly disclose his or her name and the name of the company or organization he or she is affiliated with, if any.

b. If any sale of goods is made by a licensee, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction in accordance with the procedure as set forth in s. 423.203, Wis. Stats.

c. Every order taken by a licensee for the later delivery of goods shall be in writing and shall be given to the purchaser at the time the deposit of money is paid to the licensee. The sales order shall contain:

c-1. A statement containing the terms of the agreement.

c-2. The amount paid in advance, whether full, partial or no advance payment is made.

c-3. The name, address and telephone number of the seller.

c-4. The delivery or performance date.

c-5. Whether a guaranty or warranty is provided and, if so, the terms thereof.

3. SIGNAGE. Each side of a vehicle used in the transaction of business shall display the name of the person to whom the license is issued and local telephone number in lettering not less than 4 inches high.

4. PUSH CART SPECIFICATIONS. Whenever operating on public property, the following requirements shall apply:

- a. Pushcart dimensions shall not exceed 7 feet in length and 3.5 feet in width.
- b. The vertical height of a pushcart shall not exceed 10 feet measured from ground level to the highest point on the pushcart, including signage, canopy, awning or umbrella, if any.
- c. The use of canopies, awnings or umbrellas on a pushcart shall be such as to maintain a vertical clear space of 7 feet measured from ground level to the lowest point of the canopy, awning or umbrella.
- d. Signs or other items of equipment attached to a pushcart shall not exceed the greatest dimensions of the pushcart in both directions and shall be securely fastened.
- e. Every pushcart shall be moved manually onto, about and off of public sidewalks. The use of a motor vehicle on a public sidewalk to deposit or remove a pushcart is prohibited.

5. PROHIBITED PRACTICES. a. No person shall misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods or services offered for sale.

b. No person shall impede the free use of sidewalks and streets by pedestrians and vehicles. Persons shall at all times afford any pedestrian a minimum 5-foot clearance. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

c. Except for a person who makes sales from a legally-parked motor vehicle, no person may occupy more than 7 linear feet of public space parallel to the curb in the operation of a business and, in addition, occupy more than 3.5 linear feet to be measured from the curb toward the property line.

d. No pushcart, goods, signage or any other item related to the operation of a direct seller, transient merchant or solicitor may touch, lean against or be affixed permanently or temporarily to any building, structure or street landscape item, including, but not limited to, street lighting poles, parking meters, space markers, newspaper vending boxes, trash containers, traffic signal standards, fire hydrants, tree guards, benches or traffic barriers. Freestanding signage is prohibited.

e. No pushcart or goods may be located against display windows of a fixed-location business, nor shall they be within 20 feet of an entrance to any building, store, theater, movie house, sports arena or other place of public assembly.

f. No pushcart or goods may be located within 10 feet of a fire hydrant, in or within 10 feet of any bus stop no parking zone, or within 20 feet of any driveway or any cross walk at any intersection.

g. No person shall make any loud noise or use any sound-amplifying device, horn, bell or other noisy device to attract attention to the business if the noise produced is capable of being plainly heard outside a 100-foot radius of the source.

h. No person selling goods from a pushcart, stand, table, container or other stationary apparatus shall allow rubbish or litter to accumulate in or around the area in which the seller is conducting business, whether generated by the business or the public at large. A clean, plastic-lined trash container clearly marked for litter shall be kept and maintained in the area by the seller. The seller shall remove the container from the site for emptying on a daily basis or more frequently as

conditions warrant.

i. Stands, tables, containers or stationary apparatuses other than pushcarts may not be used to sell goods on the public way or other public premises in an area with downtown zoning as established under the zoning code.

j. No person shall violate any provision of ch. 101 or ss. 105-56, 105-57 or 115-45.

k. No person shall sell or offer for sale any item while the person is on a roadway median or safety island, except when the roadway has been legally closed to traffic for a parade, festival or other civic or special event and the seller is otherwise in compliance with this section.

L. No person may conduct business within 300 linear feet of any currency exchange.

92-15. Door-to-Door Solicitation. 1. REGISTRATION REQUIRED a. No later than 5 days prior to any solicitation within the city, each solicitor shall register with the district police station in the area in which he or she intends to solicit. This registration shall contain the solicitor's name, home address and date of birth and the name and address of the person, firm, corporation or organization which the solicitor represents.

b. In lieu of the requirement in par. a, any person, firm, corporation or organization soliciting with a number of solicitors may, no later than 5 days prior to any solicitation, provide a current list of solicitors representing the person, firm, corporation or organization to the applicable district police station. The list shall include the names and addresses of the persons, firms, corporations or organizations and the names, home addresses and dates of birth of all solicitors.

2. SIGN PROHIBITING SOLICITATION. Any person who wishes to exclude solicitors from that person's premises may place upon or near the usual entrance to the premises a printed placard or sign bearing the notice "Solicitors Prohibited" or similar restriction. If such a sign is posted, no solicitor may ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, but shall immediately and peacefully depart from the premises. No solicitor may enter or attempt to enter in or upon any premises where such a placard or sign is placed or maintained. This subsection shall not apply to any person exempted under s. 92-3-1.

3. SOLICITATION PROHIBITED DURING NIGHT-TIME HOURS. No person may engage in door-to-door in-person solicitation of any residential occupant for any commercial or fundraising purpose between the hours of 9:00 p.m. and 8:00 a.m.

92-17. Penalty. Any person violating any provision of this subchapter shall be fined not less than \$50 nor more than \$500 for each violation, plus costs of prosecution. Each day's violation shall constitute a separate offense.

SUBCHAPTER 2 SECONDHAND DEALERS

92-21. Definitions. In this subchapter:

1. AUDIO AND VIDEO MEDIA means any compact disc, DVD, cassette tape, 8-track cartridge, VHS tape, vinyl record, or other device intended to store audio or video, whether digital or analog.

2. AUTOMATED RECYCLING KIOSK means an interactive device that meets all of the following requirements:

a. Is installed in a secure retail space.

b. Has the following technological functions:

b-1. Verification of a seller's identity by remote examination of a government-issued identification card by a live representative during all hours of operation.

b-2. Secure storage of articles accepted by the kiosk for recycling.

b-3. Capture and storage of images of the seller and the article purchased during the transaction.

b-4. Electronic reporting of all transactions to law enforcement.

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

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

5. JEWELRY means any tangible article of personal property ordinarily wearable on the person, consisting in whole or in part of gold, silver, platinum, aluminum, lead, brass, copper, pewter, alexandrite, diamond, emerald, garnet, opal, ruby, pearl, jade, and other such metal, mineral, or gem customarily regarded as precious or semiprecious.

6. LARGE APPLIANCE AND FURNITURE means any bed, mattress, table, chair, bureau, dresser, desk, bookcase, refrigerator, freezer, and any other household furnishing or appliance occupying a space greater than 8 cubic feet.

7. PAWNBROKER means a person, firm, or corporation engaged in the business of lending money on personal property or goods that are pledged as security for loans on the condition that, if the loans are not repaid within specified periods of time, the goods used as security may be sold to compensate for nonpayment.

8. PRECIOUS METAL AND GEM DEALER means any person, corporation, partnership, or association which engages in any transaction of buying, selling, or receiving secondhand jewelry, sterling silverware, or gold or silver coins or bullion to and from the public. "Precious metal and gem dealer" does not include a business which smelts, refines, assays, or manufactures precious metals, gems, or valuable articles and has no retail operation open to the public.

9. SECONDHAND means previously owned, sold, traded, or used by a member of the general public immediately prior to the transaction at hand. It does not mean previously owned by a wholesaler, retailer, or another secondhand dealer.

10. SECONDHAND DEALER means any person, firm, partnership, corporation, or association operating, owning, or leasing a fixed place of business or automated recycling kiosk for the purchase, sale, or exchange of any secondhand article of personal property.

11. SECONDHAND DEALER MALL means a fixed location where 2 or more secondhand dealers conduct their business as provided in s. 92-23-2.

92-23. License Required; Exception. 1. LICENSE REQUIRED. It shall be unlawful to carry on, engage, or operate the business of pawnbroker, secondhand dealer, or precious metal and gem dealer without having first obtained a secondhand dealer's license in accordance with the provisions of this subchapter.

2. SECONDHAND DEALER MALLS. The owner of a business at which 2 or more secondhand dealers are engaged in business by maintaining separate sales space and identifying themselves to the public as individual dealers may obtain a single license for that location. No individual licenses are required of the tenant occupants of such premises. No license shall be issued to the secondhand dealer mall unless each of the following requirements is met:

- a. The business has a single name and address.
- b. The business is under the unified control of one person, who shall hold the license.
- c. All sales are consummated at a central point or register operated by the owner of the business, and the owner maintains a comprehensive account of all sales.

3. EXCEPTION. The requirements of this section shall not apply to the following:

- a. Any party dealing exclusively in motor vehicles, stamps, audio and video media, baseball cards, books and magazines, works of fine art, or industrial machinery and equipment.
- b. Any individual registered as an auctioneer under ch. 480, Wis. Stats.
- c. Any transaction at an occasional garage or yard sale; estate sale; coin, gem, stamp or antique show; gun or knife show; convention; or auction.
- d. Any nonprofit organization or any person conducting a sale from which the proceeds are donated to a nonprofit organization.
- e. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves the return of the jewelry or the exchange of the jewelry for different, new jewelry.

92-25. Application. 1. CONTENT. Application for a secondhand dealer's license shall be made to the city clerk on forms provided by the city clerk for such purpose and shall contain the information specified in s. 85-12.

2. PLAN OF OPERATION. In addition to the information required under s. 85-12, an application shall contain a completed plan of operation on a form provided by the city clerk. The plan of operation shall include:

- a. Plans the applicant has to ensure that business is not conducted with minors, except as provided in s. 92-33-5.
- b. The principal location of the applicant's business within the city at which all records required under s. 92-33-9 are kept and available for inspection.
- c. The location or locations at which the applicant will conduct business within the city.
- d. If transactions are conducted at locations in addition to the identified business premises, a description of the manner in which such transactions shall be conducted, including whether transactions will occur at temporary locations, door-to-door, or otherwise.
- e. Plans the applicant has to provide security for the business premises, for business records, and for transactions conducted at locations other than identified business premises.
- f. A description of the anticipated proportion of the business, in volume of sales or monetary value, that will involve transactions in precious metals and gems during the license period, and the proportion of any transactions by percentage that will constitute sales, purchase, or other exchanges of gold.

3. FINGERPRINTING. Except for an applicant dealing exclusively in bicycles, every applicant shall be fingerprinted as provided in s. 85-21-1.

4. FEE. Each license application shall be accompanied by the fee specified in s. 81-104.

92-27. Investigation; Issuance. 1. INVESTIGATION. Each application for a new license shall be referred to the chief of police and the commissioner of neighborhood services, each of whom shall cause an investigation to be made and report their findings to the licenses committee in accordance with s. 85-21-2.

2. APPROVAL. Each application for a new license shall be referred to the licenses committee for a hearing in accordance with s. 85-2.7.

3. STATE RESIDENCY. No license shall be granted to any person who has not resided in the state of Wisconsin continuously for a period of at least 90 days prior to the filing of his or her application.

92-29. Transfers and Changes. See s. 85-19 and ss. 85-35 to 85-39 for provisions relating to the transfer of licenses and changes to applications.

92-31. Renewal, Non-renewal, Suspension or Revocation. 1. RENEWAL. a. Application for the renewal of a license shall be made to the city clerk. The clerk shall refer the application to the chief of police and the commissioner of neighborhood services for review.

b. If the chief of police and the commissioner of neighborhood services indicate that the applicant still meets the licensing qualifications, the application shall be referred to the common council for approval unless a written objection, as defined in 85-2-4, has been filed in accordance with s. 85-3-3.

c. If an objection is filed, or if a determination is made that the applicant no longer meets the licensing qualifications, the application shall be forwarded to the licensing committee for a hearing on whether

the application should be recommended to the common council for renewal or non-renewal.

2. NON-RENEWAL, REVOCATION OR SUSPENSION. a. Any license issued under this subchapter may be not renewed, suspended or revoked for cause by the common council after notice to the licensee and a hearing. If there is a possibility that the licensing committee will not recommend renewal of the license, or if suspension or revocation proceedings are initiated, the procedures for notice and committee hearing and for the committee report, recommendations and common council consideration provided in ss. 85-3 to 85-5 shall apply.

b. Suspension or revocation proceedings may be initiated 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 interested party.

3. DISQUALIFICATION; CHANGE OF CIRCUMSTANCES. Whenever any application is denied, or license is revoked, surrendered or not renewed, the procedures provided in ss. 85-13, 85-15 and 85-17 shall apply.

4. TRUTH OF STATEMENTS AND AFFIDAVITS. See s. 85-34 for matters relating to truth of statements and affidavits.

92-33. Regulations. 1. ALTERED OR OBLITERATED SERIAL NUMBER. No licensee shall receive any item or property with an altered or obliterated serial number, or from which a serial number has been removed.

2. INSPECTION. Every item pawned, pledged, exchanged, purchased, or accepted on consignment by a licensee shall be open for inspection by the chief of police, or the chief's designee, at any reasonable time.

3. HOLDING PERIOD. A licensee shall hold every item not otherwise exempt from licensure under this subchapter separate and apart from any other items, unchanged and unaltered from the form it was received, for inspection by the chief of police, in accordance with the following:

a. 30-Day Holding Period. All items pawned or pledged for security on a loan by a pawnbroker, and all items purchased or exchanged by a precious metal and gem dealer, except for gold coins or bullion, or silver coins or bullion.

b. 10-Day Holding Period. All items purchased, exchanged, or accepted in consignment, except for clothing, clothing accessories, and large furniture and appliances.

c. Additional Holding Period. The chief of police may, at the chief's sole discretion, cause any item pawned, pledged, purchased, or exchanged, which the police chief has reason to believe was not pawned, pledged, disposed of, sold, or exchanged by the lawful owner, to be held for an additional holding period deemed reasonable by the chief of police after the elapse of the initial holding period, for identification by the lawful owner.

4. AUTOMATED RECYCLING KIOSKS. A secondhand dealer operating an automated recycling kiosk may store items acquired at the kiosk in a secure off-site location. The dealer shall retain an item stored under this subsection for 30 days and, upon request, return that item to a law enforcement officer of this state within 3 business days without cost.

5. MINORS. No licensee shall have any business dealings with any person less than 18 years of age, unless that person is with a parent or guardian. A parent or guardian appearing with a minor may file a signed consent form granting permission for that minor to conduct business with the dealer at a future date without the presence of a parent or guardian. The written consent shall be retained by the dealer.

6. INTOXICATED PERSONS. No licensee shall bargain for, take, purchase, or receive in pawn any item from any intoxicated person, including any bond, note, or security.

7. STOLEN GOODS. Every licensee shall report to the police any item presented to the licensee during the course of business the licensee has reason to believe was stolen, either by the person presenting the item or another party.

8. IDENTIFICATION. a. Identification Required. No licensee shall purchase, pledge, exchange, accept for consignment, pawn, or sell any item without first securing adequate identification from the seller as provided in this subsection.

b. Forms of Identification. Identification obtained by a licensee shall be limited to one of the following current and unexpired forms of identification:

b-1. A city of Milwaukee municipal identification card issued under Chapter 83.

b-2. A Milwaukee county identification card.

b-3. A state identification card.

b-4. A valid state motor vehicle operator's license, containing a picture.

b-5. A military identification card.

b-6. A valid passport.

b-7. An alien registration card.

b-8. A non-picture identification document issued by a state or the federal government, if the dealer also obtains a clear imprint of the seller's right index finger.

b-9. A senior citizen's identification card containing a photograph.

c. False Identification Prohibited. No person pawning, pledging, exchanging, consigning, leaving for deposit, or selling any property with any licensee shall give a false or fictitious name, present false or altered identification documents, give a false date of birth or give a false address of residence or telephone number to the licensee gathering information for the transaction description record.

9. RECORDKEEPING. a. Form of Records. Transaction description records shall be kept either as computer files or in a written document approved by the chief of police, or the chief's designee. In addition:

a-1. Written transaction description record documents shall be legible and in ink, and no entry made shall be erased, obliterated or defaced.

a-2. A licensed precious metal and gem dealer may keep transaction description records as sequentially numbered invoices. Blank or voided invoices kept by a precious metal and gem dealer as transaction description records shall be kept in sequence.

a-3. Computerized files, written documents and invoices of transaction description records shall be open to inspection by the chief of police, or the chief's designee, at any reasonable time. Computerized files, written documents and invoices of transaction description records shall be maintained and retained for one year.

b. Contents of Records. Transaction description records shall include all of the following:

b-1. The date and time of the transaction.

b-2. A complete description in English of the item or property pawned, pledged, consigned, exchanged or purchased. The description shall include:

b-2-a. Any trademark or brand name.

b-2-b. Any identification number, serial number, model number, or other identifying number, word or initial engraved or otherwise marked on the item.

b-2-c. A description of any settings.

b-2-d. A description by weight and design of the property.

b-2-e. Other identification marks and inscriptions of a personal nature.

b-3. The amount of money loaned or paid.

b-4. The name, address and date of birth of the person pawning, pledging, exchanging, consigning or selling the item or property.

b-5. The identification number from and a photocopy of the identification obtained as stipulated s. 92-33-8.

b-6. A signed, written declaration of ownership from the person pawning, pledging, exchanging, consigning or selling the item or property, separate and apart from any computerized records maintained and on a form approved by the chief of police, or the chief's designee, stating whether the person owns the item or property, how long the person has owned the item or property, whether the person or another found the item or property, and if found, the details of its finding.

c. Photographs; Video Recordings. c-1. Each transaction description shall include a color photograph or color video recording of:

c-1-a. Each customer pawning, pledging, consigning, exchanging or selling an item or property.

c-1-b. Every item or property pawned, pledged, consigned, exchanged or sold without a unique serial or identification number permanently engraved or affixed.

c-1-c. Every item or property received by a secondhand dealer, except clothing and clothing accessories, to be placed on sale at a price of \$10 or greater and including but not limited to tools, electronic devices and musical instruments, with or without unique serial or identification numbers permanently engraved or affixed thereto.

c-2. Each photograph shall be at least 2 inches square. A photograph or video recording shall be time - and date-stamped and maintained so it can be readily matched and correlated with all other records of the transaction. The photograph or video recording shall be available to the chief of police, or the chief's designee, upon request. The major portion of the photograph or video recording of a person shall include an identifiable facial image. Property photographed or video recorded shall be accurately depicted.

c-3. The licensee shall inform the person that he or she is being photographed or video-recorded by displaying a sign of sufficient size in a conspicuous place on the premises.

c-4. The licensee shall keep the photograph or video recording for 3 months.

d. Signature Required. The person pawning, pledging, consigning, exchanging or selling the item or property shall electronically sign the computerized record, or sign an alternate form approved by the chief of police, or the chief's designee, if computerized records are maintained, or sign the written document transaction descriptions record or the invoice.

e. Bicycle Records. A licensee shall record, as part of the required transaction description record, the serial number of any bicycle, bicycle frame, or part of a bicycle that is received in the course of business to the extent that all or a portion of the serial number remains visible.

f. Website Reporting. f-1. Procedures. f-1-a. All transaction description records, except for signed declarations of ownership and patron signatures on transaction description records, shall be reported not later than the close of each business day by posting and uploading all transaction description records to the Internet website approved by the chief of police, or the chief's designee, according to the protocols of the website. All transaction description record postings and uploads shall be complete and accurate.

f-1-b. Each licensee shall display a sign, provided by the police department, of sufficient size and in a conspicuous place on the premises informing patrons that all transactions are reported to the police department daily through website postings.

f-2. Access. The police department may allow access to transaction description records posted or uploaded to its approved Internet website or provide copies of transaction description records and provide copies of declarations of ownership to any other law enforcement agency.

f-3. Entry failures. f-3-a. Any transaction description record which cannot be posted or uploaded to the police-approved Internet website by the close of the business day due to technical malfunction shall be posted or uploaded by 12 noon the next business day; and failing that, a hardcopy of the transaction description record including photographs or video recordings shall be delivered to the chief of police, or the chief's designee, in a format approved by the chief of police, or the chief's

designee, by 12 noon the next business day following the initial post or upload failure. The licensee shall continue to deliver hardcopies of transaction description records to the police chief, or the chief's designee, so long as website record post or upload failures persist.

f-3-b. If website post or upload failures are determined to be due to the licensee's system or Internet connection, a licensee shall be charged a \$100 daily penalty beginning on the fourth business day following the initial post or upload failure and continuing until transaction description records are again posted and uploaded to the police-approved Internet website. The police department may delay, reduce or forego daily reporting penalties for posting or uploading failures as the chief of police, or the chief's designee, sees fit without cause.

f-3-c. A licensee shall post or upload to the police-approved Internet website all transaction description records specified in par. a not later than the close of the second business day following correction of the technical malfunction. The licensee shall be charged a \$100 daily penalty beginning on the third business day following correction of the technical malfunction and continuing until all transaction description records in arrears are properly posted and uploaded to the police-approved Internet website. The police department may delay, reduce or forego daily reporting penalties for posting or uploading failures as the chief of police, or the chief's designee, sees fit without cause.

g. Other Information. Transaction records shall include any other reasonable information the chief of police may from time to time require.

10. TRANSACTIONS INVOLVING ARTICLES NOT OWNED. a. Prohibition. No person shall pawn, pledge, sell, consign, leave or deposit any article of property with or to a licensee if one or more of the following is true:

a-1. The article of property is not owned by the person.

a-2. The article of property is the property of another, regardless of whether the transaction is occurring with the permission of the owner.

a-3. Another person has a security interest in the article of property.

b. Exception. The provisions of par. a shall not apply to any person pledging, selling, consigning, leaving or depositing any article of property with or to a licensee if the person is any of the following:

b-1. A duly executed power of attorney for the owner of the property.

b-2. A personal representative of the estate to which the property belongs.

b-3. The recipient of a lawful written authorization to pledge, sell, consign, leave or deposit the property issued by the owner of the property prior to the time of the transaction.

92-35. Additional Regulations for Pawnbrokers. 1. In addition to the regulations provided in s. 92-33, every pawnbroker, at the time of each loan delivered to the person pawning or pledging any item, shall provide a pawn receipt signed by the licensee or designee, containing the following:

a. The name and business address of the pawnbroker.

- b. A brief description of the item being pawned.
- c. The amount of money being loaned.
- d. The date and time of pawning or pledging.

2. There shall be no charge for issuing a pawn receipt. Every pawn receipt shall be numbered serially, a copy shall be retained by the pawnbroker, and the receipt shall be open to inspection by the chief of police, or the chief's designee, at any reasonable time.

92-37. Penalty. 1. FIRST OFFENSE. Any person violating this subchapter shall, upon conviction for a first offense, forfeit not less than \$50 nor more than \$1,000, together with the costs of prosecution, and, in default of payment, may be imprisoned as provided by law.

2. SECOND OFFENSE. Any person violating this chapter shall, upon conviction for a second or subsequent offense, forfeit not less than \$500 nor more than \$2,000, together with the costs of prosecution, and, in default of payment, may be imprisoned as provided by law.

SUBCHAPTER 3 SECONDHAND MOTOR VEHICLE DEALERS

92-41. Definitions. In this section:

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

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

3. RETAIL means the business of buying, selling, exchanging or dealing motor vehicles, including, but not exclusively, secondhand parts of motor vehicles, to the general public.

4. SECONDHAND means previously owned, sold, traded or used by a member of the general public on a retail basis.

5. WHOLESALE means the business of buying and selling, exchanging or dealing motor vehicles, including, but not exclusively, secondhand parts of motor vehicles, 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.

92-43. License Required; Exceptions. 1. LICENSE REQUIRED. It shall be unlawful for any person, firm or corporation to engage in the business of buying, selling, exchanging or dealing in secondhand motor vehicles, including secondhand parts of motor vehicles, either retail or wholesale, without first having obtained a secondhand motor vehicle dealer's license.

2. EXCEPTIONS. a. The operator of a premises used for retail sales for a period of 30 days or less shall not be required to obtain a license under this subchapter, but shall comply with the regulations established under s. 84-53.

b. Any business buying, selling, exchanging or dealing exclusively in secondhand parts of motor vehicles shall not be required to obtain a license under this subchapter, but shall obtain a recycling, salvaging or towing license as provided under ch. 93.

92-45. Application. 1. CONTENT. Application for a secondhand motor vehicle dealer's license shall be made to the city clerk on forms provided by the city clerk for such purpose and shall contain the information specified in s. 85-12. In addition, an application shall contain:

a. Whether the application is for wholesale or retail business operations.

b. Whether the applicant has ever had a license or permit relating to the activities licensed in this subchapter denied, not renewed, suspended or revoked, with a brief statement of the circumstances associated with the event, and the jurisdiction in which the 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.

c. A completed plan of operation on a form provided by the city clerk. The plan of operation shall include:

c-1. The planned hours of operation of the premises.

c-2. What plans, if any, the applicant has to ensure 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 that the business will not violate any code provisions relating to littering of the public right-of-way.

2. FINGERPRINTING. Every applicant for a secondhand motor vehicle dealer's license shall be exempt from the fingerprinting requirement provided in s. 85-21-1.

3. FEE. Each license application shall be accompanied by the fee specified in s. 81-104.6.

92-47. Investigation; Issuance. 1. INVESTIGATION. Every license application shall be referred to the chief of police and the commissioner of neighborhood services, each of whom shall cause an investigation to be made and report their findings to the licensing committee in accordance with s. 85-21-2.

2. HEARING. Each application for a new license shall be referred to the licensing committee for a hearing in accordance with s. 85-2.7.

92-49. Transfers and Changes. See s. 85-19 and ss. 85-35 to 85-39 for provisions relating to the transfer of licenses and changes to applications.

92-51. Renewal, Non-renewal, Suspension or Revocation. 1. RENEWAL. a. Application for the renewal of a secondhand motor vehicle dealer's license shall be made to the city clerk. The clerk shall refer the application to the chief of police and the commissioner of neighborhood services for review.

b. If the chief of police and the commissioner of neighborhood services indicate that the applicant still meets the licensing qualifications, the application shall be referred to the common council for approval 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 an objection. A written objection shall meet the definition in s. 85-2-4 and shall comply with the requirements of s. 85-3-3.

c. If an objection is filed, or if a determination is made that the applicant no longer meets the licensing qualifications, the application shall be forwarded to the licensing committee for a hearing on whether the application should be recommended to the common council for renewal or non-renewal.

2. NON-RENEWAL, REVOCATION OR SUSPENSION. a. Any license issued under this subchapter may be not renewed, suspended or revoked for cause by the common council after notice to the licensee and a hearing. If there is a possibility that the licensing committee will not recommend renewal of the license, or if suspension or revocation proceedings are initiated, the procedures for notice and committee hearing and for the committee report, recommendations and common council consideration provided in ss. 85-3 to 85-5 shall apply.

b. Suspension or revocation proceedings may be initiated 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 interested party.

3. DISQUALIFICATION. Whenever any application is denied, or a license is revoked, surrendered or not renewed, the procedures provided in ss. 85-13, 85-15 and 85-17 shall apply.

4. TRUTH OF STATEMENTS AND AFFIDAVITS. See s. 85-34 for matters relating to truth of statements and affidavits.

92-53. Regulations. **1. RECORDS TO BE KEPT ON TRADE-INS.** Any person, firm or corporation licensed under this section shall, whenever a secondhand motor vehicle is taken in trade as part of a transaction, maintain records of the transaction in accordance with ch. Trans 138, Wis. Adm. Code, as amended.

2. RECORDS TO BE KEPT ON SALES. Any person, firm or corporation licensed under this section to buy, sell or exchange or trade in secondhand motor vehicles shall furnish, upon the sale of a secondhand motor vehicle, the information required under ch. Trans 139, Wis. Adm. Code, as amended.

3. ELIGIBILITY FOR SALE CERTIFICATES. No secondhand motor vehicle dealer licensed under this chapter may apply for a certificate issued pursuant to s. 101-29 to leave a vehicle that is for sale on public property.

4. 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.

5. KEY SECURITY. All keys to a used motor vehicle offered for sale at a business licensed under this section shall be placed in a secure lockbox inside the dealership building at all times when the dealership is not open for business.

6. TRANSACTIONS INVOLVING ARTICLES NOT OWNED. a. No person shall pawn, pledge, sell,

consign, leave or deposit any article of property with or to a licensed secondhand motor vehicle dealer if one or more of the following is true:

a-1. The article of property is not owned by the person.

a-2. The article of property is the property of another, regardless of whether the transaction is occurring with the permission of the owner.

a-3. Another person has a security interest in the article of property.

b. The provisions of par. a shall not apply to any person pledging, selling, consigning, leaving or depositing any article of property with or to a licensed secondhand motor vehicle dealer if the person is any of the following:

a. A duly executed power of attorney for the owner of the property.

b. A personal representative of the estate to which the property belongs.

c. The recipient of a lawful written authorization to pledge, sell, consign, leave or deposit the property issued by the owner of the property prior to the time of the transaction.

92-55. Penalty. 1. Any person violating this subchapter shall, upon conviction for a first offense, forfeit not less than \$50 nor more than \$1,000, together with the costs of prosecution and, in default of payment, may be imprisoned as provided by law.

2. Any person violating this subchapter shall, upon conviction for a second or subsequent offense, forfeit not less than \$500 nor more than \$2,000, together with the costs of prosecution, and, in default of payment, may be imprisoned as provided by law.

Part 9. The title of chapter 95 is repealed and recreated to read:

**CHAPTER 95
HOME IMPROVEMENT CONTRACTORS AND SALESPERSONS**

Part 10. Section 95-1 of the code is repealed.

Part 11. Section 95-2 of the code is repealed.

Part 12. Section 95-15 of the code is repealed.

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: _____

City Clerk - License Division

LRB174910-2

ANDREW VANNATTA: Jeff Osterman

09/30/2019