



Legislation Text

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031223
SUBSTITUTE 3

THE CHAIR

A substitute ordinance relating to the establishment and regulation of loading and unloading zones.

101-23.7 rc

This ordinance establishes a procedure for the application and issuance of loading and unloading zone permits. Applications shall be made to the city clerk and referred to the both the department of public works and the common council member representing the district in which the permit is sought for review and recommendation. If both the department and the council member recommend in favor of the permit's issuance, the city clerk is authorized to issue it. If either recommend against the permit's issuance, the permit shall not be issued unless the applicant requests an appeal, in writing, within 10 working days of the date of denial. In that case, the matter shall be referred to the common council for its decision.

Further, this ordinance establishes a procedure for the non-renewal or revocation of an existing loading and unloading zone permit.

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

Part 1. Section 101-23.7 of the code is repealed and recreated to read:

101-23.7. Loading and Unloading Zone Permits.

1. DEFINITIONS. In this section:

- a. "Commercial vehicle" means a motor vehicle used primarily for the movement of property or special-purpose equipment as opposed to persons, or a motor vehicle that is designed to carry 10 or more persons. Such vehicles shall display permanently painted or sealed/adhered and plainly marked, the name of the business owning or utilizing the vehicles. Commercial vehicles include vehicles commonly called delivery vans, buses and other similar vehicles.
- b. "Disabled person" means an individual who submits, at the time an original or renewal loading zone permit is applied for, a statement from a physician or chiropractor licensed to practice in any state or a Christian Science practitioner residing in the state of Wisconsin certifying any of the following:
 - b-1. The individual is a person with a disability that limits or impairs the ability to walk. If this condition is temporary, the statement shall indicate the approximate date on which the disability will end.
 - b-2. The individual is blind, meaning the individual has central visual acuity that does not exceed 20/200 in the better eye with correcting lenses or a visual field that subtends an angle no greater than 20 degrees. If this condition is temporary, the statement shall indicate the approximate date on which

the disability will end.

b-3. The individual is visually impaired, meaning the individual has a loss of vision that can reasonably be expected to lead to blindness or a loss of vision that represents a handicap to employment or other major life activity. If this condition is temporary, the statement shall indicate the approximate date on which the disability will end.

b-4. The individual has a disability, such as, but not limited to, Alzheimer's disease, delayed mental development or brain injury, which compromises the individual's problem-solving or reasoning skills and which makes it necessary for the individual to receive assistance in moving safely between the individual's residence and any vehicle that transports the individual. If this condition is temporary, the statement shall indicate the approximate date on which the disability will end.

c. "Nonprofit organization" means a federal, state or local unit of government or agency thereof, a public or private elementary, secondary or post-secondary school, or an organization that is described in s. 501(c)(3) of the internal revenue code of the United States of America and is exempt from taxation under s. 501(a) of this code.

2. POLICY. a. Loading and unloading zones are for the use of the general public and are not restricted solely for the use of the permit holders or their patrons.

b. Loading and unloading zones are to be used for the purpose of, and while actively engaged in, loading or unloading property or passengers. Loading zones are not considered parking spaces.

3. LOADING-UNLOADING PRIVILEGE. Permits setting aside curb space for loading and unloading zones in front of commercial establishments may be granted only to the owners of such property and only upon application therefore and the decision of the common council. Residential loading zone permits may only be granted to households containing disabled persons and shall be for 30-foot loading zones only and only upon application therefore and the decision of the common council.

4. APPLICATION. a. Any person, firm, corporation or organization desiring a loading and unloading zone shall, before an original or renewal permit is issued, file a written application with the city clerk on a form provided therefor. The application shall require:

1. The name of the person, firm, corporation or organization seeking the loading and unloading zone permit. If the applicant is a corporation, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and address of each of its officers, directors and designated managers, if any; the application shall be verified by an officer of the corporation.

2. The exact location and extent of the building in front of which the loading and unloading zone is to be located as well as the proposed length and hours of operation of the loading and unloading zone.

3. The reason or reasons for which the loading and unloading zone permit is being sought.

b. Copy for Council Member. The city clerk shall, upon receipt of a written application for a loading and unloading zone permit, serve a copy of the application upon the common council member in whose district the permit is sought. If a disabled person is applying for the transfer of a loading and unloading zone permit to a new location pursuant to s. 81-70-6, the city clerk shall serve a copy of the application upon the common council member in whose district the new loading and unloading zone would be located.

5. ISSUANCE. a. Applications shall be referred to the commissioner of public works who shall cause an investigation to be made and prepare a recommendation to the common council as to whether the requested permit should be granted. In addition, the common council member in whose district the permit is sought shall file his or her recommendation with respect to the requested permit with the city

clerk. In all cases, the standard for determining the appropriateness, location and size of any regulated loading and unloading zone shall be the public welfare.

b. In preparing their recommendations regarding loading and unloading zones, the commissioner of public works and the common council member may consider any of the following:

b-1. The nature of land use in the block in which the loading and unloading zone is requested.

b-2. The availability of parking in the block in which the loading and unloading zone is requested.

b-3. The roadway geometrics in the block in which the loading and unloading zone is requested.

b-4. The hours of the day or night when use of the loading and unloading zone is necessary or most convenient.

b-5. The likely impact of the requested loading and unloading zone on the surrounding neighborhood.

b-6. In the case of residential loading and unloading zones for disabled persons, the validity of the disability claimed.

c. If both the common council member and the commissioner recommend in favor of an application, the application shall be forwarded to the common council for approval. If either the common council member or the commissioner recommends against an application, no permit shall be issued unless the applicant requests, in writing, an appeal before the licensing committee of the common council. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the recommendation of the commissioner and the common council member. Appeals shall be forwarded to the licensing committee of the common council for its recommendation as to whether each permit should be granted. The committee shall hold a hearing on whether to grant each permit for which an appeal has been requested. No hearing shall be heard unless the city clerk's office has provided written notice to the applicant. The notice shall be served upon the applicant so that the applicant has at least 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 denial of the permit application exists and the reasons for possible denial.

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

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

d. At the hearing, the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that the applicant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the applicant may simply make a statement to the committee.

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

e-1. All witnesses will be sworn in.

e-2. The chair shall ask those opposed to the granting of the permit to proceed first.

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

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

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

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

f. The recommendations of the committee regarding the applicant must be based on evidence presented at the hearing. Probative evidence concerning whether the permit should be granted may

be presented on the following subjects:

f-1. Whether the applicant meets the municipal requirements.

f-2. Any of the factors enumerated in par. b.

g. The committee may make a recommendation immediately following the hearing or at a later date. Written notice of the committee's decision will be provided if the decision is made at a later date or if the applicant was not present or represented. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

6. FEES. See s. 81-70 for the required permit fees and terms. Non-profit organizations and disabled persons shall be exempt from paying the loading and unloading zone permit fee at the time that an original permit expires and must be renewed, as well as at subsequent renewals.

7. RENEWAL OF PERMITS.

a. Procedure for Renewal. Applications for renewal of loading and unloading zone permits shall be made to the city clerk. The application shall be referred to the common council for approval unless a written objection has been filed with the city clerk at least 30 days prior to the date on which the permit expires. This objection may be filed by any interested person. If a written objection is filed, or if a determination is made by either the city clerk or the commissioner that the applicant no longer meets the permitting qualifications, the application shall be forwarded to the licensing committee of the common council for its recommendation to the common council.

b. Procedure for Non-Renewal.

b-1. If there is a possibility that the committee will not recommend renewal of a permit, a motion shall be entertained to hold the application in committee and instruct the city clerk to provide written notice to the applicant, unless 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 so that the applicant has at least 3 working days' notice of the hearing. The notice shall contain:

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

b-2-b. A statement of the common council's intention not to renew the permit 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 such reasons for non-renewal and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

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

c. Hearings. All hearings held and committee recommendations prepared pursuant to this subsection shall be conducted as set forth in sub. 9.

d. Disqualification. Whenever any permit is denied renewal, it shall be entered on the record by the city clerk and no loading and unloading permit shall be granted to the same person for that location for a period of 12 months following the date of non-renewal.

e. Surrender. When any permit is surrendered in lieu of a pending non-renewal proceeding, no other loading and unloading permit shall be granted to the same person for that location for a period of 12 months following the date of its surrender.

8. REVOCATION OF PERMITS.

a. Any permit issued under this section may be revoked for cause by the common council after notice to the permittee and a hearing.

b. Revocation proceedings may be instituted by the licensing committee of the common council 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 permittee involving conduct which would violate ordinances that are grounds for revocation of a permit, the city clerk shall issue notice to the permittee of the licensing committee's intention to hear the matter. The notice shall be served upon the permittee so that the permittee has at least 10 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 revocation of the permit exists and the reasons for possible revocation.

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

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

e. If the permittee appears before the committee at the time designated in the notice and denies the charges contained in the complaint, an evidentiary hearing in connection with the revocation shall be conducted by the committee at that time. If the permittee 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 licensee in connection with the revocation.

f. All hearings held and committee recommendations prepared pursuant to this subsection shall be conducted as set forth in sub 9.

9. HEARING PROCEDURE.

a. Authority of the Committee. The licensing committee of the common council shall conduct hearings with respect to the non-renewal or revocation of a loading and unloading zone permit pursuant to this subsection. The chair of the 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 such 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 permittee 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 or Revocation. The recommendation of the committee regarding the permit shall be based on evidence presented at the hearing. Probative evidence concerning non-renewal or revocation may include evidence of:

d-1. Failure of the permittee to meet the municipal qualifications.

d-2. Permitting the loading and unloading zone to be used as a parking space by vehicles not actually engaged in loading or unloading.

d-3. The death of the disabled person for whom the loading and unloading zone permit was issued.

d-4. Evidence related by the department of public works that the circumstances for which the permit was first issued no longer pertain.

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

e. Committee Report. The committee may make a recommendation immediately following the hearing or at a later date. The committee may recommend that the permit be renewed, not renewed or revoked. All non-renewals shall be effective as of the expiration date of the permit. All revocations shall be effective upon service of notice of the revocation upon the permittee or person in charge of the premises at the time of service.

f. Council Action.

f-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the permittee. 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.

f-2. If the committee recommends that the permit not be renewed or be revoked, then within 7 days of the receipt of the report and recommendation of the committee, the permittee may file written exceptions to the report and recommendations of the committee.

f-3. Any exceptions filed by the permittee 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.

f-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 permittee by first class, prepaid mail sent to the address listed by the permittee on his or her application in an envelope bearing the return address of the licensing division and also notify the complainant and 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 permit be revoked or not 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 permittee in opposition to the report and recommendation and oral argument by the complainant objecting to the report and recommendation shall be permitted only at the discretion of the chair. If argument is permitted by the chair, argument shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation and the written exceptions. Permittees shall appear only in person or by attorney. Corporate permittees shall appear only by the agent or by attorney. Partnerships shall be represented only by a partner or by attorney. Limited liability companies shall be represented only by the agent or by attorney. Complainants shall appear only in person or by attorney. 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.

f-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 or revocation with the committee's report and recommendation, the city clerk shall give

notice of each non-renewal or revocation to the person whose permit is not renewed or revoked. If the common council finds the complaint to be untrue, the proceedings shall be dismissed without cost to the accused.

10. REQUEST TO SURRENDER A PERMIT. If a permittee wishes to surrender his or her permit after receiving a notice for a hearing on non-renewal or revocation, the permittee must request, in writing, permission from the licensing committee of the council 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.

11. CHANGE OF CIRCUMSTANCE.

a. When a disabled person for whom a loading and unloading zone permit is issued dies or is no longer disabled as defined by this section, the loading and unloading zone permit issued for this person shall be surrendered to the city clerk within 30 days of the change of circumstance.

b. Any permittee wishing to alter the length of an existing loading and unloading zone or alter the hours during which an existing loading and unloading zone is in effect, shall file a new application and pay the appropriate fee as required by sub. 4.

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: _____

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BJZ/rk
8/19/2004