



Legislation Text

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020963

SUBSTITUTE 5

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A substitute ordinance regulating shows or exhibitions.

81-106 rc

84-40 rc

This ordinance repeals and recreates current code provisions related to shows and exhibitions. It requires individuals or corporations hosting shows or exhibitions to acquire either an annual license or a one-time permit from the city and provides a definition of "shows or exhibitions". Excluded from this definition are events held in taverns, if a tavern also holds a tavern amusement or theater license, permanent theaters or any establishment holding a theater license, as well as shows conducted exclusively by charitable, eleemosynary, educational or religious organizations on their own premises.

Applicants are required to submit a plan of operation for the premises on which the shows or exhibitions are to take place. The plan shall include hours of operation, the number of patrons expected, the legal occupancy limit of the premises, the number of off-street parking spaces available at the premises, whether or not the shows or exhibitions held at the premises will make use of sound amplification equipment and what plans, if any, the applicant has to provide security and for the orderly appearance and operation of the premises with respect to litter and noise.

This ordinance also establishes a minimum clothing standard for those performing in licensed shows or exhibitions and provides a procedure for the non-renewal, suspension or revocation of shows or exhibitions licenses.

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

Part 1. Section 81-106 of the code is repealed and recreated to read:

81-106. Shows or Exhibitions. 1. REGULAR. Each shows or exhibitions license shall be issued for the calendar year and shall expire on December 31 of each year, irrespective of the date of issuance. The fee for each license shall be \$225.

2. TEMPORARY. The fee for each shows or exhibitions permit shall be \$10.

(See s. 84-40.)

Part 2. Section 84-40 of the code is repealed and recreated to read:

84-40. Shows or Exhibitions.

1. FINDINGS. The common council finds that various shows and exhibitions can be a source of noise, litter, large and unruly congregations of people, traffic and parking congestion that adversely affects the health, safety and welfare of the people of the city of Milwaukee. This section is established pursuant to the responsibility of the common council to legislate and license for the protection of the health, safety and welfare of the people of the city of Milwaukee and to ameliorate these undesirable secondary effects that can result from these operations.

2. DEFINITIONS. In this section:

- a. "Licensing committee" means the standing committee of the common council which is assigned jurisdiction over licensing matters.
- b. "Person" means any individual, firm, corporation, limited liability corporation, company, partnership or association acting in a fiduciary capacity.
- c. "Shows or exhibitions" includes any of the following provided for a fee: plays, skits, musical revues, children's theater, dance productions, public dance, musical concerts, opera and the production or provision of sights or sounds or visual or auditory sensations which are designed to or may divert, entertain or otherwise appeal to members of the public who are admitted to a place of entertainment, which is produced by any means, including radio, phonograph, television, video reproduction, tape recorder, piano, orchestra or band or any other musical instrument, slide or movie projector, spotlights, or interruptible or flashing light devices and decoration.

3. LICENSE OR PERMIT REQUIRED. No person may conduct or operate within the city any show or exhibition without first securing either an annual license or a one-time permit therefor.

4. EXEMPTIONS. This section does not apply to:

- a. Shows or exhibitions held in taverns, if a tavern also holds a tavern amusement or theater license, permanent theaters or any establishment holding a theater license issued pursuant to s. 83-1.
- b. Any public show or exhibition conducted exclusively by charitable, eleemosynary, educational or religious organizations on their own premises.

5. APPLICATION. a. Application for a shows or exhibitions license or permit shall be filed with the city clerk on a form provided therefor. 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 address of the premise for which the license or permit is to be granted, including the aldermanic district in which it is situated.

b-3. If the applicant is a corporation, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and address of each of its officers, directors and designated managers, if any; the application shall be verified by an officer of the corporation.

b-4. If the applicant is a partnership, the application shall set forth the name and resident address of each of the partners, including limited partners, and the application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partners.

b-5. If the applicant is a club, association or other organization which is neither a corporation or partnership, the application shall set forth the exact name of the entity together with the names and residence 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 date of birth of the applicant.

b-8. A completed plan of operation on a form provided therefor by the city clerk. The plan of operation shall require:

b-8-a. The planned hours of operation for the premises.

b-8-b. The number of patrons expected on a daily basis at the premises.

- b-8-c. The legal occupancy limit of the premises.
- b-8-d. The number of off-street parking spaces available at the premises.
- b-8-e. Whether or not the shows or exhibitions held at the premises will make use of sound amplification equipment and, if so, what kind.
- b-8-f. What plans, if any, the applicant has to provide security for the premises.
- b-8-g. What plans, if any, the applicant has to insure the orderly appearance and operation of the premises with respect to litter and noise.
- b-8-h. Any other licenses held by the applicant or attached to the premises.
- b-9. Such other reasonable and pertinent information the common council or the proper licensing committee may from time to time require.
- c. All applicants shall be fingerprinted. If the applicant is a corporation, the agent and all the officers and directors as well as the stockholders owning 20% or more of the stock of the corporation shall be fingerprinted. If the applicant is a partnership, each partner shall be fingerprinted. The requirement that an applicant be fingerprinted shall not apply to a person already permitted by the city when that person is renewing a license. The fingerprinting requirement shall not apply to the officers and directors of nonprofit corporations which apply for a license or permit, except that the fingerprinting requirement shall apply to the agents of these corporations.

- 6. ISSUANCE.**
- a. Applications shall be referred to the chief of police, the commissioner of neighborhood services and the commissioner of health, all of whom shall cause an investigation to be made and report their findings to the licensing committee.
 - b. The licensing committee shall hold a hearing on whether or not to issue each new license or permit. If there is a possibility of denial, no hearing shall be heard unless the city clerk's office has provided written notice to the applicant. The notice shall be served upon the applicant so that the applicant has at least 3 days' notice of the hearing. The notice shall contain:
 - b-1. The date, time and place of the hearing.
 - b-2. A statement to the effect that the possibility of denial of the license or permit application exists and the reasons for possible denial.
 - b-3. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for denial and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.
 - b-4. A statement that the applicant may be represented by an attorney of the applicant's choice at the applicant's expense, if the applicant so wishes.
 - c. If there is a possibility of denial, at the hearing the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the applicant admits notice. The chair shall advise the applicant that the applicant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the applicant may simply make a statement to the committee.
 - d. A due process hearing shall be conducted in the following manner:
 - d-1. All witnesses will be sworn in.
 - d-2. The chair shall ask those opposed to the granting of the license or permit to proceed first.
 - d-3. The applicant shall be permitted an opportunity to cross-examine.
 - d-4. After the conclusion of the opponent's testimony, the applicant shall be permitted to present the applicant's own witnesses, subject to cross-examination.
 - d-5. Committee members may ask questions of witnesses.
 - d-6. Both proponents and opponents shall be permitted a brief summary statement.
 - e. The recommendations of the committee regarding the applicant must be based on evidence presented at the hearing. Probative evidence concerning whether or not the license or permit should

be granted may be presented on the following subjects:

e-1. Whether or not the applicant meets the municipal requirements.

e-2. The appropriateness of the location and premises where the show or exhibition is to be held and whether the location of the show or exhibition will create undesirable neighborhood problems.

Probative evidence relating to these matters may be taken from the plan of operation submitted pursuant to sub. 5-b-8, but not the content of any message.

e-3. The applicant's record in operating similarly licensed premises.

e-4. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the permitted activity.

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

f. 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.

7. SHOWS OR EXHIBITIONS PERMIT. a. The granting of a shows or exhibitions permit shall authorize the permit holder to operate one show or exhibition lasting no longer than 72 consecutive hours irrespective of the show or exhibition's schedule. This authority shall be contingent upon the permit holder also obtaining any other special privileges or licenses required for the conduct of a show or exhibition.

b. Application for a shows or exhibitions permit and the review of the permit application shall be conducted as set forth in subs. 5 and 6 save that application for a shows or exhibitions permit shall be made to the city clerk no less than 30 days prior to the date of granting by the common council.

c. If the common council grants the application for a shows or exhibitions permit, the city clerk shall issue an appropriate document to the applicant confirming that fact and specifying the date, period of time and specific location for which the permit shall be in effect. The document shall also contain any restrictions or conditions which the common council may place on approvals. The city clerk shall, within 24 hours after the issuance of the approving document, inform the chief of police of the date, place and event for which the permit was issued.

d. No person may receive more than 4 shows or exhibitions permits in a calendar year. No permit shall be issued to an applicant who has requested permission to hold a show or exhibition on a premises at which 4 shows or exhibitions have previously been held in the same calendar year. No permit shall be issued to an applicant who has requested permission to hold a show or exhibition on a premises at which a show or exhibition has been held less than 15 days prior to the date on which the show or exhibition for which the permit is sought is to be held.

8. DEPOSIT OF FEE; REFUND. a. Prior to issuance of a license or permit, each applicant shall deposit with the city treasurer the full amount of the fee required in s. 81-106 for the license or permit applied for.

b. It shall be the duty of the city treasurer to accept the deposit, issue a receipt therefor, and cause a record to be kept thereof. When a license or permit is granted by the common council, it shall be the duty of the city treasurer to apply such deposit as full payment of the license or permit fee, upon receipt of certification thereof by the city clerk.

c. It shall be the duty of the city clerk to enter on all applications filed with him the amount deposited with the city treasurer, the date of the deposit and the number of the treasurer's receipt.

d. Upon the withdrawal or the common council's denial of a shows or exhibitions license application, the amount of \$50 of the application fee shall be retained by the city treasurer to defray the cost of

investigation of facts and administration thereof. The remainder of the application fee and deposits on all applications denied by the common council shall be refunded by the city treasurer upon surrender of the deposit receipt certified by the city clerk, provided that the certified deposit receipt is surrendered no later than one year after the date of the license denial.

9. FEES. See s. 81-106 for the required permit fees and terms.

10. CHANGE IN PLAN OF OPERATION. If, after the license has been granted or issued, the licensee wishes to substantially deviate from the plan of operation as submitted with the original application, the licensee shall file a sworn, written request with the city clerk which states the nature of the change. No change shall take place until the request has been approved by the common council. The common council's approval shall be given only if it determines, in the manner set forth in par. 6-e-2 above, that the change is compatible with the normal activity of the neighborhood in which the premises is located.

11. CERTAIN COSTUMES PROHIBITED. a. No licensee or permittee, either personally or through his or her agent or employe, shall furnish entertainment or permit the performance of any act, stunt or dance by dancers, performers or entertainers, whether such dancers, performers or entertainers are employed by the licensee or permittee or through his or her agent or not, and no entertainer or employe shall furnish any entertainment or perform any act, stunt or dance unless such dancers, performers or entertainers shall meet the following wearing apparel standards when performing or when present upon the premises:

1. That portion of every costume to be worn by dancers, performers or entertainers covered by this subsection and which relates to the breast or chest area and/or to the area of the sex organs and buttocks shall be of nontransparent material.

2. The top portion of the costume worn by a female dancer, performer or entertainer or a female impersonator shall be so conformed, fabricated and affixed to the body so as to keep the areola and the nipple of the breast completely covered at all times.

3. The lower portion of the costume worn by a female dancer, performer or entertainer, or a female impersonator shall encircle the body at the area of the sex organs and buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the sex organs, the pubic hair and the cleavage of the buttocks at all times. An animal fur piece or other device simulating the hair surrounding the pubic area shall not constitute compliance with the costume requirements of this section.

4. a. The lower portion of the costume worn by a male dancer, performer or entertainer shall encircle the area of the sex organs and the buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the pubic hair, sex organ and the cleavage of the buttocks at all times.

b. No licensee or permittee, either personally or through his agent or employe, shall permit any patron to participate in any act, stunt or dance in violation of this subsection.

c. The common council may revoke any license issued hereunder at any time for any violation of this subsection. Notice and hearing on such revocation shall be conducted in accordance with sub. 14.

12. RENEWAL OF LICENSES.

a. Procedure for Renewal. Applications for the renewal of a shows or exhibitions license shall be made to the city clerk. The clerk shall refer the application for license renewal to the chief of police, the commissioner of neighborhood services and the commissioner of health for review. If the chief of police, the commissioner of neighborhood services and the commissioner of health 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 30 days prior to the date on which the license expires. This objection may be filed by any interested person. 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 or suspend 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 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. 14.

d. Disqualification. Whenever any license is denied renewal, it shall be entered on the record by the city clerk and no shows or exhibitions license 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 license is surrendered in lieu of a pending non-renewal proceeding, no other shows or exhibitions license shall be granted to the same person for a period of 12 months following the date of its surrender.

13. REVOCATION OR SUSPENSION OF LICENSES.

a. Any license issued under this section may be suspended or revoked for cause by the common council after notice to the licensee 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 licensee involving conduct which would violate ordinances that are grounds for revocation or suspension of a license, the city clerk shall issue a summons, as authorized by Wisconsin statutes, demanding that the licensee appear before the licensing committee, not less than 3 days nor more than 10 days from the date of issuance, to show cause why the license should not be revoked or suspended. A police officer shall serve the summons upon a licensee in accordance with Wisconsin statutes, and shall also serve a copy of the complaint with a copy of this subsection upon the licensee.

d. Upon receipt of evidence that the summons has been served, the licensing committee shall convene at the date and time designated in the summons for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the common council in

connection with the proposed revocation or suspension.

e. If the licensee appears before the committee at the time designated in the summons and denies the charges contained in the complaint, an evidentiary hearing in connection with the revocation or suspension shall be conducted by the committee at that time. If the licensee does not appear, or appears but does not deny the charges contained in the complaint, the complaint shall be taken as true and the committee shall hear the arguments of the complaints and the licensee in connection with the revocation or suspension.

f. All hearings held and committee recommendations prepared pursuant to this subsection shall be conducted as set forth in sub. 14.

14. HEARING PROCEDURE.

a. Authority of Licensing Committee. The licensing committee shall conduct hearings with respect to the non-renewal, suspension or revocation of a shows or exhibitions license 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 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 licensee 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 licensee must 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 licensee to meet the municipal qualifications.

d-2. Pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed activity, by the licensee, his or her employes, or patrons.

d-3. Failure to abide by conditions imposed by the common council pursuant to par. 7-c.

d-4. Neighborhood problems due to management or location.

d-5. Any other factor or factors which reasonably relate to the public health, safety and welfare or which demonstrate that the establishment has generated the undesirable secondary effects set forth in sub. 1.

e. 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 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 license be renewed with a period of suspension, the license may be suspended for not less than 10 days and no longer than 90 days. All non-renewals, suspensions and revocations shall be effective upon service of notice of the non-renewal, suspension or revocation upon the licensee 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 licensee. 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 license not be renewed, be revoked or suspended, then within 7 days of the receipt of the report and recommendation of the committee, the licensee may file written exceptions to the report and recommendations of the committee.

f-3. Any exceptions filed by the licensee to the report and recommendations of the committee shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the full 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 licensee and complainant by certified 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 license be suspended or 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 licensee in opposition to the report and recommendation and oral argument by the complainant objecting to the report and recommendation shall be permitted only at the discretion of the chair. If argument is permitted by the chair, argument shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation and the written exceptions. Licensees shall appear only in person or by counsel. Corporate licensees shall appear only by the agent or by counsel. Partnerships shall be represented only by a partner or by counsel. Limited liability companies shall be represented only by the agent or by counsel. Complainants shall appear only in person or by counsel. Any person making an appearance before the council pursuant to this subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

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, 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.

15. REQUEST TO SURRENDER A LICENSE. If a licensee wishes to surrender his or her license after receiving a notice for a hearing on non-renewal, revocation or suspension, the licensee 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.

16. ALTERATION TO PREMISES. Any alteration, change or adion resulting in expansion of a licensed premises shall be approved by the licensing committee prior to issuance of a license, pursuant to s. 200-24, by the department of city development. An applicant whose application has been denied by the committee may appeal the decision to the common council.

17. PENALTY. Any person convicted of violating this section shall be fined not less than \$500 nor more than \$2,000 for each violation, plus costs of prosecution, and, in default thereof, be imprisoned for a period not to exceed 80 days, or until forfeiture costs are paid.

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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