



Legislation Text

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ORIGINAL

THE CHAIR

An ordinance relating to citizenship and qualified alien status requirements for issuance of professional or commercial licenses or permits.

84-3 rn

84-3 cr

85-13-2 am

The United States Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibits state and local governments from conferring public benefits, including professional and commercial licenses and permits, upon persons who are not citizens of the United States or certain qualified aliens.

This ordinance prohibits the city clerk from issuing professional or commercial licenses or permits to persons who are not citizens or qualified aliens. The ordinance requires applicants for licenses or permits to present evidence establishing legal citizenship or assisting the city clerk in determining qualified legal alien status.

The ordinance directs the city clerk to identify the affected licenses and permits and to establish guidelines for evidence presented by applicants to establish the identity of the applicant and to assist in establishing the status of the applicants.

The ordinance further establishes procedures for reviewing determinations that applicants for new or renewal licenses or permits are eligible as citizens or qualified aliens for the public benefit conferred when granted a new or renewal professional or commercial license. The ordinance provides for revocation of a license or a permit when a licensee or permittee is no longer eligible for public benefit. The ordinance also provides for procedural protections under state law for applicants for new and renewal alcohol beverage licenses.

Whereas, Section 1621 of the United States Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides that, with limited exceptions, only United States citizens and qualified legal aliens may receive a public benefit including a professional or commercial license or permit; and

Whereas, The regulation of immigration is exclusively a federal power; and

Whereas, The Hon. J.B. Van Hollen, Attorney General of the State of Wisconsin, issued an opinion dated October 25, 2007, in which he recommends that the Wisconsin Department of Regulation & Licensing verify the immigration status of all applicants for professional licenses and credentials to assure that they are not issued in violation of federal law; and

Whereas, The Attorney General further recommends a verification process be employed utilizing the United States Department of Homeland Security Citizenship and Immigration Services database known as the Systematic Alien Verification for Entitlements Program for screening applicants to assure that professional or commercial licenses are not issued to illegal aliens in violation of federal law; and

Whereas, The Attorney General further references the Interim Guidance on Verification of Citizenship, Qualified Alien Status, issued by Order Number 2129-97 of the U. S. Attorney General, and published at pp. 61344 to 61350, Federal Register, Vol. 62 on November 17, 1997, cautioning that the process for verifying citizenship and qualified alien status for public benefits eligibility must not violate federal nondiscrimination and privacy requirements: and

Whereas, The Milwaukee City Attorney has provided the City Clerk and the Manager of the Licenses Division a letter dated July 30, 2008, in response to a series of questions relating to issues raised by federal law and the opinion of the Wisconsin Attorney General; now, therefore,

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

Part 1. Section 84-3 of the code is renumbered s. 84-1.

Part 2. Section 84-3 of the code is created to read:

CHAPTER 84. GENERAL LICENSING PROVISIONS; AMUSEMENT MACHINES

SUBCHAPTER 1. GENERAL LICENSING PROVISIONS

84-3. Evidence of Citizenship and Qualified Alien Residency. 1. FINDINGS AND PURPOSE. The common council finds that, to assure compliance with federal laws prohibiting state and local governments from conferring public benefits, including issuance of professional and commercial licenses and permits, to persons who are not citizens of the United States or qualified aliens residing temporarily or permanently within the United States, it is necessary and appropriate to assure adequate documentation of the identity of applicants for professional and commercial licenses and permits, and to further assure adequate documentation of citizenship or qualified alien status.

2. DEFINITIONS. In this section:

a. "Citizenship" means lawful citizenship of the United States resulting from birth in the United States, its possessions or territories, or resulting from naturalization as provided in Title 8, ss. 1421, et seq., of the United States Code, as amended.

b. "Evidence of citizenship" means a valid and certified certificate of birth documenting that an individual was born in a state, territory or possession of the United States, a valid United States passport, or a valid certificate of naturalization, or, if such documentation does not exist, evidence of citizenship shall include a certified copy of a determination or declaration by a court of competent jurisdiction or by the appropriate officer of a vital statistics agency of any state, territory or possession of the United States, that an identified individual is a citizen of the United States.

c. "Evidence of identity" means a valid photo identification card or card bearing a fingerprint issued by an agency of the United States, or issued by any agency of state or local government of the United States, its territories and possessions, or, if such documentation does not exist, then evidence of identity shall be limited to those documents contained in a written list established and published by the city clerk.

d. "Licensing committee" means the licensing or permitting committee designated by code or rule to review and hear matters related to specified licenses or permits.

e. "Qualified alien" means an individual who is not a citizen of the United States, and who is not disqualified from

receiving a public benefit including a professional or commercial license or permit under the provisions of the United States Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC s.1621, as amended, or its successor provisions.

f. "Professional or commercial license or permit" means a license or permit issued by the city clerk that authorizes a person, including a partnership, limited liability company, corporation or other firm, to engage in professional or commercial activities.

3. QUALIFICATION FOR PROFESSIONAL OR COMMERCIAL LICENSE OR PERMIT. a. Any person or agent for a person making application to the city clerk for a professional or commercial license or permit shall provide documentary evidence of citizenship or qualified alien status as required by this section. The city clerk shall not accept any application for a new or renewal professional or commercial license or permit upon failure of the applicant to provide the required evidence.

b. In addition to documentary evidence, the city clerk may request non-citizen applicants to provide such additional information as is necessary to query the Systematic Alien Verification for Entitlement program of the U. S. department of homeland security, or a successor verification system.

c. Applications for renewal of professional or commercial licenses or permits shall include a question whether citizenship or qualified alien status has changed since the initial or subsequent application was submitted. If the applicant states that no change in status has occurred, and if sufficient documentation of evidence of citizenship or qualified alien status appears in the records of the city clerk, the renewal application may be processed upon verification by the city clerk that the status of an applicant identified as a qualified alien has not changed.

4. DENIAL OF APPLICATION AND LICENSE. a. New Applications. The city clerk shall decline to accept and to process any new application for a professional or commercial license or permit if the applicant fails to provide evidence of identity, evidence of citizenship required in this section or, if the applicant is a non-citizen, verification of eligibility for benefits cannot be established upon inquiry to the United States department of homeland security.

b. Renewal Applications. Applicants for renewal of a professional or commercial license or permit shall not be required to submit evidence of citizenship or qualified alien status if the city clerk determines that sufficient evidence has been previously submitted as reflected in the license files of the city clerk. If the city clerk determines that there is not sufficient evidence of citizenship or qualified alien status reflected in the license files, the city clerk shall request the applicant to produce the evidence. If the applicant is a non-citizen, the city clerk shall request evidence and information necessary to query the Systematic Alien Verification for Entitlements system. The city clerk, upon failure of the applicant for a renewal license or permit to provide sufficient evidence of citizenship or, in the case of a non-citizen applicant, failure to receive verification upon inquiry to the United States department of homeland security that the applicant is eligible for public benefits as a qualified alien, shall advise the applicant by written notice that the application has been rejected and shall state the reasons for rejection. The notice shall advise the applicant of the applicant's right to review by the appropriate licensing committee solely on the issue of citizenship or qualified alien status. Written notice shall include a statement that the applicant has the right to be represented by legal counsel, and may have the assistance of an interpreter, all at the applicant's own expense.

c. Committee Review, Referral and Recommendation. Upon request made within 10 days of the date of notice provided in par. b., the appropriate licensing committee shall schedule a hearing to review the decision of the city clerk rejecting the application for renewal of a license or permit for failure of the applicant to provide sufficient evidence of citizenship or, in the case of a non-citizen applicant, for lack of verification of eligibility for public benefit upon inquiry to the United States department of

homeland security. If the licensing committee finds, upon review at hearing, that sufficient evidence of citizenship has been provided by the applicant, or that inquiry to the United States department of homeland security verifies eligibility of the applicant for public benefits, or that an administrative error has been made in conducting the inquiry, the committee shall refer the application to the city clerk for further processing. If the committee finds that the applicant has not provided sufficient evidence of citizenship, or in the case of a non-citizen applicant, proper inquiry to the United States department of homeland security has not resulted in verification of eligibility for public benefit, the committee shall recommend denial of the application for renewal together with a statement of committee findings of fact and conclusions of law.

d. Common Council. Upon recommendation of the licensing committee for denial under par. c., the common council shall deny the application and license or refer the application back to committee with instructions.

5. EXPIRATION AND REVOCATION. a. Expiration of Qualified Alien Eligibility. If documentation, evidence or information presented at application for a new or renewal professional or commercial license or permit indicates that eligibility for public benefit may expire prior to the end of the license or permit period, the licensee or permittee shall present documentation to the city clerk of an extension or change in resident status, if any, that authorizes continued receipt of public benefit. Documentation of an extension or change in status shall be provided to the city clerk no later than 10 days after the expiration date appearing in prior documentation. The city clerk shall cause an inquiry to be made to the United States department of homeland security to verify continued eligibility. Failure to provide documentation of an extension or change in status, or failure to verify the continued eligibility of the licensee or permittee to receive public benefit shall be grounds for revocation.

b. Revocation Due to Ineligibility. Upon receipt of information that a licensee or permittee for a professional or commercial license is no longer eligible for a public benefit due to change of citizenship or qualified alien status, the city clerk shall initiate revocation proceedings upon notice to the licensee or permittee. Proceedings before the licensing committee and review by the common council shall be conducted in the same manner as provided for the particular license or permit except that the sole issue to be decided is the continued eligibility for public benefit of the licensee or permittee under this section.

6. CITY CLERK TO ISSUE GUIDELINES. a. List of Licenses. The city clerk shall, in consultation with the city attorney and consistent with federal and state law, prepare a list of those licenses and permits issued by the city clerk that relate to professional or commercial activities. The list, and amendments made to the list, shall be provided to the common council by communication from the city clerk.

b. Evidence and Documentation. The city clerk, in consultation with the city attorney, shall prepare guidelines for receipt, review and verification of evidence provided by applicants for professional or commercial licenses or permits that substantiates citizenship or qualified alien status. Applicants shall declare their status as a United States citizen, qualified alien or otherwise in each new or renewal application.

b-1. A valid original or certified birth certificate, a valid and unexpired United States passport, a valid certificate of naturalization, or, if such documentation does not exist, a certified copy of a

determination or declaration by a court of competent jurisdiction or by the appropriate officer of a vital statistics agency of any state, territory or possession of the United States, that an identified individual is a citizen of the United States, shall constitute sufficient evidence to meet the qualification requirements of sub. 3. The city clerk may provide for retention of copies of documentation or may require that notation be made on each application by staff of the city clerk clearly identifying the evidence submitted by the applicant and found to be acceptable. Evidence of citizenship need not be presented by an applicant for renewal of a license or permit if acceptable evidence from a prior application appears documented in the records maintained by the city clerk.

b-2. Evidence to assist the city clerk in determining that an applicant is a qualified alien includes original documents issued by the United States citizenship and immigration service clearly identifying the applicant by picture and may include alien registration receipt cards, resident alien cards, permanent resident cards, employment authorization documents, resident reentry permits, refugee travel documents or other similar documents provided that the type of document presented by the applicant indicates a status permitting the applicant to work or engage in business in the United States. The city clerk shall consult with the United States department of homeland security, or its successor agency for handling of citizenship and immigration services. Copies of evidence submitted by applicants declaring qualified alien status shall be retained by the city clerk in electronic form or otherwise.

b-3. Licensees and permittees declaring qualified alien status shall be advised in writing that they must notify the city clerk immediately upon any change in status. Failure of an alien licensee or permittee to present evidence of a change in status constitutes grounds for revocation of the license or permit if the change or expiration of status results in disqualification for public benefits or work privileges under federal law. At any time that a change in alien status disqualifies the licensee or permittee from public benefits or working privileges, the license or permit shall be immediately surrendered to the city clerk.

b-4. The city clerk shall establish procedures for verification of citizenship or alien status that may include consultation with the Systematic Alien Verification for Entitlements intergovernmental information-sharing program of the United States department of homeland security.

c. Guidelines. The guidelines established by the city clerk shall require that evidence be presented by each applicant establishing the identity of the applicant. If the evidence presented to establish citizenship or qualified alien status does not clearly and plainly also establish the identity of the applicant, the city clerk may require additional evidence such as a valid driver license or other government issued photo identity card.

d. Common Council Approval. The initial guidelines established by the city clerk under this subsection shall be submitted to the common council for review and approval. Subsequent changes in the guidelines shall be timely communicated to the common council.

Part 3. Section 85-13-2 of the code is amended to read:

85-13. Disqualification for License.

2. EXCEPTIONS. This section shall not apply to any application that is denied or any license that is not renewed for a reason based solely on the failure of the applicant to appear before the licensing

committee for a hearing on whether a new or renewal application shall be recommended for approval or denial to the common council. >>This section shall not apply to any application for a new or renewal license or permit that is refused or denied solely for failure to provide valid evidence of citizenship or qualified alien status or evidence of identity as required in s. 84-3.<<

Part 4. The provisions of s. 84-3 shall take effect on and after January 1, 2010, for new, renewal or transfer applications for all affected professional or commercial licenses or permits.

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: _____

LRB08519-3

RLW

7/21/2009