



**CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES**

May 24, 2021
REPORT OF THE LICENSES AND PERMITS COMMITTEE

Attendee Name	Title	Status	Arrived
William A. White Jr.	Chair	Present	
Wilfred N. Mbah	Vice Chair	Present	
Jefferson Thomas ("J.T.") Scott	Ward Two City Councilor	Present	

Others present: John Long - City Clerk, Hannah Pappenheim - Law, , Peter Forcellese - Legislative Clerk.

The meeting took place virtually via GoToWebinar and was called to order at 6:00 PM by Chair White and adjourned at 8:00 PM on a roll call vote of 3 in favor (Councilors Scott, Mbah and White), 0 against and 0 absent.

208979: Submitted by Eversource to install 7 feet of conduit in Willow Ave from Pole 198/22 to a point of pickup at 201 Willow Ave.

Mr. Long reported that Councilor Davis has no further objections to this moving forward.

RESULT:	APPROVED. [UNANIMOUS]
AYES:	White Jr., Mbah, Scott

211425: Matthew Shannon submitting a petition to revoke the Junk Dealer License held by Tosh Enterprises LLC.

RESULT:	PLACED ON FILE
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211921: Renewing Junk Dealer's License, Tosh Enterprises, 260 Elm St.

Attorneys Stephen Rider, representing the objector, and Bill Hudak, representing the applicant, were present.

This was the second committee meeting on this matter. The first was a public hearing held on April 26, 2021. At that meeting, Chair White had stated that he would hold a second committee meeting and provide the applicant and the objector additional time to submit any further information that they wanted the Committee to review at that subsequent meeting. At the start of this meeting, Chair White reported that both parties had submitted information to the City Clerk regarding this matter and he informed all parties that a decision will not be made regarding the interest rate, thus the interest rate will not be a consideration of whether or not to approve the applicant's license.

Attorney Hudak requested that former Somerville Police Detective, Ernest Nadile, be allowed to testify on his client's behalf. (At the time of the request, Mr. Nadile was not in the audience). Attorney Hudak presented his case and listed the procedures that have been updated by his client. He requested that 1) the City of Somerville adopt the City of Boston's pawn regulations, and 2) that the Committee establish an interest rate and send a letter to the Division of Banks for its approval.

His client has ceased pawn activity per the committee's request and connected with a service to run auctions. If pawn customers have questions, his client is willing to post information of where help is available. Attorney Hudak stated that his client took steps to "cross the T's and dot the I's". The business has essentially been closed, except to let people renew their pawns and Attorney Hudak asked that his client be allowed to continue business to the letter of the law. He noted that his client is a bonded pawn broker.

Chair White noted that the condition imposed by the committee was based on state law. Councilor Scott said he remains concerned based on the applicant's long-standing disregard for state law and he sees nothing to change his inclination in this matter. Chair White commented that any decision would be based on any documents introduced, arguments of counsel, and testimony presented.

At this point, Retired Somerville Police Detective Ernest Nadile joined the meeting and was allowed to offer testimony. He testified on behalf of the applicant and told the committee that he was in charge of pawn shops for 10 years. He said that he researched state law and found that the city is supposed to work with applicants to have the city adopt state laws. The applicant, he said, has gone above and beyond what is required of him. The applicant's establishment brings business into Davis Square. Mr. Nadile stated that overall, the applicant has done well as a pawn dealer and any problems brought to his attention were addressed right away.

Chair White asked Attorney Hudak if he had any additional witnesses and Attorney Hudak responded that he didn't. The Chair stated that it was his intention to move to approve the license renewal except that the applicant could not continue operating a pawn brokerage business. Ms. Pappenheim suggested moving for the findings of fact prior to acting on the license renewal. Chair White then referenced the ordinances and facts, as follows:

Sec. 8-1 - Revoking licenses and permits

Any license or permission which may be granted under the provisions of any ordinance may be revoked or annulled at any time by the city council without notice; and no license or permission granted under any ordinance, or any thing done or right acquired by virtue of the same, shall entitle any person to a continuance of such license, permission, or thing done or right acquired.

Sec. 8-2 - Issuance and expiration of licenses

All licenses required by this chapter shall be issued by the city clerk, and shall expire on the first day of May, annually, unless otherwise provided by law, ordinance or order of the city council.

In addition, the Junk Dealer license held by Tosh Enterprises contains the following conditions: "The issuance of this license is expressly conditional upon compliance with all applicable local, state and federal laws, ordinances, rules, regulations, and conditions. This license is subject to revocation, suspension, or modification for failure to comply with these laws, ordinances, rules, regulations, and conditions, including but not limited to any specific conditions listed below."

At the hearing on April 26, 2021 the Committee considered whether or not to renew the Junk Dealer's license for Tosh Enterprises. While the City's ordinances make clear that the Tosh Enterprises' current license does not entitle it to the continuance of such a license, and licenses are revocable at the Council's will, in consideration of the fact that the license holder may rely on the

junk dealer's license as a means of income, the committee gave the license holder ample opportunity to be heard on the renewal before it.

After reading the above, Chair White stated that the following are the findings of fact that are applicable to the item before the Committee and that he will move for the Committee to approve them:

1. On March 4, 2021 Attorney Rider, representing petitioner Michael Shannon, sent a petition to the License and Permits Committee requesting, among other relief, the revocation of the junk dealer's license held by Tosh Enterprises, LLC.
2. On April 14, 2021, Mr. Bayles, the license holder of Tosh Enterprises, was sent a notice of a show cause hearing based upon the allegations of Mr. Shannon's petition. The petition was attached to the show cause notice.
3. On April 26, 2021 Tosh Enterprises was also on the Committee's agenda for a renewal of license.
4. The show cause hearing proceeded based on the question of whether or not Tosh Enterprises junk dealer's license should be renewed.
5. Mr. Bayles was represented by an attorney, William Hudak.
6. Also present at the hearing was Attorney Stephen Rider, representing the Petitioner Michael Shannon.
7. Tosh Enterprises holds a license for Junk Dealer, License #BL16-000147. As a condition of holding the license, the license states that it is, "expressly conditional upon compliance with all applicable local, state and federal laws, ordinances, rules, regulations, and conditions. This license is subject to revocation, suspension, or modification for failure to comply with these laws, ordinances, rules, regulations, and conditions, including but not limited to any specific conditions listed below."
8. Tosh Enterprises' license is held pursuant to City Ordinance Sec. 8-60 to 8-72 "Junk Dealers and Secondhand Goods."
9. Under the license information, the license says "Will you operate as a Pawnbroker? Yes."
10. Mr. Bayles operates Tosh Enterprises in part as a pawn broker. The business also contains a secondhand goods component.
11. The Committee takes notice of MGL c. 140, §71, which states that nonperishable items must be held by a pawnbroker for at least four months after the dates of deposit. After that time, the items may be sold at public auction and the pawnbroker "may apply the proceeds thereof in satisfaction of the debt or demand and the expense of the notice of sale, and pay any surplus to the person entitled thereto on demand."
12. MGL c. 140, §71 also contains a ten-day notice requirement, to be sent by registered mail.
13. The public auction and sale provision applies to any article exceeding \$25 in value. MGL. c. 140, §71.
14. A recent pawn receipt submitted by the petitioner, issued by Tosh Enterprises dated March 31, 2021, Loan No. LT-LBC007141, states, "This ticket is good for 4 months only. Pledges after expiration of may be sold without notice."

15. Mr. Bayles admitted at the show cause hearing on April 26, 2021 that the pawn receipt discussed at the hearing, dated March 31, 2021, Loan No. LT-LBC007141, was issued by Tosh Enterprises.
16. Mr. Bayles explained that he used a template form from the National Pawnbrokers Association and provided through a software program.
17. Tosh Enterprises also sent a letter to Petitioner Matthew Shannon on December 10, 2019 entitled "Legal Notice of Pawn Expiration" which stated, in part, "If said pawn is not redeemed or the interest and storage charges paid up to the date below, said pawn will be forfeited to the licensee and licensee shall become vested with all right, title and interest in such pawn and to dispose of as its own property, in accordance with the law of the state of Massachusetts."
18. Mr. Bayles did not contest that the December 10, 2019 notice was sent by Tosh Enterprises to Mr. Shannon.
19. At the hearing on April 26, 2021 Mr. Bayles stated that some of the pawn statutes are "archaic" and that the public auction requirement was an "old law."
20. Mr. Bayles testified that owners are given ten days' notice, via a smartphone application, a phone call and in writing, before pawn items are sold.
21. If items are not claimed after the ten days, Mr. Bayles testified they are put out for sale. Mr. Bayles testified that "no one in their right mind has ever, with all due respect, sold something at auction and gave something back. That's unheard of."
22. Mr. Bayles also testified, "no one puts anything up to auction, it's just resold in the store. That's the way every store in the country works."
23. Mr. Bayles also confirmed it is his practice to keep the entire proceeds of any sale of unclaimed items.
24. At the close of the show cause hearing on April 26, 2021, the Chair of the Committee gave the applicant and petitioner the opportunity to submit any additional information or respond in writing within ten days. Those items were addressed this evening.

Chair White's motion to accept the Findings of Fact was approved on a roll call vote of 3 in favor (Councilors Scott, Mbah and White), none against and none absent.

Councilor Scott expressed his concerns about allowing this applicant to operate and said he is disinclined to recommend approval and he would like to know conditions Chair White will be proposing. Chair White stated that the committee has not heard any complaints about other parts of the applicant's business and whether that would be sufficient to justify the rejection of the entire license. Councilor Scott countered saying that a business owner must conform to all applicable laws and he doesn't know why the entire license shouldn't be revoked.

Councilor Mbah commented that everything sounds shady to him but he's open to giving the applicant a chance to have the junk dealer license, hoping that the applicant learned from this experience and would perform better.

In response to Councilor Mbah's questions, Chair White stated his intent was to move to renew the junk dealer license but not the license to act as a pawn broker. Councilor Scott stated that this is a question of character and stability, adding that the laws exist and this applicant said that they were

antiquated and not followed. Councilor Scott stated his concern about this candidate's flagrant disregard for state law.

Chair White again explained that only 1 complaint was filed with the committee and that dealt with the pawn brokerage, not the junk dealer operation. The Chair also raised the concern that because of the right that a person has in a license, based on the evidence that was before the committee that related only to the pawn brokerage business and not the other aspects of the business, , he didn't think that pawn broker violation is enough for the committee to not renew the applicant's junk dealer license. Councilor Scott felt that the conduct of the applicant carries over to all of his licenses.

Chair White's motion that the renewal of the junk dealer's license, held by the applicant, be approved with the restriction that the applicant will not be able to operate a pawn broker's business was approved on a roll call vote of 2 in favor (Councilors Mbah and White), 1 against (Councilor Scott) and none absent.

After the vote on the motion to renew the license with the restriction set forth above, Chair White then moved to impose the following conditions on the applicant's junk dealer license:

- 1) That individuals having items pawned with the business shall have the ability to redeem their items in accordance with MGL. c. 140, §71,
- 2) The applicant may not take any additional items in pawn, and
- 3) The applicant shall also comply with the provisions of MGL. c. 140, §71 and provide a report of every item currently deposited in pawn (with the applicant) listing the final disposition of each item to the City Council within 6 months. The Chair also stated that in the event that the applicant did not comply with these requirements, the entire license could be revoked.

The conditions were approved on a roll call vote of 3 in favor (Councilors Scott, Mbah and White), none against and none absent.

RESULT:	APPROVED AS AMENDED. [UNANIMOUS]
AYES:	White Jr., Mbah, Scott

211856: City Clerk submitting a proposed amendment of Article III of Chapter 8, the Junk Dealer Ordinance.

Ms. Pappenheim reviewed the amendment in Section 8-65 and said that she has no problem with the language. She did, however, state her concern with amount of the fine as well as with the statement for a performance bond. She told the committee that the suggestion for a fine of \$50 came from the state statute, however, since Section 8-66, contains the city's standard language for fines, the actual amount of the fine would be \$300.

Mr. Long pointed out that a 2nd paragraph was inadvertently included in Section 8-66 and Chair White **moved to delete that paragraph. The motion was approved on a roll call vote of 3 in favor (Councilors Scott, Mbah and White), none against and none absent.**

The committee reviewed the document and Councilor Scott had questions about the definition of second hand dealer and the exemptions therein. Mr. Long explained that MGL Chapter 140 Section 550 provides the language of what constitutes junk.

Mr. Long informed the committee that there is no reference to a CORI check under the city's current junk dealer license and Councilor Scott stated that he thinks that CORI checks should be a requirement for a pawn broker license. He also said that he wouldn't exempt all second hand dealers, but would exempt low level items. He also stated his opinion that the license revocation language seems watered down. *He made a motion that Section 8-61 revert to the city's standard language. The motion was approved on a roll call vote of 3 in favor (Councilors Scott, Mbah and White), none against and none absent.*

Ms. Pappenheim explained that the section cited may appear when a license is issued but may not appear in the ordinance, so she recommends putting it into the ordinance, as well.

The meeting was recessed at 7:42 PM and reconvened at 7:48 PM.

Councilor Mbah asked if the city could just ban pawn shops in the city and Ms. Pappenheim replied that the city could do so by not issuing any pawn licenses. Mr. Long informed the committee that Tosh Enterprises is the only pawn business in the city. Councilor Mbah again commented that pawn shops should be banned because "it's shady stuff". Chair White commented that good reason must be given for not granting a pawn license and Ms. Pappenheim asked for time to research the matter.

Chair White asked the committee to review the ordinance and submit any amendments and/or legal questions to the Chair for deliberation at a future date.

RESULT:	KEPT IN COMMITTEE
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Referenced Material:

- Approved Pawnbroker Interest Rates (with 211425, 211921)
- Submission by Tosh Enterprises attorney 5-5-21 (with 211425, 211921)
- Submission by Shannon attorney 5-6-21_Redacted (with 211425, 211921)
- 2021 5-13-21 Junk Dealers updated (with 211856)