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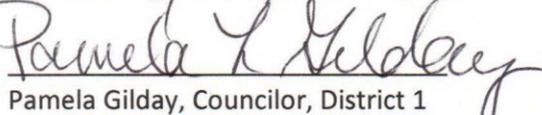
CITY OF AMESBURY

IN THE YEAR TWO THOUSAND EIGHTEEN

Sponsored by:


Steven Stanganelli, Councilor-at-Large

Bill No. 2018-010


Pamela Gilday, Councilor, District 1

An Ordinance to amend 2004-055 regarding licenses for Telling of Fortunes by removing any limitation based on the population of the City

Summary:

An Ordinance to amend Amesbury Municipal Council item 2004-055 (Licensing the Telling of Fortunes) by eliminating any limitation on the number of licenses based on the population of the City.

Whereas the Amesbury Municipal Council in 2004 adopted an Ordinance in accordance with MGL Chapter 140, Section 185I regarding licenses for Telling of Fortunes for Money which allows a municipality to establish fees for such licenses not to exceed fifty dollars, and

Whereas there is no legislative requirement in MGL Chapter 140, Section 185I to set limitations on the number of licenses that can be issues by a municipality, and

Whereas Amesbury Municipal Council item 2004-055 specifies a limitation of one (1) license per 50,000 inhabitants of the City, and

Whereas there is a benefit to allow licensed practitioners to operate and to allow choice to area residents, and

Whereas there is a compelling public policy benefit to promote business activity.

Be it Ordered by the City Council of the City of Amesbury assembled and by the authority of the same as follows:

Licensing requirements for the Telling of Fortunes for Money shall be amended to remove any limitation based on population by removing the following statement from the current Ordinance:

“There shall be one (1) license provided hereunder per 50,000 inhabitants of the Town of Amesbury.”

Amesbury

City Councilor



Steven Stanganelli
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January 29, 2018

Mr. Christian Scorzoni
President
Amesbury City Council
% City Hall, Office of the City Clerk
62 Friend Street
Amesbury, MA 01913

RE: Proposed Ordinance to Amend 2004-055 Regarding Licenses for Fortune Telling

Mr. President:

Please accept this letter as additional reasoning for the above-captioned ordinance submission.

District 1 Councilor Pam Gilday and I received several communications over the last calendar quarter and at the beginning of this calendar year from both a resident and a business owner seeking to locate a business in Amesbury. We were told that this plan was hindered by an ordinance created by the Municipal Council in 2004 (item 2004-055) which placed a limit on licenses to those who operate a business for the telling of fortunes for money.

When the prospective business owner inquired at the City Clerk's office about the licensing process, he was told that Amesbury had a limit on licenses to one, and that one had already been issued. As a result of this, his plans to sign a formal rental agreement with a resident for a property located at 51 Macy Street (Route 110) have stalled. Further, this property location remains vacant resulting in a financial hardship to the property owner.

Upon researching the legislative history of this restriction, I found that there is no requirement in state law (See MGL Chapter 140, Section 185I) that prescribes for a limitation on the number of licenses based on a municipality's population size.

Further, investigation determined that on June 2, 2004, then City Clerk Bonniyo Kitchin presented to the Ordinance Committee a request to accept the state licensing rules but to establish the fee at \$50.00. This proposal was further amended by the Ordinance Committee to establish a limit arbitrarily based on population. At the subsequent Council meeting on June 8, 2004, the ordinance as amended was approved.

As a matter of public policy, it appears that reasonable licensing restrictions are in line. Personally, as a practitioner in two regulated businesses, I understand and endorse such rules. But the limitation on something that can unreasonably interfere with a person's livelihood in an arbitrary way as a matter of law is inappropriate.

As noted in past legal opinions, namely the United States District Court, District of Massachusetts, Civil Action 83-1195-MA, Ruth Talamo versus Provincetown Board of Selectmen, Memorandum and Order dated May, 10, 1983 (page 5):

It is the law in this Circuit that the wrongful deprivation of a business interest establishes something greater than a mere pecuniary loss.

In the same opinion, the Court cited an opinion from the District Court of North Carolina (page 11):

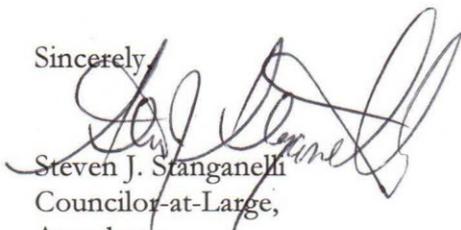
The right to work for a living in one's chosen occupation is for most people a prerequisite to the pursuit of happiness. If a [person] may be arbitrarily made to give up his lifetime endeavor ... it is idle talk to him about Fourteenth Amendment protection of personal freedom.

In my opinion, the current law needs to be amended for a host of compelling public policy reasons.

The current limitation is arbitrary as the limitation chosen was adopted based on opinion and conjecture as noted in the minutes of the Ordinance Committee. It also hinders economic activity on behalf of a business owner as well as the rental property owner. Whether or not such a limitation may result in future legal challenges based on the above-cited cases is beyond my ability to comment, but it would appear that it is a risk not worth taking. Further, it is my opinion that this restriction also denies the City tax revenue in the form of business licensing fees as well as potential personal property (personalty) taxes which in turn places a burden on the remaining property taxpayers.

Thank you.

Sincerely,



Steven J. Stanganelli
Councilor-at-Large,
Amesbury



**TOWN OF AMESBURY
IN THE YEAR TWO THOUSAND FOUR**

At the meeting of the Amesbury Municipal Council held on June 8, 2004, in the Town Hall Auditorium, the following action was taken:

SPONSORED BY: Roger S. Benson, Councilor-At-Large BILL No. 2004-55

A Request to accept M.G.L., Chapter 140, Sec. 185I, License required for Telling of Fortunes for Money and establish a fee for said license.

Be it ordained by the Municipal Council assembled, and by the authority of the same as follows:

That the Amesbury Municipal Council accept M.G.L., Chapter 140, Sec. 185 I, (copy attached), a license required for telling of fortunes for money and to establish a fee of \$50.00 for each license. There shall be one (1) license provided hereunder per 50,000 inhabitants of the Town of Amesbury.

Councilor Robert D. Woodsom moved the recommendation of the Ordinance Committee to approve 2004-55 as amended. Councilor Ann Connolly King seconded.

ROLL CALL – VOTED UNANIMOUS

Witness my hand and seal for the Town of Amesbury this 10th day of June, 2004

Bonnieo Kitchen
Town Clerk

David T. Hildt
David T. Hildt, Mayor

6/10/04
Date