

Melendez, Yadira

From: Owczarski, Jim
Sent: Thursday, April 16, 2026 1:29 PM
To: Gresham, Travis
Cc: Caples, Michelle; Newton, Saul; Melendez, Yadira
Subject: Re: Legality and Enforceability of Proposed Ordinance File No. 251676

Thank you!

Yadira --

For the file.

Jim

From: Gresham, Travis <tgresh@milwaukee.gov>
Sent: Thursday, April 16, 2026 1:27 PM
To: Owczarski, Jim <jowcza@milwaukee.gov>
Cc: Caples, Michelle <mcaples@milwaukee.gov>; Newton, Saul <SNewton@milwaukee.gov>
Subject: Legality and Enforceability of Proposed Ordinance File No. 251676

Executive Summary:

Proposed Ordinance File No. 251676 (retail food licensee notice) is legal and enforceable though there are continued enforceability concerns.

Legality:

Wis. Stat. § [97.30\(2\)](#) provides that retail food establishments shall be licensed ((am) of the same provides for the licensure of retail food establishments in cities of the first class).

The departmental code at Wis. Admin Code ATCP 75.067 provides for responsibilities of retail food licensees. Specifically, 75.067(8) which directs that the licensee is subject to the administrative and civil remedies for failure to comply with directives of the *agent* including “deadlines for corrective actions specified in inspection reports, notices, orders, warnings, and **other directives.**”

The *agent* (City of Milwaukee) *directive* to give advance notice of planned closure is in keeping with the spirit of the law and authority provided under the agency agreement between the State’s HHS Department and the City (as state agent).

Much like the requirement to visibly post the actual food dealer license, a food retail licensee must now display notice that that *license* will no longer be in effect in 30 days. (This could be considered as an addendum to the license and its posting requirement).

Existing City closure notice requirements were not specific and therefore were ignored.

This new specificity disallows licensees from abandoning the trust agreement between the licensor (here the City as state agent) and the licensee without notice and a chance to cure.

The 60 days provides the City a 30 day chance to offer solutions which are exclusively in favor of the business and its continued operation – subsidy, marketing, and other aid. The additional 30 days is to make the broader public aware of

the planned closure so that they and other businesses may plan accordingly. As retail food establishments provide necessary health and well-being to local residents and the broader population, increasing awareness of planned closures protects against sudden and unforeseen gaps in necessities. Gaps that if allowed to perpetuate strain City resources and endanger public health.

Licensing retail food establishments is necessary under state law, adherence to local controls is required of licensed establishments, this local regulation sounds in all of the strongest municipal powers in Wisconsin.

See *also* broader authority in Wis. Stats. §§ 66.0417 and general police power at 62.11(5).

Enforceability:

Because licensees who are closing can be assumed to no longer seek their upcoming annual licensure, compelling them to comply with this closure notice may prove difficult. We can cite under MCO Chapter 68 but depending on the structure of the business, actually enforcing the fine may prove difficult or excessively cumbersome. For example, if an LLC closes shop or goes bankrupt the City may have to petition a court to keep the LLC from dissolving or have the City get in line as a creditor (*secured* though it may be it would still just a be a claim against the now defunct entity).

Also, use of these citations to *encumber* licenses of other associated businesses is not likely to be supported by a court. (Just because one *discount store* failed to notice its closure does not necessarily mean that another different LLC doing business under the same name will also *fail* or that its annual licensure should be questioned because of such *brand/corporate* failure elsewhere in the City).

Respectfully,

Travis Gresham