



## Legislation Text

---

**File #:** 050072, **Version:** 0

---

050072  
ORIGINAL

ALD. ZIELINSKI

An ordinance relating to the imposition of negative use restrictions upon real property.

295-122 cr

This ordinance prohibits the imposition of certain private “negative use restrictions” upon real property in the city. Specifically, it prohibits any private agreement that forbids or materially limits the use of real property for a particular type of general retail establishment (e.g., grocery store or drug store) after an operator of the same type of general retail establishment has terminated operations at the site, when such establishment would otherwise be a permitted use, limited use or special use under the zoning code. Such an agreement is declared to be against public policy, shall be void and unenforceable and shall be subject to the penalty provisions of the zoning code.

Whereas, The purposes of the city's zoning code, as specified in s. 295-103 of the code of ordinances, include:

1. Promoting land uses and development that are consistent with the city's comprehensive plan.
2. Promoting and protecting the public health, safety and general welfare of the city.
3. Encouraging compatibility of adjacent land uses.
4. Promoting sound, attractive development within the city.
5. Encouraging reinvestment in established urban neighborhoods while protecting their unique characteristics.

; and

Whereas, The Common Council finds that the designation of permitted, limited and special uses allowed in various zoning districts furthers such purposes; and

Whereas, The Common Council finds that achievement of these purposes is thwarted, the public health, safety and general welfare of residents of the city are compromised, and the benefits of competition in the marketplace are lost when private parties impose use restrictions upon real property in the city which prohibit or materially limit the use of such property for general retail establishments after a general retail establishment owner or operator has terminated operations at the site, such restrictions being in conflict with the use regulations of the zoning code applicable to that real property (such private use restrictions hereafter referred to as “negative use restrictions”); and

Whereas, The Common Council finds that the public health, safety and general welfare of residents

of the city are furthered when residents have access to grocery stores and drug stores (2 types of “general retail establishments”), both of which meet basic human needs; and

Whereas, The Common Council finds that negative use restrictions are separate and distinct from a non-compete clause included in a shopping center development agreement, in which a landlord agrees with a tenant that is a grocery store, drug store or other type of general retail establishment to not lease other space in the same shopping center to another retail establishment of the same type in order to induce the first tenant to sign a long-term lease as an anchor tenant at the shopping center; and

Whereas, The Common Council finds such non-compete clauses to be commercially reasonable; and

Whereas, In contrast, the Common Council finds that negative use restrictions, which enable a prior owner or operator of a grocery store, drug store or other type of general retail establishment, after terminating operations at a site, to prevent any competitor from operating the same type of establishment at that site in the future, serve no public purpose, but instead have significant deleterious and blighting effects on the health, safety and general welfare of the community in which the site is located; and

Whereas, The Common Council finds that because grocery stores, drugs stores and other types of general retail establishments frequently occupy large tracts of land in the centers of neighborhood business districts or at key intersections, the continued presence of such stores serves as a catalyst to other development and advances the health, safety and general welfare of residents of the city, particularly the elderly and those who walk or use public transportation to reach shopping destinations; now, therefore

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

Part 1. Section 295-122 of the code is created to read:

**295-122. Private Negative Use Restrictions Prohibited.** A private agreement that purports to impose negative use restrictions upon real property in the city so as to prohibit or materially limit the use of such property for a particular type of general retail establishment after an operator of the same type of general retail establishment has terminated operations at the site, when such establishment would otherwise be a permitted use, limited use or special use under this chapter, shall be against public policy, shall be void and unenforceable and shall be subject to the penalty provisions of s. 295-309-6.

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: \_\_\_\_\_

LRB05161-1  
JDO  
05/02/2005