



Legislation Text

File #: 03088, Version: 2

**Fiscal Note**

No direct fiscal impact is anticipated in conjunction with the Ordinance.

**Title**

SUBSTITUTE - Creating Section 28.13 of the Madison General Ordinances to prohibit negative use restrictions relating to grocery stores and drug stores as against public policy.

**Body**

DRAFTER'S ANALYSIS: This ordinance voids and renders unenforceable negative use restrictions that prohibit the use of real property for grocery store or drug store purposes.

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The Common Council of the City of Madison do hereby ordain as follows:

Section 28.13 entitled "Negative Use Restrictions Prohibited as Against Public Policy" of the Madison General Ordinances is created to read as follows:

"28.13 NEGATIVE USE RESTRICTIONS PROHIBITED AS AGAINST PUBLIC POLICY.

- (1) Purpose and Intent. The public health, safety and general welfare of the City are compromised when private parties impose negative use restrictions upon real property in the City which prohibit or have the economic or practical effect of prohibiting the use of such real property for grocery store or drug store purposes after a grocery store or drug store owner or operator has terminated grocery store or drug store operations upon such real property. Such negative use restrictions are separate and distinct from commercially reasonable non-compete clauses included in shopping center development agreements whereby a landlord may agree with a tenant that is a grocery store or drug store not to lease another space in the same shopping center to a second grocery store or drug store, respectively, in order to induce the first tenant to sign a long-term lease as an anchor tenant at such shopping center development.
- (2) Prohibitions. Notwithstanding Section 28.04(1)(c), a private agreement that purports to impose negative use restrictions upon real property in the City so as to prohibit or have the economic or practical effect of prohibiting the use of such real property for grocery store or drug store purposes after a grocery store or drug store owner or operator has terminated grocery store or drug store operations on such real property, when such use would otherwise be permitted (including as a conditional use) under the zoning ordinance, shall be against public policy, void, and unenforceable. The foregoing prohibition shall apply whether the private agreement is incorporated in a deed restriction, a restrictive covenant, a lease or memorandum of lease, or any other instrument. This prohibition applies to all such private agreements, including those created prior to the effective date of this section. In addition to any penalty imposed by Sec. 28.12(13), the City may institute appropriate action relating to any such private agreement pursuant to Sec. 62.23(8), Wis. Stats. The penalty provisions of Sec. 28.12(13) shall not apply to such private agreements entered into prior to the effective date of this section."