

City of Whitewater Memorandum

To: City of Whitewater Common Council

From: City Attorney Jonathan K. McDonell

Date: September 25, 2023

Re: In re: Limitations on Denying "Discount Stores," "99-cent Stores," "Bargain Stores," or "Value Stores" in Whitewater

Background: We have received inquiries from residents regarding the establishment of "discount stores," "99-cent stores," "bargain stores," or "value stores" within the City of Whitewater. This memo aims to clarify the limitations on the City's ability to deny such businesses from being built within our jurisdiction.

Legal Considerations:

1. **Zoning Laws:** The City's zoning laws primarily dictate where different types of businesses can operate. Denying the establishment of "discount stores" or similar businesses based solely on the type of merchandise they sell may be considered discriminatory and legally challenged. Zoning must be content-neutral and applied equally to all businesses.
2. **Property Rights:** Property owners have the right to use their land for lawful purposes, subject to zoning regulations. Denying permits or applications for a specific type of store may infringe upon property owners' rights, potentially leading to legal challenges.
3. **Equal Protection:** Denying specific types of stores, such as "99-cent stores," while permitting other retail establishments, may raise concerns about equal protection under the law. The law typically treats businesses equally unless there is a valid and nondiscriminatory reason to differentiate.

Possible Legal Consequences: If the City of Whitewater were to deny permits or applications for "discount stores," "99-cent stores," "bargain stores," or "value stores" without legitimate and non-discriminatory reasons, the City may face legal challenges. These challenges could result in costly litigation and potential financial liabilities for the City.

Balancing Act: While the City must be cautious about limiting the types of businesses that can operate within the City, we can still use our zoning laws and ordinances to ensure that all businesses, including "discount stores," adhere to standards related to signage, aesthetics, safety, and operational hours. These regulations should be applied uniformly to maintain the character and integrity of the community.

Conclusion: While the City of Whitewater must consider community concerns and interests, it is essential to operate within the bounds of the law and respect property rights. Denying permits or applications for "discount stores," "99-cent stores," "bargain stores," or "value stores" based solely on the nature of their merchandise is legally challenging and may have unintended consequences. The focus should be on using our existing zoning laws and regulations to ensure that all businesses contribute positively to our community's well-being.