



INSTITUTE FOR JUSTICE  
CITY STUDY SERIES

November 2010  
Written by  
JASON ADKINS



# *Unhappy Days for Milwaukee Entrepreneurs*

## **Brew City Regulations Make it Hard for Businesses to Achieve the High Life**



### ***Cover Photos***

***Top***—Laura Sue Mosier has found herself tangled in red tape trying to make a bed and breakfast of the Schuster Mansion.

***Bottom***—Food truck owners must attain numerous expensive permits and licenses before operating on the streets of Milwaukee.

# *Unhappy Days for Milwaukee Entrepreneurs*

## **Brew City Regulations Make it Hard for Businesses to Achieve the High Life**

**by Jason Adkins, Staff Attorney**  
**Institute for Justice**  
**November 2010**

### ***Acknowledgments***

*The Institute for Justice wishes to thank the Diehl Family Foundation for the generous support that made this project possible.*

*This report would not have been possible without the gracious participation of the 13 amazing entrepreneurs it profiles. Numerous others—too many to count—offered local knowledge, guidance, suggestions and assistance. This project also benefited from generous research contributions by David Faith (Iowa '09), Mahesha Subbaraman (Minnesota '11), and Molly Pappas (Minnesota '10). Any errors, however, are the responsibility of the author.*



## *Executive Summary*

Milwaukee, nicknamed the Cream City, is the commercial center of Wisconsin, the Dairy State. But layers of red tape are making it difficult for the cream of Milwaukee's entrepreneurs to rise to the top.

If you thought all it took to open a business in Milwaukee was a good idea, some seed capital and a location, think again. The city government imposes a complex maze of regulations that prevent many businesses from ever getting started. Even failed businesses cannot escape the regulatory grip of city officials. At any time—but especially in tough economic times—the government must get out of the way so that businesses can succeed.

This report chronicles the ways in which the city of Milwaukee and the state

of Wisconsin make life difficult for small businesses and, as a result, threaten both entrepreneurship and the American Dream. For instance, the report describes how Milwaukee:

- Rigidly restricts the ability of entrepreneurs to operate businesses from their homes. Milwaukee's rules force everyone from candle makers and photographers to massage therapists and pet groomers to operate illegally from their home or move out of town;
- Abuses the custom of aldermanic privilege to destroy promising businesses by denying them the licenses and permits they need when an alderman does not like the business or would prefer a different one;
- Imposes restrictions on food-related businesses that make it almost impossible for small entrepreneurs to start or expand their businesses;

## The sheer volume and complexity of regulations on small businesses in Milwaukee is head-spinning.

- Overburdens successful businesses with so many rules and fees that many long-term businesses are considering throwing in the towel rather than continuing to fight against the city at every turn;
- Prevents would-be taxi drivers from owning their own cab;
- Prohibits most street vending entirely and requires those who are allowed to vend to obtain at least five separate licenses;
- Arbitrarily enforces building codes and historic preservation provisions, making it prohibitively expensive for people to rehabilitate the city's old buildings and turn them to productive use;
- Severely limits the amount of signage a business may use on its storefront. Small businesses especially rely on window signs to attract customers, so these restrictions are particularly bad for start-ups and other small businesses.
- Requires a costly and burdensome license to tell the public your business is closing. Milwaukee kicks businesses when they are down by requiring businesses to complete an avalanche of paperwork (certified by a CPA) about their inventory, and then pay a sliding scale fee based on the duration of the sale, plus \$2 for every \$1,000 worth of inventory they seek to sell.

The sheer volume, cost and complexity of regulations on small businesses in Milwaukee is head-spinning. Among the most corrupting and stifling of the restrictions is the veto power aldermen can exercise over the entrepreneurial aspirations of anyone in their ward—the power to quash a small-business person's

American Dream before it can even get started. Getting into business in Milwaukee shouldn't require someone to kiss the alderman's ring. The marketplace—and not the government—is best able to decide if a business will succeed.

According to the Bureau of Labor Statistics, the unemployment rate in both Milwaukee and the state of Wisconsin as a whole hovered near 10 percent at the beginning of 2010.<sup>1</sup> At the same time, 85 percent of Milwaukee's businesses have fewer than 25 employees, and 98 percent of Wisconsin's businesses are "small" businesses according to the U.S. Department of Commerce. Thus, it is vital that government get out of the way and let small businesses—the backbone of the region's economy—do what they do best, namely, create jobs and opportunity.

This report examines government-created barriers in industries that have traditionally provided a better way of life for the economically disenfranchised. Economic liberty—the right to pursue an honest living without arbitrary government interference—must be respected by governments at every level. Government policies should aim to foster honest enterprise, not layer regulation over stifling regulation.

**Even if an entrepreneur makes it through the regulatory gauntlet, the rug can be pulled out from under her. A local alderman can single-handedly put the kibosh on a Milwaukeean's business venture—even after that person has already opened for business.**

Among the Milwaukee regulatory burdens examined in the report are those dealing with: home-based businesses, food service providers, street vendors, occupational licensing, sign restrictions and taxis. The study also looks at state laws that license nail technicians and eyebrow threaders. The report is filled with the real-life stories of Milwaukee entrepreneurs who want to do nothing more than earn an honest living, but find government regulations standing in their way.

This report recommends that the city of Milwaukee should, among other things:

- End the custom of aldermanic privilege;
- Scrap its sign code;
- Relax rules for home businesses;
- Remove the cap on the number of taxi licenses issued; and
- Repeal the going-out-of-business license.

Likewise, the report recommends that the state of Wisconsin should:

- Exempt hairbraiding and eyebrow threading from the need for a cosmetology license;
- Limit qualifications for licensed professionals to those necessary for public safety; and
- Make food service regulations more flexible to allow food to be prepared in homes.

During the past dozen years, the Institute for Justice released similar studies examining regulatory barriers to entrepreneurship in: Baltimore, Boston, Charlotte, Detroit, New York, San Antonio and San Diego. Reports have also just been completed for: Chicago, Houston, Los Angeles, Miami, Newark, Philadelphia and Washington, D.C.

## Introduction

Milwaukee is known for its roll-up-your-sleeves “can-do” spirit. It was, and remains, a city full of first- and second-generation immigrants who brought their dreams of greater opportunity and a better life in America to this lakeshore metropolis. Its enterprising residents harnessed the city’s water resources to make it one of the leading industrial cities in the nation and, more famously, the beer capital of the world.

But for the folks who actually live in Milwaukee, it is the many neighborhoods—which are distinguished by the spires of a church steeple and a surrounding network of shops and residences—that define the city. From Lincoln Avenue to Brady Street, Milwaukee is a patchwork quilt of little communities,<sup>2</sup> summer festivals and traditions that give the city a character all its own. And within each of those communities, it is small businesses and entrepreneurs that have kept the neighborhood vibrant for decades.

Small businesses are the backbone of the economy in Milwaukee, and all across the United States. We rely on them to turn the wheels of the economy by creating new jobs for their owners and others, and even creating new industries altogether. In fact, 85 percent of the Milwaukee region’s businesses have fewer than 25 employees.<sup>3</sup> And the U.S. Department of Commerce has calculated that there are roughly 115,500 small businesses in Wisconsin, accounting for 98 percent of Wisconsin’s employers and more than 50 percent of its private sector employment.<sup>4</sup>

But the city of Milwaukee also stifles small businesses and entrepreneurship with overregulation and constant and excessive fees.<sup>5</sup> And, even if an entrepreneur makes it through the regulatory gauntlet, the rug can be pulled out from under her. A local alderman can singlehandedly put the kibosh on a Milwaukeean’s business venture—even after that person has already opened for business. As a result, the prospect of battling Milwaukee’s maze of regulatory hoops just to open shop and legally operate is stifling the entrepreneurial spirit at the heart of the American Dream.

People have a right to economic liberty; that is, they have a right to pursue a lawful occupation free from unreasonable regulations.<sup>6</sup> But when legal rules and requirements multiply, so do fees, forms and delay. Investment, time and capital are needlessly lost—at a great cost to the prospective business and the community—with little corresponding benefit. People throw up

their hands and give up; they simply don’t bother to try to build a business while others operate illegally. All of these results are bad for Milwaukee, its residents and its businesses.

This study chronicles how Milwaukee’s regulatory regime affects the lives of actual small businesses and shows why they are important components of Milwaukee’s continued economic success. In tough economic times, the government needs to get out of the way and help businesses do what they do best: create jobs, goods and services that benefit their communities. To do this, the city of Milwaukee needs to revise its out-of-date and out-of-touch regulatory regime. It should scale back its top-down solutions to economic growth and recovery, which primarily work to relocate and subsidize larger-scale speculative business enterprises. The city should cut its taxes, fees and regulation, and instead foster the entrepreneurial spirit and dreams of its can-do citizenry.

## Milwaukee’s Government Culture

For many years, Wisconsin was the nerve center of the Socialist and Progressive movements. These trends left Milwaukee with a political culture that views government as the primary agent of social change and beholden to the idea that any problem, no matter how small or how isolated, calls for a new round of legal restrictions.

Milwaukee is therefore a heavily regulated city. And indeed, it is not

surprising that a city whose leaders' gut response to any problem is "there should be a law," has lots of laws. It regulates things like "For Sale" signs in automobiles,<sup>7</sup> the number of garage sales one can hold,<sup>8</sup> and the size and dimension of business signs.<sup>9</sup> There are occasional, beneficial efforts to deregulate in certain areas, but the overall picture is stifling.

Two local scholars recently surveyed Milwaukee business owners about their perception of the city's business climate and its friendliness to entrepreneurs.<sup>10</sup> Sixty-two percent of respondents stated that government regulation was a very serious or somewhat serious problem in Milwaukee. According to the respondents, the greatest problems associated with regulation are increased compliance costs and the extra paperwork. Occupational regulations, such as licensing, were cited as the most burdensome. Nearly one in five of those surveyed said they have considered moving their business because of the city's unfavorable business and regulatory climate. These results are not encouraging for Milwaukee, and resemble those of a recent *Forbes* magazine study that ranked Wisconsin's business climate 48th in the nation.<sup>11</sup>

Interestingly, the authors also surveyed Milwaukee aldermen about how well they thought the city was doing in its relationship with businesses and entrepreneurs. Not surprisingly, the aldermen thought the city was doing a good job. Most of the aldermen who participated in the survey believed that the city's regulatory regime imposed "low fees" and had a low cost of compliance.

Milwaukee, however, has lost a significant portion of its industrial base and is currently suffering an economic crisis,<sup>12</sup>

having lost more jobs over the past 20 years than Cincinnati, Detroit or Cleveland.<sup>13</sup> It needs to help foster new industries and businesses not just to spark its own vitality, but also for Wisconsin as a whole; the state's fiscal health is among the ten worst in the country.<sup>14</sup>

Against all the evidence, Milwaukee leaders believe the city is good for business, but they also believe that real economic development cannot occur without help from the government. Milwaukee spends well over \$100 million each year on development initiatives, but its leaders' and planners' insistence on having only the kind of development they personally like means that little of this money leads to actual development. Improving this dismal situation will require systemic deregulation of entrepreneurs.

## Opening a Business

One of the few things Milwaukee's city government does well is provide plentiful online information about how to start a business and all the regulatory hoops through which would-be entrepreneurs must jump. Local government units in Milwaukee and a number of non-profits have resources readily available to help the aspiring entrepreneur.<sup>15</sup> A number of city and state agencies, such as the Milwaukee Department of City Development<sup>16</sup> and the Wisconsin Department of Commerce,<sup>17</sup> also provide financial assistance to entrepreneurs.

Assuming a person is ready to tackle the legal hurdles associated with running a business in Milwaukee, the next thing to look into is the particular license, permits, registration or certification one may need. Some cities have highly restrictive regimes forbidding entry into particular occupations. Milwaukee does not shut people out through outright restrictions, but instead imposes a seemingly never-ending series of fees, making it difficult to launch a business in the city. The city employees will be helpful and friendly, but no amount of pleasant demeanor can make up for the high costs and impenetrable permit process for someone just starting out.

### Occupancy Permit and Zoning Requirements

For almost any brick-and-mortar business, occupancy permits and zoning restrictions pose a major barrier. A new business must start by ensuring that the prospective enterprise complies with local



*When opening a business, Milwaukee does not shut people out through outright restrictions, but instead imposes a seemingly never-ending series of fees, making it difficult to launch a business in the city.*

zoning and planning requirements. The entrepreneur must first apply for an occupancy permit<sup>18</sup> from the Department of City Development (“DCD”).<sup>19</sup> DCD is generally the main gatekeeper for starting a business in Milwaukee. Business occupancy certificates usually cost between \$200 and \$400 depending on the size of the proposed business.<sup>20</sup> An application for an occupancy permit generally triggers a series of inspections.<sup>21</sup> All inspections must be completed before a business can open, and failure to comply with the occupancy requirements can result in fines of up to \$5,000 per day.<sup>22</sup>

If the business does not meet the city’s byzantine zoning and planning requirements, an occupancy permit application gets forwarded to the Board of Zoning Appeals (“BOZA”), and the business owner must petition the board for a special use permit<sup>23</sup> or zoning variance.<sup>24</sup> Both require an extensive application process<sup>25</sup> that puts a heavy burden on a business to show that its site plans conform to the character of the neighborhood and will not be detrimental to public health and safety. The BOZA process, which requires a public hearing and another \$100 fee, generally takes six to eight weeks.

Some food-related businesses, such as restaurants (which will be discussed later in greater detail), will have to obtain still more permits and inspections through the city’s health department. Other businesses, such as those with special mechanical, noise or safety components, must obtain permits from the Department of Neighborhood Services (“DNS”). DNS is the agency that tends to enforce many of the city’s codes, so it is vital that businesses check to see that they have met all the requirements. While all of this is going on, the owner may be spending her start-up capital on keeping the lease current as she tries to get her business approved. The longer the process drags on, the more productive capital is drained from the start-up enterprise.

## Home Businesses

Home-based businesses and daycare centers typify the process. Open records requests were filed with the city to obtain a general sense of the roadblocks prospective entrepreneurs face when trying to open either of these very common types of business.

Famous businesses that began in homes or garages are legendary.<sup>26</sup> William Harley and Arthur Davidson launched their celebrated motorcycle company, Harley-Davidson, in the machine shop of a friend’s northside Milwaukee home.<sup>27</sup> Many businesses start with a dream and a little know-how, but not much money. Therefore, many ventures begin right at home. In Milwaukee, however, they must either comply with a set of needlessly restrictive requirements or operate illegally. Not surprisingly, many choose the latter route, even though it inhibits their business growth and prevents them from advertising to attract customers for fear of also attracting the authorities.

The rise of telecommuting and other technology allows business to be done from almost anywhere, and many people work right from the comfort of their own home.

**The city rarely catches home-based business violators, making operating illegally a viable—if problematic—option.**

Furthermore, in a struggling economy, many of these workers have lost their jobs and home-based businesses provide an excellent way for them to apply their skills and provide for themselves and their families.<sup>28</sup> And many people with children juggling careers and families appreciate the flexibility of working from home. Unfortunately, however, Milwaukee has not kept up with the times and, as a result, the dreams of many would-be entrepreneurs are dashed.

Prospective home businesses must file a “Home Occupation Statement Application”<sup>29</sup> with the Department of Neighborhood Services and pay a \$50 fee. The application requires that the business owner abide by a set of restrictive conditions for the home business. In residential zoning districts, only residents of the dwelling may be employed in the home business; even bringing in one assistant who does not live there violates the law. If the home business is located in a commercial or industrial district, the business may have one non-resident as an employee. Further, only 25 percent of the usable floor area of the dwelling unit can be used for the business, and only 50 percent of the garage can be used for storage. One cannot make physical alterations to the exterior of the home to accommodate the business, and the existence of the company cannot be evident anywhere outside the home. That means one cannot put any signs out advertising the business or letting others know it is there. Finally, if the home business is located within a residential zoning district, then it must create no additional traffic and parking needs to the dwelling unit. This, presumably, means no stops by the Federal Express or UPS driver, and no visits or parking for clients and customers.

Because these restrictions are so draconian, few people comply with them. Many would not be able to. Any type of business that requires outside employees, periodic customer or client visits, or the regular use of a shipping carrier is excluded. Such home-based businesses that could be regulated out of existence because of these restrictions include computer repair or software companies, pet care businesses, small accounting firms, independent hair stylists or beauticians, or toymakers. The city rarely catches violators, making operating illegally a viable—if problematic—option.<sup>30</sup>

Forcing legitimate businesses underground and making criminals out of entrepreneurs may not result in immediate penalties from the city of Milwaukee, but could create all sorts of headaches down the road. If a business is operating illegally, it may

have problems with, among other things, insurance and liability issues, contracts and employment matters, not to mention the possibility of unexpectedly having to shut down the business at an inconvenient time to comply with the rules.

Fear of that ominous “knock on the door” from government officials is what has kept “Carol” from notifying the city that she’s been making candles and selling them out of her home. She was not aware of the requirements found in the city’s “home occupation statement;” she figured that melting hot wax may raise the ire of some official (even though it is no more dangerous than cooking on a stove). She suspects the city will not give her the permits she would need to operate legally. And once she applied, the city could fine her and shut her business down, so she has not even applied.

Carol would have no problem with a periodic inspection of her candle-making operation. But because her business is primarily based on Internet sales, which requires extra traffic created at her residence in the form of shipping services. And when business is heavy, a large portion of her home is taken up by supplies and product. Both features of her business would run afoul of the rules for home businesses in Milwaukee, not to mention whether the city would allow her to operate out of her home at all. Eventually, Carol would like to have a warehouse or commercial space to run her business, but like many aspiring entrepreneurs, she needs to use her home to get the business off the ground. The possibility that the city may crush her dream has led her to avoid dealing with the city altogether.

Gregory Stebbins is another Milwaukee resident whose dream has been stifled by Milwaukee's restrictions on home businesses. Gregory is a massage therapist who has an office in Greenfield, complete with relaxing Zen-like music, statues of Hindu deities, and diagrams of bones and muscles. But he built his clientele by offering his services from home, which, at that time, was also a 15-room mansion he sought to turn into a bed and breakfast in the historic Concordia neighborhood of Milwaukee.

Some years ago, Gregory discovered the art of Rolfing®,<sup>31</sup> which is a bodywork philosophy that focuses on "connective tissues" to release stress and trauma. After getting laid off from his position at a Milwaukee hotel, he decided to follow this new passion and went to massage school. Upon completion, he shared a practice with a colleague, but also started seeing people in his home. According to Gregory, many clients are more comfortable in a home environment rather than in a stark office setting. Thus, the ability to do bodywork at home is a unique asset for a specialist like Gregory.

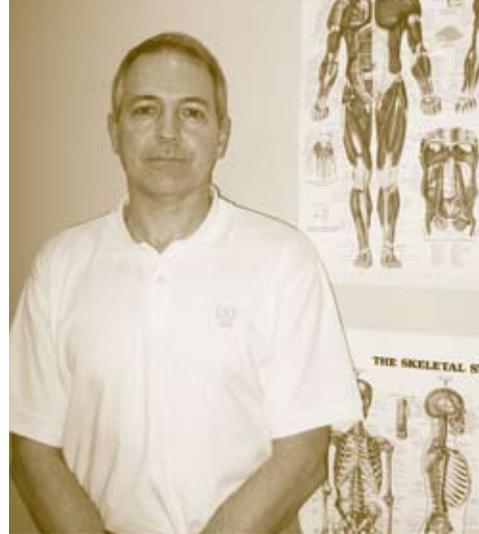
Gregory did not seek city approval for his business because of the time and expense in trying to secure the permits

and, more importantly, the possibility that the city would deny the permits and then shut his business down. For many years he operated without incident and many neighbors were his clients. But in 2002, a personal dispute with a neighbor, who just happened to be friends with the alderman, compelled Gregory to try to make his business legal. Because a massage therapy business is a special use in a residential district, Gregory had to seek approval of BOZA. During his BOZA hearing, the board was informed that the alderman put a hold on his application, and thus it became a contested case hearing. At this point, Gregory believed he would never get his permit. That, along with other personal circumstances, forced Gregory to sell the home he had also converted into a bed and breakfast. He thus gave up on the contested case hearing. The city could have had two businesses—a bed and breakfast and a massage center. Instead, due to its regulatory stance, it ended up with neither.

Gregory still lives in Milwaukee, and he would still like to serve clients out of his Milwaukee home. The city's home business requirements forbid him to do so because he would have clients coming to his home, creating extra "traffic." He's also skeptical of trying to get a home studio approved via the zoning process because of the power that a few neighbors or an alderman can wield. Gregory has no problem with inspections, and he is already licensed by the state of Wisconsin. But unless Milwaukee changes its laws, it is unlikely that Gregory will ever operate his business within the city limits. Instead, he will continue to serve clients only in other, nearby cities.

Milwaukee's home-based business rules make little sense at any time, but especially in a time of high unemployment.<sup>32</sup> And they are especially outdated in a new, information-based economy reliant in many ways on knowledge-workers. Home businesses can provide an opportunity for people struggling to find a job to create their own businesses or find employment with businesses far away while staying in Milwaukee. They allow citizens to use their skills to engage in crafts and trades that do not require a storefront or an office. And in some cases they can employ a few people to assist them. If Milwaukee does not reduce its regulations on small and home-based businesses, it will face still more people leaving the city and taking their skills and entrepreneurial aspirations with them.

**The city could have had two businesses—a bed and breakfast and a massage center. Instead, due to its regulatory stance, it ended up with neither.**



*Gregory Stebbins is another Milwaukee resident whose dream has been stifled by Milwaukee's restrictions on home businesses.*

### **Daycare Centers**

Many women, including single mothers, conclude that an excellent way to earn a living or some extra income is to run a day care. But under Wisconsin law, no person may provide care and supervision for four or more children under the age of seven not related to the caretaker unless that person obtains a license from the state.<sup>33</sup> In practice, this includes most daycare businesses.<sup>34</sup>

The state's requirements go far beyond the basic screening of daycare providers that one might expect from a licensing regime. Indeed, there is a deluge of forms with which a provider must comply and fill out.<sup>35</sup> And there are many additional byzantine sets of rules related to provider qualifications, staffing, building requirements, transportation and programming.<sup>36</sup> Once the prospective provider has met these licensing requirements, including taking certification courses, she can be licensed by the state.

If the would-be provider wants to start a daycare business of eight or fewer children in her own home, she does not need to apply for a certificate of occupancy with DCD.<sup>37</sup> Larger daycare centers, or any daycare businesses that is not located in the entrepreneur's home, must obtain a Milwaukee permit and meet the applicable zoning requirements—and there are many.<sup>38</sup> Most future daycare businesses seem to be able to run this gauntlet. BOZA receives many requests to operate various types of daycare centers. An open records request revealed two main instances in which applicants fall into trouble. First, BOZA highly disfavors day cares with a high volume of children that operate in a residential neighborhood and are run by a provider who does not live on the site. Few of these zoning appeals are granted. Likewise, daycare providers who want to open large day cares within 500 feet of liquor establishments tend to

have a tougher time making it through the BOZA process. The presence of many liquor establishments in certain neighborhoods, plus a restriction banning them from an almost two-football-field radius from such businesses, makes opening day cares particularly challenging for many people, especially those with low incomes and few other skills.

In general though, it appears from a review of the files that the appeal will be granted and the special use permit will be issued if a prospective provider: (1) appears professional in her application; (2) has a good programming plan and a sound facility; (3) has come up with a plan to avoid traffic problems; and (4) is conscious of minimizing impact on her neighbors by not having too many children or unruly outdoor activities. Thus, Milwaukee does have some flexibility despite the burdensome, multi-layered regulatory process prospective providers must surmount in order to start their business.<sup>39</sup>

### **Food Service**

Caterers and independent niche food producers who are aspiring entrepreneurs really feel the brunt of state and local

food service regulations. The explosion in local food co-ops, farmers markets, coffee shops, ethnic restaurants and other places to market independent food creations—as well as the “foodie”/Food Channel culture and the huge variety of dietary needs of the population in general—have created a big demand for non-processed, organic and specialty foods. Additionally, Internet commerce, social networking and retail outlets have opened more possibilities for aspiring food entrepreneurs to successfully market their products. But many barriers stand in the way of a prospective food service entrepreneur; most notably, the ban on making anything in the home.

Government licensing is one of the most destructive foes that innovative Milwaukee entrepreneurs must face in making and selling specialty foods—be it gourmet cupcakes<sup>40</sup> or one-of-a-kind hot sauces.<sup>41</sup> In short, on top of any state licensing requirements that might also apply,<sup>42</sup> these entrepreneurs must contend with the city Health Department, which not only inspects all retail food businesses operating within the city but also requires such businesses to obtain Food Dealer Licenses before selling any food to the public.<sup>43</sup> It does not matter how small your operation is, how simple your specialty food is to prepare, how much experience you have in the field or how satisfied your customers are—in general, food entrepreneurs must receive city permission before they can “establish a food operation, manufacture, offer for sale, store, distribute, or sell food within the city.”<sup>44</sup> The two exceptions to this rule? People who sell only canned/bottled water and soda (i.e., no food) and those citizen organizations (e.g., religious and civic

groups, youth leagues, etc.) that sell food “only one day during a fiscal year.”<sup>45</sup>

Unfortunately, receiving a Food Dealer License from the city and then maintaining that license is no simple matter. In addition to submitting the requisite application and filing fees, food entrepreneurs must also be prepared to prove on a regular basis<sup>46</sup> that the facilities and equipment they use to make their signature sauces or homemade chocolates comply with all the provisions of the Wisconsin Food Code (“Code”).<sup>47</sup> By its own terms, the Code<sup>48</sup> governs all “food establishments” in the state,<sup>49</sup> which includes *any* “operation that stores, prepares, serves, vends, sells, or otherwise provides food for human consumption”<sup>50</sup>—and “food” includes any “raw, cooked, or processed edible substance, ice, beverage, or ingredient intended . . . for human consumption . . .”<sup>51</sup> And on the basis of this sweeping mandate, the Code dictates virtually every aspect of how a “food establishment” should be run, from employee qualifications<sup>52</sup> to food preparation<sup>53</sup> to equipment purchases.<sup>54</sup> For most food entrepreneurs, however, the Code’s most devastating rule is that “food establishments” may not be run from a home kitchen—or any private residence—no matter how clean, well-equipped or safe the kitchen might be.<sup>55</sup>

Milwaukee’s food entrepreneurs are thus forced to base their operations in “commercial kitchens” capable of meeting the myriad equipment,<sup>56</sup> utility<sup>57</sup> and structural<sup>58</sup> requirements imposed by the Wisconsin Food Code.<sup>59</sup> This effectively leaves these entrepreneurs with three options: (1) build a new commercial kitchen from the ground up; (2) purchase and/or renovate a pre-existing space that is capable of serving as a commercial kitchen; or (3) rent space at an existing commercial kitchen that has already passed inspection under the Code. All three options are expensive, but the first two are even more troublesome than the third in terms of meeting Code standards and obtaining city approval. To begin with, there is no simple checklist that food entrepreneurs can consult to ensure that the commercial kitchen they seek to build or renovate will meet Code standards. Entrepreneurs must instead be prepared to leaf through countless pages of byzantine regulations that dictate everything from hand sink location<sup>60</sup> to washing machine design<sup>61</sup> to lighting intensity,<sup>62</sup> while recognizing that application of these rules will vary based on the particular food enterprise being contemplated<sup>63</sup> and inspector discretion.<sup>64</sup>

Even after anticipating every Code requirement, however, food entrepreneurs cannot just start building the commercial

kitchens they need to launch their businesses.<sup>65</sup> Instead, they must get advance city approval before pursuing any form of commercial kitchen construction, be it building a new kitchen, converting an existing structure into a kitchen, remodeling an existing kitchen, or even making basic improvements that allow a kitchen to prepare new kinds of food.<sup>66</sup> This means putting together a professional design plan for the city<sup>67</sup>—one that requires food entrepreneurs to become experts (or hire one) in construction, engineering, plumbing, heating, sanitation, refrigeration and lighting.<sup>68</sup> Accordingly, most Milwaukee food entrepreneurs try to avoid this tedium by renting space in any existing, code-compliant commercial kitchen they can find. But the supply of kitchens for rent is extremely low because of liability issues, which also drives up the cost of rent for these facilities. When a rental kitchen can be located, the prospective chef has to pay a separate occupancy permit to the city. Thus, one has to pay for a seller’s permit, a food dealer permit, an occupancy permit and rent all before baking one cookie. Where does one get the money to pay for these expenses, especially when banks are not lending money? Most likely, it’s coming out of the very savings the entrepreneur is using to start the business—a huge dent in the startup capital. Some businesses won’t even be able to get off the ground with a set-up like that.

Wisconsin’s commercial kitchen requirement is unreasonable and unnecessary. Small food producers—whether they are caterers or cookie makers—should be able to make their food at home. But what about public safety? There are other means of ensuring public safety—such as inspections, mandatory sanitation and storage training, and refrigeration standards—without requiring food be produced in commercial kitchens.

Maria Miller is the co-owner of Ball’N Biscuit Catering in Milwaukee, which specializes in weddings and smaller events like office parties. Maria is a self-described “food snob” who says she’s “passionate about food.” She believes that “entrepreneurship is a great way for people to discover who they are and what they want to do.” She also notes that there is “something special about a ground-up establishment, especially when you receive an item that someone has personally made. I want to give my customers what I would want: something special.” Maria’s business focuses on fresh, home-style cooking, but she also specializes in events where many people have unique dietary needs, like a totally vegan wedding. She likes to offer a service that other catering companies do not. But Milwaukee’s commercial kitchen requirement and its companion

fees are stifling Maria’s entrepreneurial dreams.

Maria has owned a house-cleaning business for more than 15 years, but would like to do catering full time. Unfortunately, without the security of having full-time access to a commercial kitchen, this is impossible. She and her business partner recently found a new kitchen for rent after a desperate search, but only have a short-term lease and do not think it is wise to leave their full-time jobs to pursue their catering dream when they could lose their kitchen at any time. Maria once found a potential location for her own kitchen, but it did not have a rear delivery door for loading and unloading. Maria does not need a rear door, but she knew she could never get the kitchen approved by the city without one, so she passed up that opportunity.

Maria says Milwaukee’s regulations are “overwhelming.” “Milwaukee’s laws are not freedom oriented; I’m just trying to make a living. Especially in a time when banks will not loan to small businesses, every penny saved really counts for a business like mine. . . . We could expand and hire other people if we didn’t have to deal with all of the regulatory hoops and pay the associated fees,” she says. Maria can understand having to pay some fees and comply with some regulations, but the current system is so difficult that it keeps people out of business or drives them underground.

Maria’s plight underscores the unreasonableness of Milwaukee’s requirement that all food be produced in a commercial kitchen. Maria is food-safety and sanitation certified by the state of Wisconsin, and she and her business

partner have more than 20 years of restaurant experience between the two of them. She would happily submit to periodic inspections of her home kitchen. And she would even build a commercial kitchen in her home, but Milwaukee does not allow any food produced in a home to be sold commercially. These regulations have induced people to simply keep their catering businesses underground. Maria herself knows at least a dozen caterers who operate illegally from their homes, and stay small to stay out of the spotlight.

Maria loves Milwaukee, is involved in her neighborhood community, and tries to incorporate as many locally produced foods in her meals as she can. She said, “We want to support Milwaukee; unfortunately, Milwaukee does not support us. I understand the need for rules, but to a certain degree, we have to trust people to be responsible; otherwise we will choke our businesses to death. We need to help citizens realize their dreams.”

Maria’s frustrations are shared by Caroline Carter, who, with her daughter, runs Eden’s Market. Caroline also makes and markets her own granola chunks and flavored flax seed crackers. The crackers are high in vitamins, “omega-3” and fiber, and are popular among people with limited

diets, including those suffering from gluten intolerance, and others who just want healthy and flavorful alternatives.

Eden’s Market followed the path of many startup businesses. Caroline saw a need, and she filled it. Caroline started eating raw foods for health reasons and felt tremendously better because of the change in diet. But she was looking for new foods for a little variety. So she started making these crackers and granola chunks using various vegetables and spices, such as sun-dried tomatoes. She dried them up using a food dehydrator and formed them into crackers. Eventually, her friends wanted some and the crackers became popular enough that she and her daughter turned it into a business. As Caroline says, “People love these foods, but don’t want to make them themselves.” Her daughter invested a lot of money in the business, and they began selling their products at co-ops, farmers markets and coffee shops.

All Caroline really needs to make her crackers is a food dehydrator and a clean space to work. But Caroline is making commercial food products, so Milwaukee requires that her crackers be made in a commercial kitchen. This presents a big problem: Commercial kitchens, if even available, can usually be rented only for certain periods of time and are shared with other renters and the business owner. But food dehydrators need to run for 24 hours, which creates conflicts with others who use the kitchen. As a result, she has to work around others’ schedules or hope they don’t tamper with the machine. “I don’t need a [ventilation] hood,” she says. “So why should I be required to operate in a commercial kitchen? There are lots of people like me who make really good food, but cannot offer it to the public because of overhead.”

Like Maria, Caroline has no problem with health inspections, but the rent and occupancy permit may force Caroline out of business because the overhead is just too expensive. It also prevents her from getting another dehydrator and hiring employees. There is, of course, no flexibility in Milwaukee or the state’s rules to allow such an innovative business.

**“Milwaukee’s laws are not freedom oriented; I’m just trying to make a living. Especially in a time when banks will not loan to small businesses, every penny saved really counts for a business like mine.”**

-Maria Miller

### **Business License**

Once a business has established that its *facilities* meet the necessary requirements to run a business in Milwaukee, it next has to ensure that its *people* qualify to do so. Businesses that make products or provide consumer services will often have to obtain a license from the city before they can practice a trade,

offer a service or run a certain type of business. Getting this type of license is easier overall than obtaining occupancy permits and zoning approval. But it is often expensive.

Milwaukee's license division has created a user-friendly website<sup>69</sup> listing many of the licenses and permits one needs to operate a business in the city, including links to the actual application. But be ready; there are lots of them. In Milwaukee, you need a license to sell used bicycles,<sup>70</sup> be a photographer<sup>71</sup> or home-improvement salesperson,<sup>72</sup> run a videogame center,<sup>73</sup> sell ice cream treats from a bicycle cart,<sup>74</sup> and even pick up someone's old junk.<sup>75</sup> Milwaukee requires vendors of used goods—even used clothes—to get a license on top of all of the other permits required to run a business in the city.<sup>76</sup>

The scope of the licensure requirements is so broad that in many cases businesses do not even know they need them. One prominent photographer who has been operating in Milwaukee for almost ten years had no idea the city required a photographer's license. Either way, the sheer amount of licenses can only strike the neutral observer as serious regulatory overkill.

Generally, getting a license involves filling out an application, submitting to a police investigation, fingerprinting and paying a license fee. Sometimes, the presence of a criminal background will result in the denial of a license, but for the most part, people are able to get these licenses if they are willing to pay and willing to wait.

It is normally within the discretion of the Common Council's License Committee to grant or deny a license application, and the Common Council almost always abides by the committee's recommendation. The typical application period from filing to approval by the Common Council lasts six weeks. Licenses must be renewed on an annual or biannual basis. One word of caution to the prospective business: Do not miss a hearing involving your application. Missing a hearing regularly results in the denial of an application, and the licensing committee seems almost draconian about enforcing this custom.

Milwaukee needs to reevaluate whether the costs of licensing all of these businesses outweighs any public benefit gained through what is essentially a registration requirement. Little public benefit accrues from licensing photographers, used bicycle dealers, videogame centers, junk collectors and dance studios, for example. It is one thing to license pawnbrokers; it is another thing altogether to require just about everyone who sells used goods to

waste time, money and effort in getting a license. Any hiccup in the process can result in the loss of thousands of dollars of revenue.

Unfortunately, it is often the case that there is little incentive on the part of established businesses to break down hurdles posed by licensing. The people who most need a change in the laws are those dispossessed of resources and political power. For instance, two companies operate most of the licensed ice cream carts in Milwaukee. According to one local peddler, the established companies like the licensing requirements because it lowers competition from other peddlers, who tend to be minorities or immigrants, and find it difficult to surmount the various licensing hurdles, particularly the fees. Likewise, one local massage therapist complimented the city's licensing procedures for their ease and user-friendliness, and added that she would report any masseuse she knew of that operated without a license because it "degraded" her profession. As established businesses know well, licensing laws are one way to keep out the competition.

### ***Stopped Short: Aldermanic Privilege***

Even if an entrepreneur manages to navigate through Milwaukee's cumbersome and costly requirements, he may still not be able to open his business if his local alderman decides he does not like the business or would prefer some other kind of business. Milwaukee's nasty custom of aldermanic privilege has plagued Milwaukee politics in recent years, resulting in the conviction of former



Alderman Michael McGee, Jr.<sup>77</sup> It allows Milwaukee aldermen an inordinate amount of authority concerning who gets licenses and permits. An alderman may use this privilege to hold up or deny a license or permit for any reason. It is a system that allows aldermen to act like petty despots in their districts, and destroy peoples' livelihoods at their whim.

You will not find an "aldermanic privilege" law anywhere in the Milwaukee Code. Instead, a network of both law and custom support it. For instance, aldermen can put a hold on license and permit applications, which sometimes results in a lengthy delay before an application gets a public hearing. An alderman may say that such a delay is necessary to listen to the community and study the implications of a particular application, but this is often a pretext for putting together the "public"

opposition to kill a license or permit application.

In the specific context of licensing, many types of license applications and renewals must first come before the Licensing Committee of the Common Council. The committee generally reviews new applications, revocations, suspensions and non-renewals. Even if a prospective business satisfies the objective criteria to receive an occupancy permit and business license, it could be held up or delayed by the local alderman for review by the license committee. First-time applicants have no right to appeal the denial of a license, so approval by the license committee is essential. And this is the arena in which aldermen wield their power.

Aldermen can appear as witnesses for or against a particular license application. And other aldermen will defer to the views of the local alderman concerning license applications. This is done so that each alderman has maximum authority over what goes on in his or her district. If one alderman becomes overly meddlesome in the affairs of his fellow aldermen, pretty soon he will become the victim of the same "micromanagement." Thus, as a matter of practice and privilege, the city's legislative reference bureau found that the license committee will defer to the judgment of the local alderman roughly 80 percent of the time.<sup>78</sup>



This level of deference is true even in a license renewal process, when a business has already been in operation for years. Thus, aldermen have an inordinate amount of power in the granting or denial of certain classes of licenses, particularly alcohol beverage, secondhand dealer and food licenses. Essentially, they can hold businesses hostage and deny them the reasonable use of their property. It is easy to see how such a system could breed the corruption that has plagued—and some say *is* plaguing—Milwaukee city government.

Some people in Milwaukee, even aldermen themselves, will claim there is no such thing as so-called “aldermanic privilege.”<sup>79</sup> Don’t tell that to Muhammed Nasir Khan. Nasir spent years fighting terrorists in Pakistan as the head of its elite anti-terrorism unit. But that was nothing compared to fighting bureaucrats and Milwaukee aldermen.

Nasir and his family received asylum in the United States when the political winds changed in Pakistan. After arriving in the Land of Opportunity, Nasir worked in a number of restaurants and eventually operated three 1 Potato 2 restaurant franchises in Milwaukee, all located in various food courts. He had a spotless health inspection record, but had to close them for various

business reasons. After many years, he was able to save about \$70,000 to sink into a brick and mortar hot dog stand of his own. Neither Nasir nor his wife eats the burgers, fries and Vienna beef hot dogs that he has been serving all of these years, but as he says, “In any business, you have to serve what the community wants.”

Nasir signed a lease with the owner of a Judy’s Red Hots stand on a busy but rough corner of Milwaukee at 27th Street and Kilbourn Avenue. The owner had operated a hot dog stand on the same spot, but had been shut down in the fall of 2007 because of numerous health code violations on the property. The property was infested with vermin and was filthy. Many, including city inspectors, told Nasir it would be impossible to clean the place up and revitalize it. But he had taken on tougher foes than dirt and grime,

and with a little elbow grease, he and his family completely transformed the once-run-down stand. They invested hundreds of hours and \$65,000 on new equipment, particularly a new hood vent for the kitchen, as well as police-accessible cameras. They obtained the necessary occupancy permits and food license. Finally, after all of the hard work, red tape and inspections, Nasir was ready to open the hot dog stand. He bought \$5,000 worth of groceries. And he had just officially become an American citizen only one week prior.

But only a few hours and three sales into his first day of business, Nasir received an unexpected visitor. A city official notified him that his food license had been pulled at the direction of Alderman Robert Bauman, and that his license had been issued “in error.” Bauman formally objected on the grounds that the property constituted a nuisance, and also complained that Nasir failed to change the building, trade name and menu of the previous owner, and had not blacktopped the parking lot. This holdup resulted in the loss of the entire perishable food inventory, estimated at close to \$5,000. Thus began a nightmare for Nasir and his family that resulted in the loss of their savings, Nasir suffering a major heart attack, and the bank foreclosing on their home.

Nasir had sensed some trouble on the horizon when someone from the local business association informed him during the refurbishing process that he should probably have the local alderman sign off on reopening the hot dog stand. Not thinking much of it because the troubles with the stand were the

responsibility of the prior owner, and counting on the fact that he was following the rules and doing everything right, Nasir did not put much stock in the alderman’s threats. He had received the encouragement of various city inspectors so he kept moving forward.

Nasir was allowed the privilege of an extended, six-and-a-half hour hearing in front of the License Committee. But judging from the fact that the committee agreed with the testimony of a strip club owner that Nasir’s business would have a negative impact on the community, it seems the outcome was a foreordained conclusion. Alderman Bauman continued to oppose Nasir reopening Judy’s Red Hots on the grounds that it would breed crime and disorder, as well as thwart the redevelopment of the community.

Another technique that aldermen have been using as a justification for denying a license, as well as to mask a raw exercise of “aldermanic privilege,” is to describe a certain type of business as “over-concentrated” and then deny the license. Usually, it is up to the discretion of the local alderman whether a concentration map is produced during a license hearing, but there are no objective criteria concerning whether a certain business is “over-concentrated.” One alderman who has used this tool extensively is Alderman Tony Zielinski. Some call this the “Zielinski factor.”<sup>80</sup> Especially when it comes to liquor licenses, Zielinski will claim that there are too many liquor businesses in his area when the license application involves an applicant he does not want in the neighborhood, but he will then turn around and push the approval of other licenses in the same area.

One individual who has suffered at Zielinski’s hand is Parshotam Singh, who runs the AK Food Mart at the intersection of Howell, Kinnickinnic, and Lincoln Avenues. The Bay View area in which Singh’s store is located has become a trendy nightlife district. Singh wants a license to sell beer out of his little food mart to keep his business viable, but Zielinski has blocked Singh as the alderman tries to build a new Bay View district.

After Zielinski prevented any consideration of Singh’s application, Singh met with Zielinski to try to persuade him. Zielinski tried to get Singh to sell his property to a local developer, even attempting to facilitate an actual purchase price. But Singh would not sell the fruit of his labor since coming to the United States from India more than 20 years ago.



Both Parshotam Singh (left) and Nasir Kahn (right) have been victims of the “Zielinski factor” stifling their small businesses.

Singh actually won his license in his first hearing at the License Committee. But Zielinski persuaded the full Common Council to send it back to the License Committee for another hearing. This time, he rallied prominent local property owners—including the owners of hip new liquor establishments—to oppose a license for Singh. Despite police testimony that there were no problems at Singh’s establishment, the License Committee decided to deny Singh the liquor license due to an “over-concentration” of liquor establishments in the area. Yet just one month later, Zielinski pushed through a license for a new live-music cocktail lounge half a block from Singh’s AK Food Mart. The license was endorsed by some of the same people who had opposed Singh’s license.

The pervasive impression that aldermen have almost unfettered authority over the granting or a denial of a license application led Singh to donate campaign money to Zielinski and other influential aldermen during his license review process at the Common Council. “I was thinking, ‘I can get saved,’” said Singh. He still didn’t get his license.

In addition to the inevitable abuse and corruption, aldermanic privilege aids and abets a top-down theory of local economic development, based on attracting the “right” kind of people and

businesses, and then heavily subsidizing them. Alderman Zielinski, for example, states in defending his efforts to deny Singh a liquor license that “[he’s] trying to get business people with a track record and money to invest in a *trendy* area.”<sup>82</sup> (Emphasis added.) The AK Food Mart, Zielinski says, “looks shoddy.”<sup>83</sup> Therefore, Zielinski is trying to use the denial of the beer license to shut Singh down and force him to sell to Zielinski’s chosen developer.<sup>84</sup>

Singh’s problem is that he is trying to be a full-service market for the people who actually live in the neighborhood, particularly the Lincoln Court public housing tower near the food mart.<sup>85</sup> By serving their needs, Singh gives them incentive to continue living in the neighborhood. And these “undesirables”<sup>86</sup> as one commentator described them, make it more difficult for Zielinski and his allies to create a “new Bay View.” According to one Milwaukee city planner, “The corner streets of

## Starting a Business Without Political Connections

Because of the corruption and appearance of corruption at City Hall due to the ongoing practice of aldermanic privilege, the Milwaukee Common Council set up a task force to study how alcoholic-beverage-related licenses were granted, and recommend possible solutions to lingering problems. The study largely confined itself to alcoholic-beverage licenses, but the results are applicable to all license applications that come before the License Committee.

The task force made a number of recommendations that could have helped Nasir, Singh and others similarly situated, including:

- Allow aldermen to hold up a license application only one time and delay its hearing for only two future meetings.
- Establish objective criteria for “over-concentration” based on land-use patterns.
- Eliminate the practice of aldermen appearing as witnesses for or against a license application.
- Forbid aldermen from voting on a license application when they have previously expressed their opinion on the matter in a prior public forum.
- Allow new license applicants the right to appeal a denial of their license to the full Common Council.

The task force’s proposed recommendations make sense and would go a long way toward ensuring that license applicants are not completely subject to the whims of an individual alderman.

Unfortunately, judicial precedent protects the current system, so any change will have to come legislatively from the Common Council itself.<sup>81</sup> The council reviewed changes to the licensing process last spring, but unsurprisingly enacted few meaningful reforms and limited them mostly to alcohol beverage licensing. The prospect that your business venture could become the victim of aldermanic privilege heavily discourages entrepreneurial activity, especially in areas that are in most need of development. Stories like Nasir Khan’s highlight the potential perils of starting a business without the right political and community connections. Thus, the people with the most entrepreneurial drive, particularly immigrants, will increasingly be reluctant to pursue their dreams. Aldermanic privilege is a custom Milwaukee cannot afford.

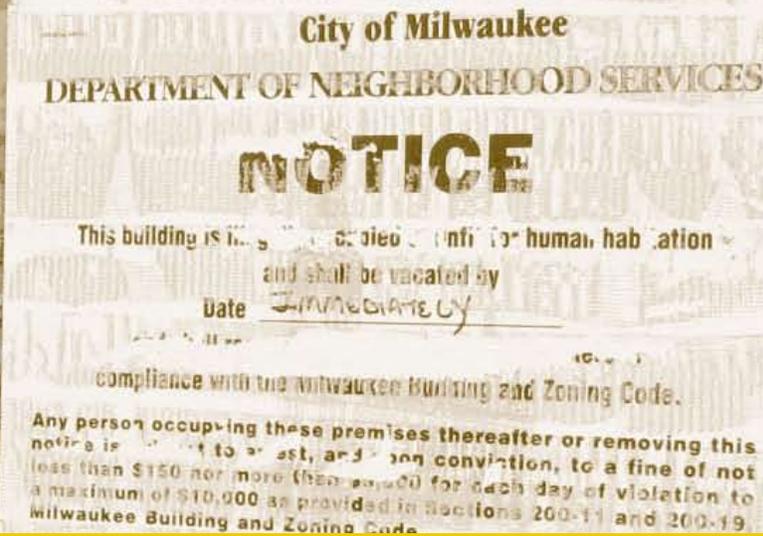
S. Kinnickinnic, W. Lincoln, and S. Howell Ave. are a key focal point for Bay View ongoing redevelopment and retail effort, and plans recommend improving this intersection with public and private investment. None of these community redevelopment strategies is furthered by granting a malt alcoholic beverage license to a second store in such close proximity to another. Granting a license wouldn't improve the goal of the plan.<sup>87</sup> The real goal is economic gentrification. An upscale wine store would probably be just fine, but a grocery that also sells beer is not part of the plan.

Likewise, Alderman Bauman rejected the possibility of an actual, taxpaying business that serves the community around 27th & Kilbourn for the speculative possibility that someone, someday, would buy the property where Judy's Red Hots sits and redevelop it. He blithely offered to change his position were Nasir to tear the current building down and rebuild it, knowing that a prospective hot dog stand owner would be unlikely to go through the trouble. Rather, Bauman's real intent, according to some in the community,<sup>88</sup> and evidenced by the testimony at Nasir's license hearing, was to lure a developer with federal community block grant money and other local development subsidies to build an upscale restaurant or other shopping facility that would act as an anchor for redeveloping the whole neighborhood. The hot dog stand is on a busy corner of real estate. It is easy to see why it would be attractive to a developer aided by public funds. "What's wrong with a sit-down restaurant," Bauman said. "What's wrong with a *place with a little class*, that shows some respect for your neighborhood."<sup>89</sup>

The top-down development initiatives of Zielinski and Bauman are emblematic of two visions for economic development—one where free and responsible entrepreneurs judge for themselves what businesses to open and where there are markets versus local economies managed by so-called "stakeholders"—politicians, planners and politically connected developers. As one commentator has described it, "The battle over AK Food Mart highlights the tension in Bay View between the trendy newcomers revitalizing the area and the neighborhood's blue-collar base." Aldermen are using

comprehensive development area plans to promote special interest growth, which are usually deemed "catalytic project recommendations."<sup>90</sup> They promote businesses and redevelopment projects that suit their personal tastes, rather than allowing growth to occur naturally. It is the type of legendary battle waged between urban activist Jane Jacobs, who favored an organic growth of vibrant cities, and arch enemy, urban planner Robert Moses, who believed all development needed to be centrally planned by government authorities and their allies.

The current vision for Milwaukee's development, however, has little to show for itself. Milwaukee invests more than \$100 million per year on redevelopment efforts, and spent \$413 million between 2002 and 2005.<sup>91</sup> The city "has wagered millions on real estate development and community development to boost the city's tax base and stimulate investment in poor neighborhoods."<sup>92</sup> Not surprisingly, there is little accounting of where the money actually ends up, or how successful each project turns out to be. And despite offering a slew of programs for small businesses, such as the "Emerging Business Enterprise Program" and every imaginable type of public subsidy, these are emblematic of a system in which bureaucrats and politicians attempt to stimulate the economy by picking winners and losers, not getting out of the way to



## Eminent Domain

Imagine buying a commercial property, paying \$30,000 to tear down the dilapidated building on the site, investing \$200,000 on new building materials, and then hearing from the city officials the proposed business could not proceed after the local alderman exercised his “privilege” to have your license denied. Then, imagine the city using the fact that the prospective business lot is empty to declare the property “blighted” and take it using eminent domain. To add insult to injury, the city wants to give it to a next door neighbor—a big contributor to the campaign coffers of the alderman—who wants to expand his business and was unsuccessful in his attempts to buy the property outright.

Does this scenario sound too far-fetched to be true? Well, it’s not. Rafael Cetina and his family bought two parcels of land south of downtown Milwaukee in the hopes of building a restaurant and a nightclub. They sank a ton of money into the project, and Rafael even turned down two promotions at his job because of his intention to open this family business. But when the Cetinas applied for a liquor license, their application was denied. The Cetinas’ next door neighbor, Pete’s Fruit Market, whose owners had been contributors to the local alderman’s campaign, complained. Neighbors also complained about the presence of another local liquor establishment in the area.

After the liquor license was denied in 2006, the land sat vacant for a few years as the Cetinas were figuring out what to do with the property. Applicants must wait three years to re-apply for a liquor license. But in the spring of 2009, the Common Council’s Zoning, Neighborhoods, and Development Committee declared the property blighted and voted to condemn it and turn it over to Pete’s Fruit Market for its expansion.

Under any common-sense definition of blight, the Cetinas’ land was not blighted. It was surrounded by a picket fence and was well-maintained. But Wisconsin law has such an amorphous definition of blight<sup>93</sup> that government can find a way to condemn almost any property. Here, the property was supposedly “impeding business growth.”<sup>94</sup>

In the end, the Cetinas agreed to use their space for a retail development rather than a nightclub, and the Common Council refused to follow the committee recommendation to condemn the land. The lesson to be learned from this tale, apart from another example of the scourge of aldermanic privilege, is that until Milwaukee or the state of Wisconsin tightens up its definition of “blighted property,” local governments will use this loophole in eminent domain statutes to condemn businesses that do not live up to the expectations of politicians and planners, and likely transfer them into the hands of other politically connected businesses. The possibility that—after jumping through all the legal hurdles to get a business off the ground, and then surviving the rigors of the marketplace—a business can be taken at whim when politicians, planners and developers determine the property could be put to better use, will be yet another disincentive for people to start new businesses in Milwaukee. This is especially true in areas more likely to be deemed blighted, which are, of course, the places that need entrepreneurs the most.

let the true cream rise to the top. In order to chase the dream of a “new” Milwaukee populated by young, urban professionals, the city is crushing the entrepreneurial ventures of its current residents.

### ***Restaurants: Death by a Thousand Cuts***

The full breadth of Milwaukee’s regime of regulatory overkill tends to fall most heavily on restaurateurs. This is ironic for three main reasons. First, there are literally thousands of restaurants in Milwaukee that provide an untold number of jobs. People always need to eat, and restaurants serve an important need in the community. Second, starting a restaurant (or working in one) is often the first step on the entrepreneurial ladder, as people like Muhammad Nasir Khan will tell you. Immigrant families will bring their culinary expertise and provide a delicious, unique cuisine. And they provide jobs to others in their communities. Third, restaurants are often seen as a harbinger of neighborhood revitalization, and will “anchor” redevelopment. It makes little sense that planners and politicians would seek to burden them in a network of crippling and unnecessary regulation.

Two Milwaukee restaurateurs demonstrate both the power of entrepreneurs in a community, as well as the fragility of even a successful small business and how regulation can threaten its survival.

Today, the neighborhood around Brady Street on Milwaukee’s East Side is a trendy and eclectic collection of shops, coffee houses, eateries and funky, remodeled old homes. But it was not always that way. Twenty years ago it was a den of crime and villainy. That is when a Sicilian immigrant who spent her first two decades in America working as a cook decided to open her own restaurant. Mimma Megna is now known as the Mother of Brady Street, because it was her restaurant that spurred a classic neighborhood revival story.

The restaurant began with eight tables and a four-burner stove. She offered a “tour of Italy” menu that focused on Sicilian seafood dishes. Despite the rough neighborhood, people lined up for

hours, sometimes in very cold weather, to get a seat in her restaurant. Mimma now has 17 employees and is capable of serving 190 guests at a time. Her walls are lined with pictures of the glitterati who have become loyal customers. Mimma did not rely on the government to help make her restaurant a Milwaukee institution. She did it the old-fashioned way, investing all of her savings and lots of hard work.

Mimma also gives to the community. She holds Thanksgiving dinners in her restaurant for HIV/AIDS patients, fundraisers for victims of domestic violence, and is planning events to benefit local animal shelters. In other words, Mimma is not only invested in her business, she is invested in her community. That is because, as any business owner knows, successful businesses—particularly small ones—are built on relationships. These relationships take time and effort to develop through both friendliness and providing a good product or service to the community. Conversely, small businesses in which ownership or management is disconnected from customers do not tend to thrive over time. The backbone of the Brady Street revival has been anchored by long-time institutions like Mimma’s and Glorioso’s Italian market—businesses with loyal customers in the community. These are the businesses that the city government should be welcoming with open arms rather than crushing them with regulations and fees, while at the same time providing

## Milwaukee Serves Up a Recipe of Burdensome Fees

The fees in Milwaukee constantly add up and almost never seem to end. In fact, the special charges, assessments, and fees Milwaukee collects have risen steadily over the past few years.<sup>95</sup> Here is just a partial list of fees a fledgling restaurant may have to pay to improve their business. Keep in mind that these do not include typical building and utilities-type permits necessary to retrofit a physical space, and that each must be renewed annually:

- Bicycle Parking Facility Permit: \$16<sup>96</sup>
- Class "B" Fermented Malt Beverage Retailer's License: \$100<sup>97</sup>
- Class "B" Manager's License: \$25<sup>98</sup>
- Class "B" Retailer's Intoxicating Liquor License: \$500<sup>99</sup>
- Class "B" Retailer's Service Bar License: \$600<sup>100</sup>
- Driveway Permit: \$153<sup>101</sup>
- Extended Hours Establishment Fee: \$250<sup>102</sup>
- Flower Pot Holders License: \$40<sup>103</sup>
- Temporary occupancy of sidewalk permit: \$90-140<sup>104</sup>
- Sidewalk Area Dining Permit: \$115 plus 28 cents per square foot<sup>105</sup>
- Food dealer's license: \$383-1,356 depending on anticipated sales<sup>106</sup>
- Sign permit fee: One percent of the cost of the sign (minimum \$50)<sup>107</sup>

subsidies to trendy nightspots that may attract the dollars of a small, overvalued segment of the population.

Besides cutting through all of the red tape that's already been described, such as licenses, occupancy permits, and sign restrictions, there are fees and regulations for everything including outdoor flower pots (even those affixed to the building) and sidewalk café permits in order to put tables and chairs outside.<sup>108</sup> Also, a separate liquor permit is necessary for outdoor seating. Of course, the local alderman must sign off on any sidewalk café before it opens. In addition, there are garbage fees, increased licensing fees, sign taxes, permits to play music inside the restaurant, and even a second permit just to sell her homemade gelato outside her restaurant. One alderman has told Mimma that, "If [she] can't afford the cost of regulation, [she] can move."<sup>109</sup> That's a pretty cavalier attitude from a city supposedly trying to keep businesses, especially those with a track record like Mimma's.

"There is going to come a day when the constantly increasing taxes, fees and permits make it impossible to keep this restaurant going. It's already difficult trying to cover my expenses and my loans," says Mimma, who has had to, at times, borrow money to pay taxes. "The city shamelessly continues to soak successful businesses to fund their pet projects and speculative redevelopment schemes. But these people do not understand businesses and how they work. If the city continues to treat businesses like this, pretty soon the only ones they'll have left are those they've given a handout to. It's death by a thousand cuts!"

On the opposite side of town from Mimma's, nestled close to Milwaukee's Mitchell Airport, sits another Milwaukee institution that has become a preferred meeting ground for business executives, federal prosecutors, local politicians and especially average workaday folks. No, it's not a flashy steakhouse; it's Martino's Italian Beef and Hot Dogs.

Martino's has all the trappings of a great wienerery: authentic Chicago dogs (no ketchup, of course), foot-long beef hot dogs, chili-cheese fries and milkshakes. There's more, but these are the

staples. Each day, owner T.J. Anderson and his wife, Cathy, serve hundreds of hot dogs to an enthusiastic customer base. T.J. is not one of those owners who is in a back office keeping the books. During the lunch rush, you can see T.J. in a cloud of steam emanating from the watery hot wiener bins. He is on the line, throwing together his famous Chicago dogs with zest and verve. Because of the volume and speed with which Martino's must operate to adequately serve its customers, T.J. spent three years working to get a waiver from city officials to handle fresh food without having to put on a new pair of plastic gloves after making each meal.

For T.J. and his family, their hot dog stand is not just a business. It is a way of life.

"I know my place in the world," T.J. says. "I sell hot dogs. But we have become a one-of-a-kind Milwaukee business and have added value to this community. I take great pride in the business, and have made a commitment to providing quality products and an excellent work environment. And I just wish the city of Milwaukee would let us earn a living."

That last line triggered a tale of a tireless business owner working overtime to build a thriving Milwaukee business, but being hampered every step of the way.

T.J. is particularly frustrated by the fact that few Milwaukee city leaders, if any, understand what it is like to run a small business.



*Mimma Megna and T.J. Anderson have both struggled to keep their restaurants afloat amidst the gauntlet of regulations and fees Milwaukee imposes upon restaurant owners.*

“Most of the time, it is easier to ask for forgiveness rather than permission,” says T.J. “It can be seemingly impossible to get things done through the city, especially concerning building permits, and sometimes the best thing to do is to just go ahead and do them and work out any problems later.”

And that’s one of the big problems with the layers of red tape and bureaucracy, according to T.J.: “It makes criminals out of honest, hard-working people.”

For instance, T.J. recently put in a new outdoor deck patio for summer customer seating. He had to present his plans to a planning review zoning board, which carried with it a sliding-scale fee based on the cost of the project. And he had to research the handicap accessibility requirements because no one at the city could help him to navigate the law.

T.J. said, “Throughout the process, there was never any attitude of ‘How can we help you?’”

T.J. shares Mimma’s frustrations with how Milwaukee’s burdensome regulations can crush a small business. Even a small hot dog restaurant like Martino’s must pay \$11,000 in combined property taxes, fees and public utilities. When the margins are as small as they are in the food business, it is difficult to justify staying in business.

“Every day we move closer to selling off,” T.J. said. “Pretty soon the law of diminishing returns kicks in and it becomes clear that you’re better off doing something else. I’d like to expand my restaurant, but not if we keep getting strangled by regulations. It’s not worth the hassle.”

According to Mark Schug, one of the authors of the business climate study mentioned previously, what sets Milwaukee apart from other high tax, high regulation cities is that “there’s a feeling in the business community they’re just a lamb to be fleeced.”<sup>110</sup> What businesses like Mimma’s and Martino’s need is a government that recognizes the value of self-made entrepreneurs and businesses, and the gifts that they bring to their communities.

## Taxis

One primary way in which people—especially immigrants and minorities—get a foothold into the economy is through the transportation sector. People need convenient transportation, so there is always a market for safe, affordable, and efficient ways of moving people around—that is, if the government allows it.

Milwaukee, like many cities, has capped the number of taxis it allows on its streets. The city has issued only 340 cab licenses<sup>111</sup> and will not issue any more.<sup>112</sup> Only 50 cabs are allowed to serve its airport.<sup>113</sup> The reason for this cap is based on a city finding that “public convenience and necessity” only require a small amount of cabs. (A “public convenience and necessity” standard is one in which the government—not taxicab drivers and the riding public—decides how many cabs a city needs.) The city is quite open about the fact that what it is doing by imposing such a cap is controlling the local taxi market, and keeping new competitors out.

Like many immigrants, Jatinder Singh Cheema came to America from India in 1981 looking for a better life. He worked in a garment warehouse in New York until 1986, when he started driving limousines. Eventually, he saved enough to open a little grocery store in Manhattan. Unfortunately, it was not successful and he came to Wisconsin in 1996 where he bought a gas station in Racine. The gas station, however, lost lots of money after a downturn in oil prices, and in 2002 he was able to find a Milwaukee cab company that would rent him one of its cabs for the night shift. He has been driving a nightshift cab ever since.

Cheema pays the cab company \$350 per week in rent, plus 15 percent of all credit card sales to operate the cab. But he would like to run his own cab company and operate a fleet of vehicles. Milwaukee’s cab cap, however, prevents him from doing so, even though Cheema believes there are many parts of the city currently underserved by the existing cab companies.

“There is a lot of service Downtown, but people on the North Side have a difficult time getting a cab,” Cheema said. “When the weather is bad, there are no taxis at the airport.”

It has not gone unnoticed that there is a shortage of cabs in Milwaukee, especially at the airport.<sup>114</sup> Milwaukee does allow new licenses for limousines, but those can only service pre-booked passengers, meaning limousines may not pick up fares on the street or at taxi stands, which effectively eliminates the existence of any new “luxury” cabs.

Strangely, Milwaukee states that one of the purposes of its regulation of public passenger vehicles is to “encourage innovation in the provision of taxicab and paratransit services.”<sup>115</sup> Yet Milwaukee’s cap on new taxi licenses and limitations on limousines snuffs out any new innovation in the local taxi industry in favor of the established companies and their way of doing business.

“Lots of people want to have cab companies or drive cabs,” said Cheema. “If I had my own business, I could employ many people who want to work for me. I’d like to bring an important service to the city, but its laws make that impossible.”

It is no secret that the cap is really about protecting the cartel, not protecting public safety. Still, Cheema chooses to remain positive and work for change: “I am grateful for the opportunities I have received in America, but Milwaukee’s cap on taxicabs prevents me and others I know from realizing their dreams. And the city suffers because of it. It’s time for the city to create real opportunity for people.”

Milwaukee’s regulation of taxi cabs stands in stark contrast to another industry normally governed by “public convenience and necessity” tests: household goods movers. The state of Wisconsin has largely deregulated the market for intrastate goods movers. And Milwaukee has not placed any additional restrictions on movers

operating within the city. Although movers do have to obtain a permit from the federal government, as well as apply for a contract carrier license from the state of Wisconsin that includes a \$500 fee, there are no absolute barriers to entry like with taxi cabs. As the state says: “It is the intent of the legislature to remove the economic regulations which limit motor carrier operations in this state. The legislature intends to let the market promote competitive and efficient transportation services, while maintaining the safety regulations necessary to protect the welfare of the traveling and shipping public.”<sup>116</sup> If only the government was this flexible for all trades and occupations. Milwaukee should take a cue from the state, as well as cities like Minneapolis, that removed “public convenience and necessity” as a barrier to entering the transportation market.

### **Street Vendors**

If vendors want to set up a stand on the sidewalk, or be stationary on the street for longer than one hour, they may as well not bother. The barriers are almost insurmountable. First, prospective vendors must get a state seller’s permit (anyone who sells anything in Wisconsin has to get one of these so the state can collect its share of taxes).

Then, they must apply for a direct seller’s license, which carries a \$129 annual fee.<sup>117</sup> A prospective vendor will also want to check to make sure the product she is selling does not require a separate city license (e.g., gem dealer, secondhand dealer, etc).

Street vendors who wish to remain stationary must also file an application for a “special privilege”<sup>118</sup> to do so from the Milwaukee Common Council. It requires another \$250 application fee, filing a surety bond in an amount ranging from \$1,000 to \$10,000, and a public liability insurance policy with a significant amount of coverage.<sup>119</sup> It also requires a plan or sketch of the proposed vending station, the exact location where the vendor wishes to set up shop, and a description of what is to be sold. According to one city official who handles these requests, the process will suck months of one’s life away. When asked about what it takes to become a prospective vendor, she discouraged this writer from even bothering to file, but was very helpful explaining how the process worked, and forwarded along the special-privilege permit application.

Once the special-privilege petition is filed with the Common Council, it is introduced into its Public Improvements Committee. It then gets referred to the Department of Public Works (“DPW”). DPW then reviews the application, while getting input from DNS (which tends not to favor these because street vending is typically inconsistent with the zoning ordinances). It then submits its recommendation to either grant or deny the special privilege back to the Public Improvements Committee. The committee then considers the request, votes on it, and then submits its recommendation to the full Common Council for a vote. Along the way, vendors will have to tussle with their alderman and gain his or her support, as well as be in the good graces of the adjacent property owner, either of whom can effectively kill a vendor’s application.

Even if the special privilege were granted, vendors would be limited to a three-foot-by-seven-foot stand, and saddled with an annual sliding-scale fee based on the value of the adjacent property. That fee can range from as small as \$10 per square foot of space, to \$250 per square foot. It is no wonder that there are only two active special privileges: one to a sunglass vendor, and another to a flower stand.

The only way going through such a process makes sense is if: (1) vendors have an amazing product that will sell like gangbusters; (2) vendors operate in a city with long months of warm weather; and (3) that city has a lot of tourists. Navigating the system might be worth it in Washington, D.C., but not in Milwaukee. Local street vendors better be sure their product is on wheels. As long as vendors are mobile—that is, they use some



*Taxi drivers like Jatinder Singh Cheema (left) and mobile food cart owners like Vijay and Manoj Swearingen (right) are all subject to the overly burdensome aldermanic decree.*

sort of pushcart, truck or vehicle, comply with traffic and right-of-way rules (some forbid vendors from being any closer than 500 feet from certain venues) and move at least every couple hours or so (the statute says one hour)—there is no need to get anything more than the two seller’s permits, which at least provides some additional opportunity for enterprising salespeople.

### **Mobile Food Carts**

Milwaukee’s flexibility concerning mobile street vendors has led to a vibrant new street food scene that is making headlines.<sup>120</sup> Milwaukee is supportive of mobile food cart establishments and even produces a “how-to” manual to help businesses get started.<sup>121</sup>

The food items are not limited to tacos; pita wraps, crepes and pizza have all stormed onto the streets of Milwaukee and have harnessed social networking technologies like Twitter to become hugely popular. These mobile stands have both the flexibility to go where the walk-up market may be strongest from day to day, as well as the same advantages as a traditional bricks-and-mortar restaurant. They can “tweet” to their loyal customers where they will be on any given day, as well as instantly notify folks of their promotions.<sup>122</sup> It will be no surprise when mobile food trucks really become a huge phenomenon.<sup>123</sup>

When the revolution happens, the Pita Brothers will be among the Founding Fathers. Vijay and Manoj Swearingen have created a concept that seems likely to be imitated elsewhere. Two summers ago, they launched “Pita Brothers,” a mobile food truck that sells a variety of pita bread wraps. Armed with a cute, environmentally friendly truck, the brothers park at various

Milwaukee hot spots throughout the day. In addition to pedestrian traffic, they “tweet” their location to their legion of more than 1,100 followers.

The premise of Pita Brothers is to create real food options for people and make it available in prime locations not available to other restaurants.

“I knew I’d have to be as good or better than any corporate franchise to survive,” Vijay said. They saw a niche for portable pita sandwiches wrapped in aluminum foil and tried to fill it. The fresh food concept is becoming increasingly popular, and the Swearingens believe they have a business model that works. Vijay said, “We try to keep it simple and keep it fresh. We make all of our ingredients, except for our pitas, which we carefully selected from a special bakery near Detroit.”

Vijay admits that his business sounds complicated, but in reality, “Any Joe Schmo could do this. It is not something that is very specialized; and, best of all, very little goes to waste.”

Judging from the comments on their Twitter page, the Pita Brothers are a big hit. One fast food chain has been sending over secret shoppers and may have even

triggered a health inspection of the truck in order to suppress the growing business.

According to Vijay, “It’s fascinating to see how greed operates. Businesses believe they own certain markets, and will use the government to prevent you from competing.” Vijay said that their experience will hopefully open some eyes about how the laws are slanted in favor of established businesses, and how businesses will use those same laws to suppress competition.

Vijay feels fortunate that Milwaukee has been flexible enough to give food entrepreneurs like him an opportunity, especially since many major cities ban food trucks altogether. He even set up a consulting business, Motovend, to advise others about opening mobile food trucks and market his own pita truck concept.

“This country was built on economic opportunity,” he said. “Fortunately, Milwaukee has made it easier to start and to test out a business idea than some other places I’ve heard about.”

But his experience with regulation and competitors who try to use the heavy hand of government has him worried. “There won’t be a United States in the future if the window of opportunity is closed by government and established businesses,” he said. “People need to have the opportunity to be creative.”

The Pita Brothers story should be a feather in Milwaukee’s cap, but that is not to say prospective food trucks still don’t face a lot of regulation. Vijay himself pointed to the ban on food trucks within 500 feet of many festivals and important Milwaukee venues like the Bradley Center and the Midwest Airlines

Center. And his food peddler license and occupancy permit amounted to about \$700, which is a huge dent in a business model that tries to make a profit on five-dollar pita wraps.

Some other food trucks will face more fees. Ice cream peddlers, for instance, must obtain a separate ice cream-peddler license, in addition to a food peddler license; they must also obtain a license for their mobile cart or vehicle.<sup>124</sup> Additionally, all mobile-food establishments must have mobile-service bases (unless the vehicle itself contains basic facilities). These service bases must be equipped with food preparation areas, utensil washing facilities, a mop sink for disposing wastewater, and a sink with threaded tap for supplying potable water. If the mobile food cart also sells non-food items, it also needs a city direct seller’s permit, as well as a state seller’s permit. Therefore, if your mobile food cart sells hot dogs, ice cream and pinwheels, you need a food peddler’s license (which requires the service base—and an occupancy permit), the ice cream peddler license, a direct seller’s permit and a state seller’s permit. It is safe to say that these five permits and licenses will substantially cut into the small margins such a food truck might make during the short summer months.

## Sign Laws

Suppose, for instance, that a businesswoman wants to start using her premises to market her products. Advertising is, of course, a basic requirement of almost any business.

But not so fast.

Milwaukee has a restrictive sign ordinance that limits what the businesswoman can tell others about her business. All permanent signs require a permit from the Department of City Development. If her business is located within a locally designated historic district, the city’s Historic Preservation Commission must also approve the sign. Businesses are generally allowed a maximum of 18 square feet of wall signage. A business may have temporary window signs, but they can only fill 25 percent of the window space. Permit applications must be accompanied by extensive information, including drawings, site plans, location of other signs, cost estimates and details of the sign supports, and fees must be paid.<sup>125</sup> The plan examination fee is 0.6 percent of the cost of the signage (minimum \$60), and the sign permit itself costs one percent of the cost of the signage (minimum \$50).

As usual, Milwaukee has a helpful guide to the basics of its law,<sup>126</sup> but that is a small tonic to the imposition of an otherwise restrictive law that can cripple a business's ability to advertise products or sales. Restrictions on commercial signage also run afoul of the Constitution. The Institute for Justice is currently litigating a First Amendment challenge to a similar law in Dallas.

The city of Milwaukee believes it is helping businesses by strategically limiting their signage. In the city's own words, "more isn't better" and "too many signs give customers an impression of clutter and disorganization."<sup>127</sup> These statements may, in fact, be true, but most businesses would rather make that decision for themselves.

## Red Tape and Hassles Threaten to Strangle Small Business

Every city tries to advertise itself as a "destination," and lure folks with deep pockets to spend while they are in town. But for all the marketing a city may do, the whole effort is futile if at the same time the city imposes a Kafka-esque set of fees and rules on businesses, even those upscale ones that try to make the city a nice place

### Milwaukee Sign Code

#### WHAT AMOUNT OF SIGNAGE IS ALLOWED?



Is this signage allowed? *No*



What about now that there is no signage in the top 60% of any window? *No*



What about now that there are painted letters covering only 1/3 of each window? *No*



What about now that there is no signage in the top 60% of any window and less than 25% of it is covered?

*OK*

**"I'm sacrificing my life to do this.  
Why does the city make my life so  
difficult?"**

*-Laura Sue Mosier*



to visit. Milwaukee's maze of red tape, mendacious inspectors and arbitrary historical preservationists are enough to drive a would-be entrepreneur crazy. Just ask Laura Sue Mosier.

Laura Sue decided she wanted to play by the rules when she opened her bed and breakfast in the old Schuster Mansion on Wells Street near Marquette University. Laura Sue is a graphic designer and wanted to create a freestanding lawn sign to advertise that she and her husband had opened the mansion for B&B business. She called the city and told an official what she wanted to do. The bureaucrat said it was okay, based on the fact that others in the area had similar signs and he knew of no restrictions on such signs.

But Laura Sue found out from another B&B owner after making the sign that there were, in fact, sign restrictions. Her sign was slightly oversized (the ordinance limited such signs to two feet by three feet, while Laura Sue's was three feet by four feet). But, again, neighboring businesses had similar signs, so she figured that her request for a variance from BOZA would be no sweat. She was wrong.

Laura Sue filed her \$300 sign permit application and fee and headed to the BOZA hearing. Prior to her own case, another applicant who was attempting to put in place an oversized sign in a residential area had his variance granted over the objection of neighbors, so Laura Sue believed she'd have no difficulties. But to her surprise, her alderman stood up and objected vehemently to her receiving a variance of the sign, arguing that there were rules and they needed to be followed, never mind the fact that many of the other area businesses had nonconforming signs and most had not received special permission from BOZA.

The board, which almost never debates individual sign variances for extended periods of time, clashed for over 45 minutes debating the request. Laura Sue was not allowed to speak in her own defense. In the end, the vote was a 2-2 tie, and the hearing was rescheduled for a following meeting when the chairman would be present to break the tie. Fortunately, she was diligent enough to send a letter to the board asking to speak, otherwise, she would have again been denied the opportunity at a follow-up hearing.

In preparation for the next hearing, she created an aerial printout of the area showing the numerous non-conforming signs. She next obtained the permission of all of her neighbors to erect the sign. The board, in an unprecedented move, argued her case for another half an hour. But again, she was denied the variance. As one board member who voted against the variance said, "If you

have a good business, you don't need a sign." Such a comment should speak for itself concerning the business acumen of many city officials. Altogether, the process from filing to ultimate denial took more than three months, the result of which prevented Laura Sue from advertising her business at a crucial time just as it opened.

Laura Sue was deeply troubled by the BOZA hearing, and asked why others were not expected to conform to the ordinance. An official told her that because a complaint had been filed against the property under the previous owner, it had been "flagged" by the city to monitor in the future for code enforcement purposes. Even though the city knew that other properties were not in conformance with code, no one had complained, and thus no action was taken against them.

The city official told Laura Sue that she could file complaints against all of her neighbors, and then their properties would be "flagged" as well. Essentially, the city stated that it only enforces its code when someone complains. But when your property is flagged, you will feel the heat from the city. And boy does Laura Sue know it.

Laura Sue and her husband, Rick, moved to Milwaukee from Chicago and bought the Schuster Mansion in March 2008. Since then, guests have asked many times what the toughest part of the business has been. "Taking care of guests is a breeze," she responds. "But dealing with the city has been an ongoing struggle." Nothing but her dynamic personality and sheer will power could have overcome the obstacles she has faced on the way to quickly making the B&B into a landmark destination.<sup>128</sup>

Within two weeks of moving in (the Mosiers also live on the top floor of the mansion), they received a letter from the city indicating it had been on the property, and provided them with a list of chores and problems they needed to correct. The micromanaging list was full of petty things like cracks in the sidewalk and an unpainted wall on the alley garage. Yet, the city largely ignored issues like broken windows in the actual mansion. According to Laura Sue, the frustrating part of the list was that it ordered them to correct things that were unrelated to the safety of guests, while they were sinking gobs of money into the actual building itself, preparing it to be safe and habitable for their customers. The city apparently disagrees—it has threatened to take the Mosiers to court for doing major repairs before the minor housekeeping chores identified by the city inspectors.

On top of this battle, the city's Historic Preservation Committee ("HPC") has been saddling them with nonsensical requirements that it has not bothered to enforce against other buildings. For example, the Mosiers want to replace the wood windows, which are rotting. But rather than use decorative wood windows that are also energy efficient, the HPC is requiring the Mosiers to replace them with the same single pane windows that are currently in place so that they look exactly like the original windows. This change is going to cost the Mosiers an extra \$140,000, not including the increased heating bills resulting from the inefficient windows. In another strange action by the HPC, it has suggested that the Mosiers could blacktop their back parking lot, when such a feature would significantly undermine the character of the lot. It is as though the

HPC has the authority to dictate whatever crosses an inspector's mind on a particular day and thus saddle property owners with huge costs without any real rhyme or reason. And on top of that, a permit is required for almost any light construction project done on the mansion. So the Mosiers are often wrangling with the city when they could be investing their time and money in their business.

Dealing with the city has taken a toll on the Mosiers. What's worse, they feel they have no one to turn to at city hall, no one who will listen—especially not their alderman.

"The city has been the most difficult thing about owning this business," she said. "Mayor Tom Barrett says on the city's website how much it wants to encourage business, but I wonder how much he really knows about how the city works."

The irony of this story, of course, is that the Mosiers are working overtime to repair a dilapidated mansion and really create a destination for the city, but are being thwarted at each step by bureaucrats acting arbitrarily, zoning boards bending to the whims of aldermanic privilege, and historic preservation committees apparently making things up as they go along.

Fortunately, business is strong at the Schuster Mansion, and Laura Sue has big dreams for the place.

She said, "We want to create an oasis in the city; a destination spot. When you come to Milwaukee, you stay at the Schuster Mansion."

And it is not just a bed and breakfast. It is a small gathering place that hosts wedding receptions, company dinners, and, Laura Sue's specialty, ladies' high teas. They want to hire more employees, but the costs and fees associated with remodeling the place and giving the city its cut have made that impossible for the moment.

Milwaukee cannot afford to treat entrepreneurs like it treats the Mosiers. Laura Sue has a will of steel, but even she is being ground down by the city.

"My husband and I are making great sacrifices to run this B&B and contribute to the community," said Laura Sue. "Why do I feel like the city is against us, rather than for us?"

### ***Going Out of Business License***

Most entrepreneurs fail a couple of times before they eventually succeed. It's a simple fact of doing business that most businesses do not survive. But the last thing one would think to do is put yet another albatross around the neck of a failing business—it



*Laura Sue Mosier (left) felt the iron rule of the aldermanic code while getting a business off of the ground, while Marc Bold (right) could not even escape it as he was going out of business.*

is a tough enough time for people whose dreams have been deferred. Milwaukee, however, is reaching into the pockets of entrepreneurs, even as those entrepreneurs are forced by circumstances to close their businesses. In Milwaukee, you must get a license from the city before you can hold a going-out-of-business sale.<sup>129</sup>

Essentially, a business cannot tell the public it is closing without first getting the government’s approval. It must submit an inventory of its items, describing when it purchased them and for how much. It must update this list on each successive day of the sale, as well as list the price for which it intends to sell each item. The closing business must also submit its advertisements for approval by the government and, worst of all, pay a rather substantial fee, which is based on how long the sale will run plus an additional \$2 for every \$1,000 in inventory.<sup>130</sup> This is an astonishing restriction to impose on failing businesses—and it is an unconstitutional infringement upon free speech.

One might think the law would prevent fraudulent close-out sales, but Wisconsin already prohibits deceptive trade practices like fraudulent sales.<sup>131</sup> So Milwaukee’s law is unconstitutional, incredibly burdensome and totally unnecessary as well.

Former True Value Hardware store owner Marc Bold was just as surprised as anyone that Milwaukee required such a license. He decided to hold a going-out-of-business sale after getting an expensive permit from the city just to put up a sign letting the public and his customers know that he was closing. But the day after he hung the banner, a city employee walked into his store and told Bold he needed another permit for the actual sale.

“It’s impossible to do business in this city anymore, especially for small businesses,” said Bold. “The city gives tax breaks to a new Home Depot store that makes it really hard for smaller, service-

oriented hardware stores like mine to survive. Yet it turns around and makes it hard for me at every turn, and is constantly reaching into my pockets. How can the city be surprised that businesses are closing or leaving the city?” And then, “the city has the audacity to kick businesses when they are down. Why bother trying again when there are roadblocks every step of the way?”

Bold does not know what is next for him and his family. There is a good chance they will pack up and move to Minnesota to enjoy the lakes.

Laws like Milwaukee’s going-out-of-business license make little sense for any city trying to foster entrepreneurship. Assuming, for example, that a failed business is offering \$500,000 worth of inventory at its close-out sale, its license will cost it \$10,000 and change, plus the time and costs associated with compliance. That is an outrageous cost with absolutely no public benefit. Such costs could significantly cut into the startup capital for the next business venture. These are the sorts of ill-conceived laws that the city must assiduously comb through and remove from the books.

## State Laws

Businesses tend to fail when their owner or employees are not capable to run them. Usually, the market is the best arbiter of who puts out quality goods and services. The government, however, has become the gatekeeper for an ever-increasing number of occupations—trades that do not require a great deal of financial capital or formal education to enter. Licensure does not guarantee that a tradesman will be a successful businessman and offer quality goods and services, but governments everywhere have decided that licensure is an effective means of communicating to the public who is legally qualified to practice a trade.<sup>132</sup>

More often than not, licensure simply codifies a particular educational path to a profession, and is often promoted by trade groups to keep the number of competitors low and, therefore, keep the prices high. The bottom line is that aspiring entrepreneurs will first want to check with the state—in this case, Wisconsin—to ensure that they have met the requirements to offer one's services in a particular trade. In fact, Wisconsin is one of the worst states for occupational regulation, requiring some form of licensure for more than 100 occupations.<sup>133</sup>

The state of Wisconsin has an Internet site listing the various trades it regulates—one for “business” professions,<sup>134</sup> and one for “health” professions.<sup>135</sup> Most of the health-related licenses can be justified on the grounds that they require a minimum level of professional qualifications in accepted medical practice for people who deal on a day-to-day basis with

essential physical health needs of patients and the public. A few of the licenses, however, leave one scratching his head, including registration requirements to practice art,<sup>136</sup> music<sup>137</sup> and dance<sup>138</sup> therapy.

Most of the time, Wisconsin regulates various businesses through registration requirements. Wisconsin, for example, requires time-share salespersons,<sup>139</sup> professional fundraisers,<sup>140</sup> cemetery pre-need sellers<sup>141</sup> and athlete agents<sup>142</sup> to be registered with the state. It uses the registration system as a means of monitoring who is participating in certain occupations, as well as collecting the necessary fees in order to do so.

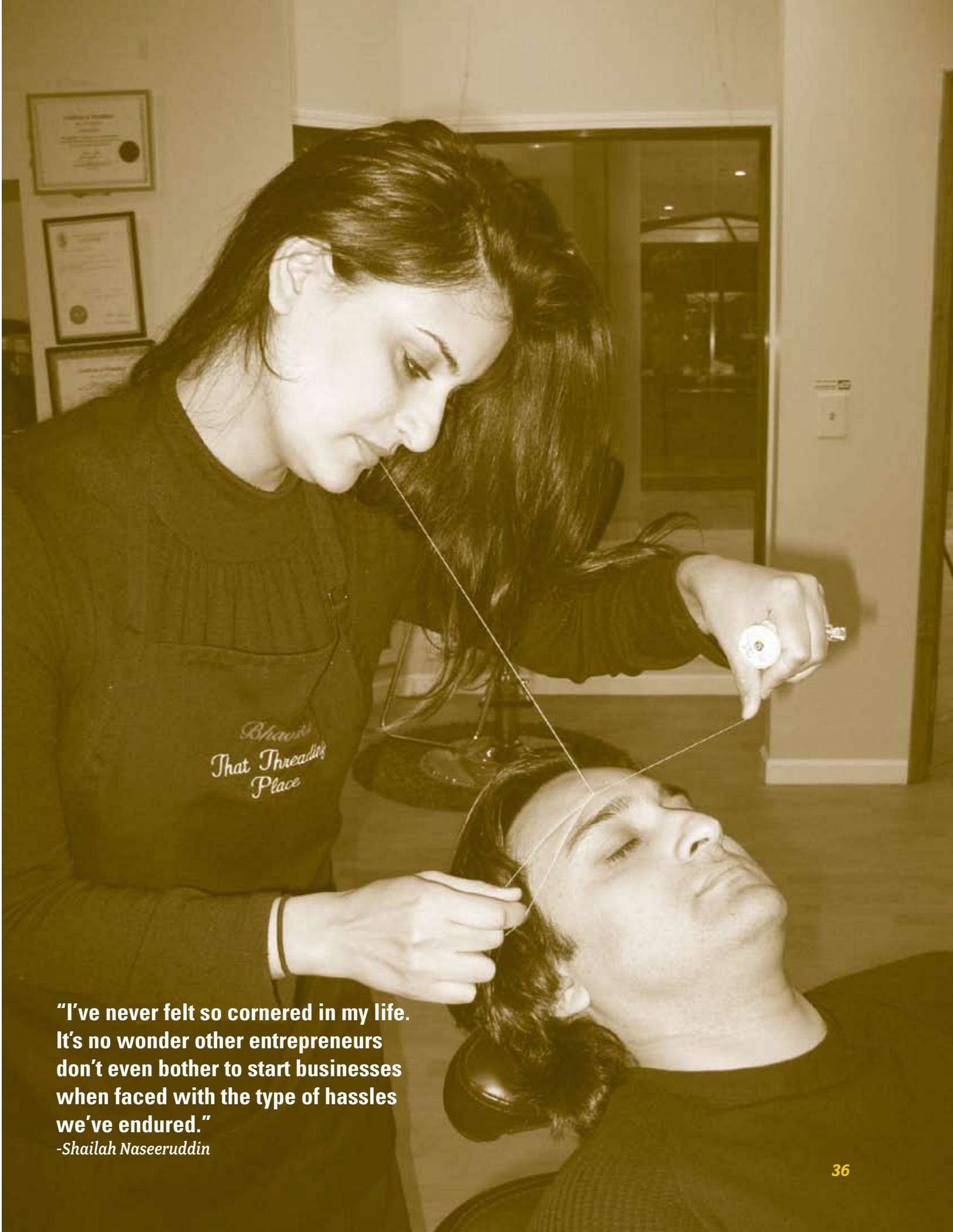
In some instances, Wisconsin goes beyond simple registration requirements and requires a full-blown license before one can even practice an occupation.

### ***Eyebrow Threaders***

Eyebrow threading is an ancient art used by South Asians to remove facial hair, usually excess eyebrows. It involves twisting a piece of thread back and forth across the surface of the skin to lift out hairs by their roots. (It in no way involves puncturing the surface of the skin.) It is much less expensive than other hair-removal methods, it is very precise, and one does not suffer the skin irritation and rashes that come with waxing. As more people from India have come to the United States, and the practice has become more well-known, threading has become a popular new method of hair removal.

Shailah Naseeruddin has been threading since she was a teenager. She learned the practice just for fun, but later realized it could be turned into a business. So, with her husband, Tanveer, they started a chain of threading kiosks inside shopping malls called, “That Threading Place.”

Before opening her two Milwaukee-area locations, Shailah called the Wisconsin state board of cosmetology to ensure that there were no threading-specific regulations they had to follow. The official at the cosmetology board had not even heard of threading, and stated that it was not regulated under the cosmetology statutes or by the board. Shailah then opened her two mall kiosks in March 2007 and business was brisk. They hired full-time managers/threaders for each location, as well as a few experienced employees. Shailah worked at the locations on weekends. Neither Shailah nor her employees were licensed cosmetologists.



*Bhawan  
That Threading  
Place*

**"I've never felt so cornered in my life. It's no wonder other entrepreneurs don't even bother to start businesses when faced with the type of hassles we've endured."**

*-Shailah Naseeruddin*



*Shailah Naseeruddin learned the practice of eyebrow threading just for fun, but later realized it could be turned into a business.*

In October 2007, a competitor most likely reported Shailah and her kiosks to the cosmetology board for operating without licensed cosmetologists on staff. A cosmetology inspector visited Shailah's two mall kiosks. She then ordered Shailah to shut down her kiosks or face arrest and penalties of up to \$5,000 and 90 days in jail for operating unlicensed cosmetology salons and employing unlicensed threaders.<sup>143</sup> Shailah was given no grace period to comply with the requirements. The inspector and the board showed no flexibility whatsoever. Worse yet for Shailah, she had just paid the holiday-season rent, which is triple the cost of the monthly rent for the rest of the year. Facing the prospect of already losing their rent for the holiday season—around \$12,000—Shailah and Tanveer entered into a stipulated consent judgment with the board indicating that they had been operating unlicensed cosmetology establishments and employing unlicensed cosmetologists, and would shut down their Milwaukee-area locations immediately.

How was the cosmetology board able to do this? It decided that because the definition of barbering and cosmetology under Wis. Stat. § 454.01(5)(d) is “the removal of hair of any person,” and because threading removes hair, it therefore falls

within the definition of barbering and cosmetology.<sup>144</sup> As a result, anyone who wants to practice threading will have to spend tens of thousands of dollars and years worth of effort first obtaining a cosmetology degree from an approved school.<sup>145</sup> Threaders now need 1,800 hours of unrelated training just to practice an ancient art, passed on from generation to generation.<sup>146</sup> Just for perspective, 1,800 hours is far more time than a lawyer spends in a law-school classroom.

The board does not have to read the statute in this manner and it could exempt threaders from the scope of the statute. But it chose not to do so likely because of the influence of an already-licensed cosmetologist intent on grabbing a piece of the growing threading business. And it is a rare bureaucracy that does not look to expand its authority in any way it can.

Such regulations, however, make no sense. Threading creates no health or safety dangers to the public. There is no skin-to-skin contact between the threader and the client. Shailah and her employees use a new thread each time to perform their work, new tissue to wipe any hair away from the face, and they use hand sanitizer between every client. Threading does not involve the use of any sharp tools or utensils, and it requires no chemicals. The state is requiring threaders to be licensed, yet threading is not even taught in the cosmetology schools. Cosmetology schools have asked Shailah to come in and teach sessions on threading, but she does not because she does not want to face any more penalties from the cosmetology board. There is no need to license threaders as cosmetologists or require them to work in actual salons.

Real people suffer when government arbitrarily regulates occupations that pose no threat to the public's health or safety. When it imposes such barriers to entry, it is typically done so to help established interests keep out the competition. Shailah had hired an experienced threader named Shital to run one of her kiosks. Shital

moved her family to Milwaukee to run the business. But Shital was not a Wisconsin-licensed cosmetologist, and so when the board shut down That Threading Place, Shital was forced to move to another state to practice her profession. Not only did the state's heavy hand cause a great disruption for Shital and her family, Wisconsin lost more of the human capital it needs to continue to grow and thrive economically.

Wisconsin's regulation even threatens Shailah's business model because not only may she not practice threading in Wisconsin without a cosmetology license, or employ unlicensed threaders, she cannot use a mall kiosk for her business. Cosmetology establishments have certain brick-and-mortar requirements under Wisconsin law like a restroom and a sink and walls.<sup>147</sup> And, she must employ a licensed cosmetology manager, which is a separate qualification altogether.<sup>148</sup> But, as discussed above, none of these things is needed. Wisconsin's inclusion of threading within the practice of cosmetology has radically undermined a cost-effective way of delivering threading services, and has limited threading to actual salons, which cuts into the affordability of such services and ends up needlessly harming consumers.

Shailah is sick at the thought of what arbitrary regulators did to her businesses.

"I've never felt so cornered in my life," she said. "I don't understand why, in this economy, the state would shut down a thriving business like ours? We pay taxes, we create jobs; and now there is nothing. It's no wonder other entrepreneurs don't even bother to start businesses when faced with the type of hassles we've endured."

### ***Nail Technicians***

It is not just threaders who are fenced out of their trade by burdensome licensing requirements. Manicurists need 300 hours of training merely to file nails.<sup>149</sup> Certainly, beauticians of all stripes

must ensure that basic cleanliness standards are maintained. For example, utensils should be cleaned after each customer and there are probably some specific chemicals that best ensure cleanliness. But these hardly require a comprehensive training program at a cosmetology school—schools that financially benefit heavily from licensure and certification requirements. And often, the appropriate training can be received on the job. The bottom line is that there are many ways to ensure that beauticians use "best practices," and it is in the salon's interest to do so, otherwise it will not get repeat customers.

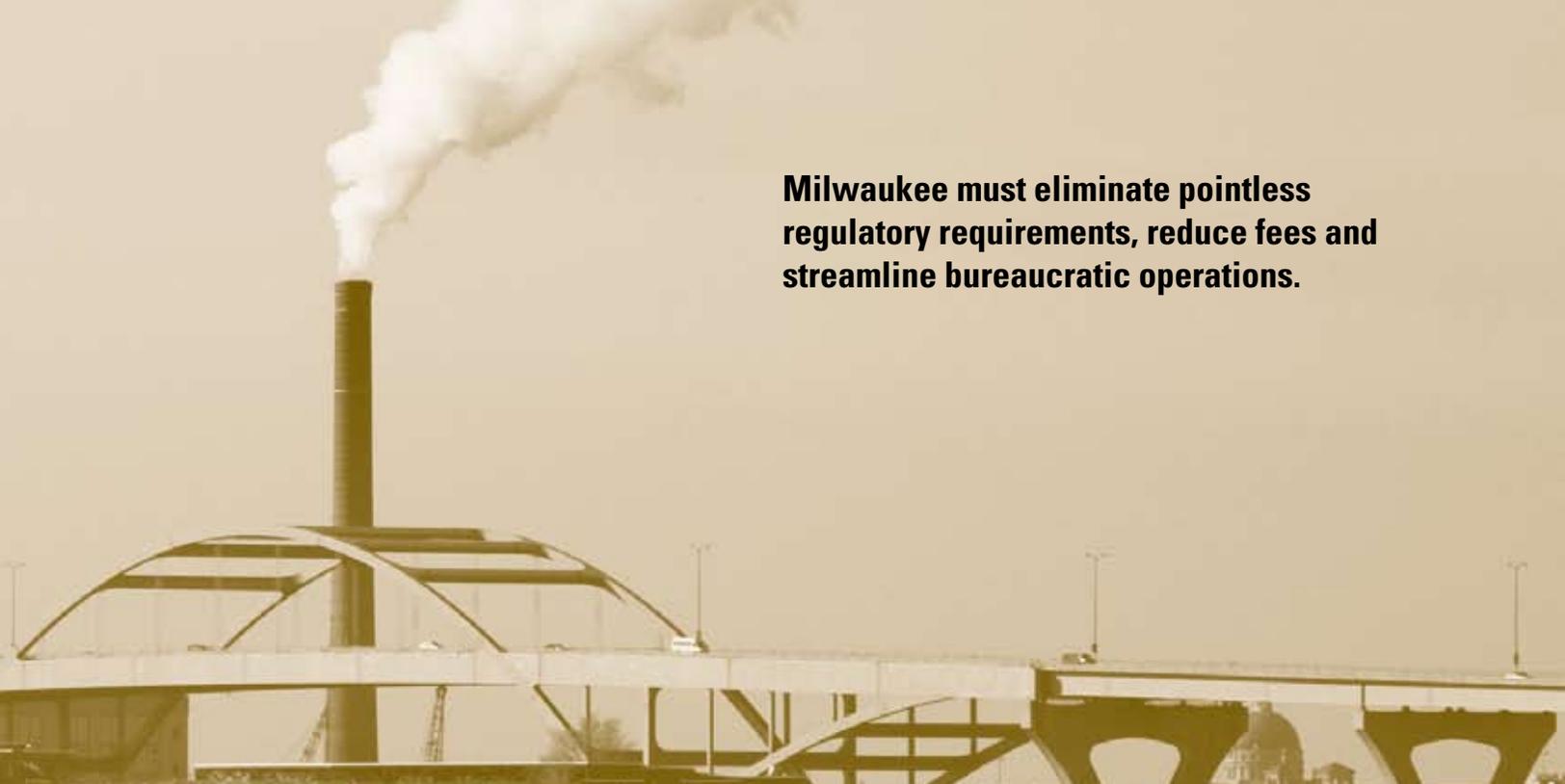
Licensing beauticians and other occupations without any substantial public health or safety justification is a major way in which states and local governments place barriers to entry in the way of entrepreneurs. Often, the costs can be so high that it prevents people from entering a trade altogether, which can be very detrimental to people on the lower rungs of the socioeconomic ladder who have neither the formal education nor the financial capital needed to overcome these barriers. States should continually reevaluate whether licensing requirements really protect consumers or simply fence out competition for established practitioners.

## Conclusion & Recommendations

In troubled economic times, the jobs entrepreneurs create for themselves and others are absolutely essential. Yet, the city of Milwaukee and the state of Wisconsin continually put up senseless and counterproductive roadblocks for people who are trying to start businesses. Milwaukee must eliminate pointless regulatory requirements, reduce fees and streamline bureaucratic operations. The Common Council must scrub the city code and remove all business regulations that are not necessary to protect the public. The rules need to be fair and equal for all Milwaukeeans in every neighborhood, and an alderman's whims must never be allowed arbitrary power over an entrepreneur's fate. The state of Wisconsin also needs to reform its system of regulating occupations. Competitors should never have influence over who is licensed to work. And, fundamentally, no one's professional calling should be constrained by laws that have nothing to do with public safety.

We recommend the following reforms to free entrepreneurs to take risks and make Milwaukee work:

1. Limit aldermanic privilege—The Milwaukee Common Council should adopt the recommendations of the alcoholic beverage licensing task force, and apply them to all types of licenses that come before its License Committee.
2. Relax rules for home-based businesses—Milwaukee needs to give home businesses breathing space to grow and operate so that industrious people can work from home. The city should (a) loosen traffic and signage restrictions; (b) allow more non-residents to work on the premises; (c) allow more home space to be used for the business; and (d) eliminate the home-occupation statement, which merely generates revenue for the city.
3. Commercial kitchens—The city of Milwaukee should work with the state of Wisconsin and develop rules to allow the use of home kitchens or commercial kitchens in a home for small food entrepreneurs and simply require inspections and sanitation certification.
4. Scrap the sign code—Milwaukee's sign regulations are unreasonable. Businesses should be allowed to affix signs to their premises, as long as they do not create nuisances to neighbors because of excess noise or light.
5. Streamline food businesses requirements—The city should streamline requirements and reduce fees, particularly for restaurants that seem to be getting nickel-and-dimed.
6. Open the way for street vendors—The city should make it easier for stationary street vendors to sell things, particularly flowers and art, as well as loosen restrictions on vending near major Milwaukee venues and festivals.
7. Allow more taxis—The city needs to remove the arbitrary government-imposed cap on the number of taxis operating in the city. Let the marketplace—not politicians—determine how many taxis the city needs.
8. Reduce permits and inspections—The city needs to cap permitting costs and streamline its schedule of fees. If someone like Laura Sue Mosier is investing an enormous amount of resources rehabilitating old buildings and turning them into great resources for the city, then the



## Milwaukee must eliminate pointless regulatory requirements, reduce fees and streamline bureaucratic operations.

city should do what it can to help instead of hinder. Capping the number of inspection and building permit fees will reduce startup costs as well as go a long way toward improving the business climate. Businesses will feel less like they are there just to be fleeced for revenue.

9. End the going-out-of-business license—This is essentially a cruel “failure tax” that has nothing to do with protecting the public, and instead needlessly kicks business owners when they are down. If Milwaukee wants to help failed entrepreneurs get back on their feet, then this is a great place to start.

10. Lower or remove fees and unnecessary paperwork—The city should review the amount of paperwork it demands of businesses and eliminate much of it. One way to do this, for example, is to require that licenses be renewed every two or three years, rather than annually. In the same way, it should review its fees and ensure that any fee generated from licensure or permitting is the very minimum necessary to cover the administrative cost of regulation and protect public health and safety. The city should not be collecting license fees as a tax on business to just generate revenue.

11. Consider removing laws from the books that are only enforced when people complain—Milwaukee seems to enforce various property-related codes only when there is a complaint. If there are few complaints filed annually under a particular ordinance, and the ordinance is not significantly related to public health and safety—but instead, arbitrary aesthetics—the city should consider removing the statute from the books. The city should recognize that the aggregate costs of regulation in many instances far outweigh any public benefits. One way to do this is for each department, such as the Department of City Development or Department of Neighborhood Services to set up business advisory councils to conduct regular reviews of the ordinances they enforce. The Common Council could also create a periodic Sunset Commission that reviews laws for both economic and regulatory efficiency.

12. Limit licensure—The city should get rid of licenses and regulations that have no substantial connection to public health

or safety. The city is too often arbitrarily exercising its power. It needs to eliminate licensure for such trades as secondhand dealers, used bicycle dealers and photographers.

13. Limit the role of the Historic Preservation Committee—As this study shows, too often historic preservation boards impose their own arbitrary tastes at the expense of common-sense preservation. The city should re-examine the discretion HPC bureaucrats have to act arbitrarily, and work to balance preservation goals with sound economics and constitutionally enshrined property rights. In the end, such balancing will actually further preservation efforts.

We recommend the following reforms to Wisconsin law to open opportunities to talented people throughout the state without giving competitors a veto over new businesses:

1. Limit qualifications for barbers, nail techs and other licensed professions to those necessary for public safety. Dramatically reduce the hours of schooling required and cancel continuing education requirements. Customers, and not bureaucrats, should decide who is qualified to provide these services.

2. Explicitly exempt hairbraiding and threading from the practice of cosmetology, and the rules associated with that profession.

## Endnotes

All Internet content was current as of June 24, 2010.

- 1 See “Civilian labor force and unemployment by state and metropolitan area,” March 19, 2010, *available at* <http://www.bls.gov/news.release/metro.t01.htm>.
- 2 <http://www.milwaukee.gov/ImageLibrary/Public/map4.pdf>.
- 3 “Starting a Business,” *at* [http://www.choosemilwaukee.com/starting\\_a\\_business.aspx](http://www.choosemilwaukee.com/starting_a_business.aspx) (last visited Sept. 17, 2009).
- 4 <http://committeeschedule.legis.wisconsin.gov/files/HearingNotices/09-11-19-0100-2009AJOB-12641.html>.
- 5 See “Omnibus Revenue Changes” in the following link for an example of how the city uses regulation to generate new revenue: <http://milwaukee.legistar.com/LegislationDetail.aspx?From=Alert&ID=385279&GUID=702B9E05-3433-4C87-845A-2A4591047D9A>. The link shows projected 2009 revenue fees from new permits, licenses and fees, as well as increases in current fees.
- 6 See, e.g., *State v. Withrow*, 280 N.W. 364, 366 (Wis. 1938); *Senn v. Tile Layers Protective Union, Local No. 5*, 268 N.W. 270, 275 (Wis. 1936).
- 7 “Milwaukee Bans Selling Cars on Street,” *Cars.com*, *available at* <http://blogs.cars.com/kickingtires/2009/05/milwaukee-bans-selling-cars-on-street.html>.
- 8 See Milwaukee Code § 295-503-3-d.
- 9 Milwaukee Code §§ 244-2, 295-407; <http://www.mkedcd.org/build/pdfs/signs.pdf>.
- 10 <http://lakeland.edu/cee/>; see also Scott Niederjohn, “Is Milwaukee open for business?” *BizTimes.com*, May 29, 2008, *available at* <http://www.biztimes.com/blogs/milwaukee-biz-blog/authors/scott-niederjohn>.
- 11 <http://milwaukee.bizjournals.com/milwaukee/stories/2009/09/21/daily58.html>.
- 12 See George Lightbourn & Stephen J. Agostini, “Wisconsin’s Quiet Crisis: Why Building a ‘New’ Milwaukee Economy Matters to Wisconsin,” *Wisconsin Policy Research Institute Report*, Vol. 17, No. 1, (Jan. 2004), *available at* <http://www.wpri.org/Reports/Volume17/Vol17no1.pdf>.
- 13 “Growing Up: Analysis of city of Milwaukee economic development efforts,” *Public Policy Forum Research Brief*, Vol. 94, No. 3 (Nov. 2006), *available at* <http://www.publicpolicyforum.org/pdfs/GrowingUp-rb.pdf>.
- 14 Tom Held, “Wisconsin budget rated in worst 10,” *Milwaukee Journal Sentinel*, Nov. 11, 2009, *available at* <http://www.jsonline.com/news/milwaukee/69771807.html>.
- 15 See, e.g., Wisconsin Women’s Business Initiative (WWBIC), <http://www.wwbic.org>; Biz Starts Milwaukee, <http://www.bizstartsmilwaukee.com/Home.htm>; Milwaukee Seven (Counties), [http://www.choosemilwaukee.com/starting\\_a\\_business.aspx](http://www.choosemilwaukee.com/starting_a_business.aspx).
- 16 <http://www.mkedcd.org/business/>.
- 17 <http://commerce.wi.gov/BD/BD-EntrepreneursStartups.html>.
- 18 Milwaukee Code § 200-42; <http://www.mkedcd.org/build/pdfs/occcert.pdf>.
- 19 <http://www.mkedcd.org/planning/index.html>.
- 20 <http://www.mkedcd.org/build/pdfs/EAppOcc.pdf>.
- 21 <http://www.mkedcd.org/build/pdfs/occinspc.pdf>.
- 22 <http://www.mkedcd.org/build/pdfs/occinspc.pdf>.
- 23 Milwaukee Code § 295-201; <http://www.mkedcd.org/boza/su.html>.
- 24 <http://www.mkedcd.org/boza/variance.html>.
- 25 <http://www.mkedcd.org/boza/app.html>.
- 26 Microsoft, for example, began in Bill Gates’ garage.

See “Bill Gates signs off,” *Agence France-Presse*, July 27, 2008, available at <http://afp.google.com/article/ALeqM5i8aV1bK5vmwLaw9wYr9nY5bFc4YA>.

27 See <http://en.wikipedia.org/wiki/Harley-Davidson>; see also [http://www.harley-davidson.com/wcm/Content/Pages/H-D\\_History/history\\_1900s.jsp?locale=en\\_US](http://www.harley-davidson.com/wcm/Content/Pages/H-D_History/history_1900s.jsp?locale=en_US).

28 On the importance of home-businesses in a knowledge-based economy, as well as the potential zoning challenges they face, see generally Nicole Stelle Garnet, *On Castles and Commerce: Zoning Law and the Home-Business Dilemma*, 42 *Wm. & Mary L. Rev.* 1191 (April 2001).

29 Milwaukee Code § 295-503-3-c; <http://www.mkedcd.org/build/pdfs/eAppHomeOccBus.pdf>.

30 Most of the citations are to home improvement contractors who filed for a home improvement contractor’s license using a residential address. This triggers an inspection from DNS, and the contractors are then required to submit the additional home occupation statement and pay another fee. Similarly, most of the other citations involve junk collectors who are storing things outside of their dwelling and drawing the ire of their neighbors, who then complain to DNS.

31 <http://www.rolf.org/>.

32 Milwaukee does have a unique provision in section 295 of its code allowing what it calls “live-work units.” In general, these are allowed in a few multi-family residential housing zoning districts, as well as commercial districts. One might call “live-work units” Milwaukee’s “artist loft provision.” Goods produced in the unit may be sold from the unit, and up to two outside workers may be employed. Live-work units are a small exception to otherwise overly restrictive rules on home businesses.

33 <http://dcf.wisconsin.gov/childcare/licensed/Index.HTM>.

34 See generally *Wis. Rev. Stat. §§ 48.65-74*.

35 [http://dcf.wisconsin.gov/childcare/licensed/forms\\_alpha.htm](http://dcf.wisconsin.gov/childcare/licensed/forms_alpha.htm).

36 [http://dcf.wisconsin.gov/childcare/licensed/pdf/dcf\\_p\\_203.pdf](http://dcf.wisconsin.gov/childcare/licensed/pdf/dcf_p_203.pdf).

37 Milwaukee Code § 295-503-2-e; <http://www.mkedcd.org/build/pdfs/daycarectrblcdcd.pdf>.

38 See Milwaukee Code § 295-311-2.

39 The state of Wisconsin has had problems with daycare providers abusing subsidy programs. Whatever problems plague that system, they are independent of the regulations related to actually enter the market, and so abuse of the subsidy system should not justify saddling new entrants with more red tape.

40 See *Classy Girl Cupcakes*, <http://www.classygirlcupcakes.com> (last visited Jan. 4, 2010) (“We bake in a commercial kitchen licensed by the Milwaukee Health Department . . . .”)

41 See Andy Tarnoff, *Locally Made Hot Sauce Turns Up the Heat*, *OnMilwaukee.com*, June 17, 2009, <http://www.onmilwaukee.com/market/articles/mbfsauces.html> (describing Milwaukee hot sauce entrepreneur Byron Jackson, who “rents a small commercial kitchen on the Northwest Side” in order to run MBF Sauces).

42 See Barbara Ingham, Univ. of Wis.-Extension Food Sci. Program, *Starting a Small Food Business in Wisconsin 2* (2008), [http://www.foodsafety.wisc.edu/assets/factsheets/small\\_business\\_FactSheet08.pdf](http://www.foodsafety.wisc.edu/assets/factsheets/small_business_FactSheet08.pdf) (delineating the necessity of a state “retail food establishment”-license, “food processing plant”-license, or a “food processing license” for small food businesses that fit into one of these three categories); see also *Wis. Stat. § 97 et seq.* (2009) (food regulation); *Wis. Admin. Code ATCP §§ 69 et seq.* (regulating buttermakers and cheesemakers), *70 et seq.* (regulating food processing plants), & *75 et seq.* (regulating retail food establishments) (2009).

43 Consumer Envtl. Health Div., City of Milwaukee Health Dep’t, *From Penny Candy to Five Star Meals: A Guide to Selling Food in the City of Milwaukee 1* (2003), <http://www.ci.mil.wi.us/ImageLibrary/Groups/healthAuthors/CEH/PDFs/PennyCandyforweb2.pdf> (“The City of Milwaukee Health Department licenses all retail food businesses in the City.”).

- 44 Milwaukee Code § 68-4-1(a) (2009).
- 45 *Id.* § 68-4-1.5(a-b).
- 46 Consumer Env'tl. Health Div., *supra*, at 2 (stating that “when you have a [city] Food Dealer License, you (or your corporation) are responsible for code compliance—from operations to maintenance to repairs.”)
- 47 *See* Milwaukee Code § 68-01 (2009) (adopting Wisconsin statutory provisions that govern retail food establishments, particularly the Wisconsin Food Code); *id.* at 1 (“The [city’s] requirements for retail food operations are found in the Wisconsin Food Code, which is state law. The code is adopted into the Milwaukee Code of Ordinances, Chapter 68.”)
- 48 The Wisconsin Food Code constitutes an appendix to Wis. Admin. Code ATCP § 75 (2009) (regulating retail food establishments). Given the independent ordination of the Food Code’s provisions, citations to it will hereinafter take the following form: Wis. Food Code § x-xxx.xx (2009).
- 49 Wis. Food Code § 1-104.10 (2009) (“This chapter applies to all food establishments . . . regardless of whether the food establishment is subject to licensing under this chapter or related statutes.”).
- 50 *Id.* § 1-201.10(B)(37) (definition of “food establishment”).
- 51 *Id.* § 1-201.10(B)(33) (definition of “food”).
- 52 *See, e.g., id.* § 12-201.11 (requiring new “food establishments” to have a “certified food manager within 90 days of the initial day of operation”).
- 53 *See, e.g., id.* § 3-401.12(D) (dictating that raw animal foods cooked in a microwave oven must be “[a]llowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium”).
- 54 *See, e.g., id.* § 4-204.113 (requiring the provision of a warewashing machine “with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine’s design and operating specifications . . .”)
- 55 *Id.* § 6-202.111 (“A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters *may not be used* for conducting food establishment operations.” (emphasis added)); *see also, id.* § 2-103.11(A) (requiring the person-in-charge of a “food establishment” to ensure that “[f]ood establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under § 6-202.111”).
- 56 *See id.* § 4 *et seq.* (governing the “equipment, utensils, and linens” of a “food establishment”).
- 57 *See id.* § 5 *et seq.* (governing the “water, plumbing, and waste” in a “food establishment”).
- 58 *See id.* § 6 *et seq.* (governing the “physical facilities” of a “food establishment”).
- 59 The Wisconsin Food Code never explicitly uses the term “commercial kitchen” in describing where all food establishment operations must occur. Instead, the requirement of using a “commercial kitchen” is imposed in a *de facto* sense as a result of (1) the Code’s ban on the use of private residences for food establishment operations and (2) the Code’s exacting requirements for any location that serves as a base for food establishment operations.
- 60 Wis. Food Code § 5-204.11 (2009) (“A handsink shall be located: (A) To allow convenient use by food employees in food preparation, food dispensing, and warewashing areas; and (B) In, or immediately adjacent to, toilet rooms.”)
- 61 *Id.* § 4-204.115 (“A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water: (A) In each wash and rinse tank; and (B) As the water enters the sanitizing final rinse manifold or in the chemical sanitizing solution tank.”)
- 62 *Id.* § 6-303.11(A) (“The light intensity shall be: (A) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in dry food storage areas and in other areas and rooms during periods of cleaning.”)

63 See, e.g., Consumer Env'tl. Health Div., *supra*, at 8 (“Sink requirements vary. A store with nothing but prepackaged items only needs to have a restroom sink for hand washing; and a mop sink. Facilities like this cannot be licensed for any other type of food service.”)

64 See, e.g., *id.* (concerning refrigeration requirements under the Code: “Non-commercial freezers are accepted only under specific circumstances. *Your inspector will make that decision.*” (emphasis added)).

65 Consumer Env'tl. Health Div., City of Milwaukee Health Dep't, Plan Review for Food Service Establishments 1 (2003), [http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/MHD\\_Plan\\_Review\\_for\\_Food\\_Service\\_Establishments2.pdf](http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/MHD_Plan_Review_for_Food_Service_Establishments2.pdf) (“Activities, including service to the public, demolition, excavation, construction, and all alterations cannot occur before plans have been submitted and approved by all regulatory agencies. . . . Make an appointment with your Health Department at the conception of your project.”)

66 See *id.* (“When would the [city] Health Department need the plans? (a) Anytime it is requested by the Health Department. (WI Adm. Code Chapter HFS 196.04(6)); (b) New Construction; (c) The conversion of an existing structure for use as a food establishment; (d) Remodeling of a food establishment; (e) A change of type of food establishment/operation and/or of foods offered/prepared.”)

67 Although the city indicates that “[p]lans submitted to the [Health] Department do not have to be prepared and stamped by professional architects or designers,” it still requires such plans to cover all of the following subjects: food to be served and/or sold, a floor plan, food service equipment layout, plumbing fixtures (location and type), hot water equipment (manufacturer, type, model number, etc.), kitchen ventilation and HVAC, food service equipment specifications, floor/wall/ceiling finishes, lighting, storage areas, garbage and refuse disposal, and service areas. See Consumer Env'tl. Health Div., *supra*, at 5-7.

68 Consumer Env'tl. Health Div., City of Milwaukee Health Dep't, Plan Review Checklist & Guide 1 (2003), <http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/>

PDFs/MHD\_Plan\_Review\_Checklist .pdf (requiring food establishment operators to render design, installation and construction plans for food service facilities that address everything from sink locations to plumbing/grease extraction to recyclables storage).

69 <http://www.ci.mil.wi.us/ObtainLicensesPermit54.htm>.

70 Milwaukee Code § 93-5; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/biketirebattery.pdf>.

71 Milwaukee Code § 84-33; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/profphoto.pdf>.

72 Milwaukee Code § 95-14; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/hisn.pdf>.

73 Milwaukee Code § 84-54; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/video.pdf>.

74 Milwaukee Code § 74-2; [http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/Ice\\_Cream\\_Peddler\\_info\\_sheet.pdf](http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/Ice_Cream_Peddler_info_sheet.pdf).

75 Milwaukee Code § 92-3; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/junkdealer.pdf>.

76 Milwaukee Code § 92-2. Secondhand dealers must also spend precious resources recording and describing each purchase they make from the public, including, among other things, photographing the seller and the property, verifying their identify through photo ID, thoroughly describing each item, getting a signed declaration from the seller as to ownership, as well as their contact information. *Id.* at § 92-12. And all of this must be posted by the close of each business day. *Id.* at § 92-13.

77 In fact, four Milwaukee aldermen have been convicted of federal crimes in the past five years. Jeff Wagner, “Crooks in The Palace: A Culture of Corruption at City Hall,” 620 *WTMJ News Radio*, May 15, 2009, available at <http://www.620wtmj.com/shows/jeffwagner/45156712.html>.

78 Comment of Richard Withers of the Legislative Reference Bureau, October 10, 2008 Meeting Minutes of the

Alcohol Beverage Licensing Task Force, *available in Final Report and Recommendations of the Alcohol Beverage Licensing Task Force*, submitted to the Common Council April 30, 2009.

79 Editorial, "A need to restore trust in city liquor licensing," *Milwaukee Journal Sentinel*, June 29, 2008, *available at* <http://www.jsonline.com/news/opinion/29571184.html>.

80 Doug Hissom, "Task force seeks to update liquor license process," *OnMilwaukee.com*, June 19, 2009, *available at* <http://www.onmilwaukee.com/politics/articles/politics061909.html>.

81 *See, e.g., Herro v. City of Milwaukee, et al.*, 44 F.3d 550 (7th Cir. 1995) (holding city had rational basis for denying tavern license); *H&H Assad, LLC v. City of Milwaukee*, 2003 WL 22083550, 671 N.W.2d 718 (Wis. App. 2003) (unpublished).

82 Dave Umhoefer, "Food mart owner seeking beer license feels the sting of aldermanic privilege," *Milwaukee Journal Sentinel*, Mar. 22, 2009, *available at* <http://www.jsonline.com/news/milwaukee/41660647.html>.

83 *Id.*

84 "Bayview License Dispute Raises Many Concerns," *Walkers' Point Blog*, March 24, 2009, *available at* <http://walkerspoint.wordpress.com/2009/03/24/bayview-license-dispute-raises-many-concerns/>.

85 Ernst-Ulrich Franzen, "Time to change aldermanic privilege," *Milwaukee Journal Sentinel*, Mar. 23, 2009, *available at* <http://www.jsonline.com/blogs/news/41691297.html>.

86 Sonya Jongsma Knauss, "Elitism in Bay View?" *Milwaukee Journal Sentinel*, Mar. 30, 2009, *available at* <http://www.jsonline.com/blogs/news/42154612.html>.

87 H. Nelson Goodson, "Southside Development Plan in Use Against Minority Business," *Hispanic News Network*, Apr. 1, 2009, *available at* <http://hispanicnewsnetwork.blogspot.com/2009/04/southside-development-plan-viewed-as.html>.

88 "Rosann Mathias," "More than hot dog sales at stake here," *Milwaukee Journal Sentinel*, Nov. 11, 2008, *available at* <http://www.jsonline.com/news/opinion/34301459.html>.

89 *See* Patrick McIlheran, "Hot dog man haunted by site's history," *Milwaukee Journal Sentinel*, Nov. 8, 2008, *available at* <http://www.jsonline.com/news/opinion/34118894.html>. In a sad twist of irony, Judy's Red Hots has very recently been converted into a tobacco stand after years of sitting vacant. Tobacco shops face fewer regulatory hurdles at the municipal level than do restaurants.

90 H. Nelson Goodson, "Southside Alderman Decides Not to Pursue Eminent Domain," *Hispanic News Network*, July 2, 2009, *available at* <http://hispanicnewsnetwork.blogspot.com/2009/07/south-side-alderman-decides-not-to.html>.

91 "Growing Up," *supra* at 2.

92 "Growing Up," *supra* at 1.

93 A "blighted property" is any one that, "by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, or sanitation, high density of population or overcrowding, faulty lot layout in relation to size adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare." Wis. Stat. § 32.03(6)(a).

94 Nicholas Penzenstadler, "Property dispute revolves on definition of blight," *Milwaukee Journal Sentinel*, June 22, 2009, *available at* <http://www.jsonline.com/watchdog/pi/48815492.html>.

95 From 2005 to 2008, special assessments rose from \$1,475,784 to \$1,587,302. Special charges rose during that same period from \$20,547,355 to \$26,235,791. These figures were obtained from an open records request submitted by a third party to the City of Milwaukee Treasurer's Office. Copies of the relevant documents are on file with the author.

96 Milwaukee Code § 81-11.

- 97 Milwaukee Code § 81-24.
- 98 Milwaukee Code § 81-25.
- 99 Milwaukee Code § 81-26.
- 100 Milwaukee Code § 81-27.
- 101 Milwaukee Code § 81-45.
- 102 Milwaukee Code § 81-51.
- 103 Milwaukee Code § 81-52-7.
- 104 Milwaukee Code § 81-102.
- 105 Milwaukee Code § 81-106.7.
- 106 Milwaukee Code § 60-21.2(b).
- 107 <http://www.mkedcd.org/build/pdfs/signs.pdf>.
- 108 Milwaukee Code §§ 245-11, 115-32.6-3, 81-106.7; <http://www.mkedcd.org/build/pdfs/sidewalk.pdf>.
- 109 Quote from unnamed councilperson relayed by Mimma Megna to author on August 27, 2009.
- 110 Patrick McIlheran, "Would it kill us to be nice?" *The Milwaukee Journal Sentinel*, June 15, 2008, available at <http://www.jsonline.com/news/opinion/29490679.html> (last visited Nov. 13, 2009).
- 111 See Pete Millard, "Revvng up the competition," *The Business Journal of Milwaukee*, June 13, 1997, available at <http://milwaukee.bizjournals.com/milwaukee/stories/1997/06/16/smallb2.html>.
- 112 The city has not issued any new permits since January 1, 1992. See Milwaukee Code § 100-50-3.
- 113 See Milwaukee County Code § 4.05.01(2)(c)(1); *County of Milwaukee v. Williams*, 732 N.W.2d 770, 774 (Wis. 2007).
- 114 "Calling 'taxi' at the airport," *The Business Journal of Milwaukee*, June 7, 2002, available at <http://milwaukee.bizjournals.com/milwaukee/stories/2002/06/10/editorial1.html>.
- 115 Milwaukee Code § 100-2-5.
- 116 Wis. Stat. § 194.02.
- 117 Milwaukee Code § 81-41.2; <http://www.ci.mil.wi.us/ImageLibrary/Groups/ccLicenses/DirectSeller.pdf>.
- 118 Milwaukee Code §§ 245-12, 81-115; <http://www.mkedcd.org/build/pdfs/specpriv.pdf>.
- 119 \$25,000/\$50,000 for bodily injury, and \$10,000 for property damage.
- 120 Carol Deptolla, "Curbside cuisine," *Milwaukee Journal Sentinel*, July 16, 2009, available at <http://www.jsonline.com/features/dining/50902557.html>.
- 121 [http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/2006\\_web\\_pushcarts\\_popcorn.pdf](http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/2006_web_pushcarts_popcorn.pdf).
- 122 <http://twitter.com/pitabros>.
- 123 Jane Black, "At the corner of hip and red tape," *The Washington Post*, Dec. 2, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/01/AR2009120100847.html>.
- 124 Milwaukee Code § 74-1; [http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/Ice\\_Cream\\_Peddler\\_info\\_sheet.pdf](http://www.milwaukee.gov/ImageLibrary/Groups/healthAuthors/CEH/PDFs/Ice_Cream_Peddler_info_sheet.pdf).
- 125 Milwaukee Code §§ 81-107 through 81-110, 244-2, 295-407; <http://www.mkedcd.org/build/pdfs/signs.pdf>.
- 126 <http://www.ci.mil.wi.us/ImageLibrary/Public/DNS/pdf/broc/SignBrochure.pdf>.
- 127 <http://www.ci.mil.wi.us/ImageLibrary/Public/DNS/pdf/broc/SignBrochure.pdf>.

- 128 <http://www.milwaukee.gov/BedandBreakfastEstab15482.htm> [wi.us/rsb/code/bc/bc003.pdf](http://www.wisconsin.gov/code/bc/bc003.pdf).
- 129 <http://www.ci.mil.wi.us/SalesOrdinance9563.htm> 148 Wis. Stat. § 454.08(6).
- 130 Milwaukee Code § 60-16. 149 Wis. Stat. § 454.06(6).
- 131 Wis. Stat. § 423.301.
- 132 See generally Adam B. Summers, *Occupational Licensing: Ranking the States and Exploring Alternatives*, Reason Foundation Policy Study #361, available at <http://reason.org/files/762c8fe96431b6fa5e27ca64eaa1818b.pdf>.
- 133 Summers, *supra* at 6.
- 134 <http://drl.wi.gov/prof/burbiz.htm>.
- 135 <http://drl.wi.gov/prof/burhealth.htm>.
- 136 Wis. Stat. § 440.03(14)(a)(2); <http://drl.wi.gov/prof/artt/def.htm>.
- 137 Wis. Stat. § 440.03(14)(a)(1); <http://drl.wi.gov/prof/musi/def.htm>.
- 138 Wis. Stat. § 440.03(14)(a)(3); <http://drl.wi.gov/prof/danc/def.htm>.
- 139 Wis. Stat. § 440.03; <http://drl.wi.gov/prof/time/def.htm>.
- 140 Wis. Stat. § 440.44; <http://drl.wi.gov/prof/func/def.htm>.
- 141 Wis. Stat. § 440.92; <http://drl.wi.gov/prof/cemp/def.htm>.
- 142 Wis. Stat. § 440.991; <http://drl.wi.gov/prof/atha/def.htm>.
- 143 Wis. Admin. Code § 454.16.
- 144 <http://online.drl.wi.gov/decisions/2008/ls08080610unl-00004709.pdf>.
- 145 <http://www.legis.state.wi.us/statutes/Stat0454.pdf>.
- 146 Wis. Stat. § 454.06(2).
- 147 Wis. Admin. Code § BC 3.01(12); <http://www.legis.state.wi.us/statutes/Stat0454.pdf>.

## About the Author

Jason Adkins is a staff attorney with the Institute for Justice Minnesota Chapter (IJ-MN). IJ-MN litigates in the areas of economic liberty, private property rights, educational choice, freedom of speech, and other vital liberties secured by the Minnesota State Constitution.

Since starting at IJ in 2008, Jason has represented, among others, landlords and tenants in their challenge to an unconstitutional rental-inspection program in Red Wing, Minn. He also has defended the free speech rights of grassroots activists in Washington state and helped stop the St. Paul Port Authority's attempted use of eminent domain to take the property of a local business.

Prior to joining IJ-MN, Jason served as a law clerk to Chief Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit and Judge Christopher Dietzen of the Minnesota Court of Appeals. Jason was also a high school teacher and journalist before beginning his legal career.

Jason received his law degree *cum laude* from the University of Minnesota Law School in 2006, where he served as an articles editor for the Minnesota Law Review and president of the Federalist Society student chapter. Jason received his undergraduate and master's degrees from the University of St. Thomas (MN).

Jason is an adjunct professor at the University of Minnesota Law School. He also serves on the board of advisors of the University of St. Thomas Journal of Law & Public Policy, as well as the board of the Federalist Society Minnesota Lawyers Division.





# Milwaukee

Waukesha  
West Berlin

West Allis

Franklin

Oak Creek

Racine

## ABOUT THE INSTITUTE FOR JUSTICE

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.

INSTITUTE FOR JUSTICE 901 N. Glebe Road Suite 900 Arlington, VA 22203 [www.ij.org](http://www.ij.org) p 703.682.9320 [www.facebook.com/instituteofjustice](http://www.facebook.com/instituteofjustice)



# Waukegan

# Highland Park