



CITY OF MILWAUKEE - EQUAL RIGHTS COMMISSION

THE COMPLIANCE & ENFORCEMENT COMMITTEE REPORT
OF THE EQUAL RIGHTS COMMISSION

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July 31, 2020

TITLE:

A resolution to amend chapter 109 of the city of Milwaukee code of ordinances, in relation to prohibiting food stores and retail establishments from refusing to accept payment in cash.

I. INTRODUCTION

An analysis and resolution relating to the Equal Rights Commission declaring the prohibition of food stores and retail establishments from refusing to accept payment in cash; disenfranchising large segments of the City's population, specifically the Black, Brown, Native, LGBTQ, Youth, Homeless, and Senior residents, and visitors.

II. RESOLUTION ANALYSIS

Prohibits food and retail establishments from refusing to accept cash as a form of payment. This resolution is intended to add a new subchapter in chapter 109 of the city code under protected classes, titled "CASHLESS ESTABLISHMENTS PROHIBITED." This new section sets out the definitions. The term "food store" is defined broadly to include any store that sells food or beverages to the public and includes street vendors. Retail establishments are also defined broadly and include any establishments where consumer commodities are displayed or offered for sale, or where services are provided to consumers at retail. Retail establishments do not include banks or trust companies.

This added protected section prohibits food stores and retail establishments from refusing to accept payment in cash, except that they may refuse cash if bills in denominations over \$20 are provided by a consumer. The exception for denominations over \$20 is a common best practice regarding the circulation of fraudulent bills and the need for businesses to protect themselves. Online, phone and mail transactions are now also exempted unless the payment for such transaction occurs on the establishment's premises. To alleviate any potential negative impacts of

this resolution, a section is added to prohibit food and retail establishments from charging consumers who choose to pay in cash a higher price than cashless consumers. Violators would face a fine of up to \$500 for a first offence and up to \$1000 for subsequent offences.

A business is in compliance with the requirement to accept cash if a device is installed on the premises that converts cash into prepaid cards that a consumer may use to make purchases. Such businesses may not charge a fee for use of the devices, nor can they require a minimum deposit over one (1) dollar. Funds deposited on such cards may not expire and there can be no limit on the number of transactions. A receipt must also be made available upon request. If a device malfunctions, a business is required to accept payment in cash. A sign must be placed on the device or immediately adjacent to it informing consumers that if the device malfunctions, the business is required to accept payment in cash, and that consumers may report any violations to the Equal Rights Commission. The effective date of this resolution is to allow 180 days after it is adopted to allow businesses time to comply.

III. BACKGROUND

For businesses embracing new technologies and faster transactions, cashless purchases are a convenient option. Business owners from establishments that only accept cashless transactions have reported shorter lines and wait times for their customers, and relief that they no longer feel vulnerable to robbery. While this technology clearly makes transactions swift and efficient, the overarching effects are not so benign. Rather, there are a range of negative consequences caused by prohibiting the use of cash for payment and marginalized communities tend to be disproportionately impacted.

A. Unbanked and Underbanked Populations

By relying exclusively on cashless payments, these establishments largely prevent unbanked customers from purchasing items or services from their stores. In an era of online shopping and payments made through apps on smart phones, one could assume that everyone is connected to a bank account and the technology that makes funds so readily available. In a seemingly-progressive city like Milwaukee, this ease in accessing cash may be expected. However, according to the recent comprehensive report by UWM Prof. Marc Levine titled “The State of Black Milwaukee in the National Perspective”, it clearly illustrates how Black communities in the nation’s 50 largest metropolitan areas fare on measures such as residential segregation; income, poverty, and intergenerational economic mobility; employment and earnings; the racial composition of private-sector economic decision-makers; mass incarceration; educational attainment; school segregation; and health care outcomes. It particularly emphasizes on Milwaukee, which arguably represents the archetype of modern-day metropolitan racial apartheid and inequality. With Milwaukee households that were ‘underbanked,’ meaning that, while they may have a bank account, they still rely on other financial services to cash checks, transfer money or access a loan. For some underbanked households, the fees or overdraft fines means that a bank account stays active, but the account holder cannot afford to make regular use of it.

Across the City, the division of unbanked and underbanked households will vary; however, what is consistent across all areas is that unbanked and underbanked households are communities of color, and other marginalized communities, Milwaukee has rates well above the national, State and City averages.

B. Marginalized Communities Negatively Impacted

Immigrants and Domestic Violence Victims. An exclusively cashless policy also potentially harms large numbers of immigrants and victims of domestic violence who face their own barriers to accessing bank accounts. In Milwaukee, domestic violence survivors who live in confidential shelters are prohibited from disclosing their address. However, opening a bank account requires a physical and mailing address. This means that domestic violence shelter residents are unable to open safe and new accounts because they cannot provide a physical address.

Victims of domestic violence also face challenges when trying to close a joint account to which their abuser has access, and this impacts the victim's ability to open a new account. Survivors of domestic violence in Milwaukee who seek legal, financial, and other support services, do not have access to safe and reliable bank accounts. These survivors have no bank account, and the bank accounts they may access are considered unsafe because their abusers also have access.

C. Perpetuating Stigma & Creating Barriers

Solely permitting cashless transactions, businesses may inadvertently construct a two-tiered purchasing system that stigmatizes cash purchases. Although it is legal tender, cash may become viewed as antiquated or dirty and thus those that rely on it could also be viewed as inferior.

While these views may be unintentional side-effects of an exclusively cashless policy, a small number of business owners have implemented cashless purchasing for precisely this reason and/or under the guise of mitigating the spread of COVID-19. For example, in a Milwaukee Journal Sentinel report in 2019 titled "Some Wisconsin businesses won't accept cash. But are 'cashless' businesses discriminatory?"¹. Additionally, a FOX 6 news report just this month titled

¹ <https://www.jsonline.com/story/money/business/2019/05/13/digital-age-some-restaurants-and-stores-going-cashless/1147023001/>

“Economic disruption of COVID-19 pandemic leads to national coin shortage, rise in contactless payment going cashless”² where a Ms. Constance Alberts stated that "When you say I can't use cash, what's my alternative? Is my alternative to get a prepaid card, put money on that card, and then continue to pay every single time I use that card? In most cases, that is going to be a lot more expensive than if I was able to use cash."

Although this cashless policy does not represent the business community as a whole, it does highlight the way an exclusively cashless policy by merchants can provide privileges to some customers and undue burden to others.

In fact, in 2017, Visa declared a “war on cash” and offered up to 50 small food establishments \$10,000 if they moved to a completely cashless system.³ According to Visa Chief Executive Al Kelly, Visa is “focused on putting cash out of business.”⁴ However, cashless transactions also force consumers to forgo their privacy. Like most online activities, cashless purchases allow tracking of consumer behavior. Cashless transactions also make customers vulnerable to having their account information hacked or their personal information stolen.

The unequal impact of cashless policies is cause for concern. While the technology provides a range of benefits for business owners, relying solely on cashless payments generates a segregated purchasing system. This policy poses great harm for certain parts of the populations,

² <https://www.fox6now.com/news/economic-disruption-of-covid-19-pandemic-leads-to-national-coin-shortage-rise-in-contactless-payment>

³ Ben Popken “The war on cash intensifies: Visa offers restaurants \$10,000 to go cashless”, *NBC News*, July 13, 2017, available at: <https://www.nbcnews.com/business/consumer/war-cash-intensifies-visa-offers-restaurants-10-000-go-cashless-n782276>.

⁴ Al Kelly as quoted by id.

and statistics show that this is disproportionately felt by poor, marginalized and vulnerable communities.

D. Other Jurisdictions

Federal law does not mandate that businesses accept cash payments and permits states to regulate the issue by jurisdiction.⁵ Massachusetts was the first state to prohibit businesses from rejecting cash payments. The 1978 law frames the issue around discrimination and states that “[n]o establishment offering goods and services for sale shall discriminate against a cash buyer by requiring the use of credit by a buyer in order to purchase such goods and services. All such retail establishments must accept legal tender when offered as payment by the buyer.”⁶ In New Jersey, the state legislature recently enacted a bill that would make it illegal for point-of-sale retail stores to refuse cash payments and violators could face fines of up to \$2,500 for a first offence.⁷ Similar bills have passed in Philadelphia⁸ and San Francisco.⁹ In Chicago, Alderman Ed Burke has introduced an ordinance to prohibit retail and food establishments from refusing to accept cash, stating that “a ‘no cash’ sign is a ‘not welcome’ sign for many without ready access to credit including those who are low or fixed income, homeless, undocumented, young, or victims of identity theft”.¹⁰

⁵ Melissa McCart “The problem with cashless restaurants”, *Eater*, February 15, 2018, available at: <https://www.eater.com/2018/2/15/16974980/cashless-restaurants-credit-card-only-legal-problem-discriminatory>.

⁶ Commonwealth of Massachusetts, General Laws, Part III, Title IV, Chapter 225D, Section 10A, available at: <https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIV/Chapter225D/Section10A>

⁷ New Jersey A591, available at: https://www.njleg.state.nj.us/2018/Bills/PL19/50_.PDF.

⁸ City of Philadelphia, bill number: 180943, available at: <https://phila.legistar.com/LegislationDetail.aspx?ID=3710586&GUID=FD85947F-8151-4DB5-9949-AF6FEF14A9C9&Options=ID|Text|&Search=cashless>.

⁹ City and County of San Francisco, file Number 190164, available at: <https://sfgov.legistar.com/View.ashx?M=F&ID=7203773&GUID=AB84EC24-3D9F-47ED-BBD2-D0E28024E1C4>.

¹⁰ City of Chicago, ordinance O2017-7145, available at: <https://chicago.legistar.com/LegislationDetail.aspx?ID=3184725&GUID=06C6F98D-8311-4DA2-93E2-D8E75B84D737&Options=Advanced&Search>.

IV. RESOLUTION

A RESOLUTION relating to the Equal Rights Commission; declaring the prohibition of food stores and retail establishments from refusing to accept payment in cash; disenfranchising large segments of the City's population, specifically the Black, Brown, Native, LGBTQ, Youth, Homeless, and Senior residents, and visitors.

WHEREAS, the Equal Rights Commission recognizes that embracing new technologies and faster transactions, cashless purchases are a convenient option more retailers and merchants, allowing shorter lines and wait times for their customers; and

WHEREAS, the Equal Rights Commission values the many its business community and partners that offer diverse products and services that contribute to a vibrant and welcoming city;

WHEREAS, the Equal Rights Commission and city of Milwaukee also has a responsibility to oppose any practices that may have negative consequences and further marginalize vulnerable populations;

WHEREAS, the Equal Rights Commission promotes the closing of the equity and equality gap for marginalized communities through policies and practices that reflect the experiences and values of the City; and

Whereas, the term “cash” means United States coins and currency, including federal reserve notes. Cash does not include foreign currency; any paper instrument other than a federal reserve note, including, but not limited to, any check, bond, or promissory note; or any foreign metal coin.

WHEREAS, the term “consumer commodity” means any article, good, merchandise, product or commodity of any kind or class produced, distributed, or offered for retail sale for consumption by individuals, or for personal, household or family purposes.

WHEREAS, the term “food store” means an establishment which gives or offers for sale food or beverages to the public for consumption or use on or off the premises, or on or off a pushcart, stand or vehicle.

WHEREAS, the term “retail establishment” means an establishment wherein consumer commodities are sold, displayed, or offered for sale, or where services are provided to consumers at retail. This definition does not include banks or trust companies as those terms are defined in section 2 of article 1 of the banking law.

WHEREAS, it shall be unlawful for a food store or a retail establishment to refuse to accept payment in cash from consumers, provided that such food store or retail establishment may refuse to accept payment:

- 1. In cash bills denominated above \$20; or*
- 2. In cash for any telephone, mail, or internet-based transaction, unless the payment for such transaction takes place on the premises of such food store or retail establishment.*

WHEREAS, no food store or retail establishment shall charge a higher price for the same consumer commodity to a consumer who pays in cash than to a consumer who pays for such commodity through a cash-less transaction.

WHEREAS, a food store or retail establishment that violates this section is liable for a civil penalty of not more than \$500 for the first violation and a civil penalty of not more than \$1000 for each subsequent violation.

WHEREAS, this chapter shall not apply to a food store or retail establishment that provides a device on premises that converts cash, without charging a fee or requiring a minimum deposit amount greater than one dollar, into a prepaid card that allows a consumer to complete a transaction at such food store or retail establishment.

WHEREAS, upon request, such device shall provide each consumer with a receipt indicating the amount of cash such consumer deposited onto the prepaid card.

Whereas, cash deposits onto such a prepaid card shall not be subject to an expiration date and there shall be no limit on the number of transactions that may be completed on such prepaid card.

WHEREAS, in the event that such device malfunctions, the food store or retail establishment where such device is located shall accept payment in cash from consumers throughout the time period in which such device does not function in accordance with the standards set forth in this subchapter.

WHEREAS, such food store or retail establishment shall place a conspicuous sign on or immediately adjacent to such device indicating that such food store or retail establishment is required by law to accept cash if such device malfunctions, and that consumers may report any violation to the Equal Rights Commission.

*WHEREAS, this resolution shall be referred to the Common Council for immediate adoption;
and*

BE IT RESOLVED, that it shall take effect 180 days after its adoption.