

FILED
06-22-2026
Anna Maria Hodges
Clerk of Circuit Court
2026CV004397

BY THE COURT:

DATE SIGNED: June 22, 2026

Electronically signed by Jean Marie Kies
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

ABDALLAH ISMAIL, ASYA, LLC

(d/b/a THE FATTY PATTY),

Plaintiffs,

v.

CASE NO. 2026CV004397

CITY OF MILWAUKEE,

Defendant.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER GRANTING TEMPORARY INJUNCTION**

On June 12, 2026, an evidentiary hearing related to the plaintiffs’ motion for a temporary injunction was held before the Honorable Jean Marie Kies, Milwaukee County Circuit Court Judge, Branch 45, in Room 413, Milwaukee County Courthouse, 901 N. 9th Street, Milwaukee, Wisconsin. The plaintiffs, Abdallah Ismail and ASYA, LLC (d/b/a The Fatty Patty) appeared in person and by the Wisconsin Institute for Law & Liberty by Attorneys Kirsten A. Atanasoff and Lucas Thomas Vebber. The defendant, City of Milwaukee, was represented by Assistant City Attorneys Joshua Brian Cronin, Matteo Reginato and Travis James Gresham.

FINDINGS OF FACT

The court makes the following findings of fact:

1. **JURISDICTION AND VENUE:** All necessary parties were properly served with this Motion for Emergency Injunctive Relief per Wis. Stat. § 813.025 and had previously agreed on the record and in writing to the extension of the emergency temporary restraining order beyond the 5-day limit, for good cause shown, pending the outcome of this hearing. Venue in this court is proper pursuant to Wis. Stat. § 801.50(2). Therefore, all jurisdictional and venue requirements have been met.
2. **PARTIES TO THIS ACTION:**
 - a. **Abdallah Ismail:** Plaintiff Abdallah Ismail is an adult citizen of the State of Wisconsin, residing at 4260 S. 26th Street, Milwaukee, WI 53221-2284. Mr. Ismail operates the Water Street Food Truck, commonly known as The Fatty Patty.
 - b. **ASYA, LLC:** ASYA, LLC owns the Water Street Food Truck and holds the food peddlers license that allows The Fatty Patty food truck to operate in Milwaukee. Mr. Ismail is the sole member of ASYA, LLC.
 - c. **CITY OF MILWAUKEE:** Defendant City of Milwaukee is a municipal corporation of the State of Wisconsin. It is the City's Ordinance that is the subject of this action. Milwaukee's City Hall is located at 200 E. Wells Street, in the City and County of Milwaukee, Wisconsin.¹
3. **THE ENACTMENT OF THE CONTESTED ORDINANCE:** The City of Milwaukee has experienced several violent crimes -- including a homicide and other shootings -- in its downtown entertainment district and near Burnham Park. The city seeks to stop

¹ Dkt.2, ¶¶9-11.

large late-night crowds of young people from gathering, loitering and congregating in these areas, and the council members and police believe that limiting food truck hours will quell the violence.² On April 22, 2026, the Common Council of the City of Milwaukee passed amended ordinance provisions governing the operation of Type 1 Time-Limited Zone³ food trucks. It prohibits Type 1 Time-Limited Food Peddlers in the downtown entertainment district⁴ from operating between the hours of 10 p.m. and 6 a.m. A closely positioned sub-provision, e-1-a, limits hours of operation in the Burnham Park area between 11 p.m. and 6 a.m.⁵ MCO 68-37-1-e-1-a and MCO 68-37-1-e-1-b. A prior version of the relevant ordinance, passed in 2023, required food trucks in these areas to cease operations between the hours of 1 a.m. and 6 a.m. The City contends these amended ordinance provisions are necessary to maintain order and promote public safety in areas where there is a high concentration of traffic and pedestrian density.⁶ Specifically, the ordinance says: “The common council further finds limiting the locations and times these [food peddler] vehicles may park on the public right-of-way in specified areas contributes to public safety.”⁷

² Dkt.19, p.10; see also, Captain Theil Aff. ¶ 12 and Fyle Aff. ¶ 12.

³ “Type 1, or *Time-Limited Zone* is a specific area currently located Downtown that works on a first-come first-served basis within the allowed hours, but not exceeding 6 hours in a 12-hour period or selling food between 1:00-6:00 a.m.” Exh.2.

⁴ The City of Milwaukee Downtown Entertainment District parameters are shown on Exh.115.

⁵ Nothing in MCO 68-1 relevant to this proceeding specifically targets operators located in the Burnham Park area. The ordinances describe ‘zones.’ The pleadings and evidence adduced at the Hearing focused on operators located in the Downtown Entertainment area. The parties apparently concede that the Burnham Park food truck operators are restricted from operating between the hours of 11 p.m. and 6 a.m. However, the Burnham Park operators are not parties to this proceeding.

⁶ See, MCO 68-37-1-a.

⁷ Id.

4. **THE EMERGENCY RESTRAINING ORDER REQUEST:** Mr. Abdallah Ismail and ASYA, LLC, the owner of the Fatty Patty Food Truck, filed a lawsuit seeking both declaratory and injunctive relief against the city ordinance. As part of this litigation, plaintiffs brought a motion for an emergency restraining order arguing that the newly passed Milwaukee City Ordinance was not enacted in an effort to promote public safety; the plaintiff alleges that the City's enactment of the ordinance is, rather, in response to MSOE expressing concerns for the safety of their students who live in the area abutting the downtown entertainment district where crowds gather (although no MSOE students have been hurt as a result of any violence in the area), as well as further (unfair and arbitrary) protectionist concerns from brick-and-mortar restaurants and bars/taverns that the food trucks pose competition for patrons who visit the district.⁸
5. Mr. Ismail argues that the ordinance unfairly restricts his ability to earn a living (his economic liberty) under the Wisconsin Constitution and that it violates the equal protection clause under the Wisconsin Constitution.⁹ He alleges that most of his business is done after 10 p.m. and that food trucks do not create unfair competition for brick-and-mortar restaurants. Most importantly, Mr. Ismail argues that his food truck has done nothing to incite the violence experienced in these areas of the City of Milwaukee.¹⁰ As a result, Mr. Ismail filed this lawsuit requesting injunctive relief.
6. **EMERGENCY TEMPORARY RESTRAINING ORDER HEARING:** On May 8, 2026, the court held an emergency restraining order hearing. After listening to arguments of

⁸ Dkt.5, p. 6 et seq.

⁹ Dkt.2.

¹⁰ Dkt.5, p.16.

counsel for both sides, the court granted an emergency order temporarily staying the newly enacted ordinance.

7. JUNE 12, 2026, EVIDENTIARY HEARING RELATED TO THE REQUEST FOR A TEMPORARY INJUNCTION: On June 12, 2026, the court held an evidentiary hearing to determine whether to issue a temporary injunction, pending further litigation challenging the constitutionality of the new ordinance. At the start of the hearing, the parties stipulated certain facts. Thereafter, the plaintiff presented the testimony of Abdallah Ismail and Dr. Ariel D. Smith. The defendant city then offered the testimony of MPD Police Captain Robert Thiel and MSOE Director of Security Billy Fyfe.

a. STIPULATION: The parties stipulated that the Court could take judicial notice, pursuant to Wis. Stat. § 902.01, of the April 10, 2026 hearing of the Public Safety Committee of the Milwaukee Common Council where the ordinance was first introduced by Alderman Bob Bauman.¹¹ They further asked the court to take judicial notice of the July 30, 2025 hearing where the geographical area covered by the 1 a.m. food truck curfew was expanded.¹² Finally, they stipulated and agreed the court may consider the affidavits of the parties previously submitted with their respective pleadings. The court approved the parties' stipulation.

b. TESTIMONY OF ABDALLAH ISMAIL IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION: Plaintiff, Abdallah Ismail, the sole member of

¹¹ The April 10, 2026 meeting of the Public Safety & Safety Committee is available online at: https://milwaukee.granicus.com/player/clip/5112?view_id=2&redirect=true .

¹² The July 30, 2025, hearing of the Common Council's Public Safety & Health Committee is available online at: https://milwaukee.granicus.com/player/clip/4746?view_id=2&meta_id=3651515&redirect=true .

ASYA, LLC, and the owner and operator of The Fatty Patty Food Truck testified at the hearing. His testimony was consistent with his previously submitted declaration¹³ in support of the emergency motion for a temporary restraining order and a temporary injunction. He owns The Fatty Patty and employs multiple people, including family members, to work in his food trucks at events and in permitted locations throughout Milwaukee County. His company, ASYA, LLC, holds a license to operate through the State's DATCP and a food peddler license from the City of Milwaukee. ASYA, LLC has a food truck in the Downtown entertainment district that now parks near Cherry and Water Streets in Milwaukee. Since 2023, the food truck has operated on weekends complying with the 1 a.m. curfew. It caters to local students from MSOE and to people going to the entertainment district, and it is very profitable because of the goodwill built up with this customer base over time. Most of the money from the business is made between the hours of 10 p.m. and 1 a.m. It is his opinion that if the City's new 10 p.m. curfew is allowed to take effect, he will have to close this location. Mr. Ismail acknowledges the crime problem in downtown Milwaukee, but he denies that any of his workers are involved in the violence, denies that they incite the violence, and denies that food trucks are the problem. He explained that his employees merely take orders, cook food, collect the money from patrons, clean, and drive The Fatty Patty truck from the hub to the downtown location and back. The workers are not responsible for security outside the food truck or managing crowds. He says he owes his workers the

¹³ Dkt.3.

duty of providing a safe place to work and would shut down if anything bad happens near the truck.

- c. TESTIMONY OF DR. ARIEL D. SMITH AT THE JUNE 12, 2026 HEARING:**¹⁴ Dr. Ariel D. Smith, Assistant Teaching Professor of Entrepreneurship at Wake Forest University, was retained by the plaintiffs to provide an expert opinion in this case. Her curriculum vitae¹⁵ sets forth her substantial education, teaching appointments, professional experience, professional memberships, publications, guest lectures, invited talks, presentations, advisory experience, board memberships, awards, grants and certifications. Of particular interest is her doctoral dissertation examining African American food truck entrepreneurship and her podcast, “The Food Truck Scholar.” Her lived experience, as well as her technical and academic training, *qualify* her as having the proper basis for giving expert opinions. *State v. Hollingsworth*, 160 Wis. 2d 883, 467 N.W.2d 555 (Ct. App. 1991); *See also*, Wis. Stat. §907.02. Dr. Smith testified that she reviewed scholarly literature, journalistic sources (also known as doing a grey literature scan), and the pleadings filed in this case; moreover, she relied upon her prior dissertation research and field research in preparing her report and rendering her opinions. She was asked by plaintiffs to address two questions: (1) whether food trucks generate or attract criminal activity; and (2) whether curfews imposed on food trucks reduce crime and what the documented impacts of such

¹⁴ Prior to Dr. Smith’s testimony, the City objected to her testimony on two grounds: (1) Her report was filed the day before the hearing which did not give the City enough time to properly review and rebut it; and (2) Dr. Smith’s testimony did not meet admissibility standards set forth in § 907.02, Wis. Stats. and the *Daubert v. Merrell Dow Pharm.*, 113 S. Ct. 2786.

¹⁵ Exh.3, Appendix A.

curfews have been.¹⁶ Dr. Smith opined to a reasonable degree of professional certainty that (1) there is no empirical data that food trucks cause crime; and (2) food trucks actually reduce crime.¹⁷ Nonetheless, the City argues Dr. Smith failed to provide the court with any *relevant* Milwaukee-specific evidence related to its food trucks, crowd control issues, impacts upon neighborhoods, or EMT and police responses to crimes in the entertainment district or Burnham Park area. Under *Daubert*, being qualified as an expert by demonstrating specialized knowledge, skill, and experience is *not* enough. The court must also analyze the methodology used to arrive at the opinions offered by an expert to see if such evidence is sufficiently *reliable*. Wis. Stat. § 907.02(1). Non-scientific, experience-based testimony “must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how the experience is reliably applied to the facts.” *Seifert v. Balink*, 2017 WI 2, 372 Wis. 2d 525, ¶73, 888 N.W.2d 816. Dr. Smith admits she has never been to Milwaukee to investigate or review materials related to shootings in the entertainment district, has never served as a law enforcement officer, has no law enforcement training, is not an expert in crime prevention or crowd management, has never owned a food truck or operated one, and did not talk to anyone in Milwaukee about safety concerns related to the downtown entertainment district or Burnham Park area. She simply offers a generalized opinion that, regardless of city, food trucks do not contribute to or cause crime.

¹⁶ Exh.3 at p.4 of 21.

¹⁷ Id. at pp.8-9.

As the gatekeeper, this court must parse out relevant to this analysis, a proper “fit.” There is no question that for purposes of admissibility in the context of this proceeding, Dr. Smith’s testimony is reliable as “exposition testimony.” *State v. Dobbs*, 2020 WI 64, ¶¶ 31-51 (“Expository testimony consists of a lecture or explanation on a specialized subject such as economics, accounting, engineering, medicine, or psychology.”); *See, Lapsley v. Xtek*, 689 F.3d. 802, 809 (7th Cir. 2011). Support for this determination is supplied by the circumstance that Dr. Smith’s testimony was “without contradiction.” *Porter v. State*, 2018 WI 79, ¶19. Thus, the testimony is of limited probative value, because it does not address the factual circumstances that motivated the enactment of the Milwaukee ordinance. Nonetheless, it is highly unlikely that the explanation offered by Dr. Smith does not or could not apply to food trucks in Milwaukee. Moreover, her testimony aids this Court in its analysis of whether food trucks have a recognized or recognizable economic interest at stake. Therefore, the court denies the City’s motion to exclude Dr. Smith’s testimony, but the testimony is encapsulated within the limitation noted.

- d. TESTIMONY OF CAPTAIN ROBERT THIEL:** Milwaukee Police Department (MPD) District 1 Police Captain Robert Thiel testified that he is responsible for reviewing calls for service, coordinating officer work schedules, and reviewing law enforcement needs in District 1 of the City of Milwaukee.¹⁸ District 1 includes the entertainment district around North Water Street which is home to bars, restaurants, clubs, residences and MSOE. He testified that food trucks park

¹⁸ Exh.115.

in the public roadway near the entertainment district during late night/early morning hours to sell food and drinks to patrons.¹⁹ Captain Thiel testified that violent criminal activity has occurred in the downtown entertainment district (which is in District 1) in the past 12 months. He noted four violent criminal gun offenses including a homicide that occurred near the food truck area. These incidents included:

*On June 8, 2025, there was a shooting before 3 a.m. that injured three young men near the Mr. Taco Food Truck which was parked near the intersection of N. MLK Dr. and McKinley Ave. At the time of this incident, the food truck curfew zone did not encompass this area of the city.²⁰

*On July 10, 2025, a 21-year-old man was shot shortly before 1:30 a.m. at the intersection of North Water Street and Knapp Street when an individual fired bullets into a crowd of people.²¹

*On March 21, 2026, an altercation involving 10 individuals occurred at 205 E. Juneau Avenue which escalated into an armed robbery and “pistol-whipping” of a victim.²²

*On March 22, 2026, a triple shooting took place near the intersection of Water Street and Knapp Street that left one person dead and two others injured.²³

¹⁹ Dkt.22.

²⁰ Exh.107.

²¹ Exh.108.

²² Exh.110.

²³ There is an ongoing homicide investigation related to this incident; therefore, no police reports were made available to the court or parties. Captain Thiel instead referenced the MSOE Public Safety Report related to this incident. See, Exh.111.

Captain Thiel attributed some of this violence to the gathering, loitering and congestion of individuals in the area where the food trucks operate. He testified that the crowds require the police department to have extra officers on duty during summer weekend nights, adding to overtime costs and officer retention problems. He opined that a 10 p.m. curfew for food trucks would help police officers curb criminal activities occurring in the downtown entertainment area and make it safer. Therefore, he supports the MCO ordinance reducing the food truck hours of operation in the downtown entertainment area.

e. TESTIMONY OF MSOE DIRECTOR OF PUBLIC SAFETY BILLY FYFE:

Milwaukee School of Engineering (MSOE) abuts the downtown entertainment district. Billy Fyfe is employed by MSOE as their Director of Public Security. He oversees campus security for the private university and supervises the 25-armed security force officers. The MSOE security force works cooperatively with MPD responding to emergency situations; however, they do not have arrest powers. As a result, Mr. Fyfe has knowledge of violent crimes that have occurred on campus and in the abutting downtown entertainment district. In his opinion, large crowds that gather, loiter, and lead to congestion near the food truck area on Cherry Street are a significant factor leading to shootings and other criminal activities near the MSOE campus and entertainment district. According to Mr. Fyfe's testimony, many of the individuals in these crowds are between the ages of 16 and 20; therefore, they cannot go to the bars in the area, so they linger on the sidewalks and areas near to the food trucks and the campus. He testified that it is difficult to disperse these crowds, that when violence has occurred

there have been so many people present that it is hard to identify and locate victims and suspects, and that his security officers will quit if they continue to be exposed to the violence. As a result, MSOE supports the MCO shutting down food trucks at 10 p.m. in this area.²⁴

CONCLUSIONS OF LAW

LEGAL STANDARD

Temporary Injunctions are governed by Wis. Stat. § 813.02(1). To secure a temporary restraining order, the moving party must show: (1) “a reasonable probability of ultimate success on the merits,” (2) that an injunction is “necessary to preserve the status quo,” (3) “a lack of adequate remedy at law,” and (4) “irreparable harm.” *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520-21, 259 N.W.2d 310 (1977). In addition, the Wisconsin Supreme Court has held that a movant must “satisfy the [] court that on balance equity favors issuing the injunction.” *Pure Milk Prod. Co-op. v. Nat’l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979).

ANALYSIS

This Court must examine each of the enumerated factors before granting or denying the Motion for a Temporary Restraining Order sought by the plaintiffs.

Is the temporary restraining order “necessary to preserve the status quo” and prevent “irreparable harm”?

²⁴ This information is derived from Billy Fyfe’s testimony and his affidavit, Dkt. 21.

The fundamental purpose of a temporary injunction is to “maintain the status quo” between the parties until litigation concludes. *Gahl on behalf of Zingsheim v. Aurora Health Care, Inc.*, 2022 WI App 29, 403 Wis. 2d 539, 977 N.W.2d 756. Wisconsin courts have consistently held that “the purpose of a temporary injunction is to maintain the status quo, not to change the position of the parties or compel the doing of acts which constitute all or part of the ultimate relief sought.” *Shearer v. Congdon*, 25 Wis. 2d 663, 668, 131 N.W.2d 377 (1964). This preventative function ensures that neither party gains an advantage nor suffers irreparable harm while the case proceeds through the judicial system. *Id.* In this instance, the status quo is to allow the food trucks to continue to operate until 1:00 a.m. as dictated by the previously enacted 2023 Ordinance.

The plaintiff argues that without temporary injunctive relief preserving the status quo, they will suffer irreparable harm. The food truck peddlers argue they will give up any “good will” they have built up with loyal customers because of parking in a particular location at a particular time and will therefore sell significantly less product. Further, the food trucks may need to move locations to continue to compete. As a result, the food truck peddlers will lose significant revenue and, in turn, may need to reduce the number of workers the owners employ or even shut down operations.

The city responds that all the food truck vendors’ reasons are purely speculative assertions.²⁵ This court has no difficulty finding that the assertion that significant income will be lost if the food trucks are obligated to close at 10 p.m. is credible. Indeed, the City’s reasons for opposing the relief requested by the plaintiffs are speculative. And the City’s

²⁵ Dkt.19, p. 27.

suggestion, during the Hearing, that food trucks could make up the difference by opening earlier, say, 5:00 p.m., is colloquially, just going back to the barn to get more hay when you discover the first load doesn't cover you.

Here is where Dr. Smith's testimony and conclusions fit in. Comparing Dr. Smith's admitted testimony to that of the City's witnesses, the City offered no proof -- just naked conclusions-- that curtailing the hours of operation by food trucks will reduce, or deter, or un-motivate the movement of crowds of people into the entertainment areas during the 10:00 p.m. to 1:00 a.m. timeframe. There was no evidence presented by the City of Milwaukee that food trucks are some kind of or sort of magnet to the underage drinking individuals and sometimes under-curfew-age individuals that engage in violent acts. It is highly unlikely that large groups of under-age (curfew and/or drinking) individuals are organizing on social media to come to Water Street because there are (on average) three food trucks in that area. Further, there has been no proof offered from the city that food truck customers, or even those who gather by, interfere with or violate brick-and-mortar restaurants and bars customer base, at any hour. To the contrary, the "bar on every corner" concept is deeply woven into the fabric of "Brew City," with most competitors experiencing an economic boon from having multiple options available to patrons in the neighborhood. The city's assertions are simply too broad and unsupported by evidence. Thus, a temporary injunction is necessary to preserve the status quo and prevent irreparable harm. A municipal ordinance, under the rational basis test of constitutionality, doesn't have to address every possible issue or problem to be upheld (under-inclusiveness), but the Ordinance must nonetheless avoid arbitrariness, speculation, and guess work; at some level the Ordinance has to hit the nail on the head; the Milwaukee

ordinance at issue fails that minimal test. *St. Joan Antida High School Inc., v. Milwaukee Public School District*, 919 F.3d 1003, 1010 (7th Cir. 2019).

Does the plaintiff have “a lack of adequate remedy at law”?

In Wisconsin, cities²⁶ and other governmental entities do not enjoy absolute sovereign immunity for lost business profits or money damages, but they benefit from significant statutory protections such as damage caps and procedural requirements that limit their liability. Wisconsin law draws a critical distinction between the state and its municipalities regarding immunity. The State possesses sovereign immunity rooted in Art. IV, § 27 of the Wisconsin Constitution, which provides that the legislature shall decide by law in what courts suits may be brought against the state. However, municipalities do not possess sovereign status. The Wisconsin Supreme Court explained in *City of Madison v. Hyland, Hall & Co.*, 73 Wis. 2d 364, 243 N.W.2d 422 (1976), that “the immunity conferred upon municipalities derives, not from their sovereign status-for they have none- but from considerations of public policy...”

Wisconsin courts have addressed claims for lost business profits against governmental entities. In *Koshick v. State*, 2005 WI App 232, 287 Wis. 2d 609, 610, 706 N.W.2d 174, the Court of Appeals held that a breach of contract claim seeking damages for lost profits and expenses incurred was not a ‘claim’ for which relief could be granted due to sovereign immunity. Further, Wis. Stat. § 893.80(4) provides immunity to local governmental officials “for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-

²⁶ A city is a municipal corporation. *Columbia County v. Wisconsin Retirement Fund*, 17 Wis. 2d 310, 317, 116 N.W.2d 142 (1962).

judicial functions,” leaving the food truck peddlers without a remedy to sue the city for damages if they are not successful in asking the court to bar the enactment of the ordinance. Their “inability to recover monetary damages because of sovereign immunity renders the harm suffered irreparable.” *Odebrecht Constr., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013).

Does the plaintiff have a “Reasonable Probability of Ultimate Success on the Merits”?

To obtain a temporary injunction, a plaintiff must show there is “a reasonable probability of success on the merits.” *Doe v. Madison Metro. Sch. Dist.*, 2002 WI 65, ¶ 87, 403 Wis. 2d 369, 976 N.W.2d 584. It is highly contested between the parties whether economic liberty—the right to earn a living in an occupation or business endeavor of your choice without government interference—is a fundamental right that is protected by the Constitution. It is further disputed by the City that the newly enacted ordinance creates a “suspect class” under the Equal Protection Clause that violates the rights of food peddler vehicles.

The court will start with whether the Ordinance will affect the members of, and the prospective members of the class of what we euphemistically call food trucks. There is no contest over whether food trucks make a substantial part of their income after 10:00 p.m. The testimony offered at the hearing, and assertions contained within the pleadings allow, and nearly compel the conclusion that there would be little economic incentive to expand the membership of Water Street food truck operators [the Class] if new businesses were restricted to 10:00 p.m. closing. *See, Porter, supra*, at ¶46.

In *Porter, supra*, the Court found the statute in question treated all funeral directors and all cemetery operators equally. *Id.* at ¶¶34, 47. That equal treatment was crucial to the decision upholding the statute under either the rational basis or “rational basis with teeth” standard of review. Indeed, without the finding that the respective businesses were treated equally under the statute, it seems likely that the dissenting opinion in *Porter* would have prevailed. *See, Porter, supra*, ¶¶ 52-98. Herein, we have the City repeatedly chipping away at the Food Truck operators – changes of location, changes in hourly operation. None of the restrictions that up-the-ante for food trucks apply to the brick-and-mortar establishments also located on Water Street, that offer the same category of product – food.

In the final analysis, at least for this phase of this proceeding, the City’s legitimate desire to contain unruly and sometimes violent gatherings on Water Street generated an Ordinance that has little support in the facts on the ground as presented in the pleadings and the evidence presented at the Hearing. The Ordinance fails to address the real and continuing problem – how to police violent under-curfew-age and under-drinking-age individuals who gather and commit crimes. Closing food trucks on Water Street at 10:00 p.m. – while leaving brick and mortar businesses open in the same location, does more than create the inference of unequal treatment. The utter lack of evidence, so far, that reduced hours of operation of food trucks on Water Street will deter the described gatherings drives, for now, the conclusion that the Ordinance was not just underinclusive, but sufficiently off the mark to make it a clear call to find that the Plaintiff, the movant here, has a reasonable chance of success on the merits.

CONCLUSION

In order to issue a temporary injunction, the moving party must demonstrate four elements: (1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits. *Deputy Sheriff's Association v. Milwaukee County*, 2016 WI App 56, ¶20; *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis.2d 513, 520-21, 259 N.W.2d 310 (1977). The Plaintiff herein has satisfied all four elements. On balance, equity favors issuing the temporary injunction.

THEREFORE, this Court issues a temporary injunction pending the outcome of this litigation staying the enforcement of Milwaukee City Ordinance (MCO) 67-37-1-e-1-b, published April 21, 2026, regulating the operation of Type 1 time-limited food truck zones in the downtown entertainment area. During the pendency of this litigation, food trucks closing time requirements shall continue to be 1:00 a.m.

SO ORDERED.