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October 29, 2009

Via Facsimile (414-286-8550)

Atty. Grant F. Langley  
Milwaukee City Attorneys Office  
200 E Wells St Rm 800  
Milwaukee, WI 53202-3515

Re: Legislative File # 090429  
-a substitute ordinance establishing a residential rental certificate

Dear City Attorney Langley,

Our office is legal counsel to the Apartment Association of Southeastern Wisconsin ("AASW"). The proposed legislation contained in Legislative File #090429, of which we have enclosed a copy with this letter, was recently recommended for approval on October 27, 2009 by the City of Milwaukee Zoning, Neighborhood, and Development Committee. This ordinance will have a significant effect on our client, which has numerous members who own rental property within the area that the pilot program will take effect.

Our client understands that the goal of the program is to ensure quality and high standards in rental property (a goal shared by our client's members), but AASW is concerned that proposed City of Milwaukee Ordinance ("CMO") 200-53(2), "Definitions" does not adequately protect the interests of property owners as it is currently drafted.

The proposed legislation will require rental property owners in the two pilot areas to have city inspectors inspect each of their rental units and then the property owners will need to purchase a "residential rental certificate" for \$85 which is valid for four years from the date of issuance if no "disqualifying violations" are found during the initial inspection. If "disqualifying violations" are found during the initial inspection, a property owner will only be eligible for a one year residential rental certificate and will have to pay for another certificate and inspection when that certificate expires.

Our client's concern is that the term "disqualifying violations" is quite subjective. Though "disqualifying violations" is defined in the proposed legislation under MCO 200-53(2)(c), our client believes that the proposed definitions can be more specific. Proposed MCO 200-53(2)(c) states:

"Disqualifying violation" means conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental unit, or other conditions that violate the provisions of the building code, building maintenance code or zoning code that indicate in their totality that the rental unit is not being properly maintained.

While there is no dispute as to items that may violate the building code, building maintenance code, or zoning code, there is no doubt that it would become a matter of opinion as to what "in their totality that the rental unit is not being properly maintained" means. Does this mean that one violation would equal improper maintenance, or would it take six violations?

The proposed legislation also attempts, in proposed MCO 200-53(2)(b), to define the term "Conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental unit." Proposed MCO 200-53(2)(b) states:

"Conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental unit" include items that violate fire safety; lack of or poor condition of sanitary facilities; absence of adequate heating systems or equipment; items which affect the safe operation of electrical and mechanical systems; items which affect structural integrity of the building or the ability of the building envelope to keep out the weather; or one or more conditions that if not corrected would be reasonably expected to become conditions that affect the safe, decent and sanitary conditions of the occupants.

As with the definition of "disqualifying violation", we feel that the proposed definition in MCO 200-53(2)(b) is too subjective.

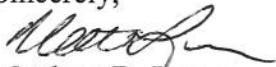
There is also significant concern with the legality of the proposed MCO 200-53(9). Having the Commissioner of the Department of Neighborhood Services review his own orders and decisions cannot withstand scrutiny under *Memphis Gas & Light*. It would be more appropriate, and legal, for appeals to be considered by Standards & Appeals, as is done with the Building & Zoning Code under MCO 200-17. What is the legal authority of the city to have appeals under the

proposed legislation handled by the Commissioner of the Department of Neighborhood services instead of by the Standards & Appeals Commission?

Finally, Commissioner Dahlberg has exchanged correspondence with Tristan Pettit, President of AASW. Dahlberg's email, dated October 28, 2009, is enclosed with this letter. The language that Dahlberg proposes, in and of itself, is quite problematic, but this proposed language is not found anywhere in the proposed ordinance.

In summary, the proposed legislation, as currently drafted, could not withstand legal scrutiny and be enforced against owners of residential rental property in the two pilot areas. We request that before you approve this matter as to legality for the Common Council, that you consider these issues.

Sincerely,



Matthew D. Lerner  
Attorney at Law

Enc.

Cc: Apartment Association of Southeastern Wisconsin  
City Clerk Ronald Leonhardt

From: Dahlberg, Art [mailto:Art.Dahlberg@milwaukee.gov]

Sent: Wednesday, October 28, 2009 12:05 PM

To: Tristan Pettit

Subject: Proposed language for multifamily sampling inspections

Dear Tristan:

Thank you for your comments at yesterdays hearing. Please take a look at the the language below and let me know if this addresses you concern on larger multiunit buildings. I am sharing this with other speakers that raised this issue. Thank you for any input you may have.

Art

"If a multifamily building has 10 or more units, the Department of Neighborhood Services shall inspect a sampling of dwelling units, of not less than 2 and not more than 10% of the dwelling units in the multifamily building. In no event will the department charge a fee for more than 10 units. If the department determines upon inspection of the sampling of dwelling units there are code violations that effect the safe, decent and sanitary living conditions for the tenants of such a multifamily building, then the department may inspect as many dwelling units as necessary enforce the provisions of the code. In that case the fee shall be based upon the charge per unit inspected as provided in section 200-33."

..Number

090429

..Version

PROPOSED SUBSTITUTE A

..Reference

..Sponsor

ALD. KOVAC, DAVIS and HINES

..Title

A substitute ordinance establishing a residential rental certificate in a designated residential area.

..Sections

200-19-2 am

200-33-49.5 cr

200-53 cr

..Analysis

This ordinance requires owners of rental properties in designated residential areas to apply for a residential rental certificate from the department of neighborhood services. A certificate is required for each rental unit in order for it to be rented. Following application an inspection is done by the department of neighborhood services to insure that each rental unit complies with the building maintenance and zoning codes. The cost of inspection is \$85 for each unit. The department shall issue a residential rental certificate only if after inspection it has found that the unit's observable conditions conform to the building maintenance and zoning codes and that there are no outstanding orders issued against the unit. The certificate shall be valid for 4 years from the date of issuance if no disqualifying violations are found at the initial inspection. The certificate shall be valid for one year after the date of issuance if disqualifying violations are found at the initial inspection. An owner failing to apply for a residential rental certificate of compliance shall be subject to a forfeiture of \$100 for the first failure to apply. The owner shall be subject to a forfeiture of \$150 for each subsequent failure to respond to a notice sent by the department to apply.

Within 4 ½ years of the effective date of this ordinance the commissioner of neighborhood services shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance unless reauthorized by the common council. No additional inspection areas shall be added within the period of the pilot program.

..Body

Whereas, The residential units in the area consisting of census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43, are on average 82.7 years old while the city average is 71.3 years old; and

Whereas, The residential buildings in this area that are rental are 47.5 % of the total residential buildings as compared to 26.9% citywide; and

Whereas, The residential units in this area are 56.8% rental compared to 47.8% citywide; and

Whereas, 72.4% of code and nuisance complaints in this area occur at rental properties while the city average is 63%; and

Whereas, The city has invested significant money into public improvements and incentives for private owners in this area, and this investment is negatively affected by conditions of rental housing and fire safety and housing inspection programs are known to stabilize conditions in rental housing; and

Whereas, Also the residential units in the area bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave. in the vicinity of the University of Wisconsin – Milwaukee are on average 94.7 years old while the city average is 71.3 years old; and

Whereas, The residential buildings in this area that are rental are 42.7% of the total residential buildings as compared to 26.9% citywide; and

Whereas, The residential units in this area are 62.9% rental as compared to 47.8% citywide; and

Whereas, 81.4% of code and nuisance complaints in this area occur at rental properties while the city average is 63%; and

Whereas, 83% of campus fire deaths occur in off campus housing and fire safety education and related inspection programs are known to reduce the number and severity of fires in residential occupancies; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-19-2 of the code is amended to read:

**200-19. Penalties.**

2. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating any provision of ss. 200-11, 200-20-2, 200-21.5, 200-22-5, 200-24, 200-42, >>200-53,<< 200-61, ch. 207, ch. 214, ss. 218-2, 218-6, 218-9-6, 222-11-2, 222-13-1, 222-19-1, ch. 223, ss. 225-2-1, 225-3-4, 225-3-5-a, ch. 236, ch. 240, s. 244-3, ch. 246, s. 252-1, ch. 261, ch. 275, ch. 289, ch. 290, ch. 295 or s. 308-81-9.

Part 2. Section 200-33-49.5 of the code is created to read:

**200-33. Fees.**

**49.5. RESIDENTIAL RENTAL CERTIFICATE.** a. The inspection fee associated with a residential rental certificate shall be \$85 for each rental unit in a building. The certificate

shall be valid for 4 years from the date of issuance if no disqualifying violations are found at the initial inspection. The certificate shall be valid for one year from the date of issuance if disqualifying violations are found at the initial inspection. The certificate may be given temporary status if nonhazardous code violations are found at the initial inspection.

b. There shall be no additional fee imposed when a temporary status is removed and a regular residential rental certificate is issued.

c. The inspection fee for renewal of a residential rental certificate shall be \$85 for each rental unit in a building.

d. A fee of \$50 shall be imposed if the department is unable to gain access to the unit for the inspection pursuant to sub. par. a at the agreed upon time.

e. Delinquent residential rental inspection fees shall be charged against the real estate and shall be assessed and collected as a special charge.

(See s. 200-53.)

Part 3. Section 200-53 of the code is created to read:

**200-53. Residential Rental Certificate.**

1. PURPOSE. Pursuant to s. 62.11 (5), Wis. Stats., and s. 4-10 of the Milwaukee city charter, the common council is responsible for the management and control of city property, acting for the good order of the city and the health, safety and welfare of the public. The common council has determined that there is a need to enact legislation requiring residential rental certificates to protect the public because residential rental dwelling units in the areas defined by census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43; and those bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave. are in need of inspection to prevent deterioration, taking into account the density of rental units, age of buildings, percentage of complaints occurring at rental units, and condition of the units in the area. Frequent inspection of these units is necessary to maintain safe, decent and sanitary living conditions for residents living in the rental units and to protect the investment made by the city in the area defined by census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43, and due to high tenant turnover in the area bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave.

2. DEFINITIONS. In this section:

a. "Building maintenance code" means that portion of the building code which establishes the minimum requirements and standards of health, sanitation, safety and occupancy for residential property. These regulations governing the condition and maintenance of residential property, and the responsibility of property owners are set forth in ss. 275-32 to 275-82.

b. "Conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental unit" include items that violate fire safety; lack of or poor condition of sanitary facilities; absence of adequate heating systems or equipment; items which affect the safe operation of electrical and mechanical systems; items which affect structural integrity of the building or the ability of the building envelope to keep out



the weather; or one or more conditions that if not corrected would be reasonably expected to become conditions that affect the safe, decent and sanitary conditions of the occupants.

c. "Disqualifying violation" means conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental unit, or other conditions that violate the provisions of the building code, building maintenance code or zoning code that indicate in their totality that the rental unit is not being properly maintained.

d. "Designated residential area" means:

1. The area defined as inspection district 1 which consists of census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116 with the eastern boundary defined by interstate I-43.

2. The area defined as inspection district 2 which is the area bounded by the following streets: Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave.

e. "Dwelling" means a building which includes one or more distinct living units. It does not include a residential 2-family building in which one of the units is owner-occupied.

f. "Owner" means the person in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and right to present use and enjoyment of the premises.

g. "Residential rental certificate" means a written and signed statement prepared by the commissioner after an inspection has been made, that the condition of a dwelling is in compliance with the building maintenance and zoning code.

h. "Person" includes an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.

i. "Sale, transfer or conveyance of ownership" means to transfer any ownership interest in a dwelling except by mortgage, gift, devise or bequest. The sale or transfer shall be deemed to occur upon the transfer of an ownership interest, the execution of a land contract or the exercise of an option to purchase property.

j. "Time of sale, transfer or conveyance" means the time when a written purchase agreement is executed by the buyer; in the absence of a purchase agreement, it shall mean the time prior to the execution of any document providing for the transfer or conveyance of a dwelling in the designated residential area.

k. "Unit" means any independently rented living space whose term of lease is 30 days or greater.

L. "Zoning code" means any requirements and standards set forth in ch. 295.

**3. RESIDENTIAL RENTAL CERTIFICATE REQUIRED.** a. Persons with an ownership interest in a dwelling within the designated residential area shall apply for a residential rental certificate for each unit in order to rent the unit. Unless a unit has a valid residential rental certificate or temporary residential rental certificate, no owner of the unit shall permit any person to occupy the unit as a tenant or otherwise. A residential 2-family building that is owner-occupied is exempt from this requirement.

b. Persons acquiring an ownership interest as the result of a sale, transfer or conveyance of a dwelling within the designated residential area shall within 30 days of sale, transfer or conveyance, apply for a residential rental certificate, subject to the provisions of sub. 6-e.



c. Any person selling, transferring or conveying an ownership interest in a dwelling shall expressly inform any person acquiring or receiving an ownership interest in a property that a residential rental certificate is required by the city.

#### **4. APPLICATION.**

a. An application for a certificate shall be filed with the department on forms provided by the department. The application shall be signed by the owner, and shall state the street address of the dwelling to be inspected, the owner's legal name, the owner's phone number and date of birth.

b. Failure to apply for the residential rental certificate as required in sub. 3-b may subject the owner to the penalties specified in sub. 13-a.

#### **5. INSPECTION.**

a. Upon application, the department shall inspect the condition of the dwelling for compliance with the building maintenance and zoning code. The department shall make the inspection within 60 days of the date of application unless another date is mutually agreed upon by the department and the owner. The owner shall inform the tenant of the unit and place a posting on the door of the unit stating the date and time of the inspection at least 2 days prior to the inspection.

b. An owner is not exempt from complying with all other applicable laws, standards and regulations pertaining to the condition and use of buildings and structures including the authority of the commissioner to perform housing inspections in accordance with applicable law.

**6. ISSUANCE OF CERTIFICATES.** a. The department shall issue a residential rental certificate only after it has inspected the dwelling or unit and found that its observable conditions conform to the building maintenance and zoning codes and that there are no outstanding orders against it. The certificate shall be valid for 4 years from the date of issuance if the inspection discovered no disqualifying violations.

b. If upon inspection of the dwelling or unit the department finds one or more disqualifying violations, then the department shall issue a one-year residential rental certificate only once all observable conditions conform with the building maintenance and zoning codes.

c. The commissioner may issue a temporary certificate if, in the commissioner's opinion, the outstanding violations do not constitute a hazard to the occupants of the dwelling or unit and if a work plan to correct the violations is submitted and approved by the commissioner. The temporary certificate shall be valid for 30 days and the commissioner may grant an extension if a revised work plan to correct the violations is submitted and approved by the commissioner. Failure to abate violations discovered resulting from inspection associated with the application for the certificate shall invalidate the temporary certificate, and no owner of the dwelling or unit shall permit any person to occupy the dwelling or unit as a tenant or otherwise.

d. If after issuance of a 4-year certificate the department subsequently finds that the dwelling or unit is found in violation of the building maintenance or zoning codes, the department may revoke the 4-year certificate and in lieu thereof issue a one-year certificate. The dwelling or unit shall again be eligible for a 4-year certificate only upon the expiration of the annual certificate, and as of the first subsequent annual inspection, no disqualifying violations are found. The commissioner may also revoke either a 4-

year or one-year certificate if he or she determines that violations are of a critical nature that constitute an unsafe or unfit condition.

e. In the event of a sale, transfer or conveyance of a property within 3 months of the initial issuance of the certificate, the certificate may be transferred to the new owner until the end of a certificate valid for one year, or one year from the date of issuance of the certificate in the case of a 4-year certificate, provided the new owner submits an application as required by sub. 4. No inspection shall be required pursuant to this paragraph.

**7. VIOLATIONS IDENTIFIED.**

a. Any building maintenance and zoning code violations identified in the initial inspection for a residential rental certificate shall be abated within a reasonable amount of time to be determined by the department.

b. Any violations identified after a residential rental certificate has been issued shall be abated within a reasonable amount of time to be determined by the department and subject to the provisions of the code.

**8. ENFORCEMENT.** a. Should the department upon inspection determine that there are conditions which constitute an imminent danger to health and safety pursuant to chs. 275 and 295, it shall order the condition to be remedied and may limit or prohibit occupancy where appropriate.

b. The department shall reinspect the premises as necessary to determine that the recorded code violations have been satisfactorily corrected. A reinspection fee may be charged in accordance with s. 200-33-48.

**9. DEPARTMENTAL REVIEW AND APPEALS.** a. The owner may request review of decisions regarding violations or regulations imposed by the department. The request shall be made in writing on forms provided by the department and shall specify the grounds for administrative review. The request for administrative review shall be filed within 10 days of the issuance of the order.

b. The administrative review hearing shall occur within 10 days after receipt of the request.

c. The commissioner, or the person appointed as the commissioner's designee, shall conduct the administrative review hearing. At the hearing, owner and staff shall present all relevant information to the case.

d. Within 7 days of completion of the hearing conducted under this subsection, the commissioner shall mail or deliver to the owner his or her written determination stating the reasons therefore.

e. If an owner is not satisfied by the decision reached by the commissioner, he or she may make further appeal to the standards and appeal commission pursuant to s. 200-17.

**10. REVOCATION.** A certificate of residential rental code compliance may be revoked at the discretion of the commissioner if violations which are considered to be an unfit or unsafe condition pursuant to sub. 7-a are observed during a complaint investigation.

**11. RULES AND REGULATIONS.** The commissioner may issue rules and regulations for the administration of this section.

**12. REMEDIES; OTHER PROVISIONS.** a. The remedies provided in this section are not to be construed to be exclusive of any other remedy under this code, and the

department may take further actions to ensure compliance with this section including, but not limited to, seeking injunctive relief and obtaining inspection warrants.

b. Nothing in this section shall be construed to limit the authority of the department to perform housing inspections in accordance with this code.

c. Nothing in this section shall limit the department from enforcing any other provision of the code or any state or federal law under its jurisdiction.

d. Nothing in this section shall be construed to relieve or exempt any person from complying with all applicable laws, this code, and standards and regulations relating to the condition and use of buildings and structures.

e. Nothing in this section shall limit, impair, alter or extend the rights and remedies of persons in the relationship of landlord and tenant that exist under applicable law.

13. PENALTY. a. An owner failing to apply for a residential rental certificate of compliance shall be subject to a forfeiture of \$100 for the first failure to apply. The owner shall be subject to a forfeiture of \$150 for failure to respond to each subsequent notice to apply which shall be sent by the department.

b. An owner failing to comply with any other provisions of this section shall be subject to the penalties provided in s. 200-19.

Part 4. Within 4 ½ years of the effective date of this ordinance [city clerk to insert date] the commissioner of neighborhood services shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance [city clerk to insert date] unless reauthorized by the common council. No additional inspection areas shall be added within the period of the pilot program.

Part 5. This ordinance shall be effective January 1, 2010.

..LRB

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date:\_\_\_\_\_

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date:\_\_\_\_\_

..Requestor

Department of Neighborhood Services

..Drafter

MET  
10/21/09  
LRB09315-5