

April 17, 2002

Mr. Mariano A. Schifalacqua
Commissioner
Department of Public Works
Room 516 – Municipal Bldg.

Dear Mr. Schifalacqua:

Re: Special Charges for Board-Up Costs

In your March 11, 2002 communication, you requested our review of notices that your department uses in conjunction with police ordered building board-ups. You supplied us with the form of notice that is posted on the building to be boarded up which states in part: “Charges will be assessed to the owner of record for costs associated with securing the premises, and the cost of such work becomes a tax on the property per City Ordinance No. 309-71.” You also provided a copy of the notice which you intend to send to the property owner. That notice informs the owner of the exact amount of the special charge and further states: “If you have any questions regarding these charges, please contact Mr. David Lewis, Department of Public Works”

We have been asked a similar question by the Commissioner of the Department of Neighborhood Services. That department has authority under sec. 275-32-7, Milwaukee Code of Ordinances, to order an owner to board up a structure. The notice provided by the Department of Neighborhood Services (“DNS”) informs the owner that if the violation is not corrected by the owner, “. . . it may be corrected by the City and the cost thereof will be charged as a tax lien against the property.” This notice is consistent with the provisions of sec. 275-32-7-b which provides:

“If, after a reasonable notice, the owner fails to board the structure, the commissioner may request the department of public works either by city personnel or by contract to correct the situation and charge the cost thereof upon the tax rolls of the property.”

The DNS notice also informs the owner of certain appeal rights before the Administrative Review Appeals Board constituted under sec. 320-11, Milwaukee Code of Ordinances. Those appeal rights are not specified in the ordinance.

Both your inquiry and that of DNS Commissioner Collins concern whether the current notices which precede the placement of board-up costs on property tax bills are legally adequate.

With the exception of special charges for “. . . street tarring or the repair of sidewalks, curbs or gutters . . .,”¹ the special charge provisions of sec. 66.0627 do not specify a particular type of notice procedure which must be followed prior to the imposition of special charges for other types of current services; rather, the statute provides: “The governing body of the city . . . may determine the manner of providing notice of a special charge.” Section 66.0627(3)(a), Stats.

Examples of special charges which follow this statutory directive are those charges which are placed on the City Services User bill. That bill is used as the manner of giving notice of the amount of the charge to the affected property owner and the property owner is alerted by that bill to their right to appeal if they feel “aggrieved as a result of the imposition or collection of such charge” See, e.g., the recently enacted sec. 309-83, Milwaukee Code of Ordinances, dealing with special charges for the recovery of the cost of snow and ice removal.

The current ordinance under which you are authorized to collect police ordered board-up costs as a special charge is sec. 309-71, Milwaukee Code of Ordinances. That ordinance does not specify a particular notice or appeal process that must be followed or available prior to the imposition of the charge. Both you and Commissioner Collins have attempted, as exemplified by the above-referenced notices, to administratively fill the procedural void. We advise, however, that the better course of action to ensure compliance with the notice requirements of sec. 66.0627(3)(a) would be to specify a notice and appeal process by ordinance. We suggest two new ordinance provisions. One providing a notice and appeal process for all DPW initiated special charges, including board-ups, and a similar process for all DNS initiated special charges, again including board-ups. The only difference between the two processes is that the DNS procedure does not allow an appeal of the necessity for the board-up order since there is another process available to challenge that order’s necessity before the Board of Standards and Appeals. Section 200-17, Milwaukee Code of Ordinances.

We have prepared two draft ordinances. The first clarifies the provisions of the current sec. 309-71, i.e., the special charge is technically not collected by the Commissioner of Public Works but rather by the City Treasurer; and creates the above-referenced new DPW and DNS notice and appeal processes. The second creates a new sec. 200-04-4, the corresponding DNS appeal process. We seek both your and Commissioner Collins’ review and comments on the attached drafts. When we have received all comments, we will schedule a meeting with you and Commissioner Collins to discuss the draft ordinance changes. Assuming all parties are in agreement, the matter can then be introduced for consideration and action by the Common Council.

¹ The notice and hearing process for these categories of current services is specified in sec. 66.0627(3)(b), Stats.

If you have any questions concerning the draft or any other matters touched upon in this opinion, please feel free to contact Mr. McDonnell.

Very truly yours,

GRANT F. LANGLEY
City Attorney

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Special Deputy City Attorney

PBMcD:dms

Enc.

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