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CITY OF MILWAUKEE
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September 29, 2006

Mr. Barry Zalben
Legislative Reference Bureau
200 E. Wells Street, Rm B-11
Milwaukee, WI 53202

Attn: Richard Withers

RE: Parking Vehicles Containing Junk/Common
Council File No. 060470

Dear Mr. Zalben:

In a communication dated July 27, 2006, Mr. Withers of your bureau requested an opinion as to the legality and enforceability of an ordinance that would prohibit at all times parking and standing of vehicles containing collected or stored junk on the public highways, with the exception of vehicles that are actively engaged in loading or unloading.

Wis. Stat. § 349.13(1e)(a) states that "local authorities may within the reasonable exercise of the police power, prohibit, limit the time of or otherwise restrict the stopping, standing or parking of vehicles beyond the prohibitions, limitations, or restrictions imposed by Wis. Stat. ch. 346." However, that same statute provides that local authorities may not prohibit, limit, or restrict the stopping, standing or parking of vehicles in a manner that is inconsistent or contrary to Wis. Stat. ch. 346 to 348 and 350.

In addition, pursuant to Wis. Stat. § 349.03(2), "No local authority may enact or enforce any traffic regulation...in any manner excluding or prohibiting any motor vehicle, mobile home, trailer or semi trailer...from the free use of all highways, except as authorized by... § 349.13."

Therefore, we must determine whether the proposed ordinance is inconsistent or contrary to Wis. Stat. chs. 346 to 348 and 350. *City of Janesville, v. Garthwaite*, 83 Wis. 2d 866, 266 N.W. 2d 418 (1978). The

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Wisconsin Legislature has permitted the operation of vehicles carrying junk on any highway as long as the junk is securely fastened. Wis. Stat. § 348.10 (3m) (a)-(c). Therefore, it appears to us that the City could not prohibit outright the parking of a vehicle with junk on it, if it is securely fastened, because that would not be consistent with State law.

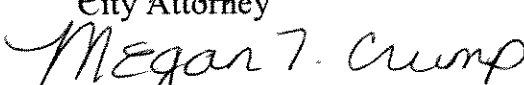
You limit your proposed ordinance to prohibiting the parking of vehicles containing "collected" junk, and vehicles on which junk is being "stored." However, the proposed ordinance lacks definitions of "stored" junk or "collected" junk; such definitions would form the basis upon which a citation could be issued or a court case proven. These are not self-evident terms; it is unclear if they are dependent on length of time, manner of storage, etc. Thus, the proposed ordinance is unenforceable. In addition, a contractor could return to his or her vehicle every couple of hours to remove items, making it difficult to determine and prove whether the contractor is "actively" loading or unloading.

It seems that your intent is to regulate and control the handling and dealing of junk in the City by prohibiting the storing or collecting of junk in vehicles on City streets or on other public property. This is certainly within the City's police power, and could be included in the ordinances that regulate junk dealers and collections. A broader prohibition could also be enacted. Clear definitions must be included.

While it is our opinion that the proposed ordinance is not legal and enforceable as drafted, we will gladly assist you in redrafting an enforceable ordinance to address vehicles that are actually being used to store or collect junk on our streets.

Very truly yours,


GRANT E. LANGLEY
City Attorney


MEGAN T. CRUMP
Assistant City Attorney

c: Alderman Robert G. Donovan
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