CITY OF MILWAUKEE

Form CA-43

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September 7, 2005

Teodros W. Medhin, Ph. D., Chair
Zoning Code Technical Committee
Room B-11, City Hall

Re: Legality and Enforceability of Common Council File No. 031613 (Substitute 1)
A Substitute Ordinance Relating to Zoning Regulations for Day Care Centers

Dear Dr. Medhin:

On August 31, 2005, you requested the opinion of this office as to the legality and enforceability of the above-referenced file, which contains an ordinance requiring any new day care center to be established in a commercial zoning district (ch. 295, Milwaukee Code of Ordinances, subch. 6) to be located at least 1,000 feet from any existing day care center. Essentially, this ordinance establishes a 1,000 foot "distancing" requirement applicable to any new day care center to be established in any commercial zoning district.

The subject of "distancing" requirements has been presented to this office previously, and we are attaching three opinions of this office dated November 15, 2004, April 26, 2004, and August 23, 2001, addressing the matter of the legality and enforceability of such requirements. We would respectfully suggest that these opinions be carefully reviewed, as they set forth in detail the applicable standards for evaluating "distancing" ordinances. The general standard is that, while the Common Council may have the power to adopt amendments to the Zoning Code which establish "distancing" requirements for certain uses, the proper circumstances must be present. Generally, such requirements will be upheld as reasonably related to promotion of the public welfare when they control provable harmful secondary effects related to the restricted use. *See*, attached opinion dated April 26, 2004 for additional explanation.

"Distancing" requirements are most often applied to uses that, although lawful, confer rather obvious adverse secondary impacts. Thus, our earlier opinions discussed the application of such requirements to payday loan and other "alternative" lending institutions. Such requirements are

also often applied to such uses as adult bookstores and theaters, or (in the non-zoning context) nightclubs, bars, or other holders of Class "B" liquor licenses. In all such instances, the adverse secondary impacts upon the general public resulting from the nature of the operations themselves is apparent, thus providing justification for greater restriction than that which might be applied to other types of lawful businesses.

We perceive the task of justifying this particular substitute ordinance as more difficult than those addressed by our prior opinions, because the adverse secondary impacts upon the public welfare resulting from the operation of a day care center in a commercial zoning district are not quite as obvious. In making this observation, we do not suggest that this showing cannot be made. We do, however, believe that the burden of making such a showing rests squarely upon the proponents of this proposed substitute ordinance, and that it must be made via presentation and analysis of sufficient evidence in the course of appropriate legislative hearings which provide the opportunity for both proponents and opponents of this proposed substitute ordinance to present their views.

If the record derived from these legislative hearings is sufficient to justify the adoption of this proposed substitute ordinance based upon evidence of adverse secondary impact, it may well be that it would be legal and enforceable, if adopted. We are not, however, in a position to reach a final opinion on this matter in advance of these hearings. If you have any further questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

GRANT F. LANGLEY
City Attorney

Stuart S. Mukamal

STUART S. MUKAMAL
Assistant City Attorney

SSM:lmb
enclosures
c: Ronald D. Leonhardt, City Clerk
Ald. James Bohl
John Hyslop, Dept. of City Development
1172-2005-2412:96539

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November 15, 2004

Alderman Robert W. Puente
9th District Alderman
Room 205 – City Hall

Re: Questions Concerning the Impact of Common Council File No. 031614 (Distancing Requirements for Currency Exchanges, Payday Loan Agencies and Title Loan Agencies)

Dear Ald. Puente:

On November 9, 2004, you inquired of this office as to the impact of Common Council File No. 031614, an ordinance that was passed by the Common Council on Wednesday, November 3, 2004 and is currently awaiting the Mayor's signature. This ordinance establishes certain "distancing" requirements for the issuance of special-use permits applicable to currency exchanges, payday loan agencies, and title loan agencies located within the City of Milwaukee (hereafter collectively referred to as "alternative lending institutions"). Specifically, this ordinance requires that any new alternative lending institution must be located at least 1,500 feet from any existing alternative lending institution and at least 150 feet from any single-family or two-family residential zoning district.

Your inquiry focused upon two points. First, you ask whether an applicant to the Board of Zoning Appeals ("Board") seeking a permit to locate an alternative lending institution within the areas proscribed by the new ordinance (*i.e.*, within 1,500 feet of another alternative lending institution or within 150 feet of a single-family or two-family residential zoning district) would be required to obtain both a special-use permit (for the use itself) and a variance (in order to locate within the proscribed area). The answer to this inquiry is "yes."

Second, you inquire as to whether, in light of § 295-125 of the Zoning Code ("Code") entitled "Vesting," the new ordinance and its distancing requirements apply to permit applications from alternative lending institutions that are currently pending before the Board. The answer to this inquiry is also "yes."

We shall now discuss both of these items in turn.

1. Requirements for obtaining both a special-use permit and a variance. Under the current Code, alternative lending institutions are either prohibited uses or special uses, depending upon the particular zoning classification involved. Specifically, they are prohibited uses in the following areas: all residential zoning districts (Code Table 295-503-1); downtown zoning district C9A (Code Table 295-703-1); industrial zoning districts IO1/IO2, IL1/IL2, and IH (Code Table 295-803-1); and zoning district PK "Parks District" (Code Table 295-903-2-a). They are special uses in all other zoning districts, including the following: all commercial zoning districts (Code Table 295-603-1); all downtown zoning districts, excepting zoning district C9A (Code Table 295-703-1); industrial zoning district IM (Code Table 295-803-1); and zoning district "TL" ("Institutional District," Code Table 295-905-2-a). Alternative lending institutions are not a permitted use in any zoning district within the City, and thus, at a minimum, all applications for such uses must satisfy the special-use permit standards established by Code §§ 295-311-2-d and 2-d-1 through 2-d-4 before the Board may issue the requisite special-use permit that would allow them to open for business and to operate.

   The new ordinance establishes the distancing requirements described above as additional necessary "findings" to be considered in conjunction with any special-use permit application submitted by or on behalf of an alternative lending institution. These are firm Code requirements, which may be circumvented only if the Board grants a variance from those requirements, in accordance with the variance standards specified by Code §§ 295-311-3-d and 3-d-1 through 3-d-5. *See*, Code § 295-201-675 (defining "variance" as "permission from the board to depart from the literal requirements of this chapter."). *See also*, Wis. Stat. § 62.23(7)(e)7; *Hearst-Argyle Stations, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2003 WI App 48, 260 Wis.2d 494, 513, 659 N.W.2d 424, 434; *Foresight, Inc. v. Babl*, 211 Wis.2d 599, 606, 565 N.W.2d 279, 282 (Ct. App. 1997).

   The outcome of this inquiry is plain. An applicant for an alternative lending institution must first obtain a special-use permit in order to open for business and to operate. This follows from the nature of the use itself. Furthermore, if such an applicant wishes to open for business in one of the geographic areas proscribed by the new ordinance, it must additionally obtain a variance from the distancing requirements specified by that ordinance. The special use is thus directed at the use itself, while the variance is directed at the particular location of that use. Under the circumstances outlined by your first inquiry, both would be required of an applicant

seeking to open and operate an alternative lending institution within the proscribed geographic areas.

2. Are pending special-use permit applications for alternative lending institutions "vested" in the special-use permit standards in effect prior to adoption of the new ordinance? Your letter notes that the Board currently has pending before it a number of special-use permit applications submitted by alternative-lending-institution applicants. Up until the effective date of the new ordinance, this is all that would be required of applicants seeking to locate alternative lending institutions within zoning districts for which such institutions are special uses. (A variance would be necessary to locate any such institution in a zoning district within which it is currently a prohibited use). You have inquired as to whether the requirements of the new ordinance would now apply to these pending applications – the impact of which would be to additionally require a variance from any applicant seeking to locate an alternative lending institution within 1,500 feet of an existing alternative lending institution or within 150 feet of a single-family or two-family residential zoning district. As noted earlier, the answer to this inquiry is "yes."

The issue presented herein concerns whether applicants whose special-use permit applications are currently pending before the Board have acquired vested rights to be adjudged according to the Code requirements prevailing as of the time of the filing and submission of their applications, which would not include the distancing requirements imposed by the new ordinance. Where substantial rights have vested, zoning ordinances cannot be applied retroactively. *Hearst-Argyle Stations, Inc. v. Board of Zoning Appeals of the City of Milwaukee, supra*, 260 Wis.2d at 514, 659 N.W.2d at 434; *County of Sauk v. Trager*, 113 Wis.2d 48, 56, 334 N.W.2d 272, 276 (Ct. App. 1983). The purpose of the vested-rights doctrine is to protect property owners who have undertaken courses of action with respect to the use of their properties on the basis of reasonable expectations. *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis.2d 157, 175, 540 N.W.2d 189, 196 (1995). If this class of applicants have acquired vested rights, only the special-use permit standards would govern and the variance standards would be irrelevant irrespective of whether the application sought to locate an alternative lending institution within a geographic area proscribed by the new ordinance. *Lake Bluff Housing Partners v. City of South Milwaukee*, *supra*.

Under these circumstances, we believe that the applicants in question have not acquired such vested rights. As noted by your letter, the operative provision of the Code is § 295-125 entitled "Vesting," which states in pertinent part as follows:

> Rights to a permit shall vest in applicants for approvals whose applications conform in all respects with zoning and building code requirements in effect at the time of the application. **No applicant for a permit requiring discretionary approval can obtain a vested right** . . .

(Emphasis added).

This provision is consistent with case law establishing that no vested rights accrue simply by virtue of applying for a permit whose issuance is discretionary. *Village of DeForest v. Dane County*, 211 Wis.2d 804, 816, 565 N.W.2d 296, 301-302 (Ct. App. 1997), or by applying for a permit associated with a use that is not a permitted use under existing zoning regulations. *Lake Bluff Housing Partners v. City of South Milwaukee, supra*, 197 Wis.2d at 177, 540 N.W.2d at 197; *State ex rel. Humble Oil & Refining Co. v. Wahner*, 25 Wis.2d 1, 12-13, 130 N.W.2d 304, 310 (1964). In so doing, it draws a sharp distinction between "discretionary" and "non-discretionary" permits. The former category refers to permits that are granted only upon a favorable finding by the Board involving the exercise of discretion and judgment. The latter category refers to permits that must be granted upon a showing by the applicant that certain definite conditions have been met. Given that the new ordinance takes the form of imposing additional requirements upon the issuance of a special-use permit, our focus must be upon the nature and categorization of that type of permit. We are satisfied that a special-use permit falls within the discretionary category and thus that applications for special-use permits are not subject to vesting requirements by virtue of Code § 295-125, quoted above.

This conclusion follows from the nature of a special-use permit itself, and of the decision-making process engaged in by the Board when considering an application for a special-use permit. "The term 'discretion' contemplates a process of reasoning which depends on facts in the record or reasonably derived by inference from the record that yield a conclusion based on logic and founded on proper legal standards." *State v. Delgado*, 223 Wis.2d 270, 280, 588 N.W.2d 1, 6 (1999) citing *Shuput v. Lauer*, 109 Wis.2d 164, 177-178, 325 N.W.2d 321, 328 (1982); see also, *Rickaby v. Wisconsin Department of Health and Social Services*, 98 Wis.2d 456, 461-462, 297 N.W.2d 36, 39 (Ct. App. 1980). It can hardly be doubted that the Board must exercise "discretion" in this matter when considering an application for a special-use permit. Such permits may be granted only upon a finding that the contents of the application (including the applicant's "plan of operation," which must be submitted as a component of that application) satisfies the special-use permit standards contained in Code §§ 295-311-2-d and 2-d-1 through 2-d-4. The decision-making

process that the Board must employ requires an evaluation of the contents and details of each application in accordance with the Code's four special-use permit standards all of which are expressed in flexible terms. This certainly contemplates the exercise of "discretion" by the Board as defined above. The Wisconsin Supreme Court aptly described this form of decision-making process as follows:

> In exercising its discretion . . . the board is obliged to take into consideration every factor in the plan of operation which would have any bearing on the purposes for which the ordinance was enacted. In order to approve an application, the board must determine that the particular proposed plan will not conflict with those purposes.

Smith v. City of Brookfield, 272 Wis. 1, 8, 74 N.W.2d 770, 774 (1956).

An application for a special-use permit is readily distinguishable from applications for non-discretionary permits such as building permits, which must be issued once standards that are definite and certain have been met. If an application for such a non-discretionary permit is timely submitted in full conformance with all applicable building code and other ordinance-based requirements, the applicant may acquire vested rights to be evaluated according to Code provisions in effect as of the time of the filing of the application. *Lake Bluff Housing Partners v. City of South Milwaukee, supra*, 197 Wis.2d at 170-175, 540 N.W.2d at 194-196; *State ex rel. Cities Service Oil Company v. Board of Appeals*, 21 Wis.2d 516, 528-529, 124 N.W.2d 809, 815-816 (1963). Indeed, the first sentence of Code § 295-125 provides specifically to this effect.

However, it is the second sentence of that provision and not its first sentence that governs the circumstances affecting applications for alternative lending institutions now pending before the Board, since those require the issuance of a discretionary form of permit, *i.e.*, a special-use permit. Thus, those applicants have not acquired vested rights which would entitle them to avoid the application of the provisions of the new distancing ordinance contained in Common Council File No. 031614. We therefore conclude that those distancing requirements apply to this category of pending applications.

If you have any further questions concerning this matter, please contact this office.

Very truly yours,

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City Attorney

STUART S. MUKAMAL
Assistant City Attorney

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1033-2004-3311:87336

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April 26, 2004

Alderman Joe Davis, Sr.
Common Council – City Clerk's Office
200 East Wells Street, Room 205
Milwaukee, WI 53202

Re: Payday Loan Agencies – Zoning Regulations

Dear Alderman Davis:

During the course of a February 2, 2004 meeting we were asked to provide a legal opinion addressing the regulation of "payday loan agencies," as defined in sec. 295-201-431 of the City of Milwaukee Zoning Code. We were specifically asked to discuss the establishment of distance requirements governing the location of such agencies. The genesis for current concerns with respect to payday loan agencies is the relatively recent proliferation of such facilities within the City, as summarized in a January 29, 2004 memoranda and attached map prepared by the City's Legislative Reference Bureau.

Payday loan agencies are currently classified as a special use in those zoning districts within the City where they are permitted. The term payday loan agency is defined in the Zoning Code as an establishment providing loans to individuals in exchange for personal check as collateral, generally the term also encompasses businesses commonly known as "title loan" agencies.

We have previously issued legal opinions addressing the standards applicable to special uses for payday loan agencies and proposed ordinances which would have included "over-concentration" as an additional criteria for some special uses. In a May 7, 2003 letter to Craig Zetley, Chairman of the Board of Zoning Appeals ("Board"), we addressed the consideration of payday loan agencies by the Board of Zoning Appeals and discussed the factors which the Board is able to consider during the course of its deliberations with respect to the grant of a special use for such businesses. That opinion did not, however, specifically address the potential for amendments to the Zoning Code itself which would specifically address and regulate payday loan agencies.

In an August 23, 2001 legal opinion addressed to Alderman Paul Henningsen we concluded that Common Council File No. 000796, which created additional factor for grant of a special use addressing over-concentration, was not necessary because those types of factors are already encompassed within existing findings for the grant of a special use. At present, Common Council File No. 031506 seeks to create a similar criteria for the grant of a special use addressing over-concentration. For the same reasons expressed in our August 23, 2001 legal opinion, we do not believe that Common Council File No. 031506 is necessary, but that does not mean that the Common Council is unable to regulate the concentration and intensity of uses through amendments to the Zoning Code.

We believe that, under proper circumstances, the Common Council has the power to adopt amendments to the Zoning Code which establish distance requirements for uses such as payday loan agencies. Zoning ordinances establishing distance requirements typically address uses such as filling stations, liquor outlets, and adult uses and impose a minimum distance between such uses. In the alternative, a minimum distance to other types of uses, such as churches or schools, is required. Generally, distance restrictions are upheld by the courts as reasonably related to promoting the public welfare because they control harmful secondary effects related to the restricted use. Rathkopf, *The Law of Zoning and Planning*, § 3:9 (4th ed.).

Initially, we note that the adoption of zoning ordinances must be reasonable and address legitimate governmental objections. In *State ex rel. American Oil Co. v. Bessent*, 27 Wis. 2d 537, 544, 545, 135 N.W.2d 317, 321, 322 (1965) the Wisconsin Supreme Court stated:

> " . . . as early in the history of zoning as . . . [1923] . . . this court considered a comprehensive zoning ordinance as justified in the exercise of the police power not only in the interest of public health, morals, and safety, but particularly for the promotion of public welfare, convenience, and general prosperity. General welfare was equated with the stabilization of the value of property and the promotion of the permanency of desirable home surroundings and of the happiness and comfort of the citizens . . .
>
> . . . The concept of public welfare is broad and inclusive and embraces in comprehensive zoning the orderliness of community growth, land value, and aesthetic objectives.
>
> (Citations omitted.) . . .
>
> However, unreasonable classifications in zoning ordinances, whether comprehensive or not, and restrictions which are not reasonably germane to legitimate objectives or which prohibit a particular use of land ignoring its natural

> characteristics for such use or which are arbitrary have been held to be unconstitutional on the facts presented.
>
> (Citations omitted.) . . ."

When enacting Zoning Code provisions which establish a distance requirement for particular uses, the Common Council should consider a record which demonstrates a reasonable relationship between the proposed distance requirement and amelioration of the harmful secondary effects of such uses. The United States Court of Appeals recently upheld a Town of St. Joseph, Wisconsin ordinance enacted to address the undesirable "secondary effects" of adult uses in the context of a First Amendment constitutional challenge. *G.M. Enterprises v. Town of St. Joseph, Wisconsin*, 350 F.3d 631 (7th Cir., 2003). The manner in which the town developed a record prior to enactment of that ordinance provides a useful model for the city to follow in considering the establishment of distance requirements.

Prior to enactment of its ordinance the St. Joseph Town Board collected sixteen studies from around the country which demonstrated a correlation between sexually oriented businesses and negative secondary effects. The Board also considered court decisions from other jurisdictions and police reports generated over a ten year period. In adopting the ordinance, the Board made clear its primary objective to minimize and control the adverse secondary effects. *G.M. Enterprises, supra* @ 633 and 634.

In reaching its decision affirming the Town of St. Joseph ordinance, the court considered decisions by the United States Supreme Court in *City of Renton v. Playtime Theaters*, 475 U.S. 41 106 Sup. Ct. 925 89 L.Ed.2d 29 (1986) and *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 Sup. Ct. 728, 152 L.Ed.2d 670 (2002). The *Playtime Theaters* case involved an ordinance which treats theaters that specialize in adult films differently from other kinds of theaters and the *Alameda Books* case involved an ordinance that prohibited multiple adult entertainment businesses from operating in the same building. Applying those cases to the analysis of the process utilized by the Town of St. Joseph in adopting its ordinance, the 7th Circuit noted:

> "*Alameda Books* does not require a court to re-weigh the evidence considered by a legislative body, nor does it empower a court to substitute its judgment in regards to whether a regulation will best serve a community, so long as the regulatory body has satisfied the *Renton* requirement that it consider evidence 'reasonably believed to be relevant to the problem' addressed. (Citations omitted) . . ."

The decision went on to note that in *Alameda Books*:

> "The plurality expressed similar support for judicial deference to local law makers: 'we acknowledge that the Los Angeles City Council is in a better position than the judiciary to gather and evaluate data on local problems." Id. at 440, 122 Sup. Ct. 728.

Again referencing the *Alameda Books* decision the 7th Circuit noted:

> "Further, the purpose of the evidentiary requirement of *Alameda Books* is to require municipalities to demonstrate reliance on some evidence in reaching a reasonable conclusion about the secondary effects. A municipality need not 'prove the efficacy of its rationale for reducing the secondary effects prior to implementation. (Citations omitted.)"

While the memoranda prepared by the legislative reference bureau present some information concerning the proliferation of and practices followed by payday loan agencies, we believe that the Common Council could benefit from a somewhat more extensive record in the consideration of zoning ordinance provisions regulating such facilities. In addition to the articles cited by the legislative reference bureau there are a number of additional outstanding articles, papers and judicial decisions addressing such facilities which could supplement the record before the Common Council and provide additional information to the utilized in consideration of any amendments to the Zoning Code.

We note that the City of Madison has adopted an ordinance which creates a 5,000 foot distance requirement for payday loan agencies and also that Common Council File No. 031614, which would establish a similar requirement in Milwaukee, remains pending before the Zoning Neighborhoods and Development Committee. Although we do not have specific information regarding the record which was before Madison's Common Council when it enacted its zoning ordinance amendment, we believe that development of a more extensive record would assist Milwaukee's Common Council in considering such an amendment and in determining what specific distance requirement might be most appropriate to address concerns with respect to the secondary effects of payday loan agencies.

Another action which the Common Council may wish to consider would be the initiation of request to the City's Plan Commission for further study of the overall impact of payday loan agencies, as well as other types of financial institutions, through the development of a Comprehensive Plan element addressing such uses. Any amendments to the Zoning Code ultimately must be referred to the City's Plan Commission and, in conjunction with the preparation of proposed Zoning Code amendments, a Comprehensive Plan element might well provide additional information to the Common Council in aid of its deliberations. A similar approach was recently utilized relative to the enactment of Zoning Code amendments regarding transmission towers. In that case, prior to the introduction of any Zoning Code amendments

addressing transmission towers, the City's Plan Commission developed a Comprehensive Plan element which set forth broad planning objectives relative to transmission towers. That Comprehensive Plan element was deemed necessary in light of the proliferation of transmission towers generally, a situation which now exists with respect to payday loan agencies.

In summary, the City of Milwaukee does posses the authority to promulgate distance requirements as part of the City's Zoning Code in order to control adverse secondary impacts of particular uses upon the general public. We believe that the most expeditious manner for the Common Council to proceed in regulating such uses, where an adverse impact upon the public welfare has been found to exist, would be first to initiate an evaluation of such uses by the City's Plan Commission and then to assemble as much additional information as possible in order to aid the Common Council in its deliberations. Such an approach should result in the adoption of Zoning Code amendments which not only promote the protection of the public health, safety and welfare but which also can be defended as a reasonable and appropriate exercise of the city's police power.

Very truly yours,

GRANT F. LANGLEY
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TOG/mll:80266

c: Ronald Leonhardt
Alderman Bohl

1033-2004-366

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August 23, 2001

Alderman Paul Henningsen, Chair
Zoning, Neighborhoods & Development
Committee of the Common Council
200 East Wells Street, Room 205
Milwaukee, WI 53202

RE: Common Council File No. 000796 - Over Concentration of Use

Dear Alderman Henningsen:

In a July 3, 2001 memorandum, we were asked to provide a legal opinion concerning the additional finding proposed for the grant of a special use by File No. 000796. That Common Council File creates a fifth finding for the grant of a special use by the Board of Zoning Appeals through an amendment to section 295-59.5.5 of the Zoning Code. The proposed new finding set forth in the draft ordinance reads as follows:

> c-5. No Overconcentration of Use. Operation of the use at the proposed location will not result in a concentration of establishments of this type in the neighborhood that is so high that the concentration will substantially impair or diminish property value or public health, safety and welfare in the neighborhood.

Specifically, we were asked for an opinion as to the manner in which the required finding could be further defined in the Zoning Code and what, if any, standards could be applied to such a determination by the Board of Zoning Appeals.

Initially, we should note that the language set forth in the proposed new finding does not create any new requirements for the grant of a special use which are not already encompassed within the Zoning Code. Section 295-59-5.5-c-1. specifically addresses the

public health, safety and welfare and sec. 295-59-5.5-c-2. specifically addresses the impact of a proposed special use upon the value of other property in the neighborhood. Accordingly, it is our belief that the addition of the proposed new finding regarding the overconcentration of a type of use, at least as it is currently phrased, will have no real impact on the deliberations of the Board of Zoning Appeals or the evidence which must be presented by an applicant to support the grant of a special use.

The development of specific standards to address a concept such as the concentration of a particular use is very problematic. Given the diverse nature of the City, the level of "concentration" of a particular use in various neighborhoods which might be deemed to constitute an "overconcentration" could vary substantially. For example, along North Water Street the location of a bar or nightclub every 100 feet is probably not an overconcentration, the location of similar facilities 500 or 1,000 feet apart in other neighborhoods of the City could very well be deemed to constitute an overconcentration. It may be more appropriate for the Common Council to consider alternative means to address the concerns which gave rise to Common Council File No. 000796 rather than attempt to create comprehensive standards for evaluating overconcentration.

Traditionally, our Zoning Code has addressed specific concentration of use concerns through the vehicle of spacing requirements. For example, sec. 295-14-9 of the Zoning Code requires adult premises to be located at least 500 feet from residentially-zoned districts and at least 1,000 feet from each other. Section 295-112-2-h. of the Zoning Code requires bed & breakfast facilities to be located at least 600 feet from each other.

In apparent recognition of the distinction between various neighborhoods in the City, sec. 295-14-11-b. of the Zoning Code specifically provides for the relaxation of the 600 foot requirement for bed & breakfasts in an area bounded by West Juneau Avenue, West Michigan Street, North 27th Street, and North 35th Street because that area has been specifically designated as a bed & breakfast district and a greater concentration of bed & breakfast facilities is encouraged.

It may be that, to the extent concentrations of particular types of uses are deemed to create problems which should be addressed by the Zoning Code, the inclusion of specific spacing requirements in the ordinances would be a more viable approach to such regulation.

Another manner in which the City could address such concerns would be through the creation of specific Comprehensive Plan elements to address various specific uses in various parts of the City. Such an effort was recently undertaken with respect to transmission towers through the adoption of a Transmission Tower Policy Statement by the City's Plan Commission. The adoption of such Comprehensive Plan elements would then automatically be incorporated into the Board of Zoning Appeals consideration of applications for special uses

inasmuch as sec. 295-5.5-c-4. requires special uses to be designed, located, and operated in a manner consistent with the City's Comprehensive Plan.

Significantly, the adoption of new elements as part of the City's Comprehensive Plan could also aid in the creation of requirements tailored to meet the specific needs of various neighborhoods and areas within the City. In considering the overall impact of a particular use in different parts of the City, the Plan Commission might then be able to distinguish between the level of concentration for a particular use which would be appropriate on the City's far northwest side and the level of concentration which might be appropriate on the City's near southside or downtown.

In summary, inasmuch as the new finding proposed in Common Council File No. 000796 is already encompassed by the existing findings which the Board of Zoning Appeals is required to make in order to grant a special use, we do not believe that the adoption of that file would result in any significant change with respect to the grant of individual special uses.

It would be our pleasure to work with you and members of the Zoning, Neighborhoods and Development Committee in exploring potential alternatives to File No. 000796, such as the creation of specific spacing requirements within the Zoning Code or the initiation of a request to the City's Planning Staff to undertake the preparation of specific Comprehensive Plan elements which could address the appropriate concentration of particular uses as part of the comprehensive plan.

Very truly yours,

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