

CITY OF MILWAUKEE

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March 13, 2002

Mr. Ronald Leonhardt, City Clerk
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

RE: WASTE CONTAINER ORDINANCE

Dear Mr. Leonhardt:

This is in response to a communication from the Utilities and Licenses Committee dated March 8, 2002 relative to File No. 001617, an ordinance requiring the placement of waste containers outside Class "A" liquor and malt licensed premises. It also includes licensed food dealers, although this is not included in the title. Specifically, we were asked to review the proposed ordinance. We would like to direct your attention to a few concerns.

It appears that this ordinance is meant to apply to "liquor stores, grocery stores, convenience stores and gas stations," but not taverns, which are Class "B" premises. However, this ordinance will also apply to all restaurants in the City, because they are licensed as food dealers. Furthermore, there does not appear to be an exemption for stores/shops located in enclosed shopping malls, hospitals or commercial buildings, etc., which might render the ordinance unenforceable and irrational as to those businesses.


In addition, it is unclear whether the waste container which is to be located in the front of the licensed premises is in addition to the waste container required

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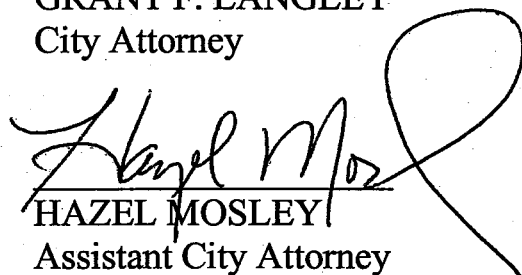
under Chapter 79 of the Milwaukee Code of Ordinances. Also, the language contained in sec. 81-134(1) is unclear. If the permit "shall be issued for a 2-year period" but expires "on January 31st in even-numbered years," how will this be accomplished? The word "shall" is mandatory language. Thus, the permit has to be issued for 2 years. Will the licensee/owner be exempt from the waste container requirement until January of an even year?

Last, as pointed out above, this proposal will have an impact on some similarly situated businesses and not others. There needs to be rational basis for requiring different treatment of these businesses. Therefore, to alleviate any equal protection concerns, we suggest that the ordinance include legislative findings as to the need for the containers at the included businesses. Only an ordinance that promotes a legitimate governmental interest and is rationally related to that interest, will withstand an equal protection challenge. McQuillin Mun Corp. §19.13 at 582 (3rd Ed.).

Very truly yours,



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HAZEL MOSLEY
Assistant City Attorney

HM/ms
1078-2002-767/51409