

CITY OF MILWAUKEE

Form CA-43

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August 18, 2004

Alderman Joe Dudzik
11th Aldermanic District
Room 205 – City Hall

Re: CCFN 040426 – substitute resolution relating to safety improvements
to access to riverbanks within the City of Milwaukee

Dear Ald. Dudzik:

In a letter dated July 19, 2004, you asked whether the above-referenced file subjects the City of Milwaukee to culpability as a result of past or future drowning tragedies. Wisconsin Stat. § 904.07, states:

Subsequent Remedial Measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to provide negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment or proving a violation of s. 101.11.

(§ 101.11, refers to the Wisconsin Safe Place statute.)

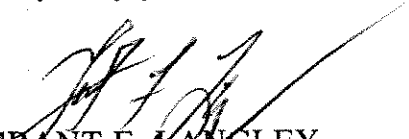
Wisconsin Stat. § 904.07, by its terms does not entirely foreclose the admission into evidence of subsequent remedial measures. It can be expected that the plaintiff's attorney will attempt to introduce into evidence any subsequent remedial measure taken

Ald. Joe Dudzik
August 18, 2004
Page 2

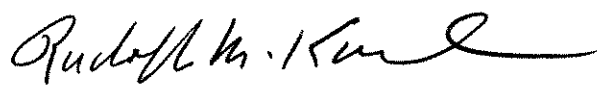
by the city or other defendants by arguing that one of the exceptions applies. How a court will rule on the issue cannot at this stage be predicated.

Nevertheless, our advice in this situation in the past, and our advice concerning this situation, is and remains that the city's decisions concerning public safety should not be based upon the effect the decision might have on any pending claim or lawsuit, but on what is best for the public. Accordingly, in our opinion, the resolution should be evaluated on its merits, and not on its possible effect on a pending claim or expected lawsuit.

Very truly yours,



GRANT F. LANGLEY
City Attorney



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