

CITY OF MILWAUKEE

Form CA-43a

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June 27, 2002

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

Dear Mr. Leonhardt:

RE: Resale Goods on Residential Premises

This is in response to a communication from the Utilities and Licenses Committee dated May 15, 2002 relative to File No. 980686, an ordinance prohibiting the sale of resale goods on residential premises. Specifically, we were asked to review the proposed ordinance. We would like to direct your attention to a couple of concerns.

This ordinance would permit rummage and garage sales on residential premises. In addition it would permit the sale of homemade crafts that are made by an occupant of the residence. However, the ordinance prohibits the sale of goods "that were acquired by their owner for the specific purpose of resale to the general public" on residential premises.

The proposed ordinance should contain findings to make clear the public interest being promoted by the ordinance and that there is a valid public purpose in distinguishing between these types of sales. In its present form this ordinance could impact on various home businesses. As you are aware, only an ordinance that promotes a legitimate

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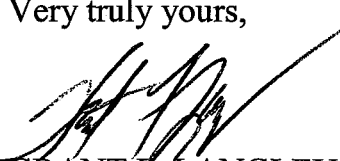
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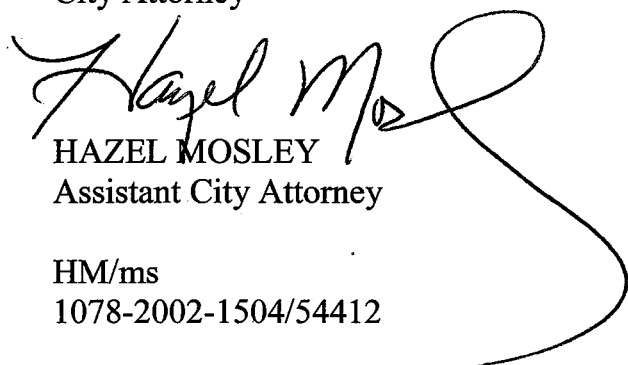
governmental interest and is rationally related to that interest, will withstand a constitutional challenge. *McQuillin Mun. Corp.* §19.13 at 582 (3rd Ed.).

Also, "resale goods" is defined as "any items that were acquired by their owner for the specific purpose of resale to the general public." In most cases, it would be very difficult for our office to prove "by clear and convincing evidence" (the standard of proof for municipal court prosecution), that an item was acquired by the owner for the specific purpose of resale. Items allegedly given as "gifts", for example, could be sold on residential premises.

Very truly yours,



GRANT F. LANGLEY
City Attorney



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HM/ms

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