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July 18, 2008

Mr. Barry J. Zalben, Manager
Legislative Reference Bureau
200 East Wells Street, Room B-11
Milwaukee, WI 53202

Attention: Mary E. Turk

Re: Limitation on hourly renting of rooms/CC File No. 070454

Dear Mr. Zalben:

By letter dated June 14, 2007, you asked us, on behalf of Alderman Murphy, to review a proposed ordinance that would prohibit hotels, motels, or rooming houses from charging for a room by the hour. In addition, no hotel, motel, or rooming house could rent a room more than twice in a 24-hour period commencing at 12:01 a.m. The forfeiture amount for a violation would be between \$50 and \$500.

We only located a few communities in California that have this type of prohibition. Your Bureau confirmed that the draft was based on an ordinance from Riverside, California. The vast majority of communities that address this issue (and, thus, all of the reported court decisions) use zoning or distancing restrictions to limit the location of hotels or motels that charge by the hour. The League of Wisconsin Municipalities searched its database for Wisconsin municipalities addressing hotels or motels that rent by the hour. No Wisconsin community appears to prohibit the practice. We are attaching Germantown's ordinance, as well as a sample from Matthews Municipal Ordinances, which is the model most often used. Hotels and motels that charge by the hour or for part of the day are typically considered in these ordinances to be "adult" uses or "sexually oriented" businesses, and are regulated as to their locations within the community.

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The United States Supreme Court has held that a city may use zoning, or other types of geographic restrictions, to limit where these hotels and motels are located, if there is a sufficient record before the legislative body showing adverse secondary impacts. In *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), the Supreme Court upheld a regulatory scheme that licensed and restricted the location of motels that rent rooms for fewer than 10 hours (as sexually oriented businesses). The Court agreed, based on the record before the Dallas City Council, that short rental period times foster prostitution, and resulted in increased crime or other secondary effects. A study from another city, according to the Court, was a sufficient record. The Court also held that limiting motel room rentals to 10 hours in certain parts of the city did not violate privacy rights. 493 U.S. at 236-237.

We could find no court decision addressing whether completely prohibiting private lodgekeepers from renting rooms for short periods is legal, although it appears from newspaper accounts that Memphis attempted such a scheme and it was struck down by a federal district court. Memphis replaced it with a licensing and zoning scheme for motels that rent by the hour and other sexually oriented businesses. *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir. 1995). Much like escort services or massage parlors, locations of these establishments are restricted, and they are licensed, but they are not banned from the community, probably because there are legal uses for hourly rates (truckers or airport patrons, as examples), or because some of these establishments are engaged in “expressive” behavior (nude entertainment or closed-circuit pornographic broadcasts), which can only be regulated as to time, place, or manner. In addition, the authority to regulate a particular industry for the protection of public health, safety and welfare (which the City has under Wis. Stat. § 254.69) does not generally permit a municipality to prohibit a lawful business. Am. Jur. 2d, Hotels, Motels, Restaurants, § 28.

Therefore, we believe the ordinance would be easier to defend, and could achieve the goal of protecting City residents from the negative consequences of short-term room rentals, if the proposed ordinance were amended to prohibit the short-term

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renting of rooms by motels, hotels, or rooming houses located within a specified number of feet of a residence, or in specific areas set forth in our zoning code.¹

Regardless of whether the ordinance prohibits the practice of short-term rentals completely or in residential areas, it must be justified by a record and findings. Reference to pertinent materials can be found in Germantown's ordinance, attached. Anecdotal evidence or police testimony would also be helpful.

It is important to note that hotels, motels, and rooming houses are already licensed and regulated by the City. A license can be denied, revoked, or suspended for a variety of reasons, including neighborhood complaints of undesirable activities, excessive calls for police service, nuisance activity, and illegal or disorderly activity at or near the premises. Section 275-20, MCO. This might be more effective than issuance of a citation.

In addition, in appropriate circumstances, our office can begin nuisance litigation.

Very truly yours,



GRANT E. LANGLEY
City Attorney



LINDA ULISS BURKE
Deputy City Attorney

LUB:bl
Enclosures

c: Alderman Michael Murphy
Mr. Ronald Leonhardt

1033-2007-1630/121315

¹ The City may wish to permit renting of "meeting" rooms on an hourly basis. If so, the ordinance's language should be clarified. Further, a rooming house that rents by the hour may not meet our Code's definition of a rooming house. See § 200-08-74, MCO.