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December 20, 2017

Mr. Preston Cole, Commissioner
Department of Neighborhood Services (DNS)
Municipal Building, Room 104

RE: Authority to issue Citations for MCO 80-44-2 Dumping Violations

Dear Commissioner Cole:

You requested this office to opine whether the Department of Neighborhood Services (DNS) may issue citations for illegal dumping to parties who dump waste and debris on private property in violation of Milwaukee Code of Ordinances (MCO) 80-44-2, Dumping Prohibited. This section states: "No person may engage in dumping on public or private property other than a permitted facility under ss.80-45 and 46."

Currently, only the Milwaukee Police Department (MPD) may issue citations for illegal dumping violations. See, Wis. Stat. § 66.0113(2)(a). Wisconsin. Stat. § 66.0113 (2) (a) provides:

Citations authorized under this section may be issued by law enforcement officers of the ... city ... In addition, the governing body of a ... city ... may designate by ordinance or resolution other ... city ... officials who may issue citations with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to issue citations may delegate, with the approval of the governing body, the authority to employees...

The Department of Neighborhood Services has also been authorized to issue municipal citations pursuant to this statute by MCO 200-19-2. However, Milwaukee Code of Ordinances 200-19-2 provides an enumerated list of violation citations that DNS may issue and MCO 88-44-2 is not one of them.



One of the official responsibilities of DNS is to monitor and abate waste and debris violations on private property pursuant to MCO 79-12. Milwaukee Code of Ordinances 80-44-2 dumping violation offenses are directly related to this official responsibility of DNS and we therefore believe that DNS may be authorized to issue these citations through an amendment to MCO 200-19-2 wherein violation of MCO 80-44-2 is added.

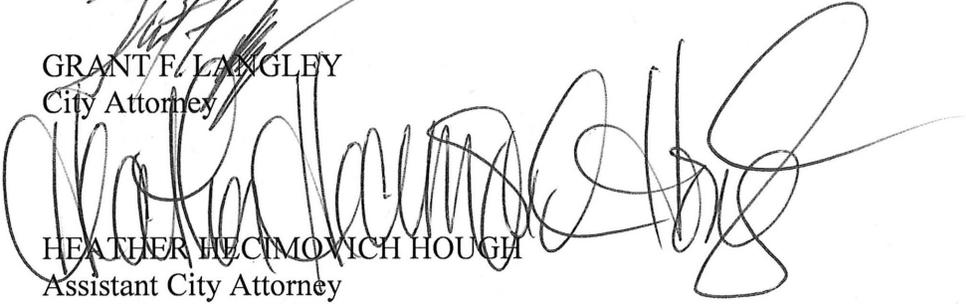
Should DNS wish to keep the authority to issue illegal dumping citations exclusively with MPD, DNS can always opt to relay information of MCO 80-44-2 violations to MPD based on observation or valid evidence and serve as a complainant for these citations. The police would not need to independently substantiate the evidence that DNS would provide and could issue these citations based upon information and belief.

This office has previously issued two opinions regarding general citation authority of municipal officials in October, 2003 and December, 2003 and we are happy to share these historic opinions upon request.

Very truly yours,



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