

# CITY OF MILWAUKEE

Form CA-43

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May 12, 2005

To the Honorable  
Common Council of the  
City of Milwaukee  
Room 205 – City Hall

Re: CCFN 041757 – A substitute ordinance relating to  
parental responsibility for misconduct of minors

Dear Council Members:

We have had the opportunity to review the parental responsibility ordinances recently passed by other jurisdictions in our area, as well as court cases from New Jersey and New Hampshire that have held similar ordinances unconstitutional. It is our opinion that the above proposed ordinance would not withstand a constitutional challenge, thus would not be enforceable.

While court decisions from other jurisdictions are not binding precedent in Wisconsin, they serve as a good guide when constitutional concerns are being raised. In the New Jersey case, *Doe v. City of Trenton*, 143 N.J. Super. 128, 362 A.2d 1200 (1976), an ordinance similar to our proposed ordinance was held unconstitutional. The attempt to make a parent responsible for the actions of a child was found to violate due process, in that no degree of parental misconduct had to be shown to charge the parent with a violation.

The communities of North Fond Du Lac, Cudahy, Saint Francis, and Oak Creek have passed parental responsibility ordinances within the last couple of years. As far as we can determine to date, no prosecutions have taken place under these ordinances in any of these communities. If we were to look to Wisconsin civil law for guidance, we would find that parents are held liable for civil damages caused by their children only in four general situations:

1. Where the parent negligently entrusts the child with an instrumentality which may become a source of danger to others;
2. where the child is acting as the parents agent;
3. where the parent knows of the child's wrongdoing and consents to it. Or directs or sanctions it; and

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4. where the parent fails to exercise control over the child, although the parent knows, or should know, that injury to another is a probable consequence.  
*Bankert v. Threshermen's Mut. Ins. Co.*, 110 Wis.2d 469, 477, 327 N.W. 150 (1983).


We have taken the liberty to revise the ordinance adopting the above guidelines to fashion an ordinance that we feel would be legal and enforceable. Of the local ordinances passed recently, St. Francis' appears to follow these guidelines and we use their ordinance as a basis for our revision. In our revision, you will note that we have changed "minor" to "juvenile". Wisconsin law considers 17 year olds to be "adults" for criminal and municipal ordinance prosecutions, thus it is appropriate to limit the age for the child's violations to those under 17. Enclosed please find a copy of your review. We would be happy to meet with you to discuss the revisions.

Thank you for your consideration.

Very truly yours,



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cc: Alderman Puente  
James Owezarski  
Ron Leonhardt