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June 28, 2010

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

Re: File No. 100242/A Substitute Ordinance Implementing State Law  
Regulating Indoor and Outdoor Smoking of Tobacco and  
Tobacco Products

Dear Council Members:

We have signed the attached file as being legal and enforceable. Because the draft ordinance impacts so many properties city-wide, we are providing a brief background of the proposed legislation for your information.

As you know, municipalities are not required to adopt their own ordinances to implement Wis. Stat. § 101.123, which prohibits smoking in specified locations. In the absence of an ordinance, sheriffs, constables, and other local police officers still have the duty to enforce the state law (§ 165.60), but prosecution is left to the District Attorney in Circuit Court. The Milwaukee Police Department has testified to its preference for a municipal ordinance with municipal penalties as a much less cumbersome and more effective method of enforcement.

The state law requires that a warning notice be issued for the first violation by the person in charge of an area where smoking is prohibited. It is our understanding that the Police Department is developing warning notices and a system for tacking them. A warning notice is not required before citing an individual smoker.


The proposed City ordinance contains a definition of “enclosed place” that differs from the state law’s definition. The state law does not limit the City’s authority to adopt ordinances that “complying with the purpose of this section, protect the health and comfort of the public.” Based on this language, the League of

Common Council  
June 28, 2010  
Page 2


Wisconsin Municipalities has suggested that municipalities adopt clearer definitions of "enclosed place" in response to the widespread belief that the state's definition is vague and confusing. A number of other municipalities have done so, and have used the same definition contained in Milwaukee's proposed ordinance, which tracks the language that was going to be included in the Department of Commerce's model rule. While there is an argument that municipalities cannot alter the state's definition, we believe that we can in good faith defend this ordinance, and in so doing provide more definite guidance to City authorities as well as private businesses.

In addition, because of the local authority quoted above, it appears possible for the proposed ordinance to be amended to allow for other City officials (for example, health or building inspectors) to enforce the ordinance, or to increase the penalties.

Very truly yours,



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