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September 8, 2020

Jim Owczarski
City Clerk
200 E. Wells Street, Room 205
Milwaukee, WI 53202

Re: Authority of the mayor to issue a proclamation pursuant to Wisconsin Statute § 323.14(4)(b) and Milwaukee City Charter § 6-07-3 ending a portion of a previously ratified proclamation.

Dear Mr. Owczarski:

In an email dated September 2nd, 2020 you requested an opinion on whether the mayor had authority to issue a proclamation on September 1st, 2020 declaring an end to a portion of a prior proclamation made on March 19th, 2020 and, if so, whether the common council must vote on the ratification of the same. The mayor did not have the authority to issue the September 1st, 2020 proclamation; therefore it is void. As a result there is no need to vote on ratification of that proclamation.

Upon the declaration of a state of emergency in the City under Wisconsin Statute § 323.11, certain provisions of state and local law designed to allow the common council and mayor to respond to the state of emergency go into effect. See Wis. Stat. §§ 323.14 & 323.15; MCO 6-07 & 6-09. Among the powers conferred on the common council is “the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, protection and welfare of persons and property within the city in the emergency and includes the power to bar, restrict or remove unnecessary traffic, both vehicular and pedestrian, from the public way, notwithstanding any provision of chs. 341 to 349, Wis. Stats., as amended, or any other provisions of law.” MCO 6-



07-2; *see also* Wis. Stat. § 323.14(4)(a). The Charter goes on to state that “[i]f, because of the emergency conditions, the common council is unable to meet with promptness, the mayor or acting mayor shall exercise by proclamation all of the powers conferred upon the common council under [Milwaukee City Charter § 6-07-2 to pass ordinances or resolutions] which within the discretion of mayor or acting mayor appear necessary and expedient for the purposes of this chapter.” MCO 6-07-3; *see also* Wis. Stat. § 323.14(4)(b). Proclamations issued by the mayor pursuant to Milwaukee City Charter § 6-07 are “subject to ratification, alteration, modification or repeal by the common council as soon as it can meet.” MCO 6-07-3.

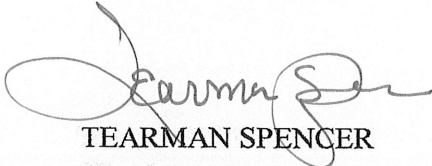
On March 15th, 2020 the mayor issued a proclamation pursuant to Milwaukee City Charter § 6-07-3 declaring a state of emergency in the City of Milwaukee due to the COVID-19 pandemic. That proclamation was ratified by the common council on March 18th, 2020. Then on March 19th, 2020 the mayor issued a proclamation pursuant to Wisconsin Statute § 323.14(4)(b) and Milwaukee City Charter § 6-07-3 that, among other things, suspended the enforcement of certain parking regulations contained in MCO 101-27, MCO 101-23-4-(am-j), and MCO 101-32 in order to prevent individuals from having to unnecessarily come into contact with members of the public during the COVID-19 pandemic. The common council voted to ratify the March 19th proclamation on March 24th, 2020 pursuant to Wisconsin Statute § 323.14(4)(b) and Milwaukee City Charter § 6-07-3. Then on September 1st, 2020, citing the same emergency authority cited in the March 19th proclamation, the mayor issued a proclamation rescinding only that portion of the March 19th proclamation related to suspension of the enforcement of the night parking restrictions contained in MCO 101-27.

The clear, unambiguous language of the ordinance grants the mayor the authority to act under Milwaukee City Charter § 6-07-2 only “[i]f, because of the emergency conditions, the common council is unable to meet with promptness”. MCO 6-07-3; Wis. Stat. § 323.14(4)(b); *see also State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage. If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.”)(internal citations omitted). There has been no indication that the common council was unable to meet on or before


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September 1st, 2020 because of the COVID-19 pandemic to vote on a resolution rescinding part of the previously ratified March 19th proclamation. The mayor did not have the authority to issue the September 1st, 2020 proclamation under Wisconsin Statute § 323.14(4)(b) and Milwaukee City Charter § 6-07-3. The September 1st, 2020 proclamation was issued without legal authority and is void. *State v. Thompson*, 149 Wis. 488, 137 N.W. 20, 22 (1912). Because the proclamation is void, there is no need to vote on the ratification of the same.

Very truly yours,



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