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CITY OF MILWAUKEE
Office of the City Attorney

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July 6, 2010

Special Joint Committee on
the Redevelopment of Abandoned
and Foreclosed Homes
Room 205 – City Hall

Attention: Mr. Ronald Leonhardt

Re: Grass Cutting/Abandoned Property

Dear Committee Members:

At the June 22, 2010 meeting of the Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes, upon the request of Alderman Murphy, we agreed to look at the method of providing notice of grass cutting to private properties that have grass nuisances, in order to streamline the process. Alderman Murphy suggested the possibility of providing notice just one time in a grass cutting season.

We are attaching the notices currently used. We understand that when an inspector verifies that a property is in violation of § 80-17, Milwaukee Code of Ordinances, regarding long grass, a "Weed Destruction Notice" is posted at the property. This notice informs the owner or occupant that a $25 inspection charge has been assessed and that the owner/occupant has 72 hours to remedy the situation or the City will do so and charge the owner for the cost of removal, plus a $65 special charge for the first violation and $100 for subsequent violations. Three days later, the City can perform the work. After the work is performed by the City, the owner receives a bill, and is notified that he or she may appeal the amount of the charges to the Administrative Review Appeals Board within 30 days. As you can see, this appeal need not prevent or delay the grass cutting.

It is our opinion that the City could state in the "Weed Destruction Notice" that future violations of § 80-17 will be addressed without further posting or waiting another 72 hours. Each subsequent invoice would still need to contain notification of the ability to challenge the amount of the charges, and the property must actually be in violation of the ordinance.

This appears to be consistent with state law, case law, and prior opinions of this office. Wisconsin Statute § 66.0517 permits summary notice of violation and removal of tall grass. Opinion of the City Attorney, June 29, 2006, attached. See also § 80-17, Milwaukee Code of Ordinances. The statute permits destruction "in the most economical manner."

There are not many cases on this subject. In *Sobocinski v. City of Williamsport,* 319 A.2d 697 (Comm. Ct. Pa., 1974), a Pennsylvania state court ruled that, as long as adequate notice was given, a due process hearing was not needed before a city abated a nuisance for failure to cut weeds, due to the insignificant property interest involved . The property owner was provided a hearing after the fact.[1]

We hope this sufficiently responds to the committee's inquiry.

Very truly yours,

GRANT F. LANGLEY
City Attorney

LINDA ULISS BURKE
Deputy City Attorney

LUB:dms

Enc.

c: Alderman Michael Murphy
Jeffrey Mantes
Wanda Booker

1049-2010-1789:159288

[1] In 1986, an earlier version of § 80-17, Milwaukee Code of Ordinances, was challenged in federal court as being unconstitutionally vague. This office defended the ordinance, and it was upheld. While not an issue in the case, the judge noted the three-day compliance period without criticism. *Lundquist v. City of Milwaukee,* 643 F.Supp. 774 (E.D. Wis., 1986).

CITY OF MILWAUKEE
Environmental Services Division
Weed Destruction Notice

Date 07/09/09
To: OWNER OR OCCUPANT OF PREMISES at 2447 S. 7th St.

On the date of this notice, high weeds were observed at the location listed. This is in violation of City Ordinance 80.17, which states, in part:

> ***"... no turf grass or weeds of any kind shall be permitted to grow or stand more than 9 inches on any property in the city..." It further states: "It shall be the duty of the owner and the tenant, or occupant of any leased or occupied premises, and the duty of the owner of any vacant or unoccupied premises within the city to comply..." with this ordinance by cutting or otherwise destroying said weeds.***

A special charge of $25 has been assessed and you are hereby requested to remove the weeds **within 72 hours** of this notice or the City will enter the property and cut or otherwise destroy the weeds, the cost of which will become a lien against the property according to Section 66.98, Wisconsin Statutes. In addition, the first violation following the issuing of a weed destruction notice will result in a special charge of $65, plus removal costs. The second and each following violation will increase the special charge to $100.

The City of Milwaukee does not want to pursue this matter any further and asks for your assistance on this matter. If you have questions, please call 286-8282. Thank you.

Inspector [illegible] Area Entire Property

Date Rechecked _____ by _____

SS-42 (revised 4/09)

City of Milwaukee

Department of Public Works - Operations Division
Environmental Services - Sanitation Section
Zeidler Municipal Building
841 N. Broadway, Room 620
Milwaukee, Wisconsin 53202

COPY

June 24, 2010

June 24, 2010
80-17
VIRGINIA S HESS
1402 W MANITOBA ST
MILWAUKEE WI 53215-3852

Dear Property Owner:

City of Milwaukee Ordinance No. 80-17 states that "no weeds of any kind shall be permitted to grow or stand more than 9 inches on any property in the city." The City publishes a legal notice of this ordinance each spring.

By law, written notification to property owners/tenants in violation of this ordinance is not required. As a courtesy, a Weed Destruction Notice was posted on your property for compliance (unless that property is a vacant lot).

Address	Tax Key	Inspection Date	Amount Due
1402 W MANITOBA ST	**508-0291-000**	**05/11/2010**	**$ 25.00**

2840 508-0291-000 2010

An inspection fee of $25.00 is now due. Failure to correct the violation will include a $65 special charge for initial violations or a $100 special charge for subsequent violations in addition to contractor abatement charges. If you do not pay these charges whithin 30 days, a $10 special charge wil be added to your 2010 year tax bill in addition to the amount due.

Make checks payable to the "City of Milwaukee" and include the tax key, property address, and assessment ID #4593. Mail payments to:

CITY OF MILWAUKEE
SANITATION SERVICES
841 N BROADWAY, ROOM 620
MILWAUKEE, WI 53202

If you wish to appeal the above charges to your property the appeal application is available online at www.milwaukee.gov (select departments, city clerk). You may also request an appeal application by calling the City Clerk's Office at 414 286-2221. Return the appeal application along with the $25 appeal filing fee to the Administrative Review Appeals Board, 200 E Wells St, Rm 205, **within thirty (30) days of this letter.**

If you have any questions regarding these charges, please contact the department at:
(414) 286-CITY (2489)

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Assistant City Attorneys

June 29, 2006

Martin G. Collins, Commissioner
Department of Neighborhood Services
Municipal Building, Room 104

Re: *Litter of Private Property*

Dear Mr. Collins:

By letter dated May 4, 2006, you wrote to this office seeking guidance concerning the enforcement by your department of violations of § 79-12 of the Milwaukee Code of Ordinances (MCO). The substantive provisions of that section prohibit the accumulation of "litter" upon any premise. You brought to our attention communications you have had with the Department of Public Works (DPW) concerning their enforcement of a similar ordinance provision prohibiting grass or weeds to be permitted to grow more than nine inches. § 80-17, MCO.

You explained that DPW uses a notice procedure substantially different from the procedure used by DNS. You explained that DPW merely affixes a "post-it" type notice to the property instructing owners to cut the weeds. DPW then allows only three days for compliance, and, if there is no compliance, assigns the abatement of the violation to a contractor. No notice is mailed to the property owner prior to the abatement.

In both situations, the cost of the abatement and associated administrative costs may subsequently be added as a special charge to the tax roll for the property where the violation was abated. Your question is whether or not the Department of Neighborhood Services (DNS) could adopt a notice system and abatement policy for litter identical to that used by DPW for tall grass and weeds and if so, would that permit DNS to add the cost to the tax roll for the property. You opined that the current code does not allow the cost to be added to the tax roll.

Chapter 80 provides for a summary procedure of which no analogous procedure can be found in Chapter 79. Section 80-2 "**Authority to Abate Nuisances**" provides, in pertinent part:

> 1. COMMISSIONER AUTHORIZED TO ABATE. The commissioner shall have the authority to cause the summary abatement of any nuisance found on any premises in accordance with the procedure prescribed in s. 80-8.

In turn, § 80-8, MCO, "**Notice to Abate Nuisance**" provides, in pertinent part:

> It shall be the duty of the commissioner to give notice in writing to the person, firm or corporation owning, occupying, in charge or control of any premises wherein a public nuisance shall be, to forthwith abate and remove the same; and any premises or conditions so described in ss. 80-6 to 80-7 which shall be so maintained or permitted to exist for a period of 2 hours after reasonable notice in writing, signed by the commissioner, shall have been given to the person, firm or corporation owning, occupying, in charge or control of the same, are declared to be public nuisances which shall be forthwith abated.

Sections 80-6 to 80-7, MCO, deal with offensive odors, hazardous substances, air polluting materials, and garage service station or parking lot nuisances. Section 80-8, MCO, seems to impose a 2-hour grace period after a reasonable notice, in writing, has been given. However, that part of § 80-8, MCO, not covered by §§ 80-6 to 80-7, MCO, seems to require and give "the commissioner" the authority to give notice to abate the nuisance "forthwith." We presume that this is the case because § 80-17 in particular, deals with grasses that produce adverse health effects of an imminent nature. No analogous summary procedure is set forth within Chapter 79, MCO.

Additional authority for the summary notice of violation and removal of tall grass may be found in state statute. Wis. Stat. § 66.0517 "**Weed commissioner**", provides, in pertinent part:

> (2) APPOINTMENT. (a) *Town, village and city weed commissioner.* . . . the mayor of each city may appoint one or more commissioners of noxious weeds on or before May 15 in each year.
>
> . . .
>
> (3) POWERS, DUTIES AND COMPENSATION. (a) *Destruction of noxious weeds.* A weed commissioner shall investigate the existence of noxious weeds in his or her district. If a person in a district neglects to destroy noxious weeds as required . . ., the weed commissioner shall destroy, or have destroyed, the noxious weeks in the most economical manner. A weed commissioner may enter upon any lands that are not exempt under s. 66.0407(5) and cut or otherwise destroy noxious weeds without being liable for to an action for trespass or any other action for damages resulting from the entry and destruction, if reasonable care is exercised.

We are unaware of any analogous state statute that would permit summary removal of ordinary trash or rubbish.

The authority for the Commissioner of DNS to issue orders to correct conditions is set forth at § 200-12, MCO. Section 200-12-1, MCO, "ISSUANCE OF ORDERS" provides, in pertinent part:

> Whenever the commissioner of neighborhood services determines, or has reasonable grounds to believe, that there exists a condition which violates any provision of the Milwaukee code **over which the commissioner of neighborhood services has enforcement jurisdiction** . . . the commissioner of neighborhood services may order the owner, operator or occupant thereof to correct the condition. If a placard action which requires posting of the order is warranted, it shall be as prescribed in s. 200-11-6. (Emphasis supplied).

Enforcement of § 79-12, MCO, is a condition which violates a provision of the MCO over which the Commissioner of DNS has enforcement jurisdiction or authority. See § 79-15, **"Enforcement."**

As a result, when enforcing the provisions of § 79-12, the Commissioner of DNS must follow the procedures set forth at § 200-12, unless the Commissioner of DNS finds that an emergency exists that requires "immediate" action to protect the public health, safety or welfare. If the Commissioner of DNS so finds, the commissioner is empowered to act under § 200-12-5, MCO. Although posting and mailing is still required, you may identify an appropriate time for compliance and an appeal and, if necessary, you may attempt to contact by telephone before you enforce the order. This gives you great leeway in acting quickly to avert a public health danger.

These seem to be the only avenues available to you under current law to enforce § 79-12, MCO. Failure to follow one of these two established procedures may violate the due process requirement that a person be given notice and meaningful opportunity to be heard concerning the proposed action. *Wilke v. City of Appleton*, 197 Wis. 2d 717 (Ct. App. 1995). The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties" of the situation. The notice must be reasonable.

Further, compliance with § 200-12 or § 200-12-5, MCO, will ensure that if an owner fails to comply with an order, a special charge may be made against the subject property to recoup the costs expended to remove the litter.

In short, the current status of the law will not permit DNS to adopt a notice system and abatement policy for litter and debris violations on private property that is identical to that used by DNS for tall grass/weed violations. Only a change in law will permit DNS to adopt such an analogous policy.

None of this, of course, precludes the exploration of the possibility of changing the law to deal with situations where a more streamlined procedure is important to maintain public safety and security. In considering changes to the law, of paramount importance is to continue to recognize the need and requirement that due process is satisfied by granting adequate and reasonable notice to individuals who may be noncompliant and therefore the target of DNS action. Reasonableness is not a hard and fast calculation. Whether or not notice is reasonable is a fluid concept that may indeed depend upon the circumstances involved. For example, an ordinance might be sustainable giving DNS a more summary procedure than that currently set forth in § 200-12, MCO, where the target of the DNS action has had a history of chronic disregard for previously-issued orders. So long as the adopted legislation grants reasonable notice under the circumstances, it should pass constitutional muster.

Finally, you indicate that if "such a code" would be adopted, you anticipate that aldermen will request that the code differentiate between owner-occupied and non-owner occupied property in terms of the amount of time allowed for compliance. You asked this office to opine on whether or not such differentiation could occur.

Your question anticipates a possible challenge under a theory of equal protection. Any proposed legislation would have to be reviewed carefully to ensure compliance. But because the situation does not deal with a suspect class or a fundamental right, as long as the City can show some rational basis for the differentiation, it may survive a constitutional challenge, but the ordinance would still have to provide adequate due process notice and opportunity to be heard.

If you have any further questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,

GRANT F. LANGLEY
City Attorney

EDWARD M. EHRLICH
Assistant City Attorney

EME:wt:106405-1053-2006-1389