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January 2nd, 2019

Mayor Tom Barrett  
200 E. Wells St., Room 201  
Milwaukee, WI 53202

Re: Opinion regarding the consolidation of positions and appointment of  
the Emergency Management and Communications Director

Dear Mayor Barrett:

Your office has requested an opinion on whether the City is able to consolidate the duties of the Emergency Communications and Policy Director and the Homeland Security Director into a single position called the Emergency Management and Communications Director (the "Consolidated Position"). You have also requested an opinion on whether the Combined Position can be hired and supervised by the Fire and Police Commission Executive Director. The consolidation is allowable and can be accomplished by an amendment to Chapter 6 of the City Charter and Chapter 314 of the Code of Ordinances. Because the Consolidated Position is a cabinet level position, the Mayor must appoint the individual filling it and that appointment must be confirmed by the Common Council. The Fire and Police Commission Executive Director does not have the authority to hire the person filling the Consolidated Position, although he or she is allowed to supervise the Consolidated Position if ordered to do so by the Mayor.

**I. Issue Number One: Whether the positions of Emergency Communications and Policy Director and the Homeland Security Director can be consolidated?**

**Short Answer: Yes, the positions can be consolidated.**

The position of Emergency Communications and Policy Director was established to "oversee and coordinate emergency communications in the city of Milwaukee,



including but not limited to citywide radio and 911 systems.” MCO 314-6(1). The Emergency Communications and Policy Director is required to:

- a. Establish a city emergency communications strategic plan.
- b. Review and evaluate emergency communication projects and budgets.
- c. In partnership with all city departments, develop standards and guidelines for emergency communication systems.
- d. Serve as a resource to departments in developing and managing emergency communications projects and budgets.
- e. Coordinate monitoring and reporting of emergency communications projects.
- f. Coordinate with city departments and agencies on emergency communication issues to promote interoperability, integration, and security of emergency communication systems.
- g. Coordinate with the chief information officer to review and monitor emergency communication technology projects

MCO 314-6(2). All of the enumerated duties of the Emergency Communications and Policy Director relate to management of the City’s emergency communications systems.

The Homeland Security Director<sup>1</sup> is a cabinet-level position established pursuant to state and local law to lead the office of emergency management and homeland security. MCO 6-01(1)(a). Pursuant to Wis. Stat. § 323.15, the Homeland Security Director is required to “implement the [City’s emergency management plan] and perform such other duties related to emergency management as are required by the governing body and the emergency management committee of the governing body when applicable.” Wis. Stat. § 323.15(1)(a). He or she is also required to:

- [d]irect local emergency management training programs and exercises,
- [d]irect participation in emergency management programs and exercises that are ordered by the adjutant general or the county head of emergency management,
- [a]dvice the county head of emergency management on local emergency management programs [and s]ubmit to the county head of emergency management any reports he or she requires.

Wis. Stat. § 323.15(1)(c). In addition to the duties enumerated under state law, the City’s Charter requires the Homeland Security Director to “have administrative control of the office of emergency management and homeland security, [...] direct the emergency management and homeland security program and perform such other duties related to emergency management and homeland security as are required by the common council.” MCO 6-05(2).

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<sup>1</sup> As discussed in Section II, the Homeland Security Director has the duties of the “emergency management coordinator” and as such is it the same position regardless of title.

State law contemplates expansion of the enumerated duties of the Homeland Security Director when it states that the Homeland Security Director is required to “perform such other duties related to emergency management as are required by the governing body.” Wis. Stat. § 323.15(1)(a). Management of emergency communications is indisputably “related to emergency management”. *Id.* Therefore it would be proper for the Common Council to direct the Homeland Security Director to manage emergency communications. This can be done by eliminating the position of Emergency Communications and Policy Director by repealing MCO 314-6 while adding the current duties of the Emergency Communications and Policy Director to the duties already listed under MCO 6-05(2). Eliminating the position of Emergency Communications and Policy Director by removing it from Chapter 314 of the Ordinances and adding the duties performed by the Emergency Communications and Policy Director to MCO 6-05(2) will effectively merge the two positions into one, the Consolidated Position.

**II. Issue Number Two: Whether the individual filling the Consolidated Position can be hired by the Fire and Police Commission Executive Director?**

**Short Answer: No, the individual filling the Consolidated Position must be appointed pursuant to Wis. Stat. § 62.51.**

The Consolidated Position is a cabinet level position and must be appointed by the Mayor and confirmed by the Common Council. Pursuant to Wis. Stat. § 62.51, “emergency management coordinator” is a “public office”. Wis. Stat. § 62.51(1)(a). Thus the Mayor must appoint an individual to fill that role subject to confirmation of the appointment by the Common Council. Wis. Stat. § 62.51(2). The appointment must take place within 90 days of a vacancy and the Common Council must vote on confirmation within 45 days after the appointment. *Id.* The Fire and Police Commission Executive Director cannot hire the individual filling the position because the Mayor is required to appoint him or her.

Regardless of whether the Consolidated Position is titled “emergency management coordinator”, “Director of Homeland Security”, or “Emergency Management and Communications Director”, the proposed duties of the Consolidated Position make it clear that the position is the “emergency management coordinator” established under Wis. Stat. § 323.15. Under Wis. Stat. § 62.51, duties rather than title control whether a position is cabinet level. Wis. Stat. § 62.51(1)(a) (defining a “public office” as the enumerated positions “or their equivalent”). The duties of the Consolidated Position show that regardless of what it is called, it is the “equivalent” of the emergency management coordinator. Both the Consolidated Position and the emergency management coordinator are

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responsible for managing the City's emergency management plan and serving as the City's point of contact for any activities related to emergency management planning. These are the two major functions of the emergency management coordinator under Chapter 323. In fact, the Job Evaluation report for the Consolidated Position directly cites Chapter 323 of the State Statutes when discussing the duties and responsibilities of the Consolidated Position. Regardless of title, the Consolidated Position is the equivalent of the "emergency management coordinator" and the individual filling the Consolidated Position must be appointed by the Mayor and confirmed by the Common Council pursuant to Wis. Stat. § 62.51(2).

Although the Mayor must appoint the individual filling the Consolidated Position, there is no authority to suggest that he or she cannot report to the Fire and Police Commission Executive Director. The Consolidated Position "serves at the pleasure of the mayor until the end of the mayoral term of office during which the public official is appointed unless reappointed and reconfirmed or until a successor is appointed and confirmed, whichever is later." Wis. Stat. § 62.51(2). The Fire and Police Commission Executive Director is also a cabinet level position and also serves at the pleasure of the mayor. Wis. Stat. § 62.51(2). If the Mayor so directs, the individual appointed to the Consolidated Position could conceivably report to the Fire and Police Commission Executive Director who would then report to the Mayor despite not actually being hired or fired by the Fire and Police Commission Executive Director.

Very truly yours,



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1077-2018-2526: