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February 27, 2004

Honorable Common Council
City Hall, Room 205

Re: An ordinance re: the establishment and regulation of loading and unloading zones
File No. 031223, Substitute 2

Dear Council Members:

This ordinance was transmitted to the City Attorney for review and approval as to legality and enforceability. The City Attorney recommends the following changes.

In § 4.a.1. the draft requires if an applicant is a corporation, to give the names and addresses of the corporate officers, directors and designated managers. There is no similar provision requiring disclosure by other forms of business organizations. We believe language should be added requiring disclosure by LLCs.

Further, the provision provides that if the commissioner recommends against an application no permit shall be issued unless the applicant requests, in writing, an appeal before the licensing committee of the Common Council. We believe that the language here should be more instructive to the appellants by providing more information concerning what is needed to perfect an appeal and to whom the appeal should be directed. Certainly, more notice should be given to prospective appellants of when the 10-day appeal period begins to run.

Honorable Common Council

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As to § 9.f-4., this section provides authority for the Common Council to collect costs from the complainant where the Common Council finds that the complainant has made a complaint that is malicious and without probable cause. No provision or standard has been provided by which the Common Council can make a finding of maliciousness or lack of probable cause. Note that the ability to argue before the Common Council is limited to the discretion of the chair, and then only five minutes. And further, such arguments would be limited to the subject matter of the report and the recommendations and written exceptions. No further inquiry could be made of the complainant. We believe, therefore, that an appropriate record could not be developed that would permit the Common Council to make a finding of maliciousness or a lack of probable cause for the purpose of assessing appropriate costs. We recommend that the language is changed to provide both procedural and substantive standards for the Common Council to make any such finding. We will be happy to assist you in drafting such standards.

Very truly yours,



GRANT F. LARGELY
City Attorney



EDWARD M. EHRLICH
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EME:wt:78484

c: Ronald D. Leonhardt, City Clerk