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October 26, 2006

Alderman Joe Davis, Sr.
2nd Aldermanic District
Room 205 – City Hall

Re: Anti-graffiti coatings for utility boxes

Dear Alderman Davis:

You have asked if the City's police power allows it to mandate the use of anti-graffiti coatings or paint on utility boxes placed in the City's rights-of-way under § 115-3, Milwaukee Code of Ordinances (MCO). For the following reasons, we conclude that such a requirement would be legally enforceable, but with some important qualifications.

Under Wis. Stat. § 62.11(5), the Common Council has broad powers to legislate for the health, safety and welfare of the City. Using this power, the Council has adopted § 275-35, MCO, which sets forth a process for graffiti abatement. The requirements of this section apply to utility boxes that must receive a permit under § 115-3, MCO, prior to installation. In addition to the permit requirements already contained therein, you have asked if the City can add a requirement that owners of utility boxes use an anti-graffiti coating or paint on their facilities. It is our opinion that, as a condition of receiving such a permit, the City could impose such a requirement under its police power. We caution, however, that this power may be limited by PSC 130.03(2)(a), Wis. Adm. Code. This section gives a utility the ability to reasonably argue that the City must compensate it for the extra cost of any such special requirement. We also caution that PSC 130.03(2)(b), Wis. Adm. Code, prohibits any requirement that interferes with the operation of the facility. Thus, if the coating or paint would somehow adversely affect the operation of the technology in the facility, then that requirement would be prohibited.

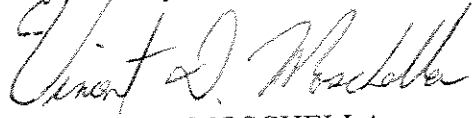
Alderman Joe Davis, Sr.
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Please do not hesitate to contact us if you have any additional questions or concerns.

Very truly yours,



GRANT F. LANGLEY
City Attorney



VINCENT D. MOSCHELLA
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c: Mayor
Common Council
City Clerk
Commissioner of Public Works

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