

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
Assistant City Attorneys

November 25, 2008

Mr. Martin A. Aquino
Engineer in Charge
Environmental Section
Room 820 – Municipal Bldg.

Re: 2009 Storm Water Management Charge

Dear Mr. Aquino:

On November 25, 2008, you requested a legal opinion as to whether or not the costs of street brush collection and City tree pruning could be included in the 2009 storm water management charge by the Common Council. For the following reasons, we conclude that the inclusion of such charges is legally permissible.

The storm water management charge imposed under sec. 309-54-5, Milwaukee Code of Ordinances, is authorized by Wis. Stat. § 66.0821(4) and sec. 12-27, Milwaukee City Charter. The specific intent of the Common Council is expressed in sec. 309-54-1-b, Milwaukee Code of Ordinances:

"Storm Water Management System. The common council finds that management of storm water and other surface water discharge within the city of Milwaukee is a matter that affects the health, safety and welfare of the city, its citizens and businesses. Failure to effectively manage storm water may create, among other things, erosion of lands, damage to homes and businesses, and sedimentation and environmental damage to waterways within the city. In order to protect the health, safety and welfare of the public, the common council establishes a storm water management charge to support operation and maintenance of the storm water management components of the city sewerage system. The city may use storm water management charge revenues to, without limitation by reason of enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities as are deemed to be proper and reasonably necessary for management of storm water and other surface water discharge within the city. The common council further finds that those elements of the storm water management system that provide for the collection and

OFFICE OF THE CITY ATTORNEY

Mr. Martin A. Aquino
November 25, 2008
Page 2

disposal of storm water are of benefit to all real property within the city of Milwaukee, including property not presently served by that system. The costs of operating and maintaining the storm water management system and financing necessary repairs, replacement, improvements and extensions of the system should, to the maximum extent possible, be allocated in direct relationship to contributions of storm water to the system. (Emphasis supplied.)"

At the Finance and Personnel Committee meeting on October 30, 2008, testimony was provided that the collection of brush prevented the blockage of the storm water collection system. Testimony was also provided that a healthy tree canopy is an important part of the storm water collection system and that properly pruned trees are necessary to maintain a healthy canopy. Based upon this record, we believe that the broad provisions found in sec. 309-54-1-b may legally include the charges for street brush collection and City tree pruning. The Council has stated that this charge may be used to:

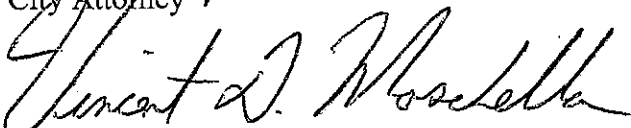
" . . . without limitation . . . maintain . . . clean . . . such facilities as are deemed to be proper and reasonably necessary for management of storm water and other surface discharge within the City."

This broad legislative mandate, when combined with the legislative record, is more than enough for us to declare those charges to be legally defensible.

Very truly yours,



GRANT F. LANGLEY
City Attorney



VINCENT D. MOSCHELLA
Deputy City Attorney

VDM:dms

c: Ronald Leonhardt
Mark Nicolini
Barry Zalben
1205-2008-3615:140079