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HAND DELIVERED

February 6, 2012

The Honorable Common Council
of the City of Milwaukee
Room 205, City Hall

Re: File No. 111276/An ordinance relating to enforcement of
property maintenance and building security requirements
for vacant buildings

Dear Council Members:

This office was presented with the above file last week for our approval as to legality and enforceability. We had not previously been requested to review this proposed ordinance.

We request that this file be held for one cycle to give us the opportunity to: 1) review the rather significant legal issues regarding warrantless entry into private property and; 2) work with the sponsors and the Department of Neighborhood Services on alternate methods to accomplish the stated goals of the proposal.

In general, the law only permits a government agent to inspect, enter upon, or remediate private property with permission or with a warrant, (unless, of course, a true emergency exists.) A warrant issued by a court, upon a showing that consent to enter has been refused, is necessary even to inspect a private property. Wis. Stats. § 66.0119(2). The warrant provides assurances from a "neutral" person that the inspection is reasonable under the Constitution and is authorized by law. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed. 2d 305 (1978); *Redevelopment Authority of the City of Milwaukee v. Uptown Arts and Education, Inc.*, 229 Wis. 2d 458, 599 N.W.2d 655 (Ct. App. 1999); and numerous other authorities.

The proposed ordinance in this file would direct the Commissioner of Neighborhood Services to enter a privately-owned vacant building to actually perform work, based upon findings by the Common Council and notice to the owner. The "whereas" clauses acknowledge that the only way to accomplish this currently is to obtain a court order.

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There is a significant question as to whether the government can give itself permission to enter private property instead of obtaining permission from the judicial branch.

In addition, the Common Council's findings would include a determination that "permissive waste" will result from the lack of property securing or maintenance of the property. ("Permissive waste" is not defined in the ordinance.) It is unclear how the Council could conclude that permissive waste will occur without first entering the property.

Finally, we believe there are alternative efficient and prompt methods available to achieve the desired result through the use of a properly drafted special inspection warrant, which could permit the City to enter the abandoned property and take minor action to prevent waste on architecturally or historically significant buildings.

For these reasons, we request that this file be held one cycle.

Very truly yours,



GRANT F. LANGLEY



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