

CITY OF MILWAUKEE

Form CA-43

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January 9, 2004

To the Honorable Committee
on Public Improvements
Room 205 – City Hall

Re: CCFN 031208 – An ordinance relating to
runoff discharge quality control regulations

Dear Committee Members:

We have been asked to review, which repeals and recreates § 120-7-6 of the Milwaukee Code of Ordinances (“Code”) for legality and enforceability. We advise that only part of this proposed new ordinance is legal and enforceable, while another part is not.

This ordinance revises § 120-7-6 of the Code entitled “Runoff Discharge Quality Control” in an effort to conform to the text of applicable regulations of the Wisconsin Department of Natural Resources (“WDNR”), in particular, Wis. Adm. Code ch. NR § 151.12(5)(a)1-3. Proposed new subsections 120-7-6-a and 6-b of the Code do achieve these objectives and are legal and enforceable. With respect to proposed new § 120-7-6-c of the Code pertaining to runoff discharge quality requirements for in-fill development under five acres, however, this is not the case. The provisions quoted therein apply only to in-fill development under five acres “that occurs within 10 years after October 1, 2002.” *See*, Wis. Adm. Code ch. NR § 151.12(5)(a)3 (attached).

With respect to such development “that occurs 10 or more years **after** October 1, 2002, the mandated suspended solids reduction factor increases from 40% to 80%, as per Wis. Adm. Code ch. NR 151.12(5)(a)4 (attached). Thus, subsection 6-c within the proposed ordinance will fail to comply with WDNR regulatory requirements applicable

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to runoff discharge quality control for in-fill development with respect to any such development that occurs on or after October 1, 2012, and is thus illegal and unenforceable to that extent.


We would advise that a substitute version of this ordinance that complies with the requirements of Wis. Adm. Code ch. NR § 151.12(5)(a)4 pertaining to in-fill development occurring on or after October 1, 2012 would be legal and enforceable. We further advise that the subject of this proposed ordinance relates only to post-construction performance standards for new development and redevelopment under Wis. Adm. Code ch. NR § 151.12. A different set of standards applies to performance standards for new development and redevelopment on active construction sites. *See*, Wis. Adm. Code ch. NR § 151.11.

Please contact this office if you have any further questions concerning this matter.

Very truly yours,



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SSM:lmb
enclosures
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