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June 6, 2007

VIA HAND-DELIVERY

To the Honorable Common Council
Committee of Public Safety
Room 205, City Hall
200 East Wells Street
Milwaukee, WI 53202

Re: *Common Council File No. 070335, an ordinance relating to loitering by criminal gang members*

Dear Honorable Committee members:

On February 1, 2006, this office issued a legal opinion regarding a proposed ordinance regulating loitering by gang members (Common Council File No. 051314). This office opined that while the proposed ordinance may have been legal, enforcement of the proposed ordinance would be cumbersome and successful prosecution difficult. Because the current Common Council File No. 070335 is identical to the previously proposed legislation, this office still opines that we could defend in good faith the proposed ordinance as legal and enforceable. However, the practical concerns outlined in the previous opinion are still present and significant.

As mentioned in the previous opinion, the proposed ordinance is similar to Municipal Code of Chicago, Section 8-4-015 (Gang Loitering), a previous version of which was held unconstitutional by the United States Supreme Court in *Chicago v. Morales*, 527 U.S. 41 (1991). However, unlike Chicago's amended ordinance, Milwaukee's proposed ordinance cannot provide for criminal penalties, including imprisonment, for violation of the ordinance. *State v. Thierfelder*, Wis.2d. 213, 222 (1993).

A review of most recently published statistics of the Chicago Police Department regarding the enforcement of the amended, post-*Morales* ordinance demonstrate that in 2004, the Chicago Police Department issued 16,679 orders dispersing 53,113 persons, and arresting 314 persons in 154 incidents.¹ In 2005, there was a significant increase in

¹ See, http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/2005AR.Final.pdf, Chicago Police Department, 2005 Annual Report, last visited June 6, 2007.

Mr. Ronald D. Leonhardt, City Clerk

June 6, 2007

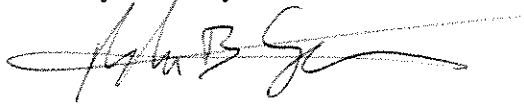
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the use of the ordinance: 38,536 orders dispersing 108,650 persons, with 420 persons arrested in 205 incidences. These statistics indicate that the number of persons subject to dispersal orders increased between 2004 and 2005 by 55,537, while the number of arrests increased by 106. Please compare the police statistics with that of the Office of the Clerk of Circuit Court of Cook County, the jurisdictional court handling the prosecutions of these cases. Between 2002 and mid-2006, a total of 1,017 gang loitering cases were filed in the circuit court leading to the dismissal of 8, a finding of guilt in 133 and a finding of not guilty in 813 (with 63 presumably pending at the time of the response).

Very truly yours,



GRANT F. LANGLEY
City Attorney



ADAM B. STEPHENS
Assistant City Attorney

C: Mr. Ronald D. Leonhardt, City Clerk

GFL/ABS/dj

1033-2006-5/120061