

CITY OF MILWAUKEE

Form CA-43

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November 6, 2002

Finance & Personnel Committee
City Hall, Room 205

Re: Common Council File No. 021039
Tax Stabilization Fund - Unrestricted Fund Balance

Dear Members:

Returned herewith is Common Council File No. 021039, being a resolution related to the maintenance of an unrestricted fund balance in the Tax Stabilization Fund ("TSF"). This resolution was referred to the City Attorney with an inquiry as to whether the subject matter can be undertaken by resolution.

The City has established a TSF under s. 304-29 of the Code. Section 304-29-5 provides that any uncommitted balance in the fund as of June 1 of the current year that is in excess of 5% of the current year, total Common Council budget shall be applied to tax reduction for the following year. Section 304-29-4-a-1 authorizes that TSF withdrawals may be used to prevent an increase of more than 3% in the Common Council controlled tax rate, provided that such withdrawal is authorized by inclusion in the adopted City budget. Section 304-29-4-c provides that the TSF may be used to stabilize the Common Council controlled tax rate beyond these limits provided no more than 50% of the balance anticipated to be available for withdrawal from the fund as of April 15 of the year covered by the adopted budget can be authorized for withdrawal for this purpose.

Common Council Resolution File No. 021039 would establish a policy commencing with the 2004 City budget relating to the maintenance of an unrestricted balance in the TSF for purposes of the resolution, to maintain an unrestricted fund balance between 5% to 10% of the City's previous 3-year average with respect to the general fund expenditures. If the fund would fall below 5% the annual draw would be limited to 95% of the previous year's fund regeneration. If the fund would fall between 5% and 7.5% the annual draw would be limited to the previous year's fund regeneration. If the

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fund falls between 7.5% and 10% the annual draw may precede the previous year's regeneration so long as the projected year end balance does not fall below the 5% guidelines. Given the current policy relative to withdrawals embodied in s. 304-29-4, your questions relates to whether the new policy initiatives relative to TSF withdrawals should be included in s. 304-29-4 of the Code, rather than in a resolution.

Our main concern relates to s. 304-29-5, which provides that any uncommitted balance in the fund that is in excess of 5% of the current year Common Council controlled budget shall be applied to tax reduction for the following year. The resolution appears to directly conflict with this requirement in that it sets a goal of maintaining an unrestricted fund balance of between 5% and 10% of the City's previous 3-year average with respect to general fund expenditures. Our other concern relates to the fact that the resolution may limit withdrawals when the balance of the fund is less than 5% of the current year budget even though such withdrawal may be authorized under s. 304-29-4 of the Code.

A resolution differs from an ordinance only in that it does not require publication. *Cross v. Soderbeck*, 94 Wis. 2d 331, 288 N.W.2d 779 (1980). Since every ordinance necessarily includes all the essential elements of a resolution, the Common Council can generally do by ordinance what it is empowered to do by resolution. However, since a resolution does not include all of the essential elements of an ordinance, an ordinance cannot be amended, repealed or suspended by a resolution. *Cross, supra*.

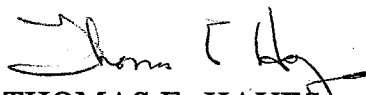
If the resolution would operate to prohibit withdrawals under circumstances that the ordinance mandates withdrawals, or the resolution would operate to limit withdrawals under circumstances in which the ordinance authorizes withdrawals, in our opinion the resolution would not be legal and enforceable.

Very truly yours,



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