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HAND DELIVERED

December 8, 2006

Barry Zalben, Manager  
Legislative Reference Bureau  
City Hall, Room B-11

ATTN: Richard Withers

Re: Common Council File 060658

A proposed ordinance relating to placement and construction of traffic calming installations and providing a process for petition and special assessments

Dear Mr. Zalben:

By email dated December 5, 2006, Richard Withers of your staff forwarded the newest version of the above proposed ordinance for our review. It is scheduled to be heard before the Common Council on December 12, 2006.

In our opinion the proposed substitute ordinance is legal and enforceable. However, there is a potential liability issue if traffic calming installations are approved without regard to, or in contravention of, sound engineering judgment.

We addressed this same concern in a July 24, 2000 opinion regarding "Petitions for the Installation of Stop Signs." We have attached a copy for your convenience.

As we explained in our earlier opinion, Wisconsin law provides that the design, installation, and operation or use of new traffic control devices placed and maintained by local authorities "shall conform" to the Manual on Uniform Traffic Control Devices ("Manual"). Sec. 349.065, Stats. The Manual defines "traffic control device" as "a sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or shared-use path by authority of a public agency having jurisdiction." Manual, Section 1A.13. Our July 24, 2000 opinion explained that the Manual

Mr. Barry Zalben  
December 8, 2006  
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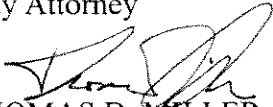
requires that any deviation from its standards on the placement of traffic control devices must be based on engineering judgment.

Because the proposed ordinance excludes from its definition of "traffic calming installations" traffic signs, signals or "other traffic control device[s] as defined in s. 349.065, Wis. Stats.," such traffic calming installations would not likely be governed by the Manual. Nonetheless, to limit the City's exposure to liability in the event of a pedestrian or vehicular accident, the same principle should apply: approval of any traffic calming installation should conform to sound engineering judgment.

Very truly yours,



GRANT F. LANGLEY  
City Attorney



THOMAS D. MILLER  
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TDM:tdm

c: Ronald Leonhardt

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# CITY OF MILWAUKEE

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July 24, 2000

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To the Honorable Members of the  
Common Council of the City of Milwaukee  
200 East Wells Street, Room 205  
Milwaukee, WI 53202

**Re: Common Council File No. 000169/  
Petitions for the Installation of Stop Signs**

Dear Common Council Members:

The proposed ordinance would require the Commissioner of Public Works to submit for Common Council approval the installation of multi-way stop signs at an intersection if the property meets certain criteria (residential, school, etc.), and if not less than 80% of the property owners have signed a petition requesting the sign.

This version was revised from an earlier draft in which the Commissioner was required to install the sign upon receipt of such a petition.

All locations of stop signs must be approved by the Common Council under existing ordinances.

Under this proposal the Commissioner would now be required to submit a location to the council "for approval" even if the Commissioner believes that multi-way signs at that location would be unwarranted or dangerous in his engineering judgment and upon application of the standards in the Manual on Uniform Traffic Control Devices.

Because nothing in this ordinance, as it has been revised, precludes the Commissioner from conducting an engineering study and making his recommendation and opinion known to

the council, and because nothing in the ordinance requires the council to approve the location, we can sign the ordinance as to legality and enforceability. We have serious reservations, however, as to legality, liability, and the possibility of a dangerous condition should the Common Council base approval of a stop sign on considerations other than engineering judgment.

In other words, if the Common Council approves a sign simply because neighbors ask for one, without basing its decision on sound engineering judgment, it may be acting in violation of state law, it may be jeopardizing the safety of the public, and it may be exposing the City to liability. We will explain these concerns.

State law provides that the design, installation, and operation or use of new traffic control devices placed and maintained by local authorities "shall conform" to the uniform traffic control devices manual, Sec. 349.065, Stats. The Wisconsin Department of Transportation is required by law to adopt a manual for a uniform system of traffic control devices which is consistent with and conforms to "current nationally recognized standards for traffic control devices." The Department of Transportation has adopted the Manual on Uniform Traffic Control Devices.

Paragraph 1A-4 of the manual is entitled "Engineering Study, Required." It states as follows, in pertinent part:

"The decision to use a particular device at a particular location should be made on the basis of an engineering study of the location. Thus, while this Manual provides standards for design and application of traffic control devices, the Manual is not a substitute for engineering judgment. It is the intent that the provisions of this Manual be standards for traffic control devices installation, but not a legal requirement for installation.

"Qualified engineers are needed to exercise the engineering judgment inherent in the selection of traffic control devices. . . ."

Therefore, although it is possible for a municipality to legally deviate from the manual's guidelines for placement of a sign, it can only do so based on engineering judgment. We have discussed this matter with the General Counsel for the Wisconsin Department of Transportation, and he believes that it is likely a violation of state law to base such a decision on something other than engineering judgment.

If the City violates state law by placing a sign in contravention of national engineering standards or engineering judgment, and a pedestrian or vehicular accident occurs as a result of that placement, it is possible that the City would be held liable for damages.

To the Honorable Members  
of the Common Council of the  
City of Milwaukee

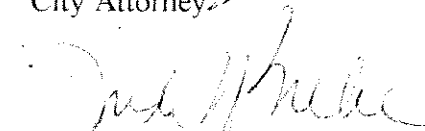
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July 24, 2000

We cannot say that the ordinance is not legal or enforceable, because it does not require the installation of signs. We strongly caution that approving the installation of a stop sign without a basis in engineering judgment may violate state law, create a dangerous situation, and result in City liability.

Very truly yours,

  
GRANT F. LANGLEY  
City Attorney

  
LINDA U. BURKE  
Assistant City Attorney

LUB/kg

cc: Ald. James A. Bohl, Jr.  
Ald. Thomas G. Nardelli  
Ronald D. Leonhardt  
Claire Weber

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