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## Memorandum

DATE: October 12, 2006  
TO: Bruce Walden  
CC: Mayor & City Council  
FROM: Jim Gitz  
RE: Reconsideration of Previously Passed Ordinance No. 2006-09-123

At the September 21, 2006 meeting of the City Council, the Council passed Ordinance No. 2006-09-123. This ordinance approved the construction, installation and maintenance of a fence in a public alley Right-Of-Way between E. Illinois and E. California Streets pursuant to a licensing agreement between the City and Luther Marlow, an adjacent property owner.

At the Council meeting, it was represented that no adjacent property owners were in opposition to the erection of the fence on the public alley. Public Works Director, Bill Gray, subsequently heard from another adjacent property owner, Mr. Rice, who is in opposition to this ordinance. I believe he also discussed this matter with Council Member Dennis Roberts. It appears that the original premise for the ordinance's passage, i.e., no opposition, is incorrect. The Mayor, CAO Walden, and Director Gray have all discussed this issue. The consensus is that the License Agreement should not go forward, at least at this time.

There are three ways to address Ordinance No. 2006-09-123: (1) reconsider the vote by which the ordinance was passed; (2) have the Mayor veto the ordinance; or (3) allow the ordinance to stand, but not enter into the license agreement. The Mayor believes that reconsideration by the Council is the preferred option.

Our Council Rules do not address reconsideration of a Council action, except in the context of vetoes. That is not at issue here. The only statutory reference is § 3.1-40-55 of the Illinois Municipal Code, 65 ILCS 5/3.1-40-55, which refers to the vote required at a special meeting. That is not at issue here either, since this is a regular meeting of the City Council.

There are some common law exceptions to reconsideration which have arisen over the years. The primary thrust of these exceptions relate to a situation where the rights of third parties have intervened. In other words, someone has taken action in reliance of the original ordinance. Since the License Agreement was never executed, that situation does not exist here.

There is a parliamentary practice that motions to reconsider must be made by a person who voted on the prevailing side. Since the entire Council voted for this ordinance, any member can make the motion.

If the Council chooses to proceed with reconsideration, I recommend that the motion be in substantially the following form:

**MOTION**

*Having voted on the prevailing side, I move that the City Council reconsider the vote by which Ordinance No. 2006-09-123 was approved on September 21, 2006.*

That motion must be seconded. It is non-debatable. Upon a favorable roll call, the ordinance comes back before the Council for further discussion and a revote.