

AGENDA # _____

CITY OF MADISON, WISCONSIN

REPORT OF:	CITY ATTORNEY	PRESENTED	<u>04/19/05</u>
		REFERRED	_____
TITLE:	VOLUNTEER RELEASE FORMS	REREFERRED	_____

AUTHOR:	Michael P. May	REPORTED BACK	_____
DATED:	April 4, 2005		_____
		ADOPTED	_____ POF _____
		RULES SUSPENDED	_____
		ID NUMBER	_____

TO THE BOARD OF PUBLIC WORKS AND COMMON COUNCIL:

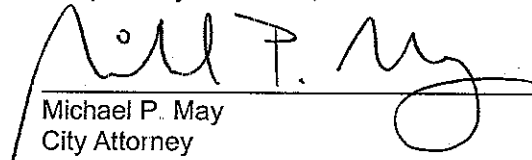
ID#: 00839 - Our office was asked to prepare Release Forms to allow volunteers to assist the City in collecting trash near the Parr Street storm water outfall. We developed such a Release Form and forwarded it to the Engineering Department.

In doing so, we advised the Engineering Department and hereby similarly are advising the Board of Public Works and the Common Council, that if a party is injured, Wisconsin courts go to great lengths to find a way around a release that has been signed prior to the injury. Any ambiguity is construed against the party who drafted the release (the City), and the courts often will set aside a release due to a "mistake of fact", usually that the person signing the release did not know of all the potential risks. Cases where releases have been set aside include *Atkins v. Swim West Family Fitness Center*, 2005 WI 4, 691 N.W.2d 334 (2005); and *Ader v. Lake Geneva Raceway, Inc.*, 187 Wis. 2d 596, 523 N.W.2d 429 (Ct. App. 1994). In the recent *Atkins* case, the Supreme Court even suggested that one reason the release would be set aside is that the injured party did not have the opportunity to negotiate over the terms of the release.

Thus, the warning from the Office of the City Attorney is simple: despite our best attempts to draft a release that we believe is clear and effective in protecting the City, the City should enter into this project with eyes wide open, understanding that the Wisconsin courts will go to great lengths to set aside such releases and allow an injured party to sue.

RECOMMENDATION: None.

Respectfully submitted,



Michael P. May
City Attorney