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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: November 14, 2023

RE: **Broadhead Armory Questions**

The Legislative Policy Division has been requested by President Mary Sheffield to provide an opinion on the ability of the Planning Department, or any other City Department, to make changes to the City Council-approved Development Agreement between the City and the Detroit Parade Company without City Council approval or input.

LPD notes, in Council President's request is the reference to the following:

The Development Agreement with the Detroit Parade Company regarding the sale of the Brodhead Armory was recently amended for the second time this year after the Parade Company was unable to close on the sale due to insufficient funds. Both amendments were made without prior City Council approval or consultation

A similar inquire was made by Counsil President Pro-Tempore Tate, in that instance, the City provided an extension of the Agreement which did not come to City Council for approval. The analysis of both inquires result in the same legal conclusion. Unless otherwise provided by law, no amendment, renewal or extension of a contractual agreement between the City of Detroit and another legal entity is valid without the approval of City Council.

The Parade Company Development Agreement is problematic as it appears to conflict with the City Code, Section 17-5-91(a) which provides in pertinent part:

With the exception of Subsections (c), (d) and (e) of this section, the following **contracts and amendments** thereto shall not be entered into without City Council approval: goods and services over the value of \$25,000.00; all contracts for personal services, regardless of the dollar value; all grant-funded contracts; all revenue contracts, regardless of dollar value, including contracts for services rendered by the City, its departments and agencies; and **all purchases and sales of and other transfers of interest in municipal land. City Council approval of a contract or amendment shall not be deemed an approval of any renewal or extension sought to be entered into pursuant to such contract. Such renewals or extensions of contracts or the exercise of an option to renew or extend a contract shall require separate City Council approval.** (Emphasis added.)

It is LPD's opinion that the City Code Section 17-5-91(a) would include amendments to development agreements that involve the purchase, sale of or other transfers of interest in municipal land (land owned by the City). Furthermore, the provision provides that the approval by City Council of the Development Agreement cannot be deemed an approval of any extension sought to be entered into pursuant to that contractual agreement. The ordinance specifically states *that such extension of contract* or the exercise of an option to renew or extend the contract *shall require separate City Council approval.*

The Parade Company's Development Agreement provides in Section 22.01 the following language:

Any change, addition, deletion or modification of this Agreement (including assignments, **but excluding extensions**) that is mutually agreed upon by and between the City and Developer shall be incorporated in a written amendment (herein called "Amendment") to this Agreement. Such Amendment shall not invalidate this Agreement nor relieve or release the Developer of any of its obligations under this Agreement unless stated therein. **Notwithstanding anything to the contrary contained herein, P&DD may extend any deadline given in this Agreement at the P&DD's sole discretion and without the need for an amendment by the P&DD Director providing written notice to developer of any such existence.** (Emphasis added.)

However, in light of the fact that Section 22.01 is in conflict with the ordinance provision, it must give way as a matter of law.

A long-standing legal principal was stated in *American Trust Co. v Michigan Trust Co.*, 263 Mich 237, 248 N.W. 829 (1933) in holding "A contract made in violation of a statute is void and unenforceable." (Id at 339.) This principal was again acknowledged in *Melki v Clayton Charter Township*, 2013 WL 4504443 in stating:

[a] public body cannot bind itself to a contract that violates its own governing ordinances... "At common law all contracts in violation of law are void." A contractual clause that is prohibited by a statute is void and unenforceable. An ordinance has the same force as a statute. It logically follows that a contractual clause that violates an ordinance is also void and unenforceable. Id at 4

Therefore, when the aforementioned law is applied to the Parade Company's Development Agreement, it appears the provision under Section 22.01 allowing for the extension of the agreement without being subject to City Council approval as set forth in the ordinance is void and unenforceable. It is LPD's opinion that the extension must be brought before City Council as set forth in the ordinance.

Finally, it is LPD's opinion that neither the Planning Department, nor any other City Department, can approve amendments, extensions (to development agreements) or any other contract as outlined in Section 17-5-91 without City Council's approval, unless otherwise provided by law.

If we can be of further assistance, please call upon us.