


David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Director, City Planning
Commission
Janese Chapman
Director, Historic Designation
Advisory Board

John Alexander
Roland Amarteifio
Megha Bamola
LaKisha Barclift, Esq.
Paige Blessman
M. Rory Bolger, Ph.D., FAICP
Eric Fazzini, AICP
Willene Green
Christopher Gulock, AICP

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Phillip Keller, Esq.
Edward King
Kelsey Maas
Jamie Murphy
Analine Powers, Ph.D.
W. Akilah Redmond
Laurie Anne Sabatini
Rebecca Savage
Sabrina Shockley
Renee Short
Floyd Stanley
Thomas Stephens, Esq.
Timarie Szwed
Theresa Thomas
Ashley A. Wilson

TO: Detroit City Council
FROM: David Whitaker, Director 
Legislative Policy Division
DATE: November 8, 2023
RE: **Broadhead Armory Questions**

The Legislative Policy Division has been requested by Council President Pro-Tempore Tate to provide a report addressing the following questions:

Does City Council have the ability to impact extensions on development Agreements?

If so, what is the process and what are ways City Council can intervene.

LPD notes the question arose out of an inquire regarding an extension to the Development Agreement between the City of Detroit and the Detroit Parade Company relative to the Broadhead Armory project. In that instance, the City provided an extension of the Agreement which did not come to City Council for approval. The Planning & Development Department (P&DD) has indicated that the extension was granted pursuant to the terms of the Development Agreement. The Development Agreement for the Broadhead Armory contained language in Section 22.01 which provides:

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.)

This provision within the Development Agreement specifically excludes extensions from being required in writing and included as an Amendment. However, complying with Section 22.01 of the 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 sale and/or transfer of the Broadhead Armory property is the sale or transfer of municipal land (land owned by the City). Pursuant to Section 17-5-91(a) 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.* This is the case notwithstanding the language of the Development Agreement's Section 22.01. 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 Broadhead Armory 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.

With regard to the question of City Council's ability to impact extensions of Development Agreements and the process of how City Council can intervene, it is set forth as stated above, in Section 17-5-91(a) of the City Code.

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