February 20, 2002

Mr. James Owczarski
Legislative Reference Bureau
Room B-11, City Hall

Ald. Michael S. D'Amato
3rd Aldermanic District
Room 205 – City Hall

Re: Legality and Enforceability of "A Substitute Ordinance Relating to the Establishment of a 6-Month Moratorium on the Issuance of Demolition Permits for Areas Declared a Conservancy District"

Dear Mr. Owczarski and Ald. D'Amato:

This office has been requested to furnish an opinion concerning the legality and enforceability of the above-referenced ordinance. Our research into this subject indicates that the proposed ordinance raises a number of significant questions in these respects, and that its legality and enforceability is, at best, very doubtful.

The proposed ordinance seeks to impose a moratorium on the issuance of demolition permits for buildings or structures located within a prospective "neighborhood conservation overlay district"–specifically, during the period of time within which the "overlay district" designation is under consideration. The moratorium would apply for a period of up to six months, commencing as of the time of introduction to the Common Council of the ordinance amending the City's zoning map to reflect the proposed "overlay district" up through and including such time as that ordinance is enacted by the Common Council confirming the designation of that district. Exceptions are provided for certain accessory structures, or structures whose unsafe physical condition has either resulted in, or would qualify for, the issuance of a demolition permit on that basis.

A "neighborhood conservation overlay district" is not created with reference to the characteristics of any particular property or structure; instead, it is directed at preservation and furtherance of what is regarded as the character of a particular neighborhood or subpart thereof. The purpose of such district is set forth in § 295-83-5, Milwaukee Code of Ordinances ("MCO"), which states as follows:

> 5. NEIGHBORHOOD CONSERVATION OVERLAY DISTRICTS. These districts take effect through adoption of neighborhood conservation plan and corresponding sets of guidelines that will facilitate maintenance and protection of the neighborhood character and the development of vacant or underused lots. Incompatible mixes of uses will be reduced or prohibited by adding limitations to the list of permitted and special uses of the base zoning district.

In other words, the creation of such an "overlay district" appears to permit custom-designed variations from the "base" zoning requirements that would otherwise apply in the absence of the "overlay" designation. This is somewhat akin to a "spot zoning" scheme applicable to an entire group of structures, an entire neighborhood, or a portion of a neighborhood.

Creation of such an "overlay district" is facilitated via an amendment to the City's zoning map, following Common Council approval of a "neighborhood conservation plan" and map amendment (§ 295-83-5-a, MCO). The "neighborhood conservation plan" itself may be prepared either by "neighborhood property owners", the Commissioner of DCD, or both, and is thereupon forwarded to the Commissioner of the Department of Neighborhood Services ("DNS") for comment and recommendation. The "neighborhood conservation plan" must contain a number of elements as set forth by §§ 295-83-5-b through 295-83-5-b-4, MCO. The significance of the creation of a "neighborhood conservation overlay district" is that, once created, no "site work" may be commenced by any property owner within the boundaries of the "overlay district" except after submission of a detailed "development plan" for the work to the City Plan Commission, and review and approval of the "development plan" by that Commission (§ 295-84, MCO). A property owner aggrieved by the decision of the City Plan Commission may appeal its determination to the Common Council under § 295-85, MCO.

Significantly, the provisions of the Zoning Code pertaining to "neighborhood conservation overlay districts" do not address the procedure for issuance of demolition permits affecting buildings or structures within such districts. The definition of "site work" set forth in § 295-82, MCO (and incorporated into the review and approval powers of the City Plan Commission under § 295-84, MCO), includes a wide range of activities pertaining to alteration, modification, or relocation of building features, but does not

include demolition of buildings or structures. Thus, it would appear that the demolition permit application and issuance processes set forth in other sections of the Zoning Code, §§ 200-26-5 and 200-28, MCO (or, if the buildings or structures are "historic", §§ 308-8-9 and 308-81-10.5, MCO), which apply to properties located throughout the City generally, would equally apply to those located within "neighborhood conservation overlay districts."

The proposed ordinance does not seek to change the permit application and issuance process for properties located within declared "neighborhood conservation overlay districts." Instead, it seeks to impose a moratorium of up to six months upon the issuance of demolition permits within **proposed** "neighborhood conservation overlay districts." It amounts, therefore, to a form of "interim zoning." The apparent intent of the proposed ordinance is to forestall changes in the status quo within boundaries of the proposed "overlay district" during the pendency of the Common Council's review and consideration of the documentation submitted in conjunction with the application for creation of the proposed "overlay district" (*i.e.*, the "conservation plan" and zoning map amendment). The proposed ordinance simply directs the DNS Commissioner to issue no demolition permits within the boundaries of the proposed "overlay district" and provides no appeal or other form of recourse for affected property owners seeking permits to demolish their own buildings or structures.

As such, the proposed ordinance constitutes a significant departure from current ordinances governing the procedure for issuance of demolition permits. Currently, the demolition-permit process is a ministerial one, with emphasis on protection of public safety during the construction (or, more accurately, destruction) process itself. Sections 200-26-5 and 200-28, MCO describe (respectively) the demolition permit application process and the demolition-permit issuance process. Section 200-26-5, MCO sets forth the specific information that demolition-permit applications must contain. These requirements are specific and itemized, and not subject to discretionary revision or addition by any city official. Section 200-28-1, MCO, states, in pertinent part, that a permit application "if found to be in conformity with the requirements of this code, or other ordinances, the Wisconsin Administrative Code, orders issued by the Common Council, or other lawful orders applicable thereto, **shall** be approved, and upon the payment of the required fee, a permit **shall** be issued be issued by the commissioner of city development." [Emphasis added] Thus, permit issuance is ministerial and not discretionary. Similarly, a properly filed permit application must be processed, and a

permit must be issued, no more than 16 working days following the date of the application. § 200-26-5, MCO. Thus, current ordinances do not envision any lengthy delays in conjunction with the issuance of demolition permits, such as that sought by the proposed ordinance.

The only exception to these provisions is contained in § 308-81, MCO, pertaining to historic sites, structures, and districts under the jurisdiction of the Historic Preservation Commission. With respect to such properties, a demolition permit may not be issued until the Commission issues a "certificate of appropriateness" authorizing the Commissioner of the Department of City Development ("DCD") to issue the demolition permit. Under this procedure, which is set forth in detail in § 308-81-9, MCO, applications for the demolition of historic properties must be filed with the City's historic preservation officer, who thereupon forwards the application to the Historic Preservation Commission for recommendation and report. In the case of an application for a permit to demolish a historic building or structure, the Historic Preservation Commission may either, following review, approve the application and direct its issuance by DCD, or conduct a public hearing with respect to the application.

If a public hearing is conducted, the Historic Preservation Commission must then consider whether or not to issue the permit in accordance with detailed criteria as set forth in §§ 308-81-9-b-1 through 308-81-9-b-3, and 308-81-9-h through 308-81-9-h-7, MCO. It may either approve the application, disapprove the application, or (per § 308-81-9-g, MCO) defer determination on the application for a period of up to one year, on the condition that reasons for the deferral must be given to the permit applicant. If the application is disapproved, the permit applicant may appeal to the Common Council (§ 308-81-9-f, MCO). If the application is deferred, the applicant may appeal the deferral to the Administrative Review Appeals Board (§§ 308-81-9-g and 320-11, MCO). It must again be emphasized that these procedures apply only to buildings or structures that have been designated as "historic sites", "historic structures", or "improvements within a historic district" (§§ 308-81-8 and 308-81-9 (introductory paragraph), MCO).

The proposed ordinance does not fit either the more general model set forth in ch. 200, MCO, or the model applicable to "historic" properties as set forth under § 308-81-9, MCO. Instead, it seeks to impose an interim moratorium upon the issuance of demolition permits tied to a specific type of zoning classification and district, specifically the "neighborhood conservation overlay district."

Section 308-81-10.5, MCO may be more pertinent to the type of moratorium sought by the proposed ordinance. Under this procedure, an "interim designation" of a structure as a "historic structure" may be made for up to 180 days, pending nomination or final designation of the structure. Here, also, the Historic Preservation Commission must first conduct a public hearing, with prior notice to the owner(s) of the affected structure, among other parties, and issue a decision on whether to accord "interim designation" to the structure. The hearing must be conducted on a strict timeline, which may be accelerated if a demolition permit on the affected structure has been applied for, and no such permit may be issued while determination on the issue of "interim designation" remains pending. §§ 308-81-10.5-b through b-3 and c, MCO. Any party dissatisfied with the Historic Preservation Commission's determination on "interim designation" may appeal that determination to the Common Council, which must review the Commission's determination within 45 days following receipt of the appeal petition (§§ 308-81-10.5-d and f, MCO). A non-owner appellant from a determination not to designate must furnish an appeal bond (§ 308-81-10.5-e, MCO). If a structure is accorded "interim designation", the Commission must thereupon hold the hearing on final designation of the structure (§ 308-81-8-a, MCO) within 90 days of the date of initiation of the "interim designation".

Given this context, we must advise that the proposed ordinance implicates several difficulties as to its legality and enforceability, as follows:

1. Lack of Statutory Authorization. The State has not enacted any statute authorizing municipalities or other local units of government to impose demolition moratoriums. This might prove to be a significant problem in the event that the proposed ordinance is challenged. Interim zoning is not *per se* unconstitutional, and is permitted when properly authorized by statute. *Walworth County v. City of Elkhorn*, 27 Wis.2d 30, 38, 133 N.W.2d 257, 262 (1965). Here, however, such statutory authorization is lacking. Interim zoning, in the sense of a temporary ordinance enacted by a city or other local unit of government pending adoption of a comprehensive zoning ordinance, is authorized by § 62.23(7)(da), Wis. Stats.; however, that is not the situation here, where the City of Milwaukee has already adopted a comprehensive Zoning Code (ch. 295, MCO). By way of contrast, moratoriums imposed by historic-preservation ordinances (such as "interim designation" conferred by § 308-81-10.5, MCO) are specifically authorized by statute, specifically, § 62.23(7)(em), Wis. Stats. Section 66.0413 (formerly § 66.05), Wis. Stats. contains detailed provisions governing the razing of buildings, but this statute is directed

towards buildings that are structurally unsound, dilapidated, unfit for occupancy, unsafe, and/or in such a state so as to constitute a "public nuisance". The scope of this statute is therefore irrelevant to consideration of a proposed ordinance.

To the extent that the City's zoning powers arise from the express grant of statutory authority from the State, we conclude that the proposed ordinance is thus problematic as it is not supported by any such express statutory authority.

2. Potential Exceedence of the Limits of the "Police Power". The power to enact zoning ordinances is also supported by, and within the scope of, the City's "police powers" (*i.e.*, its authority to regulate in the interests of public health, safety, and welfare), as set forth by § 62.11(5), Wis. Stats. While municipalities are accorded a wide scope of discretion in the exercise of their police powers, ordinances and other measures enacted in aid of the "police power" must be reasonable, not arbitrary, and rationally related to a legitimate municipal objective. *State ex rel. Grand Bazaar v. City of Milwaukee*, 105 Wis.2d 203, 208-212, 313 N.W.2d 805, 808-810 (1982); *Clark Oil and Refining Corp. v. City of Tomah*, 30 Wis.2d 547, 553-554, 141 N.W.2d 299, 302-303 (1966); *Froncek v. City of Milwaukee*, 269 Wis. 276, 281-282, 69 N.W.2d 242, 245-246 (1955). The applicable standard of scrutiny was summarized by the Wisconsin Supreme Court in *Willow Creek Ranch, LLC v. Town of Shelby*, 235 Wis.2d 409, 611 N.W.2d 693, 2000 WI 56 (2000), as follows:

> A municipality's zoning decision represents a valid exercise of its police power. *State ex rel. American Oil Company v. Bessent*, 27 Wis.2d 537, 540, 135 N.W.2d 317 (1965); *State ex rel. Carter v. Harper*, 182 Wis. 148, 155, 196 N.W. 451 (1923). Since zoning ordinances are enacted for the benefit and welfare of the citizens of the municipality, this court generally affords great deference to zoning decisions. See *Jelinski v. Eggers*, 34 Wis.2d 85, 93-94, 148 N.W.2d 750 (1967). However, we may declare a zoning ordinance or action unconstitutional when it serves no legitimate purpose and is arbitrary and unreasonable, having no substantial relation to public health or safety. *Kmiec v. Town of Spider Lake*, 60 Wis.2d 640, 647, 211 N.W.2d 471 (1973). See also *Cushman v. City of Racine*, 39 Wis.2d 303, 311, 159 N.W.2d 67 (1968).

235 Wis.2d at 431, 611 N.W.2d at 720.

We perceive a risk that the proposed ordinance, as written, may be vulnerable to the claim that it represents an "unreasonable" or "arbitrary" exercise of the City's "police powers" under § 62.11(5), Wis. Stats. While it is conceivable that the entire concept of a "neighborhood conservation overlay district" might be challenged on substantive grounds as representing too great an infringement upon a property owner's right to use and/or develop his property, our opinion is that the risk of such a substantive challenge would be relatively small and (in any event) this question is beyond the scope of your request. The risk is greater, however, in a procedural sense. A demolition-permit moratorium is a rather considerable infringement upon an interest in private property—specifically, the right of the landowner to demolish a building or other structure that he or she believes no longer serves a useful purpose or function. The proposed ordinance would deprive that landowner of the right to do so for a rather extended period of time (up to six months) by fiat, with no right to a hearing before the moratorium is imposed, and no avenue of appeal following its imposition. Furthermore, the moratorium would automatically be imposed simply upon the initiation of the process to designate an area of the City as a "neighborhood conservation overlay district", a process that may be initiated either by DCD or by one or more citizens (including even a single citizen) or both. § 295-83-5-b, MCO. Individual circumstances and/or the impact of the moratorium upon particular landowners whose property is located within the boundaries of the proposed "overlay district" are not even considered. From this standpoint, a reviewing court may well conclude that the proposed ordinance is unreasonable and/or arbitrary and invalidate it on these grounds.

3. The "Taking" Issue. Another consideration that often appears in conjunction with "police power" regulations that impinge upon the free use of property is whether the regulation is so severe or invasive as to constitute a "taking" in violation of the constitutional guarantee against taking of private property for public purposes without just compensation. *See*, U.S. Constitution, Fifth Amendment; Wisconsin Constitution, Art. I § 13. A "taking" need not be permanent; temporary "takings", even for defined periods, may run afoul of the Takings Clause of the Fifth Amendment, and thus trigger the "just compensation" requirement referred to in that Clause. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987). A "temporary taking" may also be compensable under the Wisconsin Constitution. *Eberle v. Dane County Board of Adjustment*, 227 Wis.2d 609, 595 N.W.2d 730 (1999); *Zinn v. State*, 112 Wis.2d 417, 334 N.W.2d 67 (1983). Furthermore, a

"regulatory taking" need not require a physical invasion or occupation of the property; in *Eberle*, the Wisconsin Supreme Court stated as follows:

> [T]he absolute position . . . that there must be an actual physical occupation by the condemning authority, is not the only test of the "taking". There can be a "taking" if a restriction, short of an actual occupation, deprives the owner of all, or substantially all, of the beneficial use of this property.

227 Wis.2d 609, 621, 595 N.W.2d 730, 736, citing *Howell Plaza, Inc. v. State Highway Commission*, 66 Wis.2d 720, 726, 226 N.W.2d 185, 188 (1975).

A moratorium on obtaining a demolition permit that would otherwise be routinely issued as a ministerial act and thus would be obtainable on a virtually automatic basis poses a significant risk of being characterized as a "regulatory taking". Whether such a moratorium would constitute an actual "taking" would depend upon whether it would act to deprive the landowner of all or substantially all practical use of or economic benefit from the affected property. See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *R.W. Docks and Slips v. State*, 238 Wis.2d 182, 617 N.W.2d 519, 2000 WI App 183 (Ct. App. 2000), *affirmed* 244 Wis.2d 497, 628 N.W.2d 781, 2001 WI 73 (2001); *Eberle v. Dane County Board of Adjustment, supra.* Whether or not a particular regulation effectuates such a "taking" must be determined on a case-by-case basis and will necessarily vary with the characteristics of each regulation under scrutiny and each individual property. Consequently, it is not possible to predict with any reliable degree of certainty as to whether a demolition-permit moratorium of up to six months would be construed as a "taking" under the United States and Wisconsin Constitutions, thus triggering the requirement of "just compensation".

It is, however, our opinion that the adoption of the proposed ordinance in its current form would pose a substantial risk of such a result in at least some circumstances. A landowner with a building deemed useless and therefore worthy of demolition would, in many instances, not be able to derive much practical or economically beneficial use from the property so long as the building remained, particularly if the building constitutes the only (or the major) structure upon the affected property, and its continued presence blocks the owner's future development plans. Furthermore, a six-month moratorium is no small impediment; six months is a considerable period of time, and one that cannot simply be explained away as a normal delay incident to the zoning process. In this

respect, we believe that a court would be influenced by the requirement of § 200-26-5, MCO that properly applied-for demolition permits be issued within 16 working days following receipt of the application. While lengthier delays are occasionally upheld by courts under unusual circumstances (e.g., pending adoption of a new or substantially revised comprehensive zoning code, or in response to court orders requiring substantial code revisions), we do not perceive the designation of a "neighborhood conservation overlay district" as implicating the type of circumstance justifying a delay of as long as six months or anything close to six months.

4. Due Process Concerns. Under the Fourteenth Amendment to the U.S. Constitution and Art. I § 1 of the Wisconsin Constitution, a person may not be deprived of property without due process of law. The right to apply for a demolition permit and to demolish a building or structure located upon one's property itself constitutes "property" for this purpose, thus invoking constitutional due-process requirements. "Due process" can be both "procedural" and "substantive". The proposed ordinance is problematic on both counts, although we perceive the "procedural" due-process issues as more serious.

The proposed ordinance in its current form clearly violates "procedural" due process. It provides no avenue of recourse to a landowner adversely affected by a petition filed by one or more citizens or by DCD (or both) seeking designation of a "neighborhood conservation overlay district", which would have the incident effect of precluding him or her from even applying for (let alone receiving) a demolition permit. It provides for no public hearings at which the landowner may attempt to contest the imposition of the demolition-permit moratorium, either generally or specifically as to his or her property. There are no apparent administrative or judicial avenues of appeal from the imposition of the moratorium. While it is possible that a right of appeal to the Administrative Review Appeals Board might be available under § 320-11, MCO, the proposed ordinance does not reference any such right; nor would that Board necessarily be the most appropriate tribunal to hear and determine such appeals. Clearly, therefore, from a "procedural" due-process standpoint, the proposed ordinance in its current form cannot stand.

This conclusion suggests a more pertinent issue: can this problem be alleviated by incorporation of public hearing and appeal procedures into the proposed ordinance, perhaps of a type comparable to those found in current § 308-81-10.5, MCO, pertaining to "interim designation" of "historic" buildings and structures? Certainly, a revision of the proposed ordinance to incorporate such procedural safeguards would assist in this

regard; the issue would be whether such assistance would be sufficient to overcome a "procedural" due-process challenge to this ordinance as so revised. Although it is not possible for this office to state with certainty that the adoption of such procedural safeguards and guarantees would be sufficient for this purpose, we believe that there would be at least a reasonable possibility that a reviewing court might conclude that it would.

"Procedural" due process implicates a right to fairness in procedures concerning individual claims against governmental deprivations of life, liberty, or property. The process due in any individual case depends upon the matter in dispute. *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirement of procedural due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge, supra*, 424 U.S. at 333 (1976); *In re Interest of Christopher D.*, 191 Wis.2d 680, 701, 530 N.W.2d 34, 42 (Ct. App. 1995). This refers to the nature of the deprivation alleged and the factual context in which it occurs.

Here, the deprivation at issue (imposition of the demolition-permit moratorium) would occur by operation of law, *i.e.,* via the implementation of an ordinance that would automatically impose a moratorium upon the introduction of the ordinance seeking designation of a "neighborhood conversation overlay district" and amendment of the City's zoning map to accompany that designation. As such, a pre-deprivation hearing is necessary to satisfy the constitutional requisite of "procedural" due process. A post-deprivation hearing or other procedure, standing alone, would in our opinion be insufficient. *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982); *Porter v. DiBlasio*, 93 F.3d 301 (7th Cir. 1996). In other words, the City must afford to affected property owners the opportunity to invoke the requisite hearing or other "due process" **before** a demolition-permit moratorium is actually applied to them. The type of procedure contained in § 308-81-10.5, MCO would appear to satisfy this requirement. There, both pre-deprivation and post-deprivation remedies are provided; the former by way of a hearing before the Historic Preservation Commission prior to "interim designation" and the latter by way of the right to appeal an "interim designation" to the Common Council. We would suggest, at a minimum, the incorporation of similar procedural safeguards into the proposed ordinance.

A related issue arises as to the provision of sufficient "procedural" due process to affected property owners on an **individual** basis. The requisite "procedural" due process is not satisfied, in our opinion, by a procedure focusing upon the proposed "neighborhood conservation overlay district" as a whole; it may only be satisfied through the provision of "due process" to each individual property owner with a focus upon the impact of a moratorium upon each individual property. In our opinion, public hearings or other avenues of remedy whose focus is upon the designation of boundaries of the "neighborhood conservation overlay district" itself would not suffice, because the focus of such proceedings is not directed at the impact of such a designation upon individual property owners that might be incidentally affected. It is only through proceedings directed at individual properties that the propriety of the deprivation attendant upon the imposition of that moratorium may be appropriately addressed.

It must be emphasized that the provision of such hearings or other appeal procedures, in and of itself, only addresses the "procedural" due-process issue, and does not necessarily address or overcome the remaining problems discussed in this opinion with respect to the legality and enforceability of a demolition-permit moratorium of this type.

Finally, the proposed ordinance raises issues of "substantive" due process. In *Pro-Eco, Inc. v. Board of Commissioners of Jay County, Indiana*, 57 F.3d 505 (7th Cir. 1995) the court defined the scope of "substantive due process" doctrine in the zoning context as follows:

> Pro-Eco also claims that the Board's ordinance deprived Pro-Eco of its substantive due process rights. In order to claim that a zoning ordinance interferes with its substantive rights, Pro-Eco must be able to demonstrate either that the ordinance infringes a fundamental liberty interest, *Reno v. Flores*, 507 U.S. 292, 301-303, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993) or that the ordinance is 'arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.' *Euclid v. Ambler Realty Company*, 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed.2d 303 (1926). We have interpreted 'arbitrary and unreasonable' to mean invidious or irrational. *Coniston* [*Coniston Corp. v. Village of Hoffman Estates*] 844 F.2d 461 at 467 (7th Cir. 1988); *Burrell v. City of Kankakee*, 815 F.2d 1127, 1129 (7th Cir. 1987).

57 F.3d at 514.

The proposed ordinance does not appear to implicate a "fundamental liberty interest"; at most, "property interests" are implicated. However, the question of whether the proposed ordinance is "arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare" is a more serious one, and parallels the inquiry previously discussed with respect to whether it is within the proper scope of the City's "police powers." We do perceive some risk in this area, particularly in that the infringement upon "property interests" implicated by the proposed ordinance is a substantial one, for a not-insignificant duration, and triggered by a factor unrelated to the characteristics of the individual property affected (*i.e.*, initiation of proceedings to designate a "neighborhood conservation overlay district"). This contrasts with the historic-preservation context where the proceedings are at least directly related to the characteristics of the individual property affected. In this case, this linkage is absent; the only reason for the imposition of the proposed moratorium would be the fact the a property happened to be located within the boundaries of a proposed "overlay district" and would have nothing to do with the physical, cultural, or architectural characteristics of individual properties affected by the moratorium.

Much of the risk that we see in this area arises from the "blanket" nature of the moratorium at issue. Consequently, we advise that serious consideration be given to the articulation of the nature of the claimed "rational relationship" between that moratorium and public-policy goals (*i.e.*, the advancement of the "public health, safety, morals, or general welfare") in this instance. The nature of that "rational relationship" should be expressed in legislative findings accompanying any ordinance that is eventually presented to the Common Council for passage. Furthermore, we suggest that consideration be given to ordinance amendments that might permit variations from the "blanket" imposition of the moratorium based upon specific individual circumstances, to the extent that such variations would be consistent with the public-policy objectives of the ordinance. These could be addressed in part by incorporating pre- and post-deprivation remedies for aggrieved landowners into the ordinance, as discussed earlier with reference to "procedural" due-process concerns.

Accordingly, we believe that the proposed ordinance calling for the imposition of a demolition-permit moratorium for up to six months pending consideration of the designation of a "neighborhood conservation overlay district" is problematic in several respects from the standpoint of legality and enforceability. We have attempted to articulate in detail some of the more prominent area in which this is the case. If there are any further questions regarding this matter, please contact this office for further guidance.

Very truly yours,

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