

CITY OF MILWAUKEE

Form CA-43

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April 12, 2002

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Alderman Jeffrey Pawlinski
Room 205 - City Hall

Re: Captain Frederick Pabst Theater Transfer Agreement with Cudahy Foundation
Common Council File No. 011733

Dear Alderman Pawlinski:

At the April 10, 2002 Public Improvements Committee hearing on the above-captioned file, you expressed a concern regarding the ability of the City to regain control and ownership of the Captain Frederick Pabst Theater ("Theater") after the expiration of the 10-year right of first refusal contained in the draft Transfer Agreements Section A.4.b.

As we indicated at the Committee hearing, the draft Transfer Agreement assures that: "Neither transferee nor any subsequent owner shall use the Theater Premises for purposes other than primarily for the use as a theater facility as that term is defined in Sec. 229.27, Stats., without the consent of the City." (Emphasis added). Section A.4.a. The statutory definition of "Theater" referenced in the above quoted provision is the same definition under which the City and Pabst Board currently operate the Theater. That definition provides that the Theater is operated "for the purpose of providing the community facility to further the advancement of the performing arts and other related purposes of a public nature which are hereby declared to be public purposes." Section 229.27(1), Stats.

We also observed at the Public Improvements Committee hearing that the Theater had been designated as a historic structure under federal, state and local law. Specifically, Theater's designation under the City's Historic Preservation Ordinance, Section 308-81, MCO, means that the Theater cannot be reconstructed, altered or demolished without a certificate of appropriateness granted by the City's Historic Preservation Commission. Section 308-81-9, MCO.

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Finally, we have also indicated to you that the City could exercise its powers of eminent domain under the provisions of subchapter II of Chapter 32, Stats., and acquire the Theater for fair market value at any time after the expiration of the Transfer Agreement's 10-year right of first refusal. Those eminent domain powers can be exercised to acquire property for "any other municipal purpose" pursuant to § 32.51(1)(g), Stats.; and as noted above, one specifically-recognized municipal purpose is the ownership and operation of a Theater under the provisions of § 29.27, Stats.

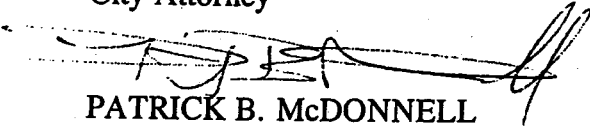
The Cudahy Foundation has agreed to modify the Transfer Agreement to provide a specific acknowledgment that nothing in the agreement "is intended to diminish the City's rights under subchapter II of Chapter 32, Wis. Stats." Section A.4.a.b., page 4. While this acknowledgment is not legally necessary in order for the City to exercise its eminent domain powers, the acknowledgement does provide a reference point for future City policy-makers considering possible options with respect to the Theater.

We are providing you with a revised version of the Transfer Agreement containing the additional new final sentence to Section A.4.b., page 4. We trust that if the redraft meets with your approval, you will undertake the necessary steps, prior to final Common Council action, to substitute this revised version of the Agreement for the version currently in the file.

Very truly yours,



GRANT E. LANGLEY
City Attorney



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PBMcD:wt:52426

Enclosure

cc(w/enclosure:

Mr. Dennis Conta
Ms. Charlane O'Rourke, Pabst Theater
Attorney Chuck Henderson
Alderman Marvin Pratt, Common Council President
Alderwoman Suzanne Breier, Chair, Public Improvements Committee
Ronald Leonhardt, City Clerk
Anthony Zielinski, Council Administration Manager
Robert Harvey, Clerk, Public Improvements Committee