

**From:** [Bohl, James](#)  
**To:** [Lee, Chris](#)  
**Subject:** Fwd: Common Council File Number 170817  
**Date:** Monday, September 18, 2017 4:36:15 PM

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Sent from my iPad

Begin forwarded message:

**From:** "Mckenzie, Jeremy" <[jmcken@milwaukee.gov](mailto:jmcken@milwaukee.gov)>  
**Date:** September 18, 2017 at 4:28:16 PM CDT  
**To:** "Bauman, Robert" <[rjbauma@milwaukee.gov](mailto:rjbauma@milwaukee.gov)>  
**Cc:** "Owczarski, Jim" <[jowcza@milwaukee.gov](mailto:jowcza@milwaukee.gov)>, "Bohl, James" <[jbohl@milwaukee.gov](mailto:jbohl@milwaukee.gov)>, "Langley, Grant" <[glangl@milwaukee.gov](mailto:glangl@milwaukee.gov)>, "Schanning, Mary" <[mschan@milwaukee.gov](mailto:mschan@milwaukee.gov)>  
**Subject:** Common Council File Number 170817

Dear Ald. Bauman:

On September 14, 2017, pursuant to your request, this office issued an opinion regarding the Legality of Contract Between the City and a Property Owner Requiring Compliance with Small Business Enterprise ("SBE") and Resident Preference Program ("RPP") Participation Percentages as a Condition of Detailed Planned Development ("DPD") Approval. In short, our opinion was that such a contract would be illegal.

Subsequent to your written request for the opinion described above, you introduced Common Council File Number 170817, "Resolution relating to Memorandum of Understanding between Goll Mansion LLC and the City of Milwaukee for the provision of community benefits and preservation of the Frederick T. and Eleanor Goll House in conjunction with Goll Mansion LLC's development of the property located at 1550 North Prospect Avenue." (the "Resolution").

In addition to the SBE and RPP requirements discussed in our September 14, 2017 opinion, the Resolution directs the City to enter an agreement with Goll Mansion LLC (the "Developer") which requires the Developer to place \$1,000,000 in an escrow account prior to receiving any permits for the Developer's plan to move, restore, and preserve the Goll Mansion to the satisfaction of the City's Historic Preservation Commission ("HPC"). The Resolution provides that should the Developer "successfully move[] the Goll Mansion, and properly restore[] and preserve[] it upon relocation, as determined by the Historic Preservation Commission then the escrowed funds are to be returned to the Developer. If however, the Developer fails to complete the relocation, restoration, and preservation of the Goll Mansion, the escrowed funds are to be moved to the Housing and Infrastructure Preservation Fund.

As discussed in our September 14, 2017 opinion, both Wis. Stat. § 62.23(7) and Milwaukee Code of Ordinances 295-907 limit the subject matter of Detailed Planned Development (“DPD”) agreements to items of land use. While requiring the Developer to properly move, restore, and preserve the Goll Mansion may be a proper land use related subject for a DPD agreement, we believe that requiring a \$1,000,000 deposit into an escrow account is not, nor is it a proper pre-condition for obtaining the zoning approval required for a land development project to proceed.

For the same reasons set forth in our September 14, 2017 opinion as to why the SBE/RPP provisions would be an impermissible inclusion in a DPD agreement, requiring the deposit of \$1,000,000 in an escrow account to be forfeited to the City upon unsatisfactory completion of the relocation, restoration, and preservation of the Goll Mansion, is also an impermissible subject for a DPD Agreement.

Jeremy R. McKenzie  
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