CITY OF MADISON
OFFICE OF THE CITY ATTORNEY

Room 401, CCB

266-4511

June 10, 2019

TO: Mayor Satya Rhodes-Conway
Members of the Finance Committee

FROM: Kevin Ramakrishna, Assistant City Attorney

RE: Block 88 and Labor Requirements

At the May 28, 2019 Finance Committee meeting, I was asked to provide an opinion on the City's authority to set contracting goals, require organized labor, set labor rates, including through best value contracting.

Project Labor Agreements (PLA) and Labor Peace Agreements (LPA) are similar with the distinction being that PLAs are used in public works contracts and while LPAs are used in private development. Both have similar impacts on labor relations, and both are illegal under state law.

In 2017, under Act 327, the State of Wisconsin created new sec. 66.0134, Wis. Stats., titled "Labor Peace Agreements Prohibited". The new law provides that the City may not:

> [E]nact a statute or ordinance; adopt a policy or regulation; or impose a contract, zoning, permitting or licensing requirement, or any other condition including a condition of regulatory approval; that would require any person to accept any provision that is a mandatory or non-mandatory subject of collective bargaining under state or federal labor laws.

The City Attorney's Office issued a Memorandum on April 17, 2018 discussing the impact of the legislation (Attachment 1). The advice therein continues to be accurate, and, as related to the Judge Doyle project, the City cannot require a union workforce, set labor rates, or enforce similar provisions through best value contracting.

Similarly, sec. 66.0901(6m), Wis. Stat. preempts the City from requiring PLAs, stating:

> Prohibited practices. A municipality may not do any of the following in a specification for bids for a public contract under this section:
>
> > (a) Require that a bidder enter into or adhere to an agreement with a labor organization.

(b) Consider as a factor in making an award under this section whether any bidder has or has not entered into an agreement with a labor organization.

(c) Require that a bidder enter into, adhere to, or enforce any agreement that requires, as a condition of employment, that the bidder or bidder's employees become or remain members of, or be affiliated with, a labor organization or pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization or a labor organization's health, welfare, retirement, or other benefit plan or program.

Nothing forbids the City from considering a company's positive labor relations policies as a positive factor, among many others, in choosing a developer. However, selecting a developer primarily based on a unionized workforce is no different than having a policy to that effect, which would be illegal.

Please note that at the Finance Committee meeting, though I noted that the law had changed, I explained that there may still be room to negotiate such agreements where the City had a "proprietary interest" in the development, which was accurate before adoption of Act 327. However, the law clearly preempts the City entirely, and that discussion should be disregarded.

The law still permits the City to set goals for employee and subcontractor diversity, in accordance with MGO Chapter 39.02 related to Affirmative Action. Goals can, and should, be set during the negotiation process of the Block 88 development agreement.