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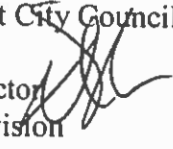
City of Detroit

CITY COUNCIL

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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division 

DATE: January 8, 2019

RE: **Report on Senate Bill 110 of 2018 amending Public Act 226 of 1988**

The Legislative Policy Division (LPD) has received a request from Council President Pro-Tem Mary Sheffield to draft an amendment to the Inclusionary Housing Ordinance to include the receipt of tax abatements as a trigger for the affordable housing requirements set forth in the current ordinance. LPD has attached a copy of the draft amendment for submission to the Law Department for review and approval as to form. In addition, the President Pro-Tem also requested that LPD report on the effects of the recent action by the Michigan Legislature's amendment to Public Act 226 of 1988 and how it relates to the City of Detroit's ability to pursue a rent control ordinance that "would limit rent increases and the amount of rent charged by entities receiving voluntary public incentives".

The Inclusionary Ordinance provides a plan to increase affordable rental residential units for the leased private property effected by its provisions. Ms. Sheffield's proposed amendment to the ordinance provides that a for lease private property owner/developer may voluntarily agree to accept tax credits, incentives or abatements in exchange for limiting the amount charged for rent. The newly passed amended statute would allow for the proposed ordinance amendment. It would not run afoul of the prohibition against controlling rents set forth in Subsection (2).

The Senate Bill 110 of 2018 in question amends Public Act 226 of 1988, Leasing of Private Residential Property, MCL 123.411, which provides as amended:

Sec. 1.

- (1) As used in this section, "local governmental unit" means a political subdivision of this state including, but not limited to, a county, city, village, or township,

if the political subdivision provides local government services for residents in a geographically limited area of this state as its primary purpose and has the power to act primarily on behalf of that area.

- (2) Subject to Subsections (3) and (4), a local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential property. (Emphasis added)¹
- (3) This section does not impair the right of any local governmental unit to manage and control residential property in which the local governmental unit has a property interest.²
- (4) This section does not limit the power of a local governmental unit to adopt an ordinance or resolution to implement a plan to use voluntary incentives and agreements to increase the supply of moderate- or low-cost private residential property available for lease. (Emphasis added)³

The main thrust of the statute is set forth in Subsection (2). The provision prohibits governmental units such as the City of Detroit (City) from taking actions that “would have the effect of controlling the amount of rent charged for leasing private residential property”. The exception to that rule is provided in Subsection (3) and (4). Subsection (3) allows a governmental unit to manage and control residential property in which it has a legal property interest, in essence, the City has the right to manage the rents of property it has legal control over.

Subsection (4) is the newly added exception to the general prohibition of controlling rents of privately leased residential property. This provision allows the City to adopt an ordinance or resolution that implements a plan designed to increase the supply of moderate –or low-cost (affordable) private residential property available for lease. The exception is allowed in cases where the ordinance or resolution provides for a private property owner to voluntarily undertake an incentive or agreement in exchange for providing moderate- or low-cost private residential property available for lease. The newly added section to the statute allows for the City to include in the Inclusionary Housing Ordinance, the receipt of tax incentives, credits or abatements as voluntary incentives utilized to increase the supply of affordable housing in the Detroit.

¹ The statute was amended by making the general prohibition of governmental units passing an ordinance or resolution subject to subsections (3) and (4).

² The statute originally contained subsection (3) which was a part of subsection (2). Under the current Inclusionary Housing Ordinance, Tier 1 and Tier 2 Qualifying Transactions were triggered by the City providing real property it owned for less than the true cash value or direct monetary support of at least \$500,000. Both methods of support would give the City a property interest which would provide the City the ability to regulate rents without violating the statute.

³ Subsection (4) was added and gives governmental units the ability to control rent as part of a designed plan to increase the supply of moderate-or low-cost residential leased units when voluntary incentives are provided. The City’s Inclusionary Housing Ordinance is a designed plan to increase the number of affordable (moderate-or low-cost residential) leased units. However, the original ordinance could not include voluntary incentives such as tax credits, incentives or abatements as a basis for controlling rent. The amended statute would allow the ordinance to include such public assistance.

Except as set forth in Subsections (3) and (4) of the statute, the City cannot pass any ordinance or resolution that has the effect of controlling the amount of rent charged for leasing private residential property. That prohibition is still in effect. LPD notes the amendment provides that the provisions will take effect 90 days after it is enacted into law. It was signed by the Governor on December 28, 2018.

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

S U M M A R Y

AN ORDINANCE to amend Chapter 14 of the 1984 Detroit City Code, Community Development; by amending Article XII, Inclusionary Housing Requirements, Sections 14-12-2 Definitions; to provide for the term *Qualified Transaction* to include financial assistance provided by the City of Detroit in the form of tax credits, incentives or abatements for the development of residential housing units.

1 **BY COUNCIL MEMBER** _____ :

2 **AN ORDINANCE** to amend Chapter 14 of the 1984 Detroit City Code,
3 Community Development; by amending Article XII, Inclusionary Housing Requirements,
4 Sections 14-12-2 Definitions; to provide for the term *Qualified Transaction* to include means of
5 assistance provided by the City of Detroit in the form of tax credits, incentives or abatements for
6 the development of residential housing units.

7

8 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**

9 **THAT:**

10 **Section 1.** Chapter 14 of the 1984 Detroit City Code, *Community Development*,
11 Article XII, Inclusionary Housing Requirements, Section 14-12-2 *Definitions*; to read as follows:

12 **Sec. 14-12-2. Definitions.**

13 For purposes of this article, the following words and phrases shall have the meaning
14 respectively ascribed to them by this section:

15 *Affordable* means, as generally defined by the U.S. Department of Housing and Urban
16 Development, housing for which the occupants are paying no more than 30% of their income for
17 gross housing costs, including utilities.

18 *Area Median Income (AMI)* means the median family income for the Detroit-Warren-
19 Livonia Metropolitan Statistical Area, as published by the U.S. Bureau of Census and the U.S.
20 Department of Housing and Urban Development.

21 *Consumer Price Index or CP* means the United States Department of Labor Bureau of
22 Labor Statistics Consumer Price Index for all Urban Consumers for the Detroit metropolitan
23 area, or some other comparable index stated in the guidelines established by the department in

1 accordance with Section 14-12-9.

2 *Department* means the housing and revitalization department.

3 *Developer* means the legal or beneficial owner or the representative thereof, of a parcel of
4 land proposed for inclusion in a development, including the holder of an option or contract to
5 purchase. The developer performs the functions necessary to obtain land control and financing to
6 construct or rehabilitate a property and expects to assume the risks and rewards upon completion
7 of the project. For purposes of this article, developer does not include a governmental entity or a
8 commercial lending institution other than a commercial lending institution affiliated with the
9 developer.

10 *Development or develop* means the division of a parcel of land into two or more parcels:
11 the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of
12 any residential buildings: any use or change in use of any buildings or land: any extension of any
13 use of land or any clearing, grading, excavation or other movement of land, for which permission
14 may be required pursuant to the City of Detroit zoning ordinance.

15 *Dwelling* means a building or portion of it designed for or occupied in whole or in part as
16 the home, residence, or sleeping place of one or more individuals, either continuously,
17 permanently, temporarily, or transiently. Dwelling does not include a hotel, motel, bed and
18 breakfast, hostel, or 15 other lodging facilities.

19 *Dwelling unit* means a building or portion of it designed and used for residential
20 occupancy by a single household and that includes exclusive sleeping, cooking, eating and
21 sanitation facilities.

22 *Eligibility criteria* means, with respect to rental housing, at the time of the first rental or
23 any subsequent lease renewals or extensions, 20% of the dwelling units required to be affordable

1 to 20 households earning up to 80% of the AMI.

2 *Fund* means the Detroit Affordable Housing Development and Preservation Fund
3 established under Sec. 14-12-7.

4 *Qualifying transaction* means any of the following:

5 (1) Type 1 - The sale or transfer of City-owned real property at less than true cash value
6 which is intended to be developed for a residential housing project: or

7 (2) Type 2 - Direct monetary support from the City of at least \$500,000, adjusted
8 annually based on changes in the CPI, for a residential housing project; **and/or financial**

9 **assistance provided by the City in the form of a voluntary tax credit, incentive or**
10 **abatement for the development of residential housing units that will include affordable**
11 **housing units**: or

12 (3) Type 3 - Commitment of Community Development Block Grant funds of the U.S.
13 Department of Housing and Urban Development controlled by the City of at least \$500,000,
14 adjusted annually based on changes in the CPI, for a residential housing project: or

15 (4) Type 4 - Commitment of HOME Investment Partnership Program funds of the U.S.
16 Department of Housing and Urban Development controlled by the City of at least \$500,000,
17 adjusted annually based on changes in the CPI, for a residential housing project: or

18 (5) Type 5 - Commitment of funds of at least \$500,000, through an as yet unidentified
19 State of Michigan or Federal housing development program.

20 *Residential housing project* means one or more buildings that collectively contain at least
21 16 dwelling units offered for rent on one or more tax parcels or lots marketed as a single or
22 unified project or sharing common elements. This includes, but is not limited to, dwelling units
23 within a mixed use development or in a planned development district as set forth in the City of

1 Detroit zoning ordinance.

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3 **Section 2.** All ordinances or parts of ordinances in conflict with this ordinance are
4 repealed.

5 **Section 3.** This ordinance is declared necessary for the preservation of the public
6 peace, health, safety, and welfare of the people of the City of Detroit.

7 **Section 4.** If this ordinance is passed by a two-thirds (2/3) majority of City Council
8 members serving, it shall be given immediate effect and shall become effective upon
9 publication in accordance with Section 4-118 of the 2012 Detroit City Charter; if passed
10 by less than a two-thirds (2/3) majority of City Council members serving, it shall become
11 effective no later than thirty (30) days after publication in accordance with Section 4-118
12 of the 2012 Detroit City Charter; if this ordinance specifies a certain date to become
13 effective, it shall become effective in accordance with the date

14 Approved as to form:

15 _____
16 Lawrence T. Garcia
17 Corporation Counsel
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