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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division (LPD) Staff

DATE: July 22, 2019

RE: **City Council approval for plaza at intersection of Randolph,
Monroe and Gratiot**

At the Public Health and Safety standing committee meeting on Monday, July 22, 2019, line item number 74 concerned a construction contract for the conversion of a temporary plaza on the east side of Randolph Street downtown where it intersects with Gratiot and Monroe.

Legislative Policy Division (LPD) staff questioned whether or not Council's approval for the plaza itself had ever been obtained. The Director of the Department of Public Works stated verbally that since this plaza involves a state trunk road (presumably Gratiot), no City Council approval is required. Council may wish to request a formal opinion from the Law Department on this issue.

This report was explicitly requested within one (1) day. As such, LPD has not had the opportunity to thoroughly research the question presented of whether or not, where one of three roads at an intersection is under state jurisdiction, Council approval is required to create a permanent plaza that blocks at least one lane of one of the roads and encroaches into a preexisting intersection for vehicular traffic.

Section 50-2-20 of the City Code requires Council approval for temporary encroachment in a street: "The director of the environmental protection and maintenance department may issue a permit for temporary encroachment in a street, alley or public easement after receiving the approval of the city council. The city council shall only approve an encroachment after receiving a report from the environmental protection and maintenance department and the community and economic development department. The city council may attach conditions to their approval that

will protect the health, welfare and safety of the community. Any permit issued under this section shall be revocable at the will, whim and caprice of the city council.”

Section 55-1-9 (c) requires Council approval to “Close any street, highway, alley or other public property or **any portion of the same or restrict the use thereof when required by public safety and convenience**” for more than 30 days. (emphasis added) Sec. 55-1-8 states: “Nothing in this division shall be construed as authority to lessen or abridge the legislative or administrative powers of the City Council or the use of such powers by the Body in enacting or approving all measures as to how traffic shall be regulated in the City.”

LPD does not, on the face of the issue, perceive any persuasive reason why the presence of one or more major streets under State jurisdiction in the area should eliminate the requirement for Council approval for a permanent plaza abutting a City street. Administration representatives, to their credit, have stated that they consulted extensively with area businesses and other stakeholders regarding the design of the plaza in question. Obtaining Council’s approval would allow for an open public forum, recognize Council’s authority and facilitate discussion of such neighborhood amenities and how they affect mobility, environment, quality of life, traffic flow and other aspects of the local setting. Assuming that the State’s control over traffic flow requires State approval, City control over public health and safety, business licensing and related issues strongly supports the requirement of City Council approval for such permanent installations as well.

The Home Rule City Act, MCL 117.4h, provides that each City “may in its charter provide: (1) For the use, regulation, improvement and control of the surface of its streets, alleys and public ways, and of the space above and beneath them...” City Council’s Charter-mandated authority over these aspects of City governance should not be negated by the presence of major State roads in the same area.

LPD is unaware of any substantive controversies or objections to this particular plaza. The question raised in this instance is purely procedural, and relates to City Council’s Charter-mandated powers. As stated above, Council may wish to request guidance from the Law Department on this issue.

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.