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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: July 20, 2020

RE: **Request for LPD to Opine on Issues and Concerns Related to the Unlimited Tax General Obligation Bonds**

The Legislative Policy Division (LPD) has been requested to provide answers to questions presented by President Pro-Tem Mary Sheffield regarding the proposed Neighborhood Improvement Bond Plan put forth by the Administration. The following question and answers are presented.

Proposed Expenditures

- 1.) The Administration is proposing to use proceeds from the sale of UTGO Bonds to demolish and rehabilitate property not owned by the City. Is this a legally acceptable use of the proceeds? If so, should the City be recouping the costs of the associated with these activities?

Pursuant to MCL 117.4a (1) Each city in its charter may provide for the borrowing of money on the credit of the city and issuing bonds for the borrowing of money, for any purpose within the scope of the powers of the city. The City's retained bond Counsel has opined that the use of UTGO Bonds is a legally acceptable manner for the City to address blight and dangerous buildings in neighborhood improvement. LPD does not dispute this legal opinion. Where possible, it would be in the interest of the City to recoup cost associated with activities undertaken, however, the properties involved are possessed by the Detroit Land Bank Authority (DLBA). The DLBA received a large inventory of the dilapidated properties from the City of Detroit in an effort to increase the ability to demolish, repurpose and clear title. The DLBA is heavily subsidized by the City of

Detroit which makes recouping the cost to demolish or secure the properties unfeasible. The hope is that the proceeds from the ultimate sale of these properties could possibly reduce the City's annual subsidy to the DLBA. The Executive Director of the DLBA cautions on the reliance of the sale of these properties having any significant impact on the DLBA's financial needs.

- 2.) The Law Department, with respect to using general funds for "Right to Counsel" expenditures, cited "Lending of Credit" legal issues preventing such use. Are proceeds from UTGO Bonds considered general funds? If so, does the City face the same "Lending of Credit" legal issues by using funds for property not in its possession?

The UTGO bonds being utilize for the purpose of the Neighborhood Improvement Bond Plan are not considered "general fund" dollars. While they are government proceeds, unlike general fund dollars which can be used for all legal government purposes, UTGO bond dollars can only be used for the purpose they were approved as stated in the bond resolution. The Neighborhood Improvement Bond dollars are to be used to demolish and secure properties that are in the possession of the DLBA a public entity enabled by the City and the State of Michigan. Use of those funds for the lawful purpose of removing and securing dangerous buildings owned by an affiliated public entity would not fall under the category of lending of credit.

- 3.) The City has over-assessed property since 2014 resulting in foreclosures and ultimately blight. Can proceeds from the proposed UTGO Bonds be used to compensate individuals who lost their homes during this period? If so, what forms of compensation would be permissible such as direct monetary, tax abatements, property purchase preferences, or other methods?

The City unfortunately over assessed the owners of residential property over a number of years which impacted many of the foreclosures that occurred in Detroit and the resulting blight. Michigan tax laws does accord taxpayers the right to timely challenge any overassessment of property taxes and provides for reimbursement procedures. However, the proceeds from the proposed UTGO bonds cannot be used to compensate individuals who lost their homes during that period. The proposed UTGO bonds can only be used for the purpose they were approved as stated in the bond resolution which is intended for property rehabilitation, demolition and other blight remediation activities (the "Project").

Timing

- 4.) As a result of the Covid-19 pandemic, the City has an extensive projected Budget shortfall. Consequently, should the City be saving its bonding capacity for more emergency purposes that could arise given the fact the pandemic is far from over?

The Covid-19 pandemic has caused considerable financial hardship upon the City resulting in an extensive projected budget shortfall. In addressing this shortfall the City has engaged in several cost saving activities including but not limited to the use of the surplus funds that were designated for blight remediation. Whether the City should defer using its bonding capacity to address what may be more emergent societal issues is a policy determination based upon priorities set by Mayor and City Council, hopefully after thoughtful assessment and full consultation with the public.

- 5.) As a result of Covid-19, unemployment, evictions and small business closures are expected to be very high. Is this a bad time to forego an opportunity to provide relief to those affected through reduced property taxes?

The Covid-19 pandemic has caused and will likely continue to cause high unemployment, evictions and small business closures. The possibility of the unemployment, evictions and closures could potentially exacerbate the blight and vacant residential conditions that currently exist. Whether the City should defer using its bonding capacity to address the current blight and dangerous housing conditions and focus on methods to provide relief to those unemployed, evicted or small business that have closed is a policy determination based upon the priorities set by the Mayor and City Council.

- 6.) The City of Detroit has received several credit rating upgrades over the last few years but there is still room for improvement. Would it be beneficial for the City to wait to issue these bonds when it is in an even better position with respect to its credit rating? Also, due to the uncertainty in financial markets related to the pandemic, is it possible that more favorable conditions to issue bonds may exist in the future?

The City of Detroit's credit rating has improved over the last few years but still suffers from the fact of its bankruptcy and continues to be considered below investment grade, primarily due to weakness in its economic base relative to peers¹. At the same time there are many things occurring that has impacted the City's finances of which there is still uncertainty. While there is a possibility that the City's credit rating could improve, there is also the possibility that circumstances could cause it to deteriorate over time. According to the CFO, the Federal Reserve currently has interest rates at a very low level making it a positive time for the sale of municipal bonds. Waiting for the City's credit rating to improve may result in interest rates being higher creating a less positive atmosphere for selling municipal bonds. In essence, no particular time is good or bad when there are many things that need to be addressed and limited resources to address them.

Potential Pitfalls

- 7.) The average tax rate in Michigan is 41.98 mills and Detroit stands at more than twice that rate at 87.62. What would be the City of Detroit tax rate if this Bond proposal is not approved and after current debt is paid off?

If the Bond proposal is not approved, the City of Detroit's property tax rate would drop from 87.62 mills to 84.62 mills (for non-homestead, or commercial and industrial property); and would drop from 69.62 mills to 66.62 mills (for homestead, or residential property).

- 8.) One of the major reasons individuals and families choose not to buy homes or reside in Detroit is the enormous tax rate. Can you expound upon the need to reduce the tax rate to stave off population decline and to incentivize home ownership?

¹ Source: 2019 Comprehensive Annual Financial Report (CAFR), page 16.

It is always good to reduce taxes when the City of Detroit is able to do so. However, the City of Detroit currently needs every revenue source possible to maintain essential City services for its citizens, especially in the wake of the COVID-19 pandemic, which has unfortunately caused a reduction in City revenue sources. Ideally, the City of Detroit needs a new revenue source that is not a local tax revenue to grow revenue in the City, such as an entertainment surcharge; but the City currently does not have the authority to impose such a surcharge.

Meanwhile, the City of Detroit does offer some tax incentives for home owners: the Neighborhood Enterprise Zone (NEZ) New and Rehabilitated program, which applies to new homes that are owner occupied and to substantial rehabilitation of existing residential properties. In addition, the NEZ Homestead program provides limited tax relief to homeowners who purchased their home in a designated zone after 1994 and who have made improvements worth at least \$500.²

In addition, under the City's Homeowners Property Tax Assistance Program, homeowners may be granted a full (100%) or partial (50%) or partial (25%) exemption from their property taxes if they meet certain income guidelines.

- 9.) Given the housing crisis, poverty and extremely low median income in Detroit, could the proposed uses of the Administration UTGO Bond plan potentially cause the gentrification of certain communities depending on where the resources are expended?

The Administration's UTGO Bond plan to demolish and rehabilitate homes throughout the City could cause property values to increase, which could create a certain level of gentrification if associated property taxes become unaffordable for some residents. Also, a certain level of gentrification could occur for some residents who are unable to find financing for the rehabilitation of homes beyond the City's initial investment to provide limited rehabilitation of certain homes under the UTGO Bond plan in the form of cleaning out interior trash and debris, securing of properties with metal or Clearview materials and repairing roofing from water leakage.

Tax Increase vs No change in taxing level

- 10.) The Administration's messaging around taxation has been that there will be no tax increase or that taxes will remain at current levels. Given that Detroiters could realize a reduction in property taxes, for full disclosure should this be classified as tax increase and should bond language reflect the possibility of lower taxes for property owners?

As indicated in the response to question 7 above, Detroiters would realize a reduction in property taxes if the Neighborhood Improvement Bonds are not sold. As a result, property taxes will increase if the bonds are sold. However, the property taxes would go back up to current levels. To illustrate, currently the property tax debt millage to pay off the City's outstanding UTGO bonds is 9 mills. If the bonds are not sold, the property tax debt millage drops to 6 mills due to current bonds being paid off. If the bonds are sold,

² Source: "Detroit and the Property Tax: Strategies to Improve Equity and Enhance Revenue", Public Focus Report, Lincoln Institute of Land Policy, authored by Gary Sands and Mark Skidmore, 2015, pages 27-28.

the property tax debt millage increases to 9 mills, which is the current property tax debt millage rate.

Typically, the bond language reflects the potential increase in property taxes over state statutory and City Charter limits as a result of the issuance of additional bonds due to the bond authorization approved by the voters. Of course, if voters do not approve the bond authorization, property taxes will not increase by the amount reflected in the bond language.

Lack of Guarantees for Hiring Detroiters

- 11.) Given the fact that Executive Order 2016-1 can be unilaterally changed by the Mayor and does not include demolition in the definition of construction as well as the option, does the E.O. provide a requirement for Detroiters to perform 51% of the work associated with demolitions under the Bond proposal?

The Executive Order 2016-1 (EO 2016-1) was issued by the Mayor and can be unilaterally changed by the Mayor. It does not include the definition of construction and has not been used with regard to demolition projects in the past. The proposed Plan allows for contractors to choose to follow the Executive Order or follow the FCA model for interviewing and hiring applicants. Neither the Executive Order if followed as written or the FCA model provides a requirement for Detroiters to perform 51% of the work associated with demolitions under the Bond proposal. It is LPD's opinion that in order to have the requirement for Detroiters to perform 51% of the work, the language requiring 51% must be specifically stated in the contracts. If the contract language states that contractors are required to have 51% of all work performed be done by Detroiters, then it is actually required. If the contract language says the contractor will follow the EO 2016-1 the contractor will be able to avail themselves of the exceptions set forth therein. The EO 2016-1 requires 51% of the work to be done by Detroiters, however there are exceptions to that requirement. The FCA model requires the interview of applicants but it does not mandate the person be hired.

- 12.) The threshold under E.O. 2016-1 is \$3,000,000. After analyzing the average cost of demolitions and the number of homes to be included in each bundle under the Bond proposal, will the E.O. be applicable to the demolitions or rehabilitation efforts under this plan?

The threshold for E.O 2016-1 is \$3 million. The Bond plan calls for the creation of smaller bundles to allow smaller contractors the ability to participate. However, just as E.O 2016-1 does not generally apply to demolitions but can be applied by contract, the \$3 million threshold and the demolition application can be modified. If the contract specifically states that E.O. 2016-1 is applicable despite the monetary threshold and is applicable to demolition contracts it will be.

- 13.) Based on the proposed Neighborhood Investment Plan, contractors could opt to use FCA model as a hiring plan. Does this model provide any guarantees for the hiring of Detroiters and achieving the 51% goal? What happens if the contractor doesn't have any additional staffing needs? What has been the result of FCA attempts to recruit and hire Detroiters?

The Neighborhood Investment Plan indicates that contractors could use the FCA model as a hiring plan. According to the materials LPD received, the contractor could opt to do the following:

Follow the FCA agreement provisions to interview Detroit candidates screened for the job qualifications by Detroit at Work before interviewing non-Detroiters.

The language provided indicates the contractor is required to interview the Detroit candidates screened by Detroit at Work prior to interviewing non-Detroiters. This language does not provide any requirement that the person be hired, only that they be interviewed. While the contractor may find and hire a Detroit resident that has been interviewed, there is no requirement to do so.

If the contractor does not need any additional staffing needs, it would depend upon what the contract language provides as to what takes place. If the contract requires there be 51% Detroiters doing the work, failure to meet this provision is a breach of contract. If the contract is silent or allows a waiver of the provision if the contractor doesn't have 51% Detroiters and is not in need of additional employees, then the threshold will not be met. If the contractor doesn't have 51% Detroiters and is in need of employees and hires enough to meet the 51% threshold the contractor will be in compliance.

With regard to the FCA attempts to recruit and hire Detroiters, LPD does not have that information and would ask that City Council inquire of the Administration and Detroit at Work.

- 14.) In meetings regarding the proposed 51% Local Hiring Ordinance I am sponsoring, the Civil Rights and Inclusion Office (CRIO) has suggested they lack the capacity to certify and monitor hiring requirements for demolition activity. Are you confident in the City's ability to monitor hiring requirements under the Bond proposal? Should language be added to include the cost for additional staff needed in CRIO?

The Administration has indicated that CRIO will need additional staff to monitor hiring requirements for demolition activity under the Bond proposal. The Administration also indicated it is committed to adequately funding CRIO in the Mayor's proposed budget to perform this work. LPD assumes the Administration is speaking to the Mayor's proposed FY 2022 budget submitted to Council in March 2021. Meanwhile, Council should be open to a budget amendment to fund more staff in CRIO if additional funding is identified in the current fiscal year 2021 to do so based on the expansion of the demolition program as a result of the passage of the Neighborhood Improvement bonds by Council and the voters.

Council should consider adding language to the Closing ("Supplemental") Resolution indicating the Administration's commitment to identify funds for additional CRIO staff as a result of an expanded demolition program as a result of the sale of the Neighborhood Improvement Bonds.

- 15.) The Bond proposal contemplates utilizing Community Development Organizations (CDO's) to rehabilitate homes. Will Executive Order 2016-1 and the FCA model apply to the construction activity for the rehabilitation of homes by CDO's?

The Bond proposal plan indicates the utilization of CDO's to acquire the homes from the DLBA and rehabilitate them. If the acquisition of the homes will be transacted between the DLBA and the specific CDO, the City of Detroit will not be a party to that transaction and the E.O 2016-1 is not applicable. However, if the City and the DLBA agree to have as part of its purchase contract with the CDO language that require the relevant portions of the E.O. 2016-1 be complied with, it would be applicable. This can also be done with any provisions of the FCA hiring model.

Disposition of Property

- 16.) The disposition of property under the Detroit Land Bank Authority has been a major point of contention for a number of residents especially in areas with planning studies and activities. What assurances do residents have that their additional tax investment won't be used to further prevent their access to purchasing property?

The Neighborhood Improvement Plan states it intends to clean out, to prevent the roof from leaking and secure the property from trespass of 8,000 properties. The Plan indicates that many of the properties intends to be sold to CDO's for rehabilitation for sale or rental. In addition the Plan indicates the City intends to leverage the DLBA Vacant Land Disposition Policies to promote the sale and stewardship of vacant land to local residents at affordable rates. According to the Administration, DLBA is forming a team dedicated to supporting and promoting resident access to land. The Administration indicates BNP, DLBA and HRD will execute a Rehab Academy to prepare Detroiters, through a series of 8 classes, for how to scope necessary repairs; bid and contract out the work and manage; plan for and complete the renovation process; and access resources and DIY tutorials if or when DIY is an option. LPD notes that there are no assurances these planned activities will materialize, it is intended to include regular Detroiters in acquiring the properties. City Council may wish to inquire of the Administration as to what assurances are being provided that Council and the public can rely on prior to their vote.

- 17.) For transparency and full disclosure purposes, should details of the disposition plan accompany the Bond proposal?

Transparency and full disclosure is generally good public policy. Because the more knowledgeable the general public is on the use of the Bond proceeds will help inform their vote, it would be in their best interest to be fully advised on all plans applicable. In such case, the details of the disposition plan should accompany the Bond proposal. City Council may wish to inquire if there are any further detailed plans.

Please let us know if we can be of any more assistance.