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TO: Council Member Raquel Castañeda-López

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: August 5, 2020

RE: **Proposed changes to Section 17-5-91(f)**

The Legislative Policy Division (LPD) is in receipt of your request for a change to the Detroit City Code Section 17-5-91(f) that would prohibit a contractor from providing services where no authorized contract is in place or has expired. The current language under Subsection (f) provides:

Each contract, or amendment, renewal or extension awarded by the City which requires City Council approval under Subsections (a) or (b) of this section, or under Section 4-122 of the Charter, shall contain a provision, which states that no payment shall be authorized or made pursuant to the contract, amendment, renewal, or extension until and unless the contract, amendment, renewal, or extension is so approved.

As indicated under Section 17-5-91(a) and (b), except as otherwise provided, contracts of more than \$25,000 require City Council approval. Subsection (f) requires that any contract, amendment, renewal or extension under Subsection (a) and (b) must contain a provision that provides that no payment shall be authorized until or unless the agreement has been approved by City Council. Once a contract terminates at the expiration date specified in the contract, there is no contract authorizing the performance of services. Therefore, implicitly no services are to be received and “no payment shall be authorized or made... unless the contract, amendment, renewal or extension is so approved.” Payment for services subject to this Subsection are only to be made when City Council approves the contractual obligation requesting those services.

The proposed language amending Subsection (f) is highlighted below:

Each contract, or amendment, renewal or extension awarded by the City which requires City Council approval under Subsections (a) or (b) of this section, or under Section 4-122 of the Charter, shall contain a provision, which states that no payment shall be authorized or made pursuant to the contract, amendment, renewal, or extension until and unless the contract, amendment, renewal, or extension is so approved, **and no services shall be provided by any contractor after the expiration date specified in the contract without approval by resolution of the City Council.**

LPD understands the concern to which you seek to address and will draft the amendment if desired. LPD notes that on numerous occasions the City Council has been asked to approve a contract, amendment, renewal or extension for services that have already begun. The proposed amended language is designed to create a hard prohibition against services being provided where a contract has expired without first obtaining City Council approval. As previously indicated, the current language provides that any services provided without a contract approved by City Council are not entitled to payment for those services until properly approved.

Even an expressed hard prohibition against services being provided where a contract has expired without City Council approval, may be problematic or have unintended consequences. LPD notes that there are times when the contract for services expires prior to the City being able to secure an extension or amendment and requires continuation to prevent a disruption of needed service. This has even been the case in the past with regard to City Council staff that were on personal service contracts. When this occurs, the City may need to pay for services rendered prior to the contract being authorized by City Council. The current language provides for the City to have the flexibility and the City Council to be the check and balance of when that payment is appropriate.

The requirement for payment of services rendered often hinges upon the legal obligation of the parties. If the contractor performs services for the City under a City Council approved contract in compliance with the contract terms, payment is required by contractual law. If the contractor performs services without the City's acquiescence (neither Executive Body or Legislative Body approval), the contractor is not entitled to payment as a matter of law. However, a contractor without a binding contract, performing services on behalf of the City based upon representations made by the City (Executive Body or Legislative Body), and having relied on that representation in providing services, may be entitled to payment under a principal of equity.

If a contractor whose contract has expired is relying on representations of the City to continue to provide services, the proposed language prohibiting services may be of no avail. If City Council must automatically deny the payment of services already performed where representations were made and relied upon, the result would likely lead to lawsuits and the cost thereof.

If there was no reliance on City representations, the current provision provides City Council may vote not to approve the presented agreement when the unauthorized services rendered are deemed inappropriate. The Administration would then have to provide a contract for future services to be rendered and not for payment of services retroactively. In any event, the Administration would have to determine whether it is absolutely necessary to continue services without an approved contract to prevent a critical disruption of City services as opposed to

inconvenience. If City Council is able to hold the line regarding no payment for unapproved services, the Administration may then present fewer retroactive contracts.

Again, LPD understands the concerns the draft proposal seeks to address. The request is a matter of policy to be determined by you and your colleagues, LPD is ready and able to provide the draft requested amendment. This report is submitted to provide an analysis for your consideration.

Please let us know if you would like us to proceed with the request.