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TO: The Honorable Detroit City Council

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

DATE: April 12, 2021

RE: **The Right to Recall for Hospitality Workers Laid Off Because of the Covid Pandemic**

Council Member Ayers requested that the Legislative Policy Division (LPD) analyze the “Right to Recall” ordinances recently passed in Minneapolis, Baltimore, and Philadelphia, for the benefit of restaurant, hotel, and other entertainment and travel-related industries’ employees laid off during the Covid-19 pandemic in 2020. LPD is tasked with opining whether or not such an ordinance is legal in Michigan and, if so, drafting one. If such an ordinance would not be legal in Michigan, LPD is directed to draft a resolution calling on state and/or federal authorities to adopt this important reform.

Background

The Right to Recall seeks to address extremely high unemployment rates in leisure and hospitality sectors of the economy that were restricted, and in many individual cases shut down entirely, by the pandemic. The essential policy these ordinances seek to implement would require that certain laid-off employees in specified hospitality and travel-related industries are offered positions by their employers as those positions become available, under specified conditions involving their previous employer/employee history, and relating to future economic reopening opportunities hopefully to be realized with reduction in Covid-19 infection rates. As such, this seems to be potentially urgent at this time, both because of the large number of severely affected workers and the current volatility in the economy related to pandemic recovery and reopening.

Michigan has Pre-empted Local Regulation of Terms and Conditions of Employment

As Council Members may recall from previous discussions of community benefits and other pre-emption of local authority enacted by the Michigan state legislature via HB 4052, the “Local Government Labor Regulatory Limitation Act”, prohibits local governments in Michigan from passing any ordinances, local policies, or local resolutions requiring an employer to provide an employee with any specific fringe benefit or any other benefit for which the employer would incur an expense, including but not limited to those specifically enumerated in the statute, or regulating or creating any administrative or judicial remedies for wage, hour, or benefit disputes.

Whether or not a local ordinance enacting the proposed Right to Recall was specifically intended to be prohibited by this state law, the statutory language seems broad enough that the right to recall probably would be covered by its plenary pre-emptive prohibition against local government action in labor relations matters. There are numerous other potential legal issues that could arise from the “Right to Recall”, depending on the specific terms of actual legislation and multiple state and federal legal rules, and Council may wish to request the Law Department’s official opinion on this issue, per the Charter. Since the issue is somewhat complex, and arguably very urgent, but pre-empted by state law, LPD is immediately providing the attached supportive resolution as requested.

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

**RESOLUTION SUPPORTING THE RIGHT TO RECALL
OF HOSPITALITY WORKERS LAID OFF BECAUSE OF THE COVID PANDEMIC**

Whereas, The Covid-19 pandemic of 2020-21 has wreaked economic havoc in our communities, nowhere more damaging than in commercially related hospitality, entertainment, travel, restaurant, casino and other workplaces serving commerce in public gathering places; and

Whereas, In Detroit, leisure and hospitality employment has been down more than forty percent as a result of this public health emergency closing public venues that are places of employment for workers who have been personally and economically devastated by the Covid crisis; and

Whereas, Even in Spring 2021, with widespread and increasing vaccination, Covid infection rates have been increasing rapidly in Detroit, continuing to put powerful downward pressure on economic opportunities in the hospitality sectors and even further extending harsh economic pressure on these vulnerable workers who have not been able to live and work normally for over a year; and

Whereas, As Michigan state law preempts local governments from legislating terms and conditions of private employment in our communities, Detroit City Council directs this resolution to legislators and other public officials at the state and federal levels who have the power to require that these workers are treated fairly as we emerge from the Covid shutdown in the near future, and these workers should be given preference for hiring; and

Whereas, Detroit City Council strongly supports passage of appropriate legislation for the “Right to Recall”, modeled generally on ordinances recently passed or proposed in Los Angeles, Minneapolis, Baltimore, San Francisco, Oakland, Philadelphia and other communities for the benefit of restaurant, hotel, and other entertainment and travel-related industries’ employees laid off during the Covid-19 pandemic in 2020-21; and

Whereas, Detroit City Council strongly believes that this policy of legal protection for recall rights of hard-hit hospitality sector workers is extremely urgent at this time, due to the duration of this economic emergency and the large numbers of long-term unemployed workers and families being harmed; and

NOW THEREFORE LET IT BE RESOLVED THAT Detroit City Council urgently requests that the Michigan State Legislature and/or Congress pass emergency Right to Recall legislation with appropriate scope for the benefit of laid off hospitality workers during the Covid pandemic, requiring that their employers to make reasonable reemployment offers to them; and

LET IT BE FURTHER RESOLVED THAT Detroit City Council urgently requests Michigan Governor Gretchen Whitmer, United States President Joseph R. Biden, Michigan Attorney General Dana Nessel, United States Attorney General Merrick Garland, and other public officials to take urgent actions to support such Right to Recall relief, including but not limited to executive orders requiring such relief where permissible by law; and

LET IT BE FINALLY RESOLVED THAT Copies of this resolution shall be provided to Michigan Governor Gretchen Whitmer, United States President Joseph R. Biden, Michigan Attorney General Dana Nessel, United States Attorney General Merrick Garland, members of the Detroit delegation in the Michigan State Legislature, and members of the Michigan delegation in Congress.