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TO: The Detroit City Council
FROM: David Whitaker, Director 
Legislative Policy Division

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RE: Resolution to Require Affordable Housing Developers to Provide Quarterly Progress Reports when Projects use ARPA/CARES Act Funding

The Legislative Policy Division (LPD) has received a request from Council Member Mary Waters to provide a resolution regarding affordable housing developers and projects that receive American Rescue Plan Act (ARPA) and/or Coronavirus Aid, Relief and Economic Security Act (CARES).

The requested resolution seeks to require affordable housing developers and the related projects that receive ARPA and/or CARES funds to provide to City Council written commitments and performance metrics.¹ In addition, after the completion of the affordable housing project, Council are to receive quarterly (every three months) updates on how the developer is meeting these goals. City Council will be expressly prohibited from considering any proposal for funding that does not meet the aforementioned reporting requirements. Finally, if the development project is funded, and the developer fails to meet any or all of their compliance goals, the City of Detroit will be empowered to claw-back any funding that was allocated for the project from public dollars.

¹ The written performance metrics the developer is to submit must include the following: the developer shall provide the proposed affordable housing rates for each unit; The developer shall provide plans that show how the affordable-rate housing units will be leased with Detroiters in need of affordable housing (including Residents with past evictions and residents who currently live in the areas adjacent to the development); and the developer shall provide details of what accommodations will be made for handicapped residents, and how many units will be handicap-accessible.

LPD recognizes the aim of the requested resolution, however, while this honorable body speaks through its resolutions, those resolutions are not the mechanism used to create policy. In order for City Council to receive written commitments from developers the requirements would have to be presented to the developers. One method to achieve this would be as part of a contractual agreement between the City of Detroit and the developer receiving the ARPA and/or CARES funds. The contract would have to expressly contain the reporting requirements which would be submitted to the Administration, who would in turn report the information to City Council. Failure of the Developer to comply with the requirements or meet the commitments expressed therein would be a material breach under the contract with a remedy being the ability of the City to claw back any funding received.

The use of a **resolution** to direct the Administration to undertake this action would be prohibited pursuant to the City Charter, Article IV, Legislative Branch, Chapter 1, City Council, Section 4-113 Prohibition on Interference in Administration which provides.

Except for the purposes of inquiries and investigations, the City Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the Mayor solely through the Mayor, and neither City Council or its members shall give orders to such officer or employee, either publicly or privately.

The requested language of the resolution would effectively direct (order) the administration to carry out the required language to bring about the desired outcome in violation Section 4-113. The resolution could be posed as City Council urging the Administration to undertake the actions which would express City Council's desire but not have any force of implementation. City Council would have the ability to disapprove any development projects receiving ARPA and/or CARES funding that does not meet the resolutions request, but it would not be required of City Council to deny.

Under Article IV, Section 4-114 which provides in pertinent part:

In accordance with state law, an ordinance shall be enacted to provide a permanent rule for the conduct of government...

City Council has the authority under Section 4-114 to establish an ordinance to provide for the permanent rule for the conduct of government which can direct the Administration to undertake the requirements desired. While a resolution was the requested method to address the desires of Council Member Waters, LPD has drafted a possible ordinance amendment under the City Code, Article III, Inclusionary Housing Ordinance Requirements which is an attachment to this report.

LPD will provide the requested resolution if that continues to be the desired method after the forgoing report has been considered.