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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: April 13, 2023

RE: **REPORT ON CITY COUNCIL'S OBLIGATION TO PUBLISH NOTICES IN PUBLIC CIRCULATION NEWSPAPERS**

The Legislative Policy Division (LPD) drafted the following report to explain the legal requirements for City Council to publish certain notices in a local daily newspaper of general publication.

Both the Detroit City Charter and the Home Rule City Act provide that, in certain circumstances, City Council is required to publish notices in a newspaper of general circulation in the city. Aside from one narrow exception in the HRCA, there is no requirement to publish a notice in more than one newspaper. The Open Meetings Act is virtually silent with regard to the publication of notices in newspapers.

The City Clerk's Office currently publishes all bids, classified advertisements, and statutorily required notices in the Detroit Legal News. The amount paid to the Detroit Legal News under the current contract is \$3,084,821.50 from December 31, 2018 through December 30, 2023. On average, the annual cost to the City is roughly \$617,000.

According to the Pew Research Center, print circulation of daily newspapers has precipitously declined since the early 2000's. Daily circulation of the Detroit Free Press has gone from 148,904 in 2018 to 83,733 in 2021. Increasingly, people are choosing to get their news from online sources such as social media or by visiting a newspaper's website. Following this trend, the City Clerk's Office publishes legally required notices online via the City's website.

The City already spends a significant amount of money to publish notices in the Detroit Legal News. If the City were to publish notices in another paper such as the Detroit Free Press, the cost to taxpayers would be considerably higher, and because the readership of print newspapers is declining, there is a diminishing return on such an investment as time goes on.

The Detroit Legal News is also a member of the Michigan Press Association, which provides the public with an online search tool to access public notices across the entire state of Michigan.

The Publication of Notices in Newspapers Act (PRWA) provides the standard definition of “newspaper” for Michigan statutes unless the statute specifically provides an alternative definition. The Detroit Legal News appears to meet all of the statutory requirements under the PRWA.

The Detroit City Charter requires the publication of notices in “a daily newspaper of general circulation in the City” under certain circumstances. Below is a non-exhaustive survey of publishing requirements from the Detroit City Charter:

- Notice of hearing and charging resolution must be published at least 14 days in advance of a public hearing regarding forfeiture of office held by an elected officer, Sec. 2-107(B)(3)
- Upon the filing of any ordinance, the City Clerk shall publish a summary of the proposed ordinance, and a public hearing cannot be held earlier than 5 days after the publication, Sec. 4-115(2)
- As soon as practicable after the enactment of any ordinance, the City Clerk shall have the law published along with a notice of enactment, Sec. 4-118
- The City Council shall publish a general summary of the capital agenda and a notice stating the location of copies of the proposed capital agenda and the time and place of a public hearing not less than 2 weeks after publication, Sec. 8-202
- City departments shall publish a general summary of programs, services and activities funded in the current fiscal year not less than 10 days prior to their annual budget meeting, Sec. 8-203
- Where the approval of voters is needed to approve a City Council ordinance regarding an irrevocable franchise, City Council shall publish the ordinance not less than 30 days before the election at which it is submitted to voters, Sec. 9-303

None of the publishing requirements found in the Detroit City Charter require publication in more than one daily newspaper of general circulation in the City.

The Home Rule City Act also provides for the publication of notices in a newspaper of general circulation in a city under certain circumstances:

- If a city wishes to amend its charter to allow it to exercise its powers regarding rapid transit systems, the legislative body must submit the amendment to a vote and published in a newspaper at least once a week for 3 weeks in succession in the 30-day period immediately preceding the date of the election. A plan for the construction and operation of any rapid

transit system must be published once a week for 6 weeks in succession in the 60-day period immediately preceding the date of the election, MCL 117.4g

- To issue bonds except for refunding bonds, revenue bonds, motor vehicle highway fund bonds, rehabilitation bonds, judgment bonds, bonds under the revised municipal finance act, bonds approved by voters, and bonds issued to comply with a court order require a city to publish a notice of issuance at least 45 days before the issuance of the bonds, MCL 117.5
- After the passage of a resolution regarding the incorporation, consolidation, or change of boundaries, each local government affected must give notice of the date and purpose of the election in one or more newspapers in each district at least once per week for 4 weeks preceding the election and by posting a like notice in at least 10 public places not less than 10 days prior to the election, MCL 117.10

The HRCA also does not require publication in more than one newspaper, except where there is an election that will affect the incorporation, consolidation, or change of boundaries for multiple local governments.

The Publication of Notices in Newspapers Act, MCL 691.1051 provides the definition of “newspaper” referred to in any statute unless the statute expressly provides otherwise. The Detroit Legal News appears to adhere to all the statutory requirements:

Sec. 1.

- (1) As used in any statute of this state in relation to the publication of a notice of any kind, unless the statute expressly provides otherwise, "newspaper" means a print publication published in the English language for the dissemination of local news of a general character or for the dissemination of legal news to which all of the following apply:
 - (a) There is a bona fide list of paying subscribers to the publication or the publication has been published at not less than weekly intervals in the same community without interruption for at least 2 years.
 - (b) The publication has been published and of general circulation at not less than weekly intervals without interruption for at least 1 year in the required area. A newspaper shall not lose eligibility for interruption of continuous publication due to any of the following:
 - (i) An act of God.
 - (ii) Labor disputes.
 - (iii) The COVID-19 pandemic, for the period beginning March 10, 2020 through the end of the COVID-19 pandemic.

- (iv) Military service of the publisher for a period not to exceed 2 years and provided publication is resumed within 6 months following the termination of such military service.

(c) The publication annually averages at least 25% news and editorial content per issue.

(2) A person that operates a newspaper in which a notice is published under this section shall do both of the following, at no additional cost beyond what the person charges for the print publication:

(a) Within 72 hours of receipt of a request to publish a notice, provide access to the notice on the website of the newspaper. The website must satisfy all of the following requirements:

- (i) The website homepage must have a link that takes a viewer to an area of the website where notices published under this section are available for viewing. This area of the website cannot be placed behind any sort of pay wall and the public must be able to read the notices at no charge.
- (ii) Notices published under this section must remain on the website during the full required publication period.
- (iii) Notices published under this section must remain searchable on the website as a permanent record of the publication.

(b) Place the notice on a website that is established and maintained by a state association of newspapers that represents a majority of newspapers in this state as a comprehensive central repository for notices published under this section throughout this state. The website must do all of the following:

- (i) Provide for searching for a notice published under this section by criteria contained in the notice.
- (ii) Maintain all notices published under this section on a permanent basis.
- (iii) Provide access through standard computer browsers and mobile platforms, such as smartphones and tablets.
- (iv) Provide a method to alert the public of notices published under this section by text message or email notification, or both.

(3) An error or omission in the posting of a notice on the internet under subsection (2) does not invalidate the notice published in the print version of the newspaper.

(4) If there is no publication that meets the definition in subsection (1) in the required area, "newspaper" means a publication in an adjoining county, township, city, village, district, or other geographic territory, as applicable, that meets the definition in subsection (1).

(5) A person that operates a newspaper that publishes a notice shall maintain a permanent and complete printed copy of each published edition that contains the notice for archival and verification purposes in the required area.

(6) A publication that meets the definition under subsection (1) but that is controlled by the person on whose behalf the notice is published or by an officer, employee, agent, or affiliate of the person is not qualified to serve as a newspaper for publication of the notice.

In Conclusion, publication of legally required notices in the Detroit Legal News satisfies the legal requirements of publishing notices. The City could choose to publish in an additional local paper or papers, however there is no legal requirement to do so, and it would be a substantial cost to the City.

Please contact us if we can be of any further assistance.