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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: July 28, 2023

RE: **Opinion on 3143 Cass Avenue Historic Designation**

The Legislative Policy Division (LPD) has been requested to provide a legal opinion regarding the effect of Detroit City Council’s resolution requesting the demolition of the property at 3143 Cass avenue be delayed until City Council returns from recess in September 2023.

The Detroit City Council under its authority granted pursuant to the Detroit City Charter. Article 4, Section 4-114 provides in pertinent part:

Sec. 4-114. - Ordinances and Resolutions in General.

In accordance with state law, an ordinance shall be enacted to provide a permanent rule for the conduct of government, while a resolution shall be adopted to express a determination, to direct a particular action, or to approve a singular event.

On July 25, 2023, at the Detroit City Council Formal Session, a resolution submitted by Council Member Gabriela Santiago-Romero requesting the demolition of the property at 3143 Cass avenue be delayed until

City Council returns from recess in September 2023 was approved by the body. Within the resolution was language stating the following:

WHEREAS, The City Council finds that there are reasonable grounds for such a request; and

WHEREAS, The Historic District Ordinance (Chapter 21-2, Detroit City Code) requires the City Council to adopt a resolution directing the Historic Designation Advisory Board to prepare a report on the proposed historic district and outlining its historic and architectural value.

The City Council approved the resolution in compliance with Section 21-2-31 *Establishment of historic districts* which provides under subsection (a):

Upon the receipt of a request to City Council from any person residing, doing business, or owning property in the City to designate an area, a resource, or resources as an historic district, the City Council, after making a determination that there are reasonable grounds for such a request, may adopt a resolution directing that the Historic Designation Advisory Board make a study to determine whether the proposed district meets the criteria for designation under the provisions of this article.

The resolution approved accomplishes directing the Historic Designation Advisory Board (HDAB) to conduct a study as to whether the property meets the criteria to be designated historic. However, it does not accomplish the requirements set forth under subsection (c) which provides in pertinent part:

Upon receipt of substantial evidence demonstrating definite historical, architectural, archeological, engineering or cultural significance in a proposed historic district, **the City Council may adopt, at its discretion, a resolution of interim historic designation,** requiring that all permit applications for work within the proposed historic district be referred to the Historic District Commission as provided for in Division 2 of this article. **For a period of one year after adoption of such a resolution, the Historic District Commission shall review permit applications for work within such proposed historic districts with the same powers which would apply if the proposed historic district were a designated historic district, notwithstanding provisions to the contrary elsewhere in this article.** (Emphasis added)

The resolution approved by City Council does not trigger the one-year interim historic designation under which all permit applications for work must be submitted to HDAB and prevents the issuance of a demolition permit without HDAB review. In order for this to have occurred, City Council would have had to have received a study providing substantial evidence that demonstrates definite historical, architectural, archeological, engineering or cultural significance, and the resolution would indicate the designation of an interim historic designation. Additionally, this would have had to occur prior to the application of the demolition permit being submitted. It is LPD's understanding that the notification of demolition was issued on May 10, 2023, and the demolition permit was issued on July 1, 2023. The demolition permit was issued prior to City Council's request for HDAB to study the historic significance and/or an interim historic designation being granted.

Finally, the resolve of the approved resolution has the effect of urging that the demolition of the property at 3143 Cass Ave be delayed until September 2023. Pursuant to Section 4-113:

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 resolution does not have the effect of directing or ordering the administration to delay or prohibit the Building Safety, Engineering and Environmental Department (BSEED) from issuing a demolition permit. Also, since no interim historic designation has been determined the permitting of the demolition of the property is not required to be evaluated by HDAB as set forth in the ordinance. That being the case, it is LPD's opinion that the only way to legally delay the demolition would be by court order.

If we can be of further assistance, please call upon us.