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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: November 14, 2023

RE: **Detroit Land Bank Authority MOU-Questions**

The Legislative Policy Division (LPD) has been requested by Council President Pro-Tempore James Tate to provide an opinion regarding the legal and administrative consequences if the memorandum of understanding is not approved by City Council this calendar year.

LPD first notes as indicated in its prior report on August 31, 2023 (Memorandum of Understanding Relative to the Detroit Land Bank Authority), that the Second Amended and Restated Intergovernmental Agreement between the City of Detroit and the Michigan Land Bank Fast Track Authority (MLBFTA) (Intergovernmental Agreement) will automatically continue after December 19, 2023, due to neither party provided the requisite notice of their intent to terminate the Agreement. The Intergovernmental Agreement is the document that statutorily provides for the establishment of the Detroit Land Bank Authority (DLBA). Pursuant to the Intergovernmental Agreement, the DLBA will continue to operate as a land bank authority until one or both of the parties chooses to end the Agreement.

Separate and apart from the Intergovernmental Agreement is the Second Amended and Restated Memorandum of Understanding between the City of Detroit and the Detroit Land Bank Authority (MOU). The MOU as intended and drafted, is a binding legal agreement between the City and the DLBA. Pursuant to the terms of the MOU, it will expire on December 19, 2023.¹ A Third Amended and Restated Memorandum of Understanding (Third MOU) has been presented for City Council's consideration. However, if the Third MOU is not approved on or before December 19, 2023, the existing MOU will terminate.

¹ This is the same date the Intergovernmental Agreement was set to expire if either of the parties to that agreement had chosen to initiate the requisite notice to terminate.

Upon termination of the existing MOU, neither the City nor the DLBA will be legally obligated to perform the terms and conditions that are required of each party under the MOU. By way of example, the DLBA will not be required to do those things set forth under Section 4, *Detroit Land Bank Duties* which include but are not limited to the following:

- The Detroit Land Bank will provide a liaison for direct communications with Detroit City Council Members and their staff.
- Approval for Property Sales. The Detroit Land Bank shall seek the approval of the Mayor and City Council prior to the subsequent transfer of ten (10) or more of such parcels to the same transferee within any rolling 12-month period.

Additionally, the City will not be required to those things set forth under Section 5, *The Cities Duties*, which include but are not limited to the following:

- City Payments. For each respective City of Detroit fiscal year budget of this MOU, City Council will approve an annual budget allocation to the Detroit Land Bank to fund in-part its obligations under this MOU and to support other Detroit Land Bank operations.
- Providing City Services. In recognition of the City's buying power and economies of scale, the City shall provide the Detroit Land Bank use of the services of certain City departments in an effort to reduce the overall cost of public expenditures. Such use of services of certain City departments may include but is not limited to: (1) utilization of the City's experience and capacity to monitor demolition contracts; and (2) partnership with the City's General Services Department for maintenance of certain properties in the City.

LPD notes, that while neither party is not legally required to undertake any of the obligations set forth under the terminated MOU, the parties may choose to continue to undertake some or all of their respective obligations under the MOU. However, in doing so, each party must comply with the relevant Charter provisions, laws and by-laws respectively. LPD further notes that any extension of the terminated MOU must be approved by City Council pursuant to Section 17-5-91(a).

Finally, the DLBA will still be able to continue to do all the things they are authorized to do pursuant to Public Act 258 of 2003, Land Bank Fast Tract Act, MCL 124.751 et seq., and its by-laws. The DLBA will continue to be able to acquire, sell or otherwise dispose of property in which it has title and ownership in as set forth by law, without the guidance provided by the MOU.

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