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TO: Detroit City Council
FROM: David Whitaker, Director 
Legislative Policy Division
DATE: February 19, 2024
RE: Report on Amendment to the Future of Health Transformational Brownfield Project

The Legislative Policy Division (LPD) has been requested by Council Member Calloway to provide language to amend the Future of Health Transformational Brownfield Project, that would allow for a two-year certificate, with the possibility of a certificate for the remainder of the permitted time period upon review of developers' performance by City Council at the two-year mark.

LPD notes that pursuant to the Brownfield Redevelopment Financing Act, the City Council has the authority to approve the Transformational Brownfield Plan as set forth under MCI 125.2664a:

- (1) The governing body and Michigan strategic fund shall determine whether to approve a transformational brownfield plan in accordance with this section.
- (2) The governing body shall make an initial determination as to whether the transformational brownfield plan constitutes a public purpose in accordance with section 14(5). If the governing body determines the transformational brownfield plan does not constitute a public purpose, it shall reject the transformational brownfield plan.

There are no provisions within the Brownfield Redevelopment Financing Act that gives City Council the authority to limit the number of years set forth in the Brownfield Plan. City Council can determine that the transformational brownfield plan does not constitute a public purpose and reject it. The

Administration by and through the Detroit Brownfield Redevelopment Authority can present the plan for approval to the governing body and the Michigan strategic fund as set forth under MCL 125.2663c.

LPD also notes, the Brownfield Redevelopment Financing Act is a separate and distinct tax incentive and not a tax abatement. With regard to tax abatements generally, as indicated in the Law Department's memorandum dated January 9, 2024, State law authorizes the legislative bodies to determine the duration of tax abatement certificates. As indicated in the Law Department's opinion.

The duration of exemption certificates should be determined on a case-by-case basis. That determination should presumably focus on whether the duration of such certificates is commensurate with the potential benefit to the City.

It is the practice and policy of the City of Detroit pursuant to the City Charter that the Executive Branch proposes, and the City Council approves or denies. In essence, The Administration submits the proposed application for certificate of a tax abatement based upon the economic evaluation taken by the DEGC. The DEGC evaluation is based upon the underwriting and the "but for" analysis of whether the project is viable utilizing the fewest number terms of years being abated and of direct benefit to the City of Detroit. This is followed by a review by LPD of the numbers submitted. City Council has the final determination as to whether to approve the application for the term submitted. City Council can deny the request and express that the Administration and the applicant seek a shorter term (be it two-years or whatever City Council determines) or the entity can continue the project without the abatement should they choose to do so.

LPD understands that Member Calloway's request was for an amendment to the Transformational Brownfield, however, as indicated above, City Council lacks the authority to unilaterally amend the brownfield plan.

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