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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: February 5, 2024

RE: **REPORT ON THE POTENTIAL CONFLICTS OF SIMULTANEOUS MEMBERSHIP ON A
COMMUNITY ADVISORY COUNCIL AND THE BOARD OF ZONING APPEALS**

Council Member Scott Benson requested that the Legislative Policy Division (LPD) prepare a report on the potential conflicts of simultaneous membership on a Community Advisory Council and the Board of Zoning Appeals.

The Detroit City Code says the following with regard to a member a Community Advisory Council (CAC) holding another public position or office:

Elected members are precluded from holding an elected office at any level of government, except the offices of Precinct Delegate and Citizens' District Council Member, while serving in the capacity of a Community Advisory Council Member. Under no circumstances shall an elected member of a Community Advisory Council serve as staff for the Mayor of the City of Detroit or as staff for the Detroit City Council, as defined by section 5-103 and section 4-120, respectively, of the Detroit City Charter and as classified by Step Code K of the Official compensation Schedule of the City of Detroit, while serving in the capacity of a Community Advisory Council member.¹

¹ Detroit City Code, Section 14-9-12(e)

Because members of the Board of Zoning Appeals (BZA) are not elected and they are not a member of the Mayor's or City Council staff nor a civil servant, there is not an explicit prohibition preventing an individual from serving on both the CAC and the BZA. Additionally, Section 14-9-14 of the City Code requires a CAC member to disclose any conflicts of interest and abstain from voting if a conflict exists by stating:

A Community Advisory Council member who has a conflict between a personal interest and the public interest as defined by Michigan law, the Charter, or the City Code, shall fully disclose the nature of the conflict to the Community Advisory Council. Where a Community Advisory Council Member has a substantial financial interest in any contract with the City or in the sale of any land, materials, supplies or services to the City or to a contractor supplying the City, the Member shall make known that interest and shall refrain from voting upon or otherwise participating in the deliberations on said matter. Where a conflict exists, after orally notifying the Community Advisory Council on the record of the conflict, a Member may not participate in, act upon, or vote upon the matter.

However, because CAC and BZA members are both public offices, there is still the potential that holding a position on both bodies would constitute a violation of the Michigan Incompatible Public Offices Act (MIPOA). The MIPOA prohibits a public officer or public employee from holding incompatible public offices at the same time.² A public officer includes a person who is elected or appointed to a public office of a city in this state or to a council of a city in this state.³ The term "incompatible offices" is defined in MCL 15.181(b) as follows:

[P]ublic offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office.

Neither the CAC nor the BZA is subordinate to the other body, nor does either body supervise the other. The CAC serves in an advisory capacity to the community and the City Council and has no authority over the BZA. The BZA's authority originates from the Michigan Zoning Enabling Act and is limited to hearing and deciding questions related to the administration of the zoning ordinance. Neither

² MCL 15.182; *Macomb County Prosecuting Attorney v. Murphy*, 464 Mich. 149 (2001).

³ MCL 5.181(e)(ii) and (iii)

position is a paid position and neither body is able to, for example, make decisions regarding contracts or compensation that may affect the other.

Therefore, the remaining question is whether an individual holding a position on both the CAC and the BZA is incompatible in such a way that will prevent the individual from performing the duties of either office. In evaluating whether a breach of duty exists under MIPOA, salient question is not whether the public official will in fact be affected, but whether there exists the possibility that actions in one office will be influenced by the other position held by the public official.⁴

It is conceivable that a potential conflict could arise between the duties of a CAC member and a BZA member. The CAC's duties require it to provide advice to community representatives and City Council on matters including:

- (1) Housing development;
- (2) Commercial blight;
- (3) Safety and security;
- (4) Economic and community development;
- (5) Employment opportunities;
- (6) Code enforcement; and
- (7) Other concerns impacting social, economic, cultural and environmental conditions within the district.⁵

Therefore, a CAC member who sits on the BZA may have already provided advice or a recommendation regarding a zoning matter that later comes before the BZA. If the individual's role as a CAC member prevents them from objectively performing their duties as a BZA member, there could theoretically be a breach of their duty as a BZA member.

However, the Michigan Supreme Court has stated “[t]hat a breach of duty *may* occur in the future or that a *potential* conflict exists does not establish incompatible offices. The official's performance of the duties of one of the offices must actually result in a breach of duty.”⁶ The positions of a CAC member and a BZA member do not appear to be inherently incompatible for the purposes of the MIPOA. The possibility of a potential future conflict is insufficient to establish incompatibility between the two offices. If a potential conflict should arise in the performance of the duties of either office, the official should recuse themselves from deliberating or taking official action on the matter and, if necessary, seek the advice of the Board of Ethics.

⁴ *Oakland County Prosecutor v. Scott* (1999) 603 N.W.2d 111, 237 Mich.App. 419.

⁵ Detroit City Code, Section 14-9-6

⁶ *Macomb Cnty. Prosecutor v. Murphy*, 464 Mich. 149, 163 (2001)