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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: February 7, 2025

RE: Analysis of Proposed Ordinance to Update Detroit Misdemeanors

The Legislative Policy Division (LPD) has been requested by Council Member Mary Waters to provide an analysis of the proposed ordinance updating the City Code regarding misdemeanor offenses. As indicated in the memorandum, Council Member Scott Benson has proposed to codify a number of state law misdemeanors under the City Code, Chapter 31, Offenses. Under the proposed ordinance, the City of Detroit would be authorized to prosecute a number of misdemeanor offenses that are currently statutory misdemeanors as City of Detroit offenses.

The authority of the City of Detroit to codify state law misdemeanor offenses is set forth in the Home Rule Cities Act, MCL 117.4i, which provides in pertinent part:

(k) The punishment of persons who violate city ordinances other than ordinances described in section 4l. The penalty for a violation of such a city ordinance must not exceed a fine of \$500.00 or imprisonment for 90 days, or both. However, unless otherwise provided by law, the ordinance may provide that a violation of the ordinance is punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days. In addition, a city may adopt section 625(1)(c) of the Michigan vehicle code, 1949 PA 300, MCL

257.625, by reference in an adopting ordinance and shall provide that a violation of that ordinance is punishable by 1 or more of the following:

- (i) Community service for not more than 360 hours.
- (ii) Imprisonment for not more than 180 days.
- (iii) A fine of not less than \$200.00 or more than \$700.00.

The proposed ordinance update for misdemeanors is in line with the concise analysis provide by the Michigan Municipal League¹ (MML) in its 2007 report regarding municipal prosecutions which indicate:

If the violation of an ordinance is a misdemeanor, action will be initiated by issuance of a complaint and warrant. Proceedings are conducted through district court/municipal court. MCL 600.8313. The penalty for such violation shall not exceed a fine of \$500 or imprisonment of 90 days or both. MCL 1174i (Home Rule City); MCL 89.2 (Fourth Class City); MCL 66.2 (General Law Village); MCL 78.24 (Home Rule Village); MCL 41.183 (Township). If state law provides a penalty of up to 93 days in jail, e.g., certain traffic violations, an ordinance violation that substantially corresponds to the state law may be punished by up to 93 days in jail. Cities, villages and townships have no authority to pass ordinances with penalties in excess of 93 days in jail.

As indicated, the authority of the City of Detroit to codify misdemeanors that are currently established under state law is permitted under the Home Rule Cities Act.

Being authorized to codify by ordinance state law misdemeanor offenses that do not exceed a punishment of imprisonment of 93 days, the proposed ordinance if adopted, would be in accordance with the law. The proposed ordinance amends Chapter 31, *Offenses*, and adds or amends the following offenses:

Article II, Obstruction of Government.

- False statement to an officer during investigation
- Failure to identify oneself to a police officer
- Refusal to allow fingerprinting
- Interference with City-owned communication system prohibited

Article III, Offenses against persons.

- Assault and battery
- Domestic violence
- Leaving a child unattended in a vehicle

Article IV, Offenses against property.

- Malicious destruction of property
- Throwing, propelling or dropping stones or object at a train car or vehicle
- Embezzlement by agent, servant or employee, trustee, bailee or custodian
- Larceny
- Larceny by conversion
- Larceny by false personation
- Larceny; motor vehicle or tailers

¹ Michigan Municipal League, Municipal Prosecution, Distribution of Fines and Cost, November 2007.

- Make, draw, utter or deliver check with non-sufficient funds
- Receive and conceal stolen goods
- Retail Fraud
- Theft by false token or false pretense

Article VIII, Weapons, Division 2, Firearms.

- Possession of a firearm under the influence of intoxicants.

Each of the aforementioned offenses as set forth in the proposed ordinance substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.

The memorandum requesting LPD's analysis, particularly identifies two of the proposed ordinance offenses, giving false statement to a police officer during investigation and refusal to allow fingerprinting. With regard to the offense of giving false information to a police officer during an investigation, the Michigan Penal Code, MCL 750.479c provides in pertinent part:

- (1) Except as provided in this section, a person who is informed by a peace officer that he or she is conducting a criminal investigation shall not do any of the following:
 - (a) By any trick, scheme, or device, knowingly and willfully conceal from the peace officer any material fact relating to the criminal investigation.
 - (b) Knowingly and willfully make any statement to the peace officer that the person knows is false or misleading regarding a material fact in that criminal investigation.
 - (c) Knowingly and willfully issue or otherwise provide any writing or document to the peace officer that the person knows is false or misleading regarding a material fact in that criminal investigation.
- (2) A person who violates this section is guilty of a crime as follows:
 - (a) If the crime being investigated is a serious misdemeanor, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00.

With regard to the proposed offense of refusal to allow fingerprinting, the Bureau of Criminal Identification and Records Act², MCL 28.243a, *Collection of biometric data; refusal or resistance as misdemeanor*, which provides:

- (1) A person shall not refuse to allow or resist the collection of his or her biometric data if authorized or required under this act.

² The Bureau of Criminal Identification and Records Act, Section 28.243(2) provides in pertinent part: "A law enforcement agency shall collect a person's biometric data under this subsection if the person is arrested for a violation of a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible term of imprisonment is 93 days."

- (2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

The proposed ordinance offenses, giving false statement to a police officer during investigation and refusal to allow fingerprinting are both substantially consistent with state law and appear to be legally authorized to be codified within the City Code.

The memorandum requesting LPD's report also requested a response to the following:

1). How many current cases for each misdemeanor are before the relevant courts that could potentially be impacted by these changes?

LPD notes that some cases that have originated in the city of Detroit may only be before the 36th District Court, if the criminal act only consists of misdemeanor violations. Other cases that may originate in the city of Detroit may consist of simple misdemeanors in conjunction with high misdemeanors and/or felonious acts, that can only be adjudicated in the 3rd Circuit Court. LPD is unable to ascertain the number of misdemeanor cases that are currently before these courts.

2) What the fiscal impact would be on the City to prosecute and what potential fines could be collected?

LPD notes that the Office of the Chief Financial Officer has prepared and distributed a fiscal impact statement dated October 16, 2024, regarding the proposed ordinance amendment. LPD cannot add anything to that statement and has attached it for further reference. LPD further notes that the 36th District Court which serves the city of Detroit is a third-class district court under state law. Pursuant to the Revised Judicature Act, Public Act 236 of 1961, MCL 600.8379(1)(c) provides in pertinent part:

In districts of the third class, all fines and costs, other than those imposed for the violation of a penal law of this state or ordered in a civil infraction action for the violation of a law of this state, shall be paid to the political subdivision whose law was violated...

Pursuant to the statutory provision, all fines and costs derived from violations of the proposed ordinance would go to the City of Detroit.

3). For the proposed Section 31-4-26, 'theft by false token', how many potential cases could be impacted by adding this to the City's Code and what impact would it have on Detroiters seeking to address real estate fraud.

LPD is unable to ascertain the potential number of cases that may be impacted by adding this offense to the City Code. LPD does note, the ordinance would have an impact on cases where the real property in question is valued at less than \$200.00, which would be a misdemeanor. Any real property that is subject to theft by false token (fraud) valued over \$200.00 would be a felony not covered under the proposed ordinance.

4). How many other municipalities in the State of Michigan and nationally have similar municipal ordinances that add local penalties for crimes already covered by state and federal laws.

LPD notes that according to the 2020 U.S. Census there are approximately 19,500 municipalities in the United States. The State of Michigan has 1,773 municipalities. Unfortunately, LPD is unable to ascertain how many municipalities in the U.S. or State of Michigan have similar municipal ordinances that add

local penalties for crimes already covered by state and federal laws. LPD was able to identify that nine of the largest cities in Michigan (excluding Detroit) have codified some similar state laws into their city code. These cities include Grand Rapids, Warren, Sterling Heights, Ann arbor, Lansing, Flint, Dearborn, Livonia and Troy.

Please call upon us if we ca be of further assistance.



**OFFICE OF THE
CHIEF FINANCIAL OFFICER
OFFICE OF BUDGET**

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October 16, 2024

Honorable Mary Sheffield, Council President
Coleman A. Young Municipal Center
2 Woodward Avenue
Detroit, MI 48226

Re: Fiscal Impact of Amendments to Chapter 31 of the Detroit City Code – Misdemeanor Violations

Dear Council President Sheffield:

Please see attached Fiscal Impact Statement prepared by the Office of Budget for the above referenced item, pursuant to CFO Directive 2018-101-029: Fiscal Impact Statements. Upon review, please do not hesitate to contact me to discuss further.

Best regards,

Tanya Stoudemire
Chief Deputy CFO / Interim Budget Director

Att: CFO Fiscal Impact Statement No. 2024-110-013

cc: Honorable Detroit City Council
Jay B. Rising, CFO
John Naglick, Jr., Chief Deputy CFO/Finance Director
Malik Washington, City Council Liaison
David Whitaker, Director-Legislative Policy Division



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CFO FISCAL IMPACT STATEMENT NO. 2024-110-013

SUBJECT: Fiscal impact of Proposed Misdemeanor Ordinance Amendment
PREPARED BY: Office of the CFO – Office of Budget
DATE ISSUED: October 16, 2024

1. AUTHORITY

- 1.1. State of Michigan Public Act 279 of 1909, Section 4s(2)(d), as amended by Public Act 182 of 2014, states the Chief Financial Officer shall submit in writing to the Mayor and the governing body of the City his or her opinion on the effect that policy or budgetary decisions made by the Mayor or the governing body of the City will have on the City's annual budget and its four-year financial plan.
- 1.2. CFO Directive No. 2018-101-029 Fiscal Impact Statements states that the CFO shall issue Fiscal Impact Statements ("FIS") for pending or enacted decision items with a significant fiscal impact on the City, as determined by the CFO, to provide financial information to the Mayor and the City Council as they consider action on proposed local policy or budgetary decision items.

2. PURPOSE

- 2.1. To provide financial information to the Mayor and the Detroit City Council as they consider action on the Misdemeanor Ordinance.

3. OBJECTIVE

- 3.1. This FIS serves as the report on the fiscal impact of the Misdemeanor Ordinance in relation to the City's annual budget for FY 2025 and four-year financial plan for FY 2025 – FY 2028 (the "City budget").

4. SCOPE

- 4.1. This FIS is not intended to convey any statements nor opinions on the advisability of the proposal, except for those components that have or may have a fiscal impact on the City budget.
- 4.2. This fiscal impact analysis is based on the proposal as described below in Section 5 of this FIS. Should the proposal change prior to final approval, an updated FIS may be issued.

5. STATEMENT

- 5.1. Conclusion: The Misdemeanor Ordinance has a **negative fiscal impact** on the City budget.
- 5.2. Background: The proposed ordinance impacts the Law Department, Detroit Police Department (DPD), and 36th District court by creating certain misdemeanor offenses under City code that mirror State law. Examples of newly created offenses includes false statements to an officer during an investigation, assault and battery, domestic violence, leaving a child unattended in a vehicle, throwing, propelling or dropping a stone or object

at a train or vehicle, embezzlement, larceny, retail fraud, and possession of a firearm under the influence of intoxicants.

5.3. Fiscal Impact: The Misdemeanor Ordinance would have a **negative fiscal impact** on the City budget. The Law Department would carry out the management and completion of cases of the newly created City misdemeanors. This amendment will require additional staffing within the Law Department following the discontinuation of federal American Rescue Plan Act (ARPA) funding in December of 2025. Law will be able to carry out these additional administrative responsibilities with its current ARPA-funded staff in FY 2025 and the first half of FY 2026. However, Law would need five additional lawyers and one paralegal to carry out the provisions of this ordinance once ARPA-related funding is no longer available.

The offenses outlined are already enforced by DPD under its current operations. DPD would carry out enforcement of all specified misdemeanor violations within its existing budget, as is current practice. Thus, the amended ordinance would not require additional personnel or the identification of additional resources to enforce the ordinance within DPD.

The Misdemeanor Ordinance will result in increased revenue from 36th District Court fines and penalties. By adding the offenses under City code, fine collections that previously were transferred to the State will now be retained as General Fund revenue. The increased court revenue may partially offset the Law administrative costs as shown in the table below. However, the overall revenue impact is indeterminate and cannot be quantified at this time.

City of Detroit
FIS - Misdemeanor Ordinance

	FY 2025 ¹	FY 2026 ²	FY 2027	FY 2028
Salaries (Lawyers , Count: 5)	\$ -	\$ 245,707	\$ 511,070	\$ 511,070
Salaries (Paralegal, Count 1)	-	34,776	72,332	72,332
Fringe	-	90,456	188,147	188,147
Total, Personnel Costs (Law Department)	\$ -	\$ 370,938	\$ 771,549	\$ 771,549
Case Tracking Software - Initial Startup Costs	\$ -	\$ 50,000	\$ -	\$ -
Case Tracking Software - Recurring Annual Costs	-	50,000	50,000	50,000
Total, Operating Costs (Law Department)	\$ -	\$ 100,000	\$ 50,000	\$ 50,000
Net impact on Four-Year Financial Plan³	\$ -	\$ 470,938	\$ 821,549	\$ 821,549

Notes:

- (1) No financial impact in FY25 as personnel need is currently being supported by ARPA staff
- (2) FY26 personnel costs demonstrate a six-month impact due to ARPA Staff ending Dec 31, 2025.
- (3) A portion of this incremental cost may be offset by increased court revenue, but any revenue impacts are indeterminate.

APPROVED

A handwritten signature in cursive script, reading "Tanya Stoudemire", is written over a horizontal line.

Tanya Stoudemire

Chief Deputy CFO / Interim Budget Director