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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: February 9, 2021

RE: **Review of the Charter Commission’s Discussion Draft**

The Detroit City Council has asked the Legislative Policy Division (LPD) to review the discussion draft of the proposed Charter of the City of Detroit, circulated by the 2018 Charter Revision Commission (the Commission). In response, LPD is submitting an extensive review of the substance of the document.

INTRODUCTION

LPD extends thanks to the Commission for its conscientious and exhaustive efforts to draft a charter responsive to the many voices of the community – including those within government, such as the Detroit City Council. We are grateful for the opportunity to review and comment on the draft document at this important stage. LPD recognizes that the Commission and participating community members are clearly concerned about increasing transparency and facilitating citizen involvement in governance. Please note, we offer our critique solely from an operational standpoint. This report includes input from all divisions of LPD, including legal/policy staff, City Planning Commission (CPC) staff, Historic Designation Advisory Board (HDAB) staff, and Fiscal Analysis (Fiscal) staff.

LPD approached its review with an operational/functional perspective garnered from staff experience working under the guidance and parameters of previous charters.¹ The Charter of the

¹ Current LPD staff members have served City Council under the 1974, 1997, and 2012 Charters.

City of Detroit, sometimes referred to as the City's constitution, once adopted by a vote of the citizenry, can only be changed by amendment put before the voters, or by a periodic general revision, *i.e.*, the current process. For that reason, the Charter functions as a nearly immutable document, providing the framework for City government and, generally, leaving specifics (*e.g.*, program details, fees, etc., that might require flexibility) to be fleshed out through the (more readily amended) ordinance process. For this reason, avoiding overly prescriptive measures allows the Charter to remain current even as the City undergoes inevitable change.

In addition, the federal government is now signaling action on a range of issues including, but not limited to health, disability rights, access to transit, water access, police reform, and environmental justice. Adopting overly specific provisions might have the potential to be inconsistent with federal programs. Clearly, there is much in flux now at both the state and federal levels in a manner that could not have been anticipated during the drafting process of the proposed Charter (*e.g.*, election funding).

Conceptually, most of the Commission's proposed additions to the Charter are important and meritorious policy ideas, but not necessarily appropriate additions for the Charter, are inordinately expensive to accomplish, and, unless major revenue streams suddenly emerge, could hinder efficient government. Some subsections appear to go beyond the general purpose of a Charter, which is granting authority and guidance on the operations and management of the City as opposed to specific detailed directives of a department. The specific requirements of some proposals might be preferably left to ordinance development and adoption to allow for critical nuanced and calibrated drafting and operational tweaks done with the affected department personnel actively involved. Other proposed changes in the discussion draft, although not prohibited by law, add layers of bureaucracy that may have the effect of rendering government less efficient while adding significant cost. The City has only recently emerged from bankruptcy and still faces an uncertain financial future.

Review of the discussion draft is below. Where specific comments are attributable to either Fiscal Analysis or CPC staff, it is so indicated.

CHARTER REVIEW

Article 1 **Establishment of City Government** – no change

Article 2 **General Provisions**

- 2-101 through 2-104: No change
- 2-105: Definitions and Rules of Construction. Definition for *debarment* created. The following definitions are amended:

Elective officers expanded to include Corporation Counsel, Board of Fire Commissioners, Election Commissioners.

Immediate family is expanded to include siblings and parents in the definition. The original definition was written to only include family members that the public servant has direct financial interest in, *i.e.*, those who are members of the public servant's household and his/her dependent children. This definition is applicable to disclosures required by the ethics ordinance. Including siblings will become tricky particularly in families where the siblings may have only one parent in common and may not interact

enough to have the knowledge to make this disclosure. Notably independent children have been left out of the definition.

Lobbyist has been reduced to only include those who are **registered** lobbyists not those who engage in lobbying but that are not registered as such. This suggestion was one of City Council's recommendations; however, upon further review, this modification seems ill-advised.

Public servant has been amended to specifically include the Corporation Counsel, as the position has been changed from an appointive position to an elected position.

Vacancy has been amended to clarify that death includes prior to the assumption of office or while in office.

- 2-106.1: Ethical Standards of Conduct. Changed to include Corporation Counsel by title as an elected official. The language should be amended to either specifically include the other elective officers or to use some more inclusive language such as “all elective officers”.
- 2-106.2: Disclosures. 1 (a), (b), (c) and (d) have been expanded to read that a public servant who exercises significant authority must disclose interests and employment of a **relative**, in addition to an immediate family member. Including any relative without definition seems too broad and does not specify the degrees of consanguinity to which this applies.
 - 1(f) requires the public servant who exercises significant authority to report all internal and external wages, compensation, bonuses, travel stipends, speaker fees, housing and accommodations or benefits, “paid by a person or entity engaged in or seeking a direct or indirect business or financial relationship with the City.” “The City shall annually disclose this information.” It is unclear who, as “the City”, must annually disclose this information.
 - Subsection 4. requires the Board of Ethics to verify the accuracy of the disclosures made. This seems an unnecessary expense and exercise for information that is voluntarily given; it would require an investigation of all disclosures. Also, there may not be a way to verify familial relationships other than by birth certificate, which may be an invasion of privacy.
- 2-106.3: Lobbying Registration and Reporting. Adds the requirement that all contractors file a quarterly report of all expenditures for the purpose of influencing a city official or supporting a candidate or city ballot measure. This section is problematic for the following reasons: Gifts to officials/employees for purposes of influence are already not permitted; expenditures to support a candidate or ballot measure are protected speech under the U.S. Constitution.
- 2-106.4: Although an ordinance is still required pursuant to this change, the concerns the ordinance is designed to address will remain. An ordinance is necessary to address de minimis exchanges for things such as bottles of water, cups of coffee and complimentary ink pens.
- 2-106.5, 2-106.6: No change
- 2-106.7: Prohibition on Campaign Activities Using City Property and Assets or During Working Hours. Extends the prohibition from soliciting appointees, appointive officers and employees to all elective officers. The term “assets” has not been defined. Additionally, it is unclear what the distinction is between property or assets.
- 2-106.8: No change
- 2-106.9: Powers and Duties [Board of Ethics]. Amended as follows:
 - extends the mandatory ethics training to the new elective officer positions in the charter.

- Indicates that training for all appointees and employees be provided on at least a biennial basis.
- Indicates the right of the Board of Ethics to obtain outside counsel for complaints filed against the Mayor, Corporation Council or the Law Department. **CPC:** The director and/or board should have some discretion with regard to this, determining if and when necessary.
- Requires the Board to publish monthly the meeting minutes, which include at a minimum, the nature of the complaint received, date filed and its disposition. Such a requirement needs to be clarified so that only adjudicated complaints will be published, as false accusations can be damaging. **CPC:** Some complaints/inquiries are confidential. How is that confidentiality maintained?
- 2-106.10 through 2-106.14: No change
- 2-107: Dismissal Proceedings.
 - Expands the list of grounds for permissive forfeiture to include “misdemeanor convictions that involve a breach of public trust, dishonesty, theft or fraud,” and “indictment for criminal conduct directly connected to the performance of an elective city officer’s duties.” Allowing an indictment alone to be grounds for permissive forfeiture does not seem to be appropriate considering no actual crime has been proven, and the individual’s due process rights have not be granted. An allegation should not be sufficient for removal from an elective office.
 - Confirms that City Council has the unfettered right to retain outside counsel when the Corporation Counsel is the subject of the forfeiture proceedings.
 - The last sentence indicates that “in cases of indictment under 2-107(B)(2)(f) City Council shall consider forfeiture or suspension from office as a penalty.” This sentence is unnecessary considering permissive forfeiture is the whole point of 2-107(2)(B)(f).
- 2-108, 2-109: No change
- 2-110: Requires all appointments to commissions and boards be City residents. This is prohibited in the case of some boards where compensation is given. See, MCL 15.602. The City cannot make residency a condition of employment except where the State law creating the board or commission specifies.
- 2-111 through 2-113: no change
- 2-114: **NEW** - Language Access Plans. Requires City departments and offices to develop and implement a language access plan. City Council is directed to enact an ordinance. The language access plan would require the City to provide written translated material of vital documents for any limited English proficiency group of 3% or 500 persons, whichever is less. The Federal Language Access regulation under the U. S. Department of Justice provides for 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered to be compliant. The DOJ also provides that where less than 50 persons in a language group trigger the 5% threshold that the City could provide notice of the right to receive oral interpretation at no cost. It may be more financially feasible to follow the federal guidelines.

Article 3 Elections

- 3-101: No change
- 3-102: Election Commission; Composition; Term; Vacancy; Selection of Officers. Changes the composition of the Election Commission. The members will be elected from each of the City Council districts for a term of 4 years. City employees, other city elected officials, candidates for elective office and city contractors and their employees

are prohibited from running for these positions. Further research needs to be done to determine whether all of these individuals can be prohibited from running for public office. Additionally, this seems to prohibit the members of the Election Commission from being re-elected to the commission because they would themselves become candidates for public office.

· The Chair is the person who received the highest number of votes in the election, and the Vice-Chairperson shall be selected by the voting member of the Election Commission. **CPC:** *The Chairperson of the commission shall be the person who received the highest number of votes in each election.* If they are elected by district - there is not an even number of population in each district – more populated districts and perhaps other factors would unfairly impact the outcome.

- 3-103: Powers and Duties. Allows for precinct election officers and temporary employees to be hired for up to six months instead of 30 days. This has the potential of increasing the staffing cost of the election six-fold.
Election Commission is charged with developing and implementing a comprehensive plan of protocols and best practices for conducting elections and increasing voter turnout. Requires annual assessment and public hearings on the performance of the department. Requires the Commission to create taskforce of experts to assist to improve the election process. Cost? **CPC:** Isn't this the responsibility of the Department of Elections/Office of the City Clerk? Is there going to be a staff to this commission to carry out these duties? How funded? How does this conflict/overlap with the responsibility of the City Clerk? **Fiscal:** This mandate that engages “a taskforce of experts... with adequate funding provided by the City,” could potentially add a costly item to the budget, which is difficult to quantify, given the fact that in most cases, the use of “experts” typically comes with substantial costs.
- 3-104: The Director and Deputy Director of Elections will be appointed by the City Clerk with confirmation by the Election Commission.
The removal of these individuals is being shifted from being removed only for cause to by the majority of the Election Commission. This is problematic for two reasons: 1) the purpose for positions being removed only for cause is to allow the individuals holding those positions to undertake their roles without fear of repercussion; shifting that politicizes the ministerial task of holding an election; 2) the Director and Deputy work mainly with the Clerk but the Clerk has no authority to remove these individuals. So, in the event that the relationship between the Clerk and the Elections Director break down, the Clerk will have no control, potentially creating an untenable situation.
- 3-105: City Elections and City Council Initiated Ballot Proposals. Amended to include all of the newly created elected positions. Provides that filling a vacancy in an elective office will be first by the next highest vote-getter in the general election and if unavailable or uninterested, then by City Council with a 2/3 vote. It does not indicate who is responsible for the process to appoint the highest vote-getter. **CPC:** This could have unintended consequences, particularly in districts with only one strong candidate in an election, as it could result in appointing a candidate solely based on their having been able to get on the ballot.
- 3-106: No change
- 3-107: Elective Officers of the City. Adds the newly created elected officers. **CPC:** With respect to corporation counsel, being an elected position does not guarantee protection from political influence from the Mayor, City Council, developers, or other outside interests. It is also more likely that the best qualifications for the position are not

what gets this person elected. It is imperative that this position is held by a person of certain and specific qualifications.

- 3-108: No change
- 3-109: Nominating Petitions. Adds in the newly created elected officers and specifies the number of signatures on the nominating petitions necessary for each position, *i.e.*, Corporation Counsel - between at least 500 and not less than 1000; Fire Commissioner - not less than 300 and not more than 650; and Election Commissioner – based on a percentage of the number of votes cast in the preceding election.
- 3-110: No change
- 3-111: Residency Requirement for Elective Officers. No change; however, candidates for Fire Commission and Election need to be added to subsection 2.
- 3-112: **NEW** – Voter Participation Among City Employees. Creates holidays for City employees for all elections held within the City of Detroit. This at the very minimum creates two election holidays, for the primary and general election, for each year that elections are held. The ambiguous language also does not specify the nature of the elections because the provision indicates “all elections” (including limited special elections?). It is also noteworthy that the State of Michigan is considering a holiday for governmental units for general elections. **Fiscal:** This section indicates that “...City employees shall be granted compensated time off to vote in all elections held within the City of Detroit.” This cost may be extensive and unpredictable, given that the language in this section indicates it applies to “all elections held within the City of Detroit,” which would apply to any special elections held in the city, which would include State and local elections.
- 3-113: **NEW** – Candidate Debates and Issue Forums. Requires the Election Commission to hold candidate debates and forums for city elections and ballot initiatives. Also, indicates that these should be taped and repeatedly aired. It is unclear how often “repeatedly” is. **CPC:** *The Election Commission is responsible for preparation and publishing of a debate and issue forum schedule and hosting candidate debates and issue forums for candidates to all city elective offices and ballot initiatives prior to the election...The Election Commission shall host non-partisan issue forums to educate voters on ballot proposals prior to the vote on the proposals.* This goes beyond the role of a commission, generally; and, if adopted, would more appropriately be the responsibility of the department, as these are department-level duties. **Fiscal:** These mandates could potentially add several costly items to the budget, which may include, but are not limited to, overtime staff costs in order to provide staff to facilitate numerous candidate debate and issue forums, camera and technical staff to broadcast said debates. These potential costs are difficult to quantify. However, unchecked, these costs could escalate exponentially.
- 3-114: **NEW** – Local Election Procedure. Creates local election procedures. Question re conflict with state law? In light of evolving technology, it is unclear whether these requirements will become quickly obsolete. If It may be more appropriate for an ordinance.
 - Requires the printing of two tapes for each voting machine on the day of each election for before the polls open to the public; also, to indicate the number of ballots each precinct receives.
 - After the polls close and voting machines are sealed within their cases, the Elections Official shall write across the bottom of the last computer tape the following information:

Security seal number, number of ballots voted and contained in case, the number of spoiled ballots, and number of unused ballots.

· Creates a complaint process, but must be filed within 24 hours after the close of the polls, with the Inspector General. Inspector General shall post a copy of the complaint “outside the Office of the Inspector General at the counter of the Detroit Election Commission”. This direction is unclear - at the counter of the Election Commission or outside the office of the Inspector General?

- 3-115: **NEW** – Funding Priorities. Requires that the Election Department be appropriately funded but does not indicate the percentages (subsection 2). It would seem that the goal would be to reach 100% of voters and not just a specified percentage. **Fiscal:** This section appears unnecessary, given the fact that the Department of Elections receives an annual budget to effectuate its goals.

Article 3.5 City Clerk - No changes proposed.

Article 4 The Legislative Branch

Chapter 1. City Council

- 4-101: Added language re Council’s authority for self-determination with respect to its support operations – no concern.
- 4-102: Clarifies that evening community meetings will not be held at CAYMC, but rather in each district. Specific time requirement remains.
- 4-103 through 4-107: No change
- 4-108: Voting. Requires a reason be given for each vote and references the right to abstain from voting; inconsistent with an earlier paragraph requiring that a member who is present vote on all matters before the Council unless the member has a pecuniary interest in the matter. In that instance, an explanation is necessary. LPD suggests omitting the reference to abstention. **CPC:** Stating a reason on the record will not necessarily result in getting an in depth response nor reveal some intent, but will add a time burden to the formal agenda process without a value-added result. Council members already routinely exercise their right to provide statements to explain their votes on controversial issues.
- 4-109, 4-110: No change
- 4-111: Confirmation authority. Adds confirmation authority for **all** directors and subordinates, and approval of their employment contracts. Council must vote within 30 days of receipt. The section includes confirmation of the Chief of Police. LPD recognizes the amended language is in response to Council’s request, but it is confusing. LPD suggests the following language:

Except as otherwise provided in this Charter or as may be required by law, Chief of Police, Mayoral appointment of the ~~Chief of Police Executive~~ Fire Commissioner, Director of Department of Health, Director of Planning and Development, Director of Human Resources, Director of Housing and Revitalization Department, and Corporation Counsel directors as defined in section 5-103, and all positions that have directors subordinate to them ~~is~~ are subject to approval by City Council. Any employment contracts for positions approved under this section shall be approved by City Council. City Council shall vote on all proposed appointments and related employment contracts within 30 days of receipt.

- 4-112: No change
- 4-113: Prohibition on Interference in Administration. Requires that the subject matter of an inquiry to the Administration, the specific complaint and the name of the department director or appointee being requested to appear before Council, be included in request. LPD has no concern with this provision. Also, significantly, adds “nothing in this section shall be interpreted to allow any interference with the City Council’s ability to enact legislation and otherwise carry out its legislative function.” This is apparently targeted at correcting Administration attempts to thwart CC legislation addressing administrative functions as being prohibited by separation of powers provisions.
- 4-114: No change
- 4-115: Ordinance procedure. adds paragraph requiring that ordinance adding “rents, tolls, excises and taxes” . . . “must be held up for no fewer than four (4) public hearings scheduled for maximum public participation.” LPD suggests that this additional public hearing requirement be moved to subsection (2), paragraph 3 of section 4-115, where the general public hearing requirement is addressed.
- 4-116 through 4-120: No change
- 4-121: Special counsel. Adds “in-house attorney from the Legislative Policy Division” to those who may represent Council, restoring LPD authority removed by the 2012 Charter.
- 4-122: Approval of contracts. Adds requirement that executive branch give Council 28 day notice of contracts to be approved. Council can waive requirement with 2/3 majority vote. Not very practical if applied to all contracts – desirable for large development projects and similar projects, but not smaller procurements or most supplemental staff positions. A mere notice of a contract, without access to the contract itself for review, will not assist Council. Council’s rules allow the body to hold contracts for further information or discussion in committee for 30 days – or longer by referral back to committee if necessary. If the Commission has certain contracts in mind - over a certain cost or for certain services or products – that should be specified. Also, the Community Engagement Ordinance affects some contracts, requiring community discussion and input before submission/approval by City Council. May also impact the efficient payment process.
- 4-123: **NEW** – Public Authority Creation; Annual Review; Conflict with Charter. Requires referendum before establishment or participation in public authority involving revenue or funds. Requires annual evaluation by the Mayor evaluating social and economic impact, which must then be submitted to Council for approval, posted on the web. But a report must be prepared 60 days *before* referendum – inconsistent and confusing – if the report is an annual review post-creation of the authority, what is being prepared *before* the referendum? This provision does not consider the role of state enabling legislation, which often dictates these operations. Proposal further states that operating agreements must not be contrary to Charter and must be so stated in agreement. The public has had concerns about the creation and role of public authorities, but this provision needs to be considered further. **CPC:** Too far-reaching and likely to delay/impede the City’s authority and/or the necessity to create certain bodies to accomplish certain ends best handled through a public authority or agency.
- 4-124: **NEW** – Designation and Support of Cultural Neighborhoods. Are these residential designations, commercial districts? What type of support is referenced by the heading? **CPC:** This does not seem appropriate to be in the City Charter. What does it mean to have areas “dedicated to the culture and heritage of Africans...” or “similar

cultural designations”? How does this accomplish “recognition and celebration...creating a more culturally inclusive, diverse, tolerant and dynamic city”?

Chapter 2. Board of Zoning Appeals

- 4-201: Adds term of office of 3 years with 3 members’ terms expiring each year. Council members are eligible for appointment as ex-officio members. Why? **CPC:** This does not appear to be consistent with the provisions of the state Zoning Enabling Act, which says the Council acts as the BZA or delegates the authority. This area is governed by MCL 125.3601 of the Zoning Enabling Act. What is the value-added? What are the possible implications? Council has taken care not to exercise undue influence on the board, so allowing for Council’s direct participation, we are inviting conflict and possible charges of undue influence to manifest.
- 4-202: Adds requirement that ordinance require notices to be sent to community organizations registered with the City for purposes of receiving notice. 4-203: **NEW** – Budget. Board to be paid per diem and reimbursed for expenses. Payment of a per diem may impact the ability to restrict appointment to City residents. **Fiscal:** Reimbursement of all expenses, may be too broad to place in the charter. This could lead to an undetermined cost for this item.
- 4-204: **NEW** – Staff and Assistance. Board may appoint staff. **CPC:** What is this intended to correct or improve? The director should continue to have authority to appoint staff. There is no apparent reason to change this. Not sure of what the exemption is or accomplishes.

Chapter 3. City Planning Commission – No change

Chapter 4. **NEW** – Public Broadband and Technology Commission for Sustainable Development. This is an essential concept, but unfortunately aspirational only. The City does not have the financial capability to implement a public broadband system. The commission is advisory only.

- 4-401: **NEW** – Public Broadband and Technology Commission for Sustainable Development. 7 member board (by district) appointed by and serving at the pleasure of Council. The “removal for cause” provision is, therefore, inconsistent. 4 year terms. Must be residents, with exception of ex-officio members if appointed (must give justification for appointment of non-resident ex-officio).
- 4-402: **NEW** – Powers and Duties. Advise Council and Mayor and “perform other duties . . . consistent with its purpose, as assigned by Council.”
- 4-403: **NEW** – Reports, Assessments and Studies. Shall commission and prepare reports and studies (as directed by Council), with participation of Administration to evaluate and plan to increase access to broadband. Submit to Council “for approval at a public hearing”, and subsequently monitor compliance with the plan.
- 4-404: **NEW** – Staff assistance. May ask for assistance from P&DD, DoIT, and other Administration departments. May appoint staff within appropriations.

New body controlled by Council, but operates with cooperation of Administration.

Article 5 The Executive Branch: The Mayor and General Provisions

- 5-101 through 5-105: No change, but note that 5-102 (vesting of authority for implementation of programs, services and activities exclusively in the executive branch) is diminished throughout subsequent sections of the proposed Charter.
- 5-106: Adds requirement that the currently required annual reports re prior year's "operational performance" be presented to Council at a public meeting. This is typically done during the budget process but currently only for larger departments or those with significant projects or challenges. Council requested this change. It also adds requirement of preparation of pandemic/emergency response plan to be incorporated into a comprehensive executive branch plan, with requirement of annual review and update.
- 5-107 through 5-109: No change
- 5-110: Re Mayor's community meetings, adds requirement that meetings be recorded, and later aired on City TV, as well as made available on City's website. (**Fiscal:** This could place an additional undetermined cost to the budget, to staff and facilitate televised meetings in the non-at large districts.) It is unclear from the added language in the first sentence if the Mayor is now required to hold 4 meetings per year in each district; if so, *28 meetings* is an onerous requirement. If that is not the intention, the language should be cleaned up. Mayor must post "actionable" agenda specific to the district where the meeting is held, including level of unemployment broken down demographically, plans to address unemployment, development plans, tax projections, "number of non-profit and for-profit businesses for at least the past 20 years and current year", comprehensive fire and crime stats for past 10 years, physical and mental health profile and efforts to address disparities, profile of residential and business income, environmental issues including water shutoffs data, comparisons with other districts. The Mayor shall identify efforts to improve the above. The report of this data should be posted on the website. (The required content of the reports appears burdensome, but such reporting requirements can be created and updated.)

Article 6 The Executive Branch: Staff Departments

Chapter 1. Budget Department – No change

Chapter 2. Planning and Development Department – No change

- 6-201 – **CPC:** No mention of responsibility to update the master plan?

Chapter 3. Finance Department

- 6-301: **NEW** – OCFO shall be appointed by Mayor, subject to approval of CC. Qualifications and duties are consistent with state statute creating the position.
- 6-302: OK – changes clarify that "finance director" is now CFO.
- 6-303: Same
- 6-304: Same
- 6-305: Same
- 6-306: (5) Adds a provision requiring Purchasing to prepare a "contractor employee report" with name, city of residence, job, wages, and any union affiliation to be submitted prior to beginning of service and updated monthly "for each entity performing contract services". This is an inappropriate provision and will chill the City's ability to secure

contracts. It seeks personal information about people who do not work for the City – too intrusive.

- 6-307: No change (Privatization provision–still not being enforced)
- 6-308: No change (debarment)
- 6-309: **NEW** – Legacy business incentive. Detroit based businesses for 20 years get extra points – implement by ordinance. This provision may be more appropriate implemented through ordinance, not the Charter. **Fiscal:** This could potentially impact bid costs by an undetermined amount.

Chapter 4. Human Resources Department

- 6-401 through 6-415: No change
- 6-416: **NEW** - Residence and Domicile Credits – **new hires must live within 20 miles of City boundaries.** See MCL 15.602. On-call firefighters must live in the City. Id. This provision comports with state law.² Council and Mayor to develop and implement programs to provide incentives to increase residency for employees, institute domicile credits, etc. – domicile credits for applicants are included in this section. More appropriately accomplished by ordinance. **Fiscal:** Without a defined program or an incentive, there’s an undetermined cost associated with this item.
- 6-417 through 6-419: No change

Chapter 5. Buildings, Safety Engineering and Environmental Department

- 6-501, 6-502: No change
- 6-503: Deletes #s 1,3,7,9,10, & 11 from list of powers and duties of BSEED – all relative to environmental and sustainability issues. Clarifies that enforcement of local and federal environmental laws includes “vigorous enforcement” of commercial entities engaged in blatant violations. Adds requirement of use of non-contaminated soil and removal of hazardous waste with respect to demolitions. Sentence needs to be reworked, however (#14). The numbering of this section needs to be updated.
- 6-504 through 6-508: no change
- 6-509: **NEW** – Citizen Complaints and Enforcement. Institutes a complaint process for citizens. Department issues tickets, with written warnings before any tickets over \$100 are issued. **Fiscal:** Uncertain as to impact on General Fund.

² **15.602 Residency requirements of public employees.**

Sec. 2.

(1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles.

(3) A requirement described in subsection (2) does not apply to a person if the person is married and both of the following conditions are met:

(a) The person's spouse is employed by another public employer.

(b) The person's spouse is subject to a condition of employment or promotion that, if not for this section, would require him or her to reside a distance of less than 20 miles from the nearest boundary of the public employer.

(4) Subsection (1) does not apply if the person is a volunteer or paid on-call firefighter, an elected official, or an unpaid appointed official.

- 6-510: Green Initiatives and Technologies. Adds **Office of Environmental Justice and Sustainability** to responsibility for preparing green initiatives plan, annual review of plan and monitoring of compliance. Updates presented to Council during formal session.

Article 7 The Executive Branch: Programs, Services and Activities

Chapter 1. General Provisions

- 7-101, 7-102: No material change.
- 7-103: Advisory Commissions. The current Charter language that provides that “Appointments to all advisory commissions shall be made by and members serve at the pleasure of, the Mayor.” There are several proposed sections of the Charter under Article 7 that provide for advisory commissions where members are not appointed by or serve at the pleasure of the Mayor. Having a provision that grants exclusive appointing authority to the Mayor and provisions that grant appointing authority elsewhere creates a conflict, and should be addressed.
- 7-104: No change
- 7-105: **NEW** - Health in All Policies Mandate and Taskforce. This provision appears to be misplaced and may be more appropriately placed under the Health Department. The need for a perpetual task force seems unnecessary and could probably be better suited to have the Health Department stand up a taskforce to undertake the task of creating the framework that can be developed for respective departments for guidelines to address any physical, mental and environmental health issues. This can be implemented under §7-207 and §7-208.[]

Chapter 2. Health Department

- 7-201: Health. Chapter 2 is no longer “Health and Sanitation”; “sanitation” has been removed and is addressed in Public Works and Environmental Justice and Sustainability.
- 7-202: **NEW** - Health Advisory Commission. The Health Advisory Commission is composed of nine members 4 appointed by the Mayor, 4 appointed by City Council and one joint appointment. The members serve at the pleasure of the appointing authority. This provision changes the manner of appointment and conflicts with 7-103, which provides that the Mayor appoints all members of advisory commissions. The previous Charter history maintained a separation of powers between the legislative and executive branch. Advisory commissions were to advise the executive branch in carrying out its administrative function and the Mayor was able to select those the executive believed would provide the best information, just as City Council was able to develop task forces to provide information to the legislative body to make informed decisions.
- 7-203: **NEW** – Health Department. Description of department.
- 7-204: **NEW** - Powers and Duties. The enumerated powers seem meritorious, however overly prescriptive for Charter provisions, including the provision (9) that the mental health crisis team shall be funded from the Police Department’s budget. Where the financial appropriation is housed is best determined at the budget proceedings.
- 7-205 – 7-207: **NEW** – Director; Emergency Response Plan; Health Impact Assessment Review.
- 7-208: **NEW** - Studies, Assessments and Reports. This provision indicates the Health Department is responsible for the collection, dissemination, evaluation and analysis of data and information to ensure the health and welfare of citizens. The number of reports,

studies and staff needed to fulfill the provisions seem meritorious but overly prescriptive, very costly and not recommended for the Charter.

- 7-209: **NEW** – Services and Staff. Requires specifically licensed therapists, psychologist, and psychiatrists. **Fiscal:** Estimate 2 staff - \$225,000.
- 7-210: **NEW** – Budget Appropriation. **Fiscal:** This section indicates that “The City shall annually appropriate funds sufficient to enable the Department of Health to perform its duties, including an allocation of funds and provision of resources necessary to provide all services and complete all reports, assessments and studies required or allowed pursuant to relevant sections of Article 7, Chapter 2 of this Charter, city ordinance or state law.” The Health Department is funded primarily a grant funded department. Therefore, this section is inconsistent with the method of funding.

Chapter 3. Arts - No change.

Chapter 4. Public Works.

- 7-401: Department. No material change
- 7-402: **NEW** - Sidewalk Maintenance. State law prevents the City from broadening its liability. This provision has made sidewalk maintenance and repair the sole responsibility of the City of Detroit. In stating that the City “shall be responsible for sidewalk maintenance and repair except in the case of damage caused by the adjacent owner and contractors.” This language appears to broaden the City’s liability. Also, the burden of proof has been shifted to the City to prove the damage was caused by the adjacent owner or contractor.
- 7-403: No change

Chapter 5. Fire

The provisions under this section appear to equate the Fire Department with the Police Department, which are quite dissimilar, require differing levels of oversight and may present a large financial undertaking. The construct of the Fire Department should be evaluated to determine the necessity of having the Commission, the staff and personnel established in this manner. It should be further noted that any positions established within the Charter cannot be modified or removed without a voter approved Charter amendment.

- 7-501: Department Role and Function. The last sentence of this provision, “The Department shall stay abreast of and implement the latest developments in technology, methodologies, practices and protocols consistent with its mandate herein” is extremely costly and impractical to achieve.
- 7-502: Board of Fire Commissioners. Restructured. The provision changes the role of the commission to having supervisory control and oversight of the fire department similar to the structure of the Board of Police Commissioners. The Board of Fire Commissioner consist of 11 members, seven elected, one from each non-at large districts and four appointed by the Mayor subject to City Council approval. The 4 appointed commissioners must have a minimum of 5-years of experience in one or more of the following areas: firefighting, fire prevention, emergency medical response, homeland security, emergency crisis management, financial management, policy making and/or public administration. The Mayor can only remove those appointed members for cause, with City Council’s approval. Similar to the Board of Police Commission, this board will also have subpoena power. **Fiscal:** “The Board of Fire Commissioners has supervisory control and oversight of the Fire Department as set forth in this chapter.” The newly

proposed “Board of Fire Commissioners,” could potentially add \$1,455,380 to the budget, due to costs related primarily to staffing (based on the Fire Department Board costing out at 39.7% of DPD’s \$3,665,944 Police Commission budget).

- 7-503: **NEW** – Duties of the Board of Fire Commissioners.
- 7-504: **NEW** – Staff. The Board shall have professional staff including a Chief Investigator and Chief Environmental Specialist as well as additional staff as necessary. There is concern regarding the necessity of having the position listed in the Charter, as well as cost. **Fiscal:** See comments for 7-502.
- 7-505: **NEW** – Executive Fire Commissioner Selection. This provision changes the manner in which the Executive Fire Commissioner is selected. The Executive Fire Commissioner shall be appointed by the Mayor (with City Council’s approval) from a list of candidates selected by the Board of Fire Commissioners.
- 7-506: **NEW** – Duties of Executive Fire Commissioner.
- 7-507: **NEW** – Complaints.
- 7-508 through 7-510: no material changes
- 7-511: **NEW** - Emergency Medical Services. This is a provision that allows for the appointment of Superintendent and Assistant Superintendent of Emergency Medical Services. There is concern regarding the necessity of having the position listed in the Charter and cost. **Fiscal:** See comments for 7-502.

Chapter 6. Historical.

- 7-601: No change. **CPC/HDAB:** Historical Department needs to be reworked, has changed/no longer in effect. Why is there no mention of HDAB or HDC in the charter?

Chapter 7. Human Rights.

- 7-701: Name change to Civil Rights, Inclusion and Opportunity.
- 7-702: **NEW** - Task Force on Reparations and African American Justice. The provision creates a perpetual task force to identify the history and impact of slavery and discrimination upon African Americans and the culpability of the City of Detroit. Again, while meritorious in concept, it is overly prescriptive and the cost of administering a perpetual task force is of concern as well as the implementation of the subsections, particularly 7-702.7(5). Compensation to be provided descendants of enslaved Africans by the City of Detroit may be prohibited by State law. **CPC:** Taskforce on reparations - outside the scope of the charter. **Fiscal:** This section indicates that “There is established a permanent Human Rights Commission Taskforce on Reparation and African American Justice to study, investigate, report on and address through reparations...” The duties of the Taskforce shall include, but are not limited to twelve listed items in the proposed charter. These mandates could potentially add several costly items to the budget, which may include among others items, the cost of experts and staff costs of an undeterminable amount.
- 7-703: **NEW** - Office of Veteran Affairs. This provision creates a new department. No issues other than financial implications. **Fiscal:** This section indicates that “There shall be established within the Civil Rights, Inclusion and Opportunity Department an Office of Veterans Affairs... (that) shall be headed by a Deputy Director...” Estimate 1 staff & 1 appointee- \$288,000.³

³ The estimates only include the projected cost of staffing. These additions could also necessitate build out costs to provide office space, furnishings, office equipment, and other accommodations, which can only be specified upon implementation.

- 7-704: **NEW** - Office of Immigrant Affairs. This provision creates a new department. No issues other than financial implications. **Fiscal:** "...shall be headed by a Deputy Director..." Estimate 1 staff & 1 appointee- \$288,000.
- 7-705: **NEW** - Immigration and Refugee Commission. The commission is advisory consisting of 2 appointed by City Council, 2 appointed by the Mayor and 11 nominated by the public and approved by the Mayor. The manner of selection for the commission conflicts with §7-103 which provides that all members are to be appointed by the Mayor. In addition, the provision is vague in providing the manner of which the public is to nominate the 11 members. **Fiscal:** This mandate could potentially add several costly items to the budget, which may include among others items, the cost of experts and staff costs of an undeterminable amount.
- 7-706: Human Rights Commission. No change.
- 7-707: Budget. No material change. **CPC:** Budget appropriation per commission varies throughout document with different requirements/descriptions. Does the omission of HDAB and HDC mean no funding? **Fiscal:** This section indicates that "The City shall make an annual appropriation for the effective operation of the Civil Rights, Inclusion and Opportunity Department and all of its related Commissions, Offices and Taskforces." This mandate could potentially add several costly items to the budget, which may include among others items, the cost of experts and staff costs of an undeterminable amount.
- 7-708: Department Duties. The enumeration of duties seems overly prescriptive for the Charter. The subsections appear to go beyond the general purpose of a charter, which usually gives general authority and guidance on the operations and management of the City as oppose to specific detailed directives of a department. **Fiscal:** This mandate could potentially add several costly items to the budget, which may include among others items, the cost of experts and staff costs of an undeterminable amount.

Chapter 8. Police

- 7-801: No change
- 7-802: Board of Police Commissioners. This provision has changed the number and manner in which the Police Commissioners are selected. The number of commissioners has been reduced from 11 to 9. The provision has 7 of the 9 members elected from the non-at large districts and 2 selected by the 7 elected members. No members are selected by the Mayor with City Council's approval. "No person who works or has worked in law enforcement may serve as a member of the Board of Police Commissioners", which precludes any board member from having any law enforcement experience. The lack of any law enforcement experience on the Board as well as no appointments from the Mayor (with City Council approval) appears to be a liability for the Board in being able to receive all necessary information to make an objective and informed decision. The prohibition of no prior law enforcement background may be in violation of the law. To restrict law enforcement experienced persons from running precludes the electors from selecting who they want as commissioners.

While changes to the Board of Fire Commissioners reflected the current Charter regarding election and appointment of members, giving the Mayor (with City Council approval) 4 appointees with experience in the field, the proposed Board of Police Commissioners is void of Mayor and City Council input and professional law enforcement experience. There may also be a problem with requiring the 2 members appointed by the elected Board be residents if they will receive compensation. The residency requirement may violate State law.

Fiscal: These mandates could potentially add several costly items to the budget, which may include, but are not limited to, overtime staff costs in order to provide camera and technical staff to broadcast Board of Police Commission meetings.

- 7-803: Duties, Obligations and Rights of the Board of Police Commissioners. In subsection 1, the addition of City Council in the establishment of policies rules and regulations is problematic. See comment presented by the Commission on City Council Right to Establish policies. In addition, as recognized by staff, the provisions that provide for City Council, the Police Board and the Mayor to create policies has the potential to create confusion.
- 7-804: Staff. **Fiscal:** This section indicates that “The Board shall appoint a Project Manager with experience in project management, data analysis and policy development to oversee the complaint process.” Estimate 1 appointees - \$175,000.
- 7-805: Chief of Police. This provision has been changed to have the Chief of Police selected from a group of candidates obtained by the Board of Police Commissioners. The appointment of the chief is made by a majority vote obtained from a group consisting of the Mayor, the City Council President, and the 9 Board of Police Commissioners. In essence, the Police Chief will be selected from a group of candidates picked by the Board of Police Commissioners, and the Chief could very well be appointed *by* the Board of Police Commissioners, since 9 of the 11 group voting to appoint are Police Commissioners. In addition, City Council has to then approve the appointment under 4-111. The selection process appears to be flawed. Additionally, while the Chief of Police reports to the Mayor, he can only be terminated by the Board of Police Commissioners, who in actuality may have appointed the Chief. This results in the Mayor, who has the obligation as the City’s Chief Executive Officer to protect the health, safety, and general welfare of the citizens of the Detroit, having no control over one of the most critical departments.
- 7-806: Duties and Obligations of the Chief of Police. Adds requirement that Board be provided with unedited body camera footage when requested.
- 7-807: No change
- 7-808: No material change
- 7-809: Requires preservation of evidence when a civilian is killed in interaction with police, as well as request for assistance of state attorney general in investigation.
- 7-810, 7-811: No change
- 7-812: DPD shall work toward an employee compositions that reflects the community demographically.
- 7-814: An employee’s disciplinary record shall be considered for purposes of promotion.
- 7-816: Where evaluation of police officers is involved, the Board shall establish the standards to apply, and not include the doctrine of qualified immunity.7-821: Psychological and Physical Examinations. The annual blanket psychological and physical exam requirement appears to be overly intrusive and possibly unreasonable as well as financially costly. It may also cause the City to be subject open to additional liability. **Fiscal:** Assume \$500 for both exams for 2700 officers = \$1,350,000 annual cost.
- 7-822: This provision has the PEACE Plan established by the Police Commissioners and approved by City Council without any review or approval by the Mayor, which conflicts with 5-102.
- 7-823: Police training. The provisions seem meritorious but do not appear appropriate for the Charter. **Fiscal:** Unclear if this is a new cost or supplants current training costs.

- 7-824: Prohibited use of Toxic Agents. The provisions seem meritorious but do not appear appropriate for the Charter.
- 7-825: **NEW** -Surveillance Technology. The provisions seem meritorious but do not appear appropriate for the Charter.
- 7-826, 7-827: **NEW** - The provisions seem meritorious but do not appear appropriate for the Charter.
- 7-828: Reports. The details of incidents, complaints and allegations required in the report, prior to the completion of the investigation could lead to the City being unable to properly defend itself and possibly interfere with the respondent or defendant's rights. This could possibly lead to false conclusions being obtained on preliminary information. Also the quarterly as well annual reporting requirement is unreasonable.

Chapter 9. Public Lighting - No changes.

Chapter 10. Recreation

- 7-1002: Advisory Commission. This provision creating an advisory commission conflicts with 7-103 with the appointment of 9 members by City Council (see comment for 7-103).

Chapter 11. Transportation

- 7-1102: Advisory Transportation Commission. This provision creating an advisory commission conflicts with 7-103 with the appointment of 9 members by City Council (same comment, 7-103).
- 7-1105, 7-1106: **NEW** – Fares, Transportation Standards. The provisions appear meritorious but perhaps not appropriate for the Charter.

Chapter 12. Water

- 7-1201: Department. This provision creating an advisory commission in conflict with 7-103, with the appointment of 9 members by City Council (same comment, 7-103). The provision changes the structure of the commission with administrative and executive function to serve at the pleasure of the legislative branch. The usual method of separation of powers under the Charter is that the legislative branch serves as an oversight check and balance of the executive branch. This provision has the City Council acting in the capacity of administering executive functions blurring the lines of the separate branches of government under 5-102.
- 7-1202: There is a concern about the residency requirement for the Board members where they are receiving compensation under state law. **Fiscal:** There would be some annual cost for DWSD meeting stipends – 7 x 4 minimum x \$50 = \$1,400.
- 7-1203: The provision requiring rates for water and sewerage combined to not exceed 3% is not flexible enough to be adjusted if necessary. It may be better to have the rate determined by the Board and approved by City Council.
- 7-1204: **NEW** – The Board shall propose the rates and City Council shall approve.
- 7-1205: **NEW** - The provisions seem meritorious but too prescriptive, and do not appear appropriate for the Charter. Subsection 1, an amnesty program, is not necessary and not clearly described. Could encourage nonpayment even if no financial impediment exists. Subsection 2, the requirement for a water affordability plan, may be better placed in 7-1203. It may also be better to established it in a similar manner of the Board of Review.

The 3% maximum has no flexibility if change is required. Subsection 3, as written, is overly broad and lacks the ability to adjust to allow for a realistic working provision.

- 7-1206: Limitation on Sale of Assets. Subsection 2 - this provision has already been nullified under the agreement with the Great Lakes Water Authority.
- 7-1207: **NEW** – Water Bill Assistance Fund. As with transit and health, there are currently discussions underway in the State and Federal government that may impact the City regarding water. This language is overly prescriptive and could hamper the City's ability to react.

Chapter 13. Zoological Park - No material changes

Chapter 14. Television Channels - No concerns.

Chapter 15. Disability Affairs

NEW CHAPTER

- 7-1501: Department. Provision creates new department. Financial implications.
- 7-1502: Department Director and Deputy Director. **Fiscal:** Estimate 2 appointees - \$350,000.
- 7-1503: Staff. **Fiscal:** Estimate 2 staff - \$225,000.
- 7-1505: Disability Justice Commission. This provision creating an advisory commission conflicts with 7-103 with the appointment of 11 members by City Council (same comment as above). While the establishment of a commission is fine, the term of office is not workable and the provision is overly prescriptive and can be better suited for an ordinance. Subsection 3, annual report on Disability Infrastructure and Cultural Report, is not clear as to what is being requested.

Chapter 16. Environmental Justice and Sustainability

NEW CHAPTER

- 7-1601: Provision creates a new department. Financial implications.
- 7-1602: Director; Deputy Director. **Fiscal:** Estimate 2 appointees - \$350,000.
- 7-1603: The provisions seem meritorious but overly prescriptive and do not appear appropriate for the Charter.
- 7-1604: Provision states the City must provide sufficient funds for programing and completion of reports, surveys, studies required under the Charter or directed by the Mayor or City Council. The budget appropriation should be consistent with other department funding.
- 7-1605: The provisions seem meritorious but overly prescriptive and do not appear appropriate for the Charter. **Fiscal:** An annual appropriation of not less than .02% of the General Fund Budget. Current estimate - \$220,000.
- 7-1606, 7-1607: Environmental Protection Commission. This provision creating an advisory commission conflicts with 7-103 with the appointment of 7 members by City Council (same comment as above). The enumerated provisions seem meritorious but overly prescriptive and do not appear appropriate for the Charter.
- 7-1608: Commission Budget. The commission is to receive an annual budget appropriation which has financial implications.

Chapter 17. Office Of Economic And Consumer Empowerment

NEW CHAPTER

- 7-1701: Provision creates a new department with financial implications.
- 7-1702: Small Business Advocacy Council. The provisions seem meritorious but overly prescriptive and do not appear appropriate for the Charter. This provision calls for the City Council to establish the Small Business Advisory Council within the Office of Economic Consumer Empowerment. The provision again appears to blur the normal separation of power embedding the Advocacy Council within the executive branch. If it remains, it may be more appropriately embedded under the legislative branch of government.
- 7-1703: The provision for funding the department should be consistent with appropriation for other departments.

Article 7.5 Independent Departments and Offices

Chapter 1. Auditor General - No concerns with proposed modifications. However, a change to section 7.5-104 is desirable to permit the AG more flexibility in hiring staff, similar to the other independent agencies. LPD suggests the following language:

The Auditor General may hire, promote, discipline and remove employees of the agency, assign duties to the employees and supervise the performance of those duties. The staff of the office may include persons who are both subject to, and exempt from, Article 6, Chapter 4 of this Charter.

Chapter 2. Law Department

- 7.5-201: Law Department. This proposed language changes the position of Corporation Counsel to an elected position. This change appears to have issues similar to the selection of the Police Chief. Making the Corporation Counsel an elected position with full authority over the Law Department could deprive the City's Chief Executive Officer (Mayor) of executive control over a significant department of the City Administration. The City runs the risk of having a Corporation Counsel that may be unwilling to work with the Mayor or City Council. The creation of a power struggle could put the City in an unsustainable and unworkable position. In order to have a strong Mayor form of government the Corporation Counsel should be answerable to the Mayor, with strong oversight authority housed with the City Council.
- 7.5-208: Intra-Governmental Dispute Resolution. The modified language allows for disputing branches of government to obtain outside counsel, and meet at least once to resolve issues. Removes the required facilitation provision which prevented the disputing branch from achieving resolution within a reasonable time.

Chapter 3. Inspector General – No concerns with modifications.

Chapter 4. Ombudsperson

- 7.5-404: Salary. No change; however, the salary of the Ombudsperson should be modified to reflect that it shall be equal in salary range (not salary) to the Auditor General. Making them equal does not take into consideration the experience and tenure of the holder of each office, which impacts the amount of salary.
- 7.5-405: Staff. This provision provides that the Office of Ombudsperson shall appoint a minimum of 10 employees which shall be accounted for in the budget appropriation for the office. The minimum employee requirement appears to be in violation of the Home Rule City Act, MCL 117.5(2).

Article 8 **Planning and Financial Procedures**

Chapter 1. Planning Procedure

- 8-101: Comprehensive Plan. **CPC:** The state Planning Enabling Act, MCL 125.3801 *et seq.*, specifies the City Planning Commission as agency responsible for the Master Plan. However, MCL 125.3849 makes an exception that allows a Charter established planning department in a city or village to submit a proposed master plan, proposed extension, addition, revision, or other amendment to a planning commission. Therefore, the Planning and Development Department has been, and is responsible for “preparing” the Master Plan of policies, extensions, etc. The planning commission can share this responsibility with a planning department. The Master Plan of policies should be developed through extensive community engagement rather than a proposal submitted by a department of the Administration.
Where the above exception is applied, the planning commission processes the document, holding the public hearing, and votes on the master plan amendments; the Council’s role per sec. 125.3843 of the Act, is to approve or disapprove of the commission’s action. Further, the City Council does not have the authority to “modify” the Master Plan; however, it can send it back to the Planning Commission for amendments. This language needs to be modified to accurately outline the process.
- 8-102: Periodic Review. **CPC:** While the Planning Enabling Act only requires the Master Plan to be reviewed every 5 years, there is no prohibition on a municipality conducting annual reviews. Typically, updates are done in conjunction with developments and/or development proposals. Once again, the City Council does not have the authority to make modifications to the master plan, however, that authority rests with the planning commission, and Council approves or disapproves the Commission’s action.

Chapter 2. Budgets

- 8-204: Annual Budget. **CPC:** What department within the City of Detroit operates “social service programs?” Clearly the intent is to demilitarize the Police Department and focus on programs that address the root issues of crime, such as social inequity. If the City has such a department that administers these programs, that department should be specified in item no. 4.
- 8-215: Election Funding. This provision may not be workable in light of the off election years where the annual funding will still be 95% of the median average previous five fiscal years. If there is no election that year, should it be funded the same as election years. **Fiscal:** The proportional funding system shall include no less than 0.005% but no more than 0.05% of the total income tax revenue for the previous fiscal year. \$244 million x .005% = \$12,200. \$244 million x .05% = \$122,000. Unclear if this is over and above the existing budget of \$10 million.
- 8-216: Implementation of this provision may conflict with State law, Public Act 436 of 2012.
- 8-217: **Fiscal:** A Cash Reserve Fund in the General Fund of the City shall be maintained in an amount no less than five percent (5%) of the prior year’s adopted General Fund expenditure budget. No additional cost, currently being done. Follows state law.

Chapter 3. Administration of Budgets - No change.

Chapter 4. Property Taxation

- 8-803: Subsection 9 - the City is preempted from creating property tax laws pursuant to the General Property Tax Act.
- 8-804: **NEW** - Tax abatements. The provision limiting tax abatements to a term not to exceed 5 years appear to be in violation of the Home Rule City Act, MCL 117.4j(3), which provides, in pertinent part, that all laws and ordinances passed by a municipality are subject to the constitution and general laws of the State. The Michigan tax laws provide the legislative body the discretion to determine the term of an abatement certificate pursuant to the statutory scheme set by the State. See also, *American Federation of States and Municipal Employees v. City of Detroit*, 468 Mich. 388, 662 N.W.2d 695 (2003), which precludes a municipality from enacting a law that is “[i]n direct conflict with the state statutory scheme, or (2) if the state statutory scheme preempts...by occupying the field of regulation which the municipality seeks to enter... even where there is no conflict between the two schemes of regulation.” The field of taxation and the abatement of taxes has been preempted by the State. **CPC:** This section seems too broad in its description of tax abatements. There are several types of tax abatements which don’t appear to be considered. For example, NEZs, and PILOTs would be hampered by this proposed amendment. Would each resident who has an NEZ be required to comply with the Tax Abatement Agreement sections of this Article?

Many of the tax abatements utilized in the City for development purposes have a maximum term of either 12 or 15-years. What cooling effect would a 5-year limitation have on development in the City of Detroit, particularly when the data shows that the City actualizes more tax capture with a 12 to 15 year abatement than it would if the development were not to take place.

Is the statement, “[t]he Auditor General has jurisdiction over all tax abatements granted by the City, even if the City is a third-party to an abatement agreement to which the recipient is a party” an accurate statement? The City may authorize a tax abatement, however, it is the State Tax Commission which issues the actual abatements. Is this section necessary considering that all of the state statutes governing tax abatements have claw back provisions written into them?

- 8-405: **NEW** - Tax Increment Financing. As stated above, the field of taxation has been preempted by the State. The provision may run afoul of State law which requires TIF revenues be expended as set forth under state law. The field of taxation and the abatement of taxes has been preempted by the State. **CPC:** Typically, a Brownfield TIF area is comprised solely of that development’s footprint. There usually aren’t residents that can benefit from any type of workforce development and/or job training initiatives. **Fiscal:** TIF money may be needed to cover debt service.

Chapter 5. Borrowing – No material changes.

Chapter 6. Special Assessments - No material changes.

Article 9 **Miscellaneous Provisions**

Chapter 1. Community Advisory Councils

- 9-102: Creation and Composition of Advisory Councils. While LPD has no significant concern about some of these particular changes, this would be the third charter proposing

these bodies, which have proven very difficult to implement. The new discussion draft proposes that the number of signatures required on nominating petitions for CAC members would be drastically reduced, from 10% of the number of voters in the district where the CAC is located in the last general election, to 1% “of the number of persons voting at the last municipal general election in the non at-large district having the lowest number of votes cast.” While this would presumably make it much easier to qualify for the ballot, it is not clear to LPD that inability to get enough signatures on such petitions was a major obstacle to implementation of this provision. There are many other challenges involving lack of broad interest in serving on merely advisory bodies, and even considerable opposition to these bodies expressed in previous implementation attempts. Also (as further discussed below), CAC members who were supposed to serve voluntarily under the 2012 Charter would now be compensated: “All members shall receive a meeting stipend in a manner and amount to be determined by City Council.”

CPC: As it concerns the “meeting stipend”, there are several boards, commissions and elected offices which do not receive compensation. Is it appropriate for CAC members to be financially compensated, when other boards and commissions which are also mandated by either state law or local ordinances are not?

- 9-103: Powers, Duties and Limitations. As with the stipend provided for in the previous section, the new requirement that Council appropriate funds for the CACs, and the authorization that they may lease space, raise potential fiscal concerns. On the other hand, the lack of resources allocated to them to function may well have been one of the biggest reasons why they were not implemented after adoption of the 2012 Charter. Most of the specific changes to CACs’ powers and duties present no significant concerns, but the new requirement number 8, that they “Provide advice to City Council on the budget for the City of Detroit”, is unnecessary, as the budget process already provides robust transparency and multiple opportunities for providing such advice. Of greater concern is number 9: “The right to request that their City Council representative receive prior consultation from the Community Advisory Council on all issues that may come before City Council which relate exclusively to their district, including information about projects taking place in the district, in a manner that allows the Community Advisory Council sufficient time to review the information and advise City Council prior to any legislative decision.” While presumably well-intentioned to enhance CACs’ role, the potential ability to delay and frustrate City Council’s deliberations and determinations pursuant to their own procedures, and responsive to the needs of the City as a whole, would be a significant additional power of CACs beyond mere advice. Moreover, it would possibly disrupt Council’s actions and potentially harm the City. CAC members and other Detroit residents are able to effectively use the existing avenues for learning about development projects and providing budgetary and development advice, particularly via the community engagement ordinance. These changes in lines numbers 8 and 9 are not necessary and threaten to add another layer of bureaucracy, rather than an advisory forum. **CPC:** In what manner will the gifts and grants to the CAC’s be received? Typically, Council must pass a resolution to accept gifts and grants and all of those funds go through appropriations. By increasing the frequency of the number of meetings to twice a month a greater financial strain is anticipated. What is the procedure if there are no municipal issues, *i.e.*, property sales, development agreements, CBAs, etc., taking place within the respective district? Is the CAC then still “required” to meet? In regards to meetings being held in donated or “leased” facilities, what safeguards are in place to ensure that each leased facility is equitable in price since the taxpayer’s dollars will be going toward the leasing of the space? Also, what safeguards are in place to

ensure that a CAC member is not profiting from the lease of one of their personal holdings to the CAC, or a family member?

Chapter 2. Council of the Arts and Funding for the Arts

- 9-201: Council of the Arts. - No significant concern
- 9-202: **NEW** - Funding for the Arts. This well-intentioned attempt to fund cultural workers in Detroit raises significant concerns about the propriety of public money being funneled to private entities, as well as oversight and cost. Council may wish to ask that the Law Department, if they do not address this provision in their own summary, opine on its legality in terms of permissible use of public money.
LPD believes that this language may be unnecessary, to the extent that legitimate use of public funds for the arts is already permissible under many circumstances. This fact may be considered to render the proposed changes as essentially surplusage, unless they are interpreted to include more robust and alternative funding models that raise the above-mentioned concerns about such appropriations for primarily private purposes of individual artists. There is significant fiscal concern, and some of the language is ambiguous and overly broad in its drafting.**CPC:** Is it appropriate for taxpayer’s dollars to go towards private institutions that contribute to the arts? Public institutions should not pose a problem, however, the source of the funding should be specified. In the case of CDBG dollars, those funds are utilized for providing services to low- to moderately-low income individuals and has documented outputs and outcomes. How would such an undertaking be monitored?
- 9-203: **NEW** - Charles H. Wright Museum of African American History. This raises significant fiscal concern by requiring specific, large fiscal appropriations to support the institution. This is well intentioned, but too rigid and expensive for the Charter. Appropriations, especially specific amounts, should not be in the Charter, leading to inflexible, and potentially bankrupting costs. **CPC:** While staff supports the Charles H. Wright Museum of African American History, does any other Article or Section in the Charter specify a dollar amount for an annual appropriation? Shouldn’t a percentage be identified rather than a dollar amount? Does this specific section limit Council’s budgetary authority? Is there any other instance in the City Charter or by ordinance where the City is required to contribute annually to an endowment? Similar language to that of “Library” (Sec. 9-504) should be utilized in this section. **Fiscal:** This proposal creates an additional cost of \$2.15 million.

Chapter 3. Regulatory Power and Review - No change.

Chapter 4. Specific Responsibilities

- 9-401: Board of Review. No change
- 9-402: Hospitals. No change
- 9-403: Revision Question: No significant concern – sets date for next submission of charter revision question to the voters in 2038.
- 9-404: Schools and Youth Employment. Cost is a concern with this obviously well-intentioned proposal for increasing youth employment opportunities. LPD believes that this is really an executive function, with City Council providing oversight, raising significant separation of powers concerns. It is unclear who will implement this ambitious program, or how. Concerns regarding excessive rigidity of policy options

when a Charter is too prescriptive, while using undefined terms. This particular language seems ambiguous and unclear, as well as not well-suited for inclusion in the Charter.

- 9-405: Elimination of Redundancy in Government. Recognizing that the Commission only updated this existing Charter section, LPD notes that this is an example of a provision that, no matter how well-intentioned, should not be in a Charter because it potentially ties government's hands by mandating one thing (here constant review of redundancy) and risking neglect of other, potentially more important things not mandated by the Charter, as circumstances evolve and change. Moreover, this provision, only very slightly changed from the 2012 Charter, is unnecessary and even more overly prescriptive at this time, because while some redundancy is actually necessary and desirable in government for oversight and accountability, much of the actual analysis and work provided for in this provision of the 2012 Charter has in fact already been done since that time.

Chapter 5. Specific Powers - No change. **CPC:** Although no amendments are proposed to this chapter, CPC staff notes that with respect to 9-503, Historic Areas and Landmarks, consent of property owners to create historic districts is not required in the City Code.

Chapter 6. Retirees' Representation - No change

Chapter 7. Risk Management

- 9-701: Risk Management Council. This slightly modified provision merely adds an hourly employee annually appointed by the Mayor to this body, which raises no significant concern. The focus in additional language singling out the hourly worker for being bound by confidentiality is unnecessary; all members of this body are bound by the same confidentiality obligations. **CPC:** Should point no. 11 read "A FTE employee annually appointed by the Mayor" rather than "...An hourly employee..."? Should a specific department where that employee comes from be identified? Should there be qualifications associated with that employee's appointment?

Chapter 8. Insurance Assistance

- 9-801: City Sponsored Insurance Assistance. This slightly revised provision from the 2012 Charter is inappropriate, because it will continue to be interpreted by many hard-pressed insurance consumers to impose what are effectively impossible tasks on City government, under a state statutory insurance scheme we do not control. This subject matter should not be in the Charter no matter how compelling the issue where, as here, it is not about the functioning of City government. For several other reasons, as previously explained in multiple LPD reports both before and after the relatively recent state legislative no fault insurance reforms, there may be much better ways for Detroit to reduce such insurance costs than such a Charter provision that can't be implemented. This critique is applicable to both the suggested amended language and the preexisting section itself.

Chapter 9. Affordable Housing

NEW CHAPTER

- 9-901, 9-902, and 9-903: **NEW** - Inclusionary Housing Requirements, Affordable Housing Development and Preservation Fund. It is unclear to LPD how these three provisions, without much more, can effectively address the complex affordable housing

crisis (which has become even more pressing during the Covid pandemic). These particular vaguely drafted, seem overly prescriptive and inflexible for the Charter, and to some extent are already in the City’s existing housing ordinance. Defining Area Median Income for various purposes risks conflicts with federal law in a federally funded area. These provisions, as drafted, could create significant confusion about affordable housing where much of the funding will use different median income standards.

It would also raise potential fiscal concerns, if some of these provisions were possible to implement. Similar to several other social welfare subject matters addressed elsewhere in this discussion draft – e.g., water, disability, immigration, language access, labor rights, etc. – while the issues are undeniably compelling, and in some cases there might even be merit in embedding basic values around such issues in the charter to set suitable base lines for future government actions (particularly where the more permanent governing bodies than the Charter Commission are primed to take action), rather than entrusting policy to the permanent elected branches of local government. This is something Council will presumably want to be very careful about. This language appears to LPD to be neither effective nor appropriate to the enormous challenges it seeks to address. **CPC:** The AMI is set by HUD and is Federally binding. Staff is uncertain if this formula can be implemented.

Chapter 10. Responsible Contracting

NEW CHAPTER

- 9-1001, 9-1002, and 9-1003: These provisions are impractical and too rigid for inclusion in a municipal charter, no matter what merits it may or may not have as a purchasing code for contractors, an ordinance, or some other form of more flexible and easily adaptable policy making. **CPC:** All of these provisions seem to already be a part of the purchasing and procurement laws in the City Code, and therefore, not necessary to include this language in the Charter.

Chapter 11. Labor Neutrality

NEW CHAPTER

- 9-1101: Labor Neutrality. This new provision requires that “Unless prohibited by law, all contracts between the City of Detroit and business entities shall contain a requirement that the business entity remain neutral concerning union efforts to organize and represent the businesses’ employees who perform services, transport people or products, or manufacture products for the City of Detroit.” Without in any way questioning the propriety of labor neutrality, this requirement may be beyond the City’s legal authority, and too intrusive into matters concerning how private companies conduct their businesses. It may be preempted by state labor standards preemption (HB 4052, the “Local Government Labor Regulatory Limitation Act”). Moreover, if this provision were added to the Charter, it might well lead to additional state preemptive legislation based on the state legislative majority’s clearly and consistently expressed hostility to municipal regulation of such issues. Council may wish to ask the Law Department to opine regarding the legality of this proposal. Even if legal, it would be better as a policy in an ordinance or administrative regulations for purchasing, planning, CRIO and other departments to meaningfully weigh labor and other human rights issues, than in the Charter.

Chapter 12. Labor Relations

NEW CHAPTER

- 9-1201 and 9-1202: These novel provisions would require the City to refrain from invoking the fact-finding process authorized by labor law prior to 120 days after the expiration of the union contract; limit the circumstances under which contract terms will be imposed; and impose emergency bargaining requirements in the event of a financial review under the state's emergency management statute. Noting that LPD lacks deep expertise in this area, this all seems too prescriptive for the Charter, and indeed probably harmful to the City's interests. If Council does not oppose these one-sided proposals on policy grounds, Council may wish to request a formal legal opinion from the Law Department.

Chapter 13. Community Benefit Agreements

NEW CHAPTER

- 9-1301: Community Benefit Agreements. This seeks to impose the specific procedural and substantive requirements of enforceable community benefits agreements on all tax-supported development projects in the City that are worth \$50 million or more. Council is familiar with policy and legal debates around these issues, which will be noted but not repeated here. The proposed provision would substitute a new community benefits policy regime for the proposed ordinance amendments currently before Council. This innovative provision is not, however, appropriate for the Charter. It is too rigid for the Charter, whereas an ordinance would allow the City to adjust, recalibrate and modify such standards and requirements as may prove to be necessary in ways that will not work for the Charter. **CPC:** Staff believes that this section should be limited to stating that an ordinance should be drafted after the passage of this Charter. The particulars of the composition of the NAC may not be easily met in each project area. The number and manner in which members should be selected can be stated here. Requiring that a "resident" from the "union" doing work on the project, and "a member of the disability community" and "faith-based community" are not feasible or relevant. In regards to requesting projected revenues within 72 hours of the NAC being selected, staff does not see the necessity of that request considering that community benefits offered by a developer are not tied to either the investment amount nor the amount of projected revenues. Staff believes that the references to "housing affordability," "gentrification," "transportation," "racial disparities," "economic inequality," and "poverty" should be stricken from the second paragraph under section B. *Neighborhood Advisory Council meetings with the Developer*, as they are not within the control or wheelhouse of the developer to address.

Chapter 14. Compensation Equity

NEW CHAPTER

- 9-1401 and 9-1402. These provisions would require Council to pass an ordinance that implements a program, process and guidelines for compensation equity that is intended to reduce the wage earner disparity between employees. These are more examples of provisions that, no matter how well-intentioned, are not appropriate for the Charter because it ties government's hands by mandating one thing (here compensation equity) and risking neglect of other potentially more important things that may arise in the same context. It is unnecessary and overly prescriptive for the Charter. Some appointed positions in City government have large compensation ranges, based on very different

duties and experience, even if they have the same title. A rigid Charter-based requirement for undefined “equity” could risk depriving the City of the flexibility needed to attract, compensate and manage employees in specific work contexts.

Chapter 15. Charter Commission

NEW CHAPTER

- 9-1501: Charter Revision Commission. This provision would require adequate funding for Charter Commissions, like the one that created this discussion draft, a basic requirement already imposed by state law, but with much less specificity. It is too prescriptive for a Charter. The Home Rule Cities Act covers these issues. **Fiscal:** Uncertain if this would increase the current budget of \$576,000.

Article 10. Courts

No change.

Article 11. Retirement Plans

No change.

Article 12. Initiative and Referendum

No change.

Article 13. Wage and Standard Boards (NEW ARTICLE)

- 13-101 through 13-105: These provisions would require City government to create and impose industry standards. They are likely preempted by state law (HB 4052, *the Local Government Labor Regulatory Limitation Act*).

Article 14. Schedule

- 14-101: Effect on Existing Legislation. **CPC:** The six-month timeframe does not appear to reconcile with other specified time frames.
- 14-104: Effective Date. **CPC:** This should be January 1st of following year.
- 14-109: Initial Appointments; Vacancies. **CPC:** Is the timeframe for filling vacancies on boards and commissions feasible? Should the vacancy be declared and posted by the subject board or commission or instead by the appointing authority following receipt of a report from the subject board or commission? Should solicitations be made in this manner for candidates to all boards and commissions?
- 14-111: Submission of the Charter. No concern