PRIVILEGED AND CONFIDENTIAL
MEMORANDUM

TO: Conrad L. Mallet, Corporation Counsel
    Charles Raimi, Deputy Corporation Counsel

FROM: Vie Seriovski, Senior Assistant Corporation Counsel

RE: The proposed ordinance to amend Chapter 44, Taxation, of the 2019 Detroit City Code

DATE: November 8, 2022

You asked for a legal opinion on Council President Sheffield’s proposed ordinance to amend Chapter 44, Taxation of the 2019 Detroit City Code. For the reasons discussed below many of the sections are unlawful. This memo highlights some of the fundamental legal problems of the proposed ordinance, however, the fact that a specific section is not addressed is not necessarily an endorsement of that section.

1. The proposed amendments to (i) Section 44-4-2 which seek, *inter alia*, to amend the inspection dates and content of assessment notices and add publication and data disclosure requirements; (ii) Section 44-4-3 which seek, *inter alia*, to amend the filing deadlines and standing requirements for an appeal to the Board of Assessors; (iii) Section 44-4-5 which seek, *inter alia*, to require the assessor to create an electronic filing system; and (iv) section 44-4-10 which seek, *inter alia*, to require creation of an Independent Review Board and provision by the assessor’s office of data analysis contrary to Michigan property tax law; are unlawful pursuant to Section 4s of the Home Rule City Act.

In 2014, in connection with the City’s bankruptcy filing and the “Grand Bargain” by which the state provided hundreds of millions of dollars to the City, the Michigan Legislature amended the Home Rule City Act to require cities with a population of more than 600,000 to establish the position of a chief financial officer. The City’s Office of the Chief Financial Officer (CFO) was established in accordance with Section 4s of the Act. The CFO oversees the operation of eight
different divisions of city government, which most notably includes the Office of Assessor. In other words, the Office of Assessor serves as an arm of, and under the direct supervision and control of, the CFO. The powers and duties conferred to the CFO by the Act, are set forth in MCL 117.4s(2), which provides:

The chief financial officer appointed under subsection (1) shall report to the mayor and do all of the following:

(a) Supervise all financial and budget activities of the city.

(b) Coordinate the city’s activities relating to budgets, financial plans, financial management, financial reporting, financial analysis, and compliance with the budget and financial plan of the city... (Emphasis added).

The term supervise is defined in Black’s Law Dictionary as an act of managing, directing or overseeing persons or projects. The term coordinate, as used in this context, is defined in Google’s English Dictionary as bringing “the different elements of (a complex activity or organization) into a relationship that will ensure efficiency or harmony.” The scope of the CFO’s authority under this statute covers the supervision and coordination of all financial activities of the City, including those involving the assessment of property taxes.

Property tax assessments are at the core of the “financial and budget activities of the City.” Adopting the proposed modifications to Section 44-4-2, 3, 5 and 10 would be unlawful under Section 4s of the Home Rule City Act. Such amendments would usurp the CFO’s statutory duty to supervise and coordinate the assessment process in accordance with statutory regulations and budgetary considerations.

In this regard we note that the Michigan State Tax Commission (“STC”) “shall have general supervision of the administration of the tax laws of the state, and shall render such advice and counsel to the assessing officers of the state as they may deem necessary and essential to the proper administration of the laws governing assessments and the levying of taxes in this state.” MCL 209.104. Pursuant to that authority the STC has issued a one-page standardized assessment notice form (exhibit A).

The proposed ordinance would require a completely different notice form that would be many pages long. It would require, inter alia, detailed explanations of inherently complex legal terms (taxable value, state equalized value, etc) understandable by individuals with an 8th grade

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1 The CFO oversees the operation of eight different divisions of city government: the Office of the Assessor; Office of Controller; Office of Contracting and Procurement; Office of Department Financial Services; Office of Development and Grants; Office of Financial Planning & Analysis; Office of Treasury; and the Office of Budget.
2 Office of the Assessor estimates the value of real property within a city which is thereafter converted into an assessment and used in the computation of real property tax bills.
4 “coordinate.” Languages.oup.com 2022
reading level. Creating and mailing such a form in multiple languages would be extremely difficult, if not impossible, and costly.

A decision to radically depart from the state standardized notice would require approvals of both the CFO and STC. This cannot be accomplished by Ordinance.

The office of assessor currently has on the City’s website information to assist residents in understanding assessment forms. There would be no impediment to the administration and City Council working together to update and improve the website and referencing the website in the assessment notice.

2. The proposed amendments to Section 44-4-6, which, inter alia, seek to expand the standing requirements for filing an appeal with the Board of Review, are unlawful under the GPTA and binding precedent.

The General Property Tax Act, MCL 211.1et seq. (GPTA) governs proceedings for contesting property tax assessments. MCL 211.30 provides in pertinent part:

Persons or their agents who have appeared to file a protest before the board of review at a scheduled meeting or at a scheduled appointment shall be afforded an opportunity to be heard by the board of review. MCL 211.30(3).

At the request of a person whose property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the board of review shall correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act. A nonresident taxpayer may file his or her appearance, protest, and papers in support of the protest by letter and his or her personal appearance is not required. MCL 211.30(4).

The governing body of the township or city may authorize, by adoption of an ordinance or resolution, a resident taxpayer to file his or her protest before the board of review by letter without a personal appearance by the taxpayer or his or her agent. MCL 211.30(8).

The Michigan Court of Appeals determined that “when read as a whole, MCL 211.30 affords “taxpayers” the opportunity to be heard on tax protests, but only “a person whose property is assessed on the assessment roll or his or her agent” may actually make such a property tax protest before the board of review.” Walgreen Company v Macomb Township, 280 Mich App 58, 63; 760 NW2d 594, 597 (2008). Additionally, the Court in Spartan Stores, Inc v City of Grand Rapids, 307 Mich App 565; 861 NW2d 347, 350 (2014) held “Persons or entities who are not the property owner or the owner's agent—for example, a commercial leaseholder who lacks the authorization of the property owner—may not protest tax assessments at the board or review.” Id at 570.
Based on the rulings set forth above, unless a person or entity is the owner of the property assessed or their authorized agent, they do not have standing to appeal the assessment before the board of review. Therefore, any amendment to this Section that extends beyond the scope of this limitation, would be unlawful under binding precedent.

3. The proposed provisions of Section 44-4-10 which, *inter alia*, require creation of an Independent Review Board and provides City Council with standing to appeal a property assessment and amend the rules governing appeals filed with the March Board of Review are also unlawful under the City Charter, the GPTA and binding precedent.

The City Charter, section 4-106, grants City Council the authority to create standing committees whose members are also City Council members. There is nothing in the Charter which authorizes City Council to create a permanent independent review board such as appears in the proposed ordinance.

For the reasons set forth in paragraph 1 above, this Committee would also violate 117.4s(2).

For the reasons set forth in paragraph 2 above, City Council does not have standing to appeal the valuation of property owned by other City residents.
**Notice of Assessment, Taxable Valuation, and Property Classification**

This form is issued under the authority of Public Act 206 of 1893, Sec. 211.24c and Sec.211.34c, as amended. This is a model assessment notice to be used by the local assessor.

**FROM:**

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<th>PARCEL IDENTIFICATION:</th>
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<th>PARCEL CODE NUMBER:</th>
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<th>PROPERTY ADDRESS:</th>
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**NAME AND ADDRESS OF OWNER OR PERSON NAMED ON ASSESSMENT ROLL:**

<table>
<thead>
<tr>
<th>PRINCIPAL RESIDENCE EXEMPTION</th>
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<tbody>
<tr>
<td>% Exempt As &quot;Homeowners Principal Residence&quot;: 0.00%</td>
</tr>
<tr>
<td>% Exempt As &quot;Qualified Agricultural Property&quot;: 0.00%</td>
</tr>
<tr>
<td>% Exempt As &quot;MBT Industrial Personal&quot;: 0.00%</td>
</tr>
<tr>
<td>% Exempt As &quot;MBT Commercial Personal&quot;: 0.00%</td>
</tr>
<tr>
<td>Exempt As &quot;Qualified Forest Property&quot;: [ ] Yes [ ] No</td>
</tr>
<tr>
<td>Exempt As &quot;Development Property&quot;: [ ] Yes [ ] No</td>
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</tbody>
</table>

**ACCORDING TO MCL 211.34c THIS PROPERTY IS CLASSIFIED AS:**

**PRIOR YEAR'S CLASSIFICATION:**

<table>
<thead>
<tr>
<th>PRIOR AMOUNT YEAR: 2020</th>
<th>CURRENT TENTATIVE AMOUNT YEAR: 2021</th>
<th>CHANGE FROM PRIOR YEAR TO CURRENT YEAR</th>
</tr>
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1. TAXABLE VALUE:
2. ASSESSED VALUE:
3. TENTATIVE EQUALIZATION FACTOR:
4. STATE EQUALIZED VALUE (SEV):

5. There WAS or WAS NOT a Transfer of Ownership on this property in 2020:

The 2021 Inflation Rate Multiplier is: 1.014

March Board of Review Appeal Information:

The Taxable Value, the Assessed Value, the State Equalized Value, the Property Classification, or the Transfer of Ownership may be appealed by filing a protest with the Local Board of Review. Protests are made to the Board of Review by completing a Board of Review Petition Form. A Petition Form may be obtained directly from the local unit or from the State Tax Commission's website at [www.michigan.gov/taxexemptions](http://www.michigan.gov/taxexemptions). Click on the "Property Taxes" box, select "Forms and Instructions," then click on "Board of Review" to obtain a "Petition to the Board of Review." Form 618 (L-4035).

The Board of Review will meet at: (enter dates and times and place)

Not less than 14 days before the meeting of the Board of Review, the assessment notice shall be mailed to the property owner.

Property taxes are calculated on the Taxable Value (see Line 1 above). The Taxable Value number entered in the "Change from Prior Year to Current Year" Column does not indicate a change in your taxes. This number indicates the change in the Taxable Value.

State Equalized Value is the Assessed Value multiplied by the Equalization Factor, if any. State Equalized Value must approximate 50% of market value.

**IF THERE WAS A TRANSFER OF OWNERSHIP** on your property in 2020, your 2021 Taxable Value will be the same as your 2021 State Equalized Value.

**IF THERE WAS NOT A TRANSFER OF OWNERSHIP** on your property in 2020, your 2021 Taxable Value is calculated by multiplying your 2020 Taxable Value by 1.014 (Inflation Rate Multiplier for the current year). Physical changes in your property may also increase or decrease your Taxable Value. Your 2021 Taxable Value cannot be higher than your 2021 State Equalized Value.

The denial of an exemption from the local school operating tax for "qualified agricultural properties" may be appealed to the local Board of Review. The denial of an exemption from the local school operating tax for a "homeowner's principal residence" may be appealed to the Michigan Tax Tribunal by the filing of a petition within 35 days of issuance of this notice. The petition must be a Michigan Tax Tribunal form or a form approved by the Michigan Tax Tribunal.

Michigan Tax Tribunal forms are available at [www.michigan.gov/taxtrib](http://www.michigan.gov/taxtrib).

Filing a protest with the Board of Review is necessary to protect your right to further appeal valuation and exemption disputes to the Michigan Tax Tribunal and classification appeals to the State Tax Commission. Properties classified Commercial Real, Industrial Real or Developmental Real may be appealed to the regular March Board of Review or to the Michigan Tax Tribunal by filing a petition by May 31. Commercial, Industrial, or Utility Personal Property may be appealed to the regular March Board of Review or to the Michigan Tax Tribunal by filing a petition by May 31 if a personal property statement was filed with the local unit prior to the commencement of the Board of Review as provided by MCL 211.19, except as otherwise provided by MCL 211.9m, 211.9n and 211.9o. The petition must be a Michigan Tax Tribunal form or a form approved by the Michigan Tax Tribunal. Michigan Tax Tribunal forms are available at [www.michigan.gov/taxtrib](http://www.michigan.gov/taxtrib).

To claim a PRE, complete the "Principal Residence Exemption Affidavit" (Form 2368) and file it with your township or city of the year of the claim. A valid affidavit filed on or before June 1 allows an owner to receive a PRE on the current year summer and winter tax levy and subsequent tax levies so long as it remains the owner's principal residence. A valid affidavit filed after June 1 and on or before November 1 allows an owner to receive a PRE on the current winter tax levy and subsequent tax levies so long as it remains the owner's principal residence.