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Paige Blessman
M. Rory Bolger, Ph.D., FAICPF
Eric Fazzini
Christopher Gulock, AICP


City of Detroit

CITY COUNCIL

LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Edward King
Jamie Murphy
Kim Newby
Analine Powers, Ph.D.
Laurie Anne Sabatini
Rebecca Savage
Ryan Schumaker
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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: May 11, 2022

RE: **The Community Benefits Ordinance and International
Border Crossings**

Council Member Santiago-Romero has requested amendment of the existing Community Benefits Ordinance (CBO) to address international border crossings. Unfortunately, determining the most appropriate way to include international crossings in the CBO is anything but a straightforward undertaking. There are multiple reasons why this should be discussed in a closed session. The proposed amendment involves several layers of complexity (and, importantly, contradictions), including:

- Ambassador Bridge-Riverside Park - In July 2015, the Detroit City Council approved the Land Exchange Agreement (LEA) between the City and the Detroit International Bridge Company involving in part the Ambassador Bridge and Riverside Park

Although this specific referral arose out of the agreed-upon, but as yet not fully consummated land swap and related terms of the Riverside Park transaction with the owners of the existing Ambassador Bridge, the CBO does not apply to this transaction by the terms of the ordinance and the development agreements. Amending the CBO to incorporate the Riverside Park/Ambassador Bridge development, if that were contemplated, would be legally problematic at this stage of the ongoing transactions, risking additional liability to the City and making this an impracticable working group project for that international crossing;

- Gordie Howe Bridge - The currently under construction Gordie Howe Bridge included a community benefits agreement after many years of community involvement with the International Bridge Authority on both sides of the border. As has previously been discussed in Council, the definition of community benefits agreement commonly applied by community advocates of such agreements is different from the definition of community benefits in Detroit's ordinance, adopted by voters as Proposal B, which prohibits enforceable community benefits agreements with community groups; and
- Other Considerations - For any conceivable future border crossing, which foreseeably if not probably might include subsidies and/or land transactions that could qualify under the terms of the CBO, either as currently stated or amended (perhaps even to include 'any international border crossing' by definition), the limits on what the City can legally enforce in such international contexts are drastic and effectively unchallengeable.

The City has very limited jurisdiction over aspects of our health and safety at the border, but not over border crossings themselves. Suffice it to say, pending a closed session if necessary, that the City has very limited power to require or enforce things like a community benefits agreement or a local ordinance, by whatever definitions, on international border crossings governed by state, federal, provincial, commonwealth and international laws. As noted above, the community benefits agreement provisions implemented around the Gordie Howe Bridge project were rooted in federal and state transportation laws and agreements with Canadian officials of the international bridge Authority, not under the Detroit CBO.

As such, it is LPD's recommendation in consultation with the Law Department that a hypothetical working group could address further amendments to the CBO (as was recently done by the previous council), if Council seeks to amend that ordinance. Guidance from Council is needed. However, limiting analysis or action in that regard to international border crossings would effectively prevent meaningful action, for the above reasons and additional ones subject to further attorney client privileged communications, if necessary and appropriate.

If we can be of further assistance regarding these issues, please feel free to call upon us and LPD will be glad to provide further research and analysis upon request.