

**To:** City Council President *Pro Tem* James E. Tate, Jr.  
**From:** Conrad L. Mallett, Jr., Corporation Counsel  
**Date:** March 20, 2023  
**Re:** The effect of not terminating the Detroit Life Building Brownfield Plan on the proposed Transformational Brownfield for District Detroit.

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**Issue Presented:**

The effect of not terminating the Detroit Life Building Brownfield Plan on the proposed Transformational Brownfield for District Detroit.

**Conclusion:**

The Detroit City Council cannot approve the proposed District Detroit Transformational Brownfield Plan without first terminating the Detroit Life Brownfield Plan.

**Background:**

In 2007, the City of Detroit Brownfield Redevelopment Authority (the “**DBRA**”) and Detroit City Council approved a brownfield plan (the “**Credit Plan**”) for the property located at 2210 Park Avenue, commonly known as the Detroit Life Building (the “**Property**”). The Credit Plan identified eligible activities for which the developer could receive a \$440,000 Single Business Tax Credit (“**SBT**”) under state laws in effect at the time. The Credit Plan did not contemplate the capture or receipt of any tax increment revenues. The eligible activities under the Plan did not occur and the developer did not receive the benefit of the SBT. The SBT program is no longer an active incentive program<sup>1</sup>.

The DBRA seeks to terminate the Credit Plan under Section 14(8) of Act 381 of 1996, the Michigan Brownfield Redevelopment Financing Act (“**Act 381**”). The Property is included as eligible property in the proposed “District Detroit Transformational Brownfield Plan” (the “**TBP**”). Resolutions for the termination of the Credit Plan and the approval of the TBP are currently under consideration by the Detroit City Council.

During the March 16, 2023 meeting of the Planning and Economic Development Committee, Council President Pro Tempore Tate asked about the effect on the proposed TBP of not approving the termination of the Credit Plan. This memorandum is in response to that question.

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<sup>1</sup> Further information about this expired state tax credit program can be found here: <https://www.miplace.org/programs/brownfield-michigan-business-tax-credits/>.

Analysis:

Termination of a brownfield plan is addressed in Section 14(8) of Act 381 which provides in relevant part that:

- (8) A brownfield plan or plan amendment may be abolished or terminated according to this subsection subject to all of the following:
- (a) The governing body may abolish a brownfield plan when it finds that the purposes for which the plan was established are accomplished.
  - (b) The governing body may terminate a brownfield plan or plan amendment for an eligible property **if the project for which eligible activities were identified in the brownfield plan or plan amendment fails to occur with respect to the eligible property for at least 2 years following the date of the resolution approving the brownfield plan or plan amendment**, provided that the governing body first does both of the following: (*emphasis added*)
    - (i) Gives 30 days' prior written notice to the developer at its last known address by certified mail or other method that documents proof of delivery attempted.
    - (ii) Provides the developer an opportunity to be heard at a public meeting.
  - (c) If a brownfield plan or plan amendment is terminated under subdivision (b), **the governing body may approve a new brownfield plan or plan amendment for the eligible property under which tax increment revenues may be captured for up to the period of time provided under section 13(5).** (*emphasis added*)

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The foregoing language grants the right to approve a new brownfield plan that includes eligible property for which a prior brownfield plan was terminated. Furthermore, the definition of “eligible property” in Section 2(p) of Act 381 includes “undeveloped property that was eligible property in a previously approved brownfield plan abolished under section 14(8).” These two provisions when read together indicate that **an eligible property that was included in a prior brownfield plan cannot be included in a new brownfield plan unless that brownfield plan is abolished or terminated under Section 8.**

Under Section 14a of Act 381, the Detroit City Council may approve a transformational brownfield plan based upon several considerations, including whether the transformational brownfield plan meets the requirements of sections 13, 13b, and 13c of Act 381. Each of Sections 13, 13b, and 13c limits brownfield plans to “eligible property”.

Conclusion:

Based on the analysis of Section 8 above, property that is subject to a prior brownfield plan that has not been terminated or abolished is not considered “eligible property” under Act 381; therefore, **City Council cannot approve a brownfield plan that includes such property.**

Based on the foregoing, in the event that the resolution for the termination of the Credit Plan is not approved, Detroit City Council would not have the ability to approve a brownfield plan that includes the Property, including the proposed TBP.