LAW DEPARTMENT

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March 18, 2022

Detroit City Council
1340 Coleman A. Young
Municipal Center
Detroit, Michigan

Re: Ordinance to amend Chapter 22, *Housing*, to add Article VIII, *Right to Counsel*.

Honorable City Council:

Council President Sheffield has requested that the Law Department prepare an ordinance to amend Chapter 22 of the 2019 Detroit City Code, *Housing,* by adding Article VIII, *right to Counsel,* consisting of Section 22-8-1 through Section 22-8-9.

A copy of the ordinance is attached which has not been approved as to form.

Respectfully submitted,

Tonja R. Long

Tonja R. Long
Chief Administrative Corporation Counsel

Enclosure
cc: Gail Fulton, City Council Liaison

SUMMARY

This ordinance amends Chapter 22, of the 2018 Detroit City Code, *Housing*, by adding Article VIII, *Right to Counsel*, which consists of Section 22-8-1, *Purpose*, Section 22-8-2, *Legislative findings*, Section 22-8-3, *Definitions*, Section 22-8-4, *Provision of legal representation*, Section 22-8-5, *Reporting*, Section 22-8-6, *Public meeting required*, Section 22-8-7, *Director of Housing Revitalization and Development to promulgate administrative rules*, Section 22-8-8, *Funding*, and Section 22-8-9, *No private right of action*, to provide for the right to counsel for qualified low-income occupants in residential eviction cases in 36th District Court and in housing-related administrative proceedings which threaten occupancy; to provide for such representation by nonprofit organizations with expertise to provide such legal services with funding from the City, and to provide for penalties and enforcement of the article.

BY COUNCIL PRESIDENT SHEFFIELD:

AN ORDINANCE to amend Chapter 22, of the 2018 Detroit City Code, *Housing*, by adding Article VIII, *Right to Counsel*, which consists of Section 22-8-1, *Purpose*, Section 22-8-2, *Legislative findings*, Section 22-8-3, *Definitions*, Section 22-8-4, *Provision of legal representation*, Section 22-8-5, *Reporting*, Section 22-8-6, *Public meeting required*, Section 22-8-7, *Director of Housing Revitalization and Development to promulgate administrative rules*, Section 22-8-8, *Funding*, and Section 22-8-9, *No private right of action*, to provide for the right to counsel for qualified low-income occupants in residential eviction cases in 36th District Court and in housing-related administrative proceedings which threaten occupancy; to provide for such representation by nonprofit organizations with expertise to provide such legal services with funding from the City, and to provide for penalties and enforcement of the article.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Chapter 22 of the 2018 Detroit City Code, *Housing*, is amended by adding Article VIII, *Right to Counsel*, consisting of Sections 22-8-1 through 22-8-9, to read as follows:

CHAPTER 22. HOUSING

ARTICLE VII. RIGHT TO COUNSEL

Sec. 22-8-1. Purpose.

(a) Recognizing that providing a right to counsel to covered individuals serves a public purpose including promoting the public health, safety, general welfare, security, prosperity, and contentment of all inhabitants of the City of Detroit, all covered individuals who face eviction proceedings in 36th District Court or in housing-related administrative proceedings which threaten

1 the occupancy of their homes, shall be afforded a right to legal representation by counsel in all
2 such proceedings.
3 (b) Recognizing also that the City of Detroit is prohibited by the Michigan Constitution
4 from lending it's credit, such as providing legal representation for individual tenants with monies
5 provided by the City's General Fund, and that the City will be prohibited from using monies from
6 the General Fund for the program.
7 **Sec. 22-8-2. Legislative findings.**
8 The Council finds that:
9 (1) Prior to 2020, there were more than 30,000 eviction filings on properties located in
10 the City of Detroit in the 36th District Court, one of the largest dockets in the nation.
11 The 2020 census reports indicates that there are 87,000 rental structures in the City,
12 of these, the Buildings & Safety Engineering Department estimates that fewer than
13 20% are code compliant;
14 (2) An estimated 11,000 homes in the City with federally insured mortgages were bank
15 foreclosed prior to the federal moratoria and are listed for sale in the 2022 HUD
16 inventory;
17 (3) There were more than 50,000 properties on the Wayne County Treasurer's 2021
18 petition for tax foreclosure in 2022, 85-90% of which are located in the City;
19 (4) There is an estimated economic value lost by the City due to out-migration related
20 to evictions of at least $28.7 million;
21 (5) It is estimated that the City will experience social safety net cost savings of
22 approximately $18 million by providing legal representation to residents facing
23 eviction. Between 2014-2019, it has cost an estimated $34 million in public funds

to demolish blighted homes purchased by speculators out of the tax foreclosure auction; and

(6) Providing the right to counsel in any proceeding that threatens the occupancy of the occupant ameliorates the threat of economic impact and to public safety not only for the individual so represented but for the entire City. Detroit receives an estimated $3,751 annually per resident in non-reimbursable federal funding, which it is at risk of losing if a resident is evicted and migrates out of the City. Detroit receives in federal funding more than three times the cost of providing legal representation for a resident facing eviction.

Sec. 22-8-3. Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Coordinator means the Coordinator of the "Office of Eviction Defense", who shall be assigned to the Housing and Revitalization Department or otherwise, as the administration directs.

Covered individual means a resident of the City whose annual gross household income does not exceed two hundred percent of the federal poverty guidelines as updated periodically in the federal register by the United States Department of Health and Human Services pursuant to subsection (2) of section 9902 of title 42 of the United States code and is a defendant or respondent in a covered proceeding.

Covered proceeding means:

(1) Any summary proceeding commenced in the 36th District Court to recover possession from an occupant of any residential property or any administrative proceeding which threatens the occupancy of an occupant, including, but not

1 limited to, eviction proceedings, mortgage foreclosures, property tax foreclosures,
2 land forfeiture proceedings, and threats to rent subsidies;
3 (2) Any post-judgment process or appeal of such a proceeding in the discretion of the
4 designated organization; and
5 (3) Any action to recover possession from an occupant illegally evicted as a result of
6 self help remedies.
7 *Designated organization* means a nonprofit tax-exempt organization under Section
8 501(c)(3) of the Internal Revenue Code, whose primary charitable activities are the provision of
9 legal services to the poor, and that has the experience, competency, and capacity to provide full
10 legal representation in all covered proceedings.
11 *Eviction* means a covered proceeding whereby a Plaintiff seeks a court judgment granting
12 possession or title to the Plaintiff.
13 *Full legal representation* means ongoing legal representation provided by a designated
14 organization to a covered individual and includes all legal advice, advocacy, court appearances,
15 and assistance with such representation. It also includes appeals to the Circuit Court or any other
16 court in the discretion of the designated organization providing the representation.
17 **Sec. 22-8-4. Provision of legal representation.**
18 (a) The Coordinator shall establish a program no later than October 1, 2022, to provide
19 full legal representation and conduct outreach to covered individuals who appear in covered
20 proceedings.
21 (b) All covered individuals shall receive access to full legal representation no later than
22 their first scheduled appearance in a covered proceeding, or as soon thereafter as is practicable and
23 as scheduled by the Court.

1 (c) The Coordinator shall establish a proposed budget annually. The Coordinator shall
2 use the most recent eviction case filings reported by the 36th District Court to establish a proposed
3 budget. Beginning January 31, 2023 and no later than January 31st of each year thereafter, the
4 Coordinator shall publish a summary of any changes to such a proposed budget.
5 (d) Any legal services performed by a designated organization pursuant to this article
6 shall not supplant, replace, or satisfy any obligations or responsibilities of such designated
7 organization pursuant to any other program, agreement, or contract.
8 (e) The lawyers providing such counsel shall be licensed in the State of Michigan and
9 employed by nonprofit organizations with experience and competency to provide such legal
10 representation, and the designated organizations shall be funded by the City of Detroit.
11 (f) The Coordinator shall annually review the performance of designated organizations
12 based on the reporting requirements contained in Section 22-8-5 of this Code to determine the
13 experience, competency, and capacity of the organization to provide full legal representation in
14 covered proceedings.
15 **Sec. 22-8-5. Reporting.**
16 (a) No later than January 31, 2024 and thereafter annually by January 31 of each
17 succeeding year, the Coordinator shall submit to the Mayor and the City Council, and post online
18 on the City's website, a review of the program and information regarding its implementation, to
19 the extent such information is available, including, but not limited to:
20 (1) The estimated number of covered individuals and the total number of covered
21 individuals served by the program;
22 (2) The number of covered individuals receiving full legal representation,
23 disaggregated by the following characteristics:

1 a. Neighborhood and postal code of residence;

2 b. Age of head of household;

3 c. Household size;

4 d. Estimated length of residency at the address;

5 e. Approximate household income;

6 f. Receipt of any public assistance at the time such legal services were

7 initiated;

8 g. Racial demographic;

9 h. Whether a rental unit was rent-assisted or subsidized; and

10 i. Types of cases filed in 36th District Court and number of each type of case.

11 (3) The racial demographic of the plaintiffs in covered proceedings if known,

12 notwithstanding the fact that plaintiffs shall not receive legal services under the

13 provisions of this article. The corporate designation shall be recorded in lieu of the

14 racial demographic if the plaintiff is not an individual.

15 (4) Outcomes immediately following the provision of full legal representation, as

16 applicable and available, including, but not limited to, the number of:

17 a. Case dispositions allowing occupants to retain possession;

18 b. Case dispositions requiring occupants to vacate the premises in dispute in

19 any period longer than the statutory minimum;

20 c. Case dispositions with a signed Order of Eviction;

21 d. Case dispositions where an Order of Eviction was bailiff-executed;

22 e. Instances where the attorney providing full legal representation was

23 discharged or withdrew;

1 f. Whether homeownership was retained or created for homeowner occupancy
2 cases;
3 g. Whether the amount of rent a covered individual was ordered to pay was
4 reduced from the plaintiff's demand at the time of trial or final hearing;
5 h. Whether repairs were ordered in the judgment or obtained through
6 agreement of the parties;
7 i. Whether the judgment contained a settlement agreement to dismiss the case,
8 or if there was a conditional dismissal entered by the court;
9 j. Whether the covered individual's subsidy was retained in matters involving
10 subsidized housing;
11 k. dispositions requiring payments of rent arrears in money judgments;
12 l. dispositions where payment arrangements were reached;
13 m. number of covered proceedings for properties without occupancy permits;
14 and
15 n. number of rental proceedings for properties without rental registrations.
16 **Sec. 22-8-6. Public meeting required.**
17 (a) Following the establishment of the programs described by Section 22-8-4 of this
18 Code, the Coordinator shall hold one public meeting each year to receive recommendations and
19 feedback about such programs.
20 (b) Such meeting may be in-person, virtual, or a hybrid of in-person and virtual meeting
21 and shall be open to the public. The Coordinator shall provide notice of such meeting, no less than
22 30 days before such meeting, by:
23 (1) Posting at the 36th District Court in English, Spanish, and Arabic;

(2) Posting in public areas in the Coleman A. Young Municipal Center designated for posting official notices in English, Spanish, and Arabic;

(3) Outreach through local media to the general public; and

(4) Posting to each designated organization, the offices of the Mayor and City Council Members, the Chief Judge of 36th District Court, and Chief Judge of the Real Estate Division of the 36th District Court, and community-based housing organizations funded by the City of Detroit.

(c) The public meeting shall provide for discussion, dialogue, or comment among participants at which members of the public are able to provide public comment.

(d) The Coordinator shall cause a record of such meeting to be produced and shall post such record online no later than 45 days after the public meeting.

Sec. 22-8-7. Director of Housing Revitalization and Development to promulgate administrative rules.

In accordance with Section 2-111 of the Charter, the Director of Housing Revitalization and Development is required to promulgate procedural administrative rules as are necessary for carrying into effect the provisions of this article.

Sec. 22-8-8. Funding.

The City is authorized, subject to approval by City Council, to utilize any funds or source of funding permitted by law to establish and fully implement the program under this article.

Sec. 22-8-9. No private right of action.

Nothing in this article or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the City or any agency, official, or employee thereof.

1 **Secs. 22-8-10 –22-8-20. Reserved.**

2 **Section 2.** This ordinance is hereby declared necessary to preserve the public peace,
3 health, safety and welfare of the People of the City of Detroit.

4 **Section 3.** All ordinances, or parts of ordinances, that conflict with this ordinance are
5 repealed.

6 **Section 4.** In the event this ordinance is passed by two-thirds (2/3) majority of City
7 Council Members serving, it shall be given immediate effect and become effective upon
8 publication in accordance with Section 4-118 of the 2012 Detroit City Charter. Where this
9 ordinance is passed by less than a two-thirds (2/3) majority of City Council Members serving, it
10 shall become effective on the thirtieth (30) day after enactment, or on the first business day
11 thereafter, in accordance with Section 4-118 of the 2012 Detroit City Charter.

Approved as to form:

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Charles N. Raimi
Deputy Corporation Counsel