

**ORIGINALLY PREPARED AS PRIVILEGED AND CONFIDENTIAL ADVICE FOR
THE ANN ARBOR CITY COUNCIL ON JANUARY 2, 2020.**

**PRIVILEGE PARTIALLY WAIVED BY COUNCIL RESOLUTION R-20-396 ON
OCTOBER 5, 2020**

TO: Mayor and Council

FROM: Stephen K. Postema, City Attorney
Matt Thomas, Assistant City Attorney

DATE: January 2, [2020]

SUBJECT: Dissolution of the Ann Arbor Downtown Development Authority

INTRODUCTION

A Councilmember requested general legal advice regarding Council's ability to dissolve Ann Arbor's Downtown Development Authority ("DDA"), the process for doing so, and the effects of the decision. This memorandum provides this general advice.

QUESTIONS PRESENTED

1. Does City Council have the ability to dissolve the DDA?
2. What is the procedure for dissolving the DDA?
3. What are the effects of dissolving the DDA?

SHORT ANSWERS

1. Yes, the City Council can dissolve the DDA if it finds the requirements found in Sec 230 of the Downtown Development Authorities Act and Chapter 1:157 of the Ann Arbor City Code are met. Both provide that when the DDA has completed its purpose, the authority may be dissolved by the Council. [REDACTED]
2. The statute requires dissolution to occur by ordinance.
3. The statute provides that once the authority is dissolved, the property and assets of the authority, once all outstanding obligations are satisfied, belong to the City.

ANALYSIS

I. Dissolving the DDA

Section 230 of the Downtown Development Authorities Act provides that “an authority that has completed the purposes for which it was organized shall be dissolved” by the governing body, which in the case of Ann Arbor’s DDA is the City Council. MCL 125.4230(1). Chapter 7 of the Ann Arbor City Code, which establishes Ann Arbor’s DDA, similarly states that the authority may be dissolved by Council “upon completion of [the DDA’s] purpose.”

By qualifying Council’s authority to dissolve the DDA with the “upon completion of its purpose” language, the state legislature has required that Council make a finding that the DDA’s purpose has actually been completed. See *Risk v. Lincoln Charter Tp. Bd. Of Trustees*, 279 Mich. App. 389 (2008). Courts have held that similar language precludes the dissolution of an authority for any reason other than what the enabling statute provides. *City of Ecorse v. Ecorse Brownfield Redevelopment Authority*, 2010 WL 99002 (2010).

[REDACTED]

[REDACTED] Section 203 of the DDA Act, which empowers communities to create a DDA when it finds an authority necessary to:

- Halt property value deterioration;
- Increase property tax valuation (where possible);
- Eliminate the causes of that deterioration; and
- Promote economic growth.

These factors could possibly be considered to be “the purpose” of the DDA, and a finding that they are “completed” could justify the dissolution of the authority. These factors are also found in 1:151 of the Ann Arbor City Code. [REDACTED]

[REDACTED]

A more specific definition of the purpose of the DDA could potentially be found in Ann Arbor DDA’s development plan, approved by Council in 2003. Section 1:158(e) of the Ann Arbor City Code states that:

[P]roposed developments identified in the March 5, 2003 Development Plan and Tax Increment Financing Plan are reasonable and necessary to carry out the purpose of Act 197 of the Public Acts of 1975 as amended.

[REDACTED]

Importantly, *Ecorse* seems to indicate that a mere “finding” by Council that the DDA’s purpose has been completed would not be sufficient to dissolve the DDA. There the Court briefly stated that “because [the Brownfield Authority] has a development agreement to remediate two or three of several brownfields in Ecorse, it cannot be said to have completed its purpose.” [REDACTED]

[REDACTED]

[REDACTED]

The City has also issued bonds on behalf of the DDA and repayment is tied to certain DDA revenue streams. If the City Council was to consider dissolution, the City’s bond counsel would need to be engaged to advise on the impact of such bond obligations on the City’s ability to dissolve the DDA.

II. Procedure

As stated above, the statute provides that the dissolution be done by ordinance rather than resolution. As with any ordinance, this would require two readings and a public hearing before it goes into effect.

III. Effects of Dissolution

After debts and other obligations satisfied, the property and assets of the Authority belong to the City, including any fund reserves. Section 215(2) of the Act specifies that “the tax increment financing plan shall not be abolished until the principal of, and interest on, bonds issued pursuant to section 16 have been paid or funds sufficient to make the payment have been segregated.” MCL [125].4215(2). In the present case, the City would be

[REDACTED]

assuming the bond payments currently made by the DDA and any contractual obligations for equipment, goods, and services, which could not under the terms of the respective contracts be terminated.

Under Section 2(n) of the Parking Agreement, the DDA at its own expense operates, maintains, pays related debt service, and keeps the Municipal Parking System in good repair and the total expense of routine maintenance and repair in connection with all City parking structures and surface lots is borne by and paid by the DDA. These expenses would then become the obligation of the City to pay, as would the revenue from parking fees.

There is one other legal implication that should be considered if the DDA is dissolved. If a future Council sought to re-establish the DDA, the current configuration is not guaranteed. This is because of a 1993 amendment to the DDA Act that allows for a taxing jurisdiction to opt-out of a new development district. This would prevent a future DDA from capturing revenue from any taxing jurisdiction if that taxing jurisdiction opted-out.

IV. Conclusion

Both the financial and operational effects of the dissolution of Ann Arbor's DDA are complex and will require further legal analysis and consultation with multiple departments within the City and bond counsel. If Council has the desire to pursue dissolution, it is recommended that Council pass a resolution directing staff to study the practical effects of dissolution to allow Council to have complete information before moving forward.