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LEGAL MEMORANDUM

TO: Rob Daykin
FROM: Peter Watts
DATE: July 1, 2015
RE: **Process For Adopting an Urban Renewal Agency and Plan**
File No. 50249-37340

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

Question Presented

You have asked us to summarize the process and timeline for adopting an urban renewal Agency and a plan under the provisions in the Charter, identify the state law changes that have been made since the current Charter provisions were adopted and recommend changes to streamline the process for adopting an urban renewal Agency or plan.

Timeline and Issues

Chapter XI, Urban Renewal, is drafted in a way that will make it incredibly difficult, and time consuming, for the city to utilize Urban Renewal, even if there is wide community support. While it is not unusual to have a voter approval requirement, to authorize the use of Urban Renewal, I am not familiar with any other city that has voter requirements similar to the requirements found in Chapter XI. I suspect that some of the issues, and ambiguity, in this chapter were unintentional, though it's possible that they were by design. Regardless of the intent of the drafters, the word choices that they made have very real consequences, and ambiguous terms with the potential for multiple reasonable interpretations could create substantial legal risk for the city.

Section 53, requires voter determination that a need exists because there are "blighted areas" existing in Dundee and that the "solution" is through "an Urban Renewal District and Agency." This vote is specified to occur at a "general election." A general election is defined in ORS 254.056, which reads, the "general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year." As a result of this the voter "need"

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determination, could next be on the ballot in November of 2016. The section also specifies that such determination “shall be without an emergency clause.” Practically speaking, ordinances with emergency clauses, cannot be referred, and go into effect immediately, and ordinances without emergency clauses can be referred and go into effect 30 days after enactment. By not allowing an emergency clause to be used, the section makes the decision to refer the question, regarding “need”, referable to voters, and also impacts the timing of adoption of the ordinance. For instance, if the City Council passed the Ordinance in early July, a resident could submit a petition to refer it, and would then have 90 days (early October) under state law, to collect the signatures. Thus, regardless of whether the referral was successful, the city would have missed the submission deadline, and would need to wait two years.

Section 54, covers the next steps if a “need” is found. If voters find a “need,” the city council is authorized to establish an Urban renewal agency, after voter approval at a general election.” While it is not entirely clear, one possible interpretation is that the voter approval requirement is the vote required in Section 53, however this is countered by the language in Section 55. Ultimately, this is an interpretation that council will need to make, and there are multiple plausible interpretations under the Charter. Given the level of ambiguity, and the fact that there do not appear to be any minutes related to the drafting or adoption of this Charter Chapter, council has very little guidance beyond the language in the Charter itself.

Assuming the Agency is established, Under Section 54, it is authorized “to develop an Urban Renewal District plan describing the adopted district boundaries, activities within, financing plan, general operations, resources, annual reports, and proposed results.” Practically speaking, the Agency will have little autonomy to make determinations regarding the district boundaries, as Section 55 provides: “Urban Renewal District Boundaries shall be those lines drawn on a map and **submitted to the voters as part of the District and Agency formation.** The Urban Renewal District Board of Directors may add no more than ten (10%) additional area to the District than initially approved by the voters.” *Emphasis added.*

Practically speaking, many of the tasks delegated to the Agency would regularly be determined prior to the formation of district boundaries, because it is those decisions that would drive the formation of a district. However, the plain language of Section 55 specifies district boundaries are established at the same time, as agency authorization. In the event that the city council interpreted the Charter Provision, to authorize the Agency to do the planning to develop the District plan first, it would push the district boundary vote to November of 2020.

Section 56 specifies that “upon creation of the Agency there is established an Urban Renewal District Board of Directors consisting of the City Council.” The Section further specifies that “City Council may choose to appoint five (5) additional directors whose terms shall be no more than two years.” This gives the City Council the choice of appointing five additional directors, or not appointing five additional directors. However, appointment of the five additional

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directors will create an even number of Directors, which could result in tie votes, with no tie-breaker specified.

Section 58, establishes which funds are available, and again, the word choices cause some interesting outcomes and ambiguity. Section 58 provides, "Property value added **as a result of actions by the Urban Renewal District** or through property value appreciation shall be used as the basis for calculating the tax increment available to the District." *Emphasis added.* Practically, the bulk of Urban Renewal funds are generated through private sector new construction, not due to the actions of the District, or through property value appreciation. While the infrastructure or amenities, built by the Urban Renewal Agency, may make it more attractive to the private sector, those amenities in and of themselves, probably will not generate much in the way additional funds. If the district is unable to capture the increased taxes, paid by new development, and instead needs to rely on annual appreciation, capped statutorily at 3%, the overall of effectiveness will be compromised.

It is possible that the city council could interpret Section 58 to mean that taxes generated by new construction, were part of the funds available for district projects. While the city council is entitled to broad discretion on code/charter interpretation issues, a determination counter to the plain language of the text of the Charter does expose the city to legal risk, and risk of litigation. Because decisions coming out of that interpretation involve the spending of money, or authority to spend money, it is particularly important that the city proceed with caution. In the event, that the city council was to make the "new construction tax revenue is available" determination, I would strongly suggest that the city council file a legal action under ORS 33.710 and ORS 33.720 to get prior judicial examination and determination of the interpretation. Although, ORS 33.710 is designed to occur on an expedited basis, the current litigation I am involved in under ORS 33.710 has been going on for in excess of 14 months.

Section 58 also provides that "[i]f the Urban Renewal District Plan includes tax incremental financing of District indebtedness, the Board of Directors shall refer to the voters, at a regular election, the question of authorizing such debt." "Regularly scheduled elections" are defined in ORS 221.230 as "[t]he second Tuesday in March; [t]he third Tuesday in May; [t]he third Tuesday in September; or [t]he first Tuesday after the first Monday in November." *Emphasis in the original.* The voter referral requirement for "tax incremental financing of District indebtedness" could create huge issues, since the voter approval is not limited to "bonded indebtedness." The term "District indebtedness" could easily be interpreted to require voter approval of all spending decisions involving the use of "tax increment financing." Again, because this question involves the authority to spend money, I would strongly recommend the city council file an ORS 33.710 action and get judicial interpretation and determination, prior to taking action.

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Finally, although the Agency is authorized to adopt a “financing plan” under Section 54, if each spending decision needs to be authorized by the voters, then the plan will have little utility.

Recommended Course of Action

Tax Increment Funding, and the use of Urban Renewal in Oregon, is an incredibly complex financing tool, and it is difficult to explain all of the nuances. There are strong opponents of Urban Renewal, who oppose cities ability to use it as a financing tool. Currently, the city has had preliminary discussion regarding studying the feasibility of Urban Renewal as a financing tool, but no determination has been made regarding feasibility. Setting aside the issues related to Chapter XI, if a study is done and it is determined that Urban Renewal is not a feasible option, then there is no urgency to address the drafting issues related to Chapter XI. Proceeding with a preliminary feasibility study will not trigger the Chapter XI, process.

If a study is done, and it is determined that Urban Renewal is feasible, then I strongly recommend that the city seek voter approval to amend and clarify Chapter XI. What that looks like, and how many voter authorizations are needed is a decision for you as policy makers, not for me as city attorney. If the intent of the drafters is to require a vote on Urban Renewal then there are undoubtedly ways that can be achieved, through the amendment of Chapter XI. But, until the ambiguities related to available funds, authority to spend those funds, and need for voter approval of each spending decision, are clarified, I cannot in good faith recommend that the city proceed with even the initial “need” vote under the current Chapter XI. There is simply too much legal risk. And, the cost of litigation, if there is litigation, will be prohibitively high.