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To: Mayor, City Council, and City Administrator

From: City Attorney Doug Herman

Re: Demolition Assistance Grant Policy

Date: February 10, 2025

Dear Mayor and Council:

Dylan asked that I review your Demolition Assistance Grant Policy, update terms in a way that will 'broaden', my terms, its applicability, and to also address the following questions or concerns that were raised by one or some of you.

1. Because the City Council approved 'grants' to applicants where the facts and circumstances of the application appeared to fall outside of the Grant Policy, my opinion on whether the Council is at risk of 'getting in trouble' for failing to follow the previously approved policy.

Response: Policies are approved by Resolution, generally, as are Applications for Grant assistance. Generally speaking, resolutions are all on equal ground, both require a majority vote of the Council. A resolution approving a 'Policy' has no greater weight than a resolution approving a 'Grant'. That said, it is important to consider the following:

- a. If a Resolution, in this case approving a Grant Application, is not consistent with the Grant Policy, why is the policy being ignored and/or why is the policy not being amended to make the desired Grant Application approval fit within the Policy? Approving Grant Applications that are not eligible for approval under the Policy will send a message to the Community that the Policy, and maybe other policies in general, do not carry much meaning or weight. Not a good message to send.
- b. What kind of 'trouble' could come to pass by the Council not following previously approved policy?
  - i. Confusion of residents over the policy or lack thereof.
  - ii. Questions of 'favoritism' amongst the public, where one might argue that a 'grant' was given to someone because of who they are or who they know. Unfairness.
  - iii. Argument by public/others who may submit a Grant Application that doesn't fit the Policy that "John got a grant for a project that was not eligible so why can't I?" (Puts the Council in a difficult spot.)

- iv. Comments in annual audit by Auditor that City Council identified by Policy a “public purpose” but is spending money outside of that Policy, the auditor potentially arguing that doing so is not for a public purpose and therefore a wrongful expenditure of public funds.
    - a. In my opinion, this risk is minimal, particularly if the Council Resolution approving the Grant makes specific findings as to why the Grant is being approved, that the demolition serves a public interest, and even if the grant falls outside the Grant Policy, the grant award is substantially consistent with the policy, or something along those lines.
2. Whether the Council could be found to be guilty of discriminating against parties/persons/entities by not making the Grant available to everyone, regardless of circumstances? (Applicants where the ‘property’ is or has been income producing, for example)

Response: The short answer is no, so long as the reason for the differences is not constitutionally prohibited.

- a. The Council has great discretion to determine what is or is not a good use of public dollars, particularly when spending money in the form of a grant. Most importantly, the City must find there is a public purpose. The City may also determine, by Policy, that it wants to promote certain projects and/or that a grant or incentive is important and necessary or appropriate in certain circumstances, but not all.
  - i. So long as the policy cannot be read to directly or indirectly discriminate against certain protected classes, including by age, ancestry, race, disability, gender, military status, religion, sex, and the like, the Council has, in my opinion, no concerns.

I have attached an updated draft ‘broadened’ policy for your review. I am guessing a bit as to what you may or may not want in the policy and you can definitely tighten it up more, condition it more, etc., if desired. For example, is a residential lot or commercial lot eligible for demolition assistance whether the applicant owns adjacent property or intends to improve the lot, or for other reasons? A couple of examples:

1. Resident(or Non-Resident) acquired residential property via tax sale, does not own adjacent property, and wants to demolish home so that lot may be listed for sale. Eligible?)
2. Resident(or Non-Resident) inherited downtown building in need of demolition, owns no adjacent property, has no plans to improve the property, only plans to own it and/or market it. What if owner is known to be independently wealthy? What if owner has unrealistic value of lot when vacant? What if owner has been a problem owner over the years with this or other property, with code enforcement issues? Eligible? Should eligibility requirements include ‘need’

and not code noncompliance history, or should it really come down to the positive impact the demolition will have on the City?

Let me know what questions or input you might have.

Sincerely yours,

***Douglas D. Herman***

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**LYNCH DALLAS, P.C.**