

Date: August 7, 2024

To: Mayor and Members of City Council

202401753

From: Sheryl M. M. Long, City Manager

Subject: Metropolitan Planning Organization Legal/Financial Implications

### **Reference Document #202401415**

Council at its session on May 30, 2024, referred the following item for review and report.

MOTION, dated May 14, 2024, submitted by Councilmember Jeffreys, WE MOVE that the Administration reports back to Council in 60 days on the legal and financial implications of the proposed Charter amendment submitted on January 22, 2024, pertaining to Cincinnati's participation in its Metropolitan Planning Organization.

### **INTRODUCTION**

A local organization called the Cincinnati Coalition for Transit and Sustainable Development is seeking an amendment to the City's Charter that would make the City's membership in the Ohio-Kentucky-Indiana Regional Council of Governments ("OKI") conditioned on OKI's amendment of its rules to provide proportional representation, under a theory that it would increase the City's weight in OKI's decision-making process. If OKI does not agree to alter its structure, the proposed Charter language might force the City to withdraw from OKI.

The City has received hundreds of millions of dollars in federal transportation funding through OKI in recent years. In addition, the Department of Transportation and Engineering relies on OKI and its professional staff for valuable expertise and support.

While the legal implications of a successful ballot measure are not certain, there is no viable alternative to OKI. The City's withdrawal from OKI would result in a significant loss of crucial transportation funding for the City, remove the City from the regional transportation planning process, and cause additional expenses for the City.

## **BACKGROUND**

### **1. The Proposed Charter Amendment**

The Cincinnati Coalition for Transit and Sustainable Development is sponsoring an election campaign financed by the Devou Good Foundation titled “Fair Share for Cincy” to place a ballot measure on the November ballot. The ballot measure would amend the City’s Charter in an effort to mandate proportional representation at OKI, which is the region’s Metropolitan Planning Organization (“MPO”) for federally funded transportation planning.

The proposed amendment reads as follows:

#### Article XVII – Membership in a Metropolitan Planning Organization

(1) The City may commence or maintain membership in a Metropolitan Planning Organization (“MPO”) only when both of the following conditions are met: (a) the voting power of the governing board of the MPO is apportioned proportionally based on population, not including those statutorily-required voting members; and (b) members that represent local governments have at least 90% of the total votes on the governing board.

(2) In the event that an MPO does not comply with section (1) of this Article, the City shall withdraw its membership from the body if the voting system is not corrected within 60 days of the effective date of this Article.

### **2. OKI’s Creation and Structure**

MPOs are creatures of federal statute, primarily under 23 U.S.C. Section 134 and 23 C.F.R. Section 450. An MPO is recognized as the entity that facilitates regional planning of transportation projects funded with federal dollars. 23 U.S.C. Section 134. MPOs are designated by agreement between the Governor and local governmental units representing at least 75 percent of the population, “including the largest incorporated city.” 49 U.S.C. Section 5303(d)(1); 23 C.F.R. Section 450.310(b).

OKI was formed by eight member counties situated in Ohio, Kentucky, and Indiana. The founding counties adopted Articles of Agreement signed by the Governors of the three states. OKI also adopted By-Laws that designate 118 participants as members of OKI’s Board of Directors, including 46 municipalities and multiple planning commissions, chambers of commerce, public transit authorities, state departments of

transportation, and environmental organizations. <https://www.oki.org/about/the-oki-region/>.

The Articles of Agreement provide that Cincinnati gets two seats on OKI's Board of Directors, including one elected official and one representative from the Planning Commission. Articles, Art. III.B.1.b and 1.e. Each member of the Board of Directors gets one vote and serves a one-year term. Articles, Art. III.B.4; By-Laws Article I, Section 2.g.

## **LEGAL IMPLICATIONS OF PASSAGE**

If the Charter amendment passes, it is unlikely that OKI will agree to change its rules to give the City proportional representation. Amending the rules would require unanimous agreement of at least the eight founding counties and the Governors of the three states, if not all 118 members of the Board of Directors. 23 C.F.R. Section 450.310(j).

Importantly, there is not an alternative vehicle similar to OKI through which the City could obtain significant federal transportation funding. In addition, the City would most likely not be able to form its own MPO separate from OKI. Federal regulations favor only one MPO in a region. 23 C.F.R. Section 450.310(e) ("To the extent possible, only one MPO shall be designated for each urbanized area."). Further, designating a second MPO for the region would require the unanimous approval of OKI and the three Governors. *Id.* Neither OKI nor the governors would have any incentive to approve a second MPO.

## **FINANCIAL IMPLICATIONS**

### **1. Recent Funding From OKI**

The City of Cincinnati has approximately 18% of the OKI Ohio population. From 2010-2028, the residents of the City have benefitted from approximately 31% (\$233.9 million of \$745 million) of OKI's Ohio funds. If the City were not permitted to participate in OKI, funding could decrease. To illustrate the potential impact, the following is a breakdown of recent funds:

- City of Cincinnati Direct Grants \$143.3 million
- Grants from other public agencies e.g. Hamilton County (the Banks, Western Hills Viaduct, etc.) \$8.6 million
- MLK Interchange (SIB loan) \$9.8 million
- SORTA Grants within the City \$72.2 million

2. Additional Costs if the City is not Part of OKI

OKI provides many services to regional partners like the City at no cost. If the City leaves OKI and/or forms its own MPO, the costs for these services would be borne by the City. These services include the Long-Range Plan, the Travel Demand Model, and Air Quality and Congestion management, just to name a few, plus the cost to hire new staff.

**CONCLUSION**

Passage of the proposed Charter amendment could result in the City no longer receiving the benefits it has received by being part of OKI. These benefits include federal funds for City and regional projects, as well as services that are currently offered at no cost to the City.

cc: John S. Brazina, Director, Transportation and Engineering