

EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK

ORDER NO. 2

**ORDER OF THE EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK
TERMINATING THE PURCHASE OF SERVICE CREDITS**

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER FOR THE CITY OF LINCOLN PARK
PURSUANT TO MICHIGAN'S PUBLIC ACT 436 OF 2012
BRAD COULTER, THE EMERGENCY MANAGER, ISSUES THE FOLLOWING ORDER:

WHEREAS, under the Local Financial Stability and Choice Act, Act 436, Public Acts of Michigan, 2012 ("Act 436"), Brad Coulter has been appointed as the Emergency Manager (the "EM") of the City of Lincoln Park, County of Wayne, Michigan (the "City"); and

WHEREAS, pursuant to Section 9(2) of Act 436, the EM "shall act for and in the place and stead of" the Mayor, the City Manager, as the Chief Administrative Officer, and of the City Council, as the governing body of the City; and

WHEREAS, Section 9(2) of Act 436 also grants the EM "broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the [City] and the [City's] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety and welfare;" and

WHEREAS, Section 9(2) of Act 436 prohibits, during the pendency of receivership, the Mayor and the Council from exercising "any powers of those offices except as may be specifically authorized in writing by the [EM] or as otherwise provided by [Act 436] and are subject to any conditions required by the [EM];" and

WHEREAS, Section 12(1)(a) of Act 436 authorizes the EM, "notwithstanding any charter provision to the contrary," to "[a]nalyze the factors and circumstances contributing to the financial emergency of the local government and initiate steps to correct the condition;" and

WHEREAS, Section 12(1)(b) of Act 436 authorizes the EM, "notwithstanding any charter provision to the contrary," to "[a]mend, revise, approve or disapprove the budget of the local government, and limit the total amount appropriated or expended;" and

WHEREAS, Section 12(1)(d) of Act 436 authorizes the EM, "notwithstanding any charter provision to the contrary," to "[r]equire and approve or disapprove, or amend or revise, a plan for paying all outstanding obligations of the local government;" and

WHEREAS, Section 12(1)(dd) of Act 436 authorizes the EM, “notwithstanding any charter provision to the contrary,” to “[e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” as provided in the Michigan Home Rule City Act, Act 279, Public Acts of Michigan 1909 (the “Home Rule Act”); and

WHEREAS, Section 12(1)(ee) of Act 436 authorizes the EM, “notwithstanding any charter provision to the contrary,” to “[t]ake any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the [EM] shall be superior to and supersede the power of any of the foregoing officers or entities;” and

WHEREAS, pursuant to Section 12(2) of Act 436, “during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the [EM];” and

WHEREAS, Section 3(k) of the Home Rule Act requires that the City’s charter provide for “adopting, continuing, amending, and repealing the city ordinances;” and

WHEREAS, Chapter V, Section 13 of the City Charter grants to the City Council and, pursuant to the above-referenced sections of Act 436, the EM, “full power by ordinance to continue, amend or repeal, in whole or in party, any existing ordinance;” and

WHEREAS, City Ordinance 294.10, entitled “Purchase of Additional Service Credits,” provides:

(a) Effective July 1, 1982, any active member having a vested right in the employees retirement system may purchase up to three years of additional credited service by paying to the Annuity Savings Fund an amount equal to five percent of his or her current annual compensation or a fraction thereof. Such purchase shall be allowed only one time per member. Purchased service credit shall be assumed to have been rendered just prior to the date of purchase for purposes of computing final average compensation.

(b) Any active member hired before September 1, 1987, having a vested right in the retirement system, may purchase up to three years of additional credited service by paying to the Annuity Savings Fund an amount equal to five percent of his or her final average compensation or a fraction thereof. Such purchase shall be allowed only one time per member. Purchased service credit shall have no part in computing the final average compensation.

(c) Effective September 1, 1987, any new member having a vested right in the retirement system may purchase up to three years of additional credited service by paying to the Annuity Savings Fund an amount equal to 7.55 percent of his or her final average compensation or a fraction thereof. Such purchase shall be allowed only one time per member. Purchased service credit shall have no part in computing the final average compensation.

(d) Effective September 1, 1987, any new member will not be entitled to a lump sum on his or her final average compensation.

(“City Ordinance 294.10”); and

WHEREAS, the City has transferred its general employees to the Municipal Employees’ Retirement System (“MERS”) through an Administrative Service Agreement (the “ASA”); and

WHEREAS, City Ordinance 296.09, entitled “Purchase of Additional Credited Service,” applicable to police and fire employees, provides:

A member with twenty or more years of credited service may purchase a maximum of three years of additional credited service by paying to the Annuity Savings Fund an amount equal to five percent of the member’s annual base wage for the year in which payment is made, multiplied by the number of years and fraction of a year of credited service the member elects to purchase. Purchased credited service shall be assumed to have been rendered just prior to the date of purchase, for purposes of computing average final compensation.

(“City Ordinance 296.09”); and

WHEREAS, consistent with his duties under Act 436, the EM has determined that it is necessary and appropriate, and in the best interests of the City, to terminate the option of any individual to purchase additional service credits, whether previously authorized by ordinance or otherwise (including under the ASA), and to repeal City Ordinance 294.10 and City Ordinance 296.09.

IT IS HEREBY ORDERED THAT:

1. The option of any individual to purchase additional service credits, whether previously authorized by ordinance or otherwise, is hereby terminated.
2. City Ordinance 294.10 and City Ordinance 296.09 are hereby repealed.
3. This Order shall become effective immediately.
4. All orders of the EM, ordinances, and resolutions of the City Council, and all parts of orders, ordinances, or resolutions, in conflict with this Order are hereby repealed to the extent of such conflict.

5. If any component of this Order is declared illegal, unenforceable, or ineffective by a court of competent jurisdiction, such component shall be deemed severable so that all other components contained in this Order shall remain valid and effective.

6. The EM may modify, amend, rescind, replace, supplement, or otherwise revise this Order at any time.

7. Nothing in this Order shall be, or shall be deemed to be, a limitation, modification, waiver, or relinquishment by the EM of any right or power available under Act 436, all of which rights and powers are expressly preserved.

8. This Order shall be distributed to the Mayor, the Chief Administrative Officer, the City Council and the State of Michigan Department of Treasury.

SO ORDERED this 20th day of August, 2014.

By: _____



BRAD COULTER
Emergency Manager
City of Lincoln Park

cc: State of Michigan Department of Treasury
Mayor Thomas E. Karnes
Members of the Lincoln Park City Council