

EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK

ORDER NO. 3

ORDER OF THE EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK

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)(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 part, any existing ordinance;” and

WHEREAS, City Ordinance 1042, entitled “Water,” provides for the connection, metering, responsibilities, rates, and administration of Water service within the City; and

WHEREAS, the City would like to provide additional avenues for Water Bill repayment, removal of specific fee language from the Ordinance to the Fee Schedule and update the Ordinance’s Fund administration; 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 amend City Ordinance 1042 Sections 1042.02, 1042.12, 1042.15, 1042.16, 1042.18, 1042.19, 1042.22, 1042.24(b), 1042.28(a), and to repeal sections 1042.29 and 1042.30.

IT IS HEREBY ORDERED THAT:

1. The EM/City Manager or his/her designee may structure a repayment schedule upon a determination of undue hardship for the payment of past due water bills.
2. That the attached Ordinance , an ordinance to amend Chapter 1042 sections .02, .12, .15, .16, .18, .19, .22, .24(b), .28(a), and repeal sections .29 and .30 of the Code of Ordinances, is adopted .
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 10th day of October, 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

RESOLVED, that" AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF LINCOLN PARK BY REPEALING SECTIONS .02, .12, .15, .16, .18, .19, .22, .24(b), .28(a) of Chapter 1042 AND REPLACING IT WITH A NEW SECTIONS .02, .12, .15, .16, .18, .19, .22, .24(b), .28(a), and repealing sections .29 and.30.

THE CITY OF LINCOLN PARK ORDAINS:

That the codified Ordinances of the City of Lincoln Park be amended by repealing and replacing Sections of Chapter 1042 Water as follows:

1042.02 CONNECTIONS; PERMIT REQUIRED; FEES, CHARGES AND DEPOSITS.

Before any connection is made or any work performed, whether upon old or new connections, or any excavation or proceeding therefor is commenced, a permit shall be obtained from the Building Department, upon payment of a water tap permit fee in the amount set forth in this section. The Department shall immediately furnish a copy of such permit to the Superintendent of Public Works. The installation of such connection shall include tapping the main, installing the corporation cock, furnishing and laying the service pipe to the property line and installing a stopcock, shutoff box and related necessary items. The charge for such installation shall be based upon the City's actual cost of labor and material, and the bill for the same shall be issued by the Water Department. A certificate of occupancy shall not be issued and water service shall not be turned on until payment of the installation charge is received by the City Treasurer. The City Treasurer shall forward copies of the paid receipt to the Building Department and the Water Department.

Fees and deposit amounts shall be set by Council on the Fee Schedule. Before a water tap can be started, a deposit shall be made to cover the cost of the installation. A receipt for such deposit must be presented to the Water Department field crew before a water tap can be started.

THEFT OF WATER.

No person shall damage, break, remove, modify, alter or tamper with any water meter for the purpose of providing water to any premises without going through the meter. [n all prosecutions under this section, proof that the defendant, other than a lessor, had control of or occupied the premises where the offense was committed, or received the benefit of the water used or consumed, shall be prima facie evidence of a violation of this section.

1042.15 FAILURE TO PAY WATER CHARGES; DISCONTINUANCE OF SERVICE

(a) All water bills that are not paid within thirty days of issuance shall be deemed delinquent and a delinquency penalty of ten percent shall be added to each charge as billed. If the City Manager or his/her designee determines that there are compelling extenuating circumstances resulting in an undue hardship, the City Manager or his/her designee may structure a repayment schedule and reduce or waive late fees and or penalties in accordance with the City's policy.

(b) A shut-off notice shall be sent to customers whose bills remain unpaid after thirty days of their issuance, notifying the customer that service to the premises will be discontinued unless the bill and any delinquency penalties are paid in full within fifteen days of the date of the shut-off notice. If the City Manager or his/her designee determines that there are compelling extenuating circumstances resulting in an undue hardship, the City Manager or his/her designee may structure a repayment schedule and reduce or waive late fees and or penalties in accordance with the City's policy.

The shut-off notice shall inform the customer of entitlement to a hearing on the matter of discontinuance of service by requesting the same of the City within the fifteen-day period by calling the telephone number or writing to the address shown on the shut-off notice.

(c) A turn-on charge, to be set by Council and listed on the Fee Schedule will be charged to the customer whose service was discontinued. Such charge shall be paid, together with all unpaid charges and delinquency penalties, prior to restoration of water service. . If the City Manager or his/her designee determines that there are compelling extenuating circumstances resulting in an undue hardship, the City Manager or his/her designee may structure a repayment schedule and reduce or waive late fees and or penalties in accordance with the City's policy.

HEARINGS; PAYMENT ARRANGEMENTS; RECORDS.

(a) Any hearing requested by a customer pursuant to Section 1042.15 shall be conducted by a committee consisting of the Water Department Foreman, the Superintendent of Public Works and the City Finance Director, any two of whom shall constitute a quorum. Hearings shall be scheduled with the customer in the City Hall, with reasonable advance notice to the customer. Service shall not be discontinued pending such hearing. If the customer fails to appear at the hearing, service shall be discontinued pursuant to the shut-off notice.

(b) The committee may grant an extension of time for full payment of the water bill and any delinquency penalties, upon good cause. The committee may enter into payment arrangements with the customer, upon good cause , on the condition that the full balance be paid within the time frame established in the policy from the date of the hearing. The customer's failure to meet the established terms of a payment arrangement shall allow the City to discontinue service to the affected premises without further notice.

(c) The committee shall keep written records of each case it considers, including records of all extensions of time for payment and all arrangements for payment. If the committee decides that service is to be discontinued, it shall so notify the Water Department immediately in writing. The committee shall record the reasons for each of its decisions.

DEPOSIT FOR TURNING ON WATER.

(a) If any property is not subject to a lien for the charges for water furnished thereto, the Water Department shall require a deposit to be established by Council and listed on the User Fee Schedule for residential property and for commercial or industrial property before water is turned on or supplied to such property.

(b) Whenever the water is turned off from any premises at the request of the owner, it shall not be turned on again until the owner has deposited with the Water Department the turn-on fee, to be established by Council and listed on the Fee Schedule to cover the labor cost for such turn-on.

USE OF HYDRANTS.

Except for official City usage, no person shall turn on or open any of the public hydrants in the City without first obtaining a permit therefor from the Building Department and paying a permit fee to be established by Council and listed on the User Fee Schedule for each hydrant turned on. The Building Department shall obtain approval from the Superintendent of Public Works prior to issuance of the hydrant permit, and shall furnish copies of each hydrant permit to the Superintendent. Each hydrant turned on shall be metered by the Water Department with a calibrated hydrant meter, and the user of water from the hydrant shall be charged at the existing, established water usage rates.

1042.22 TURNING ON SHUT-OFF WATER.

No person shall turn on the water from any water main or pipe belonging to the water system of the City when the same has been shut off by order of the Water Department. In all prosecutions under this section, proof that the defendant, other than a lessor, had control of or occupied the premises where the offense was committed, or received the benefit of the water used or consumed, shall be prima facie evidence of a violation of this section.

1042.24 SCHEDULE OF RATES AND CHARGES; RULES FOR COLLECTION.

(b) That said properties considered to be at least six months delinquent as of March 1 and certified to the City Assessor to be entered upon the next general tax roll of the City to include for each account an additional administrative fee established by Council and listed on the User Fee Schedule. This fee may be adjusted by resolution from time to time.

1042.28 ESTABLISHMENT OF FUND.

- (a) The revenues of the system are ordered to be set aside, as collected, and deposited in a bank duly qualified to do business in the State, in an account to be designated the Water and Sewer Fund, and such revenues so deposited are pledged for the purpose of the fund set forth in this section.
- (b) through (k) be and are hereby repealed.

1042.29 TRANSFER OF FUNDS

Be and is hereby repealed.

1042.30 INVESTMENTS

Be and is hereby repealed.