

REGULAR MEETING

The meeting was called to order at 8:00 p.m., Mayor Steven M. Brown presiding.

Pledge of Allegiance to the Flag

Invocation by Rev. Ray Shelton of Friendship Baptist Church

PRESENT: Councilpersons Valerie Brady, Mario DiSanto, Michael Higgins, Mark Kandes, Thomas Murphy and Frank Vaslo

ALSO PRESENT: City Attorney Ed Zelenak and City Clerk Donna Breeding

Mayor's Remarks

RESOLUTION 04-158 Minutes

By Councilman Murphy, supported by Councilman Higgins

RESOLVED, that the minutes of the Regular Meeting held under the date of April 5, 2004 be approved as recorded.

Motion unanimously carried.

RESOLUTION 04-159 Recess to Review S.A.D.'s

By Councilman Murphy, supported by Councilwoman Brady

RESOLVED, that the Mayor and Council recess and meet with the Assessor as a Board of Review to review Special Assessment Districts.

No. 1033 Special Assessment Roll for unpaid charges for Weed cutting and/or cleaning and pick up of debris

No. 1034 Special Assessment Roll for unpaid charges for Snow Removal

No. 1035 Special Assessment Roll for unpaid charges for Sidewalk Program

No. 1036 Special Assessment Roll for unpaid charges for Board Ups and Demolitions

Motion unanimously carried.

ROLL CALL of the Board of Review, including the Assessor.

PRESENT: Councilpersons Valerie Brady, Mario DiSanto, Michael Higgins, Mark Kandes, Thomas Murphy, Frank Vaslo, Mayor Steven Brown and Assessor Anthony Fuoco

RESOLUTION 04-160 Create S.A.D. #1033 Weed & Debris

By Council President Kandes, supported by Councilman Murphy

RESOLVED, that the Special Assessment District **No. 1033** in the amount of **\$67,307.37** be created.

Motion unanimously carried.

RESOLUTION 04-161 Create S.A.D. #1034 Snow Removal

By Council President Kandes, supported by Councilman Vaslo

RESOLVED, that the Special Assessment District **No. 1034** in the amount of **\$25,858.50** be created.

Motion unanimously carried.

RESOLUTION 04-162 Create S.A.D. #1035 Sidewalk Program

By Council President Kandes, supported by Councilman Murphy

RESOLVED, that the Special Assessment District **No. 1035** in the amount of **\$13,926.72** be created.

Motion unanimously carried.

RESOLUTION 04-163 Board-Ups & Demolitions

By Council President Kandes, supported by Councilman Vaslo

RESOLVED, that the Special Assessment District **No. 1036** in the amount of **\$18,232.96** be created.

Motion unanimously carried.

RESOLUTION 04-164 Adjourn Board of Review

By Council President Kandes, supported by Councilman Murphy
RESOLVED, that the Board of Review (with the Assessor) be adjourned.
Motion unanimously carried.

RESOLUTION 04-165 Reconvene Regular Meeting

By Council President Kandes, supported by Councilman Higgins
RESOLVED, that the Mayor and Council reconvene the Regular Council Meeting and act upon the resolution to adopt the Special Assessment Rolls.
Motion unanimously carried.

RESOLUTION 04-166 Adopt S.A.D. #1033/Weed & Debris

By Council President Kandes, supported by Councilman Murphy
RESOLVED, that the Mayor and Council **adopt** Special Assessment District No. 1033 (Weed Cutting and/or cleaning and pick up of debris) in the amount of **\$67,307.37**.
Motion unanimously carried.

RESOLUTION 04-167 Adopt S.A.D. #1034/Snow Removal

By Councilman Higgins, supported by Councilman DiSanto
RESOLVED, that the Mayor and Council **adopt** Special Assessment District No. 1034 (Snow Removal) in the amount of **\$25,858.50**.
Motion unanimously carried.

RESOLUTION 04-168 Adopt S.A.D. #1035/Sidewalk Program

By Council President Kandes, supported by Councilman Higgins
RESOLVED, that the Mayor and Council **adopt** Special Assessment District No. 1035 (Sidewalk Program) in the amount of **\$13,926.72**.
Motion unanimously carried.

RESOLUTION 04-169 Adopt S.A.D. #1036/Board-Ups & Demolitions

By Council President Kandes, supported by Councilman DiSanto
RESOLVED, that the Mayor and Council **adopt** Special Assessment District No. 1036 (Board Ups and Demolitions) in the amount of **\$18,232.96**.
Motion unanimously carried.

RESOLUTION 04-170 Award bid/Bridge Inspections

By Councilwoman Brady, supported by Councilman Murphy
RESOLVED, that **NTH Consultant** be awarded the bid to conduct the State mandated bridge inspections for the City's nine vehicular bridges in the amount of **\$3,5000.00**; as they are the lowest bidder and meet all specifications. Per the recommendation of the Purchasing Agent, Controller and Superintendent of DPS. Funds to come from Account #202-473-818B.
Motion unanimously carried.

RESOLUTION 04-147A Adopt Ord. Amend Chapter 466.01

By Councilman Vaslo, supported by Council President Kandes
RESOLVED, that "AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF LINCOLN PARK BY REPEALING THE EXISTING **CHAPTER 466.01** AND REPLACING IT WITH A NEW CHAPTER 466.01," be given its third reading by title only, published in its entirety and given IMMEDIATE EFFECT, said Ordinance amendment having been posted conspicuously throughout City Hall for 72 hours prior to adoption.

THE CITY OF LINCOLN PARK ORDAINS:

That the Codified Ordinances of the City of Lincoln Park be amended by repealing the existing Chapter 466.01 and replacing it with a new Chapter 466.01 entitled **OPERATING WHILE INTOXICATED** be adopted.

Chapter 466.01

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Lincoln Park if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means either of the following applies:

continued

- (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within the City of Lincoln Park by a person if any of the following apply:
- (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters or urine.
 - (c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- (3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Lincoln Park when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.
- (4) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Lincoln Park if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:
- (a) An alcohol content of not less than 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or beginning October 1, 2013, the person has an alcohol content of not less than 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.
- (5) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Lincoln Park if the person has in his or her body an amount of a controlled substance listed in schedule 1 under section 7212 of the Public Health Code, 1978 PA 368, MCL 333.7212 or a rule promulgated under that section, or of a controlled substance described in Section 7214 (a) (iv) of the Public Health Code, 1978 PA 368, MCL 333.7214.
- (6) If a person is convicted of violating subsection (1) or (5), all of the following apply:
- (a) Except as otherwise provided in subsection (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:
 - (i) Community service for not more than 360 hours.
 - (ii) Imprisonment for not more than 93 days.
 - (iii) A fine or not less than \$100.00 or more than \$500.00.

continued

- (7) A person who is convicted of violating subsection (2) is guilty of a crime as follows:
- (a) Except as provided in subsections (b) and (c), a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than \$100.00 or more than \$500.00, or both.
- (8) If a person is convicted of violating subsection (3), all of the following apply:
- (a) Except as otherwise provided in subsections (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:
 - (i) Community service for not more than 360 hours.
 - (ii) Imprisonment for not more than 93 days.
 - (iii) A fine of not more than \$300.00.
- (9) If a person is convicted of violating subsection (4), all of the following apply:
- (a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:
 - (i) Community service for not more than 360 hours.
 - (ii) A fine of not more than \$250.00.
 - (b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:
 - (i) Community service for not more than 60 days.
 - (ii) A fine of not more than \$500.00.
 - (iii) Imprisonment for not more than 93 days.
- (10) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.
- (11) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the City of Lincoln Park for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.
- (12) If a person is charged with a violation of subsection (1), (3), or (5), the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (4) in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion.
- (13) Except as otherwise provided in subsection (15), if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance in violation of subsection (1), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.
- (14) Except as otherwise provided in subsection (15), if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance in violation of subsection (3), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.
- (15) A special verdict described in subsections (13) and (14) is not required if a jury is instructed to make a finding solely as to either of the following:
- (a) Whether the defendant was under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.
 - (b) Whether the defendant was visibly impaired due to his or her consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.

continued

- (16) If a jury or court finds under subsection (13), (14), or (15) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance and an alcoholic liquor, the court shall do both of the following:
- (a) Report the finding to the Secretary of State
 - (b) On a form or forms prescribed by the State Court Administrator, forward to the Department of State Police a record that specifies the penalties imposed by the court, including any term of imprisonment, and any sanction imposed under section 625n or 904d.
- (17) Except as otherwise provided by law, a record described in subsection (16) (b) is a public record and the Department of State Police shall retain the information contained on that record for not less than 7 years.
- (18) In a prosecution for a violation of subsection (4), the defendant bears the burden of proving that the consumption of alcoholic liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.
- (19) The court may order as a condition of probation that a person convicted of violating subsection (1) or (5), shall not operate a motor vehicle unless that vehicle is equipped with an ignition interlock device approved, certified, and installed as required under sections 626k and 625l.

ADOPTED: April 12, 2004

PUBLISHED: April 21, 2004

EFFECTIVE: April 13, 2004

Motion unanimously carried.

RESOLUTION 04-171 Adopt Administrative Regulations

By Councilman Vaslo, supported by Councilman DiSanto

RESOLVED, that the first chapter of the Administrative Regulations of Conduct for City Officers proposed by the City Manager shall read as follows:

Performing under the authority of the Mayor and City Council, the City Manager as Chief Administrative Officer as defined in the Municipal Code of the City of Lincoln Park, Title Six, Chapter 215, promulgates Administrative Rules and Procedures to ensure efficiency, effectiveness and fiscal responsibility in municipal operations. When approved by the City Council, these rules, procedures, shall be applicable and direct all subordinates of the Mayor and City Council pursuant to City Charter and City Code.

Chapter 1

Section 100.

The City Manager is the Chief Policy Advisor to the Mayor and City Council and is therefore a primary point of contact for information, analysis, and advisory opinions. Generally, advising the Manager of requests and contacts with the Department Heads or other staff will aid in ensuring responsiveness to Council requests. All Department Heads and staff may freely provide information and respond to all Councilmember inquiries, advising the Manager of the nature of the request and correspondingly, the action taken. If the contact will involve expenditures, changes in immediate work plans or is contrary to approved council programs and/or policy, the manager shall be notified and he shall be required to advise the Mayor and City Council as a body of the request or direction.

Section 101.

The Mayor and City Council, Department Heads and Staff members may receive complaints regarding city personnel action or inaction. To further the goals of quality service, the City Manager shall be advised of the complaint and shall investigate the complaint and take corrective action reporting his findings and corrections to the Mayor and City Council. The protection of the city's rights and the employee's rights pursuant to contract, Code and Charter is of paramount consideration in all personnel matters.

Section 102.

The Mayor and Council shall receive the same information about a matter particularly as it relates to agenda items under consideration. No one will receive difference or special information that would tend to place one member at an advantage over the others. Staff reports shall be forwarded to the City Manager who shall review and advise Council as to the completeness and accuracy of such reports along with ensuring that alternatives for Council consideration are provided.

continued

Section 103.

No individual Councilmember will order the City Manager to act, omit, recommend order, or do something that has not been approved by the Mayor and City Council. No individual Councilmember shall direct the city staff to act until first directing the City Manager to notify the staff of the desired conduct and actions.

Section 104.

City Department Heads and staff members shall advise the City Manager when they believe an issue should be presented to City Council ~~prior to contact or lobbying Councilmember's~~. The Mayor and Council expect the City Manager to ensure quality, accuracy, appropriateness, and alternatives for solution to be provided from the staff as well as his advisory opinion when applicable.

By Councilman Murphy, supported by Councilman Higgins

RESOLVED, that Section 104 be amended by striking the words "**prior to contact or lobbying Councilmembers**".

Motion carried.

NAY: Councilpersons DiSanto and Vaslo

ADMINISTRATIVE RULES ADOPTED AS AMENDED.

Motion unanimously carried.

RESOLUTION 04-172 Ratify Contract/Fire Fighters

By Councilman Murphy, supported by Councilman Vaslo

WHEREAS, the **International Association of Fire Fighters, Local 1292** have entered into negotiations with the City concerning matters involving wages, hours and conditions of employment; and

WHEREAS, an amicable settlement of the contract issues has been arrived at; and

WHEREAS, the settlement is well within the guidelines that the City has established for all bargaining unit employees.

THEREFORE, BE IT RESOLVED, that the agreement appears to be in the best interest of the City and therefore Council hereby ratifies the aforesaid agreement.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute the aforesaid agreement.

Motion unanimously carried.

RESOLUTION 04-173 Authorize Retention Basin Repairs

By Councilwoman Brady, supported by Council President Kandes

WHEREAS, the roof and walls of the City's retention basin are experiencing structural damage, and

WHEREAS, the DPS Superintendent and City Engineer received proposals from four structural engineering firms to complete the structural engineering portion of the plans and specifications for the project, and

WHEREAS, the DPS Superintendent and City Engineers have determined that the lowest best bid to complete the structural engineering work is **NTH Consultants, Inc.'s** bid,

BE IT RESOLVED, that Hennessey Engineers, Inc. and NTH Consultants, Inc. be authorized to prepare the plans and specifications for the project.

BE IT FURTHER RESOLVED, that **Hennessey Engineers** will be compensated on an hourly basis per their current agreement with the City with a not-to-exceed value of **\$1,400.00** and **NTH Consultants, Inc.** will be compensated per their proposal submitted to the City with a not-to-exceed value of **\$11,900.00**.

BE IT FURTHER RESOLVED, that the City Manager is authorized to sign the proposal from NTH Consultants, Inc.

BE IT FURTHER RESOLVED, that the funds for the cost of the work, \$13,300.00, will be appropriated from the Retention Basin Contractual Services item of the budget, Account Number 592 500 818.

Motion unanimously carried.

Miscellaneous Resolution/Support for DTE Energy held ONE WEEK.

CITIZENS COMMUNICATIONS

ORAL REPORTS OF THE MAYOR AND COUNCIL

There being no further business, the meeting adjourned at 9:06 p.m.

