

MINUTES OF THE REGULAR MEETING OF THE HIGHLAND PARK CITY COUNCIL

August 19, 2019

Council convened at 7:10 p.m. with Council President Patrick presiding.

Present: Council Pro-Tem McDonald, Councilmember Woodard, Councilmember Lewis, Councilmember Bates and Council President Patrick. (5).

Absent: None (0).

A quorum being present, Council was declared in session.

APPROVAL OF AGENDA

Moved by Councilmember Lewis

Supported by Councilmember Woodard

To approve the agenda with the following changes, add Ordinance to Establish City Council Electoral Districts.

Remove agenda items:

V – Ordinance to amend the Highland Park Fire Prevention Code Chapter Sixteen by adding Section 705.1 to describe the requirements for a “Fire Extinguisher”.

VII-a Resolution to appropriate more funds for Home Team & NSP2 for completion of project.

VII-c Resolution to approve buying 343 Pasadena through First Right of Refusal.

VII-d Resolution to approve buying 281 W. Grand through First Right of Refusal.

VII-g Approve offer to purchase residential side lot 87 Richton.

VII-h Approve offer to purchase residential 79 Avalon.

X. Resolution to approve the contract with D/A Central for Technology/Equipment for the FDCVT Blue Light Camera Project. Yeas (5), Nays (0), Absent (0).

APPROVAL OF MINUTES:

Moved by Councilmember Lewis

Supported by Councilmember Bates

Approve Workshop Meeting minutes from August 12, 2019. Yeas (5), Nays (0), Absent (0).

Moved by Councilmember Lewis

Supported by Councilmember Bates

Approve Regular Meeting minutes from August 12, 2019. Yeas (5), Nays (0), Absent (0).

ORDINANCE- 1ST READING

Moved by Councilmember Woodard

Supported by Councilmember Lewis

V-08-19-2019

ORDINANCE TO ESTABLISH CITY COUNCIL ELECTORAL DISTRICTS

It is the intent of this Ordinance to authorize the establishment of City Council Electoral Districts in the City of Highland Park, MI and to implement those electoral districts, pursuant to Sections 1-3 and 1-4 of the Revised City Charter

WHEREAS, the voters of the City of Highland Park adopted the Revised City Charter that became effective June 1, 2019; and

WHEREAS, Sections 1-3 and 1-4 of the 2019 Revised Charter mandate that three (3) electoral districts be created for the election of Council Members; and

WHEREAS, Mayor Hubert Yopp sued the Highland Park City Council in a frivolous lawsuit costing the taxpayers of the City thousands of dollars while the City Council was working in open meetings to create the electoral districts; and

WHEREAS, THAT LAWSUIT TRIGGERED THE Court to order that the City adopt the appropriate ordinance approving the voting districts and map, NOT CREATED BY THE CITY COUNCIL;

NOW THEREFORE, THE CITY OF HIGHLAND PARK ORDAINS THE ORDINANCE BELOW

SECTION 1: TITLE

This Ordinance shall be known and cited as the Court Ordered City Council Districts.

SECTION 2: DISTRICTS CREATION

The Highland Park City Council through its Chapter mandated Legislative Powers has approved the City Council Electoral Districts map. (refer to minutes from August 12, 2019 meeting).

SECTION 3: COMPLIENCE

To comply with and implement this section, the City Clerk shall promulgate necessary election rules and procedures consistent with other provision of the City Charter.

SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect immediately upon it adoption and in accordance with the law and the Court's Order. This Ordinance shall be published in full in a newspaper of general circulation in the City of Highland Park qualified under the State law to publish legal notices and shall become effective upon publication, as provided by law.

This shall be known as the first reading. Yeas (5), Nays (0), Absent (0).

MAYOR - VETO:

8-19-19- VI.

Pursuant to Section 6-3 of the City Charter, Veto of Council Action, the purpose of this letter is to veto and therefore suspend the operation of Council's vote on August 12, 2019, to waive my pension for the reason I am being paid a salary as Mayor of the City of Highland Park. My reasons for vetoing Council's action are set forth below:

1. Council's action per resolution is ultra vires and is ineffective as an act of Council because it is outside of the legal authority of the Council. See *Parker v. West Bloomfield Twp.*, 60 Mich. App 583, 595-596 (1975).

Under the Michigan Constitution, Article IX, Section 24, "the accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." "Accrued financial benefits" as used in the Michigan Constitution provision relating to public pensions and retirement systems means the right to receive certain pension payment upon retirement based upon service performed. *Halstead v. Flint*, 127 Mich. App. 148, 338 N.W. 2d 903, 1983 Mich. App. LEXIS 3102 (Mich. Ct. App 1983).

Further, both the history from the constitutional convention and the language of the pension provision itself make it clear that the remedy for impairment of pensions is an action in the appropriate court. *In re City of Detroit*, 504 B.R. 191, 2013 Bankr. LEXIS 51120 (Bankr. E.D. Mich. 2013).

2. The law is clear: Council may not arbitrarily and capriciously demand that the Mayor waive his pension without amending the City's Charter to establish a policy to protect his vested right.

In *Van Antwerp v Detroit*, 47 Mich. App 707 (1973), Van Antwerp was a retired police officer, who after 25 years of service, began receiving pension benefits pursuant to the City of Detroit Policemen and Firemen Retirement System. Upon his election to City Council, however, his pension benefits were terminated for the stated reason that he was not entitled to the pension payment while receiving compensation as a member of the Common Council.

Van Antwerp filed a writ of mandamus against the City of Detroit. The lower court ordered payment of pension benefits to plaintiff, from the date payments were terminated to the present with interest therefrom until paid and for benefits accruing in the future. From this decision, defendants sought leave to appeal. The Court of Appeals affirmed, citing 162 ALR 1469, p 1469, which states, in pertinent part:

"Hence, where the statute under which the pension is granted provides for forfeiture or suspension of a retirement pension granted to a public officer or employee in case he should accept employment by the Federal government, the state, or one of its political subdivisions, such statute will effectively forfeit or suspend the payment of the pension in

case the contingency happens. On the other hand, where the statute does not contain such a clause, the acceptance of public employment by a retired public servant has no effect whatsoever on his pension right, unless he is found to have waived such right.

*** (Van Antwerp, 715)

This language was also cited with approval by the Attorney General with regard to the same problem:

“[I]n my opinion there is no provision in the legislative retirement act which would have the effect of denying a retirement allowance to a legislator who has become a restraint and thereafter returned to the legislature.” OAG, 1967-1968, No 4365, p 61 (June 26, 1967). (Van Antwerp, 715)

The City of Highland Park’s revised Charter, Section 17-1, “City’s Responsibilities.”

The accrued financial benefits of active and retired City employee under each city pension plan and retirement system, being contractual obligations of the City under Article IX, Section 24 of the Michigan Constitution of 1963, shall in no event be diminished or impaired.

While municipalities governing retirement systems have the power to modify their plans at will, they must do so by an appropriate charter amendment, which affords affected pensioner’s minimal procedural protection of their otherwise mature rights (Van Antwerp, HN3).

3. Finally, Council should be reminded that the three prior emergency managers saw the illegality in making such a demand and chose to follow the law. During Ramona Pearson’s tenure as Emergency Financial Manager, Titus McClary, a retired Highland Park police officer, was Mayor. While Ms. Pearson suspended the Mayor’s salary as a cost-savings measure, his pension payments were never waived nor suspended. It should also be noted that while I served on City Council at that time, I was never asked to waive my pension payments because I was receiving a stipend as a Council member.

I was elected Mayor after Arthur Blackwell became Emergency Financial Manager. Mr. Blackwell partially restored the Mayor’s salary, but my pension was never an issue; I was never asked to waive my pension payments because I was being paid a salary from the City. Emergency Financial Manager Robert Mason followed the wisdom of his predecessors in this regard.

It is apparent that all three emergency financial managers were aware of the legal consequences of demanding that Highland Park retirees who later serve as elected officials waive their pension payments because they receive a salary from the City of Highland Park. The City Attorney concurs in this veto and has additional legal challenges to Council’s vote on this illegal resolution.

Moved by Councilmember Lewis
Supported by Councilmember Woodard

TO OVER RIDE THE MAYOR'S VETO. Yeas (5), Nays (0), Absent (0).

COMMUNITY DEVELOPMENT:

Moved by Councilmember Woodard
Supported by Councilmember Lewis
VII-b-08-19-2019

RESOLUTION TO CANCEL AUTOMATIC RENEWAL OPTION OF SAFE BUILT CONTRACT

WHEREAS, on September 8, 2016, the City of Highland Park entered into a Professional Services Contract with Safe built Michigan, L.L.C; and

WHEREAS, the terms of the agreement were three years and, subsequent to the initial term, provides for the automatic extension of the Professional Services Contract for one-year increments unless either the City or Safe Built notifies the other 30 days prior to the end of the term; and

WHEREAS, a review of the revenue generated by Safe Built determined that Safe Built is receiving 81.4% of total revenues received; and

WHEREAS, at the May 6, 019 City Council meeting the City approved the solicitation of bids; and

WHEREAS, two bids were received-one from Safe Built and one from McKenna; and

WHEREAS, both bids resulted in approximately the same revenue split as the current Safe Built contract; and

WHEREAS, the City needed extra time to solicit and negotiate with different contractors; and

WHEREAS, the automatic renewal clause in the Safe Built contract required notification of the cancellation of that clause by August 8, 2019; and

WHEREAS, the attached letter was forwarded to Safe Built, cancelling the automatic renewal clause giving the City additional time to solicit other contractors; and

NOW THEREFORE, BE I RESOLVED, by the City that the automatic renewal clause in the Safe Built contract is officially waived. Yeas (5), Nays (0), Absent (0).

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Moved by Councilmember Lewis
Supported by Councilmember Bates
VII-e 08-19-2019

To approve the offer to purchase application submitted by Antoinette McCarty for side lot located at 91 Richton.

After a brief discussion with the CED Director Councilmember Lewis withdrew her motion and Councilmember Bates withdraw his supported. No other motion or supported was offer.

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Moved by Council Pro Tem McDonald
Supported by Councilmember Bates
VII-f-08-19-2019

**RESOLUTION TO SELL THE RESIDENTIAL SIDE LOT AT 80 WINONA TO ANGELIQUE COOPER
(CITY-OWNED VACANT LOT ADJACENT TO RESIDENT'S HOME)**

WHEREAS, in accordance with Section 3-1 of the City of Highland Park, "the City shall have power to manage and control the finances, rights, interest, buildings and property of the City; and

WHEREAS, the City of Highland Park holds in its inventory a surplus of City-owned parcels that are not producing a taxable, habitable and general benefit to the City and its residents; and

WHEREAS, it is the goal of the City to decrease the number of City-owned parcels and return them to productive use; and

WHEREAS, the City of Highland Park is the owner of the vacant side lot at 80 Winona, (vacant lot adjacent to resident's home); and

WHEREAS, notwithstanding anything to the contrary contained herein, Highland Park resident Angelique Cooper, who lives at 76 Winona, submitted an application to purchase the vacant side lot at 80 Winona, adjacent to his/her residence; and

WHEREAS, Angelique Cooper paid the \$25 (twenty-five) fee prior to July 2018 she shall be permitted to purchase said lot for \$500.00 and

WHEREAS, The Community and Economic Development Department recognizes that Angelique Cooper meets all requirements for purchasing property in the City of Highland Park;

NOW, THEREFORE BE IT RESOLVED THAT THE City Council authorizes the Department of Community and Economic Development to:1) the sales price at \$500.00, 2) to sell the city-owned property at 80 Winona to Angelique Cooper. Yeas (5), Nays (0), Absent (0).

FINANCE:

VIII-08-19-2019

Finance Director, Eleanor Williamson submitted the monthly financial statement July 31, 2019.

Moved by Council Pro Tem McDonald

Supported by Councilmember Lewis

Received and file the submission of monthly financial statement July 31, 2019. Yeas (5), Nays (0), Absent (0).

HUMAN RESOURCES:

IX-08-19-2019

Moved by Council Pro Tem McDonald

Supported by Councilmember Woodard

RESOLUTION APPROVING ACCEPTANCE OF DONATION FROM MHT HOUSING INC. FOR THE SUMMER YOUTH PROGRAM

WHEREAS, MHT Housing, Inc. (MHT) would like to donate \$10,000 to the City of Highland Park Summer Youth Program; and

WHEREAS, upon acceptance of the donation, the monies would provide funding necessary for the purchase of supplies, the provision of transportation services, and training classes and materials.

NOW THEREFORE, BE IT RESOLVED, that City Council approves acceptance of the donation of \$10,000 from MHT Housing, Inc. for the Highland Park Summer Youth Program. Yeas (5), Nays (0), Absent (0).

ADJOURNMENT:


Moved by Council Pro Tem McDonald

Supported by Councilmember Bates

To adjourn, motion carried meeting adjourned at 8:29 p.m. Yeas (5), Nays (0), Absent (0).

CERTIFICATE

I, hereby certify that the attached is a copy of the Proposed Minutes of a Regular Meeting held on the 19th of August 2019. Minutes are available for public inspection at the address designated on the posted public notice.



Brenda J. Green, City Clerk