

Date August 11, 2004

Kym Worthy, Wayne County Prosecutor
1200 Frank Murphy Hall of Justice
1441 St. Antoine Detroit, MI 48226

Subject: Open Meetings Act Complaint against City of Lincoln Park Michigan

Mayor Steven Brown, City Council Members: Council President Mark Kandes, Tom Murphy, Valerie Brady, Mario DiSanto, Mike Higgins, and Frank Vaslo, and City Manager Steve Duchane.

We believe that the City of Lincoln Park Mayor, City Council and City Manager have violated the Michigan Open Meetings Act Sections 15.268 as they participated in two consecutive closed meetings for "labor negotiation" discussions that did not involve open collective bargaining contracts nor pending litigation.

We are extremely concerned as residents, taxpayers, and business owners of this community as many believe that we are being shielded from deliberations and decisions made in these closed sessions that will have a serious impact on our quality of life and our two most important investments, which are our families and our homes. It is for that reason that our interests in these city departments restructuring also known as "the plan" be discussed in accordance with the Open Meetings Act.

We believe that the basic intent of the Open Meetings Act which is to strengthen the right of all Michigan Citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meeting was violated.

We have attempted to resolve our concerns with our City Leaders that was unsuccessful.

We believe that the closed meetings held on July 26th and August 2nd, 2004 violated the Open Meetings Act as written and in the spirit of the law for the following reasons:

- Mayor & Council stated that the closed sessions were for "labor negotiations".

Per Chapter 15.268 Section 8 Sub Section (c) of the Michigan Open Meetings Act Closed Sessions – Permissible purposes states:

- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
 - This section also states that the purpose for which the closed meeting is being called has to be stated and we believe the stated words of "labor negotiations" is vague, misleading, and does not represent the spirit for which the law intended. There are several Attorney General Opinions that support that specific reasons for Closed Sessions must be stated and general reasons are not what the OMA intends.
- Instead City Leaders discussed specific details about offering Early Retirement Incentives, potential layoffs of specific employees, and city department reorganization. It should be noted that the majority of the employees and departments discussed are currently operating under lawfully signed operating contracts.

Please note that the contents of these articles are based on the copy of the 50+-page document in which Mayor Brown and City Manager Steve Duchane have confirmed in said articles. We also have an email from this reporter that also confirms this information.

- Please refer to **Exhibit 1** – Published August 1st, 2004 by the News Herald --- *Buyout will Save City \$2M yearly.*

This article details some of the specific changes that are to occur within Lincoln Park City Departments which include employees operating under a signed, lawful, operating contract as well as departments that are currently in Collective Bargaining negotiations and/or with a Mediator.

In this same article, City Manager Steve Duchane speaking as to his participation in the closed session on August 2nd, 2004 states, “the proposed buyout plan is one part of a major overhaul”. Steve Duchane goes on to state which departments would be affected by this proposal which includes those employees currently operating under a lawful, signed contract and their Unions had either not yet agreed to go into collective bargaining discussion or were totally unaware of our City Leaders intentions as it relates to these employees.

In addition, Steve Duchane discussed publicly details surrounding two ongoing collective bargaining negotiations with the Command Officers (Police Department) and the Administrative Department Heads. These are two issues that should have been discussed in closed session, yet they were made public.

- Please refer to **Exhibit 2** - Published August 8th, 2004 by the News Herald --- *Buyouts Could Mean Big Changes.*

This article goes into more details. Specific quotes by City Manager Steve Duchane included providing the names of those employees that will be affected (who are under lawfully, signed operating contracts) and specifically named Administrative Department Heads wherein current labor negotiations are still ongoing.

Duchane goes on to discuss the Lincoln Park Police Chief job responsibilities as well as the job responsibilities of the remaining commanders. Again, the Commanding Officers Unit (Police Dept) contract is currently being negotiated and with a mediator for the last two years.

According to this news article (and subsequent exhibits), the City Leaders do appear to have been working diligently on a solid restructure plan, which is evidenced by the fact that the City of Lincoln Park's Labor Attorney was reviewing the plan as well as our supporting exhibits. To our knowledge, neither the Union Leaders nor their Attorneys were aware of this at the time these meetings took place.

- Please refer to **Exhibit 3** – Published August 11th, 2004 by the News Herald --- *City Expands Plans for Early Retirement Offerings.*

City Manager Steve Duchane states that as of August 10th, 2004 and two weeks AFTER the initial closed session occurred, City Leaders began outlining the details of the plan for the City of Lincoln Park employee Unions. In addition, Duchane's states that if the Unions agree, they can begin retirement in weeks. If they don't agree – layoffs will likely begin in January 2005.

- Please refer to **Exhibit 5** – *Written response from Councilwoman Valerie Brady in response to the New Herald Articles (see above Exhibits).*

In this response she acknowledged the closed sessions and affirms that Mayor and Council must complete their vote before Duchane has the authority to present these plans to the union in hopes that the Unions will agree to re-open negotiations of their existing contracts.

In addition, please note that Councilwoman Brady states that Mayor and Council a) have no idea on what positions will or will not be refilled or streamlined, b) they have never had a meeting regarding layoffs and c) Mayor and Council affirms that this plan does consist of restructuring and streamline of jobs and services which we believe is not permissible for a closed session.

However, the information provided to the News Herald Report (refer to articles) and CONFIRMED by City Manager Steve Duchane, who was present at both closed sessions, states the opposite.

- There are several Attorney General Opinions that support the validity of this complaint.

In closing, we believe that our Mayor, City Council and City Manager either intentionally or otherwise used the OMA as a shield to prohibit the public from their ability to speak about this proposed plan and its impact on our community by stating that the closed session was exclusively labor negotiations.

We believe that we have demonstrated that the scope of these closed session meetings violated the OMA permissible reasons for closed sessions under Article 15.268 Sec. 8 sub section (c) by discussing and deliberating on topics that fall outside the area of “negotiation sessions connected with the negotiation of a collective bargaining agreement” as only two of the affected departments discussed in detail are in ongoing negotiations.

Also, we believe that City Manager Steve Duchane and Mayor Brown violated OMA Section 15.268 Sec. 8 on two separate occasions (refer to Exhibit 2 and Exhibit 5) by discussing currently ongoing labor negotiations for the Command Officers (Police Dept.) and the Administrative Department Heads in a public venue.

We are requesting that your office conduct an investigation into this matter and to apply the remedies as allowed by law. We further request that upon completion of your findings, that you advise us of same.

Thank you in advance for your attention to this matter.

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Encl: Exhibits 1 thru 5