

**CITY OF SOUTH LYON
REGULAR CITY COUNCIL MEETING
May 23, 2011**

Mayor Wallace called the meeting to order at 7:30 p.m.

Mayor Wallace led those present in the Pledge of Allegiance to the Flag

PRESENT: Mayor Wallace
Council Members: Kivell, Kopkowski, Kramer, Morelli, Selden and Wedell
City Manager Murphy
City Clerk/Treasurer Zemke
Attorney Lee
Department Heads: Collins, Kennedy, Martin and Renwick

APPROVAL OF AGENDA:

CM 5-1-10 APPROVAL OF AGENDA

Motion by Wedell, supported by Kopkowski

To approve the agenda as presented

VOTE:

MOTION CARRIED UNANIMOUSLY

APPROVAL OF MINUTES:

CM 5-2-10 – APPROVAL OF MINUTES- MAY 9, 2011

Motion by Morelli, supported by Wedell

To approve the minutes of the regular meeting of May 9, 2011 as written

VOTE:

MOTION CARRIED UNANIMOUSLY

APPROVAL OF MONTHLY BILLS: None

PUBLIC COMMENT:

Mr. Darell Lane of 678 N. Hagardorn explained a problem with his neighbor who has emptied his pool which ended up with water in his basement. He stated that he would like the City of South Lyon to come up with an ordinance to keep situations like this from occurring. He further explained the problem with the soil conditions in the area. He stated that he did contact the building department that did come out and indicated that there was nothing that the City could do. He further stated that he did make a police report.

Discussion was held on this being a civil matter that would have to be settled in court.

Discussion was held on Flood Insurance. Mr. Lane stated that he did contact his insurance company. Attorney Lee stated that this is not a flood issue. If the neighbor affected more than one property, than it would

be a public nuisance. In this situation, it is a private nuisance. Attorney Lee further recommended to Mr. Lane that he seek private counsel.

Further discussion was held on flow onto private property. Councilman Wedell again stated that it sounds like he needs to talk with a private attorney.

Mr. Lane discussed the landscape and land level. Councilman Kivell stated that it is against our ordinance to create a watershed against another property.

1. Witch's Hat Brewing Company, L.L.C.

Chief Collins stated that the Witch's Hat Brewing Company is requesting a new Micro Brewer License and Small Wine Maker License for 22235 Pontiac Trail. This is a non Class C license, which will not go against the City's liquor license quota. An investigation was performed and revealed no criminal records and no negative information. He spoke with the applicants who are here to answer any questions.

Discussion was held on consumption on site. Chief Collins stated that they can have a small tasting room. Ryan Cottongim, applicant, stated that they can have a tasting room where they can only serve their products. They can serve 16 oz glasses, and charge for it, which is different than a free tasting. He further discussed the anticipated quantities produced.

Discussion was held on the size of the facility. Mr. Cottongim stated that there will be approximately 30 seats with the remainder of the space for production. The question was asked if there will be food served. Mr. Cottongim stated that there would be no prepared food, but possibly snacks such as chips, etc. They are hoping to allow patrons to bring in food if they wish.

Councilman Selden stated that on the report it shows no arrests, but in the memo, it refers to an arrest. Chief Collins stated that there were arrests, but not criminal convictions. He further stated that one was a juvenile arrest the other was an arrest at age 17-18. Both applicants have been arrest free for approximately 10 years.

Councilman Kramer asked if this business were to fail, what happens to the license. Attorney Lee stated that it would be owned by the business transferrable by them to another business in the City of South Lyon or it would go into escrow to the LLC.

Mayor Wallace stated that the Historical Commission is not happy with the name, but they understood that they were trying to take pride in the name for the City of South Lyon. Mr. Cottongim stated that they understand that and that was a pride thing. They were both born and raised in South Lyon and love South Lyon. When you think of South Lyon, you think of the Witch's Hat. They understand the bad stigma with alcohol, but they only want to do good things. He further stated that he and his wife were married in McHattie Park in the Witch's Hat area.

CM 5-3-11 – RECOMMEND APPROVAL OF MICRO BREWER/SMALL WINE MAKER LICENSE

Motion by Kopkowski, supported by Kivell

that the request made by Witch's Hat Brewing Company, L.L.C. for a new Micro Brewer License and new Small Wine Maker License to be located at 22235 Pontiac Trail , South Lyon, MI 48178, Oakland County be considered for approval as detailed on LC-1800 forms.

Councilman Wedell stated that there was a condition recommended by the Chief of Police that the approval be contingent upon compliance with all applicable City Building and Zoning Codes as well as sanitary and fire regulations and issuance of a Certificate of Occupancy.

Council Member Kopkowski amended the motion and Councilman Kivell supported to read as follows:

that the request made by Witch's Hat Brewing Company, L.L.C. for a new Micro Brewer License and new Small Wine Maker License to be located at 22235 Pontiac Trail , South Lyon, MI 48178, Oakland County be considered for approval as detailed on LC-1800 forms contingent upon compliance with all applicable city Building and Zoning Codes as well as sanitary and fire regulations and issuance of a Certificate of Occupancy.

VOTE:

MOTION CARRIED UNANIMOUSLY

2. Addendum to EECBG Grant

Superintendent Renwick stated we are closing out our grant that we had done for our buildings, and now it is time to start paying back as agreed. Included is a memo from Southeast Michigan Regional Energy Office showing how they estimated the pay back. We are looking at \$14,710 for 4.2 years. He is asking for approval of the Participation Agreement.

Councilman Kivell stated that he was surprised that we get to enjoy 20% of our savings annually when he was under the impression that we would have to payback 100% of the savings.

Councilman Wedell asked if we agree with the calculations made by the Southeast Michigan Regional Energy Office. Superintendent Renwick stated that we do. We also have the option of recalculating within a year and changing the figure if necessary.

CM 5-4-11 – APPROVAL OF AGREEMENT - SOUTHEAST MICHIGAN REGIONAL ENERGY OFFICE

Motion by Wedell, supported by Morelli

To approve the Southeast Michigan Regional Energy Office Participation Agreement in the amount of \$61,727.95 to be paid back annually at the cost of \$14,710.00 for 4.2 years.

VOTE:

MOTION CARRIED UNANIMOUSLY

3. Tax Abatement Information

City Manager Murphy stated that he has invited David Curtis from the State and Daniel Hunter from Oakland County to talk to Council about tax abatements.

Mr. Dan Hunter, Manager of The Community and Economic Development of Oakland County stated that tax abatement is something they work with often working with businesses in Oakland County. He stated that currently there are 300 in Oakland County. He explained the requirements and processes and stated that the discretion is at the local level. He discussed community benefits in regards to job retention and job creation. He further discussed the increase in taxable value on new investment over a period of time. Mr. Curtis stated that the City would collect 50% of the value on the new investment until after the end of the abatement period, which could be 1-12 years then it would go up to 100%. Mr. Hunter discussed the benefit to the business. He discussed the application process and public hearing for approval by Council.

Mr. Curtis explained the affect on the schools. Councilman Wedell stated that he is pleased to hear that the state wholes the schools so that we do not impact them. He further asked the impact on the County and asked if they have to agree. Mr. Hunter stated that the county does **always** touch base with the Commissioner from the area and often speak at the public hearing, etc. Mr. Curtis stated that **although** it may impact the other jurisdictions, ultimately the vote is with the Council.

Councilman Kramer asked that even though the County is affected, can the County then still say "No". Mr. Hunter stated that the next step is the State Tax Commission.

Discussion was held on the factors to be considered when determining the length of the abatement. It was stated that the policy is at the discretion of City Council and can be changed.

Councilman Kivell asked if the State is making the School district whole, someone is picking up the cost. With shrinking budgets is there potential for vulnerability? Mr. Curtis stated that is the way the statute reads and he is not aware of any pending legislation. He further stated that **this is money that they don't have to begin with and they do the revenue projections.**

The question was asked if the City would have to get approval of the Tax Abatement Policy from the State. Mr. Hunter stated that it would not require their approval. It is at the City's discretion.

Attorney Lee stated that he was involved in a case where they had a provision that said that in the event that promised jobs did not appear, they could rotate down the percentage of the abatement. They had problems with the State and asked if that has been straightened out. Mr. Curtis stated that he understands that under the law, it is really the investment amount, and the jobs are secondary. There is usually an agreement between the community and the company.

Discussion was held on the next step City Manager Murphy stated that he is asking Council what direction they would like to take. Attorney Lee stated that he has not seen a proposal, and would like to see one before addressing the standards. Councilman Wedell stated that he heard that some communities prepare a general policy and others handle things on a case by case basis and asked the general overall professional opinion. Mr. Hunter stated that for a larger community with various proposals, it is beneficial to have a policy. Other communities do not have a policy and make decisions based on common sense.

Councilman Morelli asked if one abatement would set precedent for another. Mr. Hunter stated that it does not necessarily, however you want to keep some consistency. Further discussion was held on dealing with individual requests. Attorney Lee stated that his experience is that communities can have problems when they create an ordinance due to various sizes of projects and being too rigid. South Lyon only has one major

industry and will only have one. Anything else we do along this line would be a small project on a small site. You need to be flexible.

CM 5-5-11 – PROPOSALS FOR TAX ABATEMENT FOR INDUSTRIAL & COMMERCIAL

Motion by Kramer, supported by Selden

To welcome any proposal for tax abatement for industrial manufacturing and high-tech industrial

Councilman Kivell stated that he feels that we should be supporting things dealing with specific events instead of an "umbrella" motion.

VOTE:

MOTION CARRIED (1 OPPOSED)

4. Community Access Preservation Act

Attorney Lee stated that the cable industry has taken out of our hands the ability to control local franchises within the City. A push by AT&T has been made to further remove cities' right to control cable by making optional PEG channels. The Municipal Attorney's Association has been trying to inform Congress and deal with the FCC. This is a resolution that would urge the Congress to pass legislation to make sure that the FCC could not make PEG channels optional or move them to the 900 section. It is asking Congress to pass an Act that would mandate the FCC to require a PEG channel in each franchise and set aside funds to support those channels. In the City of South Lyon, we negotiated our first franchise agreement 15 years ago. We have been unable to negotiate PEG monies because we were not in a position to run our own governmental channel. We have allowed outside people to run our channels, which has worked successfully. If this were to pass, the cable company would be required to pay an additional 2% toward programming for these channels. He would ask that Council look at this legislation and join with other communities in urging Congress to protect our PEG channels.

Councilman Morelli asked if this only covers Broadstripe and AT&T and not internet. Attorney Lee stated that this also goes to satellite to carry PEG channels. Councilman Kivell stated that he would also like to see strict language dealing with the location of these channels.

CM 5-6-11 – COMMUNITY ACCESS PRESERVATION ACT

Motion by Kivell, supported by Morelli

Recitals:

- Public, Educational and Government (PEG) access television channels play a significant role in City of South Lyon.
- PEG channels are a unique and valuable resource for local information and discourse for the residents of City of South Lyon.
- PEG channels televise local government meetings, including city council, planning commission, county board, and school board meetings, and are a critical source of information for the residents about the actions taken by local elected officials.

- PEG channels contribute to the democratic process by providing opportunities for candidates and others, to discuss local issues during election campaigns.
- PEG channels provide a window through which residents can view the diversity of cultures, recreational activities, nonprofit activities, educational programming and artistic endeavors in their local community.
- PEG channels reflect the unique identity of the communities they serve.
- It is important to preserve PEG channels and funding for PEG channels, and to ensure that the channels, such as Channel 19, continue to be available to serve the residents of City of South Lyon.
- HR 1746, the Community Access Preservation Act, a bi-partisan Act, addresses critical and immediate threats to PEG.

City of South Lyon RESOLVES AS FOLLOWS:

SECTION 1.

City of South Lyon supports the immediate passage of HR 1746.

SECTION 2.

City of South Lyon calls on our Congressional delegation to take all possible actions in support of the passage of HR 1746, including but not limited to endorsing, co-sponsoring and voting for HR 1746, and to work for its rapid passage

Councilman Wedell stated that he would like to amend the resolution to further resolve that a copy of this resolution be forwarded to South Lyon's representative in US Congress and Senator.

Councilman Kivell amended the motion and Councilman Morelli supported

VOTE: MOTION CARRIED UNANIMOUSLY

5. Contract for Equalization Division Services

City Clerk/Treasurer Zemke stated that this is a renewal of our contract with Oakland County for equalization services. This arrangement has worked for well for us. This is the second contract renewal that they have proposed no increase.

CM 5-7-11 – CONTRACT FOR EQUALIZATION DIVISION SERVICES

Motion by Morelli, supported by Selden

To approve the contract with Oakland County for Equalization Division Assistance Services for real and personal property for the period July 1, 2011 through June 30, 2013 and authorize the Mayor and City Clerk to Execute the contract

VOTE: MOTION CARRIED UNANIMOUSLY

6. First Reading – Amendment to Fire Prevention and Protection Ordinance

Fire Chief Kennedy stated that this is to provide some clarification and provide a beneficial tool not only for the police and fire departments but also the community. Currently, burning in the City is regulated by the City Code through the 2006 International Fire Code and Public Act 451 of 1994. The Public Act prohibits the open burning of leaves and grass in incorporated cities with a population of 6,000, which we fall into. Where this get

problematic is when we go out to enforce based on a complaint or a fire out of control, etc. When we get challenged, it would be much easier to cite based on the City's Code of Ordinances rather than the Public Act at the State level. The language is based on a document from the Michigan Township Association and the Michigan Department of Natural Resources and Environment. He further stated that other cities our size provide for total preclusion of any open burning. This language is based on language from the City of Farmington that does allow open burning as long as it is in a patio wood burning unit. This would allow people to have a fire, but it would have to be in a patio unit and raised above the ground. It would still prohibit the open burning of refuse, leaves, etc. and still allow the open burning of clean wood for recreational use only and for single family units only.

Kopkowski questioned the fire pits in the ground circled in brick. Chief Kennedy stated that would not be allowed under this ordinance.

Kopkowski questioned outdoor heating or wood furnace units. She further questioned alternative heating of a home supplied by clean wood or pellets and hooked up directly to the home. Chief Kennedy stated that a lot of this is congruent with State clean air ordinances. This would prohibit the installation of alternative outdoor units because the smoke that is generated. Council Member Kopkowski stated that the units are very clean and very efficient. With the price of oil and gas, people are looking for alternative sources to heat their homes. Further discussion was held on these outdoor units.

Discussion was held on the current ordinance versus the new language. Chief Collins explained the difficulties in enforcing the current ordinance because of the ability to burn certain items and not others as well as location of the open burn. Further discussion was held on complaints of smoke smell of permissible burning and whether that constitutes a nuisance. Chief Kennedy stated that the idea of limiting the size and limiting it to clean wood would cut down on the smell type complaints.

The question was asked if there is any conflict between this ordinance and the International Fire Code. Chief Kennedy stated that this would be more restrictive than the International Fire Code.

Discussion was held on the goal of the ordinance to limit the size, distance from structures and type of material to be burned.

CM 5-8-11 – FIRST READING – AMENDMENT TO CHAPTER 46, SECTION 46-1

Motion by Kivell, supported by Morelli

That this be the first reading of the Amendment of the Fire Prevention and Protection Ordinance, Chapter 46, Section 46-1, Outdoor Burning (see attached amendment as part of these minutes)

Councilman Kivell stated that some valid points have been raised about the outdoor furnaces and asked if we can remove that section. Further discussion was held on manufacturer specifications for these types of units and State Code regulations. It was stated that this is something that can be remedied prior to the second reading.

VOTE:

MOTION CARRIED 2 OPPOSED

7. Engineering Recommendation

City Manager Murphy stated that in 2009 the City 's three-year agreement with HRC expired. However we were in the midst of the DWRF so that was not the time to go out for Requests for Qualifications. The DWRF project has died off and last October we started preparing the Request for Qualifications process. He stated that he established a committee made up of Julie Zemke, Bob Martin, Steve Renwick, Kristen Delaney and he asked for a representative from Council which was Councilman Kramer. In December we put out the RFQ. He explained the process including narrowing down to three firms, interviews, etc. We looked at the cost aspect and all three firms were very close with HRC being one of the lowest, if not the lowest. The committee met and determined that all three firms would be qualified. The determining factor was that HRC has been with the City for 17 years and they know the City's infrastructure inside and out. The committee has recommended that we stay with HRC for another three years. He stated that he and Councilman Kramer met with HRC to discuss some changes and small issues they would like to see addressed. Their prices have remained the same since 2008 and they have agreed that if they were to receive a three-year contract, they will maintain those rates. He stated that it was a very good process and the recommendation is to remain with HRC. They have done nothing egregious to warrant a change.

Councilman Kivell stated that this was a unanimous decision of the Committee.

Councilman Morelli stated that he agrees that the process worked and would like to see the same done with our other consultants.

Councilman Kramer stated that we spent a lot of time on the process. We addressed some issues and will have an "out" clause in the contract if the issues are not addressed. It came down to HRC being very familiar with our systems. He further stated that he does not see us doing a lot in the next three years as far as major projects.

CM 5-9-11 – NEGOTIATION OF CONTRACT FOR ENGINEERING SERVICES

Motion by Kramer, supported by Selden

To authorize the City Manager and City Attorney to negotiate a three year contract with Hubbell, Roth & Clark for engineering services

VOTE:

MOTION CARRIED UNANIMOUSLY

MANAGER'S REPORT: None

COUNCIL COMMENTS:

Discussion was held on legislation regulating free samples of alcohol.

Council Member Kopkowski thanked everyone for coming out for the City's Spring Clean-up Day. Everyone did a great job. She further stated that a lot of people do not even live in our community yet they still came out to help. City Clerk/Treasurer Zemke thanked everyone that came out. It was a wonderful event and a lot was accomplished.

Council Member Kopkowski stated that Mother Nature was not as cooperative for the See Spot Run Event. However, the organizers put in a lot of effort for the first annual event.

Councilman Kramer thanked the Engineering Review Committee. He stated that he agrees that we need to do this with everyone who we have contracts with. It was a valuable experience and we spent a lot of time on it.

Councilman Kivell stated that the idea that these people from the greater South Lyon Area would participate in the numbers that they did for the City's Clean-up Day was amazing. He was humbled at the idea that people would step up and recognize the need of this community.

Councilman Kivell stated that we had talked about getting the amended minutes on the website and asked if that has been accomplished yet. City Clerk/Treasurer Zemke stated that we are working on it.

Councilman Kivell asked where we are with the well. Superintendent Martin stated that we are within two weeks of finishing. We are waiting for the DEQ to give us their blessing. He further stated that at the next meeting he will bring information to Council about the structure.

Councilman Selden also thanked all of the people who came out to help clean-up the City. Councilman Kivell stated that he would like to commend the City Manager and others for recognizing the opportunity and the need. That helped make the event that much better. Councilman Morelli stated that the amount of people that came out was amazing.

Councilman Morelli stated that he understands that the bridge that he had asked to be painted along Pontiac Trail is under the County control and would like the City Manager to talk to them about it. City Manager Murphy stated that it is actually owned by the Oil Change facility. We have talked with the District Manager who will be talking with the owner. The Manager also asked if they could take down some of the scrub trees that are in between the bridge and the sidewalk. The Drain Commission has indicated that the property owner could do what they wanted.

Councilman Wedell stated that he appreciates the Engineering Committee's work and the time that was put into it. He further stated that he is happy to see us going through these processes. He further stated that he would echo the thanks for the clean-up day. It was well planned and well led and well executed which contributed in large to it's success. City Manager Murphy stated that Julie Zemke did all of the planning.

Mayor Wallace stated that he would like to see Planning Commission minutes in the Council packets. He further stated that he would like to note that Alexander's Restaurant closed as of Sunday. He had heard a lot of rumor that the City drove them out, yet that is quite the contrary. They have another building in town for their business.

Mayor Wallace stated that the Memorial Day Parade will be next Monday. He stated that there will be some new items and a tremendous community event at the Cemetery honoring our Veterans. The VFW will be serving free food afterwards.

Councilman Wedell stated that the VFW were out selling their poppy's along with the American Legion a couple of weeks ago, and they appreciate all the people who stopped and bought a poppy and the support of the community.

ADJOURNMENT:

CM 5-10-11 ADJOURNMENT

Motion by Selden, supported by Morelli

To adjourn the meeting at 9:24 p.m.

VOTE:

MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Tedd M. Wallace
Mayor

Julie C. Zemke
City Clerk/Treasurer