

**CITY OF SOUTH LYON
REGULAR CITY COUNCIL MEETING
June 22, 2009**

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

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

PRESENT: Mayor Doyle
Council Members: Kivell, Kopkowski, Morelli, Selden and Wedell
City Manager Murphy
City Clerk/Treasurer Zemke
Attorney Hill
Department Heads: Collins, Martin and Renwick
ABSENT: Council Member Maida

APPROVAL OF MINUTES:

Councilman Kivell stated that on page 5 he would like his comment added regarding Attorney Lee's statement about a quartet not necessarily needing neighbor approval. He had indicated that if a quartet was simply playing songs, signatures from effected neighbors would be easily come by.

CM 6-1-09 – APPROVAL OF MINUTES

Motion by Kivell, supported by Selden

To approve the minutes of the June 8, 2009 Regular Council meeting as amended

VOTE: MOTION CARRIED UNANIMOUSLY

APPROVAL OF AGENDA:

CM 6-2-09 APPROVAL OF AGENDA

Motion by Wedell, supported be Kopkowski

To approve the agenda as presented

VOTE: MOTION CARRIED UNANIMOUSLY

PUBLIC COMMENT: None

OLD BUSINESS:

1. Second Reading – Sale Procedure

City Manager Murphy stated that we did remove the sentence limiting the value of the property to less than \$1,000 as was discussed at the first reading.

Councilman Selden asked if this is only for police found property. It was stated that it is only for police found or recovered property. Discussion was held on how money is handled. Chief Collins stated that the money would go back to the owner or the finder after six months. If either of those are not done, then the money goes into general fund.

Councilman Kivell stated that this ordinance addresses selling items as a block and asked if we still have the ability to sell individually if we choose. City Manager Murphy stated that we could do either or we could still sell be auction.

CM 6-3-09 – SECOND READING – SALE PROCEDURE

Motion by Selden, supported by Morelli

That this be the second reading and adoption of an amendment to City Code Chapter 54 – Enforcement – Article III, Section 54-63 – Sale Procedure (see attached amendment as part of these minutes)

VOTE:

MOTION CARRIED UNANIMOUSLY

2. Second Reading – Film Permit Ordinance

City Manager Murphy stated that we did make changes and added paragraph (8) under 22-202 (b) as we discussed at the first reading.

Council Member Kopkowski stated that it seems to contradict itself and is somewhat confusing between the definitions and the exclusions. Attorney Hill stated that many ordinances and statutes allow for exceptions for items that may be covered under the general broad definition. Further discussion was held on the exceptions.

Council Member Kopkowski asked if someone wanted to set a camera and take a picture of the gazebo, for example, would that be exempt. Attorney Hill stated that it does not obstruct traffic, etc. Councilman Kivell asked if that would be the same if the photography would be for commercial purposes. Attorney Hill stated that there would be a strong argument that it would be exempt due to paragraph (8).

Councilman Kivell asked how the duration in paragraph (8) was determined. Councilman Morelli stated that he discussed this with the City Manager and came up with the time frame. If someone is not obstructing traffic, etc. or being an inconvenience to anyone the 12 hours does not seem unreasonable. If you look at the definition, it says that you can be in a public right-of-way for less than five minutes even on a sidewalk or street. If they are longer than that then we would have to consider police staffing, etc. Councilman Kivell stated that an event in McHattie Park is exempt under paragraph (8) then we do not know if there is an inconvenience taking place and nothing that obligates them if there is any damage, etc. as a result of what they did. Discussion was held on the difference between an event taking place on private property versus city-owned property. Discussion was held on the differences between parks, etc. versus city-owned trees or right-of-ways.

Councilman Kivell stated that 22-205 (6) speaks to the idea of a plan that accompanies the permit by requiring a letter of notification and signatures from businesses and neighborhoods impacted if required by the City Manager or his/her designee. He stated that he likes the idea of everyone being treated the same. This is for submitting a plan. It does not say that they would need to implement notifications. In 22-207 (2) requires notification. He would like to add residents and occupants and businesses within 300 feet of the film location as we do with a variance request. He would like to give individuals who may be impacted the opportunity to be given notice and make their comments known. Councilman Morelli stated that it would depend on what they were going to do. He stated that everyone within 300 feet of a block party are not noticed. If there is going to be noise and filming late into the night then you would be impacting more.

Attorney Hill stated that these types of ordinances were drafted in response to the Governor's Initiative to attract film making to the State. What these ordinances are designed to do is to make these filming companies who produce action films and making lots of noise with large production areas and not over take the cities. The intent of the ordinance is not to make a photographer come in and get a permit. They are not for the small productions. The City when administering this ordinance will take that into consideration. With regards to notification within a 300 foot area, it does seem like a fair criteria. The City Manager is going to manage these permits. He knows the community and knows where these events will take place and will be able to better determine who will be impacted by the specific project.

Council Member Kopkowski stated that if we put in the 300 foot requirement, it would remove the City Manager's discretion. Councilman Kivell stated that the idea of a photographer taking pictures seems harmless, however if you are talking about someone coming in and setting up lights, etc. it could end up being an issue. If when they come in for discussion, they would have to provide the plan and gives the template of what their notice would be. Further discussion was held on the differences between the smaller projects versus a production.

Mayor Doyle asked the City Attorney if she feels that this gives the City enough protection. He stated that we do not want to impede a project that may come to the City, but we also want to have something in place that is actionable if necessary. Attorney Hill stated that she believes that it does, but it has not been tested in Michigan. The film industry is relatively new here. These are protections that municipalities are putting in place to make sure that the health, safety and welfare of the community is protected.

It was stated that this can always be re-visited at a later date and make any necessary changes.

CM 6-4-09 – SECOND READING – FILM ORDINANCE

Motion by Morelli, supported by Wedell

That this be the second reading and adoption of an amendment to City Code Chapter 22 –
– Article VII, Film Permits (see attached amendment as part of these minutes)

VOTE:

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS:

1. Contract for Equalization Division Services

City Clerk/Treasurer Zemke stated that this is a renewal of our existing contract with Oakland County for equalization services. They have frozen their rates for this two-year contract which are the same as we are currently paying. She stated that this is for both real and personal property and they have a special clause in the contract for the Colonial Acres development.

Councilman Morelli asked if this is negotiable. Oakland County has been discussing eliminating positions, etc. so if they are lowering their service to us why are they not lowering the rate. City Clerk/Treasurer Zemke stated that we do get a very good service from Oakland County. If we were to hire an Assessor, with salary and benefits we would be beyond what we pay Oakland County. It is a needed service that we cannot do without. It is a good service with a well-staffed department. They are never more than a phone call away to assist us. Attorney Hill stated that you can always request to negotiate, but in all likelihood with all of their other communities chances are very low.

Councilman Wedell stated that the quality of the service is apparent because there are no factors. Another advantage is that Oakland County does so many communities that they have the data of evaluations throughout the County. They can publish pretty accurately what is going to happen with the taxable values, etc. so that we can make accurate decisions.

CM 6-5-09 – APPROVAL OF CONTRACT – OAKLAND COUNTY EQUALIZATION

Motion by Selden, supported by Kopkowski

To approve the contract with Oakland County for Equalization Division Assistance Services for real and personal property for the period July 1, 2009 through June 30, 2011 and authorize the Mayor and City Clerk to execute the contract

VOTE:

MOTION CARRIED UNANIMOUSLY

2. Liquor License Transfer

Chief Collins stated that this is step one of a two step process for the transfer of the liquor license from Malaka to Crossroads Inc. Step two of the process was approved previously. Only within the last month, Liquor Control Commission realized that they left out step one which was a technicality. In order to accomplish the transfer, it needs to transfer from Screwie Louie's to Malaka, Inc. so that Malaka could in turn transfer to Crossroads. He stated that they did the investigation and they have provided various assurances and it has been reviewed by the City Attorney. He does recommend approval of the transfer from Screwie Louie's to Malaka, Inc. for the purposes of facilitating step two of the process to transfer to Crossroads.

Discussion was held on this simply being a pass through. Chief Collins stated that he has indicated that on his report. The question was asked if there is any possibility that it could stop with Malaka. Chief Collins stated that there is very little chance of that happening and he has not seen any intent with that happening. Attorney Hill recommended that if Council chooses to adopt the resolution that the language be added before it is sent to the LCC that Malaka, Inc. and Mr. Mugianis are not allowed to operate the license.

Discussion was held on what Council previously adopted. Chief Collins stated that he believes that it was to transfer from Malaka to Crossroads. When Screwie Louie's went out of business, they simply signed the liquor license over to Malaka, but that did not give Malaka technical control over the license to dispose of it because Malaka had not been approved by the City. Councilman Morelli stated that he believes that the approval was from Screwie Louie's to Crossroads. Further discussion was held on the previous approval. Councilman Morelli stated that he is not going to do this if the license is going back to Malaka unless there is some way that it goes directly to Crossroads free and clear.

Discussion was held on what would happen if Council did not take action. Chief Collins stated that the license is in escrow and the last legitimate holder of the license was Screwie Louie's. When they went out of business they signed the escrow license over to Malaka on paper without LCC or City approval. If we do not approve this, according to LCC the transfer to Crossroads cannot take place. Attorney Hill stated you can sell a license, but before you can transfer a license you have to go through LCC and this process. This step is clearing up a technicality. You cannot get a liquor license under the name of someone else.

Mr. George Mugianis stated that Malaka, Inc. does not own that building nor does he. He stated that when Screwie Louie's left they simply closed the doors and left everything. Part of the assets was a first lien on the liquor license. He paid off all of the taxes, etc. Screwie Louie's decided not to go to court and signed the rights to the license over to him. He was informed by the LCC it is called trafficking if he just held the liquor license just for the purposes of selling it. LCC said to find another person and it will be transferred into their name. They went through looking at a lot of people and felt that Paul Elkins would be the right fit in the City. LCC indicated that the two step process is just a pass through. He has signed an affidavit stating that he has no plans of opening the business, etc.

Councilman Kivell stated that it is his understanding that there is no legal document that obligates that it is a pass through. We are going on faith. Mr. Mugianis stated that this is how the LCC wants it done. He further stated that they have found a buyer to purchase the assets of the liquor license. If the transfer is not complete, the assets stay with Malaka, Inc. It is an Oakland County license and could be sold anywhere in Oakland County. They found a good match and they have invested a considerable amount of money. He stated that they have signed the agreement and the assets of the liquor license has been transferred to Crossroads.

Councilman Kivell asked when the sale takes place, who assumes the responsibility of the property tax obligation. Mr. Mugianis stated that the personal property taxes have been paid and the real property tax is the obligation of another corporation which he is not a part of. When Mr. Elkins makes his payments part of that will go to the bank and part will go to pay the property taxes. While he is in the building, he will be responsible for the taxes. Councilman Kivell asked if Mr. Elkins will be responsible for current as well as the arrears. Mr. Mugianis stated that The Grilled Tomato also makes sure that a certain amount is paid for the

taxes as well as Comerica Bank. He further stated that part of the problem is that Screwie Louie's was not paying the property tax. He further discussed the history of the building since he purchased the building. He stated that Mr. Elkins has a solid background. His concept is good. He had put out a website asking what people would like to see and he is moving forward.

Councilman Kivell stated that we look forward to the business, and Council already took action so that he could be the recipient of the liquor license. Council's concern is to make sure that it goes from Mr. Mugainis' corporation to Mr. Elkins'. Mr. Mugainis stated that it would be impossible for it to stop with him because it is all in the same file that goes to the Liquor Control Commission and they know the process. This type of situation does occur when a person has the assets of a liquor license and the purchaser of the license does not follow through that it gets sold to someone else.

Attorney Hill stated that the LCC follows the City's recommendation a lot. And, she would highly recommend adding the additional language that Malaka, Inc. and George Mugainis could not actively operate the license. You could also add that this is intended as a pass through to Crossroads subject to approval of the LCC. Mr. Mugainis stated that Malaka, Inc. would not be able to operate the license there because of the money that has been invested by Mr. Elkins.

RESOLUTION TRANSFERRING LIQUOR LICENSE

Motion by Wedell

That the request to transfer ownership of 2008 Class C-SDM licensed business (in escrow) with Dance-Entertainment and Official Permit (food) located at 106 S. Lafayette, South Lyon, MI 48178, Oakland, from Screwie Louie's, Inc. to Malaka, Inc. only for the purpose of passing the license through to Crossroads Grille, LLC and that Malaka, Inc. be not approved to operate the license be considered for issuance

MOTION DIES DUE TO LACK OF SUPPORT

Councilman Selden suggested getting a letter from LCC stating that they understand what we are trying to do and if it is not transferred immediately than it reverts back to the City. It was stated that it could not revert back to the City.

Council Member Kopkowski asked if Mr. Mugainis intended to continue to own the building. Mr. Mugainis stated that he does not own the building. It is owned by Grilled Tomato, Inc. of which he does have family members that are of part of that. Council Member Kopkowski asked Mr. Mugainis if he is going to be a part of Crossroads at all. Mr. Mugainis stated that he will not be a part of that.

Councilman Morelli asked if there is any intention to hold the license and enter into a management agreement. Mr. Mugainis stated that in order to have a management agreement, he would have to have been in operation, which he was not.

Chief Collins stated that there are a number of legal documents that went back and forth between Mr. Mugainis and Mr. Elkins. They were reviewed by the City Attorney and he has spoken with a Deputy Director from the LCC. This is how we arrived at the language in his recommendation. If Council would like to add that language to the resolution, he would hope that it would be acceptable to the LCC.

Councilman Selden asked if Mr. Mugainis could sell the license to someone else. Attorney Hill stated that he has a purchase agreement with Crossroads.

Mr. Paul Elkins of 6664 Whitaker Road in Ypsilanti stated that he does have a purchase agreement for the liquor license and the assets of the business. He stated that he has spoken with the Deputy Director at LCC who says that this is the only way that we can accomplish the transfer. It is one folder at the LCC, they are not separate issues. Councilman Morelli stated he would be comfortable if the resolution said that. It does not. This action would only transfer to Malaka, Inc.

RESOLUTION - TRANSFER LIQUOR LICENSE

Motion by Selden

That the request to transfer ownership of 2008 Class C-SDM licensed business (in escrow) with Dance-Entertainment and Official Permit (food) located at 106 S. Lafayette, South Lyon, MI 48178, Oakland, from Screwie Louie's, Inc. to Malaka, Inc. NOT be considered for issuance

MOTION DIES DUE TO LACK OF SUPPORT

Discussion was held on waiting for Attorney Lee to be present as he is the one that has reviewed the language. Discussion was held on adding the additional language to the resolution and the acceptance of that additional language by the LCC.

CM 6-6-09 – TABLE CONSIDERATION OF LIQUOR LICENSE TRANSFER

Motion by Kivell, supported by Kopkowski

To table consideration of a liquor license transfer from Screwie Louie's to Malaka, Inc.

VOTE:

MOTION CARRIED UNANIMOUSLY

3. Franchise Fee paid to South Lyon School District

City Manager Murphy stated that at the last meeting it was requested that a discussion of the cable franchise fees that we pay to the South Lyon Schools be added to tonight's agenda. The School has sent a letter with some documentation as to the use of those fees. Also included in the packet is a list of payments that we made to the schools since 1999.

Discussion was held on the expiration of the Inter-governmental Agreement between the City and the Schools which expired in 2002. Councilman Morelli stated that in the letter from Jim Graham, he indicates that there was a verbal commitment from Rod Cook to continue the arrangement until the expiration of the Franchise Agreement in 2012. City Manager Murphy stated that he has spoken with Rod Cook who does not recall that as being discussed.

Councilman Morelli discussed the City's channel and what is being broadcast. He stated that he would like to see us possible re-negotiate with the Schools and get something that we can be proud of. Discussion was held on Green Oak's channel 18 and the School's channel.

Discussion was held on how the schools have been spending the money. Mr. Chester Fox, Technology Director for the Schools stated that it is not just for the local channel that everyone sees. They purchase equipment to teach the broadcast studio curriculum. 100% of that money goes to purchasing and maintaining the equipment. He further discussed the curriculum and the fact that they now have two broadcast studios with the addition of South Lyon East. He discussed the studio at South Lyon High School which was put in 1998 and the fact that it is analogue and the need to upgrade to digital.

The question was asked if Lyon Township or the other communities in the school district contribute to their fund. Mr. Fox stated that they do not. He stated that they take the signal from Broadstripe and re-broadcast to the schools throughout the entire district.

Councilman Kivell stated that when this began, the idea was that the Schools would create a pool of resources both technical and talent that would enhance our broadcast and the Schools. That has not taken place.

Discussion was held on the equipment purchased. It was stated that the spreadsheets provided does not indicate the type of equipment.

Discussion was held on the expired contract. Councilman Kivell suggested that we take control of the monies and upon request by the Schools, Council can make a decision if it is some benefit to the City.

Council Member Kopkowski stated that the information provided shows that the contract expired seven years ago. She stated that she would be happy to entertain some discussions, but at this time she does not see a need to discuss it because we do not have a contract. Mr. Fox stated that the original State Legislation said that you had to provide an educational component to be able to collect franchise fees. He believes that is why the City was providing the schools that money to provide for that component. Further discussion was held on negotiating with the schools for a new contract.

Discussion was held on the amount that the Schools are paid. Councilman Kivell stated that we get 5% of the entire revenue. Of that, the Schools are receiving 20% of the franchise fee or 1% of the total revenue. Councilman Selden stated that we could put it all in our General Fund and upgrade our equipment. Furthermore, if the City is going to contribute, he would like to see all of the communities within the school district contribute.

Councilman Morelli asked if the residents of the other communities in the school district have access to the School's channel. Mr. Fox stated that they cannot because they have no point of broadcast in that area. They broadcast out of the administration building. Councilman Morelli asked Mr. Fox, based on the information he discussed earlier about the educational aspect of the franchise fees, why would a community such as Salem Township, etc. not have to provide that same component. Attorney Hill stated that she believes that if the school had a need, then possibly it would require the community pay those fees. She stated that she would have to review the information that Mr. Fox was referring to. Councilman Morelli stated that he does not have a problem with the Schools receiving the money, but it seems there should be more "players" than just the City and Broadstripe.

Mayor Doyle asked the City Manager to look at this issue further.

4. Film Permit Fee Schedule

City Manager Murphy stated that enclosed in the packet is the proposed fee schedule for the Film Permit ordinance that was just adopted.

Discussion was held on how these fees compare to other communities.

Councilman Selden asked if there is any relief for non-profit agencies. City Manager Murphy stated that usually non-profit organizations are still subject to the fees. Discussion was held on Council's ability to waive certain fees. Attorney Hill stated that in Section 22-204 (6)a of the Film Ordinance it does discuss processing fees for charitable or non-profit organizations that qualify under 501C3 of the United States Revenue Code.

Councilman Kivell asked if a municipal employee is working in another area or in an emergency situation, and we incur overtime costs, do these charges make sure that we are covered. City Manager Murphy stated that it does.

CM 6-7-09 – APPROVAL OF FEE SCHEDULE FOR FILM PERMITS

Motion by Wedell, supported by Kivell

To approve the Fee Schedule for Film Permits as presented

VOTE:

MOTION CARRIED UNANIMOUSLY

5. Budget Amendments

Mayor Doyle stated that these are previously approved actions of Council. City Manager Murphy stated that some of them are, but not all of them. He stated that snowplowing and salt were not pre-approved as we had no way to anticipate those expenditures. He stated that he did provide a brief explanation of each amendment as well as what the budget was and what it is amended.

Councilman Kivell stated that he would have like to have seen more description. Discussion was held on the amendment due to Tax Tribunal. City Manager Murphy stated that our revenue was decreased due to a Tax Tribunal for Colonial Acres. There was also an adjustment for the Detroit Edison tax bill. City Clerk/Treasurer Zemke stated that these were unanticipated expenses.

Councilman Kivell questioned the mechanics wages and benefits. City Manager Murphy stated that usually the mechanics wages are spread across the departments depending on what he is working on. In this case, more work came out of the DPW than expected. Superintendent Renwick stated that we also purchased some additional equipment therefore that line item had originally been reduced.

Councilman Wedell stated that he would hope to see these adjustments quarterly. He stated that he does not see any adjustments to the revenues. City Manager Murphy stated that he has never done adjustments to revenues before. It is not something that you normally adjust, you just adjust for the expenditures. Councilman Wedell stated that when we adopt a budget, it is a document that we can make changes based on decisions throughout the year and as changes occur. The same happens for revenue, and he would propose that we track revenues as well. If we see that we have a shortfall, we do not learn about it in the 12 month.

Councilman Morelli questioned the general DPW wages and benefits as well as mechanics wages and benefits. Superintendent Renwick stated that part of that is that we had two people out on disability, which all comes out of the one fund instead of coming out of major, local, water and sewer funds. It does throw it off when there is a disability.

CM 6-8-09 – APPROVAL OF BUDGET AMENDMENTS

Motion by Selden, supported by Morelli

To approve the budget amendments as presented (see attached budget amendments as part of these minutes)

VOTE:

MOTION CARRIED UNANIMOUSLY

MANAGER'S REPORT:

City Manager Murphy stated that he will be on vacation from July 11th -19th therefore he will not be at the next meeting.

COUNCIL COMMENTS:

Mayor Doyle stated that he has been talking with the City Manager with regards to the fire hydrant issue. He feels that that after this first year, this issue will come up again. We need to look at the longer term. He asked that the City Manager and/or City Attorney look into servicing those and possible access to those hydrants on private property.

Mayor Doyle stated that we have an opening on Planning Commission. He has talked with Bill Rodman who is interested in serving, and he has experience. It was stated that by appointing Bill Rodman to Planning, it will create a second vacancy on ZBA. Discussion was held on looking into whether he could serve on both boards.

Councilman Kivell questioned the status of the fence at Yerkes Drain. Superintendent Renwick stated that he was contacted by one of the fence companies that Oakland County has been in contact with. It does sound like they will be taking care of it. City Manager Murphy stated that there had been some question as to who was responsible the Road Commission or the Drain Commission.

Councilman Kivell stated that the sidewalk at the north end of the driveway at CVS is in very bad condition and asked that someone look at it.

Councilman Kivell questioned where we are with the interlocal agreement for the projection equipment. City Manager Murphy stated that he received an email from Don Green, Supervisor in Milford Township. He has advised us that it is at his attorney's office, but the attorney is on his honeymoon. We are waiting to hear back. It is taking a long time, but it is part of intergovernmental cooperation. Councilman Kivell stated that he has talked with Tom from the Lyon Theatre about the projection project, and he is fine with the idea. Councilman Kivell stated that he had some concern that we would be trying to compete with him, but Tom has no concerns. He will assist us whenever he can. He further discussed an Oakland County Main Street meeting.

Councilman Kivell stated that he would like to propose that we re-visit the fire hydrant inspection issue. Council made a decision to have private developments bear the financial responsibility of an annual inspection based on the information available at the time. The two important objectives was to ensure a viable fire hydrant system for the protection of our community and establish an equitable way of maintaining those private assets while remaining consistent with the use of our public dollars. He stated that he does not know if we came to the best conclusion for private hydrant inspections. The difference between public and private hydrants lies in location only. He further discussed the differences in the hydrants. He stated that he feels that we should ask these private developments to enter into a voluntary agreement with the City that grants the necessary access and relief from liability that allows the City to conduct maintenance on these hydrants in the same way we handle the City-owned hydrants. Developments that do not agree would operate under the recently adopted ordinance to conduct annual inspections at their own expense. He further discussed the argument against the City conducting road maintenance, snow plowing, leaf collection, etc. unless the streets are improved to meet the standards of the City, which is why these developments are structured as private. He stated that he would like to limit any action to hydrants alone. The leads to the City's water mains and any component other than the hydrant would remain the responsibility of the private development and would be subject to compliance with code. A solution for the City to provide routine maintenance would ensure the liability as well as health and safety while remaining consistent with the use of our tax dollars. Originally, he thought that this could be brought back to the next meeting as an action item. However, the City Manager's recommendation was to see if he and the City Attorney could come up with language for an agreement that would seem viable to accomplish our tasks.

ADJOURNMENT:

CM 6-9-09 ADJOURNMENT

Motion by Selden, supported by Kivell

To adjourn meeting at 9:15 p.m.

VOTE: MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

John Doyle, Jr.
Mayor

Julie C. Zemke
City Clerk/Treasurer