

CITY OF SOUTH LYON
REGULAR COUNCIL MEETING
FEBRUARY 27, 2017

Mayor Galeas called the meeting to order at 7:30 p.m.
Mayor Galeas led those present in the Pledge of Allegiance

Present: Mayor Galeas
Councilmembers: Kivell, Kramer, Kurtzweil, Parisien, Rzyzi and Wedell
Also present: City Manager Ladner, Department Head Martin, Chief Collins, Chief Kennedy, Attorney Wilhelm, and Clerk Deaton

MINUTES- January 23, 2017

CM 2-1-17 MOTION TO APPROVE MINUTES OF JANUARY 23, 2017

Motion by Rzyzi, supported by Parisien
Motion to approve minutes as presented

VOTE: MOTION CARRIED UNANIMOUSLY

MINUTES- 2/13/17

Councilmember Wedell stated he would like to amend the minutes to state, Mayor Pro Tem Wedell gaveled Councilmember Kurtzweil 3 times and stated her comments were out of order. Councilmember Parisien stated her name is misspelled on the last page.

CM 2-2-17 MOTION TO APPROVE MINUTES AS AMENDED

Motion by Kivell, supported by Parisien
Motion to approve the minutes as amended

VOTE: MOTION CARRIED UNANIMOUSLY

BILLS- None

AGENDA

Councilmember Rzyzi stated he wanted to point out and that # 5 is a closed session, and he doesn't know why it is on here when it is also on #2 under new business, we don't need a closed session. City Manager Ladner stated it can be dealt with under open or closed session. Councilmember Rzyzi stated he doesn't feel it should be in closed session and he will vote no. City Manager Ladner stated it is Council's decision because it is reviewing a document of attorney client privilege and only Council can waive that. Councilmember Kurtzweil stated she will vote no as well. She stated you are asking to go into closed session to consider material exempt from discussion by state or federal statute. City Attorney Wilhelm stated when there is written attorney client communication it is exempt from FOIA and that is the generally excepted rationale for going into closed session. Councilmember Kurtzweil stated there is nothing confidential in it. Attorney Wilhelm stated the document is titled Attorney-Client Privilege. City Manager Ladner stated changing the agenda of action items requires a 2/3 super majority. Councilmember Kurtzweil stated we can amend the agenda before it is approved, after it is approved, we would have to have a super majority. She further stated we should follow Robert's Rules of Order. Attorney Wilhelm stated there is a resolution dated January 2006 which states a super majority is needed.

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CM 2-3-17 MOTION TO REMOVE ITEM #5 CLOSED SESSION

Motion by Rzyzi, supported by Kurtzweil

Motion to remove item #5 from the Agenda

ROLL CALL VOTE: Kivell- No

Parisien- No

Rzyzi- Yes

Galeas- No

Wedell- No

Kramer- No

Kurtzweil- Yes

MOTION FAILED

Councilmember Kramer stated he would like to hear from the Dykema attorney because he is also entitled to Attorney Client privilege, and he understands what is being said, but he would like to hear if this report was made for Council, or if it is a document available under FOIA. Just for the sake of clarification, he would like to hear from the Attorney that labeled it Attorney Client Privilege.

CM 2-4-17 MOTION TO APPROVE AGENDA

Motion by Kivell, supported by Wedell

Motion to approve Agenda as presented

MOTION CARRIED- 2 OPPOSED

Councilmember Rzyzi asked if it is a conflict for Councilmember Kivell to vote on the agenda because it involves his investigation. Attorney Wilhelm stated according to 4.6 of the Charter he should be excused from the vote for going into the closed session. Attorney Wilhelm stated it is not his position that it is a conflict for Councilmember Kivell to vote on the Agenda. Councilmember Rzyzi stated that is wrong, it is a conflict. Attorney Wilhelm stated he disagrees. Councilmember Wedell asked if this is dealt with in open session does Council then waive attorney client privilege. Attorney Wilhelm stated it would have to be a vote of Council to waive privilege, and you would have to understand the impact of such a decision, and he suggests we wait to hear what Mr. Muskovitz says given that he is the author of the attorney client privilege written communication. Councilmember Kurtzweil stated she disagrees, the people that hold the privilege is Mr. Muskovitz, and we as City Council have the ability to vote to release this because it is of great public interest. She stated there is nothing confidential in terms of the results, and it serves a great public interest, there is nothing defamatory of the holder of the conflict, and all the documents in the report came from public record. To argue the public doesn't have the right to see the report is a complete disservice to the public we serve. Councilmember Kramer stated he understands that, but he would like to understand why Mr. Muskovitz labeled it Attorney Client Privilege. Councilmember Parisien stated we shouldn't hastily get into something without hearing from the attorney that labeled it attorney client privilege.

Councilmember Rzyzi stated he still doesn't understand why the discussion is on the agenda in open and closed session, and there is nothing privileged so there shouldn't be a closed session. Attorney Wilhelm stated the idea was to provide Council to have an open session regarding this report, but yet given the opportunity to have a closed session to discuss the written communication marked as attorney client privilege by Attorney Muskovitz. Further discussion was held on amending the Agenda. Councilmember Kurtzweil stated you have to have a majority vote to go into closed session and Councilmember Kivell would not be allowed to vote on that. Attorney Wilhelm stated that is correct. She further stated if we

make a decision in closed session, it must be in the public record. Attorney Wilhelm stated the discussion is in closed session, then the decision is made in public session.

PUBLIC COMMENT

Steve Elmsley of 51824 8 Mile stated he is part of a citizens group called CPARD for public accountability and responsible development. He stated we are one of a few groups in the state that won an open meetings lawsuit, the law was written and amended in part by the litigation against the township of Northville. He further stated going into closed session on 8(h) of the open meetings act is the most obscure and obtuse way to go into closed session. In the past, cities and townships used to post a special meeting within 18 hours of a closed session at 4:45 p.m. and no one would know about it. He has heard some of the shenanigans going on here, and to have people believe that just because a document says privileged makes it some kind of special document. That is disingenuous. He further stated he works with many attorneys and they just lost a suit with Lyon Township, but it will probably be overturned in appeals. He further stated in the end, there is no case, why this needs to be in closed session at all, all you have said is the attorney wrote attorney client privilege on the document. He further stated all that needs to be said is Councilmember Kivell needs to say there is nothing to hide, and let it be dealt with it in open session. He further stated as the head of CPARD this isn't right, and it isn't right by the people you serve, release the documents and do it in front of the people and move on.

Carl Richards of 390 Lennox stated the historical society had a 3-hour program that was really good, it wasn't highly attended but they all had a good time. He further stated the most outstanding thing that was brought in was a large old boat made out of toothpicks that was made by Larry Ledbetter. Mr. Richards stated as a point of history, he brought in a small coffee cup with Hop Along Cassidy on it from the early 50's. He also brought an Indian arrowhead. He stated he also brought in a piece of men's decoration, which was an S for Michigan State, but it is from 1925 and 1926 and it belonged to his father. He stated the tube mill is taking applications, they normally take 100 apps, then bring in 60, and hire 40 people. He stated the Salvation Army is opening soon, and they have hired 12 people, and one was one of his handicapped friends. He further stated the goal is to hire 50 people. He further stated they have 6 houses up on Mill Street and it is very interesting, he hopes things go well for them. Kurtzweil further noted that Wedell was out of order when he addressed Carl Richards at the public comment section of the agenda.

Ryan Lare of 760 Grand Court stated it is a shame about the closed session, he agrees with Maggie and Joe, and people need to know what is going on with our elected officials. He further stated the government needs to start to think about the people that pay your salaries, and it is Election time, and he will not be voting for any of the renewing councilmembers. He further stated people are being told to be quiet and he wants a full investigation about Maggie being stopped from speaking about the fraudulent information, it is an obstruction of justice.

Dan Pelchat of 255 Wellington stated he wanted to thank Council, and to thank everyone that volunteers for the City and the people that work in this office. He is on the Cable Commission as well as employed by South Lyon Schools in the technology department. He stated he is here to discuss the recent technical difficulties with the equipment in the media room. He stated no one has asked him to speak on this, but he is here to put an end to the harassment of City employees and volunteers. He further stated it is uncalled for and stems from alternative facts or lying. He further stated he had a hard time believing this can be manipulated into something it is not. He further stated the building was built in 1998, and the equipment we are using to video this meeting is from 1998. Mr. Pelchat stated it is 18 to 19 years old and I don't think anyone is using a computer from 1998. He stated there is not one person that can do a low

level of trouble shooting. We are in a tough spot to make a service call on 19-year-old equipment. He asks anyone that questions these facts, please attend the next Cable Commission at 7:30 on March 8th.

CM 2-5-17 MOTION TO SUSPEND THE RULES TO HAVE A CONVERSATION WITH THE PUBLIC SPEAKER

Motion by Kurtzweil, supported by Rzyzi

Motion to suspend rules to have conversation with public speaker

VOTE: MOTION CARRIED UNANIMOUSLY

Kurtzweil noted that Wedell was out of place when he spoke directly to a public speaker without first making a motion to suspend the rules. Councilmember Kurtzweil asked if it would help if a budget was put together to find out what it would take to modernize the equipment. She stated she was not informed the equipment was from 1998 until the last meeting. Mr. Pelchat stated the Cable Commission has been rebuilding the cable channel, nothing they have worked on has anything to do with the recording equipment. He stated we have tried to begin to bring this up to date, and it is unfortunate because of the way the television channel was left, and we had to rebuild that, now we have up to date hardware for that, but we need to get updated hardware for the recording equipment. Councilmember Kurtzweil suggested he get together with the schools, and put together an aggressive budget and get problems solved. Mr. Pelchat stated the City Manager will have some news regarding that later in the meeting. He further stated he is mainly here to squash the conspiracy theory, because it comes down to 19-year-old technology, we can hardly keep it running, and there are fewer and fewer people that service this type of equipment.

OLD BUSINESS

1. Consider proposed amendment to the performance evaluation provision of the City Manager Employment Agreement

CM 2-6-17 MOTION TO APPROVE PROPOSED AMENDMENT TO CITY MANAGER EMPLOYMENT CONTRACT

Motion by Kivell, supported by Kramer

Motion to approve the proposed amendment to Section 11 entitled performance evaluation and goals of the City Manager employment agreement as presented, and authorize the Mayor and Clerk to sign a first amended and restated City manager employment agreement containing the amended section 11

MOTION FAILED

City Manager Ladner stated this was brought before Council at the last meeting and the proposed language was rejected by Council. She stated the amendment has now been revised. Councilmember Kurtzweil stated she disagrees with the language, the revised language should give the City Manager 90 days in advance, giving her 2 weeks' notice is not fair. Councilmember Kivell stated this gives the City Manager the ability to make that argument. Councilmember Kramer stated there is option one or option 2. He stated he doesn't have a problem with the number of days being 60-90 days, instead of a 2-week notice.

CM 2-7-17 MOTION TO ADOPT THE REVISED LANGUAGE FOR CITY MANAGERS
CONTRACT WITH ALTERNATIVE LANGUAGE OF AT LEAST 90 DAYS NOTICE IN ADVANCE

Motion by Kurtzweil, supported by Kramer

Motion to adopt the revised language for City Managers contract with alternative language of at least 90-days notice in advance

VOTE: MOTION CARRIED UNANIMOUSLY

CM 2-8-17 MOTION TO AMEND THE MOTION FROM 90 DAYS TO 60 DAYS

Motion by Wedell, supported by Rzyzi

Motion to amend the motion from 90 days to 60 days

VOTE: MOTION CARRIED UNANIMOUSLY

Councilmember Rzyzi stated we are coming to a good conclusion and this is good teamwork.

NEW BUSINESS

1. Discussion regarding utility billing

Councilmember Rzyzi stated he added this because at the beginning of the meeting we heard a comment about adding the gaveling to the minutes and it got his attention, which is why he asked to have this added. The Council rules were passed in January 2006 and it states a Council Comments section will be added to the agenda, and it will allow them to make general announcements to the Community or ask other Councilmembers, Department Heads or the City Manager questions. He further stated make comments means you can say whatever you want. It raised his attention that there were possibly some fraudulent water bills. He further stated he stays in touch with residents through Facebook and when he put that on there, he got many comments from residents saying it happened to them and it has been going on for years. He quoted a few comments from his Facebook page such as, "yes I received one of those bills on some rentals I have in town", another said "it happened to them 20 years ago, and when they called the Water Department said we now have your attention." Councilmember Rzyzi stated there is some mistrust among the residents and it was admitted during that meeting in 2015 and if this is still happening, we need to address it.

Councilmember Kurtzweil stated this has been bubbling in the community. She found out about it watching a City Council tape. She stated the festering is there because this was a single woman with low usage, and she was sent a false water bill. She stated when the lady called the City, the City employee stated we did that to get your attention. She further stated people are angry that some employees took it upon themselves to issue a water bill that isn't a true bill. She said this woman was working two jobs, and this is how the City treated her. She watched that tape over the weekend and she clearly said to Council, here are my water bills, you can look at them. Councilmember Kurtzweil stated it makes the City look bad, and the Department look bad, I can't imagine any city allowing their employees to send out fraudulent water bills. She further stated she doesn't understand the culture of this City, that thinks it is ok to send a resident a fraudulent water bill, it went through the mail, which is mail fraud. If you have more than eleven people that received these bills, we could have a class action lawsuit against the City. She further stated she wants some assurances that this employee has been counseled and this is inappropriate at any time. She stated it is wrong, and she doesn't understand where the culture in this city comes from. She wants assurance this has stopped, and we need to get Plante Moran in here. If anyone paid a false water bill, we need to make amends real quick. No excuses, this is not defensible. This makes everyone look bad. Councilmember Kivell stated his comments in the minutes was that was not appropriate and it shouldn't take place, and it is a function of unit price and how many unit price was used, and it was spoken to the idea that the person would be talked to and it wouldn't happen again.

Joyce Clohosey a city resident stated she also received a water bill for over \$1,000. She further stated it was just her and her husband living there at the time, and they normally had a minimum water bill, so fortunately she did not just pay it. She called and they were told we got your attention and we want to put in the digital meter. She said the bill came just like a normal water bill, and looking back that other people are saying this happened to them, it seems the City is violating Fair Housing, if the City is seeking low usage people out, and putting a fixture in their home in a bias way, it needs to be looked at. Just because people did or didn't pay that, doesn't mean it was wrong. It is difficult to deal with the City of South Lyon. She stated it was between 2009 and 2013. Councilmember Rzyzi stated the comment he received was it happened 20 years ago, very concerning.

Miranda Clay stated she owns a building on Washington and has owned it since 2007. She stated she has every bill and it went from \$900 a month to \$3,300. She stated she went to the two prior months' bill, the water department said they might have a leak, someone came out and they did not have a leak. She further stated they then said there was a rate increase. The bottom line was she was told if you don't pay you will get the water shut off. She further stated what is going to happen now, am I going to get a credit, or should I call channel 2, 4 or 7 and show them the bills. An investigation should happen. She hopes something is done, and if nothing is done, she will contact the media. Councilmember Kramer asked if it was just one bill and when. Ms. Clay said it was one bill and it was the last bill. Councilmember Rzyzi stated this is why he added this to the agenda, it is very upsetting. City Manager Ladner stated any meters that are replaced are on a regular schedule for replacement, it is not done by any selection of household size or location in the City. Councilmember Kurtzweil stated that is hard to believe. She said when they came out, she asked if there was something wrong with it, and he said no, it is being replaced because it wasn't pulling enough water and we want to make sure we are billing for every dime that comes into this house. She further stated the City was replacing water meters on every home that had low usage to get every dime you could. She said he was very honest and that is what he told her. The lady that came to the meeting to complain had a similar lifestyle, and she was targeted to get her meter replaced. She further stated the woman that was here had also been on vacation and because she worked 2 jobs, and the water department was only available Monday – Friday 8:30-5:00. Ms. Clohosey stated the home she bought was vacant for almost 2 years, and she had to have the City initial the electric box, and HUD had to sign off on everything, and the fact that there is a master schedule, no one from the water department wanted to come in and take corrective action. She stated she had a rental property that sat vacant, and you get a minimum bill whether any water is used or not. It takes a lot to go over that minimum, it is clear they look for low usages. She further stated she would like to see a water meter replacement schedule.

Ryan Lare stated he received a notice to replace his water meter as well, and he doesn't trust the water department or anyone in the City except for 3 people, Bob, Chief Collins, Chief Kennedy, and Councilmembers Maggie and Joe. This City needs to get its act together, and someone needs to be investigating the fraud that went on, it was mailed in the mail, that is fraud, and by gaveling Maggie at the last meeting that was an obstruction of justice, you have to be careful of what you vote on, that is a potential crime as well. People shouldn't have to worry about their water bills, and no one is coming into his house to change his meter, and if he gets a \$1200 water bill he will be the first one in the door.

Department Head Martin stated he would like to speak to Council and the City of South Lyon, he has worked for the City for 38 years. He takes responsibility for things pertaining to water, wastewater and other things. In order to have a billing system you have to have something to bill. What we bill is the water, and we do that thru water meters. We have 3600 meters throughout South Lyon. Most are 3/4

except the schools which have 6". The cost for water in the City is very reasonable, it is \$2.40 per 1,000 gallons. We read the meters quarterly. He said people think we are showing up to their house because they aren't generating enough water, that isn't true and it isn't reasonable. There is a battery-operated meter head in each meter. The battery lasts 10-12 years. The guys drive around the City and picks up electronic reads, then we take the computer back to the billing department and upload it to the billing computer and it shows everyone's individual billing. If the battery goes bad, we don't get a signal, that is how it is determined that a meter needs to be replaced. He stated we don't call, we send letters, and it can be done any day of the week, and it takes 5 minutes to do this. If they don't call for another quarter, we have to do an estimated bill. He further stated that is how sometimes it can go over a year. That practice that was done was stopped in 2015, and he stopped it. The previous superintendent was the one that started that practice. The water meters are so precise and there is a small red dial and it speaks to a literal drip coming out of the bathroom faucet. He further stated we have updated all of our computers to windows 10, and BSA cash receipts and at the same time our water meters went to a new thing called Beacon. Mr. Martin stated Plante Moran audits the City every year as well as the water department. He stated they measure all unbillable water that goes out of the City, and 10% is very good, we were at 4.7% that is how good our system is, we will never get to 0%. We are as transparent as we can be, and that is a hard sell, but that is a fact. Our billing Clerk has worked here for 28 years, he stated he raised his family here as well. He stated his bill is approximately \$145.00 a quarter, and \$40.00 is for Garbage, that drops it down to \$105.00 a quarter, and it works out to .53cents a day. We have very few people complaining but if we do, we are there, we have two very good guys in the water department. He stated in a 10-unit building, you don't know how the water was used, someone could have had a toilet running.

Councilmember Kurtzweil stated she wants to get back to the fraud. She asked how does someone generate a bill if it is not based on usage. Department Head Martin stated fraud is a scary word, you have already tried and convicted him. Councilmember Kurtzweil asked how the bills are generated. She would assume the computer will look at the previous 3 years, and then generate an estimated bill. She stated her water usage was about \$100 a quarter, so how does someone generate a water bill for over a \$1,000. Department Head Martin stated he would be happy to look at this. Mayor Galeas stated he is very concerned and no one has asked him, but you are assuming as you always do, and he doesn't understand the checks and balances and he understands their concerns, but everyone should have their say. He further stated he is not disagreeing but things happen and lots of comments are being made, but we aren't getting an answer and we don't give the guy a chance to explain that is running the Department. He further stated this has been political since day one. We have the opportunity as Council representing the City if we have a question, to ask the question to the City Manager to get answers instead of trying to get everyone angry and asking things in public. He stated he would like a resolution instead of people making a point of giving everyone a hard time. Department Head Martin stated he cares so deeply and it is unfair to use the word fraud against him, you know me as a person, do you think I would allow that to happen. Councilmember Kurtzweil asked if there is someone over the billing clerk. Department Head Martin stated he is in her office every day, and his guys are in there as well working on things. He further stated he knows every now and then there will be a glitch, but if it happens we will address it and correct it. Councilmember Kurtzweil stated no one uncovered this until the taxpayer came up to the microphone and said that has to stop. Department Head Martin stated that happened in 2015 and it hasn't happened since. He guarantees over 4 letters were sent to that person, and it wasn't right, but he stopped it. Councilmember Kurtzweil suggested if it is a problem, sit down with the City Attorney and go get court orders. Department Head Martin stated we can according to the City Code, but we want to work with people. Councilmember Kurtzweil stated has she been counseled, and she wants assurance this will not happen again. Department Head Martin stated he will always strive to do things right, and he needs some

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respect from council as well. I give you my word, that was addressed and sometimes we do get some large readings, and then it comes back down, how do you know there is no leak. We know sometimes toilets run, and we work with those residents and we charge the water side of the bill, but we don't charge on the sewer side. He stated he is being as honest as possible. He stated the integrity of the employees of the City is beyond reproach, we try to be true public servants. Councilmember Kurtzweil stated this employee was not an inexperienced employee, this was an employee that had extensive experience. Department Head Martin stated he hopes we can have more conversation back and forth and we can move forward with this. Councilmember Parisien asked if other communities take the same course of action as the City. Department Head Martin stated they do. He further stated we have nothing to gain by charging one penny more. Councilmember Rzyzi asked when Linden Beebe was the superintendent. Department Head Martin stated he took over in 2000. Councilmember Rzyzi stated he won't beat a dead horse, but you said this was implemented by him, and ended in 2015, and it has been going on potentially for 15 years. Department Head Martin stated he doesn't know how many times it was done in the last 15 years. He further stated just because a bill is high doesn't mean we did anything wrong. Councilmember Rzyzi stated it has happened and people were told it was to get their attention. He further stated in order to get people's attention, someone would have had to physically manipulate the numbers, don't whitewash it. Department Head Martin stated this hasn't happened since 2015 and if you have any questions why not just call and ask me if you have a concern instead of throwing it on Facebook. Councilmember Rzyzi asked if we need to have an audit. Department Head Martin stated we are audited each year. He further stated you have quality people working for the City. Councilmember Kivell stated that is an important part of the conversation, instead of being ambushed during Council Meetings these are all things that could be much more constructive when a phone call can be made during the day when you can give them the information and they can look into it, then if you want to still have a discussion during the meeting, at least they have the ability to investigate and come up with the root of the pricing spike might have been, the idea of having these TV moments is way over the top.

Mayor Gales stated he said this before, it isn't the statement, or the topic, it's the delivery. He further stated when he was on Council in the past we went to the City Manager with questions, and we got answers, we didn't always agree. He further stated there can't be a conspiracy or cover up if we have no idea what people are going to bring up. He stated when he is blindsided he has no option except to ask the Manager or the Department Heads. He stated the Department Heads and the City Manager are running the departments. He further stated if you see a water bill go high, it needs to be looked at. He stated it seems like people think everything has to be a social media topic to get everyone upset to solve a problem. If the rest of us aren't given the information to try to solve the problem, he doesn't understand where this is coming from.

Ms. Colohosey stated she understands Council doesn't do the water billing. She received a \$1200 water bill, and she was told on the phone it was to get her attention, not an average, they said was we sent you this bill to get your attention. She stated the superintendent just stood at the microphone and said on the record and on tape admitted his department sends out erroneous water bills. Mayor Galeas stated he did not say that.

Mayor Galeas called for a 5-minute recess at 9:17 p.m.
Mayor Galeas reconvened the meeting at 9:24 p.m.

2. Discussion/Consideration of investigation report from outside counsel

Mr. Muskovitz of Dykema Gossett PLLC stated it is standard practice for work product to be marked as attorney client privilege and Council may waive that, this is different than litigation. Councilmember Kivell stated the only reason he wanted to have the agenda remain as proposed is because he has no problem with having this discussion in the open meeting, he didn't want to limit someone else's ability to have a discussion in closed session if they had a concern. He further stated he is unaware of the process and if he will be participating in the discussion, if not, he would like the ability to read a statement before the process takes place.

Councilmember Wedell asked if this body of Council can waive the privilege.

CM 2-9-17 MOTION TO WAIVE PRIVILEGE TO DISCUSS FINDINGS OF MR. MUSKOVITZ

Motion by Kramer, supported by Wedell

Motion to waive privilege to discuss findings by Mr. Muskovitz

VOTE: MOTION CARRIED UNANIMOUSLY

Attorney Wilhelm stated this Council has set precedent and the participant can be included with the conversation, but not the vote. Councilmember Rzyzi stated he recalls neither of them participating and standing in the back of the room. Councilmember Kurtzweil stated it is fine. Councilmember Rzyzi stated he doesn't have a problem with it.

Mr. Muskovitz stated there are three basic facts not in dispute. Councilmember Kivell was employed by Pullum Windows at the time of the contracts being awarded, he participated in the votes, and didn't disclose his conflict. He stated the scope of the assignment was broke into 3 groups. The first was if Councilmember Kivell had any solicitation or rewarding of the bids. The second was if his conduct violated any sections of City Code or City Charter by not disclosing his employment, and the third was any recommendations to change city documents for any issues he found during this investigation. Mr. Muskovitz stated he interviewed all Councilmembers, Chief Collins, Lieutenant Sovik, City Manager Ladner, Attorney Wilhelm, and Councilmember Kivell individually. He stated Councilmember Kivell was very accommodating. He further stated Mr. Kivell shared all of his paystubs as well as his W-2 so we could determine if his compensation he received on a weekly basis equaled his yearly pay. He further stated he put together events in chronological order. Mr. Kivell was hired by Pullum in January 2016, which is before the Police Department reached out for window contracts, which reflects he was not hired by Mr. Pullum with the idea it might help him get the contract. Mr. Muskovitz stated he met with Mr. Pullum and he was very cooperative, he made arrangements for him to see the bid and specifications. Mr. Kivell was hired as a window assembler, he worked on the windows that went into the city's buildings, he was paid hourly, his hours throughout 2016 were consistent the entire year. The hours he worked before the bid was done, and the hours worked after the work was done was very consistent. He was not involved with the installation of the windows. He confirmed with Mr. Pullum that Mr. Kivell didn't receive any bonus, or stipend, commission nor a pay increase. That is why he asked to see his weekly paycheck to make sure they matched the W-2. He stated the fact his hours are consistent is because if Mr. Pullum doesn't keep his employees close to 40 hours a week, he will lose employees. The fact is Mr. Kivell worked there, he was an assembler, and he was paid for the work, but it wasn't disclosed. Mr. Muskovitz stated Mr. Kivell played no role in the bid process, nor did he play any factor in the bid proposal, as far as he can tell, the bids were kept by Lieutenant Sovik until the information was given to City Manager Ladner for the Council packet which was issued on August 4th. Lieutenant Sovik approached 5 other companies, but only two companies bid the job, and a 3rd suggested he contact Pullum because they have a reputable reputation and they are local. As far as the recommendation on the Agenda note that was written by Sovik which stated that Pullum was the low bidder, and a local business with a

good reputation. He further stated after the bid was awarded, Mr. Pullum then contacted Lieutenant Sovik and City Manager Ladner stating that unilaterally he was going to enhance the product for aesthetic reasons without additional cost. Mr. Muskovitz stated the second issue is if Councilmember Kivell's actions violated any of the Code or Charter provisions. He stated he looked at the Code and the Charter, but he also expanded that by the State Statute with dealing with local bodies that supersedes local ordinances and charter provisions of public officials. He stated he views the first and third motions voted on August 8th to approve Pullum as a contractor as voting on a contract. He further stated the second motion to waive the bidding process isn't seen as voting on a contract, but he found 7 violations of Charter, Code or State Statute which all involved the same conduct. He stated this is not straight forward, by voting on the contracts, did he have a financial interest in the City Code, and financial interest is not defined in the Code or Charter. Mr. Muskovitz stated if financial interest is defined as ownership, Mr. Kivell did not, but a broader definition would be a financial concern or benefit that can be derived by a relationship. He further stated the broader definition is more reasonable. He stated language and rulings by the Attorney General determined that by virtue of being employed by an entity that the City is contracting that there is a financial interest because there is a benefit for the company and the employee. Mr. Muskovitz stated when we concluded that it seems there are sections of the Code and Charter that are similar, such as section 4.6 which states it is a violation to vote on any question with a financial interest, similarly section 5.2 by voting to waive the bid process, Councilmember Kivell took official action on another matter and that is a violation, also by having a financial interest in the waiver motion. We concluded that because it was clear on the Agenda note and the comments made at the meeting that the waiver was being voted on because the City Manager was hoping to piggy back on the bid for the Police Department contract with a contract for the South Lyon Area Recreation Authority building. It was clear the process of soliciting bids was waived, there would be a vote on the windows for the Police Department, that there would also be a vote on the SLARA therefore we felt he had a legal violation of 3 sections of the code. He further stated the state statute is not a picture of clarity but we believe after analyzing it we determined that at a minimum required disclosure and not voting on the contract. He further stated it is known to Council that all 3 motions were voice vote and it was unanimous, it is not determinative of the outcome of the vote, but it was still a violation. He stated there are criminal sanctions involved that the City would have to file a criminal complaint. He stated section 2.78 of the code provide for sanctions for violation of the city code of suspension, removal from office or other disciplinary actions.

Councilmember Kramer asked what the ramifications are for the contract and if we need to revote on the contract. Mr. Muskovitz stated the contract is voidable, but it isn't void, but Council could void the contract. He further stated there have been no complaints by Pro Brothers who was the other bidder, therefore nothing needs to be done.

Councilmember Kurtzweil commended Dykema and Mr. Muskovitz for the stellar piece of legal work. This is what she thought we would originally get during the prior look at this. Dykema is in high regard because of the quality of the work. She stated she is more interested in the gymnastics and academics more than the end result. She further stated she is pleased he looked at all the material, and she also reviewed all of the material. She also thanked Mike Kramer for recommending Dykema. She further stated this is a model for all attorneys doing investigative work. Councilmember Kurtzweil stated Dykema has brought in the state statute 750.478 that wasn't reflected in the previous report. One of the statutes that didn't show up in the first investigative report. This statute is regarding willful neglect of duty, and all City employees should be aware of this statute and understand it. Dykema made a point of saying there are State Statutes that override some of our code and ordinances. You can't just look at our

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codes and ordinances, you have to look to the State Statutes. She further stated this is willful neglect of duty, and she agrees this is a jury issue. The jury will decide if the actions were intentional. This statute need to be analyzed and an employee may violate this, and we may have heard this tonight. Councilmember Kramer stated in order to prosecute ordinance violations the City would have to hire special counsel, but his concern is the State Statute if there was willful neglect of duty, who would decide that, the prosecutor's office, or the City having to hire special counsel? Mr. Muskovitz stated he doesn't have that answer, it is possible it could go to the County prosecutor's office. Councilmember Kurtzweil stated to follow up on Mike's question, she asked Chief Collins when he writes a ticket and send things to be prosecuted, is it sometimes state law or ordinances. Chief Collins stated it can go either way, when we can we seek a complaint under city ordinance, if it is more serious or some reason to do so, we can go to the County prosecutor and ask them to write a warrant over state law. Mr. Muskovitz stated normally when it is state law, it is the prosecutor's office.

Councilmember Kivell stated he wants to applaud the report, it is very thorough, and well organized, he questions the findings, but he appreciates the work that was put into this. He further stated this validates everything that he had said in the meeting, and his only concern is how much more money this will cost for an extension of changing the language in Ordinances. Mr. Muskovitz stated he was asked for recommendations in improvements of policies and procedures. He further stated we would recommend something that is done in private sector by having people fill out statements annually in respect to their employment and knowing what the City contracts are at that time, and that would put everyone on notice those contracts were coming up and that would give that person a chance to allow someone to recuse themselves from voting. He would add some definitions to terms and a procedure for identifying conflicts.

Councilmember Rzyzi thanked Mr. Muskovitz for this report, there was a lot of time and due diligence done. He further stated he doesn't know all the facts, but originally, we received a recommendation from our City Attorney, then within a week or so there was a reversal of opinion, which is when we brought this before Council, and we voted to hire Dykema. He further stated there were 7 violations, and he is not a lawyer, and he doesn't think this is up to anyone to decide for anyone except law enforcement. Mr. Muskovitz stated there are 7 violations are all based on the same thing whether it is the State Statute or the City Code or Charter, there should have been disclosure. He further stated nothing mandates Council to pursue this under State Statue, you may decide to pursue this under City Code and take your own actions, that can include reprimand or removal. Councilmember Rzyzi stated he is not in the position to make a judgement call, if there are not wrong doings, councilmember Kivell should be given the opportunity to validate himself. He stated he thinks everyone deserves their day in court and he hopes that doesn't happen here, but everyone deserves justice and the opportunity to be validated.

CM 2-10-17 MOTION TO FORWARD FINDINGS OF INVESTIGATIVE REPORT TO LAW ENFORCEMENT

Motion by Rzyzi, supported by Kurtzweil

Motion to forward the findings of the investigative report regarding the conflict of interest of Councilmember Glenn Kivell for law enforcement review as to the alleged violations of City Charter and City Code March 17, 1968 specifically 750-478

ROLL CALL VOTE: Parisien- No
Rzyzi- Yes
Galeas- No
Wedell- No

Kramer- Yes
Kurtzweil- Yes

MOTION FAILED

Councilmember Kramer asked what department would handle the law enforcement review. Mr. Muskovitz stated it is Council's decision to keep it in house and deal with the city code violations, or you could proceed with the County prosecutor under the state statute and anything that is done rests with Council. Councilmember Kramer stated before he goes this route, he would like to know how this will be handled, such as the special counsel and how we decide on that and the cost. Councilmember Kurtzweil asked if Dykema does have the someone that could be special counsel, because Johnson Rosati has a conflict. Mr. Muskovitz stated anyone could handle this but he hasn't discussed this with them. Councilmember Kurtzweil asked if all of the violations are misdemeanors. Mr. Muskovitz stated they are. Councilmember Kurtzweil stated she isn't worried about the cost because there is such a thing as restitution. Mayor Galeas stated he would like more information before deciding on where to go with this. Mr. Muskovitz stated there are two sides to every story and different legal arguments can be made. Councilmember Kivell stated you just listened to the exact information he laid out at the beginning of this, the crux is he didn't disclose what took place and that was a huge oversight. He further stated he has enjoyed no benefit other than he has a job that he was paid for, and he was not enriched with anything beyond what he would have been with or without this work going into this building. The idea of spending more money on prosecuting something on the fact he simply didn't say he worked at Pullum when it was a unanimous decision for both of the contracts seems so inappropriate compared to what the lack of disclosure was. He further stated he is trying to get his arms around the idea that this would be dragged out, there is a political favor to be had, but as a practical matter he doesn't see how the City is benefited one iota by this measure.

Councilmember Wedell stated if the motion gains a second, he will vote against it. He has listened to the report and everything that was said, and he finds the non-disclosure and voting was inappropriate, but the contracts were passed unanimously and he doesn't see any intent in Kivell's actions to gain anything for himself or the City. He further stated if the time comes, he will make the motion to censure him. Councilmember Parisien stated the non-disclosure was inappropriate, and there was no financial gain and it appears it was an oversight, and she would agree with a reprimand or suspension, but she doesn't feel a criminal complaint will benefit the City.

CM 2-11-17 MOTION TO DIRECT CITY MANAGER AND CITY ATTORNEY TO DRAFT LETTER OF CENSURE

Motion by Wedell, supported by Kramer
Motion to direct City Manager and City Attorney to draft letter of censure against
Councilmember Kivell at the next meeting

ROLL CALL VOTE:

Parisien- No
Rzyzi- No
Galeas- Yes
Wedell- Yes
Kramer- Yes
Kurtzweil- No

MOTION FAILED

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Councilmember Rzyzi stated the issue with a censure is most people see it as a joke. Mayor Galeas stated it is not a joke unless you make it a joke, it should be treated seriously. He further stated he doesn't believe the intent was there, and it isn't correct to say someone doesn't see it as a serious issue.

Councilmember Kurtzweil stated she will not vote for a censure, she was censured and it was politically motivated, there is no legal basis for it. It is more politically jived and the comments she got from residents is it is politically motivated to shut people up. She further stated censure could affect someone looking for a job, it could be something an employer doesn't want and it could prevent him from working. You either deal with the nature of the criminal violation, and I will leave it at that.

Councilmember Parisien stated she thinks we should set a precedent that this won't be tolerated. She further stated it is inappropriate for a reprimand and we should invoke the suspension, not criminal, but middle ground. Councilmember Rzyzi stated he is not the judge and jury, and let law enforcement deal with it, and he will not support suspension. Councilmember Kurtzweil stated she would like Dykema to draft the censure because she doesn't have confidence in the City Attorney and they have done a great job with the report and she wants to see them finish it.

DOWNTOWN

Bob Donohue the Economic Development and DDA Director stated he gave Council a report of the information given by all the representatives in Michigan of programs he thinks we can use to move forward with the Master Plan. He further stated this was the 9th year he has gone to D.C to fight for these policies and the trip was paid for by the Michigan Downtown Association. He further stated public officials cannot lobby, but they can educate and advocate. He further stated there was a bi partisan bill to extend tax credits to smaller scale projects and they looked at Mr. Bonner's building and they said that is the type of project they would like to see.

Councilmember Rzyzi stated he is excited about the Salvation Army opening, he has gotten good feedback on that. Mr. Donohue stated they will be opening in April. Councilmember Rzyzi stated some people weren't for it originally, but they will be hiring 50 people, and they have cleaned up the building and added a nice new entrance, and any foot traffic on that end of town is good. Mr. Donohue stated he would be remiss if he didn't point out there may be a potential casualty because we already have a resale shop in town. Councilmember Rzyzi stated it is competition. Councilmember Kurtzweil stated she has heard a lot of good things about the salvation army, people are looking forward to it. She further stated this is competition and not all businesses will survive the changes that are coming. She stated if you bring a business into town you will have to have a good product because hopefully the rent prices will go up because the values will go up. Mr. Donohue stated their plans changed, but they didn't change the plans with the building department. They did come in and are in good standing, and it is exciting and they are hoping to open by the end of the summer.

Mr. Donohue stated the City Manager mentioned we should have a study session regarding the building façade grants and tax abatements. Councilmember Kurtzweil suggested Monday of next week, she has been asking for this since September. It was the consensus of Council to meet Monday March 6, at 6:30p.m.

MANAGERS REPORT

City Manager Ladner thanked everyone for their condolences for her grandmother passing. City Manager Ladner reminded Council she will be in Lansing at the MMRMA conference Thursday and Friday this week. She stated the Parks and Recreation Commission has completed their draft naming policy and that will be on the next agenda. She further stated she will be speaking with an organization that works with

municipalities to review their unfunded liability and to develop a strategy for reaching their full funding level. She further stated the Safe Routes to School program is moving forward but we are running into issues with MDOT and we are now hoping for a May bid letting. She stated she met with the school administration and the Cable Commission to discuss the media room recording equipment, and they will be meeting with the company that replaced the media equipment in some of the schools. Councilmember Wedell stated he had read something about the residents on Marjorie Ann not wanting sidewalks installed. City Manager Ladner stated the City, Lyon Township and South Lyon Schools have received a letter along with a petition because the age of the homeowners they feel if we put in sidewalks it will be burden on them. She stated the sidewalk is being done in the right of way, and although we don't want to push this on them, it is a safety issue for the students. She stated they are working on a joint letter regarding this issue.

COUNCIL COMMENTS

Councilmember Kivell stated when we were discussing the Knolls project and the retention walls by the water retention area, and they have now have the fences up so it is no longer a safety issue. He further stated it looks nice and he emailed the contractor to let them know. He asked Department Head Martin to explain the copper and lead report. Department Head Martin stated the report will be included with the consumers' confidence report that will be going out soon. He further stated we are on a 3-year rotation for when we check for copper and lead. Our results were issued this week from the DEQ and the scale goes from 0-15 for lead. Our reading was less than 1. He further stated for copper the limit is 1300 and we were under 2. He is very happy with those numbers.

Councilmember Parisien stated at the last two meetings it was brought up by a resident asking if we could stop the leaf pick up and move that money to funding roads and she would like to discuss that at a future meeting. Roads are a hot topic and they need to be addressed in our community. City Manager Ladner stated we could deal with that during the budget workshop.

Councilmember Parisien stated she wanted to thank the City of Wixom for hosting us and it was nice to meet with other councilmembers and mayors to see what they are dealing with as well. She further stated tomorrow is paczki day and everyone should go to the South Lyon Bakery and get their paczkis.

Councilmember Rzyzi stated he knows these meetings seem difficult and painful and that is a negative, but a lot of good has happened in the last year and a half. We updated our fee schedule, Board of Review has been revived and reformed, the dangerous building codes have been updated, the new website, electronic funds, as well as hiring Bob Donohue. He stated this has all happened since the November 2015 Election, and he stated with all the good happening we can keep getting better. One of the things is to continue to set those standards high. People are pushing and we will keep pushing. He stated the City has a corrective action letter from the state because our fund balance is dwindling, we have the water bill scandal, open meeting act violations, and that is finally being addressed. He further stated change is happening and as long we continue down that path things will continue to get better.

Councilmember Kramer stated he would like to have the investigation report attached to the minutes for this meeting. He further stated he is disappointed that we spent money to hire an attorney for the investigation to be done, and he is a firm believer of following the rules. The report is clear, and we did nothing about it. He further stated he is disappointed in Council that not even a slap of the wrist was done.

Councilmember Kurtzweil stated this has been another interesting meeting and she likes to think of herself as a champion for reform in the City and she will continue to do that, she doesn't care if she upsets anyone on Council, she cares about the voters. She stated tonight the voters and taxpayers of the City of South Lyon just got screwed by some of their Councilmembers. She further stated this Council just taught the students that rules don't matter. That is the lesson we have taught tonight. She further stated at the last meeting Marilyn from the Resale Shop made a complimentary comment about Bob Martin being the most loved employee in the City. She stated she wouldn't have made that comment because all our City employees are worth value and do a great job. She further stated she wants to recognize Chief Collins and Chief Kennedy who are also loved and respected. They have given outstanding service to the City of South Lyon.

ADJOURNMENT

CM 2-11-17 MOTION TO ADJOURN

Motion by Kramer, supported by Wedell

Motion to adjourn the meeting at 10:57 p.m.

VOTE:

MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Mayor Galeas

Lisa Deaton Clerk/Treasurer