

Regular City Council Meeting

February 25, 2013

Agenda

7:30 p.m. Call to Order
Pledge of Allegiance
Roll Call
Approval of Agenda
Minutes – February 11, 2013
Public Comment:

I. Old Business

1. None

II. New Business

1. Acceptance of Donation
2. Traffic Control Order 13-01
3. Closed session to discuss written legal opinion regarding utilities pursuant to Section 8(h) of the Open Meetings Act.

III. Manager's Report

IV. Council Comments

V. Adjournment

CITY OF SOUTH LYON
REGULAR CITY COUNCIL MEETING
FEBRUARY 11, 2013

Mayor Pro Tem Wedell called the meeting to order at 7:30 p.m.

Mayor Pro Tem Wedell led those present in the Pledge of Allegiance to the Flag

PRESENT: Mayor Pro Tem Wedell
Council Members: Kivell, Kopkowski, Kramer, Rzyzi, Wedell and Dixson
Also present: City Manager Murphy, City Attorney Wilhelm, Chief Kennedy,
Chief Collins, Department Head Martin, and Deputy Clerk/Treasurer
Lisa Deaton
Absent: Mayor Wallace

APPROVAL OF MINUTES JANUARY 28, 2013

Councilman Kramer stated on Page 4 it reads Councilman Kramer asked if there was a reason we did not attempt an ice rink this year, and it should state Councilman Kivell asked if there was a reason we did not attempt an ice rink this year.

CM 2-1-13 MOTION TO APPROVE MINUTES AS AMENDED

Motion by Kivell, supported by Kramer

To approve the minutes of the January 28, 2013 meeting as amended

VOTE: MOTION CARRIED UNANIMOUSLY

APPROVAL OF MONTHLY BILLS

Some discussion was held on the monthly bills

CM 2-2-13 MOTION TO APPROVE MONTHLY BILLS

Motion by Kramer, supported by Kivell

To approve the payment of the monthly bills as presented

VOTE: MOTION CARRIED UNANIMOUSLY

APPROVAL OF AGENDA

Mayor Pro Tem Wedell stated he would like to handle the Manager's Report and Council Comments before the Closed Session meeting.

CM 2-3-13 MOTION TO APPROVE AGENDA

Motion by Kopkowski, supported by Dixson
Motion to approve the agenda as presented

VOTE: MOTION CARRIED UNANIMOUSLY

PUBLIC COMMENT:

Doreen Hannon of the Salem South Lyon District Library stated she is here to invite council to the District Library's 20 year anniversary. There were a lot of meetings and research done 20 years ago, and she is very happy there were people in place to do what needed to be done to make it happen. The Library will be celebrating their 4.5 millionth check out. There will be many activities happening all this week, including a reward for the top 25 users of the library. She further stated she is here to give the Council Members a copy of the annual report.

Fire Chief Kennedy stated there was a garage fire February 5th at a residence on Harvard and the fire fighters did a great job knocking it down very quickly. Everyone worked together and he is certain that within another 1 to 2 minutes, it would have spread to the house. Instead of a family being put out of their house in the middle of winter, the family is still able to sleep in their home. They did lose the garage, but the house is safe. He further stated they did an outstanding job and everyone worked together. He wanted to personally thank and recognize Mike Weir, Todd Gerhardt, Corey Armstrong, and Chad Aldrich for working together and doing such a great job.

Carl Richards stated he has a list of items he would like to bring to the Council's attention. He stated the drains and the under bedding at the E Lake Street rail road crossing, which is where the drilling and water main work is going to happen is a problem. The drains were cleaned this summer, but prior to that the drains had been overflowing and plugged. They have undermined the track bedding, and it needs to be addressed. He has been able to get permission for the boy scouts to clean it out. Mr. Richards stated he believes we need more safety signage at the rail road crossing as well. Mr. Richards stated he wanted to alert Council to the fact that over the summer, there were survey stakes around the railroad property, and he thinks Council should be aware if CXS are planning on building something. Mr. Richards pointed out that there are two drains on Reese in the Railroad's area, he stated they were constructed in the 1860's. He discussed this issue with the drain commission members two years ago, and one of them is their responsibility, but the other they were unsure of. Mr. Richards further stated he would like the Council to look into the feasibility of re opening the crossing at Pettibone that has been closed for 60 years. He stated it could be used for emergency vehicles.

Mr. Richards stated the last thing he wanted to mention was he believes Council should look into erecting a historical marker of some kind on the property near Reese Street prior to the 150 year anniversary, which is approximately 10 years from now. He further stated it would benefit the town.

OLD BUSINESS:

1. Second Reading of Ordinance Amendment Section 58-243 regarding the use of breathalyzers on minors.

Chief Collins stated this is a technical clean up of the City ordinance that stated we could require a minor suspected of consuming alcohol to take a breathalyzer. The State and Federal courts have ruled that it is unconstitutional to require a minor suspected of alcohol consumption to submit to a breath test without a warrant. He further stated the amendment would remove the language that renders the ordinance unconstitutional.

CM 2-4-13 MOTION TO APPROVE THE SECOND READING OF THE AMENDEMENT TO CHAPTER 58, 243 (5) OF THE CITY CODE

Motion by Kramer, supported by Kopkowski

Motion to approve the second reading of the amendment to Chapter 58, 243 (5) regarding the issue of requiring a minor to take a breath test without a warrant. (See attached amendment as part of these minutes)

VOTE:

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS

1. Contract for Solid Waste Removal

City Manager Murphy stated our solid waste contract is up on June 30th. It has been 5 years since we began using Duncan Disposal, and we have an option for a 3 or 5 year renewal. If we sign the 5 year renewal option, Duncan will hold price for the first year at the cost we are currently paying which will be a savings of \$14,000.00 in the first year. Councilman Kivell stated Duncan is a local company, and they are very responsive and a high end service. Councilman Rzyzi stated he has a concern regarding what the cost will be after the first year. City Manager Murphy stated it will increase with the C.P.I which is the customer price index, but will have a 3% cap. Councilman Rzyzi asked if it would be costly for the City to do an RFP, and if it wouldn't cost much, why wouldn't we want to see how much the market has fluctuated. He further stated he would like to see what other companies are charging. Councilman Rzyzi stated he is very happy with their service, but he would have liked to have seen other prices from other companies. More discussion was held regarding Duncan Disposal and the quality of their service.

CM 2-5-13 MOTION TO APPROVE 5 YEAR REWAL CONTRACT WITH DUNCAN DISPOSAL

Motion by Kivell, supported by Kopkowski

Motion to approve 5 year contract with Duncan Disposal Inc. as proposed

VOTE:

MOTION CARRIED 1 OPPOSED

5- Yes

1- No

2. Farmers' Market- Use of Veterans Memorial Parking Lot

Debbie Nogle stated there has been an overwhelming response in favor of moving the Farmers Market to Saturdays. She further stated they are asking Council for the use both of parking lots because we will have more vendors, therefore we will need more space.

Council Member Kopkowski stated last year someone had stated how horrible that parking lot was and it was too dangerous to use for the market. Some discussion was held regarding the condition of the parking lot. City Manager Murphy stated it is not in the best condition. Some discussion was held regarding different lots to use for the Farmers Market. Ms. Nogle stated it is has to stay in the DDA district. Councilman Kivell stated moving the market to Saturday has been brought up in the past, but it was thought we would not be able to get enough vendors because the surrounding areas have their markets on Saturdays as well. Ms. Nogle stated that will not be an issue.

CM 2-6-13 MOTION TO APPROVE THE USE OF THE VETERANS PARKING LOT AND THE PARKING LOT OFF PONTIAC TRAIL FOR THE FARMERS MARKET

Motion by Kopkowski, supported by Kramer

Motion to approve the use of the Veterans parking lot and the parking lot off Pontiac Trail and North of W. Liberty Street on Saturday's from May 4, 2013 through October 26, 2013.

VOTE:

MOTION CARRIED UNANIMOUSLY

3. Contract with CSX Railroad

City Manger Murphy stated we need to replace some water mains that go underneath the crossings at 10 Mile and Pontiac Trail, therefore we need to have a new contract with CSX. Councilman Kramer stated he is concerned regarding the liability, because if we screw this up in anyway, we have to fix it to the current state. Do we have any safeguards that if they aren't happy, we can go after our contractors or sub contractors. Attorney Wilhelm stated if something goes wrong, there will be a big fight with spreading the liability. This is a license agreement where the City is asking the railroad to go onto the railroad's property to deal with the DWRP project. This is a one sided contract, but given the nature of the project, he doesn't feel it will be necessary to change the contract because basically the railroad has you where they want you. He further stated sections 9 and 10 are the sections we need to be concerned with. He understands HRC is working with the general contractor and they have worked with CSX in the past, and we need Council to approve this to move forward. Attorney Wilhelm stated

the City is insured, and the contractors involved are all insured. Discussion was held regarding the amount of work that will be done in that area.

CM 2-7-13 MOTION TO APPROVE THE PROPOSED FACILITY ENCROACHMENT AGREEMENT BETWEEN CSX RAILROAD AND THE CITY OF SOUTH LYON

Motion by Kivell, supported by Dixon

To approve the proposed Facility Encroachment Agreement between CSX Railroad and the City of South Lyon as presented.

VOTE: MOTION CARRIED UNANIMOUSLY

MANAGERS REPORT: None

COUNCIL COMMENTS:

Councilman Kramer asked a question regarding the Friday's Management report regarding the MERS and new employees. Attorney Wilhelm stated he has checked with MERS on how the process works to make the changes. He further stated they will walk us through the process and he will then bring it to Council.

Councilman Rzyzi stated a young man during public comment at a previous meeting discussed the north and south traffic on Pontiac Trail. He asked if Griswold would be paved in the future. He feels this is something we should pursue. City Manager Murphy stated that Lyon Township wants to pave the road, but as of right now RCOC knows nothing about it, so it may not be started anytime soon, unless the Township will be using different engineering firm. City Manager Murphy stated the funding is there for 2014, but if they want to bump it up to 2013 the Township will have to spend the money up front.

Councilman Kivell stated the Department of Public Works did a great job during the last snow storm. Department Head Martin stated the guys have been very active with the brine, and it is a fraction of the cost of salt. Councilman Kivell asked if we have enough salt for the rest of the year, and Councilman Martin stated we have plenty left.

Mayor Pro Tem Wedell stated he would like to follow up on the comments regarding the retirement plan, and getting us into a defined benefit plan from the defined contribution plan, we won't see any benefit from it for the next 30 years, but we have to make that move soon, and now is the time because we can afford it. He further stated he was on Harvard when the fire occurred, on Harvard, and it was a very impressive effort on everyone's part.

CM 2-8-13 MOTION TO ENTER INTO CLOSED SESSION TO DISCUSS LEGAL OPINION REGARDING UTILITIES PURSUANT TO SECTION 8 (H) OF THE OPEN MEETINGS ACT

Motion by Kramer, supported by Rzyzi

Motion to enter into closed session to discuss legal opinion regarding utilities pursuant to Section 8 (h) of the open meetings act at 8:20 p.m.

ROLL CALL VOTE: MOTION CARRIED UNANIMOUSLY

Council entered into Executive Session at 8:25 p.m. and reconvened the regular session at 9:10 p.m.

ADJOURNMENT

CM 2-9-13 MOTION TO ADJOURN COUNCIL MEETING

Motion by Kivell, supported by Kopkowski

Motion to adjourn the City Council meeting at 9:10 p.m.

VOTE: MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Harvey Wedell
Mayor Pro Tem

Lisa Deaton
Deputy Clerk/Treasurer

AGENDA NOTE

New Business: Item #1

MEETING DATE: February 25, 2013

PERSON PLACING ITEM ON AGENDA: City Attorney

AGENDA TOPIC: Acceptance of donation of two grave sites

EXPLANATION OF TOPIC: Margaret Vibbert (formerly Margaret R. Emery) wants to donate graves 4 and 5, Lot 33A Block 3, in the South Lyon Cemetery back to the City. Mrs. Vibbert and her family will retain and use graves 1, 2, and 3. The City Attorney has reviewed the ownership issues and prepared a transfer form. We are waiting to hear whether any grave markers need to be relocated. If so, any acceptance should be conditioned on Mrs. Vibbert relocating markers at her expense. She and her son have been advised of this requirement.

MATERIALS ATTACHED AS SUPPORTING DOCUMENTS: Map of the cemetery, transfer, quit claim and release of cemetery graves and email to City Attorney Wilhelm.

POSSIBLE COURSES OF ACTION: Accept/do not accept the donation as presented.

RECOMMENDATION: Accept the donation.

SUGGESTED MOTION: Motion by _____, supported by _____ to accept the donation of graves 4 and 5, Lot 33A Block 3, in the South Lyon Cemetery to the City from Margaret R. Vibbert (formerly Margaret R. Emery) with thanks.

Robert Vibbert

From: Robert Vibbert [rvibbert01@comcast.net]
Sent: Tuesday, February 05, 2013 5:29 PM
To: 'twilhelm@jrsjlaw.com'
Subject: South Lyon Cemetery, Block 3, Lot33A, Graves 4 and 5

Mr. Timothy S. Wilhelm, Esq.
Attorney for the City of South Lyon, Michigan
c/o Johnson, Rosati, Schultz & Joppich, P.C.
34405 W. Twelve Mile Rd., Suite 200
Farmington Hills, MI 48331-5627

Via email

By mail

Robert A. Vibbert

Dear Tim,

Thank you for your letter Feb. 1, 2013 regarding the Subject. Your legal and common sense approach is most appreciated.

As we discussed on the phone today:

- You do have the documents relating to the Deed of the cemetery plots and a letter dated August 9, 1985 from the then City Clerk, Norma Wallace acknowledging the burial records and relationships.
- It is clear there is a direct relationship between my mother, Margaret R. Vibbert (formerly Margaret R. Emery) and William J. Emery and Florence M. Emery, her parents.
- I do have the Durable Power of Attorney
- Since William and Florence Emery are both deceased, buried in this Block and my mother Margaret is 90 years old, any other formal records relating to the subject beyond those provided cannot be readily located. I will be going through the stacks of documents, mostly family history, to see if I can come up with anything else for you.
- Phillips Funeral Home in South Lyon handled the arrangements for both William and Florence. I am not certain if Richard ("Dick") Phillips is still available for any inquiries.
- I have discussed this matter with my mother, Margaret Vibbert and she has assured me that there have not been any transactions transferring the subject graves to anyone. I am also certain, as Trustee of her Trust, there have been no transfers through the Trust.
- My father's cremated remains (Robert A. Vibbert) have not been interred in grave 1 yet. When Mom passes away, her cremated remains and my father's will be interred together in grave 1.
- I also have a copy of the contract for the Emery monument from Allen Monument Works, 580 South Main, Northville, MI 48617 dated Sept. 26, 1967, in case you want it. We understand the costs of moving the monument are for Margaret R. Vibbert. We await information as to who we will be working with to accomplish the move.

FYI - My grandparents (William & Florence Emery) and my mother (Margaret) were long time residents of South Lyon at 203 W. Lake St.

Your help in accomplishing this donation is most appreciated. Once completed, the City of South Lyon will be able to sell the plots with all proceeds accruing to the City of South Lyon.

I will mail a copy of the Cemetery Map along with the executed Transfer, Quit Claim and Release of Cemetery Grave(s) to you tomorrow.

I also have a copy of the contract for the Emery monument from Allen Monument Works, 580 South Main, Northville, MI 48617 dated Sept. 26, 1967, in case you want it.

Please let me know if you need anything else.

Very truly yours,

Robert A. Vibbert, II
(POA for Margaret R. Vibbert)
Home ph: 248-335-3836
Cell ph: 248-505-3332

cc: photocopy to Margaret R. Vibbert

TRANSFER, QUIT CLAIM AND RELEASE
OF
CEMETERY GRAVE(S)

I/We,

Name(s) MARGARET R. VIBBERT, Telephone 248-375-7729
FORMERLY MARGARET R. EMERY Telephone 248-335-3836 (200-POA)
BY ROBERT A. VIBBERT, II POA
Address 3250 WALTON BLVD. APT. 279
City ROCHESTER HILLS State MI Zip Code 48309

I/We do hereby transfer, quit claim, assign, and release all interest, burial and internment rights, other rights, title, use, claim and demand and equity in:

Graves 4 and 5, Lot 33A, Block 3, South Lyon Cemetery located in the City of South Lyon, County of Oakland, State of Michigan

to

Name(s) CITY OF SOUTH LYON, MICHIGAN Telephone 248-437-1735
Address 331 S. WARREN ST.
City SOUTH LYON State MICHIGAN Zip Code 48178

This Transfer, Quit Claim and Release is made subject to the laws, City Ordinances, and Rules and Regulations applicable to the South Lyon Cemetery, and the Transferee agrees to be bound by same. The parties signing below do hereby release the South Lyon Cemetery and the City of South Lyon from any and all liability of any nature whatsoever in connection with this Transfer, Quit Claim and Release.

Prior Owner(s) BY Robert A. Vibbert, II (POA) Date 2/6/13
ROBERT A. VIBBERT, II Date _____
FOR MARGARET R. VIBBERT

Recipient(s) _____ Date _____

_____ Date _____

Cemetery Representative _____ Date _____

Name:

Title:

AGENDA NOTE

New Business: Item #2

MEETING DATE: February 25, 2013

PERSON PLACING ITEM ON AGENDA: Police Chief

AGENDA TOPIC: Traffic Control Order 13-01

EXPLANATION OF TOPIC: On 02/11/13 Council approved changing the day for the Farmers Market from Wednesday to Saturday with hours of 9 a.m. to 2 p.m., from May through October. Council also authorized the use of the municipal parking lots on the northwest and southwest corners of Lafayette Street and West Liberty Street. This change necessitates issuance of a new Traffic Control Order to authorize signage reserving both lots for Farmers Market usage.

MATERIALS ATTACHED AS SUPPORTING DOCUMENTS: Traffic Control Order 13-01; Traffic Control Order 13-01 Approval Form

POSSIBLE COURSES OF ACTION: Approve/do not approve Traffic Control Order 13-01.

RECOMMENDATION: Approve Traffic Control Order 13-01.

SUGGESTED MOTION: Motion by _____, supported by _____ to approve Traffic Control Order 13-01.

02/25/13

CITY OF SOUTH LYON
TRAFFIC CONTROL ORDER

DATE OF ORDER: February 12, 2013

CONTROL NO. 13-01 (Rescinds Traffic Control Order 12-01)

Pursuant to Chapter 90, (Article II), of the South Lyon City Code, same being the Uniform Traffic Code for Cities, Villages, and Townships as promulgated by the Commissioner of the State Police, and in the interest of public safety and convenience, the following Traffic Control Order is hereby issued by Lloyd T. Collins, Chief of Police and duly authorized as Traffic Engineer, under Sec. 2.25 of said code.

The issuance of the Traffic Control Order has been preceded by study and investigation of the existing roads and traffic conditions upon the roadways within the City of South Lyon, County of Oakland, State of Michigan specifically including the type, manner, location and area controlled by traffic control devices, signs, or signals on the following road(s):

City of South Lyon Municipal Parking Lot on the southwest corner of Lafayette Street and West Liberty Street, (1); City of South Lyon Municipal Parking Lot on the northwest corner of Lafayette Street and West Liberty Street, (2).

And after said investigation, it is hereby ordered and directed that the Department of Public Works erect and maintain the below mentioned signs or traffic control devices, in accordance with the Michigan Manual of Uniform Traffic Control Devices as required by Sec. 4.2 of the aforementioned code.

1. "No Parking Saturday 6 a.m. to 3 p.m. May – Oct., Reserved for Farmers Market" (18"x 24" sign: 3' west of entrance drive – 26' south of existing sidewalk).
2. "No Parking Saturday 6 a.m. to 3 p.m. May – Oct., Reserved for Farmers Market" (18"x 24" sign: 3' west of water service valve near entrance drive; 1' north of existing sidewalk).

Dated: February 12, 2013

Lloyd T. Collins
Chief of Police
Traffic Engineer

TRAFFIC CONTROL ORDER NUMBER 13-01

Approved by City Council:

Traffic Control order number 13-01, having been presented to the Council of the City of South Lyon, Michigan for study and approval, is hereby approved, and it is hereby ordered and directed that this order be filed in the office of the City Clerk and a copy thereof in the office of the Chief of Police of said city.

It is further ordered and directed that this order shall become effective upon being filed with the City Clerk and upon erection of adequate sign(s) giving notice of the existence of aforesaid.

Adopted at a regular session of the City Council of the City of South Lyon, Michigan on February 25, 2013.

City of South Lyon Council

By: _____
Harvey Wedell, Mayor Pro Tem

Lisa Deaton, Deputy City Clerk