

CITY OF SOUTH LYON  
REGULAR CITY COUNCIL MEETING  
NOVEMBER 28, 2016

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, Council Members; Kivell, Kramer, Kurtzweil, Parisien, Rzyzi, and Wedell  
ALSO PRESENT: City Manager Ladner, Chief Collins, Department Head Martin, Clerk/Treasurer Deaton,  
Chief Kennedy and Attorney Wilhelm

MINUTES-

Councilmember Kurtzweil stated she has several comments. She stated she doesn't recall the statement made by Attorney Wilhelm was part of the minutes, it was just a side comment, it was not part of the October 24<sup>th</sup> minutes. She further stated on page 4, it says Councilmember Kurtzweil stated she is not comfortable with this, and with is in the sentence twice. She further stated on page 6 she would like two of her comments added. Councilmember Kurtzweil stated she would have to disqualify herself from voting on anything that involves Colonial Acres. Councilmember Kurtzweil stated again she cannot vote on anything involving Colonial Acres. She further stated on page 10, the name Dawn Belinger should be spelled Tawn Beliger.

BILLS- None

CM 11-1-16 MOTION TO APPROVE MINUTES AS AMENDED

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

VOTE: MOTION CARRIED UNANIMOUSLY

AGENDA

Councilmember Rzyzi stated he would like to add item #8 under New Business for a discussion involving a conflict of interest involving Councilmember Kivell and Pullum Windows

CM 11-2-16 MOTION TO APPROVE AGENDA AS AMENDED

Motion by Rzyzi, supported by Kurtzweil  
Motion to approve the agenda as amended

VOTE: MOTION CARRIED UNANIMOUSLY

PUBLIC COMMENT

Carl Richards of 390 Lenox stated the DPW is prepared for the ice, snow and cold weather. He stated he is delighted we have high school students here, and people ask him why he never says anything about our sports teams. He further stated our sports teams are all ambassadors for our community and they exhibit confidence and character and carry a sense of pride. Mr. Richards stated Cool Yule is this weekend and hopes the weather cooperates. He further stated the Christmas House is open which is also known as the Weather Head House. He stated South Lyon City Council was on the WHMI radio

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station which he has never heard of happening before. He further stated some Council comments were quoted as well. He doesn't know who reported this, but it wasn't him. Someone had to have called them and given them the minutes.

#### OLD BUSINESS

##### 1. Discussion with Executive leadership of GFL USA (formerly Rizzo Environmental)

Patrick Dovigi, CEO and founder of GFL stated he is here to answer any questions Council may have. He further stated he founded the company in 2007. He further stated they closed the acquisition of Rizzo Environmental on September 30<sup>th</sup>, and two weeks after they found out the troublesome news as everyone else did. They were not aware of any of the actions that may or may not have taken place. He further stated GFL is focusing on making business better. He further stated there were a few changes in management such as Chuck Rizzo resigning and they are moving forward with the existing plan which is to provide their customers with the best service at the best price. Councilmember Kurtzweil asked what he is doing as the CEO of a multimillion dollar international corporation to stem the tide of public corruption. Mr. Dovigi stated this wasn't identified before they purchased Rizzo. He further stated they have strict anti-bribery policies that all employees must sign. He further stated they have a zero-tolerance policy and it will not happen again. Mr. Dovigi stated they have hired forensic auditors and from what they have found, as of right now there were only one or two people involved from Rizzo. Councilmember Kurtzweil asked how their bid process works in Canada. Mr. Dovigi stated it is more refined in Canada. It is an RFP process and it is an open bid process. Councilmember Kurtzweil asked if the Attorney for GFL could explain the stock purchase versus an asset purchase. Attorney Richard Manczak at Varnum Law Firm stated it was structured as a stock purchase agreement by demand of the seller. Rizzo Environmental Services was owned by a holding company named Rizzo Holdings, which was owned by various investors. The stock in Rizzo Holdings was sold by the Rizzo Group to an indirect subsidiary of GFL in a stock purchase deal. Rizzo Environmental Services is still owned by Rizzo Holdings as it was before. The only difference is the ownership of Rizzo Holdings have new investors that own the company. As a result, since there was no change in the legal identity of the company, there was no assignment of the contract. The assignment clause which requires the approval of the City for any assignment of the contract was not triggered because there was no assignment. Councilmember Kurtzweil stated GFL is a wholly owned subsidiary of the Rizzo Holdings company. Mr. Manczak stated they are. Councilmember Kramer stated the assets purchased by Rizzo from Duncan is now the property of GFL. He further stated to get around the asset purchase which would have made it into an assignment, it was made into a stock purchase. Councilmember Kramer asked how long the negotiations were happening. Mr. Dovigi stated the negotiations were happening off and on for about a year. He stated the negotiations broke down in the spring. He further stated he didn't buy the stock to get around the contract assignment. He stated it made more sense. Councilmember Kurtzweil stated there are various reasons for doing a stock purchase as opposed to an asset purchase, most times it is for tax benefits. Councilmember Rzyzi stated it seems GFL was thrust into a bad situation, but from his point of view, we have had the same service for many years, including a locally owned business which participated in the community. Unfortunately, the Rizzo name is now somewhat tainted, and he wants a guarantee all of the corruption has been eliminated. Mr. Dovigi stated he doesn't know everything that happened before they owned the business, but he can say it was eliminated since they purchased the business. He further stated they have assumed the liabilities when they purchased the stock, and

they have extensive holdbacks that they can rely on, and they are going through all of the steps to ensure no corruption is occurring. Councilmember Rzyzi stated he also wants to ensure we continue to receive the type of service we have had in the past, and would like the cost to stay in line with what we have been paying. Mr. Dovigi stated they focus on the best service with the best price. They are committed to this market and will keep moving ahead, and they are highly focused. Councilmember Rzyzi stated Duncan always provided free dumpsters for our local events. Mr. Dovigi stated they would do that as well. Mayor Galeas stated Duncan did a tremendous job for the City. Councilmember Parisien stated her main concern was what further assurance they would provide, because this contract was entered into quickly, and it falls back on the Council because we entered into the contract and in light of the circumstances of what happened with the companies, it seems tainted. She further stated Mr. Dovigi already stated they will comply and the employees will have training, and as long as those compliances are in effect she is more comfortable with the contract. She thanked him for coming before Council and answering their questions and concerns.

Councilmember Kivell thanked him for coming before Council and he finds it is unrealistic GFL is being held responsible for another company's problems. He stated GFL seems to have bent over backwards to ensure no issue will occur. Councilmember Kivell stated Rizzo's management team has only been here a short time, but the most critical part of the contract is that GFL performs precisely to the contract we had with Duncan, because we have an enhanced version with appliance removal and those are important aspects of the contract. He stated he hope we can keep our existing contract as long as the level of service is there, and the cost doesn't grow too much. Mr. Dovigi stated it is his goal to maintain the price and give the best service.

## 2. Consider approval of final site plan for Thomasville Development

Councilmember Kurtzweil stated she has a conflict of interest. She further stated conflicts of interest are in the business environment as well as government. She stated if you're experienced with managing conflict of interest you can make a good business decision and solution on how it may or may not affect your decision moving forward. Councilmember Kurtzweil stated the general definition is if you have a personal or financial consideration that may compromise your business judgement. You need to make sure you are making a judgement for the best of the entity. She further discussed managing a conflict of interest. Councilmember Kurtzweil stated she represented Colonial Acres Phase 5 in 2014 for the utility dedication. She further stated in sometime land was sold to a developer, but she didn't represent them regarding the sale of the land. She stated she learned that when she was on the Planning Commission. She stated at the last Council meeting, she asserted she needed to disqualify herself with any votes regarding Colonial Acres. She stated no one from Colonial Acres contacted her about the easement. She stated she is experienced with managing conflict of interest and if one exists, you need to make it known right away, which is what she did. She said she could not have handled the situation any better. Councilmember Kurtzweil stated she has worked through how she is planning on managing this. She further stated she will not be paid for anything she reviews, and she will not be drafting anything regarding the easement. She stated she rejects any legal advice from the City Attorney, she doesn't trust his legal opinion and she has reasons why. Mayor Galeas stated there is no need for personal attacks on anyone. Councilmember Kurtzweil stated she will only converse with the client, she will not discuss the easement with anyone on Council. She has not made any phone calls to anyone on Council or any members of any commission. She further stated she has no contact with Council outside of

meetings. She stated she asks to be removed from any documents regarding the status of this development. She further stated there is no legal authority that she should have to leave the room during a discussion on this. She further stated she will not sit at the Council table, but she will not leave the room. She stated this is an open meeting and she has a statutory right to remain in any open meeting as long as she peacefully observes. Councilmember Kurtzweil stated she has a legal right to sue the City of South Lyon if she is asked to leave the room based on the open meetings act. She further stated the fact the City Attorney even suggests she leave the room suggests a misunderstanding of the Open Meetings Act. She further stated the OMA is about transparency of government and protects the people. There are criminal sanctions for violating the OMA.

Councilmember Kramer asked if Councilmember Kurtzweil is an attorney on record for her client. Councilmember Kurtzweil stated she is not. Councilmember Kurtzweil stated they will hear from her attorney.

Councilmember Kramer stated she is telling Council how she will deal with the conflict of interest but she doesn't want them to ask our City Attorney how to deal with this, yet she has already gotten an attorney.

Councilmember Parisien stated going back to the actual issue if there is a conflict of interest, she commends her for coming forward if there is a conflict of interest, but there is a level of being professional when you should disclose, yet you should still respect each other, whether you agree with each other or not. She further stated if as much effort was put into the City, that was put into that commentary, we would have wonders happening in the City.

Attorney Wilhelm stated there was no request made to Councilmember Kurtzweil to leave the room during this discussion. There was a discussion and the recognition of the conflict was made, and he commends her for that. He further stated it would be the best practice as a Councilmember with a conflict of interest to remove themselves from the discussion. He stated there has not been a demand to leave the room, it was a discussion and a recommendation.

Councilmember Kivell stated the developer has not provided the items necessary to move forward, he would like to table this until another day. City Manager Ladner stated she does not have a timeline of when they hope to have the proper paperwork.

#### CM 11-3-16 MOTION TO TABLE THE FINAL SITE PLAN AND PUD AGREEMENT FOR THOMASVILLE DEVELOPMENT

Motion by Kivell, supported by Wedell

Motion to table until all required paperwork is completed

VOTE: MOTION CARRIED UNANIMOUSLY

Councilmember Ryzyi stated this is a controversial issue. This development was supposed to be a transition with Colonial Acres without a lot of disruption. He further stated at the last meeting he asked for a listing of restrictions that were originally on the agreement as well as any restrictions that were removed. He further stated he will not vote yes on this until there is a signed agreement between all the phases of Colonial Acres.

Pamela Ortner of 61354 Heritage Blvd asked if there were two entrances and exits from that property. Councilmember Kivell stated that was Fire and Police Departments suggestion. City Manager Ladner stated there is not two entrances. Ms. Ortner stated this is a safety issue, and they have many other concerns. Councilmember Kivell asked if Ms. Ortner attended any of the planning commission meetings

when this was discussed. Ms. Ortnier stated she wasn't aware of this until the last Council meeting. City Manager Ladner stated nothing has been done within the last month and a half. She further stated everyone in Colonial Acres would have received notice regarding the public hearings. Ms. Ortnier stated there are no sidewalks in Colonial Acres and many people like to walk through the development and walk their dogs, and if the easement is approved, there will be an increase in traffic, which is a concern. She asked if there have been any traffic studies done.

Bruce Hueber of 25234 Franklin Terrace stated he is the President of Phase 3 and on the Board for Colonial Acres and is concerned and if the City needs the access from Pontiac Trail to Eleven Mile, why doesn't the City claim eminent domain and take over Heritage Blvd. It is private property and they pay for the upkeep of the road. This doesn't make any sense.

### 3. Consider approval of second reading of Housing Commission Ordinance Amendment

#### CM 11-4-16 MOTION TO APPROVE THE SECOND READING HOUSING COMMISSION ORDINANCE

##### AMENDMENT

Motion by Kivell, supported by Kramer

Motion to approve the second reading of the Ordinance to amend Chapter 34, Article IV of the City of South Lyon Code of Ordinances by repealing Sections 34-87 through 34-91 and amending Section 34-84

VOTE:

MOTION CARRIED UNANIMOUSLY

##### NEW BUSINESS

### 1. Consider approval of quit claim deed for South Lyon Housing Authority

Attorney Wilhelm stated there is a rental assistance demonstration conversion that allows the Housing Commission to utilize different financing. He stated he had a few meetings in 2012 with the executive director, and it is his understanding the Housing Commission believe this is a good thing. HUD has advised the City needs to quit claim the deed to the South Lyon Housing Commission. Councilmember Kramer asked if this property was on our tax roll. City Manager Ladner said it is not, but it is on our liability insurance. When we are off the deed they will have to acquire their own insurance.

Department Head Martin stated he has been on the Housing Commission for 14 years, and they have worked toward this for many years. This will help the Housing Commission as well as the City.

Councilmember Kurtzweil stated on the original warranty deed the grantee was the City of South Lyon acting by and through the South Lyon Housing Commission, and why is that grantee not the grantor. Attorney Wilhelm stated that was a judgement call. We want the City to quit claim the interest in the property to the Housing Commission. Councilmember Kurtzweil stated the City was acting as the Housing Commission, and are you just removing the City of South Lyon from the deed. She further stated if the trust is still intact, the City will still have interest in the property.

#### 11-5-16 MOTION TO APPROVE THE QUIT CLAIM DEED FROM THE CITY OF SOUTH LYON TO THE SOUTH LYON HOUSING COMMISSION

Motion by Kramer, supported by Parisien

Motion to approve the quit claim deed from the City of South Lyon to the South Lyon Housing Commission as to the property located at 432 Washington Avenue, South Lyon

Michigan, 48178, tax identification number 21-30-234-006 and authorize the Mayor and City Clerk to execute same

VOTE: MOTION CARRIED UNANIMOUSLY

Mayor Galeas called for a brief recess at 8:50 p.m.

Mayor Galeas called the meeting to order at 8:53 p.m.

## 2. Consider approval of Parks and Recreation Master Plan

City Manager Ladner stated Marc Russell as well as a member of the Parks and Recreation Commission, are present if anyone has any concerns or questions. Councilmember Kivell stated on page 27 under objective C at the end of the first line should say maintenance, not maintain. He further stated on page 24 there is a point about an online survey. He further stated there was 180 respondents, and for 2/3 of the people their first priority was for a splash park. Councilmember Kivell stated it was an unscientific survey and it seems incidental and he would have preferred to know what the people that actually attended the meetings want to see. Councilmember Kivell stated on page 28 there was a mention of a recreation center, and he was hoping to see something regarding what people are willing to pay for the things they are wanting. He further stated he is hoping there is money available in the future for the chronological plans the Parks and Recreation Commission has laid out. Marc Russell of Russell Design stated that is a bench mark, and we can peck away at it and carry it forward. He further stated the most popular discussion was about getting grants, but to get grants, we also have to have a match for the funds. He stated they will do their best with fundraising, private donations and sponsorships. Mr. Russell stated Carmine Avantini co-authored this document with him, and they did the surveys together as well. Councilmember Rzyzi stated this was very well done, and it is much needed. He further stated the two items that stood out to him. First was the paving of the roads at Volunteer Park. Department Head Martin stated Oakland County grades the roads four times a year, and it does get better as the summer goes along. Councilmember Rzyzi stated it would be nice if the DPW could work on it as well. Department Head Martin stated we don't have a road grader to do that. Councilmember Rzyzi stated the second thing that stood out was the recreation center information. He stated it makes him uneasy to consider having a recreation center inside the City limits. We don't have room for a huge building such as that. Councilmember Kramer stated he would like to see a recreation center, and he believes Lyon Township will have their own recreation center in the next ten years. Councilmember Kurtzweil stated on page 21 there is a listing of private parks, and Clarks Crossing has a very nice small park tucked away near the bike path, and she would like that park to have the recognition. Councilmember Kurtzweil stated she hopes we have the money to deal with this because competition comes in the downtown area and it is coming in the recreation area. She further stated Northfield Township just purchased acreage in Whitmore Lake which will be developed in the next five years. Councilmember Kurtzweil stated we are competing for funds, and they are far ahead of us. She stated some of the developers in Lyon Township have kicked in money to develop the park land on Milford Road. Councilmember Kurtzweil stated Parks and Recreation are a dedicated group of individuals, and she has a lot of confidence in that commission.

### CM 11-5-16 MOTION TO APPROVE RESOLUTION ADOPTING THE PARKS AND RECREATION MASTER PLAN

Motion by Kramer, supported by Rzyzi

Motion to approve the resolution adopting the Parks and Recreation Master Plan

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VOTE: MOTION CARRIED UNANIMOUSLY

3. Consider approval of City of South Lyon Master Plan

Carmine Avantini of CIB Planning stated there have been a couple of amendments that need to be made, as well as some dates to be filled in. He further stated there is a strong focus on downtown as well as McHattie Park, maintaining the traditional character of downtown as well as the residential areas. Mr. Avantini stated we had a lot of input from the Planning Commission. He further stated we are all happy with this and everyone is proud of this Master Plan. Councilmember Parisien stated she appreciates all the hard work everyone put into this. She further stated capturing the downtown feel of the charm of our City is great, and it is important to preserve that feeling. Councilmember Parisien asked what the natural surveillance pertains to in the Master Plan. Mr. Avantini stated the term natural surveillance refers to an active downtown which means having more people walking around which creates added safety because there are always eyes on what's happening. Mr. Avantini stated he would like to remind everyone that Councilmember Kurtzweil was on the Planning Commission much of the time we were working on the Master Plan. Councilmember Kivell stated he appreciates all the effort everyone has put into this Master Plan. He stated the Master Plan has a different vision for the west side of N Lafayette than he does, but he is comforted knowing that this won't preclude something different from what the drawing looks like because if we can get the downtown thriving, we can get the developers to understand we are a viable community. He further stated this was very well done, and he is happy we are finally approving this. Councilmember Rzyzi stated it is great to see all the small nuances such as the overhangs, the multi-level buildings. We need to keep our old charm, and we don't want to be Novi or Northville, but bring some of the nicer aspects to the City. He further stated rumors get started very easily and on page 56 there is a picture of a sign for Walmart, if we could remove that, it would be helpful so people don't get the wrong idea.

Mayor Galeas stated he has lived in the downtown a long time and it is important to keep our downtown historic and quaint. He further stated he wants to make sure this information gets out to everyone and we really need to promote this Master Plan. Councilmember Rzyzi stated now that the Master Plan is being adopted, we need to make sure we follow it, and we need to make sure all of our decisions are consistent. Councilmember Kurtzweil stated she remembers working on these years ago, and it was like working on a blank canvas and this is a brand new vision. This is a major step forward in the planning for the City. She further stated we have to follow through with the Master Plan, and if we don't follow it, we will end up where we have been for the last 30 years. She stated this is a very good plan. She stated this is an important document and we need to follow it, it cannot sit in a drawer anymore.

CM 11-6-16 MOTION TO APPROVE RESOLUTION TO ADOPT THE NEW SOUTH LYON MASTER PLAN

Motion by Rzyzi, supported Kramer

Motion to approve resolution to adopt the new South Lyon Master Plan

VOTE: MOTION CARRIED UNANIMOUSLY

#### 4. Consider approval of Phase 1 cost estimate for Volunteer Park improvements

Marc Russell of Russell Engineering stated to recap, Phase 1 is the east side of the park and it includes two ball fields, two comfort stations and a bridge over the drain. He further stated he worked with HRC and Department Head Martin for the cost estimate for the water and storm sewer estimate. He further stated none of the fields are currently lighted, there was some discussion about that, but nothing is confirmed yet. He stated he worked with Laura Martin from the Metro Parks regarding composting toilets in the first two comfort stations. He further stated the cut and fill and land balancing will begin to get the fields playable. Councilmember Kivell asked if the water will be supplied by the well that is there for the sprinklers. City Manager Ladner stated there is a cost estimate for running a water main. Mr. Russell stated it will be difficult to get public funding for the fields, versus for walking paths and such. Councilmember Kramer asked who is coordinating the fundraising efforts because he knows a lot of the leagues are seeking corporate donors. Mr. Russell stated Amy Allen from South Lyon Recreation Authority is working on that. He further stated everyone seems to want to participate as much as possible. Councilmember Kramer stated we have a contract with the person that does the farming on the property. City Manager Ladner stated the contract expired and it was not renewed, and we don't have to give him notice. Councilmember Kivell stated many people would like to keep some natural paths trails, and asked if any groups have shown interest in helping with that. Mr. Russell stated they have shown some interest. He further stated we only have to have 20% passable, but using fresh stone or limestone, can be traversed and the DNR looks favorably upon those types of paths. Mayor Galeas stated it is a great opportunity for high schools to get involved with the environmental part of this. He further stated it is important to make sure everyone is aware of this and hopes they will get involved. Councilmember Kurtzweil stated she believes the money is going to be there, and this is 20 years in the making. She stated people and organizations are already discussing this. She further stated this could be a management issue. She stated at some point, we will need to look at if an organization comes in with the money for fields, but if all the other amenities never get completed because the City doesn't have the money, it appears spotty. Mr. Russell stated the committee has discussed that, and they want quality fields to help support the downtown businesses and housing by having recreational facilities and he believes one can support the other. Councilmember Kurtzweil stated this can be a nightmare or it can be a great public relations thing for the City because she can see the organizations raising money, then having the money sit for years and nothing getting done. She further stated there is going to be a timing issue and the City needs to have some strong organizational skills on this. Councilmember Rzyzi stated he is in full support of this and he will help with fundraisers. He further stated his son is part of the Panthers and sometimes the sports overlap for the parents with multiple children and it is difficult for them to get to each event, and whatever can be done will be terrific. Councilmember Rzyzi asked if the cost estimate of \$5.2 million can be broken up between the different phases. Mr. Russell stated this is just for Phase 1.

#### CM 11-7-16 MOTION TO APPROVE PHASE 1 COST ESTIMATE FOR VOLUNTEER PARK

Motion by Kramer, supported by Kivell

Motion to approve Phase 1 cost estimate for Volunteer Park improvements

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VOTE: MOTION CARRIED UNANIMOUSLY

5. Consider approval for Pint Sized Marathon and related road closures

Chief Collins stated this is similar to the past event and the Police Department are in full support of this. Stephanie Rife of Footprints Fitness stated they are a non-profit 501c3 and based in South Lyon. This is the 3<sup>rd</sup> year they are doing this event. The funds go directly to the services in the school. They supply yoga services to the elementary schools at no cost to them. She further stated they want to promote an active community and they pair this with Witches Hat Brewery to get more adults involved. Families participate with their children. She further stated it has been very successful in the past and the race sold out twice in the past.

CM 11-8-16 MOTION TO APPROVE THE PINT-SIZED MARATHON AND ROAD CLOSURES

Motion by Rzyzi, supported by Parisien

Motion to approve the closure of Dorothy Street between Pontiac Trail and McMunn, McMunn between Dorothy and McHattie, McHattie between McMunn and Washington, Washington between McHattie and the Rail Trail on April 29, 2017 between 11:30 a.m. and 2:00 p.m.; and to approve use of the Witch's Hat Depot, McHattie Park and Rail Trails for the Pint Sized Marathon

VOTE: MOTION CARRIED UNANIMOUSLY

6. Consider approval of auction sale of Water Dept. out of service vehicle

Department Head Martin stated we have sold vehicles in the past on the MITN for about 5 or 6 years. He stated we have had a lot of success with them. He would like to sell an older vehicle with a beginning bid of \$100.

CM 11-9-16 MOTION TO APPROVE THE SALE OF 2002 DODGE DAKOTA

Motion by Wedell, supported by Kivell

Motion to approve sale of 2002 Dodge Dakota VIN #1B7GG16X42S519354

VOTE: MOTION CARRIED UNANIMOUSLY

7. Consider approval of purchase of Department Head vehicle

Department Head Martin stated he is asking to purchase a used vehicle for himself and other employees that may need to go to educational classes. He further stated this vehicle is included in the budget. He further stated Varsity Ford has a 2014 Escape that is great condition with 6,000 miles. He further stated the cost is \$21,114.00 and it should last many years. Councilmember Rzyzi stated the current vehicle is rusted out and very junky, so he agrees a new vehicle is needed. He further stated we need to run government as a business, and purchasing a lightly used vehicle is great. Councilmember Kurtzweil asked if Department Head Martin could give her the line item numbers after the meeting where this was budgeted for.

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CM 11-10-16 MOTION TO APPROVE PURCHASE OF 2014 FORD 4X4 SE ESCAPE FROM VARSITY FORD

Motion by Kurtzweil, supported by Kramer

Motion to approve purchase of 2014 Ford 4X4 SE Escape from Varsity Ford

VOTE: MOTION CARRIED UNANIMOUSLY

8. Discussion regarding conflict of interest with Councilmember Kivell and Pullum Windows

Councilmember Kivell stated when the item was brought up about the Police Department needing new windows, he wasn't aware of anything else until the bids were brought back to Council by Lt. Sovik or Chief Collins. At that time, he noticed Pullum Windows had made a very competitive bid winning the low bid of the project. He was happy the owner of the business stepped up with an interest to help out his community. He further stated he has no interest financially, he builds windows. He further stated he doesn't get anything extra. Mr. Kivell stated after the bid was achieved Charlie Pullum told him he doesn't believe Lt. Sovik understood what exactly is going on with the windows. He stated they sell many different high end windows. He further stated Charlie Pullum wanted to make their own windows for that building with an oak interior. Mr. Kivell stated he was adamant about pursuing that. He further stated when the bid approval came about, he didn't think twice about it, he has no financial gain. He further stated it would have been in his and Council's best interest if he had recognized that, to eliminate the potential perception of a conflict of interest, and for that he apologizes.

Councilmember Rzyzi stated he added this to the discussion because it is very serious and more serious than an oversight. He further stated most of the people on Council care about the residents, and everyone puts on their best face, but behind the scenes not everyone is so nice. He stated he was offended by the letter from City Attorney Wilhelm regarding the conflict of interest of Councilmember Kurtzweil. He further stated additionally, he felt as though he was cut off by Mayor Galeas. He stated Attorney Wilhelm stated has shown bias regarding himself and Councilmember Kurtzweil on multiple occasions. He further there is more than meets the eye with how people are treated on this Council. He stated he wants to commend Councilmember Kurtzweil for bringing her conflict of interest forth. He further stated Councilmembers Kivell conflict is a serious topic. He quoted a letter from the City Attorney which stated his employment with Pullum was a clear conflict of interest because it would tend to impair his independence of judgement as a Councilmember. (Please see the attached letter from Attorney Wilhelm). He further quoted his failure to disclose his employment with a potential bidder was improper and contrary to the City's Code of Ethics.

Mayor Galeas stated the overall tone of this Council of being mean and rude to people across the board is unacceptable, and it doesn't matter who it comes from. We should treat people the way we want to be treated and we should be able to discuss things in a business-like matter whether everyone agrees with each other or not. He further stated you have to pay attention and some things are done innocently and you can't let personal things from the past interfere with your decisions. He stated when he was on Council years ago, someone did some work on his vehicle, and he then found out that person was also doing some work for the City. He let the City Manager know. He further stated if you don't acknowledge it, everyone thinks the worse. He thinks differently than other people and he thinks we need to pay attention to the real issues, not what is personally happening. Mayor Galeas stated there is

a lot of good going on, but the sidetracking and the things that are taking our minds off of what we should be doing as a Council.

Councilmember Kramer stated between the last meeting and this meeting we have had two conflict of interest issues. The difference was councilmembers Kurtzweil conflict was disclosed. It bothers him that Councilmember Kivell's was not disclosed. He believes it needs to be discussed, he has a problem with an issue with rewarding contracts when he doesn't know if there was a financial interest or not. Councilmember Kurtzweil stated she manages conflicts of interests professionally and she has insight on that and conflict management. She further stated she won't let Council control her career or her reputation. That is why she took the steps to manage her conflict because she has a history with this Council. She doesn't trust this Council to protect her reputation. She further stated you are supposed to acknowledge a conflict of interest even if you're not sure it is one, you shouldn't get to the deliberative process. This is very serious and she doesn't know if she buys that Councilmember Kivell didn't know, because he was fully aware of bringing to the attention of Mayor Wallace's conflict of interest with the cable channel. She further stated she thinks this is a very blatant conflict of interest and this is serious because this is now a criminal misdemeanor and maybe he wants to plead the 5<sup>th</sup>. Councilmember Kurtzweil stated there are criminal consequences. She further stated she finds it disturbing that this issue didn't come up until November 18<sup>th</sup>. She stated the window contract was voted on in August. She stated she doubts if this would have come to light if she wouldn't have made the phone call to the City Attorney. She stated there was no initiative by the holder of the conflict of interest being done. She further stated when she was at the Council meeting, she put Council on notice that she wouldn't continue talking about her conflict of interest, and she is bothered because this would not have been disclosed if it wasn't for her. She further stated it is bothersome to her that she spoke with the City Attorney on the 18<sup>th</sup> of November and she was shocked that he said he had heard that to, and the correct thing to do would be to rescind the vote. She stated she was shocked because she is being objective and why is it she calls and says what she heard and she inquiries about it, and then the Attorney heard it also. She stated she wants to give Attorney Wilhelm a few compliments, such as he has learned from the BOR issue was this was a public meeting and the letter didn't say Attorney Client Confidential, as it did regarding the BOR meeting. She further stated the Mayor and Council has now learned that they cannot deny someone from adding something to an agenda as she was regarding a BOR issue that took place during a public meeting. She further stated this tells her this shows that learning process has begun and we are beginning to make the transition from where we were in January. These things are now being handled more professionally. She further stated when a conflict of interest arises with money, you let the Chief of Police be aware of the situation, and on this letter the learning process has started because the letter was copied to the Chief of Police. Councilmember Kurtzweil stated she is bothered that Attorney Wilhelm had a hunch about this conflict of interest and he didn't act on it, and it didn't get acted on until she made the phone call. She further stated the other issue, is the email on Monday the 21<sup>st</sup> stated he confirmed with Councilmember Kivell that he was working at Pullum at the time of the vote. Attorney Wilhelm stated Councilmember Kurtzweil is taking a phone conversation out of context, after the phone conversation he did more research and he doesn't understand what she is critical of. Attorney Wilhelm stated he had no context of the window contract and when Councilmember Kivell worked at Pullum. He further stated he had no information on the dates or timing. He thanked her for bringing this to his attention, this has been dealt with. He further stated it was a course of 7 days between the time he was alerted about this, and communication was sent to Council. He further stated this was over the Thanksgiving Holiday, and he is working as quickly

11/28/16

as he can within the parameters he has to work in and he represents the City's business, not any particular Councilmembers. Attorney Wilhelm stated he is not biased towards any Councilmembers and he is offended by the allegation that he is somehow biased toward any Councilmembers.

Councilmember Rzyzi stated he doesn't agree with that. Councilmember Kramer asked if Councilmember Kurtzweil sent an email to any Councilmembers regarding her conflict of interest. She stated she did not, she was working it out with the City Attorney. Further conflict continued. Mayor Galeas gaveled and called the meeting back to order. He stated this has been an ongoing problem, and the arguing in public is embarrassing. We can disagree with other people, but everyone needs to take a breath, some members of Council treat each other very badly. He further stated this is all personal and it needs to stop. He stated some people do not seem to want to be part of the team, and if you yell at everyone all the time he has to say something because there are good things happening, except for the infighting on Council. Department Head Martin stated he has worked for the City of 39 years, and he manages 17 employees, and they all watch these meetings, and he deals with them weekly, because they comment on what happens in these meetings. He further stated after 39 years, having to sit in these meetings, and listen to the infighting, when it has nothing to do with the performance he and his employees try to do for the City. He and his employees love the City, and it makes him want to get up and leave.

Councilmember Parisien stated it is embarrassing. Councilmember Kurtzweil stated she had an issue because there was a delay and it was an obvious conflict of interest. She further stated when your employer is involved with what you do for a living, but if you don't have knowledge of the conflict, how can you hold them accountable. This is not the case, this involves a person that is very seasoned with conflicts of interest, and it wasn't disclosed for 4 months. She doesn't believe this was a mishap. This is extremely serious. Councilmember Parisien stated she would like to backtrack to 40 minutes ago, when this issue was brought up. She further stated the first letter regarding Councilmember Kurtzweil did not have accusatory tones, and it was professionally written. The second letter was practically identical in the same tone. She further stated when you discuss being professional in our daily lives, you cannot be professional in front of everyone and then not be professional behind the scenes. Your reputation is built daily, and every day everything you do, can make it better or worse. She further stated if you put on a great front for the video, everyone else can see how unprofessional people can be behind the scenes. She further stated, in her opinion, there were no accusatory tones in the letters.

Councilmember Rzyzi stated the original letter from the City Attorney stated we received an email from Attorney Wilhelm which stated Councilmember Kivell's' failure to disclose his employment relationship with a bidder for contracts for the City and voting on contracts was improper and contrary to the City's code of ethics. He further stated we are talking about \$42,000, which is not a small amount of money. He further stated the large portion of the bid is the labor. He further stated he has mentioned the issue of bias by the City Attorney, and he asked if Phil Wiefert has turned in the proper insurance yet. City Manager Ladner stated not as of yet. He further stated he could spend thirty minutes on how the City Attorney berated him for not having the proper insurance for the Mat Cats event. He further stated it may be because he didn't vote for his 61% raise. Councilmember Kramer stated this topic is about Councilmember Kivell not the City Attorney. Councilmember Wedell stated this is off topic.

Councilmember Rzyzi stated this is about the unfair treatment by our City Attorney and Councilmember Kramer voted for that raise as well. Councilmember Kramer stated this is about what Councilmember Rzyzi wants to talk about and Councilmember Kurtzweil stated Councilmember Kramer should calm down and that he hasn't been well in months. Councilmember Rzyzi stated when he brings up the 61%



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331  
Phone: 248.489.4100 | Fax: 248.489.1726

Timothy S. Wilhelm  
twilhelm@jrsjlaw.com

www.jrsjlaw.com

November 26, 2016

Mayor John Galeas, Jr. and City Council  
City of South Lyon  
335 S. Warren Street  
South Lyon, MI 48178

RE: Pullum Window Corporation Contracts – Conflict of Interest

Dear Mayor Galeas and Council Members:

It has been brought to my attention that Council Member Kivell was employed by Pullum Window Corporation ("Pullum") on August 8, 2016, when City Council approved the Pullum bids to install windows in the Police Department and SLARA buildings. The August 8, 2016 Council minutes are enclosed, see pages 15-16. Council Member Kivell voted on both matters and did not disclose his employment relationship with Pullum. His employment at Pullum was a clear conflict of interest as it would tend to impair his independence of judgment as a Council member. His failure to disclose his employment relationship with a bidder for contracts with the City and voting to approve them was improper and contrary to the City's Code of Ethics contained in Sections 2-71 through 2-76 of the Code of Ordinances.

Furthermore, his participation in the review and approval of these bids and contracts raises questions regarding their validity which will need to be addressed. But, before I can provide a specific recommendation for addressing this conflict of interest I need to conduct additional legal research and obtain additional information regarding Council Member Kivell's employment relationship with Pullum and the bid and contract details. Depending the facts and circumstances, Charter Sections 4.6(c) and 5.2 and Code Section 2-75(b)(5) may be applicable, each of which prohibits a council member from voting on a contract or other matter in which he or she has a financial interest.

Charter Section 4.6(c) pertains to the Rules of Council and states:

Section 4.6 The Council shall determine the rules of its proceedings subject to the following provisions:

(c) No Councilman shall vote on any question in which he is financially interested or on any question concerning his own official conduct; but on all other questions every Councilman present shall vote unless excused by unanimous consent of the remaining members present.

Charter Section 5.2 entitled "Financial Interests Prohibited" states as follows:

*Section 5.2 No person holding any elective or appointive office under the City government shall take any official action on any contract with the City or other matter in which he is financially interested, or be a bondsman or surety on any contract or bond given to the City. Any member of the Council or other officer found guilty of violating the provisions of this section may be punished by a fine of not to exceed five hundred dollars (\$500.00) or be imprisoned for not more than ninety (90) days or both within the discretion of the court. The conviction of any Councilman or officer under this section shall operate in itself to forfeit his office. (Emphasis added).*

Code Section 2-75(b)(5) also addresses contracts with the City and states:

(5) Contracts with the city. Any councilman or other official or employee who has a substantial or controlling financial interest in any business entity, transaction, or contract with the city, or in the sale of real estate, materials, supplies, or services to the city, shall make known to the proper authority such interest in any matter on which he may be called to act in his official capacity. He shall refrain from voting upon or otherwise participating in the transaction or the making of such contract or sale.

A councilman or other official or employee shall not be deemed interested in any contract or purchase or sale of land or other thing of value unless such contract or sale is approved, awarded, entered into, or authorized by him in his official capacity.

Note, the Charter and Code do not prohibit the approval of contracts between the City and a council member or where a council member has a financial interest; rather, under those authorities, generally the financial interest must be identified and disclosed and the interested council member is prohibited from voting on or participating in the matter. Other facts that may impact this issue include whether Pullum has installed the windows, and, if so, whether the City has paid Pullum for the work.

Mayor John Galeas, Jr. and City Council  
Pullum Window Corp Contracts – Conflict of Interest  
November 26, 2016  
Page 3

Although I do not yet have a definitive recommendation for addressing this issue, I felt it necessary to bring this to your attention. If you have any question or concerns regarding the foregoing in advance of the Council meeting, please do not hesitate to contact me.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Timothy S. Wilhelm

encl

cc Lynne Ladner, City Manager  
Lloyd Collins, Police Chief

minutes prove that the meeting time of the prior year was fully utilized or exceeded, and further, that 90% of all regular or special meetings were fully attended by all members of the Council, except for those who had been excused by the remainder of the Council, and so recorded in the minutes. Such compensation shall be made by Council resolution.

- (e) The Mayor and Councilmen shall receive their actual and necessary expenses incurred in the performance of their duties of office.

#### MEETINGS OF COUNCIL:

Section 4.4 The Council shall hold at least one regular meeting each month at such time and place within the City as it shall prescribe by ordinance. Special meetings may be called by the Mayor, City Manager, or by any two Councilmen on at least twelve hours actual notice given to each Councilman and the Mayor or by written notice left at their respective residences by the Clerk after he has received the request from those authorized. All regular and special meetings of the Council shall be open to the public and citizens shall have reasonable opportunity to be heard.

#### QUORUM:

Section 4.5 Three members of the Council shall be a quorum for the transaction of business at all meetings of the Council, but in the absence of a quorum, and number of members less than a quorum may adjourn any regular or special meeting to a later date.

#### RULES OF COUNCIL:

Section 4.6 The Council shall determine the rules of its proceedings subject to the following provisions:

- (a) A journal of the proceedings of each meeting shall be kept by the Clerk, in the English language, which shall be signed by the Mayor and Clerk.
- (b) The vote upon passage of all ordinances, and upon the adoption of all resolutions shall be by a "Yes" or "No" vote and entered upon the record, except that where the vote is unanimous, it shall be necessary to so state. The people shall have access to the minutes and records of all regular and special meetings of the Council at all reasonable times.
- (c) No Councilman shall vote on any question in which he is financially interested or on any question concerning his own official conduct; but on all other questions every Councilman present shall vote unless excused by unanimous consent of the remaining members present.
- (d) The Council may by a majority vote of its members compel the attendance of its members and other officers of the City at its meetings and enforce orderly conduct and procedure therein. A police officer designated by the presiding officer of the Council may serve as Sergeant At Arms in the enforcement of the provisions of this section.
- (e) There shall be no standing committees of the Council.
- (f) The Council shall not make any contract with or give any official position to any person who is in default to the City.



## CHAPTER 5

### GENERAL PROVISIONS REGARDING OFFICERS AND PERSONNEL OF THE CITY

#### ELIGIBILITY FOR OFFICE IN CITY:

##### Section 5.1

- (a) No person shall hold any elective office of the City, unless he was a resident of the City for at least six (6) months immediately prior to the date of the election at which he is a candidate. He must also have been a registered elector on the last day for filing nominating petitions for such office or prior to his appointment to fill a vacancy.
- (b) No person shall be eligible for any elective or appointive City office who is in default to the City. The holding of office by any person who is in such default shall create a vacancy unless such default shall be eliminated within thirty (30) days after written notice thereof has been served at his last known place of residence, according to the records of the City, by the City Clerk upon the direction of the Council, or unless the officer contests his liability for the default in a court of competent jurisdiction.
- (c) No person who holds or has held the office of Mayor or Councilman shall be eligible to hold any appointive office in the City until one year has elapsed following the expiration of the term of office for which he was elected. This provision would not apply to such appointments as the Board of Review, Planning Commission, or the Zoning Board of Appeals where nominal compensation may be paid.
- (d) No appointive City officer or employee shall seek an elective office of the City unless he resigns from his position with the City.
- (e) The Council shall be the sole judge of the election and qualification of its own members.

#### FINANCIAL INTERESTS PROHIBITED:

Section 5.2 No person holding any elective or appointive office under the City government shall take any official action on any contract with the City or other matter in which he is financially interested, or be a bondsman or surety on any contract or bond given to the City. Any member of the Council or other officer found guilty of violating the provisions of this section may be punished by a fine of not to exceed five hundred dollars (\$500.00) or be imprisoned for not more than ninety (90) days or both within the discretion of the court. The conviction of any Councilman or officer under this section shall operate in itself to forfeit his office.

#### SURETY BONDS:

Section 5.3 Except as otherwise provided in this Charter, the Council may require any officer or employee of the City to give a bond to be approved by the Council, conditioned upon the faithful and proper performance of the duties of the office or employment concerned, in such sums as the Council may determine. All such officers or employees who receive, distribute, or are responsible for City funds or investments shall be bonded. The resignation, removal or discharge of any office or employee, or appointment of another person to such office or employment, shall not exonerate such officer or employee or any sureties of such officers or employee from any liability incurred by

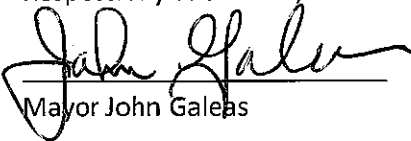
raise, he is brushed off saying the numbers are fake. He voted against it and Councilmember Kramer voted for it. Councilmember Kramer asked if we are talking about Glenn or our City Attorney. Councilmember Rzyzi stated we are talking about treatment and unfair treatment. He further stated Councilmember Kramer made the recommendation to his buddy Glenn. Mayor Galeas gaveled repeatedly and called for adjournment.

ADJOURNMENT

Mayor Galeas adjourned the meeting before the Agenda was completed at 10:47 p.m.

VOTE: MOTION CARRIED

Respectfully submitted,

  
\_\_\_\_\_  
Mayor John Galeas

  
\_\_\_\_\_  
Lisa Deaton Clerk/Treasurer