

Meeting of 2003-2-25 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
FEBRUARY 25, 2003 - 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell, Also Present:
Presiding Larry Mitchell, Acting City Manager
 John Vincent, City Attorney
 Brenda Smith, City Clerk
 Col. Steuber, Fort Sill Liaison

The meeting was called to order at 6:30 p.m. by Mayor Powell. Notice of meeting and agenda were posted on the City Hall notice board as required by law.

ROLL CALL

PRESENT: Randy Bass, Ward One
 James Hanna, Ward Two
 Glenn Devine, Ward Three
 Amy Ewing-Holmstrom, Ward Four
 Robert Shanklin, Ward Five
 Barbara Moeller, Ward Six
 Stanley Haywood, Ward Seven
 Michael Baxter, Ward Eight

ABSENT: None.

PRESENTATION OF REPORT FROM HIGHLAND CEMETERY BOARD

Roy Penepacker, Chairman, Highland Cemetery Board, reported a decrease in the number of spaces sold and that more one and two space lots were sold than four and eight space family lots, which reflected a change in family life style. There has been a decrease in operating income and fees; the Cemetery Care Fund receives 25% of the fees to replace equipment and make capital improvements. Last year's improvements were replacing the roof on the outdoor chapel at the main entrance, restoring the bell tower to include the chimes which now play on the hour, landscaping around the bell tower, and purchase of equipment in the amount of \$2,821. The perpetual care fund is held by a trustee appointed by a judge. Penepacker explained a very beneficial addition of the information center located near the cemetery office. Information is provided on the streets, lots, blocks, names of those interred and locations of graves. Computer information has been helpful in this regard.

Penepacker said 4,566 spaces remain unsold; with 120 spaces having been sold in the last two y ears, if that rate of sale continues, spaces will be available for 38 years. Fees were raised \$50 and further increases may be warranted. The number of cremations has increased, and the remains are currently interred in a regular size space. A future plan may include establishing 12" x 12" spaces for internment of cremated remains and the board will discuss this in coming months. The Cemetery Board, including Roy Penepacker as Chairman, and members Larry Campbell and Chris Elledge, were commended for their volunteer service, and for planning for the future.

AUDIENCE PARTICIPATION:

Dan Tucker expressed concerns about Lawton entering into a joint jail venture with Comanche County. He said comments by county commissioners were to hurry the new jail along since a delay could cause them to have to bring the existing jail in the basement up to code. Tucker said he found it appalling that anyone would want to operate a facility that was not up to code and he could not think of a greater responsibility, not liability but responsibility, than to put another human being in a place where they are unable, on their own, to enter or leave or control their getting in and out, and not meeting codes.

Tucker said these are not the City's prisoners; Lawton's police department arrests suspected criminals but then takes them to the District Attorney and they become the responsibility of the County. Tucker said a comment was if they remodeled the jail, they would free up some beds and make some money for the county. He said he did not know that the city had money to give to the county and the city has its own jail. Tucker said his personal belief was

that the two operations should remain separate and last spring during the construction phase, the decision was made that the county was going to take care of the county jail and the city would not be in on that. Tucker said a fire at a jail in Mitchell, North Carolina, resulted in the death of eight people who were unable to get out because they had an antiquated jail. He said many of those in jail are there pending trial and a jury or a judge will determine if they are a criminal, but they are locked up until that determination is made. Tucker asked that the Council be cautious in looking at this situation and not make a hasty decision.

Philip Johnson said 13 years ago his father was killed, March 1989, and they have yet to find out from the police department whether or not this will be solved and they were tired of waiting. He said his six year old son asked him about his Grandpa Johnson and he told them they are not working on it right now. Johnson asked that the Council put a committee together to solve the unsolved murders in Lawton.

Mike Walkos, 2204 NW 37th Street, distributed copies of a prepared statement which he read and which is on file in the City Clerk's Office. Mr. Walkos expressed dissatisfaction with the 38th Street Project being in close proximity to area homes and businesses, the lack of adequate response by certain City officials in 2001, and that the project area contains a roosting site for Peregrine falcons, a bird of prey listed on the Endangered Species List. He said the City would be approached by investigators from PETA, People for the Ethical Treatment of Animals. The statement concluded that: "the existing plans are uninformed, non-sensical, and certainly non-cooperative with the residents, who are not anti-widening of the road, but that taking land without consent, without consideration, and without regard to safety, property and animal rights must stop." This item will be placed on a future Council agenda.

David Cline, SanTech Environmental, 650 25th Street NW, Cleveland, Tennessee, said his firm made a proposal to operate the landfill based on the bid that was sent out. Mayor Powell said that cannot be discussed during audience participation since it was on the agenda; he said it has been tabled and will come back in 30 days to be discussed again. Cline asked if the opportunity for discussion, as discussed earlier, would include operation of the landfill. Jerry Ihler, Public Works Director, said operation of the landfill was tabled during the Water Authority, and that Items 13 and 14 on the City Council agenda should be tabled as well due to that action.

CONSENT AGENDA : Separate consideration was requested for Items 2, 3, 5, 7,13, and14.

MOVED by Shanklin, SECOND by Baxter, to approve the Consent Agenda items as recommended with the exception of Items 2, 3, 5, 7, 13 and 14. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for denial: Charles and April Miller; and Norma and William F. Wilson. Exhibits: Opinions/Recommendations. Action: Denial of claims.
2. Consider the following damage claims recommended for approval and consider passage of any resolutions authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: Spencer Stanley; Southwestern Bell Telephone (2); Elke C. Anderson; and Joseph West. Exhibits: Legal Opinions/Recommendations.

Baxter said the Spencer Stanley claim involved a sign, which he had looked at, and the only damage was to a small piece of iron which could easily be repaired and did not appear to require payment of \$1,500. Vincent said he could not force Mr. Stanley to allow the City to repair the sign, and the claimant has a right to request the larger payment. Baxter asked if he had the right to request that Council not approve that amount. Vincent said yes.

MOVED by Baxter, SECOND by Bass, that we do not approve \$1,500 for a two inch dent in a sign and to re-enter into negotiations with Mr. Stanley to get that amount reduced, and to approve the remaining claims as recommended. AYE: Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine. NAY: None. MOTION CARRIED. Action on remaining claims is as follows: SW Bell \$249.30, and \$545.75 Res. 03-21; Anderson \$1,200.00 Res. 03-22; West \$800.00 Res. 03-23.

3. Consider approving travel of one Council member to attend the Lawton Chamber of Commerce & Industry (LCCI) sponsored Washington, D.C. trip, March 23-26, 2003. Exhibits: Letter.

Mayor Powell indicated he had not asked any one Council member to make this trip. Council members confirmed that was correct. Mayor Powell asked that rumors in this regard be put to rest.

Mayor Powell said this came about by General Baxter, representing the Chamber of Commerce, asking him what he thought about having more representation in Washington, D.C. meeting with elected officials on the national level, and his response was he thought it was great idea and that he would bring the item. He asked for Council action in this regard.

A motion by Hanna and second by Moeller was offered to send Randy Bass on the trip. Mayor Powell asked that a motion first be made as to whether or not to send anyone on the trip; action would be to approve travel for one Council member to attend the LCCI sponsored Washington, D.C. trip, March 23-26 to include expenses for air travel and three nights hotel in an approximate amount of \$1,000.00.

MOVED by Hanna, SECOND by Moeller, to approve the recommendation to send one Council member to Washington, D.C. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

Mayor Powell asked if anyone wanted to volunteer and then make a decision.

MOVED by Baxter, SECOND by Devine, to send Amy Ewing-Holmstrom to Washington, D.C. since she has major ties with our Fort Sill community and she could communicate quite well with those people.

SUBSTITUTE MOTION by Hanna, SECOND by Haywood, to send Randy Bass on this trip. AYE: Shanklin, Moeller, Haywood, Hanna. NAY: Ewing-Holmstrom, Baxter, Devine. ABSTAIN: Bass. SUBSTITUTE MOTION CARRIED.

4. Consider authorizing the City Attorney's Office to close the file in the pending bankruptcy of Marshall and Evelyn Justice, Western District of Oklahoma, Case Number 00-10875-TS. Exhibits: None. Action: Approval.

5. Consider authorizing the City Attorney's Office to close the file in the Chapter 7 bankruptcy styled In Re: Gregory & Christina Mucker, Case Number 01-14914WV, Western District Court of Oklahoma. Exhibits: None.

MOVED by Baxter, SECOND by Hanna, to approve the City Attorney's Office closing the file in the Chapter 7 bankruptcy styled In Re: Gregory & Christina Mucker, Case Number 01-14914WV, Western District Court of Oklahoma. AYE: Shanklin, Moeller, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom. NAY: None. ABSTAIN: Haywood. MOTION CARRIED.

6. Consider approving the request to allow the Vietnam Veterans of America, Chapter 751, to sponsor and exhibit *The Wall That Heals* Traveling Vietnam Veterans Memorial and Museum at the Vietnam Memorial site in Elmer Thomas Park in 2004. Exhibits: Letter. Action: Approval.

7. Consider allowing the Parks & Recreation Department to individually Co-sponsor with the Lawton Chamber of Commerce, Cameron University, Lawton Public Schools and Lawton/Fort Sill Coop a series of softball tournaments for the year 2003. Exhibits: Tournament List.

Moeller said there are direct costs to the City but there are some indirect costs also for use of facilities at no charge being revenue lost, for ice and various other items. She asked that those figures be included to show the City's true support of these events. Kim Shahan, Parks & Recreation Director, said he would list that information and provide it to Council.

MOVED by Moeller, SECOND by Baxter, to approve the request with the new figures. AYE: Moeller, Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin. NAY: None MOTION CARRIED.

8. Consider adopting a resolution authorizing the City Clerk to dispose of certain original records which have been reproduced on optical disk. Exhibits: Resolution No. 03-24 . Action: Approval.

9. Consider increasing the Revenue Services Division petty cash fund from \$2,900 to \$3,700. Exhibits: Resolution No. 03-25. Action: Approval.

10. Consider approving the renewal of the current agreement between the City of Lawton Fire Department and Southwestern Medical Center. Exhibits: None. Action: Approval.

11. Consider approval of a Memorandum of Agreement (MOA) for Mutual Aid between the City of Lawton Fire Department and the Fort Sill Fire and Emergency Services Department. Exhibits: None. Action: Approval.

12. Consider renewing the agreement between the Board of County Commissioners of Comanche County and the City of Lawton for library services to Comanche County residents living outside the City of Lawton. Exhibits: Memo; Letter. (Agreement on file) Action: Approval.

13. Consider rejecting bids for the sale of solid waste collection equipment. Exhibits: None.

14. Consider rejecting bids for the sale of City landfill equipment. Exhibits: None.

MOVED by Shanklin, SECOND by Baxter, to table Items 13 and 14 for 30 days as was named earlier. AYE: Shanklin, Moeller, Baxter, Bass, Devine, Ewing-Holmstrom. NAY: Hanna. ABSTAIN: Haywood. MOTION CARRIED.

15. Consider approving the following contract extensions: A) Fire Department Uniforms with J.B. Battle Uniform Company; B) Mowing and Litter Contact II with Beaver Creek Tractor Service, Dales Tractor Service, Teen

Challenge; C) 2003 Uniform Violation Complaints with Fields Printing Company. Exhibits: None. Action: Approve contract extensions.

16. Consider awarding contract for Dairy Products for Lawton City Jail. Exhibits: Recommendation; Bid Abstract. Action: Award contract to Hiland Dairy Foods.

17. Consider canceling contract of Tree Transplanting Service with Gleason Instant Tree Farm. Exhibits: Letter. Action: Cancel contract.

18. Consider appointments to boards and commissions. Exhibits: Memorandum.

Parks & Recreation Commission: Tammy Barrett, Ward 1, Term: 2/28/03 to 1/1/05.

Building Development Appeal Board: Don Barrington, Home Owner; Paul McWilliams, Fire Protection; Johnny Owens, Commercial Property; Dan Tucker, Licensed Mechanical Contractor; Charlie Wright, Licensed Professional Architect; Don Zacharias, Commercial Contractor - all terms expiring 2/25/05.

19. Consider approval of payroll for the period of February 17 to March 2, 2003.

20. Consider approval of Minutes of February 11, 2003, Council meeting.

BUSINESS ITEMS:

21. Consider a request from the general employees of the City for representation by the American Federation of State, County and Municipal Employees (AFSCME) union and if so desired, give direction to staff. Exhibits: Documentation from AFSCME; OML summary of SB 648.

Hanna said he was approached by City workers about bringing this to the Council agenda. He said Senate Bill 648 is now being considered and if passed, it will give schools, cities, colleges and some others throughout the state the right to form a union. Hanna said he thought we should give this consideration to our City employees, let them have a union, it is for their protection, and if we give them the union, there may be problems coming up through the state. He said according to the letter from the Oklahoma Municipal League, certain employees would not be allowed to join this union and they must form another union, so there will be problems if this passes and it has to be all ironed out. He said he felt by doing this the Council will be telling the employees that they are wanted, they will work better for us, and they will not have to wonder from day to day whether they have a job or not. Hanna said there are legal issues with the proposal and he asked the City Attorney to address some of those problems.

Vincent said Hanna asked him to speak about the documents submitted to the Council members, one of which was a proposed ordinance and the other was a proposed resolution. He said as we stand right now, without state legislation, there are Charter provisions that govern the operations of the municipal employees; for example, we have the personnel board, and we could not constitute that by a grievance arbitration procedure similar to police and fire without a change in the City Charter unless we had state legislation to provide relief. Vincent said other examples are rates of pay, salary, and working conditions; the Charter gives the City Manager certain rights and the Council certain rights that we cannot negotiate away with a collective bargaining unit. He said if the Council wants to consider this proposal, he would request, if Council so desires, that he be given direction to assist them in preparing the documents in the proper format so Council can consider them correctly.

Baxter said due to the fact that there are some problems apparently with the resolution and that Senate Bill 648 is still under discussion, he would like to make a motion to table this for 30 days, or for two weeks and asked if Senate Bill 648 would be out in two weeks. Vincent said no, it came out of committee to the Senate floor with the title pulled, it did pass out of committee and has gone to the floor of the Senate with the title pulled so that means it has to go back to committee. Baxter asked if Vincent could get this fixed in two weeks. Vincent said yes but we still have the problem if the bill passes it will require two employee unions of the general employees possibly.

MOVED by Baxter, SECOND by Shanklin, to table for two weeks and work on that document. AYE: Haywood, Baxter, Devine, Shanklin, Ewing-Holmstrom. NAY: Moeller, Bass, Hanna. MOTION CARRIED. (This is the final vote on this issue.)

Moeller, Haywood and Devine passed on initial roll call. Ewing-Holmstrom said she wanted it to be legal but wanted Council to do something other than table it and so she would vote no.

Haywood said he wanted to make sure he was clear before voting; he was for a union 100% but wanted to make sure it's legal. He asked if he voted yes, what was it saying. Vincent said it was his understanding that if you vote yes, he would visit with the AFSCME representatives and put these in proper form and bring them back for Council consideration. Haywood then said he would vote yes.

Ewing-Holmstrom said if voting yes means the City Attorney will meet with the representatives to discuss, make

this legal and get this off of high center, then she needed to vote yes. Baxter said that was what he had said. Vincent said as he understands the motion and the second, and he could be corrected, it was to table this for two weeks to allow the City Attorney's Office to visit with AFSCME's folks, get this in proper form and put it back on the agenda. Baxter said that is correct, we do not want any malfunctions.

Mayor Powell asked for Ewing-Holmstrom's vote and she voted yes. Mayor Powell said right now there are four affirmative and three nay votes (Devine's name had not been called on roll call yet). Shanklin asked why you would want to pass something that could be in direct conflict with what comes out of the State Legislature. Mayor Powell asked that there not be any further discussion and asked how Devine wished to vote. Devine said he was like Haywood, he wanted to see them get their union but wanted to make sure it was right for them, did not want them left hanging out on a limb or to have a big legal battle right off in the beginning, and he did not think two weeks would hurt, so he would vote yes.

Mayor Powell said there were five affirmative votes and three nay votes. He said he hoped everyone understood the motion and that the City Attorney had stated that this was a table while he meets with the gentleman to work out these two legal documents and then it will be brought back for Council action. Mayor Powell said we cannot have discussion where there is a table and that is the rule. Mr. McMichael asked if he could make one comment, just to be fair. Mayor Powell asked if he could accept comment. Vincent said the voting is over with.

Mr. McMichael said he met with Mr. Vincent and the Human Relations Director and indicated to Mr. Vincent two weeks ago, four weeks ago, three weeks ago as a matter of fact, for a presentation two weeks ago that if there were any legal or language problems with the resolution as they presented it, they were prepared to meet within the last two weeks. Mr. McMichael said he had not been contacted by either the Human Relations Director or Mr. Vincent in regards to any problems with the resolution he submitted. Mr. McMichael said we were prepared for the last two weeks to meet with Mr. Vincent to discuss any problems to avoid tonight what appears to be a further delaying tactic on the part of City administration.

Mayor Powell said the item will be brought back. Mr. McMichael said the senate bill does not conflict with this. Mayor Powell asked that Council consider Item 22, and said he did not want to be insulting but had to follow the rules of procedure and hoped Mr. McMichael understood that.

The Mayor and Council recessed upon motion, second and roll call vote from 7:20 p.m. until 7:30 p.m. with roll call reflecting all members present.

22. Hold a public hearing to consider multi-year changes to 1996 and 1998-2000 Consolidated One-Year Action Plans, receive input from citizens; provide input for the final plan changes. Approve the changes to the 1996, 1998 and 1999 Plans authorizing the Mayor and City Clerk to execute the implementing documents and pass a resolution revoking Resolution 00-43 authorizing the original Consolidated One-Year Plan for FFY 2000 and authorizing the Mayor and City Clerk to execute the implementing documents necessary to implement the changes to the Consolidated One-Year Action Plan for FFY 2000, Change 1. Exhibits: A) Funding Allocation Summaries for the One-Year Action plans for the Federal Fiscal Years 1996 and 1998-2000; B) Resolution No. 03-26 authorizing the filing of the changes to the Consolidated One-Year Action Plan for FFY 1996 Change 1, FFY 1998 Change 2, FFY 1999 Change 3, FFY 2000 Change 1. (The proposed multi-year revisions and input from neighborhood meetings on file in City Clerk's Office)

Haywood excused himself from Item 22 and left the stage at this time.

Tom Aplin, Community Services Department, said the purpose of these changes is to clean up after some projects that were completed where funds were left over, and to clean up some projects that were completed but paid for from other funding sources. He said the sources and uses of funds are shown on Page 61 of the agenda folder. Aplin said approval of the change will transfer \$81,897.25 from those accounts in Table 1 on the CDBG Program to the projects shown in Table 3, the uses of the CDBG funds.

Aplin said the first three are parks projects that were way over funded when they were initially passed; part of the funds are from park projects paid for by other funds and moved into these three projects to either renovate or build one new restroom for one of the parks; the Mattie Beal Project is a request for an additional \$43,744.50 to restore the interior of the building to its 1923 standard. A \$10,000 grant has already been given for an architect to determine the requirements for the restoration of the Mattie Beal Home, and other funding sources are expected as well to complete the restoration.

Aplin said with the HOME fund, in Table 2, out of the 2000 Project 25, Homeowner Rehabilitation Program, we are requesting to move \$45,939, and there is an error here to correct. On the revised funding where it shows \$190,552.75, a recent review determined that figure should be \$201,683; the difference between that figure and the current funding of \$272,450 is \$45,939; we are proposing to move that \$45,939 to Table 4 where it will provide additional funding for the projects shown there, two of which are new projects. First is the CHDO Set Aside Project which will receive an additional \$9,389 to meet our CHDO requirements. Project 26 is a new project that will be

providing \$11,000 for a Project Based First Time Homebuyer Project, and Project 27 will provide CHDO operations funds for Great Plains Improvement Foundation to allow them to offset some of their costs for delivering the housing development services under their CHDO operation.

Baxter pointed out the errors in the figures provided by Aplin and said he had no problem with the program but wanted to know where the other money went. Aplin said he got on the wrong column and apologized for the error. Aplin said the amount will be moved to the current column under the revised funding, so we will end up with \$86,039 for the CHDO Set Aside Project 23; we will end up with \$11,000 for the Project Based First Time Homebuyer Program, and we will end up with \$25,550 for the 27 Project, with a total amount of funds that will end up being the transfer will be the funds necessary to raise those revised figures to what is reflected in the right hand column, that is where the \$9,389 increases the funding for the CHDO project to \$86,039, the \$11,000 for the First Time Homebuyer Project, the CHDO Operations Project to the \$25,550; that reflects the funds being moved into those projects to elevate to those funding levels.

Baxter said there was still \$25,000 missing. Aplin agreed and said the current funding is \$272,450; we are moving \$45,939, so what should be in the revised funding under the Homeowner Rehabilitation Project would be the difference between the \$272,450 and the \$45,939; that is the figure that should appear in the revised funding, and the wrong number is the \$201,683.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Shanklin, SECOND by Baxter, to approve Resolution No. 03-26. AYE: Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller. NAY: None. OUT: Haywood. MOTION CARRIED.

23. Hold a public hearing and adopt a resolution declaring the structures at: #3 and #5 SW 14th Street to be dilapidated and dangerous, thus causing a blighting influence on the community and detrimental to the public's health and safety. Authorize the City Attorney to initiate legal action declaring a public nuisance in District Court and Neighborhood Services to solicit bids to raze and remove structures, if appropriate. Exhibits: Resolution No. 03-27.

Angie Alltizer, Neighborhood Services, said the property owner requested this action to receive reduced tipping fees at the landfill.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Shanklin, SECOND by Baxter, to approve Resolution No. 03-27. AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

24. Consider approving an ordinance amending Chapter 13, Lawton City Code, 1995, by changing the membership, term of office and duties of the Lawton Human Rights and Relations Commission. Exhibits: Ordinance No. 03-10.

Mayor Powell said the changes to the ordinance are intended to assist the Commission in its operation.

MOVED by Ewing-Holmstrom, SECOND by Haywood, to approve Ordinance No. 03-10, waive reading of the ordinance, read the title only.

(Title read aloud) Ordinance No. 03-10

An ordinance pertaining to changing the membership, term of office and duties of the Lawton Human Rights & Relations Commission, amending Section 13-1-103, 13-1-104, 13-1-105, 13-1-106 and 13-1-108, Article 1, Chapter 13, and repealing Sections 13-1-111, 13-1-112, 13-1-113, 13-1-114, 13-1-115, 13-1-116, 13-1-117 and 13-1-118, Article 1, Chapter 13, Lawton City Code, 1995, providing for severability, repealer, and effective date.

VOTE ON MOTION: AYE: Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

25. Consider amending Sections 16-3-1-301, 16-3-1-302 and 16-3-1-319, Chapter 16, Lawton City Code, 1995, changing the amount from fifty dollars (\$50.00) to five hundred dollars (\$500.00) and exempting larceny from the house, which is a felony, to comply with changes in state statutes and declaring an emergency. Exhibits: Ordinance No. 03-11.

Vincent said the State Legislature increased the amount of what would constitute a misdemeanor and raised that to \$500 from the larceny amount. The District Attorney is not taking cases between \$50 and \$500 and the City does not have the ability to prosecute them without this being in the code.

MOVED by Devine, SECOND by Haywood, to approve Ordinance No. 03-11, waive reading of the ordinance, reading the

title only, and declaring an emergency.

(Title read aloud) Ordinance No. 03-11

An ordinance pertaining to larceny, amending Section 16-3-1-301, 16-3-1-302 and 16-3-1-319, Article 3, Chapter 16, Lawton City Code, 1995, providing for severability, and declaring an emergency.

VOTE ON MOTION: AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

26. Consider amending Section 16-5-1-508, Chapter 16, Lawton City Code, 1995, expanding the definition of peeping tom and declaring an emergency. Exhibits: Ordinance No. 03-12.

Vincent said the proposed ordinance will bring the City Code in compliance with State law, as far as the definition of peeping tom.

MOVED by Devine, SECOND by Bass, to approve Ordinance No. 03-12, waive reading of the ordinance, reading the title only, and declaring an emergency.

(Title read aloud) Ordinance No. 03-12

An ordinance pertaining to peeping tom, amending Section 16-5-1-508, Article 5, Chapter 16, Lawton City Code, 1995, providing for severability, and declaring an emergency.

VOTE ON MOTION: AYE: Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

27. Consider authorizing staff to proceed with the engineer selection process for the NW 67th Street (Cache Road to Rogers Lane) Project and to prepare plans for constructing short term improvements to NW 67th Street from Cache Road to Quanah Parker Trailway.

Mayor Powell said this item was requested by Council Members Moeller and Baxter.

Moeller said the City sold land to Wal-Mart for \$200,000 and at that time she and Baxter asked that the money be reserved for improvements to the street or the immediate vicinity. She said 67th Street between Cache Road and Quanah Parker Trailway, also known as Old Cache Road, is in horrible condition. Moeller said staff tried to find a way to use this money for road improvements in connection with the street section being constructed by Wal Mart but it could not be worked out. She said she and Baxter agreed that the best way to go forward is to have an engineering project on that entire strip, overlay the part of 67th Street that is so terribly bad, and include in that a survey because the residents of Fair Cloud and Creekwood were expecting Wal Mart to build a sound abutment wall and the final analysis was that Wal Mart did not commit to that. Moeller said they would like to proceed with an engineering project for the entire 67th Street from Cache Road to Rogers Lane to finish it the way it should be done and to overlay 67th Street between old and new Cache Road with consideration to be looked at as to what the residents of those two additions need as far as a sound abutment wall.

Baxter asked for Council's help saying 67th Street between old and new Cache Road is in real bad shape; it will get a lot more traffic with Wal Mart opening March 19. He said it probably cannot be repaired before that, but this will free up some money to get the road in a respectable condition for the next few years until the engineering design can be done and the project sent through ODOT, which may be five to eight years, but this will help out in the mean time.

MOVED by Baxter, SECOND by Moeller, to authorize staff to proceed with the engineer selection process for the NW 67th Street, Cache Road to Rogers Lane Project, and prepare plans for construction of short term improvements to NW 67th Street from Cache Road to Quanah Parker Trailway. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

28. Consider approving Council Policy No. 4-2, which would establish and maintain an operating reserve fund in the General Fund to provide for unanticipated expenditures of a non-recurring nature, or to meet unexpected increases in service delivery costs. Exhibits: Council Policy No. 4-2.

Rick Endicott, Finance Director, said the policy formalizes action that has already been taken to set aside fifty cents of the \$1.50 refuse fee, for non-recurring expenses. An affirmative vote of six council members will be required to spend any money out of this reserve. Mitchell said the policy targets 5% and a certain future date to meet that target, and we will work toward that in the next two or three years.

Moeller asked for an example of increase in service delivery costs. Endicott said if our costs were to go up to provide a service, such as picking up garbage, that could be considered. Moeller said it would be any service provided to the citizen and Endicott said yes.

Bass asked what the money can be spent on. Endicott said it would be up to the Council and it would be voted on through an agenda item for approval. Mayor Powell said six affirmative votes would be required and Endicott agreed. Bass asked if it could be spent on anything the Council so desired. Endicott said yes.

Devine disagreed and said when he made the motion to balance the budget for the fifty cents to be put in reserve, it was to be used when we needed money to get grants so we would have that reserve built up, because we never have enough money for matching funds in grants; that fifty cents was to be put aside to start building a reserve fund strictly for that. He asked Moeller if that was correct. Moeller said that was part of it. Devine said it was and that he and Moeller had a strong understanding and debate about that because she only wanted to raise the refuse rate by \$1 and he asked her to raise it to \$1.50 and we would put the fifty cents into a reserve so we would eventually have some money to use as matching funds when we go out for grants and that was the way it was stated in his motion the night the budget was passed; it was not to go in the general fund, and that he and Mr. Baker had many discussions over that. Endicott said he was given direction by the previous City Manager on preparing this.

Moeller said Devine is correct that we never have enough money for matching grants but we also have nothing to rely on in case of emergency, i.e. paying crews when storms come through, ice storms and things of that nature, and that was the reason she asked about the service delivery cost. Moeller said she did not believe that had ever been brought up in any of their discussions on the floor.

Mayor Powell asked if Council wanted the money to be used only to match grants or other items. Moeller said since it would take six votes to use it, she would hope Council would be very careful about what service delivery they allow, and she was not saying to take that out because there might be a chance we might have to do that, but add grants to it. Devine said his problem with that, it goes back to the same issue that was debated on the rolling stock or capital outlay; that was stated one way on this Council floor and it eventually got turned around to be used another way and now all that money ended up in the general fund. Devine said he did not want that to happen again and that some terminology should be used so the money is not twisted around after it gets built up to use it for a project that six members get together to have done, and they forget that it is to be a reserve.

Baxter said he thought the previous discussion included using the funds in case of catastrophe. He said he understood that it was to be set back for grants and/or for catastrophe; what are we going to do if a tornado wipes out City Hall, and that very question was asked during that budget session. Baxter said he did not know how that should be worded and if staff wanted to bring it back and change the wording to include grants and catastrophes, but he remembered both of those things being talked about.

Bass asked if it was not true that no matter what you earmark this as that we can go get it and bring it back for anything we want to use it for, just like we are doing now, so he did not know what we were arguing about; go ahead and earmark it for what you want and then we will use it how ever we decide. Mayor Powell said that was well put. Bass said he did not mean to be rude and was not trying to be. Mayor Powell said Bass was relating from past experiences.

Moeller said each department seemed to have a little pile of money for grants and the question was asked why it could not all be put in one pile to get bigger grants and nothing was ever done on that. Shanklin asked if we had ever got a grant that did not come to the Council first.

Ewing-Holmstrom agreed with Devine and said we must be careful of the wording because if it is wrong and it is on TV or in the press that here's another fifty cents that we originally made plans to use a certain way and now the Council is going to do later on what ever they want with it, maybe a new Council four or five years from now will do something else with it. She said a decision must be made and Council should be careful on whether it would be used for grants and/or catastrophes and to state it that way.

MOVED by Shanklin, to table this until the next Council meeting and get the wording right.

Mayor Powell said it should be brought back in a form everybody understood.

Bass said if you are going to label it where you cannot use it, do not leave the wording open where you can go in and get it. Endicott asked if it should be worded just for grants and catastrophes and requested direction. Devine said he would have no problem with that part of it on the fifty cents, then the 5% that Mr. Mitchell mentioned, we can put that in the general fund or whatever, but on that fifty cents there was an agreement that it should be placed in that fund and earmarked where it cannot be put in the general fund to build a wall or a ditch, and it cannot be used for raises.

Mayor Powell asked if Council wanted it returned where it could be used for grants only. Devine said yes. Moeller asked if it was for grants only. Devine said for grants and emergencies or catastrophes.

SECOND by Ewing-Holmstrom to the motion to table. AYE: Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass,

Hanna, Devine. NAY: None. MOTION CARRIED.

29. Consider denying the request for a subordination agreement on the City's mortgage with Pamela T. Miller (also known as Pamela T. Jefferson) (Borrower) for the property at 719 SW Ranch Oak Boulevard. Exhibits: None.
*Note: Haywood left the stage prior to consideration of this item.

Aplin said the City currently holds a mortgage with a balance of \$12,790 on the property. The original value of the loan was \$20,075 for this property that was purchased and rehabilitated under the First Time Homebuyer Program in 1994. He said the amount of loans versus the appraised value of the house would be 144% and if it exceeds 75% it is referred to the Council for a decision.

Aplin said the proposal is for the homeowner to take a consolidation loan from Wells Fargo for \$54,825 versus the appraised value of the home of \$48,262. The homeowner was awarded a subordination agreement previously in March 2000. If the loan is approved, the family would have a disposal income of approximately \$925 per month compared to the current \$480 per month. Aplin said Mr. Jefferson was notified that he is being laid off from the Lawton Public Schools, which is something to consider. He said Mr. and Mrs. Jefferson are in the audience if there are questions.

MOVED by Shanklin that we do not deny the request for the subrogation.

Shanklin said this has been done repeatedly in the past, and was done at the last Council meeting. Baxter agreed and said he asked what would stop people from filing for this again, and the response was nothing. Baxter said it is now two weeks later, and three years down the road from the previous subrogation on the same property for the same owner, and we are in the same boat as what he just asked two weeks ago was going to happen; Council already approved this for these people before. Shanklin asked what that meant to Baxter. Baxter said Council did this before for these people and they want us to do it again, and we are not a bank, we are not in the business to be over funding houses and he could not agree with it.

Mayor Powell asked if there was a second to the motion. Moeller seconded the motion.

SUBSTITUTE MOTION by Ewing-Holmstrom, SECOND by Baxter, to deny the request. AYE: Baxter, Bass, Hanna, Devine, Ewing-Holmstrom. NAY: Shanklin, Moeller. OUT: Haywood. SUBSTITUTE MOTION CARRIED. (Note: Devine passed on initial roll call.)

ADDENDUM: Consider approving a request to enter into a contract with the Oklahoma Highway Safety Office and the City of Lawton for an aggressive driving/seat belt/child restraint project. Exhibits: None.

Police Chief Harold Thorne said this is a reimbursement grant through the Highway Safety Office for overtime of officers to address issues contributing to accidents and the ultimate focus is to reduce accidents. Baxter asked how long it takes to receive the reimbursement. Thorne said the overtime reports are submitted monthly and reimbursements are received monthly.

MOVED by Baxter, SECOND by Hanna, to approve the request. AYE: Moeller, Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER.

Col. Steuber said the farewell ceremonies continue for those being deployed, and Fort Sill is accepting new missions as they continue to supply forces for the possible contingency. Mayor Powell said there was an excellent Commanding General's National Prayer event this morning with an excellent speaker.

Haywood said he attended an event for Mayor Powell at the Museum of the Great Plains for the opening of "The Struggle for Equality", which will be on display for one year. He said he failed to recognize Dr. and Mrs. Graybill who brought Mrs. Travis, their former employee, who is 86 years old and in a nursing home facility, to the exhibit opening. Haywood expressed appreciation to Dr. and Mrs. Graybill for that kindness and for their support of the Museum and the City.

Shanklin said Lawton's water has been cited as not meeting standards, as have many other cities. He said Lawton is spending a great amount of money to comply but rural water districts do not have to meet the same standards if they serve less than 10,000 persons.

Shanklin said regarding 707 Gore, a gentleman promised it would be done on February 15 and it is not. He said when properties are placed on D & D, it causes a reaction and gets things done; it is not to tear the house down but to get compliance. Shanklin said we should remember that in the future.

Baxter congratulated Haywood for not drawing an opponent in the upcoming election and for being able to serve

another City Council term. He said he drew an opponent and Mrs. Moeller drew quite a few opponents. He encouraged everyone to vote on March 11 and for Ward 8 residents to vote for him.

Moeller said she was still thinking about the reserves for the grants and emergencies and that it was troubling not to have funds for emergencies; there is also a need for money to match grants. She said the money should be kept for its intended purpose and there is a need to keep something for emergencies.

Bass said his cell phone number is 695-8285 if residents desired to contact him regarding the 38th Street Project. He said he wanted the project to be done and did not know how wide the road would be. He said Dan Wiggington does a great job for the City and should not be blamed for the roadway design.

Ewing-Holmstrom suggested that residents use alternate routes around the intersection of Flower Mound and Gore Boulevard due to construction. She said if Bass is not able to go to Washington, D.C., she would be glad to do so.

Mitchell said a City Council candidate forum is scheduled for March 6 at 6 p.m. in the Council Chambers. He said he would be in Oklahoma City tomorrow at an OML legislative workshop.

Mayor Powell said an e-mail was sent to the City Attorney's Office last night regarding proposed state legislation that would prohibit municipalities from having jurisdiction over any municipal property outside their city limits, meaning the water treatment plant, lakes, and so forth. He said he called Mr. Kirby and the bill was pulled. Vincent said the bill was sponsored by Rep. Hutchinson from Tulsa who was concerned about a lake owned by the City of Tulsa; the e-mail was sent by OML at 1:00 a.m. and as soon as he got it, he started making phone calls. Ewing-Holmstrom said this brings up the other bill they were following, House Bill 1515. She said we should all be watching the actions being taken in Oklahoma City because they are making laws that pertain to all of us and it is important to be involved. Shanklin asked the status of the annexation bill and Vincent will find out and report.

BUSINESS ITEMS:

30. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending Workers Compensation case of Melody Crawford, Case No. 2002-02926-A, and if necessary, take appropriate action in open session. Exhibits: None.

31. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending Workers Compensation case of Gary Bishop, and if necessary, take appropriate action in open session. Exhibits: None.

32. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending Workers Compensation case of Robert Puccino, and if necessary, take appropriate action in open session. Exhibits: None.

33. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending EEOC claim of Linda G. Hargrove vs. City of Lawton, and if necessary, take appropriate action in open session. Exhibits: None.

34. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the procedures to be followed in the employment of a new City Manager and discuss the appointment/employment of the Acting City Manager and in open session take any action necessary. Exhibits: None.

Addendum: Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending lawsuit in the Western District of Oklahoma, Case Number CIV-03-027L of Sandy Porter vs. City of Lawton, and if necessary, take appropriate action in open session. Exhibits: None.

MOVED by Hanna. SECOND by Baxter, to convene in executive session as shown on the agenda and as recommended by the legal staff. AYE: Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at approximately 8:20 p.m. and reconvened in regular, open session at approximately 9:05 p.m. with roll call reflecting all members present.

Vincent reported on Item 30 that Council convened in executive session to discuss the pending workers' compensation case of Melody Crawford, and the case was discussed, including the proposed settlement offer by Ms. Crawford. Vincent recommended a motion to deny her settlement offer and let the case stand as currently presented.

MOVED by Baxter. SECOND by Devine, to approve as stated by the City Attorney. AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Vincent reported on Item 31 that Council entered executive session to discuss the pending workers' compensation case of Gary Bishop. He requested authority to attempt to negotiate a joint petition settlement in this case, and if successful, the item will be brought back for Council approval.

MOVED by Devine, SECOND by Bass, to approve as stated by the City Attorney. AYE: Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

Vincent reported on Item 32 that Council entered executive session to discuss the pending workers' compensation case of Robert Puccino. He requested authority to attempt to negotiate a joint petition settlement in this case, and if successful, the item will be brought back for Council approval.

MOVED by Devine, SECOND by Hanna, to approve as stated by the City Attorney. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

Vincent reported on Item 33 that the Council entered executive session to discuss the EEOC claim of Linda Hargrove and that no action is required in open session.

Vincent reported on the addendum item that the Council entered into executive session to discuss the lawsuit of Sandy Porter. He recommended a motion approving outside counsel for Jerry Ihler.

MOVED by Devine, SECOND by Hanna, to approve hiring outside counsel for Jerry Ihler as recommended. AYE: Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine. NAY: None. MOTION CARRIED.

Mayor Powell read the title of Item 34 and said he would entertain a motion to name Larry Mitchell, even though it says in his job description, but to name him as the Acting City Manager and re-agenda this item for two weeks to take further action.

MOVED by Moeller, SECOND by Devine, that we confirm Mr. Larry Mitchell as our Acting City Manager and return the agenda item in two weeks. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 9:10 p.m. upon motion, second and roll call vote.