

Meeting of 2008-10-28 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING  
OCTOBER 28, 2008 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr.                      Also Present:  
Presiding                      Larry Mitchell, City Manager  
   Tim Wilson, Acting City Attorney  
   Traci Hushbeck, City Clerk  
COL Robert Bridgford, Fort Sill Liaison

Mayor Purcell called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Gregg Baxter, Lawton Baptist Tabernacle, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:                      Bill Shoemate, Ward One  
James Hanna, Ward Two  
Janice Drewry, Ward Three  
Jay Burk, Ward Four  
Robert Shanklin, Ward Five  
   Stanley Haywood, Ward Seven  
   Randy Warren, Ward Eight

ABSENT:                      Jeff Patton, Ward Six

PRESENTATION TO MCARTHUR HIGH SCHOOL CLASS 5A SOFTBALL TEAM.

Mayor Purcell presented a Certificate of Honor to the McArthur High School girls softball team who won the State 5A Girls Softball championship.

AUDIENCE PARTICIPATION: None.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF OCTOBER 14, 2008.

MOVED by Hanna, SECOND by Shoemate, to approve the minutes of the Lawton City Council regular meeting of October 14, 2008. AYE: Hanna, Drewry, Shanklin, Haywood, Warren, Shoemate. NAY: None. ABSTAIN: Burk. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Mayor Purcell requested item #2 be considered separately. Drewry requested item #4 be considered separately

MOVED by Warren, SECOND by Hanna, to approve the Consent Agenda with the exception of items #2 and #4. AYE: Drewry, Burk, Shanklin, Haywood, Warren, Shoemate, Hanna. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: Judy Franco and Manuel Garcia in the amount of \$200.00, John S. and Sandra G. Cochrane in the amount of \$265.00, Nicole Haycock in the amount of \$638.4 (**Res. 08-141**) and Shadda and Christin Graham in the amount of \$2,000.00 (**Res. 08-142**). Exhibits: Legal Opinions/Recommendations, Resolution No. \_\_\_\_, Resolution No. \_\_\_\_.

2. Consider the following damage claims recommended for denial: Hamra Prop. Co. LLP in the amount of \$865.65. Exhibits: Legal Opinions/Recommendations.

Wilson stated this is a claim where a water line broke off of Cache Road and was repaired by

city crews. The water line was in the city easement/right of way and there was a sprinkler system that the city crews damaged. The claimant has filed a claim for \$865.65. He stated city code states that the city is not responsible for damages that are done to property or structures within the public easement during repair work.

Council policy 5-3 states that the City is not responsible for restoring and paying for the replacement costs upon encroachment to the public utility easement and right of way. Staff is asking Council to deny this claim. They do not feel the City is negligent in this case.

Mayor Purcell stated the only reason this item was pulled was because someone called in and asked to speak about this claim but it looks as though they decided not to show up.

MOVED by Warren, SECOND by Shoemate, to deny the damage claim of Hamra Prop. Co. LLP in the amount of \$865.65. AYE: Burk, Shanklin, Haywood, Warren, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED.

3. Consider adopting a Resolution requesting the Governor of the State of Oklahoma to appoint a special commission to consider future rail transit options and uses of Union Station and its associated rail lines, to enhance future rail transit for the State of Oklahoma and the City of Lawton, and authorize the Mayor and City Clerk to execute said document. Exhibits: **Resolution 08-143** and 10-13-2008 Correspondence from ODOT.

4. Consider a request from the Kiowa, Comanche & Apache Intertribal Land Use Committee (KCAILUC) to waive accrued liens for securing of property, cleaning of trash and debris, and mowing, placed upon the old Southwestern Hospital building located on the 400 block of Lee Boulevard by the City of Lawton and authorize the City Clerk to release said liens upon verification of the KCAILUC s qualification and compliance with an ASCOG revolving loan to pay for abatement of the property aforementioned. Exhibits: Correspondence from KCAILUC, 10-9-2008. Lien information available in City Clerk s Office.

Mayor Purcell stated Chairman Wallace Coffey would like to address the City Council.

Chairman Coffey stated these liens go back to 1993 and one in 1994. The Southwestern Hospital was conveyed to the KCA back in 1988 and the transfer agreement did not occur until 1990. At that time they were not familiar with the fact that there was asbestos and problems with contaminants until after it was transferred. He stated they have gone through a completed study of the entire facility and they are making an application for a Brownsfield project through ASCOG for \$285,000. Currently it would only be good for storage space because all of the wiring and copper have been removed and there are problems with the structure. Right now they just want to clean it up.

Haywood stated he agrees with the Chairman and they should have been told about the problems.

Shoemate stated five years ago the KCA paid \$30,000 to ASCOG to start the Brownsfield project and it has been that long since anything has been done. It has been an expense to the KCA to mow and keep the graffiti off the building and it has been a major headache. He stated the citizens of Lawton want to see something done.

Chairman Coffey stated he would like to see some kind of development of the property and he will get with the City planning division to see what could be undertaken.

Allen Faries, 908 SW 3<sup>rd</sup> Street, stated he lives close to that hospital and he would love to see it used for something productive. He stated the crowned jewel of Lawton, the Mattie Beal Home, is right across the street from this eyesore. He would like to see the City Council let this debt go in increments as long as the entity that owns it keeps the property up. He stated the City has no control over the tribal governments and the City should have a little leverage.

Shoemate suggested Mr. Faries call the KCA office and leave a message for the board members.

Mr. Faries stated he has tried to do this and no one will return his phone call.

Shanklin stated he would hate to think that a \$4,700 bill would jeopardize a \$285,000 project.

Haywood stated he agreed.

Burk stated he has been called many times on this property and he is thankful that maybe something will be done with the property.

Haywood stated the KCA has contributed more than \$4,700 to this community.

MOVED by Drewry, SECOND by Haywood, to waive accrued liens for securing of property, cleaning of trash and debris, and mowing, placed upon the old Southwestern Hospital building located on the 400 block of Lee Boulevard by the City of Lawton and authorize the City Clerk to release said liens upon verification of the KCAILUC s qualification and compliance

with an ASCOG revolving loan to pay for abatement of the property aforementioned. AYE: Shanklin, Haywood, Warren, Shoemate, Hanna, Drewry, Burk. NAY: None. MOTION CARRIED.

5. Consider accepting a Quit Claim Deed from LNDS, Incorporated and authorizing the Mayor and City Clerk to execute the instrument. Exhibits: Location Map. Quit Claim Deed is on file in the City Clerk's office.

6. Consider accepting a permanent sewer line easement and a permanent drainage easement from Lawton Country Club, Incorporated, releasing an easement grant from Westside Golf & Country Club (now known as Lawton Country Club) and authorizing the Mayor and City Clerk to execute the instruments. Exhibits: Documents are on file in the City Clerk's Office.

7. Consider accepting two (2) temporary easements and one (1) permanent easement needed for the NW 38<sup>th</sup> Street (Gore Blvd. to Cache Rd.) Project # 2006-7 and authorizing the Mayor and City Clerk to execute the easements. Exhibits: Location Map. Easements are on file in the City Clerk's office.

8. Consider acknowledging receipt of a Tier I permit from the Oklahoma Department of Environmental Quality for the construction of 948 linear feet of 12-inch PVC waterline, 563 linear feet of 8-inch PVC water line and all appurtenances to serve Sleep Inn located along SE Interstate Drive and SE H Avenue in the SW/4, SE/4 of Section 32, T2N, R11W, I.M., Comanche County, Oklahoma. Exhibits: Permit to Construct on file in the City Clerk's Office.

9. Consider approving plans and specifications for the Landfill Cells 4 & 5 Project #2008-4 and authorizing staff to advertise for bids. Exhibits: None.

10. Consider awarding (CL08-066) Primary Effluent Pump to Weir Floway, Inc. of Fresno, CA. Exhibits: Department recommendation, abstract of bids.

11. Consider approval of payroll for the period of October 6 - 19, 2008.

#### BUSINESS ITEMS:

12. Hold a public hearing and consider an ordinance changing the zoning from F (Floodplain District) to R-1 (Single-Family Dwelling District) zoning classification with a Planned Unit Development overlay district located approximately mile south of NE Cache Road and mile west of NE Flower Mound Road. Exhibits: Site plan, Location Map, Application and Draft CPC Minutes. Ordinance No. 08-\_\_\_ is on file in the City Clerk's Office.

Mayor Purcell opened and closed the public hearing.

MOVED by Drewry, SECOND by Hanna, to strike item #12. AYE: Haywood, Warren, Shoemate, Hanna, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

13. Hold a public hearing and consider an ordinance closing the alleys in Block 37, Waldman Addition located between SW 11<sup>th</sup> and 12<sup>th</sup> Streets and Lee Boulevard and Summit Avenue. Exhibits: Ordinance No. 08-\_\_, Application and Location Map.

Richard Rogalski, Planning Director, stated this has to do with closing the alleys in Block 37, Waldman Addition. An Application for Closing of Public Way or Easement was submitted by WG-Lawton 08, LP, to close the alleys located between SW 11<sup>th</sup> and 12<sup>th</sup> Streets and Lee Boulevard and Summit Avenue for the development of a new Walgreens. The applicant proposes to replat all of Lots 1 - 6, the west 59 feet of Lots 7 - 9, and all of Lots 10 - 12, Block 37, Waldman Addition into one parcel. All private utility companies have been notified, and no objections to the closing have been received. The developer is working with the companies to relocate utilities prior to the proposed vacation of the alleys. The City Council approved construction plans for the relocation of the sanitary sewerline on September 9, 2008.

Notice of public hearing was mailed on September 26, 2008 to property owners within 300 feet of the requested area to be closed, and proper notice was published in *The Lawton Constitution* on October 12, 2008.

Shoemate questioned if this would cause a problem for the Stripes store on the corner.

Rogalski stated the Stripes store was located on the front half of the lots so there will be no issue.

Haywood questioned if this was vacating the alley.

Rogalski stated they are closing the alley to public use and after a period of time the alley would be vacated in District Court. This is a two step process.

PUBLIC HEARING OPENED.

Chuck Wade, attorney for Omni Group who is the developer, stated they have in place contracts to relocate the sewer line and the work is in progress now. When the action is taken to close, they will immediately file an action in District Court so they can build on a portion of the site that covers some of the alleys.

MOVED by Shanklin, SECOND by Haywood, to adopt **Ordinance 08-65** waive the reading of the ordinance, read the title only. AYE: Haywood, Warren, Shoemate, Hanna, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED

(Title read by City Attorney) Ordinance 08-65

An ordinance closing the alleys in block 37, Waldman addition, more particularly described in section one hereof.

14. Discuss any changes Council wishes to make to City Code Section 22-2-1-215 **Interference with meters-Averaging charges-Adjustment of water bill** relating to customer requests for utility account adjustments involving unexplained high water consumption and take appropriate action as necessary. Exhibits: **Ordinance 06-85**, Ordinance 08-08 and Minutes from January 22, 2008, Council meeting.

Mitchell stated the City Council requested staff to look at a procedure by which they could address the water adjustment issue. Staff surveyed six cities and made a recommendation that is very similar to the section of the city code that was eliminated in January 2008. This mirrors how they handle other types of leaks. Anything under \$500, the city/administrator would approve and anything over \$500 would have to come to the City Council for approval.

Rick Endicott, Finance Director, stated the recommendation staff is making is unlike the leak adjustment, they would only allow one adjustment per twelve month period per account. He stated they would adjust at 150%. For example, if the average bill over the twelve month period is \$100 and you get an unexplained high consumption and the bill is \$200, then you would have to pay \$150 and the city would adjust the \$50. The City is sharing in the adjustment along with the customer.

Karen Lopez, 7722 NW Wyatt Lake Drive, stated they moved to their new house in February 2008 and they put their house at 4614 Meadowbrook up for sale. She received a bill in August for over \$400. She has documentation from the City that they used over 95,000 gallons that month with no one living at the house. A year before then, in July 2007, when her and her family lived in that home they only used 31,000 gallons. She stated there is no explanation why the bill was so high. She checked the sprinkler system and there was no problem. The City came out and read the meter again and it was 95,000 gallons. She stated they could not find a leak anywhere and she does not understand how a vacant house would consume that much water.

Warren stated this is the same situation he spoke of regarding his constituent. The water had to go someplace.

Mayor Purcell questioned if the next month it was back to normal.

Ms. Lopez stated it did go back down to 36,000 gallons when they rented the home out the next month.

Mayor Purcell stated someone could have gone in when they were showing the home and turned the water on and it never got turned off until the next showing.

Burk stated someone may have flushed the toilet and it just kept running.

Ms. Lopez stated that her or her husband would go by the house either daily or every other day to check on things.

Haywood questioned if this was going to be retroactive.

Warren stated if they do, it should go back to July 1<sup>st</sup>.

Endicott stated staff has a difficult time whenever they have to go back retroactive. If they go back to July 1<sup>st</sup> and they have a flood of adjustments, it will take some time to process the adjustments. Staff is in the middle of conversion for the new billing system and they are on the front end of the AMR and new meters. He stated residents will have to be patient because they will not be able to process claims the day they come in.

Mayor Purcell stated they went through this will the last drill and they don't need to get in a bind again. Rather than start this whole flap again for two or three people, they should make this effective immediately.

Endicott stated there is no ordinance with this item. They will have to bring the ordinance back for approval.

Mayor Purcell stated he does not feel it is a good idea to try and go back to July 1<sup>st</sup>.

Burk stated they have all had calls and he feels they have to go back and fix it. He agrees that it needs to go back to July 1<sup>st</sup>.

Warren stated that residents should be patient and staff can get to it when they can. He does not believe there will be that many.

Ms. Lopez stated she can understand the complication of backdating the process.

Warren stated that residents will have to be careful about applying for an adjustment that is just a little higher than their normal bill because they may lose out on one later in the year. Once you use the once a year adjustment it is all over.

Endicott stated he would recommend they go back to August 1<sup>st</sup>.

Haywood stated he would prefer July 1<sup>st</sup>.

Mayor Purcell stated they create more problems in trying to fix this problem. They made all of those adjustments to the water rates through the month of July which took staff forever. He stated it is very difficult to go back to July because they have already adjusted part of last year's rates.

Haywood questioned if this would include Ms. Lopez.

Mayor Purcell stated Ms. Lopez's bill was in August, so she would be able to apply for the adjustment. He questioned when Councilmember Warren's constituent had the high water bill.

Warren stated it was in August or September.

Mayor Purcell stated this should take care of many of the ones they know about. He questioned if there were any calls regarding high water bills in July.

Burk stated he stated they have all gotten calls but he is not sure in what month.

Warren stated they need to decide a real start date for the billing and the rebate. If they start with August billing, that will take care of usage in July.

Burk stated he feels it should include those bills that were read after July 1<sup>st</sup>.

Endicott stated if they look at the August 1<sup>st</sup> date, everyone's consumption that was after July 1<sup>st</sup> would have been read and the bill would have gone out towards the end of July or August 1<sup>st</sup>. No matter how they do this, someone is going to feel they were left out. This will include any high consumption during this fiscal year. He stated if they go back to any bill produced after July 1<sup>st</sup>, they will be back into the previous fiscal year's consumption.

Shanklin questioned how many accounts they are talking about. There cannot be that many and staff can handle that.

Mayor Purcell stated he feels everyone is saying the same thing. They are all talking about consumption in July which is the August 1<sup>st</sup> billing date.

Shanklin stated he wanted an answer on how many accounts they are talking about.

Endicott stated he cannot answer that. If they make it retroactive it will depend on how many people come in and request an adjustment.

Shanklin questioned how many people come in and complain about high usage.

Endicott stated several on a daily basis.

Shanklin stated he does not feel this is serious as far as numbers when we have 33,000 accounts. He stated we used to be able to tell someone that their account is using too much water and it is cut off.

Burk stated why don't they tell people that if they have had a high bill on X date, then they are eligible to come in and file for a rebate. Then let's see how many people come in and then look at the numbers.

Haywood stated August 1<sup>st</sup> is fine with him.

Mayor Purcell stated staff needs to bring back an ordinance at the next meeting. He questioned if everyone agrees that the ordinance will say that any bills that were sent out from August 1<sup>st</sup> which will cover consumption in July.

Endicott stated there could be a few meters that may be read on July 1<sup>st</sup> that could be billed at the end of July.

Mayor Purcell stated if they all agree, they can direct staff to bring back an ordinance that would apply to every bill that went out from August 1<sup>st</sup> which would cover most of the consumption in July. If someone received a bill on July 29<sup>th</sup>, they would not qualify. He questioned if everyone agreed on this date.

Council agreed.

15. Consider receiving a report on the City's financial condition for the 1<sup>st</sup> Quarter of Fiscal Year 2008-2009, and provide direction to staff. Exhibits: None.

Endicott stated this is the first quarter, which is 25% of the year so everything should be measured against that 25%. City sales tax is up \$324,240 or 6.64% compared to last year. We have collected \$5,209,733 or 24.59% of budgeted sales tax. Franchise tax is up \$75,000 compared to last year. We have collected \$610,750 or 20.57%.

Police fines are down \$54,309 or 8.09% compared to last year. We have collected \$617,161 or 21%. All other general fund revenue is up \$163,000 and we have collected 25.3%. Water revenue is up \$1,200,000 or 41% compared to last year. We have collected about 28.59% of budgeted revenue. Sewer revenue is up \$458,000 and we have collected 22.14% of budgeted revenue. Refuse collection is up \$366,000 and we have collected \$1,700,000 or 22.22%. Landfill revenue is down \$31,000 or 6.4% compared to last year and we have collected 26.76% of budgeted revenue. He stated part of the reason the revenue is down is because we are losing a major deal with Goodyear. Council did pass an ordinance requiring trash haulers to dump in our landfill. He does not have a good feel if that is reflected in this amount because it is hard to measure the tonnage but it should be helping our revenue stream.

Mayor Purcell stated they should see some pick up next quarter with the Goodyear fall off being somewhat offset.

Endicott stated we have expended, in both the enterprise and general funds, exactly 26.31% of appropriations. All other fund expenditures are about 30%. He stated he has had a lot of questions about the fuel and he would like to be proactive yet cautious. They are all seeing the fuel prices go down at the pump but we are not seeing it over the first quarter. He stated he knows the City Council will be anxious to look at the fuel surcharge. He requested they give it another quarter. He stated this year we have used a total of 164,161 gallons of fuel, both unleaded and diesel. Compared to last year we used 189,834 gallons. In consumption of fuel we are down almost 26,000 gallons. The City Manager and City Council made some moves several months ago regarding conserving fuel and stepped up some procedures and he believes that departments have tried their best and this is evidence that we are using less fuel. He stated we have spent \$548,702 in fuel compared to last year when we spent \$467,000. We have used less fuel but have spent over \$80,000 more. He stated this is why he feels they need to give it another three months worth of data before they do anything.

Burk requested Endicott explain the pumping fees and sewer rehab.

Endicott stated the sewer rehab is done when we issue bonds to do projects. He stated we try to figure out what we are going to do over the next year. Most of that revenue comes in through those bond issues on the sewer rehab side. He stated pumping fees is a best guess because they are trying to figure out how much they are going to pump but they really don't know how much we are going to get charged. We get a bill from PSO and it is a pass through in the sense that we get a bill and we put that charge on the utility bill to get the revenue so it is not additional revenue.

Chief Ronnie Smith, Lawton Police Department, stated the citations are not down, the fines are down. He stated citations are about where they were last year if not a little over.

Mayor Purcell stated the Judge has said that people don't have the money to pay their fines.

Mitchell stated he has asked Chief Smith to give an update on crime stats.

Chief Smith stated homicides are still down by 33% for the first nine months of the year. The only violent crime that is up is rape and it up by 1.6%. Robberies are down 6.3% for the year. Assaults are down 11.1%, burglaries are down 3.9%, larcenies are down 10.8% and motor vehicle thefts are down 18%. He stated violent crimes are down 9.3% for the year and non violent crimes are down 8.8%. He stated his people are working hard getting people off the street. He stated crime is not as bad as it sounds in the newspaper. The newspaper is just reporting it more and that is why it looks like crime is up.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shoemate stated he and Councilmember Warren attended the grand opening of Pet Sense and the manager was telling him of an adoption program that will cut down on the number of animals euthanized in the area. He stated staff may want to get with them to find out more about the program.

Haywood encouraged everyone to get out and vote on November 4<sup>th</sup>.

Warren stated he would like to see staff look into some companies that create and maintain stoplight and speed cameras. He would like to see if they would be able to work out a deal where we could install one at Sheridan and Cache Road so that when we go to the legislature we have something in our hand as far as hard numbers.

Mitchell suggested the City Council adopt an ordinance in conjunction with this demonstration and have the state intercede.

Warren stated even if they intercede, they could at least send those photos to the vehicle owners and there will be a little bit of a change even if we are not able to ticket.

Chief Smith stated they visited with state legislators years ago and they would not even listen.

Warren stated it is not cost effective to have officers sitting at those lights.

Mayor Purcell stated they need to talk to some vendors at National League of Cities and they will work with state legislators this year to see if we can get a bill. It is working in Texas.

Drewry stated this is why everyone should vote for the best representative for southwest Oklahoma.

The Mayor and Council convened in executive session at 7:27 p.m. and reconvened in regular, open session at 7:42 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

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

Wilson read the title of item 16. No action is required.

ADDENDUM:

1. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss CJ-2007-822 City vs. Bob and Delores Mansell, et al., and if necessary, take appropriate action in open session. Exhibits: None.

Wilson read the title of the addendum. No action is required.

There being no further business to consider, the meeting adjourned at 7:44 p.m. upon motion, second and roll call vote.

/s/ John P. Purcell, Jr.

JOHN P. PURCELL, JR., MAYOR

ATTEST:

/s/Traci Hushbeck

TRACI HUSHBECK, CITY CLERK