

Meeting of 2008-6-10 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JUNE 10, 2008 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Janice Drewry, Mayor Pro Tem Also Present:
Presiding Larry Mitchell, City Manager
 John Vincent, City Attorney
 Traci Hushbeck, City Clerk

Mayor Pro Tem Drewry called the meeting to order at 6:23 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Dr. David King, Calvary Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: James Hanna, Ward Two
Jay Burk, Ward Four
 Robert Shanklin, Ward Five
 Stanley Haywood, Ward Seven
 Randy Warren, Ward Eight

ABSENT: Bill Shoemate, Ward One
Jeff Patton, Ward Six

ANNOUNCEMENT OF WINNERS OF THE CLEAN AIR COLORING CONTEST

Mayor Pro Tem Drewry and Katie Dermody, Planning Division, recognized Christina Givens, Courtney Chambers and Ashley Hoffman who were the winners of the Clean Air Coloring Contest. Each winner received a \$200 gift certificate to Terry's Bicycles.

PRESENTATION OF PROCLAMATION FOR GO SKATEBOARDING DAY

Mayor Pro Tem Drewry proclaimed June 21, 2008 as Go Skateboarding Day. She presented the proclamation to Chris Robinson, a local skateboarder.

AUDIENCE PARTICIPATION: None

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF MAY 13 AND MAY 27, 2008.

MOVED by Hanna, SECOND by Haywood, to approve the minutes of the Lawton City Council regular meetings of May 13 and May 27, 2008. AYE: Haywood, Warren, Hanna, Drewry, Burk, Shanklin. NAY: None. 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 Pro Tem Drewry stated item #2 needs to be considered separately. Shanklin requested item #23 be considered separately.

MOVED by Haywood, SECOND by Warren, to approve the Consent Agenda with the exception of items #2 and #23. AYE: Haywood, Warren, Hanna, Drewry, Burk, Shanklin. 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: Emmanuel Lutheran Church in the amount of \$883.15 (**Res. 08-73**) and Michel H. Lavigne in the amount of \$65.00. Exhibits: Legal Opinions/Recommendations and Resolution No. _____.

2. Consider the following damage claim recommended for denial: Timothy and Rosemary Reed in the amount of \$1,200.00. Exhibits: Legal Opinions/Recommendations.

Timothy Reed, 2827 NW Ozmun, stated on April 20, 2007 his plumber, who is Hodges Plumbing, called for an inspection because he replaced a sewer main back to the city main. The inspection was done and they were told to backfill their portion to where the city was also working on the city main. They left the portion open and the city backfilled when they got through. The city had a huge backhoe and they ran back over the portion that they had backfilled and bent a pipe. The pipe was bent to the point that it would not let the water flush into the city main and it was backing up into his home. He stated he had to call his plumber back out who replaced the pipe and charged him \$1,200.

Frank Jensen, Deputy City Attorney, stated the city crew did replace a segment of the main, then they only backfilled the area of the city main which was only about half the way up. They had to leave the stand pipe, which is connected to the main by the saddle, exposed so that Mr. Reed s plumber could then finish the job. The only backfilling that the city crew did was in the main about half way up. The stand pipe was exposed and sticking straight up in the air and there was no problem with it. At that point the city crew was done. The backhoe sits stationary over the main and does not move around at all, especially not over Mr. Reeds service line.

Shanklin questioned when and how did they determine that the main was damaged.

Jensen stated later on Mr. Reed was having problems with his service line. When the city crew left that site, the standpipe was sticking straight up and was not bent. The job passed inspection and the City crew backfilled partially and they were done.

Haywood questioned if Mr. Reed called his City Councilmember.

Mr. Reed stated he did not talk with Mr. Shoemate. He stated his plumber could not be here tonight. The backhoe had to be moved at some point.

Burk questioned if they could table this item until Mr. Hodges could be in attendance.

Jensen stated there was nothing wrong with the standpipe and the City could not drive that piece of equipment over an open trench for the service line. That is just not physically possible.

Burk stated he would like to hear a professional opinion from the plumber, Mr. Hodges.

Jensen requested that the crew member also be in attendance.

MOVED by Burk, SECOND by Shanklin, to table this item. AYE: Warren, Hanna, Drewry, Burk, Shanklin, Haywood. NAY: None. MOTION CARRIED.

3. Consider renewing the professional services agreement with James C. Ferguson of Walker, Ferguson and Ferguson for the defense of Workers' Compensation claims; Dennis Butler for prosecution of various eminent domain cases; John C. Mackey for various matters involving real property; and the Center for Economic Development Law for economic development financing methods, and authorize the Mayor and City Clerk to execute the agreements. Exhibits: Retainer Agreements for Professional & Legal Services on file in the City Clerks Office.

4. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in directing our third party administrator to make payment on the judgment in the Workers' Compensation case of Ronny Dye in the Workers' Compensation Court, Case No. 2007-12876 A. Exhibits: **Resolution No. 2008-74**.

5. Consider approval of renewing the Retainer Agreement for Professional Services with Doctor Eric Frische, to continue in providing professional services to the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement is on file at the City Clerk s Office.

6. Consider approval of renewing the Retainer Agreement for Professional Services with Mary Anne Derrico, RN, to provide professional services to the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement.

7. Consider approving a renewal Agreement effective July 1, 2008 through June 30, 2009 between the State of Oklahoma Office of Juvenile Affairs and the City of Lawton for the continued operation and management of a Community Intervention Center in Lawton, and authorize execution of the renewal Agreement and an Affidavit of Assignment authorizing payment directly from the State to Marie Detty as the CIC subcontractor. Exhibits: Renewal Agreement and Affidavit of Assignment on file in City Clerk s Office.

8. Consider approving a renewal Agreement between the City of Lawton and the Marie Detty Youth and Family Service Center, Inc. for the continued operation and management of the Community Intervention Center in Lawton and authorize execution of the renewal Agreement and any associated documents. Exhibits: Agreement with Marie Detty Youth and Family Service Center, Inc., is on file in the City Clerks Office.
9. Consider adopting a resolution declaring that Ninety Percent (90 %) of the budgeted and appropriated revenues for fiscal year 2007-2008 have been collected for the General Fund. Exhibits: **Resolution No 08-75** and Revenue reports dated May 31, 2008.
10. Consider the adoption of a resolution approving action taken by the Lawton Water Authority authorizing issuance, sale and delivery of the authority's promissory note to the Oklahoma Water Resources Board; ratifying and confirming a certain lease agreement, as amended; and containing other provisions related thereto. Exhibits: **Resolution No. 08-76**
11. Consider adopting a resolution setting the E-911 fee for the period of July 1, 2008, through June 30, 2009. Exhibits: **Resolution No. 08-77.**
12. Consider adopting a Resolution authorizing the installation of traffic control measures at the following intersections: NW Arlington at NW 29th St.; SW Cornell Ave. at SW 24th St.; SW 14th St. at SW Wisconsin Ave.; NW 7th St. at NW Mockingbird Rd.; SW C Ave. at SW 2nd St.; SW 4th St. at SW I Ave.; SW 24th St. at SW H Ave. and SW G Ave. Exhibits: Traffic Commission Minutes, Traffic Issue Requests, and **Resolution No. 08-78.**
13. Consider denying the request for installation of traffic control measures along SW 68th St. between SW Beta Ave. and SW 67th St. Exhibits: Traffic Commission Minutes and Traffic Issue Request.
14. Consider approving the Proposed Cooperative Program and Memorandum Agreement between the Oklahoma Water Resources Board, the U.S. Geological Survey and the City of Lawton for lake and stream level gauging and authorizing the Mayor and City Clerk to execute the agreement. Exhibits: Proposed Cooperative Program and Memorandum Agreement (on file with the City Clerk).
15. Consider approving agreements for euthanization services with the following entities, and authorize the Mayor and City Clerk to execute the Agreements: City of Grandfield and Town of Medicine Park. Exhibits: Agreements (On file with the City Clerk).
16. Consider approving agreements for refuse disposal with the following entities, and authorize the Mayor and City Clerk to execute the Agreements: Town of Indianahoma, Multiple Community Services Authority and Town of Temple. Exhibits: Agreements (On file with the City Clerk).
17. Consider approving a resolution adopting the Lawton Metropolitan Bicycle and Pedestrian Plan. Exhibits: **Resolution No. 08-79**, Prioritization of Lawton Bicycle and Pedestrian Projects Map. Lawton Metropolitan Bicycle and Pedestrian Plan on file in the City Clerk s Office.
18. Consider approving the construction plans for a sanitary sewer line located on SW 6th Street to serve the new Lawton Area Transit System facility. Exhibits: Location Map.
19. Consider awarding (CL08-059) Laboratory Services for toxic pollutants to Red River Environmental Laboratory & Consulting of Oklahoma City, OK. Exhibits: Department recommendation, abstract of bids.
20. Consider awarding (CL08-055) Warehouse Forklift to Texas Lift of Wichita Falls, TX. Exhibits: Department recommendation, abstract of bids.
21. Consider awarding (CL08-058) Rock Hauling to Atlas Tuck Concrete of Duncan, OK. Exhibits: Department recommendation, abstract of bids.
22. Consider extending the contract (CL06-050) Moving Radars with Kustom Signals, Inc. of Lenexa, KS. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
23. Consider awarding (CL08-060) Self-Propelled Asphalt Paver to Kirby-Smith Machinery Inc of Oklahoma City OK. Exhibits: Department recommendation, abstract of bids.

Shanklin stated he just wanted to bring this out to the taxpayers that we are in the process of purchasing an asphalt paver. He questioned when we would be receiving this piece of equipment.

Carl Dentler, Acting Public Works Director, stated the bidder has given them a ninety day delivery date.

MOVED by Shanklin, SECOND by Haywood, to award (CL08-060) Self-Propelled Asphalt Paver to Kirby-Smith Machinery Inc of Oklahoma City OK. AYE: Hanna, Drewry, Burk, Shanklin, Haywood, Warren. NAY: None. MOTION CARRIED.

24. Consider approval of payroll for the period of May 19 June 1, 2008.

OLD BUSINESS ITEMS:

25. Consider the following damage claims recommended for denial: Bob and Jean Baird. Exhibits: Legal Opinions/Recommendation.

Vincent stated this claim was tabled on May 27th at the request of Mr. Baird because they could not attend. He stated he was told that Mr. Baird and his plumber would be in attendance tonight.

Bob Baird, 7601 NW 14th Street, Oklahoma City, stated that his plumber was not in attendance. He stated his plumber, from Andy s Plumbing, called the City Attorney and explained his situation.

Vincent stated he did talk with Mr. Devine from Andy s Plumbing, but he asked him to be at this meeting. He suggested they table this item until Mr. Devine can attend.

Haywood suggested they table this item until Mr. Devine can be here.

Mr. Baird stated he would wait until the next meeting.

MOVED by Haywood, SECOND by Hanna, to table this claim. AYE: Hanna, Drewry, Shanklin, Haywood, Warren. NAY: Burk. MOTION CARRIED.

NEW BUSINESS ITEMS:

26. Hold a public hearing and consider an ordinance changing the zoning from PF (Public Facilities District) and F (Floodplain District) to C-4 (Tourist Commercial District) zoning classification located at 2415 East Gore Boulevard. Exhibits: Ordinance No. 08-____ (as recommended by the CPC), Ordinance No. 08-____ (as requested), Location Map, Site Plan, Application and CPC Minutes.

Richard Rogalski, Planning Director, stated this request is for a 5.6 acre tract located on the south side of East Gore Boulevard, approximately mile west of Flower Mound Road. The proposed uses are miniwarehouses, banking facility, and commercial retail. The applicant is R. Waggoner, Inc., who has a lease from the Oklahoma Commissioners of the Land Office.

The zoning of the surrounding area is C-5 (General Commercial District) to the north, PF and F to the south, PF to the east, and F to the west. The applicant has asked for C-4 zoning which is Tourist Commercial. Tourist Commercial is the only commercial zone that allows for billboards. He stated staff tends to recommend the most restrictive zoning that fits all of the uses the applicant applies for. In this case, C-2 fits all of the uses that the applicant has asked for. That is the recommended zoning from the Planning Division and the City Planning Commission agreed that C-2 zoning was more appropriate for this area.

On May 15, 2008 the City Planning Commission held a public hearing on this request. During the public hearing one person spoke in favor of the request. The CPC, by a vote of 6 to 1, recommended approval of C-2 zoning rather than the requested C-4 zoning.

Notice of public hearing was mailed on May 20, 2008 to six property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on May 25, 2008.

Hanna questioned if this was in the flood zone.

Rogalski stated originally on the old maps this was a flood zone. Now the actual flood zone is to the west.

Hanna questioned if the City would be responsible if the area floods.

Vincent stated the City would not be responsible since the flood plain has been moved to the west on the FEMA map.

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

MOVED by Warren, SECOND by Hanna, to adopt **Ordinance 08-42** changing the zoning from PF and F to C-2 zoning classification located at 2415 East Gore Boulevard, waive the reading of the ordinance, read the title only. AYE: Drewry, Shanklin, Haywood, Warren, Hanna.

NAY: Burk. MOTION CARRIED

(Title read by City Attorney)

Ordinance 08-42

An ordinance changing the zoning classification from the existing classification of PF (Public Facilities District) to C-2 (Planned Neighborhood Shopping Center District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; changing the zoning classification from the existing classification of F (Floodplain District) to C-2 (Planned Neighborhood Shopping Center District) zoning classification on the tract of land which is hereinafter more particularly described in section two (2) hereof; authorizing changes to be made upon the official zoning map in accordance with this ordinance.

27. Consider accepting the annual audit report of the City of Lawton for the year ending June 30, 2007. Exhibits: Copies of the audit report were distributed to the Mayor and City Council on May 28, 2008.

Rick Endicott, Finance Director introduced Andy Cromer, from Arledge and Associates, the external audit firm that does the City of Lawton s external audit.

Andy Cromer stated he is a CPA with John Arledge and Associates and this is the third or fourth year they have done the City of Lawton s audit. He stated there is another CPA firm involved, Crawford and Associates, and they are a totally independent firm from them. The Crawfords have stepped in and their role is to help the City get ready for the audit. They are two separate firms, different owners, different management, but they have a similar relationship with them on a number of city audits. He stated Arledge and Associates are actually the auditors and will be signing off on this. He reviewed the performeter analysis which is a rating on a scale of one to ten with ten being the best. The City of Lawton received a score of 7.5 and in his model that is a very solid, acceptable score and that is comprised of a number of indicators. One thing that he saw that lowered that from a ten down to the 7.5, is the City of Lawton s retirement plan. That plan is about \$16-17 million under funded. That number is an estimate because that is based on how long people will live and work and their salaries. Actuaries have methods to try and determine that number, it is an estimate but it is reasonable. This actuary says City you need to pump in X dollars of covered payroll every time you have a person whose eligible and is in the play, you need to pump in X cents on that dollar. That rate is higher than what the legal ordinance says. There is plenty of cash there for the moment, and there really is going to be plenty of cash there for a long time and it s going to take a long time before it actually runs out of cash and the City can t write a check to a participant. At the same point, you have this large so-called legacy cost that future city council members and future taxpayers will have to deal with. He stated the City of Lawton is very dependent upon sales tax and there are rainy day funds that are not high enough, which is the way it is in most communities.

He stated the City of Lawton receives and spends over \$500,000 in federal funding and they are required to do some additional testing on those large federal programs. If they find any problems with that program, those findings go into a document. That document gets mailed off to that federal agency. They did not have any findings, but that report still gets mailed out to the federal agency. Under the Letter of Audit Communication, there were no findings under those issues and nothing they need to discuss.

The Letter to Management is suggesting possible things to improve or to do differently. The first item talks about the fact that here we are on June 10th and the year end is June 30th. The second item comes up because the SEC has started this so called corporate governance. How or what do you as a governing body need to be doing to make sure that your internal controls are operating effectively. Internal controls are more than just making sure that no one is stealing your money. That s part of it. The other part is that your reporting is correct and the other part is that you are complying with laws and regulations. Part of this so called corporate governance is to look at an anti-fraud policy which is part of internal audit activities. If you have an internal audit department do they need to be reporting to an audit committee and how should that be structured.

He stated that it has gotten incredibly easy to steal money by people that have never even been to the City of Lawton much less even in the state of Oklahoma. They can take a check and copy it or reproduce a City of Lawton check far easier than they could ten years ago. It is rare for him not to have a client that at least once during the year this has happened. Banks have started asking their clients to submit an electronic version of checks they have written and when a check comes in, that bank takes this electronic version and compares it to the actual paper version in their hand. If it is not the same they kick it back to the City. He encouraged the council members to look into this. The last item deals with LATS and that they are starting to build up some fund balance which is getting close to \$95,000- \$100,000 and it really should probably be closer to zero, so there might be some opportunity for them to refund some money to the City of Lawton.

Burk asked for some more information on the LATS issue.

Mr. Cromer stated that the way LATS works, theoretically, is they spend money and then they seek reimbursement from the City for what they spent. If they collect fares, they will net that with what they collect from the City. But conceptually what they spend and what they collect back from the City should be zero. You might have some

timing differences, but at the end of time it should be zero. Their rainy day fund, which again should be zero, has been going up. Each year it gets bigger, it gets further away from zero.

Burk questioned if they were talking about a lot of money.

Mr. Cromer stated at the end of 06 it was \$60,000 and on June 30, 2007 it is \$95,000.

Burk stated that they need to check into this issue.

Cromer stated some of that may need to stay there, but that seems rather excessive for what they should have.

Burk questioned if the City of Lawton has any missing funds. Some council people sometimes come in and say they think there is missing money. He questioned if any money has been hidden somewhere.

Mr. Cromer stated absolutely not.

Burk questioned if anyone has stolen any money from the City?

Mr. Cromer stated no.

Burk questioned if we purposely delayed this audit so that we would not have it ready in time for budget and was it our fault?

Mr. Cromer stated that he did not know the intention, but the very last thing they needed was the pension plan audit because that factors into here. A separate CPA firm does that. That is nothing that they could control and he thinks that it was May 23rd when they finally received it.

Burk questioned if any of the federal funding looked like it had been misappropriated or been sent somewhere it shouldn't be.

Mr. Cromer stated no.

Burk stated that these are questions that he is asked all the time.

Endicott stated that he wanted to publicly state that there was no intention of delaying the audit.

MOVED by Burk, SECOND by Hanna, to accept the annual audit report of the City of Lawton for the year ending June 30, 2007. AYE: Burk, Shanklin, Haywood, Warren, Hanna, Drewry. NAY: None. MOTION CARRIED.

28. Consider adopting a resolution repealing Resolution No. 02-187 and increase the Lawton taxicab companies fares for all zones by \$.50 (Fifty Cents) and increase the fare for each additional person \$.50 (Fifty Cents) for all cross zones, and establishing an effective date of June 11, 2008. Exhibits: Request from AAA Cab Company, Checker, & Peoples Cab

Rate Card, December 1, 2002 (rates currently in effect), Proposed Rate Card proposed effective date, June 11, 2008, Resolution 02-187 and Resolution No. 08-_____.

Mitchell stated Resolution 02-187 was approved by the City Council on June of 2002. Staff received a request for the \$.50 increase.

MOVED by Shanklin, SECOND by Warren, to adopt **Resolution 08-80** increasing the Lawton taxicab companies fares for all zones by \$.50 and increase the fare for each additional person \$.50 for all cross zones, and establishing an effective date of June 11, 2008. AYE: Drewry, Burk, Shanklin, Haywood, Warren, Hanna. NAY: None. MOTION CARRIED.

29. Consider approving a request for Public Safety Improvement Cost Sharing for the Enterprise Rent-a-Car waterline project and entering into a cost sharing agreement with the developer for the installation of a new fire hydrant and 8 waterline in accordance with City Council Policy 6-4. Exhibits: Application for Public Safety Improvement Cost Sharing and Cost Sharing Agreement.

Rogalski stated on February 12, 2008 the City Council approved a new policy on cost sharing for public safety improvements. The issue was when there was an area of town that had been built out and there were existing buildings and all of the sudden you get a new tenant and there is no fire hydrant around and yet these buildings were around beforehand. This is the first application staff has received under the new policy. The applicant is Mike Brown Development, Inc. The applicant had to build an 18-inch line across Cache Road. There was an existing water line on the south side of Cache Road but there was not a suitable water line on the north side in order to provide that fire flow. The plans were already approved by the City Council to build an 8-inch line across Cache Road connecting to the 6-inch existing line, completing the loop and building a fire hydrant. The applicant has

shown that there are existing buildings on each side of his development in such that the new fire hydrant is serving 50% more buildings than just his own, so he did meet all of the criteria. Public Works has received and modified the building materials list with a cost of \$6,713.65 for the materials that Public Works would provide. Per the policy, the City would provide the materials on that list. They will make it available in the Public Works yard, given thirty days notice and the applicant would come pick the materials up and then build the improvements. The City would inspect the improvements and they would be brought to the City Council for final acceptance.

Mitchell stated the recommendation is that they allocate monies out of the 2007 CIP to cover this cost. The program has about \$5.5 million allocated for water line replacement in older parts of the community. Staff feels this is an eligible expense under that part of the 2007 CIP.

Shanklin questioned if we had done this before for anyone else.

Mitchell stated this is the first one under this new policy, but we have done this on several occasions for other commercial businesses.

Warren stated this is the first one where we have had an agreement in place.

MOVED by Warren, SECOND by Haywood, to approve a request for Public Safety Improvement Cost Sharing for the Enterprise Rent-a-Car waterline project and entering into a cost sharing agreement with the developer for the installation of a new fire hydrant and 8 waterline in accordance with City Council Policy 6-4 AYE: Burk, Shanklin, Haywood, Warren, Hanna, Drewry. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shanklin questioned who was responsible for the tree limb hanging over the right of ways. He stated there was one on 6th Street.

Vincent stated he called that one in to Public Works that morning.

Haywood questioned who is responsible.

Vincent stated under the policy, if the limb is less than 14 feet high in the street right of way, the City takes care of it.

Haywood questioned what department takes care of cutting the limbs.

Vincent stated Parks and Recreation.

Shanklin questioned whose responsibility it was to clean up the graffiti off of buildings.

Vincent stated the owner of the property is responsible. He stated if they can find out who did it, the court system can order them to clean it up.

Chief Ronnie Smith, Lawton Police Department, stated if you can catch who did it, you can collect up to three times the amount of damage.

Haywood stated this past weekend they had blessed building in Lawton View at 1216 SW Georgia. He stated there were so many people involved and he was very proud. He stated Habitat for Humanity plans on building four homes in Lawton View. He stated Lawton Fort-Sill Juneteenth is scheduled for June 14th starting at 5:00 p.m. It will be held at Patterson Center.

Mitchell stated there may be a special council meeting either on June 30th or July 2nd. They are expecting the arbitration decision on the police union somewhere around those dates.

There being no further business to consider, the meeting adjourned at 7:32 p.m. upon motion, second and roll call vote.

/s/ Janice Drewry
JANICE DREWRY, MAYOR PRO TEM
ATTEST:

/s/ Traci Hushbeck
TRACI HUSHBECK, CITY CLERK

