

Meeting of 2008-9-23 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
SEPTEMBER 23, 2008 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr. Also Present:
Presiding Bryan Long, Acting City Manager
John Vincent, 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 Lloyd Grubbs, Trinity Assembly of God, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
James Hanna, Ward Two
Janice Drewry, Ward Three
Robert Shanklin, Ward Five
Jeff Patton, Ward Six
Stanley Haywood, Ward Seven
Randy Warren, Ward Eight

ABSENT: Jay Burk, Ward Four

RECOGNITION OF CITY EMPLOYEES: MARDI REPASY REVENUE SERVICES; DEBBIE DOLLARHITE
PLANNING DIVISION

Mayor Purcell recognized Ms. Repasy and Ms. Dollarhite for job well done which was prompted by a letter sent by Pastor Robert Weiger, Bible Baptist Church. He presented Certificates of Recognition to both.

AUDIENCE PARTICIPATION:

Karen Schaefer, 1919 NW Arlington, stated she would like to have some answers regarding handicap accessibility. Many businesses in this area are not up to the standards of the American Disabilities Act. She is talking about doors that are wide enough for wheelchairs and scooters, but if you don't have someone with you to open the door you cannot get into the building unless a stranger will help you. Most businesses do not have automatic doors and their employees are not at the front door to help you. She would like to see a code change that would make everything accessible.

Vincent stated there is no requirement on existing structures to retrofit.

Haywood questioned if the Human Rights Commission was still in existence.

Mayor Purcell stated no, not locally, it is at the state level.

Haywood stated members of the commission used to go out and talk with businesses about being ADA compliance which is very important.

Vincent stated he has not researched the requirements, but he did not recall anything about the door having to be automatic.

Mayor Purcell requested staff to look into the requirement of automated doors in new construction and get back with Ms. Schaefer.

Clifford Douglas, representing IDMR Bible School, 525 SW 11th Street, stated they had a leak last year that cost them 19,000 gallons of water in a month. They performed the test which was provided for them by city staff and no leak was found. City staff eventually changed the meter out, they had no leaks, so staff put the old meter back in and it showed there was a leak somewhere. They only have two toilets and two lavatories in the building and it is only an eight foot span from the meter to the building and the ground was never wet. They changed the meter in November of last year and now they are back to normal. He met with Mr. Endicott and Mr. Mitchell as well as coming before the City Council. They paid \$168 more than their average bill and they would like to have a reimbursement or credit because they did not have a leak in the building.

Patton questioned what they could do about these types of issues. He stated this does not seem right.

Haywood stated it had to be something. He had a constituent who went from using 2,000 gallons to 32,000 gallons and they did take out the meter. They need to find a solution.

Warren stated he brought this up at the last meeting and it fell on deaf ears. They need to figure something out, but there is really no way to do it other than the way they do it now. What they do has to be right for everyone. The water went someplace.

Mayor Purcell stated when someone has a leak in a toilet it does not take long to use a lot of water when it is filling and refilling.

Mr. Douglas stated that he has done everything to figure out this problem. They meet at the building three times a week and he is in the building during the day and he would notice if the toilet was

running.

Warren stated those meters are mechanical instruments that run slow, fast or exactly as they should.

The only way you get a large bill that you don't deserve to pay is if the meter is found to be running fast. The water has to be going somewhere if it went through the meter. How are they going to decide who they are going to pay for and who they are not paying.

Shanklin stated that just because we bring it in and we find nothing wrong with it, that doesn't mean that these people should be held responsible for that debt when they are looking at 1% out of 33,000 customers down here complaining about it. There has to be some way that they can adjust this. He stated the meter started working again and that is the track record right there. He does think they should be able to make some type of adjustment for these people who are sincere about their water bill and the over usage. He questioned if Mr. Douglas already paid the water bill.

Mr. Douglas stated he did pay the bill and they are not behind on their account.

Mayor Purcell questioned what kind of guidance the Council would like to give to staff regarding this issue.

Shanklin stated that common sense should prevail. He suggested that staff think about how to solve this issue and bring it back to Council and maybe together they can get there.

Haywood stated that some people may try to pull something, but staff would know who these people are. But some residents are sincere.

Shoemate questioned what happened to those meters that have caused problems.

Mayor Purcell stated in this case it wasn't the meter. He stated they put in a new meter and it didn't do anything so they put the old meter back in.

Mr. Douglas stated they took the old meter out, put in the new meter and the problem was solved. Then they took the new meter out and put the old meter back in and the problem persisted. They put back in the new meter and they have not had a problem.

Mayor Purcell stated that staff has some guidance now and suggested they move on.

PRESENTATION OF PROCLAMATION FOR CONSTITUTION WEEK

A representative from the Daughters of the American Revolution thanked the Council for proclaiming September 17 23 as Constitution Week.

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.

MOVED by Warren, SECOND by Haywood, to approve the Consent Agenda as written. AYE: Hanna, Drewry, Shanklin, Haywood, Warren, Shoemate. NAY: None. ABSENT: Patton. 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: Tom and Carol McClure in the amount of \$275.00, Bryce and Sara Bivens in the amount of \$26,000.00 (**Res. 08-131**), Luis Pagan in the amount of \$1,200.00 (**Res. 08-132**) and AT&T Telephone in the amount of \$315.35. Exhibits: Legal Opinions/Recommendations, Resolution No. ___ and Resolution No. ___.
2. Consider the following damage claims recommended for denial: Shafic and Patricia Malouly in the amount of \$960.00 and Fort Sill Federal Credit Union in the amount of \$380.80. Exhibits: Legal Opinions/Recommendations.
3. Consider ratifying the action of the City Attorney in filing an appeal in the workers compensation case of Ronnie Walker, Workers Compensation Court Case No. 2006-14472 R. Exhibits: **Resolution No. 08-133**.
4. Consider approving an Outside Water Sales Contract with James and Vicki Apple, and authorize the Mayor and City Clerk to execute the Contract. Exhibits: Location Map. Contract is on file in the City Clerk s Office.
5. Consider renewing the professional services agreement with Gary M. Bush of The Public Finance Law Group PLLC, for certain financial related representative services, and authorize the Mayor and City Clerk to execute the agreement. Exhibits: Retainer Agreement for Professional & Legal Services on file in the City Clerk s office.
6. Consider renewing the agreement between the Board of County Commissioners of Comanche County and the City of Lawton for library service to Comanche County residents living outside the City of Lawton. Exhibits: Agreement on file in City Clerk s office.
7. Consider approving contracts for Children s Art Studio , Fall 2008 semester for Steven Scott Smith (\$ 675), Lawrence Johns (\$ 540), Kenneth Hobbs (\$ 270), and Sandra Dunn (\$ 315) instructors for the program. Total amount for fall semester stipends is \$ 1,800.00.
Exhibits: Contracts on file in City Clerk s office.
8. Consider approving a Mutual Assistance Agreement for Fire Protection between the City of Waurika Volunteer Fire Department and the City of Lawton Fire Department. Exhibits: Mutual Aid Agreement between City of Lawton Fire Department and the City of Waurika VFD.
9. Consider the sale of surplus Fire Engine/Pumper to the Waurika Volunteer Fire Department. Exhibits: Letter of request from City of Waurika Volunteer Fire Department.
10. Consider accepting a FEMA/State of Oklahoma reimbursement check for the total amount of five hundred forty eight thousand one hundred eighty one dollars and fifty six cents (\$548,181.56) and authorize the Finance Department to deposit these funds into the General Fund, FEMA Fund 35, Sewer Rehab Fund and the 2005 CIP to reimburse the accounts from which the funds were expended during the 2007 summer floods. Exhibits: Summary of FEMA/State of Oklahoma checks received to date and eligible project costs.
11. Consider waiving Council Policy #8-1, approving an agreement with R.B. Hendrick & Sons Co. Inc. for professional engineering design services for the Numu Creek Bridge Replacement Project #2008-15 and authorizing funding . Exhibits: None.
12. Consider adopting a Resolution authorizing the installation of traffic control measures at the following intersections: 17 different locations where side streets intersect with NE Kingsbriar Dr. in the Kingsbriar and East

Lake Additions (see attached location map); NW Maple Ave. & NW 64th St.; NW 40th St. near 2212 NW 40th St.; NW 67th St. & W Gore Blvd.; NW 27th St. from NW Ferris Ave. to NW Wesley Ave.; NW Elm Ave. near 5314 NW Elm Ave.; NW 52nd St. & W Gore Blvd. Exhibits: Traffic Commission Minutes, Traffic Issue Requests, and **Resolution No. 08-134**.

13. Consider denying the requests for traffic control measures along NW 35th St. near John Adams Elementary School and at 710 SW A Ave. Exhibits: Traffic Commission Minutes and Traffic Issue Requests.

14. Consider a request to provide payment in lieu of stormwater detention for a proposed accessory building at 509 NE 15th Street. Exhibits: None.

15. Consider a request to provide payment in lieu of stormwater detention for the MacArthur High School Gym Lobby Addition at 4402 E. Gore Blvd. Exhibits: None.

16. Consider a request to provide payment in lieu of stormwater detention for the Eisenhower High School Gym Lobby Addition at 5202 W. Gore Blvd. Exhibits: None.

17. Consider approving the record plat for Oak Ridge Addition, Part 1A, and accepting the improvements, escrow agreement in lieu of minor incomplete improvements, maintenance bonds, and easements outside the platted area. Exhibits: Plat Map. Escrow Agreement, Maintenance Bonds and Easements on file in City Clerk s Office.

18. Consider approving the record plat for Carl s Sheridan Addition. Exhibits: Plat Map.

19. Consider approving the record plat for Sherwood Addition, Part 8, and accept the improvements, maintenance bonds, and easements outside the platted area. Exhibits: Plat Map. Maintenance Bonds and Easements on file in the City Clerk s Office.

20. Consider setting the date of October 28, 2008, to hold a public hearing and consider an ordinance closing the alleys in Block 37, Waldman Addition located between SW 11th and 12th Streets and Lee Boulevard and Summit Avenue. Exhibits: Application, Location Map and Council Policy 5-1.

21. Consider awarding (RFPC09-005) Copier Contract to Bennett Office Equipment and Supply Inc. of Lawton, OK. Exhibits: Department recommendation, abstract of proposals.

22. Consider awarding (CL09-006) Testing Services to Standard Testing and Engineering Company of Lawton, OK. Exhibits: Department recommendation, abstract of bids.

23. Consider approval of payroll for the period of September 8 21, 2008.

BUSINESS ITEMS:

Mayor Purcell stated that item #25 needs to be stricken from the agenda. They have received a request from the attorney representing the appellant that the item be postponed to the next Council meeting.

24. Consider the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year (FFY) 2007, receive a briefing on the CAPER, hold a public hearing to receive input from citizens, and approve the report for submission to HUD, and authorize the Mayor to sign the approved CAPER. Exhibits: The CAPER is on file in the City Clerk s Office.

Tom Aplin, Assistant Director of Housing and Community Development, stated he is here for the annual presentation on the performance of the consolidated plan for federal fiscal year 2007. He distributed a hard copy of the presentation. He stated they had \$181,878 available for administration and \$1,485,277 available to go against various eligible projects that were authorized to be funded during this period. He stated they had funded 28 projects during this period, 13 of those projects were completed. Some of these are actually not completed and paid until after the end of the fiscal year, so that number could be higher than it is today. The total expenditures for the year on projects were \$418,720. Regarding housing activities, the housing delivery costs assisted 96 families or households with property issues. He stated they had 71 housing rehabilitation projects that were concluded during this year. Total funds expended were \$344,587. He stated there is a limit on the amount of funds that they can expend on public services which is 15% of the annual allocation. At the beginning of the year, their net obligations were \$135,288 and there was program income of \$18,900 plus the entitlement grant of \$889,183 giving them a total grant amount of \$908,074. He stated they allocated and expended 14.9% for public services. Under financial summary, they are required to expend funds for a certain percentage benefit of low and moderate income citizens in the community. The expenditures typically run between 95% to 100% benefit to low and moderate income people. This year 100% of the funds were expended on low to moderate income individuals. He stated regarding the Section 108 loan, they have set aside over the past few years approximately \$450,000 in order to ensure they would be able to make the payments on the Section 108 loan once it was approved. The loan

was approved and they anticipated making the first payment in December, however the first payment is not due until February of 2009. As a result those funds were not expended. Regarding a project related to the 2nd Street redevelopment, the decision was made to hold on implementing that project until such time as the actual redevelopment project began which should be soon. The idea was to enhance the water line under the street which will increase the size to 8-inch which fits within the strategic plan for enhancing the water line system. He stated the brownsfield economic development initiative was \$1 million which is linked to the Section 108 loan. He stated that \$500,000 of that serves as collateral, a debt service reserve for the Section 108 loan. The remaining \$500,000 is to go to purchase brownsfield properties in the Phase IA project along 2nd Street.

Tim Libby, Grants and Fiscal Officer for Housing and Community Development, stated the Home Investment Partnerships program has \$490,000 this year with just under a million authorized for projects and \$113,000 for administration. There were 25 projects with 10 first time home buyers, 11 rehabs and 4 new homes built by the community housing development organizations. Currently there is an unexpended balance of \$628,063 for project. In the HOME program they have to match 25% of that years entitlement with city funds. For the past several years they have been rated by HUD as a city in severe fiscal distress and thus the match has been waived. This has allowed them to build and bank match. All of the funds must be committed within two years and expended within five year or they lose them. All of the funds from 2004 have been expended and all of the funds have been committed. Thirty eight percent of funds for FY 2007 are committed.

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

MOVED by Haywood, SECOND by Hanna, to approve the report for submission to HUD, and authorize the Mayor to sign the approved CAPER. AYE: Drewry, Patton, Haywood, Warren, Shoemate, Hanna. NAY: None. ABSENT: Shanklin. MOTION CARRIED.

25. Hear the appeal of Central Baptist Church and Trinity Christian Academy from the decision of the Building Development Appeals Board and take appropriate action.

Exhibits: Copy of the Appeal to the Building Development Appeals Board (Letter from Townsend & Associates); Copies of Lawton City Code, 2005, Chapter 6, Article 6-7, Division 6-7-1, Sections 6-7-1-701 through 6-7-1-706; Copy of the By Laws of the Building Development Appeals Board; letter from J.W. Doolin requesting appeal to Council; and response letter from City Attorney s Office regarding appeal to Council. Unapproved Minutes of the Building Development Appeals Board are on file in the City Clerk s Office.

THIS ITEM WAS STRICKEN

Councilmember Warren exited the meeting.

26. Consider adopting resolutions approving the submission of Transportation Enhancement (TE) grant applications to the Oklahoma Department of Transportation for a streetscape enhancement project for 2nd Street from south of Gore Boulevard to SW C Avenue, a streetscape enhancement project for 2nd Street from Ferris Avenue to south of Dearborn Avenue, and implementation of prioritized projects in the Lawton Metropolitan Bicycle and Pedestrian Plan and authorize the Mayor to execute. Exhibits: Resolution No. 08-___ (Bicycle and Pedestrian Plan), Resolution No. 08-___ (Ferris Avenue to south of Dearborn Avenue), Resolution No. 08-___ (South of Gore Boulevard to SW C Avenue). Complete Applications on file in the City Clerk s Office.

Richard Rogalski, Planning Director, stated they have two grants that they are just getting ready to bid to do a couple of phases of the 2nd Street project. There is a third they have at the Museum of the Great Plains for the Intermodel Transportation Museum which will also be going to bid fairly soon. This item is for the current cycle of applications. This item will cover resolutions in support of three different applications. Two applications are concerned with the remaining phases of 2nd Street. The engineering has been done on the 2nd Street project from Ferris Avenue to C Avenue and there is a current project that goes from just south of Gore to just north of Columbia. That leaves two ends.

On the north end they are calling Phase IB and the south they are call Phase IV. Both of those grants application are included. The other project is for the city wide bicycle and pedestrian plan project. One of the primary means to get this build is through these enhancement grants. The Comanche Nation has donated \$100,000 to use as the match for this project. This would be a \$500,000 grant and the City of Lawton would have no out of pocket costs other than staff time.

MOVED by Drewry, SECOND by Patton, to adopt Resolution No. 08-135 (Bicycle and Pedestrian Plan), Resolution No. 08-136 (Ferris Avenue to south of Dearborn Avenue), and Resolution No. 08-137 (South of Gore Boulevard to SW C Avenue).

Shanklin questioned when they would start these projects.

Rogalski stated the applications are due in October but will not be funded until next summer. They will also have to go through a design phase on the bicycle and pedestrian plan before they can go to a construction phase. On the 2nd street projects, the design is done, so once the grant is approved they can go directly to bidding.

VOTE ON MOTION: AYE: Patton, Haywood, Shoemate, Drewry. NAY: Shanklin. ABSENT: Warren. ABSTAIN:

Hanna. MOTION FAILED.

Mayor Purcell stated it takes five votes to pass a resolution, so this means that the City Council will turn all of this down. He stated if no one wants to change their mind and reconsider, they will have to wait and see if Councilmember Burk wishes to bring this item back to the Council. They will not be able to move forward on these projects until they have five votes.

Shanklin stated he wants to protect his ward with regards to what is going on and the state of the economy. He stated they have the cart before the horse down there. He requested that Councilmember Hanna change his vote and let this go forward and he will take the heat.

MOVED by Shanklin, SECOND by Drewry, to reconsider item 26. AYE: Shanklin, Patton, Haywood, Shoemate, Hanna, Drewry. NAY: None. ABSENT: Warren. MOTION CARRIED.

MOVED by Drewry, SECOND by Patton, to adopt **Resolution No. 08-135** (Bicycle and Pedestrian Plan), **Resolution No. 08-136** (Ferris Avenue to south of Dearborn Avenue), and **Resolution No. 08-137** (South of Gore Boulevard to SW C Avenue). AYE: Patton, Haywood, Shoemate, Hanna, Drewry. NAY: Shanklin. ABSENT: Warren. MOTION CARRIED.

27. Consider an ordinance pertaining to right and left turns, amending Section 23-9-901, Article 23-9, Chapter 23, Lawton City Code, 2005, by clarifying the method of turning at intersections, including when a traffic marker or sign has been placed within or adjacent to an intersection, providing for severability, and declaring an emergency. Exhibits:

Ordinance 2008-__.

Vincent stated the main emphasis of this ordinance was the buttons in the street and left turns. The state saw fit to change their statutes so we needed to change our statutes. They are trying to define when a person makes a left turn, which lane they turn into. For example, if your are on Sheridan Road turning westbound onto Cache there is a double left turn lane. The cars on the inside lane would turn into the inside lane and the cars in the outside lane would turn in the middle lane.

Mayor Purcell questioned if this applied to right turn lanes.

Vincent stated the statute deals with left turn lanes. There were no changes with regards to right turn lanes.

MOVED by Warren, SECOND by Hanna, to adopt **Ordinance 08-62**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Haywood, Warren, Shoemate, Hanna, Drewry, Shanklin, Patton. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 08-62

An ordinance pertaining to right and left turns, amending Section 23-9-901, Article 23-9, Chapter 23, Lawton City Code, 2005, by clarifying the method of turning at intersections including when a traffic marker or sign has been placed within or adjacent to an intersection, providing for severability, and declaring an emergency.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shanklin stated he hoped to get a hold of Mike Dixon with the McMahan Foundation to discuss the pruning of the trees in Elmer Thomas Park.

Haywood stated the Airport Authority was notified that residents cannot have windmills within the vicinity of the airport.

Warren stated he attended the Lee West Neighborhood Watch meeting and they had around 60 people in attendance. They are staying active and it is making a difference.

Mayor Purcell stated the International Festival will be held this weekend. He received a request from the Mayor of Abilene asking if he would sign a letter to American Airlines. No one objected to the Mayor signing the letter.

Jerry Ihler, Public Works Director, stated two meetings ago Mr. Alvin Martin came before the City Council requesting staff look into Arlington Street from 27th to 31st. He had some problems with some ponding in front of his driveway. He stated Arlington is in very poor shape and there is some heaving with some low spots. The street needs to be reconstructed. It was overlaid more than twenty five years ago and part of the overlay is peeling off as a result of the run off we have in that area. The overall construction costs to reconstruct from 31st to 27th and include the storm drain would be around \$800,000 to \$1 million. He explained to Mr. Martin that we do not have those funds in the budget. The next capital improvement program would be around 2012 and this is an area that was identified in earlier CIP s but never made it to the top of the list. He stated if Council had no objections, staff could start working on the design so that it

would be ready by that time. He announced that on October 2, 3, 4 and 5 staff begins the next fall clean up. Citizens can put out their trash on those dates and on Monday, October 6th, crews will start picking up in those areas starting west and working their way to the east. It will take them three to four weeks to get through.

Hanna questioned if they could move that date back a week because the trees are still in bloom and he would like to wait until residents are able to prune their trees. He stated the International Festival is going on this weekend and residents will not have enough time to get everything together for the clean up.

Ihler stated the City Council approved those dates earlier in the year. He has no objections to moving the date, but they have already sent out the information to the media.

Mayor Purcell stated there is too much information out to change it this year, but they need to think about that when setting the dates for next year.

The Mayor and Council convened in executive session at 7:16 p.m. and reconvened in regular, open session at 7:27 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

28. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending damage claim of Rosemary Reed, Damage Claim No. DC-2008-073; and Timothy Reed, Damage Claim No. DC-2008-074, and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of item #28. No action was taken.

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

Vincent read the title of item #29. No action was taken.

ADDENDUM:

1. Pursuant to Section 307B. 4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending grievance AFSCME has filed regarding the general employee retirement plan, and if necessary, take appropriate action in open session. Exhibits: None.

MOVED by Warren, SECOND by Hanna, to authorize the City Attorney to file a lawsuit seeking a declaratory judgment that the City s retirement system is not subject to negotiations and injunctive relief. AYE: Hanna, Drewry, Shanklin, Patton, Haywood, Warren, Shoemate. NAY: None. MOTION CARRIED

There being no further business to consider, the meeting adjourned at 7:29 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