

Meeting of 2010-1-12 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
JANUARY 12, 2010 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr. Also Present:
Presiding Larry Mitchell, City Manager
 Frank Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Ray Lacey, 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 Trey Smart, First Baptist East, 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
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
 Doug Wells, Ward Eight

ABSENT: None

PRESENTATION OF OKLAHOMA MUNICIPAL LEAGUE HONOR ROLL OF SERVICE.

Mayor Purcell presented certificates and 25 year service pins to City of Lawton employees.

AUDIENCE PARTICIPATION:

Audrey Johnson-Drew, 5535 NW Cache Road, stated she is having an issue with the Animal Control Division. On November 10th she was moving and a stray pit bull came into her yard and she chained him up. She called Animal Control and let them know there was a chained dog in the yard. She stated they presented her with two tickets, one for chaining a dog and one for no license on the dog which was not even hers. Animal Control came out to her job and presented her with the tickets. She stated her neighbor knew the owner and called them to come pick up the dog and another Animal Control officer was there to meet them, but the other officer still gave her the tickets. She does not want to pay these tickets.

Mayor Purcell stated that the City Attorney will meet with her to give her some guidance.

Joshua Blum, 508 SW 26th Street, distributed a copy of a tort claim for damages to his property. He had a house on 28th Street and the water was turned off on August 17th. On December 11th his neighbor called to tell him there was water running out of the house. He has contacted his insurance company and they have refused to pay this claim due to the fact there was water being supplied to the house. He did not have heat on in the house because the house was on the market to sell.

Mayor Purcell stated the claim needs to be filed with the City Clerk s office so that the issue can be investigated. A recommendation will be presented to the City Council for approval or denial. He stated there is nothing the City Council can do tonight.

Mr. Blum gave the original tort claim form to the City Clerk.

Michael Tennis, 1710 NW Cherry, stated he would like to publicly acknowledge the efforts made by fire, police and

general employees in helping stranded motorists on Christmas Eve. He witnessed firsthand the action taken. He felt it was appropriate to give kudos where they are deserved.

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 stated they need to strike #15 and #20 and consider item #2 separately. Shanklin requested item #19 be considered separately.

MOVED by Drewry, SECOND by Hanna, to approve the Consent Agenda with the exception of items #2, #15, #19 and #20. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolutions authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: Jeff and Aileen Sadler in the amount of \$3,100.00 (**Res. 10-01**), Edward and Laverne Selstad in the amount of \$219.50, Grover and Christy Myers in the amount of \$1,381.81 (**Res. 10-02**) and Samella McWilliams in the amount of \$2,516.83 (**Res. 10-03**). Exhibits: Legal Opinion/Recommendation, Resolution No. 2010-____, Resolution No. 2010-____, Resolution No.2010-____.

2. Consider the following damage claims recommended for denial: Christopher and Latasha Jessie in the amount of \$1,142.71 and SW Bell Telephone, dba AT&T Telephone, L.P. in the amount of \$2,455.23. Exhibits: Legal Opinions/Recommendations.

Christopher Jessie, 3335 SW Overland, stated his car was damaged by Lawton Police officers while they were attempting to apprehend a suspect. He is requesting that these damages be repaired. On September 18, 2009 at 10:30 p.m. he was leaving Cameron Stadium and as he approached his car he witnessed LPD officers chasing two young men. The officers and juveniles were involved in a struggle between his vehicle and another parked vehicle.

When he was allowed to leave the scene he inspected his car and he noticed there were creases in the back passenger door and black scuff marks along the passenger side. He phoned dispatch and an officer came to his home and made a report. He requested approval of this claim.

Kelea Fisher, Assistant City Attorney, stated staff has recommended denial of this claim. She has interviewed Lt. Sutherland who was there that evening. There were also Lawton Public School officers there and Lt. Sutherland indicated that he did not see any LPD officers specifically damage Mr. Jessie s vehicle. The primary reason that her office has recommended denial is that there are two exemptions under the Governmental Tort Claims Act that this situation will fall under. The actions of the officer would be exempt because they were enforcing the law. When there is a civil disobedience or riot, the method of providing police protection is exempt from liability.

Shanklin questioned if the vehicle has been repaired.

Mr. Jessie stated yes.

Shanklin questioned the amount of the deductible.

Mr. Jessie stated his deductible was \$500.

Shanklin recommended they pay the \$500 for his deductible.

Haywood thanked Mr. Jessie for all of the work he is doing in the Ranch Oaks neighborhood.

MOVED by Shanklin, SECOND by Haywood, to adopt **Resolution 10-04** approving the damage claim of Christopher and Latasha Jessie in the amount of \$500.00. AYE: Drewry, Burk, Shanklin, Haywood, Hanna. NAY: Zarle, Wells, Shoemate. MOTION CARRIED

MOVED by Shanklin, SECOND by Haywood, to deny the damage claim of SW Bell Telephone, dba AT&T Telephone, L.P. in the amount of \$2,455.23. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED

3. 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 Jed Fox in the Workers' Compensation Court, Case No. 2007-09653Q. Exhibits: **Resolution No. 2010-05**.

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 Larry Cochran in the Workers' Compensation Court, Case No. 2009-06605K. Exhibits: **Resolution No. 2010-06**.

5. Consider approving contract with Theatreworks USA for school performances of Max and Ruby on Thursday, March 25, 2010. Exhibits: Contract on file in City Clerk's office.
6. Consider accepting the Numu Creek Bridge Replacement Project #2008-15 as constructed by Wittwer Construction Co., Inc. and placing the Maintenance Bond into effect. Exhibits: None.
7. Consider approving the Oklahoma Department of Transportation (ODOT) Change Order No. 3 for the NW 67th Street (Cache Road to Rogers Lane) Project #2003-7. Exhibits: None.
8. Consider awarding a contract for the purchase of poly sewer pipe as part of the Sewer Rehab Stimulus Project ORF-09-0015-CW. Exhibits: None.
9. Consider accepting 20-foot utility easements from Morford Land and Leasing Company along the southern portion of Lots 39 and 40, Block 9, The Enclave, Part 2. Exhibits: Location Map, Easement on file in City Clerk's Office.
10. Consider approving a credit adjustment in the amount of \$903.35 to First Baptist Church's utility account #1805161500/00029225 for the property at 428 SW B Avenue for an unexplained, exceptional billing. Exhibits: Signed, notarized statement from John Cullison dated 10/09/2009.
11. Consider approving a credit adjustment in the amount of \$791.20 to the Tri-Creek Water Association service account #00022237 for their master meter located at the corner of Lasso Loop and Lariat Road for an undetected, underground leak in the service line. Exhibits: Invoice from Pippin Brothers dated 10/24/09.
12. Consider approving an amendment to the City's Business Associate Agreement (BAA) with BlueCross BlueShield of Oklahoma to incorporate into said agreement new security requirements mandated by the Health Information Technology Economic and Clinical Health (HITECH) Act. Exhibits: Amendment to Business Associate Agreement with Attachment 1.
13. Consider awarding (RFPCL10-026) Financing of Landfill Compactor to Welch State Bank of Welch, OK. Exhibits: Department Recommendation, Proposal Price Bid Sheet.
14. Consider extending the contract (CL09-037) Dewatering Polymer from Polydyne of Riceboro, GA. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
15. Consider extending the contract (CL08-040) Footwear (Safety, Athletic & Walking)-Item-Safety from Woodward's Department Store of Cyril, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
16. Consider extending the contract (CL09-023) Aqueous Ammonia from Southwest Chemical Services of McAlester, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
17. Consider extending the contract (CL08-035) Hydraulic Root Saws from J & R Equipment of Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
18. Consider awarding (CL10-024) Supervisors Dispatch Console (Furniture) to Watson Furniture Group dba Watson Dispatch of Poulsbo, WA. Exhibits: Department Recommendation, Proposal Price Bid Sheet.
19. Consider awarding (CL10-025) Automated Side Load Refuse Trucks from McNeilus Company of Hutchins, TX. Exhibits: Department Recommendation, Proposal Price Bid Sheet.

Shanklin questioned if the crews were ever going to pick up in the alley.

Mitchell stated no.

Jerry Ihler, Public Works Director, stated there are a couple of streets that they do pick up in the alley, like 11th Street.

Shanklin questioned if these were three new trucks.

Ihler stated these are three new trucks.

Shanklin stated this will cost \$563,000.

Ihler stated that is for three trucks. They are about \$200,000 a piece. He stated they will be delivered by April 1st.

Shanklin questioned how many more side load trucks we will need.

Ihler stated he believes they will need one more after this purchase.

Shanklin questioned what happens if one of them goes out of service.

Ihler stated right now they have semi-automated trucks with tippers in the back and they will utilize those when a side load truck breaks down.

Wells requested that the bid pages have totals when there are multiple pages.

MOVED by Shanklin, SECOND by Zarle, to award (CL10-025) Automated Side Load Refuse Trucks from McNeilus Company of Hutchins, TX. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: None.
MOTION CARRIED

20. Consider extending the contract (CL08-040) Footwear (Safety, Athletic & Walking)-Item-Athletic from Kessler s Team Sports of Richmond, Indiana. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

21. Consider awarding (RFPCL10-020) Hardware and Software Support Agreement to Atlantic Tech Services of Richfield, Ohio. Exhibits: Department Recommendation, Proposal Price Bid Sheet.

22. Consider approval of payroll for the periods of December 14, 2009 January 10, 2010.

NEW BUSINESS ITEMS:

23. Consider funding Phase II building improvements being completed by the general contractor J. L. Walker, from the City General/Enterprise Funds-Repair & Maintenance Account and take action as deemed necessary. Exhibits: Sept 25, 2007 Agenda Item Commentary approving J. L. Walker Contract, May 13, 2008 Agenda Item Commentary approving J. L. Walker Demo Contract, Construction Progress Chart submitted by Meyer Architecture Plus, Email from City Attorney dated November 25, 2009, Dec 4, 2009 Correspondence from McAfee & Taft Expenditure of Tax Revenues, Certificate of Substantial Completion-Phase II, Dec 30, 2009.

Mitchell stated this issue was stricken from the agenda in December because they had recommended a funding source that needed some additional review. Staff investigated the idea of using interest earned in the 2005 CIP program to pay the balance of the contract due to J.L. Walker. He stated there is memo from the City Attorney and a legal opinion from McAfee & Taft that states that they are unable to use the interest income because the 2005 CIP program was broken between sales tax projects and ad valorem projects. The Lawton High School renovation project was an ad valorem project and therefore they cannot use money that is generated for the sales tax projects. He stated they determined in order to pay the balance they had to identify a source in the general fund. They first looked at the possibility of finding miscellaneous income or revenue that was not accounted for in the budget or that we might receive from various sources. They decided that was very impractical and was not the best approach. They have identified a funding source in the repair and maintenance account for both the general and enterprise funds. Each year there is approximately \$4.8 million in that line item to pay for contractual services for maintenance of the heating and air conditioning systems in the various facilities and repair and maintenance for the water and wastewater facilities. He stated they will have to reduce or defer other repair items under that account to make this payment. He stated the reason for this oversight is because they had issued a smaller contract to J.L. Walker for some demolition work and he mistakenly thought that contract was included in the requisitions that were approved on a monthly basis for Phase II of the project, so the revenues and expenses were tracking correctly until they got to the end of the contract and they discovered that the demolition contract of \$230,000 had not been included in those requisition payments. He stated it was his error.

Zarle questioned if the architect had any liability for any of these change orders.

Mitchell stated no. The architects responsibility is to put together the bid specs and documents for bidding the contract and during the course of the contract, the contractor may discover things that were not included in the bid specs or in the scope of work for the project. He stated this is more often in renovation projects. He stated there was some overlap with Phases I and II since Phase I was a project through Lawton Public Schools. All that is remaining to pay the contractor under Phase II is the retainer.

Wells questioned if they have identified any projects that may be deferred or not done out of this account.

Mitchell stated nothing has been identified. They have looked at the history of that account and they believe that staff has the ability to save that amount of money.

MOVED by Drewry, SECOND by Haywood, to approve funding Phase II building improvements being completed by the general contractor J. L. Walker, from the City General/Enterprise Funds-Repair & Maintenance Account. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: Shanklin. MOTION CARRIED

24. Consider approving Change Order, with J. L. Walker Construction, Inc. for the CJHS Restoration Project, for fire sprinkler improvements required to complete system in accordance with NFPA-13, Par. 8.5.5.3.1, Phase II, and take appropriate action as deemed necessary. Exhibits: AIA Document G701 2001 Change Order 004, Cover letter, J. L. Walker Construction dated October 12, 2009 & Recap Sheet. SimplexGrinnel Quotation available for review in City Clerk s Office.

Mitchell stated as per NFPA standards it is required to cover greater than 48 and provide and install upright sprinkler heads with wire head guard. He stated this item was not covered in a previous change order approved in August 2008 which made sure the entire building had sprinkler coverage.

MOVED by Burk, SECOND by Haywood, to approve Change Order with J. L. Walker Construction, Inc. for the CJHS Restoration Project, for fire sprinkler improvements. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: None. MOTION CARRIED

25. Consider approving an ordinance amending Sections 17-1-3-121, 122, 123, 124, 125, Division 17-1-3, Article 17-1, Chapter 17 Personnel Policies and Procedures, Lawton City Code, 2005, by amending language to update the department title from Personnel to Human Resources, make physical exams optional and adding criteria for recruitment and interview and relocation expenses, providing for severability and establishing an effective date of February 1, 2010. Exhibits: Ordinance No. 2010-_____.

Trisha Thomason, Human Resources Director, stated this change is based on a request by Councilmember Wells at the July 28th meeting to look at a Council Policy on advertising of vacant positions. She stated they looked at this issue as well as some existing administrative policies. She stated they looked at Administrative Policy 3-4 which was titled Reimbursement of Moving Expenses, and they are changing the title to Reimbursement of Interview and Relocation Expenses. They also looked at Administrative Policy 3-10 which was connected to internal recruitment. That issue is covered in the current ordinance, so they are recommending that policy be rescinded. Both the ordinance and the two administrative policies have been reviewed by legal and the City Manager. These should work in conjunction so that there are guidelines based on the job families that currently exist to determine any expenses that would be paid in relation to those jobs. They will be looking at the job criteria, job title, classification, job skills and the difficulty in filling those skills. Any funding that would be provided for recruitment, relocation and interview expenses would have to be approved by the City Manager.

Wells stated Administrative Policy 3-10 dealt with internal employees getting preference for an open position.

Thomason stated it was for internal recruitment. There is a section in this ordinance that actually overrode that policy some time ago. Now they post that job for three days rather than opening them for seven days and giving internal preference.

Wells stated he understands that there are some positions that you are not going to get filled with people from Lawton or the surrounding area. There are a lot of positions that can be filled by qualified people in house. He feels that in house employees should be given some consideration. He stated they always talk about how we don t pay enough, but he did a sampling and called two cities smaller than Lawton and two cities bigger and he said everyone had the same complaint. This is a problem that all cities have.

Mitchell stated they make every effort to fill positions internally, but there may be qualified employees that are not interested in those positions.

Zarle stated he cannot support this ordinance if it makes physical exams optional.

Thomason stated there is a recommended change in the ordinance. In section 17-1-3-125, paragraph B of the ordinance they will leave the word shall and insert the phrase As according to Administrative Policy 3-5.

MOVED by Wells, SECOND by Zarle, to adopt amended **Ordinance 10-01**, waive the reading of the ordinance, read the title only and establishing an effective date of February 1, 2010. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

An ordinance pertaining to personnel policies and procedures amending Sections 17-1-3-121, 122, 123, 124 and 125, Division 17-1-3, Article 17-1, Chapter 17, Lawton City Code, 2005, by amending language to update the department title from personnel to human resources, conducting physical exams in accordance with administrative policy 3-5, adding criteria for recruitment and interview and relocation expenses, providing for severability and establishing an effective date February 1, 2010.

26. Consider approving an ordinance amending Division 17-1-6-163, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by amending the benefit of on-the-job injury leave (full salary) to 56 hours at the beginning of lost time until temporary total disability benefits are available and stating how employees who have been released to work with permanent disabilities, and cannot perform the essential functions of the job, will be paid, providing for severability and establishing an effective date of February 15, 2010. Exhibits: Ordinance No. 2010-____.

THIS ITEM WAS STRICKEN FROM THE AGENDA.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Ihler presented a report from the Street Division on activities from July 1 through December 31, 2009. He stated he will provide this report to the City Council on a quarterly basis. In the future he will mail the report.

Burk recommended that they receive this report every six months.

Council agreed to six months.

Haywood stated he appreciates all of the work done by city employees.

Burk congratulated the fire department on their new recruits. He stated he agrees that we have the best employees.

Drewry stated she has heard a lot of compliments from people regarding the assistance they received by city employees during the winter storm on Christmas Eve.

Hanna recommended that the City Council look at having just one election during the year without a run off. Whoever receives the most votes will win. He stated Duncan has gone to this type of election and it has been very successful. He also suggested they have the election in October to get away from winter weather and the holidays. Whoever wins the election would take office in January which would give them a working knowledge for the budget process.

Mayor Purcell stated this would have to be a charter change and go out to a vote of the people. He stated this would mean that 10% of those voted would elect someone and most people don't like that. That is the reason for a run off.

Shoemate congratulated Assistant Chief James Apple on his promotion.

COL Lacey stated the first soldier from the Air Defense School at the AIT level went to school this morning and they are very proud of this. He stated all new ADA courses will start at Fort Sill. He asked that everyone remember the two soldiers from Fort Sill who were killed during the winter storm while rendering aid to motorists.

Mayor Purcell stated he had heard that approximately 85% of the BRAC movement has been accomplished.

COL Lacey stated he would refine that to say that equipment was at 90% and personnel is somewhere between 60% - 70%.

Mayor Purcell stated there is another unit coming this summer. He stated about 9,000 people are already here because of BRAC.

COL Lacey stated the BRAC law came into effect in 2005 and the end date is September 15, 2011. There is a lot of coming and going of units, but they believe when it is all said and done, 8,000 - 10,000 will be added to Fort Sill.

Mayor Purcell stated there will be a press conference on Thursday to emphasize the 2010 census that will take place on April 1st. He stated the census is critical and everyone needs to participate.

Wells stated they need to recognize LATS bus drivers who worked during the storm.

Mitchell stated there will be a workshop at 5:00 p.m. on January 26th prior to the regular scheduled council meeting to discuss funding options for the Lawton High School project. He stated on January 28th the Chamber of Commerce will host a luncheon and the speakers will be Mayor Purcell and Mayor Elect Fred Fitch.

The Mayor and Council convened in executive session at 7:27 p.m. and reconvened in regular, open session at 7:45 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

27. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending lawsuit in the United States District Court for the Western District of Oklahoma, Jason Wells v. City of Lawton, et al., Case No. CIV-09-1354-D, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 27.

MOVED by Wells. SECOND by Hanna to approve an employment agreement between the City of Lawton and Ambre Gooch, attorney at law, authorizing her to represent Officer Richard Hollebeke in his individual capacity in the case styled Jason Wells v. The City of Lawton and Richard Hollebeke, individually and in his official capacity as a police officer with the City of Lawton, Case No. CIV-09-1354-D, in the Western District of Oklahoma, and authorize the Mayor and City Clerk to execute the same. AYE: Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

28. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claims of Alejandro Cabrera, Marlen Ramirez, Senon Cabrera and Margarita Cabrera, Damage Claim Nos. DC-2009-098, DC-2009-099, DC-2009-100 and DC-2009-101, respectively, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 28. No action was needed.

There being no further business to consider, the meeting adjourned at 7:47 p.m. upon motion, second and roll call vote.

/s/ John P. Purcell, Jr.

JOHN P. PURCELL, JR., MAYOR

ATTEST:

/s/ Traci L. Hushbeck

TRACI HUSHBECK, CITY CLERK