MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
OCTOBER 23, 2018 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor Presiding	Also Present: Jerry Ihler, City Manager Frank Jensen, City Attorney Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:13 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Gordon Brooks, First Church of God, followed by the Pledge of Allegiance.
ROLL CALL

PRESENT:	Bob Morford, Ward One Keith Jackson, Ward Two Jay Burk, Ward Four Dwight Tanner, Jr., Ward Five Sean Fortenbaugh, Ward Six Onreka Johnson, Ward Seven Randy Warren, Ward Eight
ABSENT:	Caleb Davis, Ward Three

PROCLAMATION FOR ATLANTIK-BRUCKE GERMAN DELEGATION (This proclamation was presented prior to the City Transit Trust Special Meeting)

PROCLAMATION FOR 2018 EXTRA MILE DAY
Mayor Fitch proclaimed November 1, 2018 to be the 2018 Extra Mile Day

PROCLAMATION FOR 2020 CENSUS
Mayor Fitch presented the census proclamation to Patricia Woodward, Oklahoma Partnership Specialist, Dallas Regional Census Center, U.S. Census Bureau.

PRESENTATION OF OUTSTANDING CITIZENS OF COMANCHE COUNTY TO SANDY FOSTER

Mayor Fitch presented a Certificate of Commendation from the Mayor’s Office to Sandy Foster.

AUDIENCE PARTICIPATION:

Renee Zeller, stated the south side of Sheridan Road is not being maintained. She stated there are businesses, a school, a racetrack, the entrance to the airport as well as fine people living in the south community that travel that road from Geronimo, Walters, Randelett, Grandville, Devol, Hollister, Frederick, Chattanooga and Faxon and these are people that come to Lawton and shop and leave tax dollars here. That is why the citizens of Lawton would benefit if Sheridan Road is fixed. Sheridan Road is the center point road of Lawton and it is just not safe and it needs some attention. The City of Lawton sends out letters to those citizens who do not maintain their property but the City of Lawton does not maintain the ditches on Sheridan Road. She hopes that she sees positive things on Sheridan Road.

Mayor Fitch stated this is Sheridan Road South of Lee about five or six miles. He stated five or six miles would be a $10 million project and there are so many roads within this community that need to be taken care of. When they passed the $55 million bond issue last spring, that tackled about 20% of the road needs that we have within the city. He stated they have talked about this area and it is on the list of priorities and they will try to make something happen in this area.

Johnson thanked Ms. Zeller for sending the pictures. She lives a few blocks from there and she drives on that road all the time and they are working on this area because it is a priority to her.

Justin Hackney, stated he recently submitted plans for an accessory building to be built on his property. He submitted a site plan, foundation plan, framing details and material details. Everything was approved except for the color of the building. He was told the color could not be white because his house is tan and he was told the building has to match the house. He questioned why the City of Lawton gets to tell him what color his building has to be.

Mayor Fitch suggested Mr. Hackney speak with Mr. Rogalski, the Community Services Director

Theodore Symeleski, 2509 SW Cornell, stated the council approved an ordinance last year regarding water rate discounts for the elderly/disabled where the income limit would correspond with the cost of living raises people received from social security, but the council only changed it for one year and it will have to be approved again this year. He was told two months ago that it is being worked on and he is waiting to see what happens.

Ihler stated that ordinance was approved by council a month ago and they made it automatic based on what the social security benefit increase is.

CONSENT AGENDA:

Warren requested item #1 and Fortenbaugh requested Item #4 be considered separately.

MOVED by Burk SECOND by Jackson to approve the consent agenda with the exception of items #1 and #4. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for denial: Baymont Inn & Suites in the amount of $29,500.00, and Michael and Margo Bibbs in the amount of $175.00. Exhibits: Legal Opinions/Recommendations.

Warren stated his concern is with the Michael and Margo Bibbs claim in the amount of $175. He stated this couple lives two or three houses north of the intersection of 53rd and Gore Boulevard and they have been in the middle of this construction for some time and their water was turned on and turned off by a bunch of different people. They have had a couple of issues and they did have a problem with a toilet that filled up with dirt during that period of time. He does not believe they are asking for anything they do not deserve. He would like to approve this claim.

MOVED by Warren SECOND by Tanner to deny the claim of Baymont Inn & Suites in the amount of $29,500.00. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

MOVED by Warren SECOND by Tanner to approve the claim of Michael and Margo Bibbs in the amount of $175.00 AYE: Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Morford. MOTION CARRIED.

2. Consider the following damage claims recommended for approval: Berrian and Candace Seabrook in the amount of $343.56, Robert Muller, D.D.S. in the amount of $1,700.00 **(Res. 18-72)**, Oscar Aguilar in the amount of $50.00, and Justin Herriage in the amount of $1,000.00 **(Res. 18-73)**. Exhibits: Legal Opinions/Recommendations; Resolution No. 18-___; Resolution No. 18-___.

3. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in making payment on the judgment in the Workers' Compensation case of Larry Cochran in the Workers' Compensation Court of Existing Claims, Court No. 2018-01475A. Exhibits: **Resolution No. 18-74**.

4. Consider declaring as surplus four park properties identified as: 1) Almor West Park, 2) Crosby Park, 3) Council Heights Park, and 4) a portion of Stephens Park, authorizing staff to establish a reserve price for each property, authorizing sale of these properties by competitive bid, and make acceptance of any bid subject to claims of adjacent property owners or other interested parties. Exhibits: Park Location Legal Descriptions and Aerial Photos of each park.

Fortenbaugh stated he appreciates the work that staff had done on this. The City has nearly 100 parks and some of them are impossible to get to. He would like to talk about Almor West Park. Almor West is a big neighborhood and this is a nice park with a baseball diamond, basketball court and nice playground equipment and it is used a lot. He received a lot of feedback from the residents when the word got out that we were looking at taking the park away. He feels this is a great effort because we have parks that no one knows where they are at, but this park is used and he does not know why this one was targeted as compared to some others.

Jack Hanna, Parks and Recreation Director, stated when they assessed this park they looked at the adjacent property which is Almor West Elementary School which has playground equipment. They did not want to leave a neighborhood without the use of any recreational equipment.

Almor West Elementary has newer and bigger playground equipment and that was in their assessment and that is why they put this up for surplus.

Fortenbaugh stated the school only has a very small area and you are not going to play baseball or football on the school side of it. This would be a huge loss to this community. He would like to leave this park alone.

Hanna stated they need to set a minimum bid. He does have some estimates on the value of the park property. Crosby Park estimate is between $50,000 and $60,000, Council Heights Park estimated is $150,000 and the portion of Stephens Park is $50,000. These are the retail values he received from a broker.

Mayor Fitch questioned the value of Almor West.

Hanna stated he has two different estimates. One was $20,000 and the other was $35,000.

Warren questioned where the ingress and egress was in Crosby Park. He does not know how it could have any commercial value considering we cannot get a curb cut on the highway.

Hanna stated the approach from Quanah Parker would have to be discussed with ODOT. The access point is actually off of Horton Street.

Burk stated he does not see us getting those prices, we will be lucky if we can find someone to buy it and just mow it.

Hanna stated he consulted a profession broker.

Burk questioned if they were setting this as their starting price.

Hanna stated these numbers are for retail.

Burk stated he cannot imagine this being reality. He questioned what would be the minimum number we would start the bidding and will staff come back to council with the bids.

Hanna stated he hopes so. Last time they sold two pieces out of four that went to auction. One sold for $500 and the other for $10,000.

Burk stated they are just basically setting this bid and hoping for the best.

Hanna stated the last time they did half of the retail value as a starting point. He would recommend they get them sold and get them back on the tax rolls.

<u>MOVED by Fortenbaugh SECOND by Tanner</u> to close Crosby Park, Council Heights Park, and a portion of Stephens Park but keep Almor West Park. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

5. Consider extending (RFPCL17-004) Maintenance of Public Grounds to Bedrock Nursery of Lawton, OK for an additional year. Exhibits: Department Recommendation, Contract Extension Form and Price Sheets.

6. Consider approving a contract with C.H. Guernsey & Company in the amount of $49,650.00 for design, bidding, and construction administration services for the remodel of the restrooms and related work at the Lawton Public Library and authorize the Mayor and City Clerk to execute the contract. Exhibits: Contract on file in the City Clerk's office.

7. Consider approving plans and specifications for the SE Larrance Street and the Gore Blvd Intersection at Railroad Street construction and authorize staff to advertise for bids. Exhibits: Plans and specifications are on file in the Engineering Department office.

8. Consider authorizing staff to purchase fifteen (15) KNOX KeySecure truck mounted units at a total cost of $7,860.00 with said cost of units to be funded via the Fire Cost Recovery fund 035-0097-000-00-02791103. Exhibits: Sole Source Letter, Equipment Specifications.

9. Consider approving a resolution rescinding Resolution 02-71 that established the Water Meter Purchase Fund of the City of Lawton and directing that said funds be transferred to the Enterprise Fund. Exhibits: Resolution 02-71 (**Resolution No. 18-75)**.

10. Accept the Annual ADA Report that outlines completed ADA accessibility projects, and work done towards compliance, and the money expended on each project required by the settlement agreement between the City and Joseph Harper and Vivian Wheeler dated 9 December, 2013. Exhibits: 2017-2018 ADA Compliance Report, ADA Executive Summary.

11. Consider setting the date of November 27, 2018, to hold a public hearing to close the 50 foot wide platted right-of-way between Blocks 28 and 29, of Brockland South Addition, located south of NW Ferris Avenue between NW 61st Street and NW 63rd Street. Exhibits: Location Map; Record Plats.

12. Consider setting the date of November 27, 2018, to hold a public hearing to close the alley adjacent to Lots 11-18, in Block 3, of Lee Addition, located east of NW Sheridan Road, between NW Lake Avenue and NW Arlington Avenue. Exhibits: Application; Location Map.

13. Consider approval of payroll for the periods of October 8 - 21, 2018.

NEW BUSINESS ITEMS:

14. Hold a public hearing and consider approving the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year 2017, for submission to HUD, and

authorize the Mayor to sign all necessary documents required to submit the approved CAPER. Exhibits: None (The CAPER is on file in the City Clerk's Office).

Christine James, Supervisor of Housing and Community Development, reported on the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Programs' activities and accomplishments during the previous program year. A briefing was presented by James (on file in City Clerk's office).

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

<u>MOVED by Burk SECOND by Johnson</u> to approve the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year 2017, for submission to HUD, and authorize the Mayor to sign all necessary documents required to submit the approved CAPER. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

15. Consider an ordinance pertaining to Personnel Policies and Procedures amending Section 17-1-5-152, Division 17-1-5, Article 17-1, Chapter 17, Lawton City Code, 2015 by increasing non-exempt employee compensatory accruals to two hundred (200) hours, establishing cash out provisions, providing for severability, and establishing an effective date. Exhibits: Ordinance 18-__.

Warren Wick, Human Resources Director, stated this is a recommendation from the Employee Advisory Committee. Currently non exempt employees may accrue up to 120 hours for compensatory accruals and the proposal is to go to 200 hours. This becomes equivalent to what police and fire receive. We are trying to be as fair as possible across the board.

Tanner questioned who would be the exempt employees.

Wick stated that would be management and supervisory.

Tanner questioned how much this would cost overall to do this.

Ihler stated this will not cost any additional funds. It is possible that if they hold onto these hours until they leave the City, there would be a cash out, but without the change they would still have the ability to be able to buy it down during the process.

Tanner stated this is something the employees have already earned, it is just now the cap is 120 so if they don't use anything above that they lose it.

Wick stated that is correct.

<u>MOVED by Tanner SECOND by Morford</u> to adopt **Ordinance 18-32**, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-32

An ordinance pertaining to personnel policies and procedures, amending Section 17-1-5-152, Division 17-1-5, Article 17-1, Chapter 17, Lawton City Code, 2015, by increasing non-exempt employee compensatory time accruals to Two Hundred (200) hours, establishing cash out provisions, providing for severability and establishing an effective date of thirty days from today.

16. Consider appointing Council Members Davis, Warren, Fortenbaugh and Johnson to serve as council representatives to the Emergency Medical Services Committee (EMSC) and to meet to discuss the reestablishment of the EMSC. Exhibits: None.

Mayor Fitch stated he received a call from Council Member Davis who was not able to attend and he requested this item be tabled until the next meeting.

MOVED by Johnson SECOND by Fortenbaugh to table to the November 13th meeting. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

17. Consider approving Change Order No. 1 and accepting the SW Bishop Road Reconstruction Phase 2 Project #2017-02 as constructed by T&G Construction, Inc. and placing the Maintenance Bond into effect. Exhibits: Change Order #1.

George Hennessee, City Engineer, stated the Phase 2 Bishop Road project is Bishop Road from 52nd to 38th Street. That road has been completed along with the drainage structures. It did come in under the budgeted estimate due to the fact that the intersection of 38th and Bishop Road is in good shape and we did not have to reconstruct that intersection. The purpose of this item is to allow for the weather days and delay days that were encountered during the construction.

MOVED by Burk SECOND by Johnson to approve Change Order No. 1 and accept the SW Bishop Road Reconstruction Phase 2 Project #2017-02 as constructed by T&G Construction, Inc. and placing the Maintenance Bond into effect. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

18. Consider approval of Change Order No. 1 to the contract with T&G Construction for the reconstruction of SW 52nd Street from Stillwater Central Railroad north to Gore Blvd, approximately ½ mile, for the installation of a water meter to the Eisenhower School Cafeteria. Exhibits: Change Order #1.

Hennessee stated during the construction of the 52nd street project, T&G were instructed to relocate a water meter that was interfering with the construction of the storm drainage system. Once that water meter was relocated and the existing service line was abandoned, it was realized that the connection that served the school cafeteria was between the new location and the old location and therefore the cafeteria had been cut off from water. In order to eliminate that, they installed a new water meter to the cafeteria and it was done just prior to school opening and they needed to get water to the school.

MOVED by Burk SECOND by Tanner to approve Change Order No. 1 to the contract with T&G Construction for the reconstruction of SW 52nd Street from Stillwater Central Railroad north to Gore Blvd, approximately ½ mile, for the installation of a water meter to the Eisenhower School Cafeteria. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

19. Consider approving Amendment No. 10 to the March 14, 2011 agreement with CH2MHill Engineers, Inc. for additional professional engineering analysis; to submit a FEMA application as well as performing additional Engineering and Technical work in support of finalizing the design, the drawings, and specifications for the retrofit of the spillway apron, ogee apron and the training wall for the Lake Ellsworth Spillway project. Exhibits: Amendment to the agreement, Statement of Work from CH2MHill Engineers.

Afsaneh Jabbar, Director of WWTP/WTP, stated during the months of May and June of 2015 the City of Lawton received unusually heavy rainfall. The heavy rainfall events caused extensive damage to several sections of the Ellsworth Spillway. As a result they started evaluating the spillway to find the cause and how to solve the problem. On February 28, 2017, the City Council approved Amendment No. 6 for the design of the rehabilitation of Ellsworth Spillway. During the process of evaluation, four alternatives were identified for just the spillway. The concept that was chosen was the overlay of some of the panels that forms the spillway. The cost of construction for this design was $10 million. CH2MHill started working on the design and they realized that they had to look at the seismic issues. The original work was supposed to address the uplift of the spillway as a result of the pressure and the underlying soil. It was discovered at some point that the seismic has a greater effect than the swelling pressure. On June 12, 2018, the City Council approved amendment No. 8 for performance of site specific seismic analysis to determine the maximum credible earthquake motion at the site. At this point they are asking to modify the contract to have CH2MHill evaluate the stability of the spillway and the two retaining walls to make sure that it has the structural capacity of not failing under a seismic event. The proposal is to have seven more borings at different locations on the spillway.

Burk stated he does not see that we have a choice on this. They need to make sure the spillway is right and that we are safe.

Tanner questioned if they have even started on the repairs or are we still trying to figure out what is wrong with the dam. He stated this is $623,000 for additional and professional engineering analysis and to submit a FEMA application. He questioned if this was for a grant and questioned the amount.

Jabbar stated they submitted three applications, one is for engineering which would be approximately $750,000, another for an amount to be determined and FEMA has already approved $480,000 for repairs.

MOVED by Burk SECOND by Morford to approve Amendment No. 10 to the March 14, 2011 agreement with CH2MHill Engineers, Inc. for additional professional engineering analysis; to submit a FEMA application as well as performing additional Engineering and Technical work in support of finalizing the design, the drawings, and specifications for the retrofit of the spillway apron, ogee apron and the training wall for the Lake Ellsworth Spillway project. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

20. Consider an ordinance amending certain provisions governing the City's sales tax contained within Section 10-2-206, Section 10-2-209, and Section 10-2-210 Article 10-2, and Section 10-18-1802, Article 10-18 and Section 10-19-1902, Article 10-19, all contained within Chapter 10, Lawton City Code, 2015, to allow for the collection of sales tax upon the retail sale of medical marijuana, removing obsolete statutory references, providing for severability, and establishing an effective date. Exhibits: Ordinance 18-__.

W.R. Moon, Assistant City Attorney stated pursuant to Oklahoma Statute, Title 68, Section 2701, all municipalities are empowered to tax all of the same things the state can tax. With the recent passage of State Question 788, the state became able to tax medical marijuana. If we adjust some of our ordinances, specifically the exemptions contained within our sales tax, and mention the sale of medical marijuana in our general sales tax as well as the 2015 and 2016 CIP's, at that point in time it will allow the City of Lawton to go ahead and tax medical marijuana sales within the city. He stated there is a revision to the proposed ordinance in the agenda packet, an extra word was left in Section 10-2-206, the word "from" should be stricken.

Tanner questioned if we are just charging what the city would charge, which is 2%?

Ihler stated it is 4 1/8th.

MOVED by Burk SECOND by Morford to adopt **Ordinance 18-33** as amended, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-33

An ordinance amending certain provisions governing the city's sales tax contained within Section 10-2-206, Section 10-2-209, and Section 10-2-210, Article 10-2, and Section 10-18-1802, Article 10-18 and Section 10-19-1902, Article 10-19, all contained within Chapter 10, Lawton City Code, 2015, to allow for the collection of sales tax upon the retail sale of medical marijuana, removing obsolete statutory references, providing for severability, and establishing an effective date of thirty days from today.

21. Consider approving an application for Economic Development Assistance – Retail submitted by GBT Realty Corporation to assist with the development of a retail center located on NW 82nd Street, north of NW Cache Rd, in accordance with City Council Policy 1-10. Exhibits: Application, Evaluation Report.

Rogalski stated on August 17, 2018, an application for Economic Development Assistance was submitted by GBT Realty Corporation (GBT). The request includes both lump sum and reimbursement incentives to offset the cost of construction for both the public and private improvements associated with the development of a proposed 112,619 square foot retail center. The project will be located on currently undeveloped property on the northwest corner of NW 82nd Street and NW Cache Road. The criteria for Economic Development Assistance – Retail are set forth in City Council Policy 1-10. This policy was established in an effort to develop and expand the local economy by promoting and encouraging retail development and redevelopment projects that enhance the City's economic base through the expansion and diversification of job opportunities and new private investment. The policy sets out that the City of Lawton will consider, on a case-by-case basis, requests for economic development assistance to private retail business entities in order to make projects possible that would not otherwise occur. This project is not located in a redevelopment area, TIF District, or Enterprise Zone. Due to the size of the proposed development (112,619 sf) this project does meet the criteria as a Regional Retail Project. While some of the proposed retailers would seem to duplicate products in our existing retail market, the proposed development does also offer retailers that would be expected to fill gaps in our market, and retain or attract sales that might otherwise have gone to other communities.

(Rogalski presented the financial analysis for the project. This document is on file in the Clerk's Office)

Rogalski stated the developer, in their application has said that about 65% of the sales in that location would be new to the economy and that would result in new sales tax in the general fund of about $412,000 a year. He stated staff has also done an analysis of the same center. He continues to get numbers of actual sale tax collections from similar retailers around the community. There is a difference in the numbers from staff and from the developer. He is showing $178 per square foot of sales, which is significantly less than what the developer is showing. One of the reasons for this difference is that he is only seeing taxable sales. When you are dealing with economic development for the collection of taxes and to pay back some of these incentives by collection of taxes, taxable sales is a critical number. He feels the good number to use is about $20 million a year in taxable sales and $400,000 a year in the general fund revenue. As for the percent new to the economy, it is very difficult to determine how many retail sales that come to a certain store have transferred from another store. Based on what he felt was a reasonable analysis, he came up with 47%, so a little less than half of those sales would be new. That gives us a projected annual sales tax of revenue new to Lawton would be almost $180,000 a year. The developer asked that the public improvement costs be provided as an incentive. They want those paid for up front. They estimated only $385,000 of public improvements. We looked at that same improvement and it looks to staff like it will be about $700,000. According to City Council Policy1-10, public improvements are part of that policy and it is going to be based on the actual costs of those improvements that would be verified after they are constructed. This agreement on this number is not really an issue to argue about. The other thing they wanted was a lump sum payment of $1.35 million when 80% of the stores were open for business. The next thing they wanted was the first year's sales collection. Here it would make a difference with the volume of sales because this is based on sales tax. Using their numbers it comes out to $1.3 million, using his numbers it comes out to $828,000. He stated they also want six additional years of sales at about 1%. That package based on their numbers is $4.9 million and on his numbers it is about $4.1 million. He stated in terms to pay back that amount, if we are earning $412,000 of new sales it would take 14.4 years for us to pay off that incentive package. If they use his numbers of $187,000 of new sales, then it would take 28.8 years to pay off that sales tax package. He stated the Lawton Economic Development Authority (LEDA) first reviewed this request on September 18th, tabling the discussion and directing staff to research the four projects mentioned by the developer's representative as projects where GBT Realty was able to receive more incentives than would be allowed by our current policy. Staff was also instructed to obtain a legal opinion as to the continued saliency of said policy with regards to the Local Development Act and subsequent court opinions. The requested information was provided to LEDA at their meeting on October 11th. After some discussion, LEDA voted 6 to 0 to recommend to the City Council that the request be approved in accordance with City Council Policy 1-10, limiting the assistance to the actual cost of the public improvements, with such cost to be reimbursed to the developer through annual payments equal to one half of the general fund sales tax revenue generated by the project for a maximum term of five years. This is how it was done on the last major project we did. Using his $700,000 number in the public improvements, that payoff at 50% of the annual general fund would only be 3.5 years. The public improvement portion that was recommended to be approved by LEDA does fit in to the policy and it would take less than the 5 years to actually pay it off. They would only get the maximum amount for those public improvements or the maximum amount of that 1% over five years, that is how the policy is set up.

Mayor Fitch requested that Rogalski discuss some of the communities. He stated one was a TIF district and it was within the parameters of funding from the city. Another one of the items was the city of Owasso.

Rogalski stated in Bartlesville, it was not in a TIF district. It was in an area in the middle of town that was in a floodplain and it needed about ten feet of fill. They put that into a TIF district and they were able to pay off the incentive with just the ad valorem part of the TIF district and with the sales tax part they were able to gain. In Owasso they had a traffic signal that needed to be moved to the location for this new facility. Two thirds of the assistance they provided went to pay for that traffic signal and another third was an incentive. In Enid, they had a closed Walmart that was being used as a warehouse and part of that was to acquire that site and make sure that company using that as a warehouse was able to relocate and they made everyone whole on that one. The one in Enid was not in a TIF district and they made the developer guarantee the sales amount or money would have to be paid back.

Mayor Fitch stated Bartlesville was in a TIF district so they could use funds inside the parameters of the project. In Owasso, they had a very loose city ordinance and now they are going back and rewriting their city ordinance because they realized they are opening the door to every contractor and developer that comes along to assist in some sort of incentive on a retail project. Retail incentives and economic development industrial manufacturing incentives are two different things. Our incentive package is like we applied on the Town West center and they had $2.5 million of infrastructure work that had to be done outside the parameter of the property which included widening of streets, stacking lanes, signalization, cutting across Quanah Parker and we were able to do that because it met our policy within the City of Lawton. We gave them a one cent sales tax over a period of five years or $2.5 million, whichever came first. They paid for these projects to be done and then we reimbursed them. With this project there is approximately $700,000 of infrastructure work outside of the parameter of the project that we can fund and we can fund that in a manner of 1% of the general revenue sales tax of 2% and they pay for it and we reimburse them. The other part that comes up to $4.9 million, the time frame based on their estimates of retail sales and based on our estimates of retail sales, which are taken from like companies that are going to be in this project, and applying those sales tax figures it figures out to be about 28.8 years to get our money back. On this $1.35 million lump sum payment when 80% of the stores are open for business, they want this cash up front and we don't have that kind of money to give them and our ordinance does not allow us to do anything within the property going into the construction of buildings and things of that nature. We can do the $700,000, but we need them to pay for it and we will give them back sales tax dollars over a period of 3 ½ to 4 years. When you look at the staff's funding of sales tax generated and sales generated, the sales that are generated are based on the sales tax collections on those sales that are turned in to the Oklahoma Tax Commission and we don't know how many tax exempt cards there are in this community, but there are a tremendous amount. We do know that if they are estimating $400,000 worth of sales tax generated and then we have an example to show that it is only $187,000, and that is telling us there are a lot of tax exemptions within the city of Lawton. The military and Indian tribes have tremendous advantage over retail purchases because of sales tax exemptions that they are entitled to. When you are looking at 28 years to cover the cost on this, he is sure the present owners won't even be around and this would all have to be passed on to the next developer. Our ordinance would have to be completely rewritten. The Lawton Economic Development Corporation (LEDC) acquired funding this week for 300 new jobs, with benefits, within this city and the total package is about $675,000. They are talking about 325 jobs and very few would have benefits. One of the retail operations is another location within this community and he is not sure they will keep their present location open. These are not all new dollars and those things are hard to figure out. This is a lot of money and we can do the widening of Cache Road and the public improvement signalization and things of that nature, through a rebate back to them over a period of time with the sales tax generated in about 3 ½ to 4 years and that is what LEDA approved. They did not approve anything going above that $700,000.

Fortenbaugh questioned how many regional shopping centers are trying to come to Lawton.

Rogalski stated this is the only request we have right now.

Fortenbaugh stated this is Target all over again. We have a council policy that we can change and we can do whatever we want and what we are doing is driving businesses around town and that is not a function of government, and that is not what we are supposed to do. There is $183 million of retail going out of town every year in this community and that is a lot of sales tax. What they are doing is blocking this and he does not understand it. We have never made any kind of effort to work with a developer in any way, we just say that we have a policy, we need to just change the policy. Lawton is so behind and we are missing out on so many things and he is not going to blame a policy that we can change.

Tanner stated he would like the retail store to come in, but if we were to go off their numbers, where are we going to get this $1.4 million. It will have to come out of the general fund and what services are we going to have to give up to provide the retail developer this money. We do have the economic development fund but he does not know if this would qualify and we don't even have enough in that fund to assist in a project like this. He does not know if we have even increased our local sales tax from the 2nd Street and the 82nd Street projects. From his understanding we have stayed the same. We have got the same piece of pie cut into smaller pieces and it affects the current retail businesses that we have in town like Central Mall and C Avenue where we are trying to promote development downtown. He feels the proposal of $700,000 to help with the offsite infrastructure upgrades is a reasonable offer and it is something we can afford.

Burk stated he helped work on this policy because we had nothing in place. At least now we have a process where we can help people who are doing retail and industrial development. We have invested a lot of time, money and effort into the developments in town that are not completed and not full. He stated that the $700,000 for offsite infrastructure needs is probably a good number but he does not see where we would get the $1.4 million to help with the development. He would like to see a development anywhere, but how do we fund it? He stated if they are able to give guarantees and if it doesn't happen they will pay the City a percentage of the shortfall, that might be something he would consider, but he does not see that in the plan.

Cathy Jo See, Land Acquisition Director for GBT Realty Corporation, stated GBT is a company that has been around for 35 years and they have built over 390 million square feet of retail and they know what they are doing. She stated she called the City of Owasso and she talked to the economic development director and they are looking at revising the policy but they are not going to not incentivize. Every square foot in the city of Owasso has been incentivized in some way. She stated that Council Member Tanner had said that some of the retailers may go out of business, but there are people in Lawton that are leaving Lawton to go shop elsewhere and there is a huge amount of leakage. On non retail $123 million is leaving Lawton. Currently in grocery $84 million is leaving Lawton. Other general merchandise stores $15.5 million is leaving Lawton. Gasoline stations are $12.269 million. Lawn and garden equipment and supplies are $4.7 million. In home furnishing stores is $3.6 million. Recreation vehicle dealerships are $3.3 million. Children and infant clothing stores is $2.58 million. She is up here because Burlington Coat Factory has an interest in coming into Lawton. She is the third developer that has come in to town to try and make this happen. She stated malls are failing because that is not how people want to shop anymore. She stated some cities are turning malls into community centers or multi uses where you have retail, offices and condos. She stated the discount retailers today that are moving. It is Ross, TJ Maxx, Marshalls, it's those types of retailers that are moving. The Target and Walmart days are going. The retailers today are not paying as high per square foot. She stated Ross has been out there and they are willing to do a second store. If Ross wasn't doing $14 million in this town, they would never consider a second store. These retailers know what kind of market this is, this is a trimary market, not a primary or secondary market. They don't want to be up here asking the city for money, but things are changing and to make this work in Lawton, because construction costs are higher because of soil and other issues. The numbers they had projected are a little bit different than what staff has projected. She stated it shows on state taxes that Lawton receives 4.125% in sales tax and there is 2% that goes to the general fund and 2.125% that goes into the CIP. You are basing those numbers on a general fund when they are basing $31.8 million in the first year of sales projections and in year ten they are projecting $36.7 million because they have the two out parcels that they don't know who those tenants are just yet. Out of the 4.125%, they are projecting $14,157,000 in ten years, the 2% general fund would be $6,864,000 and the 2.125% CIP is $7,293,000. She stated it is her understanding that the CIP money is used to do other projects.

Mayor Fitch stated the 2.125% is dedicated to capital improvement program that don't expire until 2025, so that income from that sales tax has to go to pay for the debt service on those projects that the people voted for. We cannot spend that money for anything else.

Ms. See stated what part of not adding in the other 2.125% of the $7 million goes back into the City of Lawton to behoove the rest of the CIP, those numbers aren't even in there.

Mayor Fitch stated Ms. See is mixing apples and oranges here because that money is dedicated to the CIP based on today's revenue dollars and it is projected out to 2025 and those projects will be paid for and built and developed.

Ms. See stated the $7 million allocated to the CIP for you to do more projects and you are not allocating that in any of these numbers to show what this retail could do for the city of Lawton.

Mayor Fitch stated there are a lot of "what ifs" in this thing and some of the comments that Ms. See based her figures on weren't up to par.

Ms. See asked what the Mayor was talking about.

Mayor Fitch stated she came in and wanted 4 1/8th because that was the sales tax we received and we told her we could not use that in this project.

Ms. See stated she was told that after they submitted the application and in LEDA they had a conversation and she said not to tell her what you can't do, tell her what you can do. She stated if you could only do the one year at the 2.2% of the general fund, then let's have that discussion. If they had to break it into two years, let's have that discussion, let's just get there.

Mayor Fitch stated on the $1.3 million you want that money up front when 80% of the project is completed and that is a must. Ms. See told him it was not a good deal if she didn't have that money up front.

Ms. See stated she said they could not make it happen.

Mayor Fitch stated on the $700,000 worth of improvements, she stated she would have to have us pay for that, which we could pay for, but we are going to do it through a sales tax rebate of 1 cent on the general fund for a period of 3 ½ years and that would cover our costs. She would not pay for that up front and then let us reimburse her. We don't have the $1.35 million to pay up front and he asked Ms. See if they couldn't do that, would this kill the deal and Ms. See stated yes. We can pay it back over a 1 cent sales tax on an annual basis, but we can't pay for it up front, we don't have it.

Ms. See stated the total retail sales in Lawton in 2014 was $1,111,746,000. She questioned if that sounded right.

Rogalski stated we have no idea what total sales are. All we get from the OTC is what sales tax is collected and they give it back to us. All we know is how much sales tax we earned, we do not have any way of knowing what total sales are in the city.

Tanner stated our general budget is around $88 or $89 million and that tells him if our sales tax is increasing that much then our general budget would be going up in proportion. Since he has been on the council our budget has somewhat decreased and the only reason it has been able to stay at par is because the utility bill has gone up every year. It is not because of new sales tax. We don't have $1.3 million to give to Ms. See out of the general fund. We would have to cut a lot of projects and services and we are not going to do that. We do have dedicated funds that come in every year on an annual basis called hotel/motel tax. It is for two purposes, tourism and economic development, and we have been focusing on tourism since 1995 and he made a proposal this year to focus on economic development and take that money and put it in our economic development fund. If we have that economic development fund then we might be able to help, but he is not going to vote to put $1.3 million out of the general fund so she can build a retail project. If she was building manufacturing it might be a different situation. He does not mind spending the $700,000 for the offsite infrastructure improvements, he feels this is a fair offer and she wants to take this back and renegotiate it and she can guarantee that she will increase our sales tax base, then that is a workable deal. He is for this project but we just don't have the money. He suggested the council table this and send it back to LEDA and let them renegotiate.

Burk stated he agrees, there just needs to be another approach and we have to come up with a better plan.

Ms. See stated they can do a guarantee, that is how they did it in Enid. Enid went and borrowed the money and they also did it in Bartlesville as well. They borrowed the money and the city guaranteed the loan at the bank and as soon as they opened is when the money came into hand so then they were immediately generating sales tax revenue per month and they guaranteed a certain percentage and paid off the loan. They predicted approximately $24 million on the Enid project and they ended up doing $28.7 million. They will have that paid off in 3 ½ years.

MOVED by Tanner SECOND by Burk to table and send it back to LEDA.

Mayor Fitch stated this was thoroughly gone through with LEDA and LEDA wanted to stay within the parameters of what are ordinance is.

Ms. See questioned if she had to work with LEDA or can she sit down and redo their deal and resubmit.

Burk stated he would prefer she work with LEDA because that is our economic development authority and they are set up for a reason. He stated he would be happy to come and sit in since it is an open meeting. He thinks they will give her a chance if she comes back with a good deal.

Morford stated the leakage is bothering him and if we can pick up some of this we sure need to.

Mayor Fitch stated part of that leakage is the tax exempt status.

Ms. See questioned Councilmember Fortenbaugh about the tax exempt in his restaurant.

Fortenbaugh stated about 3% of customers use the tax exempt card at both of his restaurants.

Ms. See stated she called around town and the most she heard was 5%.

Fortenbaugh stated they do not want to take $1 million out of the general fund but they could borrow the money and pay it back from sales tax. We owe $30 million on 2nd Street, so it is not like we haven't done this before. He would like to make a substitute motion that we don't restrict that policy on LEDA because there doesn't seem to be a good reason for it. He would like to send it back to LEDA but give them the ability to negotiate a deal.

Mayor Fitch stated if they don't change the policy and we do something we have to have ourselves guaranteed a good return to the citizens. If they go ahead and change the policy, then they will be fighting this thing every day with other developers wanting to come and wanting us to pay 25% of their overall costs.

Fortenbaugh stated he appreciates the Mayor's point, but he does not see a stream of developers beating on our door right now.

SUBSTITUTE MOTION by Fortenbaugh to go back to LEDA but without the restrictions on our policy.

Mayor Fitch stated they can take it back to LEDA but the restrictions are there. They will have to bring something back to council that would deviate from the $700,000 that they can do according to the ordinance.

Fortenbaugh stated it is a policy and they can agree as a group to change that policy.

Mayor Fitch stated they need to change the policy to accept any other thing to where we are paying out more money than the $700,000.

Fortenbaugh stated in the meantime LEDA can approach this from the stance that they don't have that restriction which does not serve any purpose here. They can continue to work on this.

Tanner stated for clarification, they are sending it back to LEDA to try to renegotiate a deal with the assumption that council policy doesn't necessarily apply in this case.

Fortenbaugh stated we will work on changing the current policy.

Mayor Fitch stated the motion is to send it back to LEDA and try to work a better deal and anything they worked out deviating from what we have here, we have to change the policy.

Jensen stated you can suspend a policy, but we need to modify the policy. The policy was written so restrictive because there is a constitutional provision that you have to deal with. That is what they have to start dealing with as far as a policy. Then you have the state legislature enact statutes like the local development act and the quality jobs act. There are a lot of exceptions to this constitutional provision but only if we actually can prove that there will be a public benefit to providing incentives and getting a real return on our investment and having strong accountability. If we give $1.3 million there has to be some kind of safeguards where you can't walk away with our money. This has to be done the right way and if we don't get a good deal and we don't have strong accountability we are in violation of this constitutional provision. LEDA can reconsider this without having the policy finalized.

SUBSTITUTE MOTION by Fortenbaugh SECOND by Morford to suspend our policy and send back to LEDA to look at it further and direct staff to amend the policy. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

ADDENDUM:

1. Consider an ordinance pertaining to Personnel Policies and Procedures amending Section 17-1-6-162, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2015 by increasing the number of fixed holidays per year from six (6) to seven (7), providing for severability, and declaring an effective date. Exhibits: Ordinance 18-__.

Morford suggested they also give the employees Christmas Eve as a holiday when it falls during the work week.

MOVED by Morford SECOND by Tanner to adopt **Ordinance 18-05**, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-05

An ordinance pertaining to personnel policies and procedures, amending Section 17-1-6-162, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2015, increasing the number of fixed holidays by adding as holidays (1) the Friday after thanksgiving and (2) Christmas eve [when Christmas eve falls on a Monday, Tuesday, Wednesday or Thursday], providing for severablity, and declaring an effective date of thirty days from today.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Johnson stated the Lawton Police Department is celebrating Red Ribbon Week from October 23rd through the 31st.

Fortenbaugh stated there will be a full service restaurant opening at the airport.

Tanner expressed condolences to the family of Donny Thorn. He stated Open Streets had another successful event. He announced that November 5th is Ambucs Pancake Day.

Diane Branstetter, Finance Director, presented revenue and expenditure highlights for the first quarter ending September 30, 2018. (On file in the City Clerk's office).

The Mayor and Council convened in executive session at 8:32 p.m. and reconvened in regular, open session at 9:01p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEMS:

22. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2018-2019 between the International Union of Police Associations (IUPA), Local 24, and the City of Lawton, and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title to item #22. No action was taken.

There being no further business to consider, the meeting adjourned at 9:02 p.m. upon motion, second and roll call vote.

____
FRED L. FITCH, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK