MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JANUARY 9, 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 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Rev. John Helgeson, First Presbyterian Church, followed by the Pledge of Allegiance.

ROLL CALL

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

ABSENT: None

PROCLAMATION FOR HUMAN TRAFFICKING AWARENESS MONTH

Mayor Fitch proclaimed January 2018 as Human Trafficking Awareness Month. He presented the proclamation to Cindy Evans, The Red Cord organization. Ms. Evans stated they will be hosting a gala on January 27th at 6 p.m. at the Hilton Garden Inn.

PUBLIC SAFETY FACILITY QUARTERLY UPDATE

Jim Healey and Bruce Hensley from Dewberry Architects updated the council on the public safety facility project.

AUDIENCE PARTICIPATION:

Theodore Symeleski, 2509 SW Cornell Avenue, stated he has a questioned about the EZ-Go on 26th and Gore. He emailed Carey Johnson who told him he now wants to put it on 27th and Gore and put the bank on 26th and Gore. He questioned if this change has to come back to the city council for approval.

Richard Rogalski, Community Services Director, stated it depends on what they want to do. He has not seen any plans for a relocation, but the corner is zoned C-1 so there will still be a use permitted on review for an EZ-Go so that would go to the City Planning Commission (CPC). This would not need council approval unless there are some public improvements involved.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF DECEMBER 12, 2017.

MOVED by Tanner SECOND by Morford to approve the minutes of Lawton City Council regular meeting of December 12, 2017. AYE: Morford, Jackson, Davis, Burk, Tanner, Johnson. NAY: None. ABSTAIN: Fortenbaugh, Warren. MOTION CARRIED.

CONSENT AGENDA:

Mayor Fitch stated the Dalton and Dollie Cook claim on item #1 will be considered separately.

MOVED by Burk SECOND by Warren to approve the consent agenda with the exception of item #1 (Dalton and Dollie Cook claim). AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Kathy and John Moffit in the amount of $2,070.78 **(Res. 18-01)**, Donna Ahlborn in the reduced amount of $987.09 **(Res. 18-02)**, Jerry Ramos in the amount of $89.37 and Dalton and Dollie Cook in the reduced amount of $1,481.03. Exhibits: Legal Opinion/Recommendation, Res. 18-___, Res. 18-___, and Res. 18-___.

Kelea Fisher, Deputy City Attorney, stated this claim was filed by Dalton and Dollie Cook who alleged that on October 9, 2017, a City of Lawton sanitation truck struck their 2001 Dodge pickup with the automated arm while emptying a trash cart at 511 SW Monroe Avenue. The damage to the truck occurred on the front driver's side panel and it damaged the light and the bumper on the vehicle. She is recommending approval of the claim because there is no denial that this accident did occur. Mr. Cook submitted one estimate to repair his pickup in the amount of $3,558.36 which actually exceeds the value of the vehicle which is approximately $2,000. Because he only submitted one estimate, despite the fact that our tort claim form requests two estimates, staff did go out and obtain an independent estimate from Guy's Body shop and that was in the amount of $1,481.03. One of the items removed from the estimate submitted was the replacement of the grill on the vehicle which was not damaged. There were some replacement parts that were recommended to be replaced with refurbished parts.

Dalton Cook, claimant, stated he disagrees with this claim on the amount. He stated the employee was in training when he hit his truck and he did not know about the two estimates. If he takes it to the shop who is going to pay the rest of the money? He is losing money every day because his truck has been down for three months now. He is losing between $1,000 and $1,500 every month because he is in the pallet business. He just wants his truck fixed.

Tanner stated it looks like the truck is still drivable.

Mr. Cook stated he is not going to drive that truck on the road because if he drives it and the police stop him he will receive a ticket. His fender, bumper and grill are messed up.

Tanner stated the City is not denying the claim, we are just taking issue over the amount of the claim. He questioned how staff got the second estimate.

Fisher stated they took the photographs that were provided by the worker at the scene and they provided those to Guys Body shop.

Tanner questioned who Mr. Cook got his estimate from.

Mr. Cook stated Carcraft.

Tanner questioned if Mr. Cook drove the car over to get the estimate.

Mr. Cook stated yes.

Tanner stated this is what he does for a living and the truck looks drivable and it doesn't look like he has suspension damage.

Mr. Cook stated his right front fender, lights, bumper and grill are messed up. He is worried he will get a ticket if he drives it on the road.

Davis stated the estimate of $1,401.03 was an estimate that the claims investigator got via a photograph they took to a body shop.

Fisher stated they took the photographs to Guy's Body shop as well as the estimate that was provided by Mr. Cook.

Davis questioned if it was standard procedure to give a bid by looking at a picture.

Tanner stated it is difficult but you can get an idea. It depends where you get your part prices. He would suggest they table this temporarily and have Mr. Cook drive it over to another facility and get a third estimate and then we will have something a little more accurate to work off of.

Davis stated he would like to see the City have an actual hard estimate, not just an estimate based on a picture, unless that company says that they will definitely repair it for that amount.

Fisher stated they do have a hard estimate. They didn't verbally provide the estimate they actually prepared a written estimate.

Davis questioned if Guy's Body shop is guaranteeing this price of $1,401.03 based on the pictures, to repair all the damage to the truck.

Mayor Fitch suggested they take the truck to Guy's Body shop so they can physically look at it and verify his estimate.

MOVED by Tanner SECOND by Davis to table this claim. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

2. Consider the following damage claim recommended for denial: James and Louoma Hapka in the amount of $185.00. Exhibits: Legal Opinion/Recommendation.

3. Consider accepting State Aid for Libraries Grant of $45,471.00 from the Oklahoma Department of Libraries for FY2017-2018. Exhibits: Agreement for 2018 State Aid Recipients. Oklahoma Department of Libraries Grant Rules for Public Libraries are on file in the City Clerk's Office.

4. Consider approving Amendment No. 7 to the March 14, 2011 agreement with CH2MHill Engineers, Inc. for additional professional engineering analysis; to evaluate, make recommendations, and design the rehabilitation and reconstruction of Ellsworth Spillway. Exhibits: Amendment to the agreement is on file in the City Clerk's office.

5. Consider approving plans and specifications for the Medicine Park Water Treatment Plant (MPWTP) Improvements Project #2017-05 and authorizing staff to advertise for bids. Exhibits: Plans and specifications are on file in the W/WW Department office.

6. Consider approving plans and specifications for the WWTP Improvements Package III Project #2011-08 and authorizing staff to advertise for bids. Exhibits: Plans and specifications are on file in the W/WW Department office.

7. Consider approving appointments to boards and commissions. Exhibits: None.

Building Development Appeals Board

Paul Webb
Residential Homeowner
New Member
0915/2018

Michael Merritt
Ex-Fire Official
New Member
01/09/2020

Waurika Master Conservancy District Board

John Mackey
Existing Member
02/06/22

8. Consider approval of payroll for the period of December 18 - 31, 2017.

OLD BUSINESS ITEMS:

Mayor Fitch stated the council will address item #10 before item #9.

10. Consider approving a resolution in recognition of Indigenous Peoples' Day on the Friday after Thanksgiving each year. Exhibits: Resolution No. 18-__.

Dr. Cornell Pewewardy, 3031 NE Stratford Circle, requested the city council approve the adoption of this resolution on the second Monday in October each year starting on October 8, 2018.

MOVED by Tanner SECOND by Burk to approve **Resolution No. 18-03** approving a resolution in recognition of Indigenous Peoples' Day on the second Monday in October of each year. AYE: Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Morford. MOTION CARRIED.

9. Hold a public hearing and consider a resolution amending the Land Use Plan from Industrial to Public Facilities, an ordinance changing the zoning from I-3 Light Industrial District and I-4 Heavy Industrial District to P-F Public Facilities District, and an amendment to the setback for property located at #1 South Railroad Street. Exhibits: Resolution 18-__, Ordinance 18-__, Location Map and Site Plan.

Richard Rogalski, Community Services Director, stated the public hearing for this item was held at the last council meeting and he questioned if the council would like him to go through the presentation a second time.

MOVED by Davis SECOND by Tanner to table to January 16, 2018 special council meeting. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

11. Consider the following damage claims recommended for approval: Eisenhower Village Association in the amount of $856.00. Exhibits: Legal Opinion/Recommendation and Resolution No. 17-__.

Fisher stated this claim was originally presented to council on December 19, 2017. The damage was caused to the parking lot of the Eisenhower Village Association in the pool parking lot by a solid waste collections truck. They submitted a paid receipt to repair the damage in the amount of $1,712. She recommended they approve the claim in the reduced amount of $856. She stated Council Member Tanner made a motion to approve the claim at 75%, but because there were not five affirmative votes the item failed.

Mayor Fitch stated he thought it was 70%.

Tanner stated yes but today it is 75%.

Fisher stated that her recommendation has not changed.

MOVED by Tanner SECOND by Davis to approve **Resolution No. 18-04** approving the damage claim of Eisenhower Village Association in the reduced amount of $1,284.00.

Edward Williams, President of the Eisenhower Village Homeowners Association, stated when the claim was brought to the City they were advised to have two estimates and they chose the smaller one. They were also advised that the City had the ability to repair that parking lot and that is what they really wanted to do, but they were informed to file a tort claim. He stated they will accept the 75% because they are not trying to get rich. He represents 375 homeowners and they could not have the parking lot unfinished because they were getting ready to open the pool so they had it repaired.

VOTE ON MOTION: AYE: Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Morford. MOTION CARRIED.

Davis questioned if the City told Mr. Williams that they could repair the parking lot.
Mr. Williams stated they were told that the City had the equipment.

Davis questioned if staff gave Mr. Williams the option of the City repairing it or them filing a claim.

Mr. Williams stated no.

NEW BUSINESS ITEMS:

12. Hold a public hearing and consider a resolution amending the Land Use Plan from Residential/High Density to Commercial and an ordinance changing the zoning from R-3 Multiple-Family Dwelling District to C-1 Local Commercial District zoning classification on property located at 1050 SE 45th Street. Exhibits: Resolution No. 18-__, Ordinance No. 18-__ with Site Plan, Location Map, Applications and CPC Minutes.

Rogalski stated this request is for a 3.12 acre tract of land located south of Sungate Addition on the east side of SE 45th Street. The proposed use of the tract is administrative offices and maintenance services to include materials and equipment storage for housing owned by the Comanche Nation. The zoning of the surrounding area is R-3 to the north, C-1 to the south, R-4 High Density Apartment District to the east, and R-1 Single-Family Dwelling District to the west. The land use of the surrounding area is single-family residential to the north and west, Dollar General store to the south, and vacant to the east. The site plan indicates a one-story building with a height of 30 feet measuring 12,186 square feet. Parking would be located in the front and rear of the building with some of the parking spaces closest to the building being covered parking. The parking area in the rear of the building would have an 8-foot security fence for the parking of maintenance vehicles. SE 45th Street is in the process of being reconstructed to a five-lane arterial. There is a waterline along SE 45th Street. The applicant would be required to provide sewer improvements to this tract. In 2005 the City Council approved construction plans for a sewer line to serve this tract subject to conditions. The sewer line was not constructed. The proposed use at that time was an elderly living center for the Comanche Nation. He stated on November 30, 2017, the City Planning Commission (CPC) held a public hearing on this request. At the public hearing one resident requested sewer service not be tied to the residential lines due to a history of sewer problems in this area. The applicant was present to answer questions. The CPC, by a 7–0 vote, recommended approval of the request.

PUBLIC HEARING OPENED.

Betsy Lawrence, 1001 SE 45th Street, stated she is directly across the street from this rezoning. She questioned what type of facility this will be, will they have shifts, what are the hours of operation and if there will be traffic.

Burk stated they will operate approximately from 7 a.m. to 5 p.m., Monday through Friday. They basically take care of the Comanche housing throughout the city and the surrounding areas. They do not have big trucks or heavy equipment coming in. He believes it will be an asset and it is great area for the development of commercial property.
PUBLIC HEARING CLOSED.

MOVED by Burk SECOND by Tanner to approve **Resolution No. 18-05**. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

MOVED by Burk SECOND by Davis to adopt **Ordinance 18-01**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-01

An ordinance changing the zoning classification from the existing classification of R-3 Multiple Family Dwelling District to C-1 Local Commercial District zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

13. Consider providing direction to the City Manager to suspend the issuance of any building permits necessary for the construction of the Public Safety Facility and by vote of the Council on motion of a Council member appoint a Council Committee to immediately begin negotiations with the contractor, Flintco, LLC, to prepare a proposed change order for the project, as authorized in paragraph 17 of the General Conditions of the Contract Documents, eliminating certain use(s) and associated portions of the construction; and submit the proposed change order and any other recommendations of the Committee related thereto for approval of the City Council at a special meeting of the Council on January 16, 2018 at 6:00 p.m. Exhibits: None.

Davis stated this is to form a committee to look into bringing the public safety facility back within budget. The contract was let and awarded last year at nearly $5 million over budget. In order to do that was to steal money from the Gore project between 67th and 82nd which is a shared project with ODOT, Parks and Recreation, Library and at least one other construction project. All of those projects were on the ballot and approved by the people to be addressed by the money in that sales tax extension of 2015. He tried last year to get the council to wait for one week and look at an alternate plan to save the citizens several million dollars. The majority of the council did not do that. He and Council Member Tanner were the only ones who voted against that. They received an update from Dewberry tonight and that project has started, so the original plan he had back then was not viable anymore. The location has to stay where it is because of how much money we have invested in it, but we still have an opportunity to bring that public safety facility within budget and take that money and put it back into the projects that were also approved by the people. It would take about $5 million to bring it back into budget. There are a couple things they would address to include the size of the jail and moving the fire station. The vote was to have the existing fire station remodeled. After some research he does not believe that moving the fire station is going to save any money because the amount of money was specified in the ordinance that was attached to the ballot so the money would stay the same virtually that's in the fire station and go back to remodeling the existing fire station. He stated on that ballot it also stated that the governing body can basically dole that money as they see legal and practical and that is up to the interpreter on their definition of practical. His definition of practical on the fire station is if this committee finds that it is not going to save us money or going to cost us more money, obviously that would be counterproductive to spend more money. If they find that to be the case, he would be for the fire station staying where it is now in the new public safety facility. The jail is the most expensive per square foot part of this building and he believes it is oversized especially when coupled with a lot of the policies that a lot of municipalities are going to that reduces the amount of inmates that they are currently housing. He does not want to delay the public safety project so he is asking to form a committee to look at some of these cost saving measures and bring their recommendation back to council at a special council meeting next week. At that time the council can vote to approve those recommendations of cost savings and put that money back to the projects that were also on that ballot or the council will continue in the direction it is going now.

Mayor Fitch stated there are some things that need to be taken into consideration for the entire council to hear at this time because they will not attend the committee meeting due to a quorum restriction. He requested George Hennessee, City Engineer, to come forward and he has some comments to make and there was additional information put out by the City Manager.

George Hennessee, City Engineer, stated in developing the facility they looked at three or four individual buildings. That proposal was put before the public as four building but as a cost savings item it was determined that they could build a single building with all four functions at a much lower cost because of the traffic, drainage and utility issues as well as the land purchase. A single facility was developed. With the jail, our current 70 person facility is overloaded on a regular basis so some of the lower risk inmates are released early. Staff determined that a facility that would house about 100 people would serve today's demand. They looked at a 40-year projection and they felt they would need approximately a 300 jail facility. Currently they do not have funding for a 300 cell facility so they developed a pod system with three individual pods. Pod one would be built with the initial construction, pod two would be added as required and pod three would be at the end of the building life. He stated that is how the building was developed.

Tanner stated he has gone through this process from the beginning and they hashed everything out and looked at the different locations. It was going to be less expensive to put all the facilities in one building but it has always been a contention of his as to why we need a jail system that large when the only type of inmates we are going to handle are misdemeanor inmates. What would you consider when you are releasing a low risk inmate. They are all low risk inmates. The high risk inmates go to the county.

Hennessee stated when an inmate has served 8 of his 10 days, then he is eligible for the early release.

Tanner stated he knows an individual who works for him part time and he rides a ten-speed around. When it starts getting dark you have to have a light on your bike. You have to abide by the same traffic rules as an automobile. This individual got pulled over and they wrote him a ticket for not yielding at a stop sign and they wrote him another ticket because he did not have a light on his bicycle. He goes to court to deal with this and he got charged court costs, but he did not have the $51 so they locked him up. We don't need to be locking up folks that don't yield on their ten speeds at a stop sign. We are spending hundreds of dollars to collect pennies. That is the reason he did not vote last August on this public safety facility, the jail is too big and also because we took money from parks and recreation, the library and road projects. We can get that money back by downsizing that mammoth jail. We don't even need it, we have a jail that is perfectly functional to house prisoners. That is his opinion and he feels we need to address this oversized jail. He feels they can send this out to a debt collection agency instead of locking people up.

Davis stated he is not sure where Mr. Hennessee got his numbers or the research that he has done. He disagrees. His research shows that the average daily population of our jail is 61 inmates, so the notion that the jail is constantly overloaded is incorrect. Three hundred beds is the estimation that we would need in 40 years. According to the ratio of population to prisoners, we house less than 1/10th of 1% of our prisoners, that means in 40 years you would have had to estimate that our population was going to be over 500,000 people. He does not believe Mr. Hennessee estimated that and if he did, that estimate is grossly inaccurate. He feels that the jail is currently too big and we need to move in the opposite direction of housing low level offenders for not paying things like seat belt tickets or yielding at a stop sign on their ten speed.

Fortenbaugh stated he feels it is good to look at any opportunity to save the City money but he is concerned if this may delay Flintco in any way by taking seven days to do this on the side.

Hennessee stated the contractor is currently working under an earth change permit. He has a submittal for steel for the foundation and so they expect delivery of the steel in February. They would like to start drilling piers and placing beams in February.

Fortenbaugh stated it sounds like if the council comes back next week and make a decision that will not affect the contract.

Mayor Fitch stated it will affect the contractor if the council comes back with the decision of going to 20 cells because you will then open up the possibility of a lawsuit being filed by Flintco. It is not a negotiation you get into with Flintco, we are not in a negotiating situation with this when we are asking to cut the project down. Flintco will have the option of suing us and we are not in a negotiating situation. We are asking to downsize this thing in an impractical manner, you are talking about deleting 45% of the whole project and you are going to have some exposure out there as far as liability to Flintco. We have a tremendous amount of dollars spent in the design, engineering and architecture with the work that has been done and the work that has steel coming. He stated they probably already have orders placed for steel if they want it delivered here the first of next month.

Hennessee stated that Flintco does have the offices ready and equipment and manpower on site. There are daily charges as well as the office administration, bonding, insurance and the normal contracting stuff.

Mayor Fitch stated there is a possibility of an upward $5 - $7 million that we are just going to throw out the window.

Tanner stated there is an ongoing cost also that he has contention with. When we build a new jail system we are going to be under different regulations from the state governing agencies and we have had estimations that we are going to have to add approximately 15-25 additional jailers.

Ihler stated the statute says that for every 20 prisoners we need to have two jailers. We would be looking at 15 to 20. The consideration of how many is based on the configuration of the jail and that would be determined by the state inspector when he came down.

Tanner stated he asked Mr. Ihler how we would come up with the money to pay for these new jailers and his response was that he did not know. He stated if our water revenue and sales tax revenue does not increase, then some other employee in the City is going to lose their job. When he looks at the numbers of which jobs are being cut, it is in public works. He stated they need to look into this jail and he thinks that Flintco can understand that it is not just the cost of the building, it is going to be the annual cost to provide the labor of jailers to sustain a mammoth jail like we are building.

Fortenbaugh stated they cannot just park just four council members in a room and have them figure out what size jail we need. This has to be a public meeting with people in there that know about jails, that know about all these things we are talking about, so we don't make a bad decision later on. We can't throw out money in the process and we cannot delay this project either.

Mayor Fitch stated he would recommend that the meeting take place in the council chambers and they will be open to the public. Not necessarily for public input, but input will be from the engineers, architects, etc. In looking at the amount of time it took to get us to where we could even award a contract, he does not see how anything can be done within one week, without forcing the delay of this whole project. A lot of communities have gone away from having jails and now they are building jails because they made a mistake.

Burk stated he appreciates the fact that we should look at every opportunity to save money. They did that when they started looking at the facility to start with. They have done everything to make sure that they were doing the right thing to include moving the fire station. After going through all this they determined they could not buy the land they wanted and they couldn't do what they needed to do. They asked professionals about how to make this all work. When it came to the jail, they went and had a sit down with the county commissioners and looked at if they could have one jail. The county has no money and the projected numbers came back between \$30-\$50 million to expand a jail that is already full at the county level. They did not want to take our prisoners because the state pays them more money than what we would be willing to pay, so the county commissioners basically said that they didn't have any money and it would be on the City's back to do that. Everything they looked at came back with huge numbers. They sat down with police and fire and talked about co-mingling a building that they could share so it won't be so expensive. He stated with regards to the projects that are going to be delayed, the 67th street project is still a priority to us, but ODOT does not have it on their priority list so either the City pays 100% of the project or that project does not get done. We do have some matching funds set aside and it is ready to go, but ODOT will not have their part of the money. He understands the need and concern about saving money, but there was nothing left unturned. He stated the county did not build their jail big enough. It is fairly new and it is full. He stated they need to make sure they are not only looking at police and fire just for today. He does not mind putting this off for a week, but they have to keep this ball rolling and they cannot let this project die and they cannot let themselves get into a lawsuit with a firm that has a signed contract. They can make adjustments, but they cannot make a contractor take away his profits after he has left other jobs on the table, because we better get ready to be sued and the number will be between \$6 - \$10 million because that is your profit numbers if you cut this project in half. He does not have a problem forming a committee but he just doesn't want this to hold up our movement on trying to do the right thing. Saying that we threw money away is just not the correct answer.

Davis stated the issue that the Mayor brought up that this will not be a negotiation, as the agenda item states as authorized in Paragraph 17 of the General Conditions of the Contract under extras it clearly give us the ability to negotiate a change order either to increase the size and scope of the project or to decrease the size and scope of the project. That is according to the contract that we signed with Flintco, an absolutely incorrect statement. This is a negotiating circumstance that we would be in if we decided to downsize the jail. He would like a committee to look into the possibility that we don't need a 120 bed jail facility, we need a much smaller jail facility, and to consider the possibility of doing like multiple other municipalities, in certain cases, and contracting our prisoners out to decrease the liability, legal costs and the extra expense of hiring new employees. He has asked the same questions and currently no one has a plan how we are going to open the doors because the best estimate that we can get is about 14-15 people which would double the staffing. We are currently on the road to construct something that we cannot even open the doors to because we have no idea how we are going to hire the additional staff needed. There is a lot of information that a lot of people have compiled and that can be presented at this committee meeting. He is asking that the committee look at, not going away from a city jail, but reducing the size of the city jail in an effort to bring this back in the budget. They have had conversations with the architect as far as delaying the project, and there will have to be some redesign work. The center part of that where the police, fire and the shared spaces area would probably not be delayed and if so, very little. With the jail being on the far side and the fire station being on the other far side helps us out in allowing the contractor to continue their work. He agrees with everyone here in that we need to get that police station built as soon as possible and he does not want to delay the contractor a moment more than we absolutely have to. He does not believe that downsizing the jail will delay the contractors on building the police station and after Mr. Ihler talked with the architect, they could continue on that center part without much delay.

Ihler stated he never spoke about starting in the center part. In fact, the discussion he did have with Dewberry, was about the mechanical system, heating and cooling and was based on the facility as one large facility today. If we reduce the size of the facility by 40-45%, if we remove the fire station and the jail facility, that would change the size of some of the mechanical systems that we would use to heat and cool the facility. It is going to take some time to design that aspect of it. He wants to make sure that everyone understands that when we come back in a week, the understanding he has is that the committee is going to have a guidance of what they want staff to talk to the contractor about as far as the items that we want to remove/add or whatever revisions need to be made. They need to incorporate into this the design architect because they know the facility better than anyone and they can provide good information to us during this week as they will have questions about what we can and can't do. We do have hourly rates that we pay them to attend these meetings to provide valuable information as to what we need to do as we move forward. He just does not want there to be a false concept that we will be able to have, in a week, to walk over to Flintco's office and say that this is what we want to do and we need a number. We are not going to have a number in a week.

Davis stated he does not think anybody thinks that.

Ihler stated he has had some discussions and some people do think that so he wants to clarify that. Whatever the changes are there is going to be design time to change the facility and change the design to what we are going to do. Depending on what we end up with it could be anywhere from 3-6 months. They are going to find out from the architect as well as the contractor if they can continue to work.

Davis stated they did have a discussion about the possibility of continuing on with building on the center part. The bottom line is that facility was passed at $5 million over budget. They have already run into tens of thousands of dollars of unexpected costs as he predicted we would in August when they passed this thing. It is his opinion that it is the obligation of the city council to try everything they can to bring this back into budget and to take that money and address the other items that the people also voted on to be accomplished with that same sales tax extension money.

Mayor Fitch questioned if Council Member Davis is doing away with the fire station.

Davis stated the idea of this is to bring the project within budget and that is the goal. At this point with the work that has already been done and the possibility of the cost associated with deleting the fire station from the project and taking that money back over to the existing fire station, personally he would like to see us do that because he knows that was the intent of the voter on the ballot, but now that he has dug into it he does not think it will save any money. The money was allotted in the ballot for that fire station and it is not going to be any less than the $3.6 million that we are estimating the cost of the fire station to be now. If it is the same or less that is something he would like to talk to the committee about. He personally does not think we will get any savings from the fire station and he is not for doing something that moves in the opposite direction and costs more money.

Burk stated if they cut 25% of the project off, he questioned at what point will there be legal ramifications. Can we just arbitrarily go back to Flintco and say that you have a $30 million contract but we are going to cut it off and pay you $20 million today. Is that even legal?

Jensen stated we can't do anything arbitrarily. When he was asked to write the agenda item he reviewed the contract to see what provisions there were in there that would allow a negotiated process. He cited paragraph 17 that is title extras but the actual wording is what was stated earlier. There can be add ons, extras or alterations, which may be revenue neutral and there can be deductions in the work. That can't be unrealistic or the contractor will never even talk to us. That clause gives us the authority to approach them to see if they are willing to talk about it. Should you do that or not, he is not going to comment on that when we could be facing some kind of legal action here and his office has to defend it one way or the other. Either a tax payer lawsuit or a lawsuit by a contractor or whomever, it would totally ridiculous for him to make comments about that in a public meeting. If they are going to do this, and he has stressed this to Council Member Davis and a couple others that if they are going down this road it needs to be a negotiated process because even though we can order changes, there has to be the other entity equation dealt with and that is how much are we actually going to save.

Warren stated he has had issues with this building for a long time. There was an opportunity to do something and take a week that could very well have saved a lot of money but nobody was willing to do that. He does not have a problem with taking a week and having some extra meetings if there is a possibility of saving the citizens some money and doing the things that were on the ballot that citizens actually voted for. He has had citizens tell him that they actually voted for this because they wanted 67th Street done. He understands there is an ODOT issue, but there is always going to be an ODOT issue. He remembers the days when they had five year waits. He stated that he feels this was not well thought out because of two things, no one thought of the fact that we are going to have to have more jailers and no one drilled any core samples to see what the ground was like and then we had to go in and do more dirt work than what they had originally planned because someone just sat in an office one day and said it would cost this much. There have been problems and things that were missed and things that weren't done properly. As far as he knows we never really called a company that builds and operates jails and had them help us and show us what we wanted to do. He does not see a reason to not spend a week and see what we can put together.

Hennessee stated on the design of the jail, the project began in 2014 and it began with an estimate that we received from Wilson Estes, a firm from Kansas City. They determined how many officers we needed based on population and how many inmates we would be serving based on that population. They took that information and employed a second architect, CH Guernsey out of Oklahoma City, who came down and did a needs assessment. They sat down with the police and fire chiefs, court clerk and judges and they went through every function that they could identify to put together a program. Wilson Estes came up with a jail population of 300 and CH Guernsey came up with a population of 300. When they went to design the project they went out for an RFP and Dewberry was the most qualified firm to do the design. They verified the Guernsey needs assessment and made modifications, but the 300 person jail was not modified. Staff went through a number of steps trying to verify and quantify the amount of needs that the city wants. The direction from council was that they wanted a safe city and if we want a safe city we have to have a jail.

(Jackson exited the meeting at 7:55 p.m.)

Mayor Fitch stated when you are looking at going 30, 40 or 50 years out…

Hennessee stated that was the purpose of the needs assessment, to find out what are our needs today and what are they going to project it out in 25 to 40 years.

Mayor Fitch stated they knew the 300 was going to cost way too much money so when they went out for bid they went out with a 100 capacity jail with 20 additional holding cells. He stated that is not out of line with what we may need 20, 30 or 40 years down the road.

Davis stated if Mr. Hennessee is finished with providing the facts that you had for him he doesn't think this is the appropriate place for Mr. Hennessee to make personal conjecture and arguments like he did previously.

Mayor Fitch requested that Council Member Davis tone down his comments about stealing money and Mr. Hennessee's comments.

Davis stated he feels this is not the appropriate place for Mr. Henneesee, as the City Engineer, to make personal conjecture and arguments for or against this public safety facility. He is here to provide factual information as requested. One of the things this committee wants to take into account is reducing the number of people that we house. He would like to look at throwing less low municipal offenders into jail, then it changes our needs assessment and it changes the size of the jail we need. No one is arguing that if we throw the same amount of people in jail over the same offenses that we need a smaller jail. That is why he is asking for a committee.

(Jackson exited the meeting at 7:55 p.m.)

Mayor Fitch suggested that a recommendation be made for this committee.

<u>MOVED by Davis SECOND by Tanner</u> to form a committee to include Council Members Fortenbaugh, Warren, Tanner and Davis.

Morford stated he feels they should include someone who was on the council when this project was put together. Everybody here is new.

Davis stated Council Member Tanner was on the council.

Mayor Fitch stated he was on the council but he was not on the public safety committee.

Tanner stated most of what was discussed about the public safety facility was discussed in open session.

Burk stated he chaired the committee and Council Member Tanner was not on the committee.

Morford stated he would like to add himself and Council Member Burk to this committee and drop a couple off.

SUBSTITUTE MOTION by Morford SECOND by Burk to form a committee to include Council Members Morford, Burk, Tanner and Davis.

Mayor Fitch requested Council Member Davis make a recommendation for this motion of what two people he wants to put on there.

Davis stated he is not going to add to Council Member Morford's substitute motion or participate in the substitute motion. He is hoping the substitute motion fails and that his motion with the councilmen that were elected by the citizens of this city to represent them in all matters comes before the council and that his motion passes with the council members that he nominated.

Morford stated that they were also elected to represent.

Davis stated the argument is being made that the newer folks were not on the committee in previous years. To him that doesn't matter, these folks are just as much to represent the council as anyone that has been on the council for any length of time. That is why he is not participating in Council Member Morford's motion.

Mayor Fitch stated we are just trying to make transparency available here.

Tanner stated he does not mind stepping down if Council Members Morford or Burk would like to take his place and if Council Member Davis would allow it in his motion.

Mayor Fitch questioned what two others would he add to the committee.

Morford stated Council Member Davis and Warren.

SUBSTITUTE MOTION by Morford SECOND by Burk to form a committee to include Council Members Morford, Burk, Warren and Davis.

Davis stated if this motion fails it will revert back to his original motion of the council members that he put on. He stated if Council Member Tanner is willing to step down from the committee, council member Burk has expressed desire to him to be on that committee and he knows his motion has been made and seconded and no longer belongs to him, it belongs to the body, but if we suspend that he will substitute that motion with Council Member Burk instead of Council Member Tanner.

Jensen stated there is a substitute motion on the floor that has to be dealt with first.

VOTE ON SUBSTITUTE MOTION: AYE: Morford, Burk. NAY: Davis, Tanner, Fortenbaugh, Johnson, Warren. MOTION FAILED.

Mayor Fitch stated we will go back to the original motion.

Tanner stated he will remove his name from that motion.

Davis stated he will add Council Member Burk to his motion.

MOVED by Davis SECOND by Tanner to form a committee to include Council Members Fortenbaugh, Warren, Burk and Davis. AYE: Morford, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Jensen stated that was one part of the action of this item. The second part was to give direction to the City Manager and the third part was that by approving this they are agreeing to have a special council meeting on January 16th at 6 p.m. He stated they need a motion to address this part.

MOVED by Davis SECOND by Morford to provide direction to the City Manager to suspend the issuance of any building permits necessary for the construction of the Public Safety Facility and submit the proposed change order and any other recommendations of the Committee related thereto for approval of the City Council at a special meeting of the Council on January 16, 2018 at 6:00 p.m. AYE: Morford, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Davis stated he would like the first committee meeting to be held tomorrow morning at 9 a.m.

Tanner stated we have spent a lot of money where we are at right now and he is content with the fire station and he is content with the police station. If there is a way at all possible he would like to reduce the jail size.

14. Consider approving an ordinance amending Sections 7-19-1-1901 through 7-19-1-1904 and creating Section 7-19-1-1905, Division 7-19-1, Article 7-19, Chapter 7, Business, Lawton City Code, 2015, by modifying the requirements for a refuse hauling license, specifying the appeal process for a denied license, clarifying the renewal period of the license, specifying certain hours that the refuse collection can occur within a residential area, and providing for severability. Exhibits: Ordinance No. 18-__.

Rogalski stated city staff has received complaints regarding the noise created by very early morning or late night commercial refuse collection within or adjacent to residential areas. This ordinance will create time restrictions for commercial refuse collection to occur within a residential district or within 300’ of a residential dwelling, which includes single-family dwellings, multi-family dwellings and apartment complexes. While reviewing the code for this proposed addition, staff determined that the code needed to be more clear on the current application and licensing process and requirements. It now lists the current inspection requirements to give the applicant the ability to correct any concerns prior to the inspection. This ordinance and the accompanying resolution, also provides an incentive to renew the license before it expires.

Davis stated under C, the vehicles would be subject to inspection at the landfill, he questioned if these were commercial vehicles only or is this covering a person in a pickup truck.

Rogalski stated these are people that are being licensed by the City to actually be in the profession of commercial refuse pick up.

MOVED by Burk SECOND by Morford to adopt **Ordinance 18-02**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Morford, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-02

An ordinance amending Sections 7-19-1-1901 through 7-19-1-1904 and creating Section 7-19-1-1905, all in Division 7-19-1, Article 7-19, Chapter 7, Business, Lawton City Code, 2015; by modifying the requirements for a refuse hauling license, specifying the appeal process for a denied license, clarifying the renewal period of the license, specifying hours that the refuse collection can be performed within a residential area, and providing for severability.

15. Consider approving a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, pertaining to Chapter 7, Business, by amending Article A-7-19, Refuse Hauling. Exhibits: Resolution 18-__.

Rogalski stated this is the resolution that changes the fee schedule to go with the previous refuse collection ordinance. They added a fee of $25 for the seasonal license and they added an incentive for people to renew on time by reducing the cost. It is easier for staff to renew a license rather than issue a new one.

Morford stated to haul things it will cost a company $50 but they can have four or five trucks and it is $20 for inspection.

Rogalski stated the inspection is actually per vehicle. The license is for the whole company.

MOVED by Morford SECOND by Burk to approve **Resolution No. 18-06**. AYE: Morford, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

16. Consider approving an ordinance amending Division 4-2-3, Article 4-2, Chapter 4, Alcoholic Beverages, Lawton City Code, 2015, by adding provisions for licensing to sell nonintoxicating beverages for on-premise consumption for businesses that do not meet the definition of a tavern and declaring an emergency. Exhibits: Ordinance No. 18-__.

Rogalski stated Senate Bill 383 provided for some major changes in the state laws governing the retail sale and on premise consumption of alcoholic beverages in Oklahoma. While much of the law will not go into effect until October, 1, 2018, sections allowing the sale of nonintoxicating beverages (low-point beer) and mixed beverages for on premise consumption within a movie theater area is already effective. Article 4-2 of Lawton City Code governs the retail of nonintoxicating beverages and provides for two types of licenses. If more than 25% of the gross sales of a business establishment are derived from the sale of nonintoxicating beverages the establishment must be licensed as a tavern and abide by the regulations provided for taverns. However, if not more than 25% of the gross sales of a business establishment are derived from the sale of nonintoxicating beverages, then the only license available is for a restaurant. Since a theater is not a restaurant, our existing code does not provide for licensing to sell nonintoxicating beverages for up to 25% of the gross sales. This ordinance renames the license from "restaurant" to "non-tavern retailer's license" to remedy this omission. Senate Bill 383 will require significant changes to the City Code. Staff has begun working on the changes, and the City Council will review the changes prior to the October 1, 2018, effective date.

Davis stated currently we do not have a license for establishments where 25% or less of their revenue doesn't come from the sale of nonintoxicating beverages.

Rogalski stated as a standard practice we have been issuing a restaurant license. In taking a closer look at it they felt that they needed to clarify the language.

Davis questioned if we have the legal obligation to require a license and create a license for this.

Rogalski stated our code states it already. Our code states that if you are going to sell low point beer you have to have a license.

MOVED by Burk SECOND by Tanner to adopt **Ordinance 18-03**, waive the reading of the ordinance, read the title only. AYE: Morford, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 18-03

An ordinance pertaining to nonintoxicating beverages amending Division 4-2-3, Article 4-2, Chapter 4, Lawton City Code, 2015, adding provisions for licensing of on-premise consumption non-tavern retailer, providing for severability, and declaring an emergency.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Johnson stated on January 13th from 10 a.m. to 3 p.m., a program will be held at Cameron University called Teamwork Makes the Dream Work. It is an event for youth to attend.

Warren stated he appreciates the support from the voter of Ward 8.

The Mayor and Council convened in executive session at 8:24 p.m. and reconvened in regular, open session at 10:02 p.m. Roll call reflected all members present excluding Fortenbaugh.

EXECUTIVE SESSION ITEMS:

17. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claim of Lebron Copeland and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #17. No action was taken.

18. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending action involving an employee wage and benefit issue, and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #18.

MOVED by Davis SECOND by Warren to offer an agreement for repayment of 50% of the overpay with police and fire provided they sign an agreement to repay within two years and payment may be made through payroll deduction, cash payback or special pay.

Tanner stated he would like to postpone this decision until they discuss this matter further with our legal counsel and the city manager as to the legalities of the issue. Although this is a complicated situation that we did overpay police and fire, but it is still taxpayer money that we are negotiating with, it is not the council's money. He would like to postpone this indefinitely.

SUBSTITUTE by Tanner SECOND by Morford to postpone this item.

Davis stated the motion that he made ensures that the citizens get back 50% of their money, which they are not assured of getting back within two years at this point. The citizens can be assured that we are taking steps to get 50% of that money back, whereas we may not receive any of it within two years.

Tanner stated he understands, but his position is that the other 50% of the taxpayer's money is not his to give away. As unfortunate as it is that the finance department made a mistake in overpaying them, it is still his duty as a representative of ward 5 to be prudent with taxpayer's dollars. He would like to get with our legal counsel and look into the repercussions that the council may have personally by giving away about $50,000 of the taxpayer's money.

Davis questioned if we do not have a signed agreement with police and fire to repay this money, are we able to force them to repay all of this while they are employed with us.

Jensen stated we cannot force them to sign an agreement until the point in time when they are going to leave the City service and then we take it out of their remaining pay and benefits that are due from the City.

Tanner stated he is not opposed to giving police and fire an unlimited amount of time to pay this back. He is opposed to giving away $50,000 of the taxpayer's money. He stated the 50% is a fair agreement, but he does not think it is the right one at this point in time.

Davis stated we cannot force them to pay this back until they would retire or quit and then we could take it out of their last check.

Jensen stated prior to that point in time we are asking them to enter into an arrangement. If they decline to do so then our remedy would be at upon separation from employment.

Mayor Fitch stated you can't guarantee the 50% if they don't sign anything.

Davis stated that is why in the motion the 50% is subject to them signing an agreement to pay it back within two years.

Jensen stated if you are going to make a concession like that you should require them to enter into an agreement. There needs to be an exchange of a benefit on both sides.

Burk questioned if he holds personal liability if he gives away $50,000 of taxpayer money.

Jensen stated we have a claim, it is the council's policy decision whether you want to compromise that claim and in return for that his strong recommendation was to require them to sign an agreement so we will get our money back relatively soon so we will have that money available and not have to wait for someone to separate. Yes, the council has the legal authority to compromise claims without personal liability.

Tanner questioned if they assume responsibility if they reduce what is owed to the taxpayer by 50% and as a council making policy decisions it is approximately $50,000.

Jensen stated his legal position is that no, you do not assume personal liability. The council has the authority to compromise claims, we do it all the time. It should be a reasonable compromise and that is why he wanted to add the component about getting our money back. If they want this benefit they need to go ahead and get some of our money back promptly.

Tanner stated at this point in time they do not have to pay back anything until they possibly retire or leave the City.

Warren stated they compromised a claim earlier in this meeting when they paid more for a pothole claim.

Tanner stated that was a $500 compromise and he is willing to take that gambler, not a $50,000 compromise.

VOTE ON SUBSTITUTE MOTION: AYE: Morford, Tanner, Johnson, Fitch. NAY: Davis, Burk, Warren. MOTION CARRIED.

19. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2017-2018 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 of item #17. No action was taken.

There being no further business to consider, the meeting adjourned at 10:12 p.m. upon motion, second and roll call vote.

____

FRED L. FITCH, MAYOR

ATTEST:

____

TRACI HUSHBECK, CITY CLERK