

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
FEBRUARY 9, 2010 – 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr.
Presiding

Also Present:
Larry Mitchell, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk

Mayor Purcell 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 Dave Menge, Western Hills Christian Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bill Shoemate, Ward One
James Hanna, Ward Two
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT:

Janice Drewry, Ward Three

Mayor Purcell introduced Boy Scout Troop #4144 from First United Methodist Church.

Mayor Purcell recognized all of the efforts from the various entities who did a wonderful job during the ice storm, the sewer main blow out and the problems at the Medicine Park water treatment plant.

AUDIENCE PARTICIPATION:

Donna Moore, 2105 NW Bell, stated she has a rental property at 1804 Garfield which is a mobile home. She has tied it down and skirted it and is in the process of renovating it. She has paid all of the liens on the property. She has had three strokes and is in the process of giving up her home on Bell and she will be moving into the property on Garfield. She has been before the Council regarding this property and she was told that as long as she lives in the mobile home she can keep it. She stated this is the only place she can go. She just paid almost \$1,500 to the county for back taxes.

Haywood stated she had two trailers there at one time. The correct address is 1804 SW Charles W. Whitlow Avenue.

Ms. Moore stated she had a motor home sitting in front.

Haywood stated it should be no problem to move into the home at 1804. He stated neighborhood services staff have not pushed her to do anything to that home. He stated she just cannot bring in a new trailer on that property. If something should happen to the existing mobile home, that is it.

Mayor Purcell stated he is not sure what Ms. Moore is asking for.

Haywood stated that the City asked her to move those trailers at 1804 SW Charles W. Whitlow Avenue. As long as she moves in, it is okay.

Traci Hanna, 1109 NW Cherry, stated she is here to talk about the tree debris removal. She stated they have elderly neighbors across the street and they cannot remove the limbs off their homes and out of their yards. Her and her husband spent \$275 to rent a commercial dumpster and have spent five days removing debris from their yards. They were told that they had to pay

the fee to take it to the dump. She has requested that the fee be waived. She stated there is a city ordinance that if you rent a commercial dumpster then you have to pay the dumping fee. She had tried to go through the proper channels and she had spoken to Jason Powell, Superintendent of Solid Waste Collections, who has been very nice and returned her phone calls. She also has spoken with the City Manager who told her he would think about it. She stated they are saving the City the time it would spend cleaning up their debris. She is not asking the City to pay for anything other than just waiving this fee.

Mayor Purcell stated they are going to address this issue during the report section. He asked her to stay until that portion of the meeting.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF JANUARY 26, 2010.

MOVED by Hanna, SECOND by Shoemate, to approve the minutes of January 26, 2010. AYE: Hanna, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

MOVED by Shoemate, SECOND by Shanklin, to approve the consent agenda. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claim which is over \$400.00: C. Todd Bridges in the amount of \$592.07. Exhibits: Legal Opinion/Recommendation and **Resolution No.10-13**.
2. Consider the following damage claims recommended for denial: Gary Ogletree through his attorney George Miller in the amount of \$1,600.00 and Joe and Patty Hamlin through his attorney Robert Schacher in the amount of \$2,485.00. Exhibits: Legal Opinions/Recommendations.
3. Consider approval of the Retainer Agreement for Legal Services between the City of Lawton and Robin L. Rochelle and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Retainer Agreement for Professional & Legal Services on file in City Clerk's Office.
4. Consider acknowledging receipt of permits for the construction of sanitary sewer lines from the Oklahoma State Department of Environmental Quality to the serve the South Wolf Creek Trunk Expansion #1 Improvement Project, City of Lawton, Comanche County, Oklahoma. Exhibits: None.
5. Consider granting an extension of time for the performance bond for drainage improvements in Scissortail, Part 1. Exhibits: None.
6. Consider extending the contract (CL09-040) Police Vehicle Equipment Items 2-7 and 9-10 from Adamson Industries Corporation of Haverhill, MA. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
7. Consider extending the contract (CL09-040) Police Vehicle Equipment Items 1 & 8 from Galls of Lexington, KY. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
8. Consider extending the contract (CL08-045) Mowing & Littering Contract II: Areas G, H & L to Teen Challenge of Oklahoma of Cache, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
9. Consider awarding (CL10-030) 10 Ton Winch System to Earth Tool Company of Oconomowoc, WI. Exhibits: Department recommendation, abstract of bids.

10. Consider awarding (CL10-029) Hydraulic Excavator to C.L. Boyd Company of Oklahoma City, OK. Exhibits: Department recommendation, abstract of bids.
11. Consider approving appointments to boards and commissions. Exhibits: None.
12. Consider approval of payroll for the period of January 25 – February 7, 2010.

NEW BUSINESS ITEMS:

13. Hold a public hearing and consider an ordinance amending Section 18-12-3-1243, Lawton City Code, adding hotels and convention centers as permitted uses in the Commercial Central District of the Downtown Lawton Overlay District and creating Section 18-12-3-1244, Lawton City Code, establishing a height restriction for the Commercial Central District of the Downtown Lawton Overlay District. Exhibits: Ordinance No. 10-____, CPC Minutes.

Richard Rogalski, Planning Director, stated on December 15, 2009, the City Council approved amending the D6 Urban Renewal Plan to include hotels and convention centers as permitted uses in the Commercial Central District. The Lawton City Code also needs to be amended to include hotels and convention centers as permitted uses in the Commercial Central District of the Downtown Lawton Overlay District. The Downtown Lawton Overlay District provides a maximum height restriction of 54 feet, unless otherwise specified in the applicable subdistrict. Currently the Commercial Central District does not specify height limitations. It is recommended the height restriction of the C-4 Tourist Commercial District, which is 165 feet, be established for the Commercial Central District.

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

MOVED by Wells, SECOND by Haywood, to adopt **Ordinance 10-05**, waive the reading of the ordinance, read the title only. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 10-05

An ordinance pertaining to zoning amending Section 18-12-3-1243, Chapter 18, Lawton City Code, adding hotels and convention centers as permitted uses in the Commercial Central District of the downtown overlay district and creating Section 18-12-3-1244, Chapter 18, Lawton City Code, establishing a height restriction for the Commercial Central District of the downtown overlay district; providing for codification; and providing for severability.

14. Consider approving an ordinance granting to Public Service Company of Oklahoma, an Oklahoma Corporation, its successors and assigns, a non-exclusive franchise for twenty-five (25) years to use the streets, alleys, avenues, ways, and other public places and grounds in the City of Lawton, Comanche County, Oklahoma, for building, equipping, maintaining, extending, owning, and operating a system for the manufacture, transmission, distribution, sale, and control of electricity and communication circuits for itself and others using Public Service Company of Oklahoma facilities, in and to the city and the public generally. Exhibits: Ordinance No. 10-_____.

Jensen stated Public Service Company (PSO) is currently operating under a 25 year franchise agreement that will end this year. He stated they are negotiating a new potential ordinance for the next 25 years that has to be approved by a vote of the people. PSO is asking for a special election date of May 11, 2010, which means the election documents must be at the Election Board by March 11th. He stated they were not sure they would be able to finalize the language in the ordinance by this meeting. Staff had a meeting last Friday with PSO representatives which was very productive, but negotiations have carried over into the current week. He placed the item on the agenda to give the Council a chance to start reviewing the lengthy ordinance. Staff is very close to getting a proposed ordinance finalized and he is recommending that items #14 and #15 be tabled until the next meeting. Once the changes are made, as compared to what is in the agenda packet, they will red line those changes and deliver a copy to members of the Council.

Zarle questioned why they were waiting so late in the season to get this handled.

Jensen stated it is not late, they started this process late last year and they still have plenty of time for the March 11th deadline. He stated PSO asked for the May 11th election date, but there are other election dates that are possible. He feels this is very timely and they are on track.

Tim Hushbeck, Community Services Manager for PSO/AEP, stated the Election Board had asked that they use the May 11th date. The agreement does not expire until December 2010.

Shanklin questioned if they were raising the franchise fees for the individual citizens.

Jensen stated the proposed fee is the same as the current agreement, which is 2%. He stated they have had discussions regarding this issue because 25 years is a long period of time to have the same rate. The 2%, as far as PSO is concerned, is not negotiable right now, but they have built into the new proposed ordinance, a provision where every five years they could ask the voters to increase that fee from 2% up to a maximum of 4%.

Shanklin questioned if the franchise fees on the electric bill come to the City of Lawton.

Mr. Hushbeck stated every bit of the 2% fee goes to the City of Lawton. It is just a pass through for PSO. Every city in Oklahoma, that they serve, is at 2%.

Hanna stated he has received some calls because people are concerned about a 25 year contract. He stated not too many years ago they gave the cable company a contract and then the rates went up within a year. He asked if this was going to happen with this agreement.

Mr. Hushbeck stated they are governed by the Oklahoma State Corporation Commission and there are lengthy deliberations on any rate case they have. Their citizens and industrial customers have a chance to voice their opinions during these deliberations. He stated PSO cannot arbitrarily raise rates.

MOVED by Hanna, SECOND by Shoemate, to table items #14 and #15 until the February 23, 2010 meeting. AYE: Shoemate, Hanna, Burk, Shanklin, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

15. Consider approving a resolution authorizing the calling and holding of a special election in the City of Lawton, State of Oklahoma, for the purpose of submitting to the registered qualified electors of said City the question of approval or rejection of Ordinance No. 10-_____ of the City, more particularly described as an ordinance granting to Public Service Company of Oklahoma, an Oklahoma Corporation, its successors and assigns, a non-exclusive franchise for twenty-five (25) years to use the streets, alleys, avenues, ways, and other public places and grounds in the City of Lawton, Comanche County, Oklahoma, for building, equipping, maintaining, extending, owning, and operating a system for the manufacture, transmission, distribution, sale, and control of electricity, and information distribution in and to the City and the public generally, and authorizing the Mayor and City Clerk to execute the Resolution and Special Election Proclamation and Notice. Exhibits: Resolution No. 10-_____ and Special Election Proclamation and Notice.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Mitchell distributed a summary of what staff is proposing to do and how they are going to stage the clean up activity and manpower and equipment requirements. He stated FEMA representatives will be here for a meeting in the morning. The storm declaration did not include reimbursement for debris removal. At this point they are proceeding with this clean up using city staff because they do not know how we would be able to hire out a contractor for this work.

Jerry Ihler, Public Works Director, stated the first page addresses clean up priorities. All of the streets are passable and all should be clear by the middle of next week. He stated they have submitted three site locations that the city could utilize where they could burn tree limbs. The priority is to get those sites prepared. He stated they hope to start picking up in residential areas by the end of next week. The city approved burn sites are the city property south of the landfill south of 11th Street, Eastside Park location off East Gore, which will be for City trucks only, and NW 67th and Rogers Lane. He stated only tree limbs can be burned at these sites and if ODEQ

sees that there is mixed trash they will shut it off. He stated they would like to buy two air curtains which are \$30,000 a piece. They are estimating staff overtime to be \$120,000 - \$150,000. The remaining costs will come from the individual division budgets. To fund the \$60,000 for the air curtains, they will defer \$15,000 in capital outlay purchases from Parks and Recreation, Police, Fire and Public Works. When and if they get reimbursed through the FEMA process, they could purchase those deferred items. He stated the funding for the overtime costs will be paid out of Fund 35, which is about \$200,000 that has been set aside from previous storms. He stated they will still be able to keep the divisions functional at a minimum scale and work on things they normally do. They are estimating the clean up will take 10 to 12 weeks at six days a week.

Mitchell stated a requirement from ODEQ is that they can only burn between now and April 30th. They do not want to get into a situation where one of these sites get shut down for any reason.

Ihler stated that the City Manager had received a cost estimate from a company that does this type of debris removal. They are estimating a total cost of \$18,176,230. He stated even if they were to get 75% of that approved through FEMA, the City's share would be a little over \$2.2 million. He stated we just don't have that kind of upfront money to be able to move forward with this option.

Shanklin stated that all of the limbs that are set out in his ward will not meet the criteria in the code for length and size.

Ihler stated they are not requiring residents to cut it up into five foot sections. They are just asking residents to get it to the curb and crews will be going through with the grapple trucks. He stated they will also be utilizing dump trucks and front end loaders.

Zarle stated he has driven around and the citizens are doing a great job.

Wells questioned the purpose of a burn apron.

Ihler stated it provides oxygen which helps fuel the fire and makes it burn cleaner and faster.

Burk stated he feels they need to come up with some kind of an emergency clause. They tie the hands of city staff because of the city code. In circumstances like this, they need to have things in place to allow staff to make decisions and give the City Manager the leeway to make some of these decisions. He feels they should allow commercial haulers to dump limbs without a fee until a specific time, he was hoping until March 15th. He stated this will save the City a lot of money.

Haywood stated they need to be careful because there will be people coming from surrounding towns that will also want to dump without paying.

Shoemate stated all they need to do is show their water bill.

Mayor Purcell stated those in the county will borrow a water bill from someone inside the city limits. He stated some of these commercial trimmers will go ahead and charge the client for dumping.

Burk stated some people are going to do this no matter what they do. There are going to be those people who just want to beat the system. He stated he believes the City will win if we allow those people to haul this mess off to the landfill.

Zarle stated he agrees with Councilmember Burk.

Mitchell stated the other issue is that they know that there are commercial haulers who will build that cost into their bill and the homeowner will pay it anyway whether they waive the fee or collect the fee. There are a lot of people out there who want to help their neighbors, but there are also a lot of people out there who want to make money. He does like the idea of having this for a limited time which will give everyone a window of opportunity to do this, and then close it down.

Burk stated when the word gets out that they are waiving the fees, this would be a negotiating point. There are a lot of older people that live here that just don't have a way to haul this stuff away. He just feels they need to do the right thing.

Haywood stated he would like to hear from the Public Works Director.

Ihler stated he would agree with the idea if he knew that the contractor was not turning around and charging the homeowner. He knows from personal experience that part of the charge was the fee to the landfill. He was going to charge that no matter what. That is the problem.

Mayor Purcell stated they will have to get the word out through the media so that residents can be cautious on paying that extra fee. He stated someone needs to make a motion.

Wells questioned if they are going to reimburse those who have already paid those fees at the landfill. He stated they are going to get that question.

Burk suggested this would start tomorrow.

Todd Gregor, stated he has some tub grinders that could be brought in to grind all this up.

Mayor Purcell stated Mr. Gregor needs to speak with the City Manager.

MOVED by Burk, SECOND by Shoemate, to waive fees for all commercial haulers to haul tree limbs and debris to the landfill from February 10, 2010 through March 1, 2010, provided they have a copy of a current City of Lawton utility bill. AYE: Hanna, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate NAY: None. MOTION CARRIED.

Ihler stated they are deferring the capital outlay and utilizing fund 35. He questioned if they needed to come back to the Council with an item that ratifies this action.

Mitchell stated he will bring back an item for ratification at the next meeting.

Ihler questioned if they had authorization to purchase the burners so they can get started.

Mitchell stated yes it is an emergency.

Mayor Purcell stated they will be officially ratifying the emergency action at the next meeting.

Haywood thanked all of the groups and organizations that assisted people during the ice storm.

Burk stated he would like to see a committee put together to look at doing some kind of an emergency clause that would allow the City Manager to take action on issues during an emergency.

The Mayor and Council convened in executive session at 7:30 p.m. and reconvened in regular, open session at 7:54 p.m. Roll call reflected all members present excluding Shanklin.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

16. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending claim from retiree Stacey James relating to insurance premium and medical coverage; and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 17. No action is necessary.

17. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the District Court decision regarding City of Lawton v. PERB and AFSCME, CJ-2009-680, and take appropriate action in open session. Exhibits: District Court Order issued 01/27/10, Case No: CJ-2009-680.

Jensen read the title of item 17.

MOVED by Hanna, SECOND by Shoemate, to authorize the City Attorney to appeal the decision of the District Court in Comanche County CJ-2009-680. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Burk. NAY: None. MOTION CARRIED.

18. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2010-2011 between the Police Union, IUPA, Local 24, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

Jensen read the title of item 18.

MOVED by Wells, SECOND by Hanna, to appoint the following individuals as the City's negotiating team for police contract negotiations: Tim Wilson, Chief Negotiator, Trisha Thomason, team member, James Apple, team member, and Bryan Long and Sherry Anderson as alternates. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Burk. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 7:57 p.m. upon motion, second and roll call vote.

JOHN P. PURCELL, JR., MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK