MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
FEBRUARY 26, 2019 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Stan Booker, Mayor	Also Present: Michael Cleghorn, City Manager Frank Jensen, City Attorney Traci Hushbeck, City Clerk COL Don A. King, Fort Sill Liaison

Mayor Booker called the meeting to order at 6:11 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Charles Barnett followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:	Mary Ann Hankins, 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

PRESENTATION OF OUTSTANDING CITIZEN OF COMANCHE COUNTY TO NANCY FERRELL & LUCY

Mayor Booker presented a Certificate of Commendation from the Mayor's Office to Nancy Ferrell and Lucy.

PROCLAMATION FOR THE YEAR OF THE AMERICAN LEGION AND AMERICAN LEGION AUXILIARY

AUDIENCE PARTICIPATION: None

CONDUCT ELECTION OF MAYOR PRO TEM

MOVED by Davis SECOND by Warren to nominate Jay Burk to serve as Mayor Pro Tem. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF JANUARY 22, 2019.

MOVED by Burk SECOND by Warren to approve the minutes of the Lawton City Council regular meeting of January 22, 2019. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Mayor Booker stated he would like the council to consider item #18 because the auditor has a five-hour drive home.

18. Consider accepting the annual audit report on the City of Lawton for fiscal year ended June 30, 2018, as presented by BKD, LLP. Exhibits: The annual audit report for fiscal year ended June 30, 2018 will be on file in the City Clerk's Office and distributed to the Mayor/Council members immediately upon receipt from the auditors.

Cynthia Burns, BKD LLP, presented the financial statements for the City of Lawton for the fiscal year ending June 30, 2018. (The audit is on file in the City Clerk's Office).

MOVED by Burk SECOND by Fortenbaugh to accept the annual audit report on the City of Lawton for the year ended June 30, 2018. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA

Mayor Booker stated item #14 will be stricken from the agenda. Johnson requested item #8, Burk requested item #11 and Davis requested items #7 and #9 be considered separately.

MOVED by Burk SECOND by Warren to approve the consent agenda with the exception of items #7, #8, #9, #11 and striking item #14. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. 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 Lawrence Richards in the Oklahoma Workers' Compensation Commission, Case No. CM-2016-03484L. Exhibits: **Resolution 19-10**.

2. 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 M. Cochran in the Oklahoma Workers' Compensation Commission, Case No. CM-2017-07300X. Exhibits: **Resolution 19-11**.

3. Consider adopting a resolution approving the joint petition settlement and making payment in the workers' compensation claim of Braylon R. Clark, Sr. Exhibits: **Resolution 19-12**.

4. Consider approving a renewed, twenty-five (25) year lease agreement with the Lawton Housing Authority of the City-owned property located on SW F Avenue associated with the Benjamin O. Davis Park and with the Benjamin O. Davis High Rise Apartments, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: The proposed Lease Agreement is on file in the City Clerk's office.

5. Consider approving the agreement between Guardian Enterprises and the City of Lawton in the amount of $5,040.00 for the purpose of asbestos testing at the Lawton Public Library. Exhibits: Agreement with Guardian Enterprises.

6. Consider entering into a Service Agreement with Midwest Tape LLC to provide their proprietary Hoopla digital service to allow authorized library patrons to access digital media content using smart phones, tablets, computers, and web browsers. Exhibits: Informational memo from Library Director; Hoopla Service Agreement with Midwest Tape, LLC.

7. Consider approving a professional services agreement in the amount of $13,250.00 for sound, stage, lighting and PyroMusical choreography to LimeLight Productions, LLC. This professional services contract is in addition to the previously awarded RFP, Pyrotechnic Fireworks Production (RFPCL18-015) for the community fireworks display on June 29th, 2019 in Elmer Thomas Park as part of the City's annual Freedom Festival. Exhibits: Operating and Professional Services Agreement.

Davis questioned the total cost of the Freedom Festival.

Bart Hadley, Assistant City Manager, stated the previous contract for fireworks was $50,000, and this would be an additional $13,250 for a total of $63,250. They tried to get some sponsorships and make some money so the end cost could be different.

<u>MOVED by Jackson SECOND by Burk</u> to approve a professional services agreement in the amount of $13,250.00 for sound, stage, lighting and PyroMusical choreography to LimeLight Productions, LLC. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

8. Consider authorizing the Fire Chief to submit a SAFER grant (Staffing for Adequate Fire and Emergency Response) application to the U.S. Department of Homeland Security, to assist with adding up to 12 additional firefighter positions to the Lawton Fire Department. Exhibits: Grant Overview.

Johnson questioned how they were going to pay for this. She stated they would have to pay 25% for the first two years and increase it on the third and they have to keep those firefighters that are hired under this grant for a year.

Chief Dewayne Burk, Lawton Fire Department, stated it is a three-year performance period and at the end of the three years the council will determine if they want to continue to maintain these positions.

Johnson requested that Chief Burk talk about what the grant covers.

Chief Burk stated the SAFER grant is a grant that assists fire departments to enhance the local fire departments' abilities to comply with staffing, response and operational standards established by the NFPA (NFPA 1710 and/or NFPA 1720). He stated we were awarded one of these grants in 2009 where we received 12 positions. Back then it was a five-year grant period with the last grant year being 100% funding through the City. They were able to maintain those positions for 2009 – 2014. In 2015 they lost 8 positions through budget cuts and in 2017 when the new station opened they had hired 12 which gave them a net increase of 4 positions. When they opened the station, they ended up pulling 8 positions out of other fire stations to make up that staffing loss. They start each day with minimum staffing. It takes about six months to get a firefighter trained and by the time they get through the academy they lose more positions, so they are never at full staff. Without that staff and trying to accommodate all the leave for, they are calling in for overtime on a daily basis. In 2017-2018 they had an overtime budget of $37,000 and they spent over $180,000. That was just to maintain their minimum staffing.

Warren stated if the council approves the application and we make the cut, when would that come back to council again.

Chief Burk stated they will be making the awards by September 30th. As soon as they are told that they are awarded the grant they would come back to council. There would be a 180-day period immediately following the grant award for them to do the hiring and recruitment and the period of performance would start when they employ those firefighters.

Warren stated he does not have a problem authorizing the Chief to submit the application. What happens between now and then is really going to drive this train. Unless we have a financial boom, it is going to be a problem. They can address that when the time comes.

Burk stated when he came on council our overtime budget was astronomical. He stated we went out and got grants and got more people and stopped paying so much overtime. When they apply, do they have to specify the number of positions?

Chief Burk stated yes.

Burk stated he does not see the $180,000 number going down. He likes that the grant pays $266,000 in year one and $266,000 in year two, so they are paying a huge amount putting these people to work. He questioned if we had to keep them for four years.

Chief Burk stated no, you keep them for three.

Burk stated the City's cost would be $88,000, $88,000, and $230,000 through year three. At $180,000 per year for overtime, that is over $500,000, so it would cost the City much less. He does not mind seeing us apply for six because he feels that is a doable number. He feels the nine and twelve is a stretch to fund them down the road. He feels it would be worth applying for something.

Chief Burk stated if they were allowed to apply for nine, at the end of the three years the council could decide to only keep six.

Burk questioned if we could adjust those numbers after the three year period.

Chief Burk stated I you want to have an affect on the overtime costs, nine would get them back to where they were.

Burk stated the ISO one rating we received last year, he feels most citizens don't know what kind of savings that means for their homeowners' insurance.

Chief Burk this is a rating that is applied to fire departments that measure their ability to respond and this cuts down the cost associated with insurance claims. The better your fire department, the better your rating and the lower your premiums. When they were able to achieve a one, that put them at the top of the game, there is probably less than half of 1% across the nation will make that cut. There are a lot of things associated with this, including the fire department staffing and equipment. He feels it is very important to try to regain those positions.

Davis stated the goal for the public safety sales tax extension was to hire 12 additional firefighters. What the City in reality did was lay off 8 firefighters and then immediately hired them back along with an additional 4. That public safety sales tax expires in 2025 and they have had multiple discussions on how we will fund, out of the general fund, 12 full time positions if the public safety sales tax extension is not extended. The idea that we would hire additional firefighters and then lay them off in three years, we all know that doesn't happen. We will have to figure out a way to keep them on and the total cost in that fourth year of 9 firefighters is $719,736.36. We know we cannot afford that. We can't even pay enough to get good engineers and project managers. This is not a sustainable plan. He questioned how the overtime budget was affected the year we hired the additional four. Did it substantially bring the overtime budget down?

Chief Burk stated there has been a tremendous number of retirements and turn over and for one year they were 18 positions down.

Davis stated those positions are already funded.

Chief Burk stated that is how they were staying afloat with respect to the overtime.

Davis questioned if we have the overtime budgets for 2013, 2014, 2015, 2016, 2017 and 2018. He wants to know if those four brought down the overtime budget. What was spent.

Chief Burk stated in 2013-2014 they spent $38,148, in 2014-2015 they spent $37,168, in 2015-2016 they spent $14,607, in 2016-2017 they spent $24,301 and in 2017-2018 they spent $180,823.

Davis questioned where was the drop that those additional four brought to the overtime budget.

Chief Burk stated the drop occurred in 2009 when they hired 12 plus the council had authorized 2 additional that year, so they had 14 new positions that they added to the ranks. They were approaching $250,000 prior to that grant. The commitment that was made by Chief Hadley was that they could virtually eliminate the overtime if they were to get that grant and that is exactly what happened for the five- or six-year period. At the point where they lost the 8 positions, now it has crept back up and they are facing the same dilemma prior to 2009.

Davis stated in total numbers we are not down 8, because we hired 12. He quested if we were at 143.

Chief Burk stated they have 134 on shift. He stated they routinely have 3 to 6 vacancies and in addition they have 5 vacation spots they have to backfill for and any bereavement leave, OJI, sick leave, or administrative leave for training. They can have 10-12 personnel off at any given time, which means the 8 positions that they have overage are eaten up pretty quickly.

Davis stated the premise of Chief Burk was that we get 9 additional firefighters, and we have a zero-overtime budget at that point. Are the 9 firefighters going to cut us to a zero-overtime budget?

Chief Burk stated that is not what he is saying. He stated they maintain a $35,000 budget for overtime, and they cannot cut it, but they can at least that overage out and they were able to take that and apply it towards the grant. It would lessen the affect of the overall budget.

Davis stated we are spending $719,736.36 in order to save $143,823. That doesn't make sense. Sometimes it is cheaper to pay the overtime than hire the additional personnel to cover the overtime.

Hadley stated when they had 4 additional, the reason there wasn't a drop at that point is because we opened a new station and we had manning requirements. Prior to the year the fire station was opened, the City made cuts across the board and the fire department was not exempt from those cuts. The initial intent was to cut the personnel and not man the hazmat unit full time and to cut 6 positions, through attrition they would lose three lieutenants and three drivers. Those cuts and through some negotiation with the union, they made a proposal that would allow them to save the same amount of money in a different manner and that is why the 8 firefighter positions were cut, those firefighter positions would equate to the same amount of money as the lieutenants and drivers. The ballot indicated that they would hire 12 additional firefighters to man the new fire station when it opened, and we did have to hire those firefighters a little bit early so that they were trained and ready.

MOVED by Tanner SECOND by Burk to approve authorizing the Fire Chief to submit a SAFER grant (Staffing for Adequate Fire and Emergency Response) application to the U.S. Department of Homeland Security, to assist with adding up to 9 additional firefighter positions AYE: Hankins, Jackson, Burk, Tanner, Johnson. NAY: Davis, Fortenbaugh, Warren. MOTION CARRIED.

9. Consider receiving as a donation from the Oklahoma State Firefighters Museum one (1) 1913 White Fire Engine along with one (1) 1850 Horse Drawn Hose Cart formerly owned and utilized by the City of Lawton Fire Department to be displayed at the historic Central Fire Station. Exhibits: Photos of equipment to be donated.

MOVED by Davis SECOND by Burk to approve a donation from the Oklahoma State Firefighters Museum one (1) 1913 White Fire Engine along with one (1) 1850 Horse Drawn Hose Cart formerly owned and utilized by the City of Lawton Fire Department to be displayed at the historic Central Fire Station. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

10. Consider an agreement with Myra Encinias, a Homeowner Rehabilitation assistance program client, regarding an insurance check provided to her for the rehabilitation of the roof on her residence located at 1304 NW Smith Avenue, Lawton, OK 73507, authorizing the Mayor and City Clerk to execute the agreement. Exhibits: Agreement on file in the City Clerk's office.

11. Consider accepting a proposal from Ford Audio-Video Systems, LLC to install certain audio-video-control (AVC) systems in the new Public Safety Facility and authorize the City Council and Mayor to enter into a System Installation Agreement on behalf of the City for same. Exhibits: Proposal for AVC systems from Ford Audio-Video Systems, LLC; System Installation Agreement with Ford Audio-Video Systems, LLC.

Warren stated we continue to look for ways to save money in this new facility and he noticed that there are TV's and things of that nature for the jury room and he does not know how much money is encapsulated in that room that is not going to be used until we become a court of record some day.

Rusty Whisenhunt, Director of Field Utilities, stated the TVs that are in the jury room will be used if a jury is deliberating and they request documentation that may be scanned in during a trial.

Warren questioned if we were doing jury trials now.

Jensen stated we have not had a jury trial since the mid 1990's.

Warren stated we plan to some day if we become a court of record.

Hadley stated citizens could request a jury trial even for misdemeanor cases even if we are not a court of record.

Jensen stated that is correct, but we have not had one because we don't have enough money to convene juries. It just hadn't happened in a long, long time.

Burk questioned if this was where we could look to save money for right now and then we could fund this at a later time if and when we decide to become a court of record. He stated we could pre-wire it and then buy the equipment down the road.

Whisenhunt stated part of the contract is equipment cost. It is necessary for part of this to be installed as the building is being constructed. We don't want to install the equipment until the building is done. The first estimate on this contract was $800,000 and they looked at squeezing it down and getting it as tight as we could. Part of this is the recessed wall boxes and pulling the wiring for the interrogation rooms. He agreed that there are a lot of TVs in this contract.

Burk questioned if some could be deleted.

Whisenhunt stated any of the TV's can be deleted and we could remove that at any time.

Burk recommended that we table this item and look at dropping some of this equipment. He stated they have to pre-wire the building, but we just don't have to provide the equipment in each room. There has to be some savings here.

Cleghorn stated the council asked staff to look outside the box to see what kind of solutions we could come up with to shore up the contingency fund for the public safety facility. He stated he and the Assistant City Manager, and the Finance Director looked at some of the things that could shore up the contingency account and they have run through some of those contingency items that could possibly solve this issue.

Hadley stated if this contract is approved they could still eliminate or delete equipment such as the televisions in some areas to help save money. The funding of the facility is a concern and they had discussed several different options and he feels they have the best solution to offer. This item is what brought this solution to their minds when they started discussing the issue. He stated there is $500,000 of potential IT issues here and they looked at paying for this contract with the IT dollars that were recently approved by the citizens. That would potentially free up $500,000 of project money to go fill the hole of $176,000 and provide some additional contingency to get us through the rest of the project. We don't necessarily think that is the right way to go but it did get us on track to discover that council has already approved that when they closed the 2005 CIP in September 2018, there was $500,000 that was identified specifically for computer hardware/software improvement and they are suggesting that they take that $500,000 that has already been moved into the public safety facility project and use that money to take care of some of the actual IT needs, we have as much as $1.2 million of IT in that building. That would free up $500,000 of project costs to fill all we need to fill for the pier overruns and the change order and to provide some contingency for the rest of the project.

Burk stated that is thinking outside of the box and finding a way to make this work.

Whisenhunt stated approximately $100,000 of this will fit that IT description and the other parts will not.

Fortenbaugh stated we solicited a bid from only a single vendor.

Whisenhunt stated this is under the state contract.

Fortenbaugh questioned why we wouldn't solicit bids from multiple vendors to try to get the best deal.

Burk stated he feels the state contract is just pushing the easy button. They are usually people that are not from here. He wants to buy local if possible. He questioned if they could possibly take the time to bid this out to see if there is a local vendor that can do the job.

Hennessee stated the status of the building is that they are putting up dry wall and without the boxes being installed they can't do the conduit without the boxes being set. It will cause a delay. The state contract has been bid statewide.

Tanner stated the stated cost for all the equipment, installation and service under the proposed agreement is $567,000. He questioned if this was for the whole building.

Hadley stated yes.

Whisenhunt stated the whole contract is up for approval.

Tanner stated the $576,910. He stated a lot of this is possible going into the jury room. He stated this was not all calculated into the original contracts.

Whisenhunt stated the original contract had pulled the running conduit and have an AV contractor to come in and install their equipment and set boxed to pull the wire.

Tanner stated this would be a good place to save some money, but if they are getting ready to hand sheet rock they need to go ahead and start doing this or they will slow the project down.

Cleghorn stated a contingency fund is usually in the 5% to 10% range. He stated this is running around 1%. Staff has kept a tight run on a contingency that is very small.

Burk questioned if they could set up this contract so that they could put the boxes in and prewire without buying any other apparatus.

Whisenhunt stated a part of the contract is the boxes and equipment and there is no sense in doing that until they have the contract approved.

Warren stated he does not want to change anything, he wants this building to be the most modern thing we can possibly do so we don't have to fix something in five years. He only questioned if we needed to outfit the jury room if we are not forced to use it. He stated they need to have this information long before they start nailing in the wall. He questioned how they make it happen so they can bid these things every time regardless of whether they end up going with the state contract or not. They might have been bid all over the state, but they might not have got a discount like they would have if they had bid it local. We don't know if that would have saved us any at all. He would like to change the policy in the future.

Burk stated once they went with the police cars it eventually all went to local contractors. He feels they need to make it where the last choice is the easy button. They need local people working.

Cleghorn stated staff will be happy to go back and look at the purchasing policy and determine if they can make some changes regarding local procurement before state contracts.

Fortenbaugh stated this is the third or fourth time tonight they have been brought something and told they have to vote on it now and if you don't vote yes bad things will happen. He feels they also need to look at the timing of when things are brought to council ahead of the due dates.

Davis stated they dealt with this in a change order that we still have not approved because the City Attorney will not sign off on it. One of the reasons is that they have to be able to vote legally without being bound to something. It they approved a change order in the field and the contractor already did it and then it comes before council, we are in that situation right now. That is not really a legal vote because we have to do it. Here again, city staff is telling us we have to do this and all we can do is take their work that we don't have any other option. He does have another option, he has to legally take a vote that he is not already pre bound by. He is going to vote not because this information has to come to them so they can make a vote where they are not bound to do something that is already predetermined. It has already been predetermined by the staff through the timing of us that they have to vote yes. He is not going to continue to succumb to that and be put in that box by the staff. It is basically predetermined because they don't have a choice because it is too late to do anything else. It is unacceptable to be in this position.

Warren requested that staff look at the jury room and hold off spending some of that money.

Tanner stated the cost of wiring the jury room is $65,000. He questioned if they don't approve this tonight, do they have time to look at what they could cut.

Hennessee stated they could delay the project.

Burk stated they are hanging sheetrock we don't want to delay the project.

Tanner stated once we approve this we are locked into this contract.

Hennessee stated they could eliminate monitors hanging on the wall.

Tanner stated they could get everything wired in but at a time in the future they can say that we don't want that equipment in this room.

Hennessee stated they can look at it prior to the time they order the monitors.

MOVED by Warren SECOND by Burk to accept a proposal from Ford Audio-Video Systems, LLC to install certain audio-video-control (AVC) systems in the new Public Safety Facility and authorize the City Council and Mayor to enter into a System Installation Agreement on behalf of the City for same. AYE: Hankins, Jackson, Burk, Warren, Booker. NAY: Davis, Tanner, Johnson, Fortenbaugh. MOTION CARRIED.

12. Consider adopting Street Light Resolution No. 498 to authorize the installation/removal of street lights at the locations listed in the Resolution. Exhibits: Street Light Resolution No. 498.

13. Consider approving an agreement and payment of $2,233.00 to Mr. Chris Helton for the replacement of a portion of the residential driveway located at 313 NW 65th Street, which was demolished in the course of completing a city waterline repair. Exhibits: Proposed agreement between the City of Lawton and Mr. Helton.

14. Consider awarding a requirements unit price contract for the Sanitary Sewer Emergency Line Replacement Requirement Contract 18-7 SSES to Evans & Associates Utility Services, Inc. for the open trench portion and to Horseshoe Construction, Inc. for the pipe bursting portion to be utilized for emergency repair and replacement of sewer lines. Exhibits: Bid Tabulations. The Construction Contract is on file in the Sewer System Technical Division's Office. **STRICKEN**

15. Consider extending contract (RFPCL18-018) Jail Inmate Phone System to Cen-Tex Pay Telephone Co, Inc. of San Antonio, TX for an additional year or until the current Jail facility is no longer in use whichever is sooner. Exhibits: Department Recommendation, Contract Extension form, Price Sheet.

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

Citizens' Committee On Capital Improvement Program (CIP)

Jerrold Jones
Ward 7
Existing Member
04/23/22

Mayor's Commission On The Status of Women

Samantha Lankford
At Large City Limits
New Member
02/26/21

Emily K. Ellis
Ward 5
New Member
02/26/21

Parks & Recreation Commission

Sherene Williams
Ward 7
Existing Member
01/01/21

17. Consider approval of payroll for the periods of February 11-24, 2019.

NEW BUSINESS ITEMS:

18. (Addressed at the beginning of the meeting)

19. Hold a public hearing and consider an ordinance amending the binding site plan for property located at 3407 and 3409 NW Cache Road. Exhibits: Ordinance No. 19-__ with Amended Site Plan, Site Plan Approved in 2015, Location Map and Application.

Richard Rogalski, Community Services Director, stated on May 12, 2015, the City Council approved Ordinance No. 15-8 which rezoned Lots 4 and 5, Block 2, Morford Hills Addition from R-1 Single-Family Dwelling District to C-1 Local Commercial District. The ordinance included a binding site plan. On January 15, 2019, the developer submitted a revised site plan. The Planning Director reviewed the attached amended site plan and determined it was a significant change from the approved site plan. Section 18-1-1-114.1 provides that if a binding site plan is changed significantly, the revised site plan shall follow the same process as a rezoning request. The proposed use is a restaurant with a drive thru. The site plan submitted with the original request in 2015 included a drive-thru; however, the drive-thru was removed prior to approval by City Council. The proposed building does encroach into the front yard setback; therefore, a variance would need to be granted by the Board of Adjustment. The City Planning Commission held a public hearing and reviewed this request on February 14, 2019. In 2015 there was strong opposition to a drive-thru facility at this location, and the drive-thru was removed from the site plan. There have been no significant changes in this area; therefore, the CPC recommended the City Council deny the request. The applicant has submitted a site plan that is slightly different than the one that went to the CPC. The applicant has put in a lot more trees along the boundary to create an additional buffer. The issue is noise that will come from the drive thru box.

Hankins stated she has heard from several citizens that have voiced concern about the location and the noise. She stated if we have promised the citizens in that area that we won't do the drive thru, do we keep our word? She hates to turn down new business, but she has to go with what her constituents want.

Rogalski stated that is why the city council set this property in code so that if somebody had a binding site plan and the decision is made.

Mayor Booker stated the commentary states it has to go to the Board of Adjustment for a variance.

Rogalski stated the front yard setback from the property line is 32 feet which is 6 feet more than our normal setback. When these lots were platted there was a 100-foot setback on Cache Road. This doesn't encroach into plat that sets back, it is still well beyond the minimum setback. The Board of Adjustment will have to approve the encroachment into the platted setback. It is still 31 feet from the right of way of Cache Road.

Mayor Booker questioned how that set back compared to the building on this binding site plan.

Rogalski stated it is a little further back. The normal setback on a road like Cache Road is 25 feet from the property line and this building is 31 feet.

Tanner stated he does not remember making any promises about not putting in a drive thru in a particular area. Each person that comes up and wants to do a zoning change will address the council. The biggest objections to the residents behind there would be the noise and possibly the fumes. It is on Cache Road, which is one of the noisiest roads in town. He personally does not see an issue with the drive thru, but he does not live in the neighborhood. He stated they just approved Braum's in ward 5 on Sheridan and the residents in that neighborhood had similar objections. The council went ahead and allowed Braum's to put a drive thru in and he voted for that. He personally does not have any objections.

Hankins stated she lives close and can attest to the fact that it is noisy. She stated there are people who have just bought homes there and they hate to have the noise. Things have changed with the other businesses that have gone next to this property. There are a lot of things that can change.

Fortenbaugh questioned the business hours.

Rogalski stated they close at 10 p.m.

Davis questioned the current noise ordinance.

Rogalski stated it is based above the ambient noise. The drive thru is not going to create a noise ordinance issue, but it is an impact to the adjacent neighbors that may or may not be mitigated by some means.

Davis stated you can control the volume with these drive thru menu boards. He stated he thinks our noise ordinance is 60-70, but if the menu board was set at 90, one foot away, at 17 feet it would be at 66 which is considered normal conversational levels and at 60 feet it would be at 55 which is normal conversation level. He questioned how far the normal house was from the menu board.

Rogalski stated not close. There is an alley between the two properties. He stated the order board is about 80 feet to the house. It is about 55 feet to the property line.

Davis stated if we have loud menu board and start getting complaints we can talk to them and see if they are breaking the noise ordinance and they can turn it down.

Rogalski stated a lot of times if a complaint comes in about the business they just call the business and ask them to work it out. In these transitional areas nothing is going to be the same unless they put another house and land there.

PUBLIC HEARING OPENED

Dr. Robert Morford, stated when this was developed in 1950, Cache Road was a two-lane highway at that time. He stated when the homeowners around there agreed to not fight selling along Cache Road, this was one of the conditions that there will be no drive throughs. The difference between this and Braum's is that the property behind this is in a historical overlay so it is not likely to become commercial property. He stated six years ago these property owners were promised there would be no drive ins and he realizes the council can do what they want.

Scott Marks, 3414 Atlanta, stated their main concern is that they agreed with the historical overlay but they were promised that there would be no drive throughs. He has combat related issue and noises will keep him up at night, especially cars playing thumping music, the dumpsters.

Michelle Marks, 3414 Atlanta, stated their house directly backs up to the properties in question with an alley in between. She stated they spoke in favor of the businesses coming in because they were promised there would be no drive thru. She stated her son has noise issues because of a medical condition. This will decrease his life, he will not be able to enjoy his back yard. He should feel calm in his home. If they allow this drive thru what will stop the next one becoming a 24-hour drive thru. She stated it will decrease their property values. They do not object to the business, they just don't want the drive thru.

Jessica Grant, 3412 NW Atlanta, stated she just closed on their home on January 19th which is directly behind these two locations. She stated she would never have bought the home if this had a drive thru.

Claude Mackey, 3411 NW Atlanta, stated he is across from the proposed restaurant. He stated with the existing businesses if the wind is right he can smell their food frying and grease burning. He stated a drive thru speaker will be a real nuisance day and night.

Brian Birmingham, 3404 NW Atlanta, stated he owns lots 22 and 23. He have lived with Jimmie Johns and Five Guys for the past three years. (He distributed photos of the view out his window). He stated staff says there is 75 feet between the building and his home but looking out the window 75 feet doesn't justify when you have to look at something that is 20 feet tall that is lit up 24 hours a day. It may not be open 24 hours a day, but it is lit up 24 hours a day. This proposed building will be the same thing. They promised trees to block it off, but nothing is blocked off. How many years will it take to grown trees 20 feet tall. He strongly urged that they don't allow a drive throughs. He understands that there will be commercial development along Cache Road, but they don't need drive thru. If they want a drive thru they need to go across the street to where the gas station is, that property has plenty of setbacks that allow those residents not to have to listen to a drive thru. The alley is very narrow, and he can hear cars and people talking at Five Guys and now he has to contend with a drive thru speaker. He does not think it is fair especially since the previous people that agreed to this were told that there would be no drive thru and here we are changing that agreement.
Mayor Booker questioned if the vegetation was put in per the binding site plan for Five Guys.

Rogalski stated they had to put in a screening fence.

Joanna McCowsy, 3408 NW Atlanta Avenue, stated she is worried about drainage. When it rains it floods her backyard. She knew it was going to develop on Cache Road and she is not against it because it is progress. She requested they take into consideration the way the land is because they are experiencing flooding.

Jason Wells, Insight Commercial Brokers, stated he is representing Thomas Densmore of Firehouse Subs and he is here to answer any concerns.

Hankins stated there are some water issues in this area and that might be something the City might look at.

Davis questioned if they are familiar with the binding site plan as far as the trees are concerned.

Thomas Densmore, Firehouse Subs, stated that they will exceed what is required. He stated they want to be a good neighbor. He stated they spoke with a landscaper and they will be using a Spartan Juniper which will rapidly grow to 15 feet.

PUBLIC HEARING CLOSED.

Mayor Booker stated the CPC has recommended denial and the staff is recommending denial.

Burk stated the real issue is the drive thru. His fear is that we are going to cross this same issue as this develops. He appreciated the fact that they will go above and beyond what is required. He does want to find out why their yards are flooding. The noise on Cache Road is bad, but that is part of development and moving thing forward. He hates to turn away a business that will produce sales tax. They need to address the speaker loudness that can be used at a drive through that backs up to residential. It has to be low enough it does not affect the neighbors.

Davis stated he agrees with Council Member Burk. He appreciates those who came to speak. By developing this he feels it will cut down the noise from Cache Road. Long term vacant property is bad for your property value. Development will help.

Tanner stated the council approved the drive through at the Braum's on Sheridan and it intruded two lots into the neighborhood. He cannot vote against this just because it is in a more affluent neighborhood.

MOVED by Tanner SECOND by Davis to adopt **Ordinance 19-05**, waive the reading of the ordinance, read the title only.

Fortenbaugh questioned if the motion is to approve with a drive through.

Tanner stated it is to approve with a drive through.

VOTE ON MOTION: AYE: Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Hankins, Jackson. MOTION CARRIED.
(Title read by City Attorney) Ordinance 19-05

An ordinance amending Ordinance No. 15-8 which changed the zoning classification to **C**-1 Local Commercial District on the tract of land which is hereinafter more particularly described in section one (1) hereof and approving the revised site plan attached as Exhibit A.

20. Discuss the sound quality of the broadcast of council meetings to include the broadcast over the internet and the local access channel and provide direction to staff if necessary. Exhibits: None.

Mayor Booker stated he has been coming to council meetings for a year and a half and not only is the sound quality in auditorium not very good, when you are at home watching on the television or on the internet it is not very good. He feels this is an issue of transparency and we are transparent about everything we do even though he does not think the citizens think that. They are not going to come to the meetings, but they do tune in and this is the day of the internet and people watch on Facebook and we need to add You Tube. He does not know the problem with the local access channel and why it is off and on or why the sound is not good. This reflects what we think of ourselves and what people are going to think of us. He would like a motion to direct staff to come up with a plan to improve it and bring us into the current century.

Tanner stated there were issues when he came on council years ago.

Burk stated he has been talking with Max Sasseen and Charles Barnett about the processes. He stated LETA bought a camera so we could have Facebook and he owns a streaming company that does all the high school sports in southwest Oklahoma and he feels this is something they need to look at. They need to be able to stream to channel 5 and Facebook and we can do that through one platform. The cameras that are in here were meant for surveillance; they are not cameras for what we are doing. He feels they need to get the right type of cameras. The sound system is an issue because if you look away from the mic it does not work or if you forget to turn your mic on or don't sit close enough to the mic it does not work. We need to look at streaming through laptops and portable cameras that can also be used for other events throughout the city. He stated all of this could be broadcasted and archived. It is a matter of having high stream internet and being able to send it out to Facebook, etc. He would be more than happy to help staff figure out a solution and come back with something inexpensive.

Warren stated when he ran for office the audio/visual issue is the number one complaint he received.

Mayor Booker stated he believes it is part of the franchise agreement to provide a channel, but if we are causing a problem we need to fix it, but if they are the problem they need to step up as well.

MOVED by Tanner SECOND by Burk to direct city staff to look into our issues with sound and look at costs and bring back to council. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

21. Consider providing direction to the Police Chief to establish a new policy regarding allowing police officers who live outside of city limits to take home City of Lawton police vehicles, in certain limited circumstances, and in accordance with applicable state and federal regulations. Exhibits: Draft copy of sample vehicle take-home policy; proposed coverage map.

Warren stated this extends out 20 miles the ability of officers that live outside the city limits to take their vehicle home under the same conditions that officer living in the city limits have to follow. This prevents a lot of issues. The officer would be able to start work the minute they hit the city limits without having to come to station to pick up a patrol car. He stated there have also been issues with the cars sitting in the parking lots. If anything bad happens it will happen to more vehicles if they are congregated in one place. There will also be parking issues at the new building. He stated this is not to approve a policy tonight, but direct staff to bring policy adjustments back to council for final approval.

Mayor Booker suggested they also direct staff to come back with the cost of this and all the positives and negatives.

Burk stated every time we have had a flood, east Lawton is blocked off. Some of the officers drive their cars home now and the public safety committee felt that it was not a far distance but if there was an emergency they would not have to drive their personal cars in to town to get a car. They could go straight to the emergency.

Jensen stated this policy will also needed to be reviewed by our tax counsel.

Tanner this is really an administrative issue and if they believe it is good for operations and they can come up with the additional revenue why don't they just put it in the budget.

Warren stated there is a council policy that says the council will not ask staff to expend a great amount of time on an issue until the council votes on it.

Tanner stated if the City Manager and Police Chief feel this will enhance the operations of the police department they could just go ahead and do it.

Davis stated other communities are doing this with great success. He is in favor of this issue and how it was initiated.

MOVED by Warren SECOND by Burk to direct city staff to draft policy with proposed savings and cost and bring back to council in April. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Johnson stated on Thursday the 28th at 15th & Pennsylvania she will be having her monthly meeting at 5:30 p.m.

Fortenbaugh stated our public safety officers do a great job.

Burk stated Trash Off is scheduled for May 4th.

Davis stated there is a great need to get the CIP projects done and they need to hire some engineers, but he was told that we do not pay enough. They need to think about raising the salary.

Mayor Booker stated since 2012, we have added 826,000 feet of retail space in town and 677,000 of it is vacant. That is important to remember when requests come in.

Diane Branstetter, Finance Director, presented revenue and expenditure highlights for the period ending January 31, 2019. (On file in the City Clerk's office).

The Mayor and Council convened in executive session at 9:24 p.m. and reconvened in regular, open session at 10:17 p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEMS:

22. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending action/claim involving A.E. Construction Co. and liquidated damages, and take appropriate action in open session as necessary. Exhibits: None.

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

23. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case in United States District Court of <u>Chu H. Pae vs. City of Lawton</u>, CIV-16-1198-G, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #23.

<u>MOVED by Jackson SECOND by Warren</u> to approve **Resolution 19-13** authorizing and directing the city attorney to enter into an economic settlement agreement in the federal district court for the western district of Oklahoma as settlement of the lawsuit styled Chu H Pae vs. City of Lawton, CIV-16-1198-G further directing the city attorney to prepare and file for the courts approval a motion and order for dismissal of all plaintiffs claims and the City's counter claim for cost and authorize the Mayor and the City Clerk and or city attorney to execute any and all documents necessary to effectuate a settlement. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending action regarding the City's contract with Ceridian Dayforce Human Capital Management and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #24.

MOVED by Burk SECOND by Davis to dissolve the contractual agreement with the understanding that the City will not be responsible for payment of any outstanding invoices, that Ceridian is not entitled to any remaining funds that have been appropriated and encumbered to date, and that the City will not make future appropriations for this contract and to execute a release of all claims against Ceridian upon receipt of a release by Ceridian of any claims against the City, and reimbursement for the purchase of time clocks to be negotiated by the City Attorney in an amount agreed to by the parties. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

25. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Traci L. Hushbeck as City Clerk, and in open session take other action as necessary. Exhibits: None.

Mayor Booker read the title of item #25.

MOVED by Burk SECOND by Warren to approve a contract with Traci L. Hushbeck with a 2.5% salary increase. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren, Booker. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 10:20 p.m. upon motion, second and roll call vote.

____
STAN BOOKER, MAYOR

ATTEST:
____
TRACI HUSHBECK, CITY CLERK