

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JUNE 28, 2016 – 6:00 P.M.
NEW CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Jerry Ihler, City Manager
Frank V. Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Glen A. Waters, Fort Sill Liaison
COL Samuel Curtis, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:07 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Ken Lane, Olivett Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Dwight Tanner, Jr., Ward Five
Cherry Phillips, Ward Six
V. Gay McGahee, Ward Seven
Doug Wells, Ward Eight

ABSENT:

Keith Jackson, Ward Two

COL Waters introduced the new Garrison Commander, COL Sam Curtis.

PRESENTATION OF OUTSTANDING CITIZEN OF COMANCHE COUNTY TO
EMMANUEL ALFARO

Mayor Fitch presented a Certificate of Commendation from the Mayor's Office to Emmanuel Alfaro.

EMPLOYEE SPOTLIGHT PRESENTATION TO CASEY SIDES AND MICHAEL
MCCOLLUM - LANDFILL DIVISION (STRICKEN)

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR
MEETING OF JUNE 14, 2016.

MOVED by Wells SECOND by Burk to approve minutes of Lawton City Council regular meeting of June 14, 2016. AYE: Morford, Bellino-Hall, Burk, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

AUDIENCE PARTICIPATION:

Donna Durbin, 1800 block of Osmund, stated she wanted to applaud the council and especially councilmembers Jackson and Burk, who worked on a problem that she has had for 20 years with the state and they got it accomplished this year.

Jimmie Alexander, 605 Carver, stated on the 12th of this month and it was the worst he has seen on Carver where the creek overflowed and flooded homes. He stated they lost four cars and two houses. The creek needs to be cleaned out and something needs to be done about the flooding.

Mayor Fitch stated this was a 500 year flood and there were areas in town that had never flooded in the past. He stated they will be making some changes to our plans and addressing this issue. The city has lost over \$1.2 million in infrastructure and costs related to addressing the flooded areas. It has affected over 250 homes. He is hoping to report some information on FEMA to the public within 10-14 days. They feel that help will be here before too long.

Sterling Bailey, Bailey's Catfish and More, stated he was harassed by the Oklahoma State Health Department and Councilmember Tanner and was told he did not have the right to set up because he had not invested enough money and that he was violating the law by not moving his trailer. He has documents from the state health department that says that mobile trailers can sit still. He was harassed and closed down and he still has no license.

Tanner stated state law says when you have a mobile food truck that you can only be in a spot for no more than 12 hours a day. Then you have to move it to a commissary and clean your equipment. He did not make this law, it is a state law.

Mr. Bailey stated the law says that trailers can set up.

Mayor Fitch stated he would like to see Mr. Bailey and Councilmember Tanner sit down with staff. He stated we have to follow the rules of the county when it comes to food services.

Mr. Bailey stated the rules say that he has the right to set up.

Ihler suggested Mr. Bailey come in and visit with staff and they will look through the documentation he has.

Tanner stated the city did not close him down, the county did.

John Hoffman, 310 NW 63rd, stated he has questions on the false alarm issue. He understands the committee is looking at enforcement of the current code instead of enacting and changing the code to have alarms registered for a certain fee.

Ihler stated the committee had their first meeting and there has been some discussion about following the existing code. It is not set in stone and they will have another meeting to try to finalize in the near future.

Mr. Hoffman stated the newspaper stated that as far as emergency communications is concerned they have not issued any excessive alarm citations in the period of time the director was down there. He questioned why the code was not being enforced now.

Wells stated that is the question the committee had, so they are looking into that.

Mr. Hoffman stated Mr. Russell stated that of the 6,600 alarms in the last year, 70% of them were legitimate. If 70% were legitimate, what about the other 30%? Were they sent any kind of a letter saying they had a false alarm and they needed to do something about it.

Wells stated that actually the 6,600 were false alarms. The director out there said no letters had been sent. He stated the committee is looking into it.

Mr. Hoffman stated for a certain period of time the director would come out and get a list of alarms within a given period and that was stopped and when he was asked why he wasn't doing it anymore his response was that the city council doesn't want to get into it. In 18 years he does not remember any letters being sent out. It is an issue that needs to be looked at.

CONSENT AGENDA:

Mayor Fitch stated the Johnson claim from item #2 will be discussed separately.

MOVED by Wells SECOND by Burk to approve the consent agenda with the exception of item #2 (Johnson claim). AYE: Morford, Bellino-Hall, Burk, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: John and Carolyn Phillips in the amount of \$1,034.00. Exhibits: Legal Opinion/Recommendation and **Resolution No. 16-47.**
2. Consider the following damage claims recommended for denial: Colten Burris in the amount of \$701.94, Edner Banks in the amount of \$10,000.00 and Isaac and Laura Johnson in the amount of \$11,313.00. Exhibits: Legal Opinion/Recommendations.

Kelea Fisher, Assistant City Attorney, stated Isaac and Laura Johnson filed a claim alleging that on November 11, 2015 the city had an obstruction in our main that caused their home to flood with sewage and cause damage to their property. They also alleged that this is the second back up they have experienced at that property and the first occurred in October 2012 while the city was performing preventative maintenance on the main. According to Mrs. Johnson they did not report that back up in 2012 at the advice of their property manager. They are seeking reimbursement in the amount of \$11,313.00. Staff did review the sewer history for the actual pipe segment that services this residence as well as the first, second and third pipe segments below the actual pipe segment, and they found no history of any obstructions or issues reported for three years prior to November 11, 2015. Because the City did not have actual or constructive notice, her recommendation was to deny the claim. She stated Mrs. Johnson requested staff go back and review records regarding the issue in October 2012 and she wanted verification that

there was preventative maintenance performed or not performed in October 2012 because staff did make a statement in the claim that there was no maintenance performed. They did go back and review the records from wastewater collections and there was actually preventative maintenance performed in October 2012, that was an error, however there was no call for service and there was no report of any damage in October 2012. Despite the error, her recommendation does not change because the issue is whether or not the City had actual or constructive notice in November of 2015 and we did not. Mrs. Johnson admitted she did not report any problem in October 2012 and so the first notice of any issue occurred in November 2015. Because the alleged back up that occurred in October 2012 was outside of the already generous three year time frame we look at in order to determine whether or not we had notice. The recommendation for denial does not change.

Burk questioned if we sent someone out after the 2015 back up to actually make sure we have had no issues and run a camera. He has had issues recently with our records.

Fisher stated the record indicates no data and no reports. She believes the city records are accurate because typically we have to account for where our employees are during the day and they report with daily worksheets.

Burk questioned if we have checked it since we have gotten this claim. If we camera that line we will be able to know if we have a problem in that area.

Jensen questioned the obstruction on the day in question.

Fisher stated on the day in question the obstruction was debris in the main. Since that time they have performed preventative maintenance twice. They have received no information that they replaced the line or have had any other problems.

Ihler stated when we have debris in a line we flush the line and after a period of time for the next six months to a year we go out and flush the line to make sure there are no problems with that area.

Burk questioned if we have had any other instances around this home.

Fisher stated not that she is aware of.

Valerie Key, Property Manager for Coldwell Banker, read a statement from the property owner which stated on November 11, 2015 they were notified that the city main backed up into their property due to the city sewer personnel performing preventative maintenance on the pipe segment that services their house. On October 20, 2012, the same thing happened due to the same maintenance by city sewer personnel flushing the system. That incident caused over \$16,000 in damage. The City Attorney is recommending denial of the claim because the first instance of preventative maintenance occurred outside the three year time frame that is used to determine notice. The first instance happened three years and one month beforehand. The technicality does not change the cause of damage which was the result of the city sewer personnel. The City Attorney also states that the city did not receive a report of the previous

damage and therefore cannot be held liable. They directed the property manager to notify the City and take the appropriate steps to file a claim. Theirs was not the only home affected, their neighbors also suffered damage to his property. The City's actions have caused them more than \$35,000 in damage and loss of rental income over these two events. They are asking for damages from the recent damages so they can place it back on the market. She stated the City Attorney stated that they did not report the damage the first time it happened on October 10, 2012. This is not true, the staff at the management company reported it to the City. They did not turn in a tort claim because insurance ended up paying for it, but it was reported to the City. The property manager did call the city several times and that is how they knew preventive maintenance was being done. After that no work was done on the line until November 11, 2105 when the second occurrence happened. Mr. & Mrs. Johnson are asking that the council please review the case and give consideration to the reversal of the recommendations denied by the claims investigator.

Burk questioned if Ms. Key had anything from the previous management company that shows where they contacted the City.

Ms. Key stated she talked to the manager that was handling the property at the time and she verified that she had talked with the City several times and she had a copy of the tort claim that she had started. In the meantime insurance paid for everything.

Mayor Fitch questioned if this claim has been filed with insurance.

Ms. Key stated that insurance will not cover the damage. When the last claim was paid their insurance dropped them and their new insurance does not have a back up clause.

Phillips questioned if there was enough new information to look at this claim.

Jensen stated no, there is no reason to look at the claim. Going back three years has been the policy for the past 25 years. We are not an insurance company and you can get a rider on your insurance policy but we do have a generous period of three years and that is a long time to say that you have to have done an abatement that will last three years. It does not apply to this case because we are outside of that three year period.

Burk stated it sounds like we are having the issue when we flush the line. This is the second time we flushed the line and both times we have had a back up in this same house. It sounds like we are causing the problem.

Jensen stated we were not flushing the line the second time.

Fisher stated in November 2015 there was an obstruction in the main that caused the back up. She stated that wastewater collections keep detailed records of phone calls they receive and there were no call in October 2012. The last preventative maintenance on that main was October 2012.

Ms. Key read an email from Ms. Fisher to Mrs. Johnson in which she sent the sewer history records of October 2012 which show on October 5, 2012, preventative maintenance was performed and preventative maintenance was also performed on October 10, 2012. The first occurrence was on October 10, 2012. When they did the second preventative maintenance in November 2015 they had the back up on that same date.

Wells stated preventative maintenance could have been done because of the call.

Fisher stated Mrs. Johnson did have a sewer worksheet that they hand out to residents and it said that they cleared the obstruction. The problem on November 2015 was an obstruction, not preventive maintenance.

Burk stated the obstruction was in our main. If this had fallen within the three year time period, would we have paid this claim?

Fisher stated no, her recommendation would not have changed because we did the preventative maintenance in October 2012, but we still did not have any notice that there was issue with our main that may have caused their back up because they did not report it.

Burk stated if we were in that three year window and we do have debris in our line and it causes that house to back up then we would obviously pay the claim.

Jensen stated if it was in that very generous three year window, yes you are correct. When they are outside the window they make a recommendation not to pay.

Bellino-Hall questioned the term “preventative maintenance”.

Ihler stated if they get a call for a sewer back up they go out and flush the main and clear the debris. That is not preventative maintenance, that is reacting to the call. They will perform preventative maintenance in areas that have had problems to make sure that debris is not building up in the line.

Burk stated these people had a \$16,000 claim three years and one month ago before this happened. These people have had two instances where their home has been destroyed. This is a military family that lived here and how can we say that because of one month we are turning this claim down. One month is irrelevant and we are lucky we didn't have to pay for both.

Wells stated you are assuming there was a note of a blockage before the first one. He understands the law that if they were to disregard the City Attorney's advice and pay this, a citizen could sue the council and they could individually be held for triple damages. That one month means a lot when you are talking about this much money.

Burk questioned if the three year policy was our rule or a state or federal law.

Jensen stated the three year policy was here when he came 25 years ago and it was a policy of the city. He does not know how they came up with three years. They will make their

recommendations consistently as they have for the past 25 years. Personally he would not go as long as three years. That three years is very generous to hold us to a standard where we are negligent, if we don't clear something so well that it is going to be good for three years, that is an impossible standard to meet.

Bellino-Hall stated if they go beyond one month, then its two months, they set precedence for the next claim and they have to draw the line someplace.

Morford stated just because there is debris in the line it doesn't mean we are negligent.

Jensen stated so many of these are grease and debris and generally that debris comes from the customer.

Burk questioned if this line is scheduled to be replaced.

Fisher stated she has received no notice.

MOVED by Bellino-Hall SECOND by Morford to deny the claim of Isaac and Laura Johnson in the amount of \$11,313.00. AYE: Morford, Bellino-Hall, McGahee, Wells. NAY: Burk, Tanner, Phillips. MOTION CARRIED.

3. Consider renewing the professional services agreement with McAfee & Taft for legal services related to the City's pension system, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Retainer Agreement for Professional & Legal Services on file in City Clerk's Office.
4. Consider renewing the professional services agreement with James C. Ferguson of Walker, Ferguson and Ferguson for the defense of Workers' Compensation claims. Exhibits: Proposed Retainer Agreement for Professional & Legal Services on file in the City Clerk's Office.
5. Consider renewing the professional services agreement with John C. Mackey, for various matters involving real property, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Retainer Agreement is on file in the City Clerk's Office.
6. Consider renewing the professional services agreement with John C. Mackey Jr., to serve as alternate prosecutor in the absence of the city prosecutor, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Retainer Agreement for Professional & Legal Services on file in City Clerk's Office.
7. Consider renewing the professional services agreement with John C. Mackey Jr., to provide legal representation in an eminent domain case still ongoing as result of the City's widening of 38th Street, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Retainer Agreement is on file in the City Clerk's Office.

8. Consider renewing the professional services agreement with Mackey Law Firm, to provide professional property research services in connection with dilapidated properties, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement is on file in the City Clerk's Office.
9. Consider authorizing staff to transfer funds from the 2015 Public Safety and Capital Improvement / Operational Expenditures Sales Tax to reimburse the city's general fund for eligible benefits provided to uniform members of the city's police and fire departments during FY-15-16. Exhibits: None.
10. Consider approving the annual Cooperative Agreement and an Agreement for Limited Funding between the City of Lawton and the Transit Trust to provide funds for the operation of a public transit system and authorize the Chairman and Secretary to execute the same. Exhibits: Cooperative Agreement and Limited Funding Agreement are on file in the City Clerk's office.
11. Consider approving an Agreement for Limited Services between the Museum of the Great Plains Authority and the City of Lawton to fund the continued operation of the Museum, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement.
12. Consider adopting a resolution authorizing Kellogg & Sovereign Consulting, LLC ("KSLLC") to file FCC Form 471 for funding year 2016-2017 in accordance with the agreement authorizing KSLLC to provide E-Rate Management Services for the Lawton Public Library and further authorizing payment of the Lawton Public Library's share of requested services subject to E-Rate funding and receipt of services. Exhibits: **Resolution No. 16-48.**
13. Consider allowing the Parks & Recreation Department to participate in submitting a request to be originated by two concerned citizens, Jacobi Crowley and Kimberly Jones, to the Oklahoma City Thunder Cares Foundation to build or refurbish an outdoor Thunder Basketball Court at the Patterson Community Center. Exhibits: Letter of request to the Oklahoma City Thunder Cares Foundation and site map.
14. Consider approving annual contract renewals between the City of Lawton and the following: County Commissioners (Juvenile Detention Center); and Lawton Crimestoppers, Inc. (Funds from sale of property in police custody). Exhibits: Copies of contracts are located in the City Clerk's Office for review.
15. Consider approving a Memorandum of Agreement between the Comanche County Health Department and the City of Lawton for public health services and authorize the Mayor and City Clerk to execute the document. Exhibits: Memorandum of Agreement.
16. Consider approving the construction plat for Eastlake Addition, Part 3B, subject to a condition. Exhibits: Plat Map.

17. Consider awarding a professional services contract to Zia Corporation for the purpose of providing environmental engineering services for the City of Lawton and authorize the Mayor and City Clerk to execute the contract. Exhibits: Retainer Agreement for Professional Engineering Services.
18. Consider approving agreements for refuse disposal with the following entities, and authorize the Mayor and City Clerk to execute the Agreements: Town of Indianoma, Multiple Community Services Authority and Town of Temple. Exhibits: Agreements (On file with the City Clerk).
19. Consider accepting a permanent easement and a temporary easement from Michael S. and Cecilia M. Sepura, husband and wife, for right of way needed for the Pat Henry Elementary School, Safe Routes to School Project# 2013-09, authorizing the Mayor and City Clerk to execute the documents. Exhibits: Location map. Documents are on file in the City Clerk's office.
20. Consider accepting a permanent utility easement from Brentwood Development Inc., for right of way needed for the SW Bishop Road Reconstruction 67th Street to 38th Street, Project# 2013-11, authorizing the Mayor and City Clerk to execute the document. Exhibits: Location map. Documents are on file in the City Clerk's office.
21. Consider accepting the NW Arlington Avenue and NW 35th Street Drainage and Street Construction Project #2012-3 as constructed by MTZ Construction, Inc. and placing the Maintenance Bond into effect. Exhibits: The Maintenance Bond is on file in the City Clerk's office.
22. Consider ratifying the action of the City Engineer approving Change Order #1 and accept the 2014 Waterline Phase 1 Project #2014-8 as constructed by Southwest Water Works, LLC and placing the Maintenance Bond into effect. Exhibits: None.
23. Consider awarding contract (CL16-030) Mowing and Litter Areas P and R to Teen Challenge of Cache, OK. Exhibits: Department Recommendation, Abstract of Bids, Price Sheet.
24. Consider extending contract for Degreaser to Mid American Research Chemical of Windthorst, TX for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
25. Consider approving an extension of the current agreement between the City of Lawton and Delta Nutrition for the operation of a nutrition program at the H.C. King and Patterson Centers. Exhibits: Contract Extension Form
26. Consider approval of payroll for the period of June 6-19, 2016.

NEW BUSINESS ITEM:

Mayor Fitch stated items #29 and #30 will be stricken from the agenda. They will be brought back after staff has resolved some issues with the committee.

27. Consider approving an Ordinance amending Sections 12-1-102 through 12-1-110; and repealing Sections 12-1-111 through 12-1-126; Article 12-1, Chapter 12, Lawton City Code, 2015, regarding Food Service Sanitation, by establishing regulations for the different types of food-service establishments and reflecting the restructuring of the Comanche County Health Department as provided by state law. Exhibits: Ordinance No. 16- __.

Richard Rogalski, Community Services Director, stated this ordinance deals with the health requirements for food handling within the city limits. We rely on Comanche County Health Department for that service. We follow the state statute for food codes. The City rules are you have to meet state laws and you receive a state license and then you can get a city license. Some of the code that is stricken is just outdated because Comanche County Health Department restructured their codes. He stated we updated definitions and added a section of code which has to do with food trucks. State law says you can only be in one place for 12 hours in any 24 hour period and you have to pick up all your stuff when you are done and take it with you. You have to go back to your place of business and clean the food truck out and be ready for business the next day. This code was discussed with a council committee consisting of council members McGahee, Phillips and Tanner as well as other business people from the community.

Tanner stated he also invited Mr. Bailey but he did not show up.

Rogalski stated we are starting with the regulations to follow the state statute. There is a limitation on mobile food, we simply say that you have to stay mobile. You have to have a food handler's permit and you can't use more than 10% of the parking.

Phillips questioned if the food handler permit covers anyone working in that food truck.

Rogalski stated food handler's certification is required for anyone handling any food at any restaurant.

Phillips stated she heard that in some of the food trucks not everyone is certified as a food handler, just the owner of the truck.

Rogalski stated that anyone that handles food should have a food handler's license.

McGahee stated she did attend one of the committee meetings. She stated that Mr. Rogalski said this lines up with the Comanche County Health Department. She asked if he was aware of the 45F permanent facility permit that the health department offers. In the code relating to the fixed establishment it is actually different than the county code. She questioned why there is a different definition of "fixed establishment".

Rogalski stated he was not aware of that.

McGahee stated it is actually showing something a little different than what we are putting in the city ordinance.

Rogalski stated the definition of fixed was probably from the previous code. They are discussing the same thing with a permanent building with permanent connections. The county goes into more detail.

McGahee stated the city goes into more detail and goes beyond the county code.

Rogalski stated we want a fixed foundation to be a building. Most of our code regarding health requirements follows the state statute and our food truck code follows state statute. Not all of the code is identical to the state. The City wants a fixed establishment to be a permanent building.

McGahee stated this is not lining up with the county, we are going beyond the county and this is what Mr. Bailey is talking about, there was actually a code where you can have a permanent establishment and the county will allow this.

Rogalski stated not all of this code matches the county. The city does have requirements in here for different establishments.

Phillips questioned if the city's code is more restrictive than the county.

Rogalski stated in this instance it definitely is. We can't be less restrictive than state statute, but we can choose to be more restrictive.

Phillips questioned how people know if they go by city code or state code.

Tanner suggested they table this item and readdress it with Council members Phillips, McGahee and Mr. Bailey. We are not trying to isolate one individual.

MOVED by Tanner SECOND by Phillips to table items #27 and #28. AYE: Bellino-Hall, Burk, Tanner, Phillips, McGahee, Wells. NAY: Morford. MOTION CARRIED.

28. Consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, to amend the fees associated with food service establishments and providing an effective date. Exhibits: Resolution No. 16- ____.
29. Consider approving an Ordinance creating Section 15-5-501 and amending Section 15-5-503, Article 15-5, Chapter 15, Nuisances and Health, Lawton City Code, 2015, to re-title the article; to define vehicles; and to clarify the requirements for the parking and storing of vehicles in one and two family neighborhoods and zoning districts. Exhibits: Ordinance No. 16- ____.
30. Consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015 to establish fees for large recreational/commercial vehicle parking and temporary habitation permits. Exhibits: Resolution No. 16- ____.

STRICKEN

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Wells reminded everyone of the Freedom Festival event on Saturday.

McGahee stated she recently traveled with the Galilee Missionary Baptist Church Dr. L.K. Jones Ambassadors for Christ Drill Team, who are now the 18th national award winning drill team. She was proud to be able to travel to the competition with the group.

Tanner thanked everyone who helped with his campaign.

Burk stated he was able to go to every single house in ward 4 and he has seen some areas he hasn't been to in a while. He encouraged citizens to contact their council member and make them aware of the situations that are going on in your neighborhood and become involved in your neighborhood.

Bellino-Hall thanked Chief Dewayne Burk, Lawton Fire Department, for his kindness to former Fire Chief James Martin, who passed away this month. She stated his family has great gratitude for what Chief Burk has done.

ADJOURNMENT

There being no further business to consider, the meeting adjourned at 7:27 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK