

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
SEPTEMBER 14, 2021 – 2:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Stan Booker, Mayor

Also Present:
Michael Cleghorn, City Manager
John Ratliff, City Attorney
Traci Hushbeck, City Clerk
COL Rhett A. Taylor, Fort Sill Liaison

Mayor Booker called the meeting to order at 2:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Mike Keahbone, First Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Keith Jackson, Ward Two
Linda Chapman, Ward Three
Jay Burk, Ward Four
Allan Hampton, Ward Five
Sean Fortenbaugh, Ward Six
Onreka Johnson, Ward Seven
Randy Warren, Ward Eight

ABSENT: Mary Ann Hankins, Ward One

REPORTS: MAYOR/CITY COUNCIL - None

AUDIENCE PARTICIPATION:

Dave Goodin, 1107 SW Pecan Road, stated he was promised the City would clean up the trash on 11th Street and it has not been done. He stated he is documenting all of this to send to the federal EPA.

CONSENT AGENDA:

Mayor Booker stated items #2 and #18 will be discussed separately and items #13 and #23 will be stricken from the agenda.

MOVED by Warren SECOND by Fortenbaugh to approve the consent agenda with the exception of items, #2, #13 and #18. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider approval of the minutes of the Lawton City Council regular meeting of August 24, 2021.
2. Consider withholding payment of disputed invoices from Johnson Controls, Inc.

Ratliff stated the City has had a relationship with Johnson Controls for several years and there have been several issues. Staff met with representatives from Johnson Controls to talk about several areas of maintenance that we requested they fix, and they were given assurances by Johnson Controls that they would honor their contract and absolutely nothing has occurred. Since the contract has expired the City has received invoices from Johnson Controls totaling \$89,828.06. Given the nature of the issues we have had with them and given that we have had damages in excess of \$500,000 and based on the fact that they did not honor their contract and they did not maintain the equipment, the least the City can do is not pay this invoice. That is his recommendation.

Rusty Whisenhunt, Director of Public Utilities, briefed the council on the issues with Johnson Controls at the wastewater treatment plant.

MOVED by Warren SECOND by Chapman to approve non-payment of Johnson Controls invoices and direct the City Attorney to engage in negotiations with Johnson Controls concerning the disputed invoices. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

3. Consider ratifying the action of the City Manager by accepting the Health Literacy grant of \$9,000.00 from the Oklahoma Department of Libraries for three bicycle repair stations, health classes, and health supplies.
4. Consider ratifying the action of the City Manager by accepting the Unite Us Oklahoma grant of \$10,000.00 from Unite Us for the Lawton Public Library to be a Community Champion to advocate and assist with building the Unite Us network.
5. Consider authorizing the use of 2015 CIP funding in an amount not to exceed \$150,000.00 for the installation of electrical improvements at Elmer Thomas Park to support additional lighting for the annual Holiday in the Park event.
6. Consider approving an Airport Improvement Program (AIP) construction grant for the Lawton-Ft Sill Regional Airport in the amount of \$1,111,111.00.
7. Consider adopting a **Resolution 21-166** authorizing the installation and/or removal of traffic control measures at NW 75th Street at Willow Creek Park and SW Sherman Valley Drive near Patton Hill Drive.
8. Consider acknowledging receipt of an Oklahoma Department of Environmental Quality general permit for the land application of water treatment plant residuals from the City of Lawton Medicine Park Water Treatment Plant onto two application sites.

9. Consider accepting two Permanent Roadway and Utility Easements and a Permanent Drainage Easement from Cate Farms, LLC for right of way needed for the W. Gore Blvd Reconstruction from SW 82nd Street to 67th Street, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s) and authorizing payment for the same.
10. Consider approving Amendment No. 9 to the December 9, 2014 contract with Garver, LLC, which will amend the scope of service to provide professional services necessary for the final design, bidding, construction administration, application engineering programming service, and implementation of SCADA system improvements for the MPWTP, SEWTP, and water distribution system.
11. Consider approving Agreement between City of Lawton and EST, Inc., for the Professional Engineering Services and the Preparation of Contract Documents for the ‘Street Reconstruction Project: SW 38th ST from SW Bishop Rd to W Gore Blvd, Project No. 2021-02.
12. Consider rejecting all bids received for CL19-034 (2021) Sulfuric Acid and authorize staff to re-advertise once market conditions stabilize due to bid exceeding available funding for current fiscal year.
13. Consider approving a contract award to Air Solutions, LLC for the City HVAC Maintenance contract effective September 30, 2021. **STRICKEN**
14. Consider extending contract RFPCL19-035 Physical Damage Coverage for Select Vehicles & Heavy Equipment to North American Insurance Agency of Lawton, LLC, dba INSURICA of Lawton
15. Consider extending CL20-002 Manhole Coating Product with Corgill Construction, Inc. of Greenwood, Arkansas for an additional year.
16. Consider awarding contract for (CL22-001) Supplemental Nuisance Abatement to Looking Good Lawncare and Veteran’s Tree and Lawn, LLC.
17. Consider awarding contract (CL22-004) Precast Concrete Manholes (Large) to Primary Structure of Guthrie, OK.
18. Consider awarding Contract Number CL-21-032, Mowing & Litter Contract Area R to Adult & Teen Challenge of Oklahoma.

Ratliff stated he just wanted to enter this into the record because it is not listed in the attachments, which is exhibit 3, the legal opinion. The legal opinion is as follows: I believe the bid from Complete Landsculpture of Texas is non-responsive. Section 9 “Changes to Specifications” of the General Conditions for Bidding Requirements Contracts document states “Changes in specification reducing the quality, versatility or applicability of the product or service shall cause the rejection of the bid.” Our specifications show the City will determine the frequency of tasks with a minimum of 8 mowings. Complete Landsculpture added a note to their

price bid which states their per visit pricing is based on 18 mowings a year and if their frequencies are reduced or delayed extra work pricing may be necessary. I interpret that to mean they intend to charge more if we do not provide a minimum of 18 mowings per year, and therefore their bid price is not firm.

MOVED by Warren SECOND by Hampton to award Contract Number CL-21-032, Mowing & Litter Contract Area 'R' to Adult & Teen Challenge of Oklahoma. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

19 Consider awarding contract CL20-028 (2021) Liquid Aluminum Sulfate to TR International Trading Company of Edmonds, WA.

20. Consider approving appointments to boards and commissions.

Board of Adjustment

Shane Lupi
1906 NW Cherry Avenue
Lawton, OK 73505
580-704-0018
Term Expires 10/28/2024

Building Development Appeals Board

Joshua Dickson
811 SE 3rd Street
Lawton, OK 73501
580-536-5820
Term Expires 09/07/2023

Mayor's Commission on the Status of Women

Jennifer Ellis- Western District
PO Box 442
204 Big Rock Road
Medicine Park, OK 73557
580-355-2182
Term Expires 09/07/2023

Emily K Ellis- Eastern County Commissioner
515 NW Dearborn Avenue
Lawton, OK 73501
Term Expires 09/20/2023

Lawton Urban Renewal Authority (LURA)

John Purcell
3006 NE Muse Circle
Lawton, OK 73507
Term Expires 07/31/2024

LURA Continued...

Dr. Ernest Sheppard
2604 NW Lake Front Drive
Lawton, OK 73505
Term Expires 07/31/2024

BUSINESS ITEMS:

21. Hold a public hearing and consider an ordinance to close a 25-foot wide by 100-foot long portion of the right-of-way of SE Stafford Avenue, adjacent to Lot 10, Block 12, Industrial Addition.

Richard Rogalski, Deputy City Manager, stated on August 10, 2021, City Council voted to set this date to hold a public hearing for a request to close a 25-foot wide by 100-foot-long portion of the right-of-way of SE Stafford Avenue, adjacent to Lot 10, Block 12, Industrial Addition. The request has been made by AMG Holding Company LLC, owners of the adjacent property, to accommodate the placement of a new ground mounted transformer by PSO to provide enhanced electrical service for the building. AEP-PSO would be allowed to be install the new transformer at that location in the public right-of-way but have requested this closure to obtain an easement specific for their equipment. On August 14, 2021 notice was mailed to the nine (9) property owners within 300 feet of the requested area and the private utility companies that have rights to our right-of-way. Notice was also published in the Lawton Constitution on September 3, 2021. The Planning Department has received no letters or call regarding this request. City Council Policy 5-1, regarding the closing of public ways and easements states “Public ways and easements are considered to be held in trust by the City government for the present and/or future use of the people of the City of Lawton. Except when a major development or redevelopment plan previously adopted by the LMAPC (CPC) and approved by the City Council requires closing of a public way or easement, it shall be the policy of the City Council not to approve such closings.” Upon review, staff does not believe that this request meets this policy and recommends that the City Council deny this request.

PUBLIC HEARING OPENED.

John Chestnut, Southwest Design Associates, 702 SW 52nd, stated they were hired in March 2020 to do the plans. In March 2021 they were notified by PSO that they could not put the transformer in the right of way. He spoke with staff in planning, and he was instructed on how to go about closing the right of way. They are asking for 25 feet of the 90-foot right of way. Since he spoke to staff this was lost in the shuffle and what should have been a two-month process has become a six-month process. His client has had to pay \$20,000 in rent over this period. To move the transformer would cost \$200,000. All they are asking for is this 25 feet. If they get this property they are dedicating it to PSO to be a utility easement.

Hampton questioned if anything is on this property.

Rogalski stated it is just gravel. Staff does not object to the transformer going there, they just feel it is not necessary to close and vacate the right of way. In order for them to grant PSO the

easement they would have to vacate the right of way, which would take away the rights to the property. If we close it then the city has a right to reopen, and we are in the same situation as today. He stated PSO could have put that transformer in back when they were originally asked.

Mr. Chestnut stated that PSO will not do it.

Art South, attorney for the applicant, stated Mr. Scotts leased this building almost two years ago and the plans were initially approved. In the plans the transformer was in a different location and the City requested that the plans be changed, and the transformer be moved. In March 2021, Mr. Chestnut came down here and was told the plan would be submitted to a committee and was told this would not be a problem. All this time Mr. Scotts has been paying \$5,000 a month in rent. Mr. Scotts was told by PSO that they will not put a transformer on a municipal right of way because the City can tell them to move it at any time at PSO's expense. He was told by PSO it has to be put on private property. They are talking about a lot of money to move this transformer to the private property. Mr. Scotts can take a 25 x 25 piece, but it has to be on private property. There will still be easements on both sides of the street. His client is going to have employees and he is going to sell product and taxes will be paid on this.

Tim Hushbeck, AEP-PSO, 226 E. B Avenue, stated they do not want to build on there without an easement because if they were forced to move they would have to pay the \$200,000 to move it. They have no desire to put a transformer there without an easement.

Fortenbaugh stated if they pass this as written it will give them what they need.

Rogalski state his recommendation is based on the policy and if you absolutely have to close this right of way for this person to do what they want to do. Technically you do not because PSO has the right to place the transformer in our right of way. The City or PSO has to choose to do something they don't want to do. This can happen without the City closing the right of way. If we ever have the desire that we might want to use that right of way, then we should hold it for the public.

Fortenbaugh questioned who owns the property.

Rogalski stated they are the underlying property owner of the right of way, we hold right of way in trust so we can't sell the right of way to them. Either we close right of way that we don't have to or PSO puts a transformer in right of way that they don't want to.

Fortenbaugh stated he sees a strip of gravel in an industrial area, and he feels they need to help them out if we can find the right way to do it.

Johnson stated they are just asking for 25 feet, she questioned if that is the way the ordinance is currently written.

Rogalski stated the ordinance was written exactly as they requested it.

Hampton questioned if it would affect the City putting any utilities in that easement.

Rogalski stated if it is closed, it is gone forever.

Warren stated if this was on Cache Road or Sheridan Road he could see the issue, but there is a slim chance we would ever need this right of way.

PUBLIC HEARING CLOSED.

MOVED by Johnson SECOND by Fortenbaugh to adopt **Ordinance 21-21**, waive the reading of the ordinance, read the title only. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 22-21

AN ORDINANCE CLOSING A 25-FOOT WIDE BY 100-FOOT LONG PORTION OF THE RIGHT-OF-WAY OF STAFFORD AVENUE, ADJACENT TO LOT 10, BLOCK 12, INDUSTRIAL ADDITION.

22. Consider receiving a presentation on the modified Public Service Organizations scoring results for FFY 2021, discuss recommendations from the City Planning Commission, and consider approving the Public Service Organization individual allocation amounts that are part of the Annual Action Plan for FFY 2021, and authorizing the Mayor and City Clerk to execute the agreements.

Christine James, Community Services Director, stated this is the continuing item of the individual allocations to the eight public service organizations that applied for CDBG funding for this year. She stated this issue was sent back to the City Planning Commission to revisit the scoring of the applications and the allocation amounts. (James presented information on the proposed funding which is on file in the City Clerk's office)

Warren stated he feels this will work and he does not think there was any better solution they could come up with, but it will not fix the problem. If you have a new entity the problem will reoccur. The ones that apply every year are part of the problem. It was originally set up that each entity would have a limited amount of time to utilize these funds and then they would rotate off. This way you are using the funds as start up funding for multiple entities. That is not what has happened. He suggested that before next time, the council look at reworking the plan.

Johnson stated they do need to look ahead because the slices are going to get smaller as others apply. She suggested some type of notification to the current recipients to let them know the possibility of the process changing so they can start looking for additional funding.

James stated next year they are looking at a requirement to come to a pre-bid type meeting to go over information before they apply. The hardest part of this is the deadlines from HUD and how much they can do ahead of time.

Hampton stated part of the issue is giving these entities forewarning that they may not get as much funding. They need to know that things are changing, and we cannot guarantee the same funding.

James stated they want to reach more organizations.

MOVED by Johnson SECOND by Hampton to approve the Public Service Organization individual allocation amounts that are part of the Annual Action Plan for FFY 2021 and authorize the Mayor and City Clerk to execute the agreements. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

23. Consider an ordinance amending Chapter 8, Lawton City Code 2015, renaming the chapter, revising the scope, adding, and deleting definitions, adding a section on cybersecurity, and bringing several sections within Chapter 8, Lawton City Code 2015, into compliance with the Oklahoma Emergency Management Act of 2003 and establishing an effective date. **STRICKEN**

STAFF REPORTS: None

The Mayor and Council convened in executive session at 2:47 p.m. and reconvened in regular, open session at 4:25 p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEMS:

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation concerning pension calculations, and, if necessary, take appropriate action in open session.

Ratliff read the title of item #24. No action was taken.

25. Pursuant to Section 307 B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending conflict of interest investigation under City Code Section 17-2-13-274, and if necessary, take action in open session.

Ratliff read the title of item #25.

MOVED by Hampton SECOND by Fortenbaugh that the agenda item has been resolved and no further action is needed to be taken. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Mayor Booker read the following statement:

I would like to address the council about a misunderstanding that I unintentionally helped perpetuate regarding allegations of an OSBI investigation that involved the City of Lawton and open records laws. I want to express my sincere regret for my role in this unfortunate misunderstanding. Like the rest of you, I am proud to represent our great city and I am

committed to acting in its best interest. Earlier this year I was contacted and provided information from various public outlets. I understood the information to be accurate and shared this information with other members of the public. Thereafter I learned that some of the information was not true. While I was not the source of the information, my role in sharing it led to unnecessary public embarrassment to our city clerk, Ms. Hushbeck, and one of our council members, Mr. Burk. I have apologized. I deeply regret my role in this misunderstanding. As head of our municipal government, I understand and acknowledge my mistake. If I had to do it over again, I would not have shared the information I received. In the future I will make sure that any information I receive from the public is thoroughly vetted. I can do better, I will do better. I appreciate our city clerk and the members of this body and everyone's willingness to move past this misunderstanding and work together in the unified goal of helping and serving our community.

There being no further business to consider, the meeting adjourned at 4:28 p.m. upon motion, Second and roll call vote.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK