

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
SEPTEMBER 25, 2018 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Jerry Ihler, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Garrison Hopper, Jr., First Free Will Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bob Morford, Ward One
 Keith Jackson, Ward Two
 Caleb Davis, Ward Three (arrived @ 6:12 p.m.)
 Jay Burk, Ward Four
 Dwight Tanner, Jr., Ward Five (left @ 6:16 p.m.)
 Sean Fortenbaugh, Ward Six
 Onreka Johnson, Ward Seven
 Randy Warren, Ward Eight

ABSENT: None

PROCLAMATION FOR LAWTON BUSINESS WOMEN'S WEEK

Mayor Fitch proclaimed September 24-30, 2018 as Lawton Business Women's Week

PROCLAMATION FOR POW/MIA RECOGNITION DAY

Mayor Fitch proclaimed September 21, 2018 as the POW/MIA Recognition Day in Lawton.

AUDIENCE PARTICIPATION: None

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF AUGUST 14 AND AUGUST 28, 2018.

MOVED by Burk SECOND by Jackson to approve the minutes of the Lawton City Council regular meetings of August 14 and August 28, 2018. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA:

MOVED by Burk SECOND by Jackson to approve the consent agenda. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Paul Pope in the amount of \$110.00, Sandra Baker in the amount of \$187.50, and William A. Williams in the amount of \$1,821.00 (**Res. 18-67**). Exhibits: Legal Opinions/Recommendations and Resolution 18-____.
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 Richard Franz in the Workers' Compensation Court of Existing Claims, Court No. 2017-07287H. Exhibits: **Resolution 18-68**.
3. Consider adopting a resolution approving the joint petition settlement and making payment in the workers' compensation claim of Randall Webb. Exhibits: **Resolution 18-69**
4. Consider approving funding for the 5th Annual City of Lawton/Ft. Sill Freedom Festival, scheduled for Saturday, June 29th, 2019, in the amount of \$65,000.00 as established in Resolution 14-139. Exhibits: Resolution 14-139.
5. Consider approving an agreement between the Lawton Disc Golf Club and the City of Lawton for the purpose of hosting tournaments, maintaining and improving Elmer Thomas Park Disc Golf course. Exhibits: Disc Golf Agreement.
6. Consider authorizing acceptance of the award of a \$40,000.00 grant from the 2018 Oklahoma Attorney General's Safe Oklahoma Grant Program and authorizing the Mayor/City Manager to sign the necessary forms. Exhibits: None.
7. Consider approving a request to enter into a memorandum of understanding with the Federal Bureau of Investigation (hereinafter "FBI") and the City of Lawton Police Department (hereinafter "LPD") authorizing the agreement to allow their agents to utilize the Lawton Police Department's Firing Range for purposes to include conducting yearly firearms, defensive tactics and tactical training sessions. Exhibits: Copy of the Memorandum of Understanding.
8. Consider accepting the waterline and maintenance bond, and approve the record plat for Aubrey Subdivision, a replat of Lot 6, also known as Block 6, Thompson Subdivision. Exhibits: Plat Map. Maintenance bond is on file in the City Clerk's office.
9. Consider awarding contract (CL19-003) for procurement of Repair Clamps, Bell Joint Clamps and Steel Couplings, to Core & Main LP of Owasso, OK. Exhibits: Department Recommendation, Abstract of Bids, Price Sheets.

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

Library Board

Ellouise Love
New Member
05/31/2020

11. Consider approval of payroll for the periods of September 10-23, 2018.

NEW BUSINESS ITEMS:

12. Hold a public hearing and consider an ordinance modifying language in the zoning code for the sale and serving of alcoholic beverages to conform to State law. Exhibits: Ordinance No. 18-__.

Richard Rogalski, Community Services Director, stated on August 28, 2018, the City Council approved Ordinance No. 18-27 amending Chapter 4, Alcoholic Beverages, Lawton City Code, to conform to the State law which goes into effect on October 1, 2018. The proposed ordinance amends Chapter 18 of the Lawton City Code to conform with the new law by defining “package store or liquor store,” deleting the term “nonintoxicating,” deleting the permitted use of mixed beverage licensee in conjunction with a restaurant provided such club is ancillary to the restaurant in C-2 and C-3, and adding beer and wine licensee for on-premise consumption in C-4, C-5, and CBD. Restaurants may sell alcoholic beverages for on premises consumption as long as the sale of food is more than 50% of total sales.

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

MOVED by Jackson SECOND by Burk to adopt **Ordinance 18-29**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-29

An ordinance pertaining to planning and zoning amending Sections 18-1-1-106, 18-5-8-581, 18-5-9-592, 18-6-10-601, 18-6-11-611, 18-6-12-623, and 18-6-13-635, Chapter 18, Lawton City Code, 2015, modifying language in the zoning code for the sale and serving of alcoholic beverages; providing for renumbering; and providing for severability.

13. Hold a public hearing and consider an ordinance amending Chapter 18, Lawton City Code, adding definitions and establishing zoning requirements for medical marijuana growing, processing, research, and dispensary facilities and declaring an emergency. Exhibits: Ordinance No. 18-__.

Rogalski stated on June 26, 2018, State Question 788 was passed which legalized the licensed use, sale, and growing of marijuana for medicinal purposes. The State is still in the process of finalizing regulations for medical marijuana growing, processing, research, and dispensary

facilities. He stated they are receiving a lot of inquiries on where these facilities are supposed to go and up until now he could just give the city planners interpretation because those uses were not listed in our code. This ordinance simply lists the uses of a medical marijuana dispensary, a medical marijuana processing facility, growing facility and research facility in our code so that through this process of the public hearing and setting policy, those will be set now in our code so that everyone knows exactly where this community wants those uses to be located. He stated with a dispensary, they interpret that to be similar to a pharmacy and it is allowed in a zoning code everywhere a pharmacy would be allowed. That begins with C-1 when located on a major street and as a use permitted on review when not located on a major street, and as a permitted use in C-2 and CBD. Because of cumulative zoning, dispensaries would also be permitted uses in C-3, C-4, C-5, I-1, I-3, and I-4 districts. The next thing would be a research facility. They allow medical marijuana research facilities in C-5, which will also allow research facilities in I-1, I-2, I-3, and I-4. The next use would be a growing facility. Up until mid August they were seeing what the state's rules were coming out as and the state had growing facilities being indoor only. We drafted our code with indoor only and almost all the requests we have had have contemplated indoor growing facilities. Since that time the State simply removed that section of the code so they no longer say that growing facilities must be indoors. They don't say indoor or outdoor. With many uses in the code there are different locations for outdoor and indoor stuff. They have separated growing facilities as indoor and outdoor. For an indoor growing facility it would basically be a warehouse with medical marijuana growing in it. They felt it was very similar to warehousing so they started off in our warehouse district which is light industrial which is I-1, which will also allow commercial growing facilities in I-2, I-3, and I-4 within an enclosed building. When it comes to outdoor growing it is a little different. It does create a smell and there could potentially be some security issues. As an intense use you may not want it in all your industrial areas but it is suitable in some areas, but this will allow outdoor medical marijuana commercial growing facilities in I-4 as a use permitted on review. A use permitted on review allows due process where those property owners within 300 feet get notice and they have the ability to come to a public hearing before the City Planning Commission (CPC) and have their say as to whether it is or is not a good use in that area. It provides that extra step of reasoning to determine if this is good or not. This code is very restrictive on outdoor growing of medical marijuana.

Morford stated it seems like we need some security regulations, but does that need to be done through the zoning or put in here.

Rogalski stated this is straight zoning so you don't put rules in the zoning necessarily. They are working on rules for medical marijuana, but we are moving cautiously because the state's rules are changing. As we write rules for these types of uses, there will be some issues with security as there are with any industry. The last use is the processing facility. There is a wide range of what could be a processing of medical marijuana. They will make a lot of different types of topical creams and lotions out of the plants and materials and it is a chemical industrial process. They found the uses most similar to that were in I-3 so that is where they put the processing facility. At this point we are not adopting any type of measurement requirement from other facilities, we are saying that here are the new facilities that were created by the state and here is where we feel our community would locate them. All the personal use, growing in your home,

nothing is covered in here, this is just where the larger commercial and industrial facilities would go in town.

Burk stated we don't want to be too restrictive throughout the city because there are a lot of larger buildings that are vacant that could be set up to do this type of thing. He does not want us to eliminate those growers from being able to grow inside the city because all these buildings are going to have to be reused and brought up to code and a huge amount of money will be spent on these buildings to make this happen. He wants this money to be spent in Lawton, not outside of our city limits because we have made it too restrictive. He can think of older buildings along Cache road that are C-5 that would be a perfect use for this. The front end could be the store part and the back end could be used as the grow facility. His idea would be to allow this dual thing and he does agree with the fact that it goes before the CPC with a use permitted upon review. He can think of five or six locations that could be brought up to date and would bring in property tax and it brings in sales tax when they sell it right here in Lawton. He would like to see us put in this code a C-5 ability for these grow facilities with a dispensary that would go to the CPC and then would be a use permitted upon review. He does not see why we would have to restrict it to only industrial sections. People are going to put dispensaries up and down every road if they want, but there are some very large buildings in Lawton that are sitting empty today and some very large lots that could be used to build upon. These people are going to come in and spend millions in our city and local people will be out doing the work and that is what we need and that is what this is all about. If it is just a grow facility he gets the concept of industrial, but this will go to the CPC for their review and if the building meets the criteria then it would come back to council for approval.

Rogalski stated that everything he has seen on the indoor growing facilities are that they are not a loud use or that they are not a bad neighbor and that Council Member Burk is correct in suggesting that they combine with a dispensary because you would not want large warehouse facilities in our commercial zoning, that takes away good commercial zoning. As long as they do have that use permitted on review where the neighbors get that notice and they can come and voice their concern.

Mayor Fitch stated these people will spend hundreds of thousands of dollars and will have a lot of equipment and a lot of security. It will be a big deal because they have millions of dollars of inventory. They will be protecting themselves as well as the citizens.

Morford questioned the size of a commercial growing area.

Mayor Fitch stated they are thousands of square feet.

Burk stated some of them are 50,000 square foot facilities. The square footage is worth a lot of money once they become a grow facility. It is important that we have a way for someone to come to us with a plan or an idea and then go to the CPC, it is good for Lawton.

PUBLIC HEARING OPENED.

Tom Leon, 2307 NW Redwood Lane, questioned how sealed up or secure are these buildings where the smell does not come out. If the smell comes out of the building and someone goes down the road and smells the marijuana, then they are going to be high. Will the buildings be sealed tight?

Mayor Fitch stated he is sure that there are building codes that will come down from the State.

Burk stated these growers will spend the money because if they don't grow, they don't make money. There are charcoal filters that are put in and it is a major process.

Debbie Smith, 53rd Street, stated the medical marijuana makes a difference in people's lives. She does not know how we could increase the alcohol content which has proven time after time that there is human element. She has had a lot of issues that doctors have not been able to explain and the oils have made a difference. Before there is a decision made there needs to be some serious research and some serious thought because anything you mix with anything you will have a reaction, but from her understanding, it will not make you crazy high.

Jensen questioned if they were looking at continuing this public hearing to address the proposal from Council Member Burk and the issue about the enclosed facilities where the state took that out of their rules after it was in their rules and the Attorney General's office intervened. If we close the public hearing now we will have to republish if we are going to do some revisions to what we have on the floor tonight.

Burk stated he wants to see these revisions happen. He questioned if they could bring the changes back at the next meeting.

Rogalski stated they could continue the public hearing or they could close it and table to the next meeting. He could have the changes ready for the next meeting as long as they continue the public hearing so they don't have to give another notice.

Mayor Fitch recommended that they keep the public hearing open and table it until the next meeting.

MOVED by Burk SECOND by Jackson to continue public hearing until the October 9th meeting. AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

14. Consider authorizing closing out the 2008 Capital Improvement Program(CIP)'s and directing financial services to transfer the remaining funds to the 2015 Sales Tax Extension CIP and 2016 CIP. Exhibits: Exhibit "A" Summarizing the 2008 CIP and Exhibit "B" 2008 CIP Financial Summary.

Ihler stated they are asking the council to do what they did at the last meeting when they closed the 2005 CIP. In Exhibit A all of the projects that were identified are complete with the exception of the Rogers Lane (I-44 to Flowermound) design project. They are asking to close out the 2008 CIP and there is some funding that had been identified for some of those projects

that are complete. There is \$7,444 in Ward 4 projects and they suggesting those funds be transferred to the 2016 CIP specifically the SE 40th and SE 41st residential street projects. The Rogers Lane (I-44 to Flowermound) design, because we also have in the 2015 funds for construction, utility and relocation for the I-44 project, they are asking to transfer those funds to the 2015 CIP and keep them for the purposes of design and just create a new account in the 2015 for that purpose. The residential street design, they are asking to move to the 2016, there is \$19,938, we have an account in the 2016 for city wide residential streets, and they would like to move it into that account and utilize if for those streets that we are designing now. The Nine Mile Creek Sewer Line Project, they are asking to move that \$20,613 into the 2016 and put those funds into the phase III of the sewer rehab. The Fire Station 8 Waterline Project funds, in the 2015 there is a category for water, sewer system improvements and they are asking to transfer that \$50,693 to the 2015 and put into that account. There is \$100,000 that was approved for I-44 Pedestrian Bridge and they also approved \$100,000 in the 2015, so they are asking to move that into that account in the 2015. There is also a little over \$1 million that remained at the end of the 2015 CIP because we were able to pay off the loan for improvements with the Water Resources Board and as a result we were able to save \$1.2 million. A little over \$600,000 of that came from this 2008 CIP. The 2008 CIP was established for water, sewer and streets and they are recommending that \$109,353 be put into the water distribution system improvements of the 2015 for pump damage and the remaining money they are asking that \$900,000 go to the Gore Boulevard project from 67th Street to 82nd Street. A little over a month ago they entered into an agreement with ODOT where they indicated that they would be coming up with funds in the near future.

MOVED by Burk SECOND by Morford to authorize closing out the 2008 Capital Improvement Program(CIP)'s and directing financial services to transfer the remaining funds to the 2015 Sales Tax Extension CIP and 2016 CIP. AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Warren requested Rogalski look into a situation regarding a piece of property that they need to remove the utility easement from and bring it back to council.

Rogalski stated he will start that process.

Warren encouraged everyone to attend the International Festival.

Ihler stated he distributed a list copy to each councilmember of prioritized streets with the ratings for each ward with streets that the engineering department and the streets division have went out and reviewed. He would like each council member to consider what streets they would like to move forward with reconstruction because there are funds available to move forward with the next group of residential streets. He suggested they have a special council meeting or the council can send him an email with what streets they are interested in doing.

Diane Branstetter, Finance Director, presented revenue and expenditure highlights for the period ending August 31, 2018. (On file in the City Clerk's office).

The Mayor and Council convened in executive session at 7:04 p.m. and reconvened in regular, open session at 8:48 p.m. Roll call reflected all members present excluding Johnson. (Johnson did not attend executive session).

EXECUTIVE SESSION ITEMS:

15. Pursuant to Section 307(B)(4), Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending action by the City against A&E Construction for liquidated damages, and take appropriate action in open session including considering approval of an agreement to retain retired District Judge Allen McCall to serve as mediator in an effort to resolve the City's claim without the necessity of litigation. Exhibits: None.

Jensen read the title of item #15.

MOVED by Burk SECOND by Morford to authorize mediation of the City's claim for liquidated damages against A&E Construction in the 2012 local street reconstruction project #2012-12 Phase I and II in the amounts of \$444,000 and \$390,000 and to appoint Council Member Davis as the City's representative at the mediation and to authorize an agreement retaining retired District Judge Allen McCall to serve as the mediator for a fee of \$500 to be paid by the City with A&E Construction agreeing to also pay a \$500 fee for Judge McCall's services. AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

16. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to evaluate the performance of the City Manager with regard to his handling of discipline of City employees, and evaluate the supervision by the City Attorney of Deputy City Attorneys with regard to negotiation and preparation of documents relating to settlement of employee disciplinary cases, and in open session take action if deemed necessary.

Mayor Fitch read the title of item #16. No action was taken.

There being no further business to consider, the meeting adjourned at 8:50 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK