

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
OCTOBER 22, 2019 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Stan Booker, Mayor

Also Present:

Richard Rogalski, Acting City Manager
Bob Ross, Interim City Attorney
Traci Hushbeck, City Clerk

Mayor Booker 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 Robert Smith, Dayspring Community Church, followed by the Pledge of Allegiance

ROLL CALL

PRESENT:

Mary Ann Hankins, Ward One
Keith Jackson, Ward 2
Caleb Davis, Ward 3
Jay Burk, Ward 4
Dwight Tanner, Jr., Ward 5 (arrived @ 6:15 p.m.)
Sean Fortenbaugh, Ward 6
Randy Warren, Ward 8

ABSENT:

Onreka Johnson, Ward Seven

PROCLAMATIONS FOR 2019 EXTRA MILE DAY

Mayor Booker proclaimed November 1, 2019 as 2019 Extra Mile Day. He presented proclamations to Christina Woodson, Kim Jones and Albert Rivas.

REPORTS: MAYOR/CITY COUNCIL - None

AUDIENCE PARTICIPATION: None

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF SEPTEMBER 24, 2019.

MOVED by Warren SECOND by Burk to approve the minutes of September 24, 2019. AYE: Hankins, Jackson, Davis, Burk, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA:

Mayor Booker stated Destiny Mahsetky has signed up to speak on her claim on item #2. He stated he would also like to discuss item #15. Fortenbaugh requested item #12 and Hankins requested item #16 be considered separately.

MOVED by Burk SECOND by Warren to approve the consent agenda with the exception of items #2 (Mahsetky claim), #12, #15 and #16. AYE: Hankins, Jackson, Davis, Burk, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: David and Heike Johnson in the amount of \$383.00. Exhibits: Legal Opinion/Recommendation.
2. Consider the following damage claim recommended for denial: Destiny Mahsetky in the amount of \$6,168.00, and Lail Chiropractic in the amount of \$2,259.84. Exhibits: Legal Opinions/Recommendations.

Kelea Fisher, Deputy City Attorney, stated Ms. Mahsetky filed a claim relating to vehicle damage that she sustained after she ran into a deer on July 24, 2019 at approximately 9:05 p.m. She is seeking reimbursement of \$6,168 for the repair or replacement of her vehicle as well as towing costs. She stated she has recommended denial of this claim because she can think of no reason why the City would be responsible for a wild deer running into the road. She stated Ms. Mahsetky only has liability insurance and it is not her recommendation that the City act as a substitute insurance company for her.

Destiny Mahsetky, claimant, stated her vehicle is all she has and she has no money to fix the car. She stated it was worth a shot to try with the city attorney and with the council.

Burk stated he is sorry this happened to her car, but it is not something that the city council can do. They cannot just give her money.

Ms. Mahsetky stated if there would have been signs posted she would have been more cautious.

MOVED by Burk SECOND by Fortenbaugh to deny the damage claim of Destiny Mahsetky in the amount of \$6,168. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

3. 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 Enriquez Nestor Jr., in the Oklahoma Workers' Compensation Commission, Case No. CM2019-01056 K. Exhibits: **Resolution 19-94**.
4. Consider adopting a resolution approving the joint petition settlement and making payment in the workers' compensation claim of Bobby Don Finley. Exhibits: **Resolution 19-95**.

5. 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 Sherri Poolaw in the Oklahoma Workers' Compensation Commission, Case No. CM2019-02411. Exhibits: **Resolution 19-96**.
6. Consider adopting a resolution approving the joint petition settlement and making payment in the workers' compensation claim of Jereld Young. Exhibits: **Resolution 19-97**.
7. Consider authorizing staff to cooperate and participate in and submit an application for a grant with the U.S. Economic Development Administration (EDA) by the Association of South Central Oklahoma Governments (ASCOG) to fund economic development on Lee Blvd. Exhibits: None.
8. Consider adopting a resolution modifying the allocation of monies received from municipal court costs and approving the transfer of unused monies within the Municipal Court Department Improvement Fund to the Lawton Enhancement Trust Authority Beautification Fund. Exhibits: **Resolution 19-98**.
9. Consider accepting the Citizenship Corner Literacy grant of \$4,000.00 from the Oklahoma Department of Libraries for citizenship materials, supplies, and classes, and authorizing the Mayor to sign the contract. Exhibits: On file in Clerk's Office.
10. Consider approving a memorandum of understanding for the Fiscal Year 2019-2020 with the Board of County Commissioners of Comanche County, Oklahoma, authorizing the Lawton Police Department to assist with the transportation of Comanche County Regional Juvenile Detention Center residents in the event an emergency situation renders the detention center unable to sustain operations and necessitates the relocation of its base of operations. Exhibits: Copy of the proposed MOU.
11. Consider approving a request to enter into a memorandum of understanding (MOU) with the Department of Veterans Affairs (hereinafter "VA") and the City of Lawton Police Department (hereinafter "LPD") authorizing the agreement to allow new recruits to utilize their G.I. Bill for educational expenses through electronic reporting (VA-ONCE). Exhibits: Copy of the Memorandum of Understanding on file in City Clerk's Office
12. Consider accepting a grant of \$129,189.00 and entering into a grant agreement with the Oklahoma Highway Safety Office (OHSO) to target and reduce the number of alcohol-related crashes and fatality accidents within the City of Lawton. Exhibits: A copy of the grant agreement summary is on file in the City Clerk's office.

Fortenbaugh stated he pulled this item so that he could recognize our police. This is a great program we have had for a long time and based on our success with the program they have opted to renew it. He stated they dedicate officers to address alcohol issues on our streets and he wants to recognize the leadership at the Lawton Police Department for doing such a good job.

MOVED by Fortenbaugh SECOND by Warren to accept a grant of \$129,189.00 and enter into a grant agreement with the Oklahoma Highway Safety Office. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

13. Consider approving the Memorandum of Agreement (MOA) between the Caddo/Comanche/Cotton/Kiowa County Health Departments (hereafter referred to as Comanche-Custer Area Jurisdiction) and Washita County and the City of Lawton Fire Department for the purpose of responding effectively to any disaster or catastrophic public health emergency. Exhibits: Mass Immunization/Prophylaxis Strategy (MIPS) Plan and Memorandum of Agreement between City of Lawton Fire Department and the Comanche-Custer Area Jurisdiction.
14. Consider setting the date of November 26, 2019, to hold a public hearing to close the alley in Block 22, Lawton Original Townsite, located between SW A Avenue and SW B Avenue, SW 1st Street and S Railroad Street. Exhibits: Application and Location Map.
15. Consider authorizing the Mayor to sign and execute the Oklahoma Department of Environmental Quality (ODEQ) Consent Order, Case No. 19-223 for the control of blowing litter at the City's Landfill. Exhibits: Consent Order, Case No. 19-223 is on file in the City Clerk's Office.

Mayor Booker questioned if there was a deadline for us to sign this.

Larry Wolcott, Public Works Director, stated the deadline is 90 days from the date the City received the consent order. That would take us to October 30th.

Mayor Booker questioned if that was the day to sign it or to be in compliance.

Wolcott stated that is the date to sign it and send it back. Their goal is to be in compliance by that date as well.

Mayor Booker questioned if we know the standard that ODEQ wants us to meet.

Wolcott stated yes and we typically do meet that, but blowing litter is a constant issue we deal with daily. In the past, we have only had a temporary employee that is tasked with picking up blowing litter throughout the landfill. Depending on conditions, this work can be overwhelming. This fiscal year they added one labor position to the landfill and that will double their staffing and that, along with adding another temporary position, he feels they can get this thing taken care of.

Burk stated we have been told twice that we are not in compliance and it has taken all this time. He questioned if adding this position will guarantee that we stay in compliance.

Wolcott stated they will make sure we are in compliance when we call for a reinspection.

Burk questioned how we will know that we will stay in compliance. Is adding one person enough to say we are going to stay in compliance.

Wolcott stated it will be a huge help. They have tried to add people over the years.

Davis questioned what were the parameters that ODEQ gave us as far as the blowing litter.

Wolcott stated one of the basic statutory requirements is that we collect blowing litter throughout the landfill at least weekly. Weekly can turn into daily depending on the wind conditions. It is a constant battle to deal with.

Davis stated we currently have a full time position doing that and now we have added another position.

Wolcott stated we have funded a temporary employee to perform that task and with a temp, we may go days without having one.

Davis questioned if we were meeting the weekly requirement with a temp.

Wolcott stated he cannot say that we were not, but a temporary employee is not a sustainable way to be able to prove that you cannot pick it up weekly. He stated adding a full time staff member we are better equipped to do that.

Mayor Booker questioned if this had anything to do with 11th Street going to the landfill. He gets many complaints about trash on that road.

Wolcott stated that is also an ongoing battle, but this consent order is specifically for blowing litter inside the landfill, not on 11th Street.

Mayor Booker questioned if the trash on the roads is coming from our trucks or from citizens hauling trash out there uncovered.

Wolcott stated it is a combination of both. We try to tarp all of our loads and to contain solid waste collection trucks, but in some cases small pieces of blowing litter will escape.

Burk stated he thought that the litter patrol group made up of inmates came out once a week and went up and down that road. If not, that needs to be part of our agreement.

Jack Hanna, Parks and Recreation Director, stated the route is on the schedule, but it is not necessarily weekly. He stated it is not on a weekly schedule because they try to get around the whole city. They did start a second litter patrol person on Monday, and he is learning the routes and going through training.

Burk stated he thought we were going to hire a female so that they could utilize female inmates.

Hanna stated they only had two applicants and both were males.

Burk stated we need to be able to take out the female inmates. That was the reason he asked for the position in the budget.

Hanna stated they left the position open for 3 ½ weeks and only received two applicants.

Burk questioned if this male supervisor could oversee female inmates.
Hanna stated he will find out.

Burk stated they specifically created that position so that female inmates could do this. Most of the inmates enjoy getting out and doing community service. Every week a crew needs to address 11th Street all the way to the landfill and back. We need to ask our citizens to please tie down their loads. He knows no one wants to go out to the landfill and hopefully they can work on getting more curbside pickups in the city limits so people will not have to drive out there as often. He just wants us to be in compliance and if we need something more than a temporary position then they need to make this a permanent staff member.

Wolcott stated they have added one position, the laborer position and that person is on staff.

Burk stated they need to talk to the City Manager about this.

Tanner stated the compliance issue is just inside the landfill and just keeping the loose debris from blowing inside the landfill and up against the fence. He stated the solid waste committee recommended a gate fee and out of that fee 10% was going to LETA to help with plantings along 11th Street. He stated the committee might have to meet to address the debris along the highway.

Mayor Booker suggested they approve the signing of this order and let the solid waste committee meet to discuss this issue.

Fortenbaugh questioned if we had fences and windscreens.

Wolcott stated yes, that is one method they use. They have windscreens they can move around depending on where they are working. He stated they use several windscreens but it would be good to add some more in the future.

Fortenbaugh stated that our code says that loads going out to the landfill have to be secure, but it does not really explain what secure means. He suggested they look at tarping loads.

MOVED by Tanner SECOND by Warren to authorize the Mayor to sign and execute the Oklahoma Department of Environmental Quality Consent Order, Case No. 19-223 for the control of blowing litter at the City's Landfill. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

16. Consider approving plans and specifications for the 2017 Ad Valorem Street and Roads Program (Residential), Phase 1 Project #2017-07 and authorizing staff to advertise for bids. Exhibits: Plans and specifications are on file in the Engineering Division Office.

Hankins stated she wanted to make sure that the citizens were aware of the streets that are going to be done in phase 1 from the 2017 ad valorem. She stated her constituents are asking about this

because it takes a while. The two streets in ward one are NW 40th Street from 38th to NW 39th and from NW 24th Street from NW Cache Road to NW 23rd.

Mayor Booker questioned if the engineering was completed and they are ready to get started.

George Hennessee, Engineering Director, stated the plans have been developed and they are ready for advertising. We do not have temporary right of ways for a number of driveways and they are acquiring them at this time.

Davis stated there are a hundred or more right of ways that have to be acquired and the bidding process for the project may not even begin for six to twelve months.

Hennessee stated they are anticipating it may take six months.

Davis stated the money is there but it is going to be a year to two years before they actually see the project completed.

Fortenbaugh suggested that staff put this information on our website. He gets a lot of calls regarding this subject.

Mayor Booker stated at the November 12th meeting the IT department will be unveiling something regarding this issue.

Hennessee stated the project is bid as a lump project and there are a dozen streets that will be constructed during this project. The City does not have the authority to dictate to the contractor where it will start. We can make suggestions and we usually try to work around school schedules.

Fortenbaugh stated it has been two years since the citizens have voted on this and not a single street has been started. They owe it to the citizens to let them know what is going on.

Burk stated he is concerned about bidding this in multiple streets because we are going to get back into what we had before where we have a contractor that goes out and starts fifteen streets and then we have them all broken up. He stated it should be a priority to get these streets done. He does not like that the contractor is telling us where he will start. He feels we need to stand our ground because we are paying millions of dollars to these contractors and they have got to do what we expect them to do.

Hennessee stated they do try to control how many streets they can open at a single time. In past experience it was three streets.

Burk stated they should keep it to one or two. We can never get into that situation again where people had to walk blocks to their homes for months.

Hennessee stated hopefully we set an example with liquidated damages.

Jackson stated it seems that we have a little trouble getting these jobs started and completed. He stated that is the largest complaint from citizens.

Mayor Booker stated that once the contract is let on a job, they will have 420 calendar days to complete it.

Hennessee stated yes, that would be all the streets.

Mayor Booker stated it will take six to twelve months to get started and then from the time they get started they will all be done in 420 days.

Davis stated minus all utility days, rain delay days, etc.

Warren stated this is when contractors start weighing the liquidated damages and if they can go and do a job and make more money than they will lose by not doing our job then that is what they will do.

Davis stated he has heard from some of the contractors that work for the City and one of the problems when we put this in one bid package, that one contractor has to be bonded for \$5 to \$7 million. There are many contractors that can get bonding for up to \$2 million, but when you get to \$5 to \$7 million there are two local contractors that can get bonded for that amount of money. He suggested they break these down into no more than \$2 million and have three or four bid packages, then we could have multiple contractors working at the same time.

Hennessee stated this is a sizeable package but there is no reason they cannot break it into multiple pieces.

Rogalski questioned if there was any negative issues breaking this into three or four packages.

Hennessee stated it would take a little time from staff, but it would probably expedite the project.

Warren stated he feels they would get better bids because there would be more contractors competing for the projects. He feels they need to break this up so that smaller contractors can bid.

Burk stated they need to do this if it can speed up the process. He feels they need to table this item until it can be brought back with the project split up.

Davis suggested they have a goal to keep the packages under \$1.5 million.

Burk questioned if staff could bring it back on November 12th.

Hennessee stated they have the units broken out into individual streets so they can put it into packages. He stated he could try to have it ready for November 12th.

Mayor Booker stated if it is not ready they can put it off until the 26th, but we want to get this done.

MOVED by Burk SECOND by Davis to table to November 12, 2019. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

17. Consider extending contract (CL19-005) Zinc Orthophosphate with Water Tech, Inc. of Owasso, OK for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
18. Consider extending contract (CL19-007) Manhole Lining Product to The Strong Company of Pine Bluff, AR for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheets.
19. Consider extending (RFPCL19-011) Employee Physicals/Drug Screen Testing Section A (Physicals) to the Center for Occupational Health, of Lawton, OK and Section B (Drug/Alcohol Testing) to Allied Lab, Inc., of Lawton, OK for an additional year. Exhibits: Department Recommendation, Contract Extension Forms, Price Sheets.
20. Consider approving appointments to boards and commissions. Exhibits: None.

Airport Authority

Steve Gilkeson
Existing Member
12/31/23

Ed Petersen
Existing Member
12/31/23

David Madigan
Existing Member
12/31/23

Brad Burgess
New Member
12/31/23

Historical Preservation

Paige Michener
Existing Member
10/11/2021

Kent Jester
Existing Member
09/10/2021

Housing Authority

Mark Ashton
Existing Member
10/27/2022

(Continued on the next page)

Lakes & Land Commission

Sean Fortenbaugh
Existing Member
12/07/2022

Mayors Commission On The Status of Women

Toni Street Walker
Existing Member
11/14/2021

Teresa Abram
Existing Member
11/14/2021

Toni Capra
Existing Member
County Commissioner Western District
09/10/2021

Kathy Monroe
Existing Member
County Commissioner Eastern District
9/20/2021

Traffic Commission

Paula Bowen
New Member
Unexpired Term 4/26/2020

NEW BUSINESS:

Mayor Booker stated that item #24 has been stricken.

21. Discuss the options for the relocation of the electrical distribution line along Railroad Street, adjacent to the new Public Safety building, and consider granting a permanent electrical utility easement to AEP/PSO across the Public Safety Facility property. Exhibits: Preliminary Layout and Easement Document.

Ross stated that maps have been distributed with the proposed location of the easement.

Burk stated he does not know why we are making a big deal out of this. This needs to be underground, otherwise it is going to be ugly. He stated PSO is paying \$2 million to get it there and all they are asking for from us is that we are not going to tell them in a year or two to please move your line because we have decided to do something different at this location. He stated this is a no brainer because we do not want big ugly poles in front of our new building.

Tanner stated PSO is not paying the full price to lay it underground. The City is picking up a portion of that.

Rogalski stated to do this underground, PSO is paying all of the cost to put it underground, but the City does have to backfill the trench.

MOVED by Burk SECOND by Warren to grant a permanent electrical utility easement to AEP/PSO across the Public Safety Facility property. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

22. Continue discussion of the proposed extension of the 2015 and 2016 Sales Tax Capital Improvement/Operational Expenditure Programs (CIPs), as amended, to include completion of incomplete projects/expenditures from the 2015 and 2016 CIPs, along with new projects and expenditures; provide any final direction to City staff on the projects,

expenditures and associated dollar amounts as applicable to be included in the extension enabling preparation and timely filing of the legal documents with the Comanche County Election Board necessary to call and hold an election for such purpose; receive an update on the expected timing of final preparation of the documents; and take action as necessary. Exhibits: None.

Mayor Booker stated a citizen has asked to speak regarding the sports complex, which is a part of the proposed CIP extension. He stated he received a call from our bond counsel and they have asked us to delay this briefly. We are probably not going to make the January election. They desire to make sure that it complies with all the state laws, so they have asked for a little more time.

Alex Niedo, citizen, stated he feels the sports complex will generate money for the community. He stated he has a lot of ideas and artwork for the complex.

Mayor Booker stated he will get Mr. Niedo in touch with the committee when the time is appropriate. He stated there is really no action to take unless someone wants to change something that the council has directed to staff. He stated he would like this item to be on the next agenda as well.

Burk stated as the chair of the LATS committee he has some concerns with not putting any money in this CIP for LATS. He stated they need to make sure they take care of the citizens that do not have transportation and those who want to use LATS because it is better for the environment. He stated for heavy-duty buses, ADA vans, paratransit vans, shop equipment, bus shelters, benches, signage, a new transfer center, hub, all of this comes to \$8.5 million, and the FTA will give us \$6 million if we can come up with a local match of \$2.5 million.

Tanner stated he feels this needs to be added.

MOVED by Tanner, SECOND by Burk to direct staff to add \$2.5 million to the proposed CIP for the LATS system. AYE: Hankins, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: Jackson. MOTION CARRIED.

23. Consider an ordinance pertaining to Personnel Policies and Procedures amending Section 17-1-1-102, Division 17-1-1, Article 17-1, Chapter 17, Lawton City Code, 2015, by modifying the definition of “Shift Employee” removing the requirement for the City Manager to approve a position for shift differential pay; providing for severability and establishing an effective date. Exhibits: Ordinance 19-__.

Dewayne Burk, Human Resources Director, stated City Code currently states in order for an employee to be eligible to receive and/or qualify for shift differential pay, the employee must either be a “Shift Employee” meaning the division the employee works within must require 24 hours of continuous operation; or the employee must work and/or be scheduled to work in a position where at least fifty percent (50%) of the work is performed prior to 5:00 A.M. or after 5:00 P.M. City Code currently requires the City Manager to approve “shift pay differential” for any non-shift employees. The proposed change will simplify the process by tasking the

employee's Department Director/Supervisor with insuring compliance with the city code. In addition, the city's payroll specialist currently verifies eligibility which provides a check and balance to insure code compliance. This change would also eliminate unnecessary tracking measures by placing more responsibility on the Department Directors/Supervisors.

Tanner questioned the meaning of differential pay.

Burk stated differential pay applies to shift employees that are assigned to a division that has 24 hour continuous service and/or it could be an employee who is scheduled to work a shift that would start or where he would at least work 50% or more of his time after 5 p.m. or before 5 a.m. It does not include emergencies where an individual would have to stay late. He stated this is something that needs to fall under the supervisors and directors, not the City Manager.

Tanner stated this will let the department head decide whether this actually qualifies for differential pay or not.

MOVED by Warren SECOND by Tanner to adopt **Ordinance 19-22**, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days after passage. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 19-22

An ordinance pertaining to personnel policies and procedures, amending Section 17-1-1-102, Division 17-1-1, Article 17-1, Chapter 17, Lawton City Code, 2015, by modifying the definition of "shift employee" removing the requirement for the city manager to approve a position for shift differential pay; providing for severability and establishing an effective date of thirty days after passage.

STAFF REPORTS

Kara Haynes, Finance Director, presented revenue and expenditure highlights for the period ending September 30, 2019. (On file in the City Clerk's office).

EXECUTIVE SESSION ITEMS:

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss an action relating to litigation against the manufacturers and distributors of opioids in an effort to hold them accountable for their marketing practices alleged to have caused public nuisance and monetary damages suffered by municipalities, and take action in open session with regard to a claim asserted by the City of Lawton as deemed appropriate. Specifically, regarding the City's decision to enter into the Multi-District litigation negotiating class or to continue to pursue its own independent litigation. Exhibits: None. **STRICKEN**

There being no further business to consider, the meeting adjourned at 6:58 p.m. upon motion,

Second and roll call vote.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK