

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
DECEMBER 13, 2011 – 6:00 P.M.  
NEW CITY HALL  
COUNCIL CHAMBERS/AUDITORIUM

Mayor Fred L. Fitch  
Presiding

Also Present:  
Larry Mitchell, City Manager  
Frank V. Jensen, City Attorney  
Traci Hushbeck, City Clerk  
COL Paul Hossenlopp, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:09 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Bob Weeger, Bible Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One  
Rosemary Bellino-Hall, Ward Three  
Jay Burk, Ward Four  
Rex Givens, Ward Five  
Richard Zarle, Ward Six  
Stanley Haywood, Ward Seven  
Doug Wells, Ward Eight

ABSENT: Michael Tennis, Ward Two

PRESENTATION OF CERTIFICATE OF APPRECIATION TO FIELD ARTILLERY  
WARRANT OFFICER ADVANCE COURSE CLASS 01-12

Mayor Fitch presented the certificate of appreciation to members of warrant officers class for their support with the Fishing for Food event on November 19<sup>th</sup>.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

MOVED by Burk SECOND by Shoemate to approve the consent agenda. AYE: Givens, Zarle, Haywood, Wells, Shoemate, Bellino-Hall, Burk. NAY: None. MOTION CARRIED.

1. Consider adopting a resolution approving payment on the judgment in the Workers' Compensation case of Arthur Reyes in the Workers' Compensation Court, Case No. 2011-06110J. Exhibits: **Resolution No. 11-108**.

2. Consider approving the 2012 Notice of Meeting Schedule for Lawton City Council Meetings and Resolution 11-\_\_\_ rescheduling the regularly scheduled meetings in November and December 2012. Exhibits: 2012 Notice of Meeting Schedule for Lawton City Council; **Resolution No. 11-109**.
3. Consider accepting a grant of \$1,000 from the Oklahoma Humanities Council to support the 2012 Let's Talk About It, Oklahoma Book Discussion. Exhibits: None.
4. Consider and take action with respect to a resolution approving the incurrence of indebtedness by the Lawton Water Authority (the "Authority") issuing its utility system revenue note, series 2011 (the "note"); providing that the organizational document creating the authority is subject to the provisions of the indenture authorizing the issuance of said note; waiving competitive bidding with respect to the sale of said note and approving the proceedings of the authority pertaining to the sale of said note; ratifying and confirming a lease agreement, as amended, pertaining to the city's water, sanitary sewer, and refuse systems; establishing the city's reasonable expectation with respect to the issuance of tax-exempt obligations by or on behalf of said city in calendar year 2011, and designating the note as a qualified tax-exempt obligation; and containing other provisions relating thereto. Exhibits: **Resolution No. 11- 110**.
5. Consider approving a credit adjustment in the amount of \$560.03 for two months' bills to S. Saltiel's service account #00009038 for the property located at 1620 NW 46<sup>th</sup> Street for an undetected, underground leak on the customer's service line. Exhibits: Statement from Hodges Plumbing dated 9/24/2011.
6. Consider approving a credit adjustment in the amount of \$578.98 for two months' bills to Virginia Szatkowski's service account #00024961 for the property located at 908 SW H Avenue for an undetected, underground leak on the customer's service line. Exhibits: Statement from Mick's Plumbing dated 9/02/11.
7. Consider setting the date of January 24, 2012, to hold a public hearing and consider closing and vacating certain streets, alleys, and easements in the Downtown Redevelopment Project area. Exhibits: Location Map.
8. Consider accepting the water, drainage and street improvements, releasing the escrow agreement in lieu of a performance bond, accepting an escrow agreement in lieu of completion of minor improvements and accepting the maintenance bonds for Sun Group Development. Exhibits: Plat Map. Maintenance Bonds and Escrow Agreement are on file in City Clerk's Office.
9. Consider approving the construction plans and accepting an escrow agreement in lieu of completion of a waterline and fire hydrant installation for Cache Road Square Shopping Center. Exhibits: Location Map. Escrow Agreement is on file in City Clerk's Office.
10. Consider approving an adjustment of as built estimated quantities, establishing final project close-out cost and accepting the 2008 CIP Waterline Replacement Phases 1 and 2

project #2008-12 as constructed by Bowles Construction Company and placing the Maintenance Bond into effect. Exhibits: None.

11. Consider establishing a special Rental Revenue Fund in which to place all rental fees and deposits collected from the rental of any spaces at the New City Hall. Exhibits: Proposed **Resolution No. 11- 111**
12. Consider extending contract (RFPCL10-020) HDW/SFW Support Agreement to Atlantic Tech Services of Richfield, OH. Exhibits: Department recommendation, abstract of bids, price sheet.
13. Consider awarding contract (CL12-016) Heavy Equipment Service and Parts to Clarence L. Boyd of Lawton, OK. Exhibits: Department recommendation, abstract of bids, price sheet.
14. Consider approval of payroll for the periods of November 28 – December 11, 2011.

#### NEW BUSINESS ITEMS:

15. Hold a public hearing related to refunding the city of Lawton's General Obligation Bonds, series 2001 ("2001 bonds") as required by title 62, section 754.1, to receive public input regarding the possible refunding of the 2001 bonds and council vote to proceed with the refunding, if deemed appropriate. Exhibits: Refunding of 2001 General Obligation Bonds Analysis.

#### PUBLIC HEARING OPENED

Rick Smith, Municipal Finance Services, Inc., stated the state statutes require a city or school to hold a public hearing prior to considering or taking action on a general obligation refunding. The notice of this hearing was published in the paper on December 2, 2011. The purpose of this public hearing is to provide information to the council as well as the public as to the benefits of the general obligation refunding transaction and the savings that could accrue from this and also to list the proposed terms, rates and participants in the financing transactions. (He distributed a one page summary). He stated this is not an approval of this transaction, it is a public hearing and staff would come back based on the actions to allow them to proceed. He would then come back to council with the final rates and terms and savings in January. He stated there are a number of general obligation bonds that the city has issued over the past few years for various purposes. There was one issue that they felt had adequate savings which is the 2001 bonds that were approved by the voters. The city issued those bonds, approximately \$15 million total, primary for water system improvements. That issue carries an interest rate on its remaining term, about five years, of 4.66%. There is \$5,850,000 in principal outstanding on that issue that would mature in 2016. It is subject to redemption in July 2012 and at that point you could pay that bond issue off. He stated they are proposing that the city issue new bonds that would take the proceeds from those bonds to pay off that 2001 issue. As part of this transaction the city would actually sell the bonds at a premium or higher price than the par value of the bonds to individual purchasers through an underwriter. That premium would be in the form of extra dollars that would come to the city and then cost would be paid out of that premium and the net amount would return to the city as an economic benefit. Their analysis indicates that the net

economic benefit to the city would be approximately \$200,000. Those funds would have to be used for purposes designated by the original bond issue. A substantial portion of that would have to be used for water system improvements. He stated the underwriting firm they are recommending is BOSCO, which is a subsidiary of Bank of Oklahoma in Oklahoma City. He stated the Attorney General's office has to approve the issue. He stated the purpose of this item is to respond to questions from the public and the council and if the resolution is approved, they would come back to the council in January with the final rates, terms and costs. They would be able to close the issue near the end of January.

Bellino-Hall stated this is just allowing them to look at the information and it will be brought back for a vote.

Mr. Smith stated the resolution which is the next agenda item sets out a minimum savings that the city would accept as part of the transaction. He stated the estimated savings of \$200,000 is the minimum savings that they would target.

PUBLIC HEARING CLOSED.

Wells stated the other choice in this issue rather than take the \$200,000 estimate would be to let the ad valorem tax that would be continued to be paid normally, be returned to the citizens rather than keep the property tax where it is at.

Mr. Smith stated there are two ways to achieve savings, one would be to reduce tax levy, but if you spread that out over the entire city, it would be pennies to individual taxpayers. The other alternative is to generate dollars that come back to the city to be used for projects that were previously approved by the voters.

Wells questioned if it was normal for the cost of these issues to be about 35%. He stated if he understood the numbers, we would get back \$203,000 back but it is costing us \$119,000 to do it.

Mr. Smith stated the cost is really associated with the par amount of the financing, so we have almost a \$6 million financing. There are minimum costs for this type of a transaction. When you look at the costs as a percentage of the overall premium, that is what the target is, because the cost again are a function of how much debt you are actually issuing.

Rick Endicott, Finance Director, stated that has been the standard as it relates to the par value of the issues.

MOVED by Haywood SECOND by Givens to proceed with the refunding. AYE: Zarle, Haywood, Wells, Shoemate, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED.

16. Consider and take action with respect to a resolution establishing a general obligation refunding plan, ratifying the publication of a notice of public hearing and authorizing the City Manager to negotiate a bond purchase agreement and present the same to the City Council. Exhibits: Resolution 11-\_\_\_\_.

Endicott stated that staff is requesting the council to approve the resolution for staff to proceed with this issue and go out for bids and bring those back to the council.

MOVED by Givens SECOND by Zarle to approve Resolution 11-112.

Wells stated they have not made the decision on whether they will take the money back or let it go back to debt service.

Endicott stated according to this resolution, if it does not meet the minimum savings, then it would die. If minimum savings could be obtained, staff would bring it back to the council for approval.

Mr. Smith stated the way they have structured this, the savings would come back to the city up front. If the city was interested in reducing the annual debt payments and lowering the ad valorem tax, then they would structure the issue in a different way. They would end up with the same savings, it is just a matter of how it will be structured. He stated the resolution does provide for a structure that would require them to bring the money, up front, back to the city as part of this transaction.

SUBSTITUTE MOTION by Wells to use the amount saved to reduce the debt service.

Mayor Fitch stated he believes that decision will be made when it is brought back in January.

Mr. Smith stated based upon discussion with staff, they felt the upfront savings generated to the city would be more beneficial. He stated that is the call of the city council.

Mayor Fitch stated councilmember Wells motion died due to a lack of a second.

VOTE ON ORIGINAL MOTION: AYE: Haywood, Shoemate, Bellino-Hall, Burk, Givens, Zarle. NAY: Wells. MOTION CARRIED.

17. Hold a public hearing and consider a resolution amending the 2030 Land Use Plan from Residential/High Density to Commercial and an ordinance changing the zoning from R-4 (High Density Apartment District) to C-5 (General Commercial District) zoning classification for property located at 207 SW Summit Avenue. Exhibits: Resolution No. 11-\_\_\_, Ordinance No. 11-\_\_\_, Site Plan, Location Map, Applications and CPC Minutes.

Richard Rogalski, Community Services Director, stated this request is for Lot 13, Block 19, Beal Addition and measures 50 feet by 140 feet. The proposed use is temporary storage for cars on layaway for Uncle Sam's Car Lot which is located at 701 SW Lee Boulevard and 2114 NW Fort Sill Boulevard. The applicant is Linda Pendergraph. The zoning of the surrounding area is R-4 to the north, south, and west and C-5 to the east. The land use of the surrounding area is vacant to the north, single-family residential to the south and west, and an automotive garage to the east. The 2030 Land Use Plan designates this lot as Residential/High Density. There would be no employees at this location. The lot would be used to temporarily store cars on layaway. The lot has been screened on all sides in preparation of the proposed use. The screening on the north,

south, and west property lines is a 6-foot metal fence, and the screening on the east side is a 6-foot wooden fence which was installed by the property owner to the east.

On November 17, 2011 the City Planning Commission held a public hearing on this request. During the public hearing one person spoke in favor of the request, and no one spoke against the request. The CPC, by a vote of 7 – 1, recommended approval of the request subject to the driveway and vehicle storage area meeting the requirements of the Lawton City Code. The driveway must be at least 25 feet but no more than 35 feet wide. He stated to meet city standard there are a couple of conditions. They need to revise their site plan to bring the gate over to the driveway. The isle needs to be at least 12 feet wide. According to Chapter 18-6-12-625, all the parking and storage in this area has to be a paved surface. This would only allow them to store on the isle and in the building. This request does require a binding site plan; therefore, in the future, prior to the use or site plan being modified, the owner would have to follow the procedures in the Lawton City Code which would require public hearings before the CPC and the City Council.

Notice of public hearing for the City Council public hearing was mailed on November 22, 2011, to 29 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on November 27, 2011.

#### PUBLIC HEARING OPENED

Linda Pendergraph, applicant, stated she and her husband have owned Uncle Sam's Pawn and Guns and Uncle Sam's Car Lot for 26 years. She stated they need a place to store their layaway cars. They currently park the cars behind the fence on Summit and she gets tires and gas stolen, she has lost air tanks, a golf cart and a riding lawn mower. She stated she had cement poured and the buildings went up within three days. The city inspector came by and told her she needed to get permits. The city approved the car lot building but they denied the barn on 2<sup>nd</sup> and Summit. She spent \$6,000 to protect her investments. She stated one of her options was to get the property rezoned as a temporary overfill lot. She stated none of the neighbors have any objections to what they are doing there and she does not have any plan to do more than park a car or a motorcycle, trailer or truck that she may hold for 90 days at the most. She has lighting and an alarm system for the property.

#### PUBLIC HEARING CLOSED

MOVED by Haywood SECOND by Zarle to approve **Res. 11-113**. AYE: Shoemate, Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells NAY: None. MOTION CARRIED.

MOVED by Haywood SECOND by Wells to approve **Ord. 11-57** waive the reading of the ordinance, read the title only. AYE: Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-57

An ordinance changing the zoning classification from the existing classification of R-4 (High Density Apartment District) to C-5 (General Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

18. Hold a public hearing and consider a resolution amending the 2030 Land Use Plan from Residential/High Density to Commercial and an ordinance changing the zoning from R-4 (High Density Apartment District) to C-5 (General Commercial District) zoning classification for property located at 2114-2116 SW A Avenue. Exhibits: **Resolution No. 11-114, Ordinance No. 11-58**, Site Plan, Location Map, Applications and CPC Minutes.

Rogalski stated this request includes Lots 7 and 8, Block 8, College View Addition which measure 98.75 feet by 183 feet. The proposed use is an automotive garage. The applicant is Lynn McKenzie. The zoning of the surrounding area is C-4 (Tourist Commercial District) to the north, R-4 to the south and east, and C-1 (Local Commercial District) to the west. The land use of the surrounding area is miniwarehouses to the north, multi-family residential to the south, single- and multi-family residential to the east, and commercial, office, and church to the west. The 2030 Land Use Plan designates these lots as Residential/High Density. The lots are currently vacant. Mr. McKenzie desires to expand his current automotive garage, which is located at 2201 SW B Avenue.

On November 17, 2011, the City Planning Commission held a public hearing on this request. During the public hearing one person spoke in favor of the request, and no one spoke against the request. The CPC, by a vote of 8 – 0, recommended approval of the request subject to revisions to the site plan and modification of the application for the use of automotive garage only. Initially, the application stated the proposed uses were automotive garage and any use permitted in C-5. Mr. McKenzie agreed to modify the application and has made the revisions on a revised site plan. This request does require a binding site plan; therefore, in the future, prior to the use or site plan being modified, the owner would have to follow the procedures in the Lawton City Code which would require public hearings before the CPC and the City Council.

Notice of public hearing was mailed on November 22, 2011, to 24 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on November 27, 2011.

#### PUBLIC HEARING OPENED

Lynn McKenzie, Rt. 1, Box 4098, Apache, stated he would like to expand his shop into that area.

Shoemate stated that Mr. McKenzie keeps his garage spotless.

#### PUBLIC HEARING CLOSED

MOVED by Givens SECOND by Haywood to approve **Res. 11-114**. AYE: Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

Givens questioned if adopting the ordinance would include the restricted site plan.

Rogalski stated yes.

MOVED by Givens, SECOND by Haywood, to adopt **Ordinance 11-58**, waive the reading of the ordinance, read the title only. AYE: Burk, Givens, Zarle, Haywood, Wells, Shoemate, Bellino-Hall. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-58

An ordinance changing the zoning classification from the existing classification of R-4 (High Density Apartment District) to C-5 (General Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

19. Hold a public hearing and consider an ordinance amending Section 18-1-1-107 modifying the list of zoning districts and repealing Division 18-11-2, Transition District. Exhibits: Ordinance No. 11-\_\_\_ and CPC Minutes.

Rogalski stated on September 15, 2011, the City Planning Commission directed staff to prepare an ordinance to repeal the Transition District. The Transition District was created in February 2007 and was the first district requiring binding site plans, increased setbacks, and detailed landscaping regulations to provide an increased level of protection to adjacent low density residential properties. However, since that time, the protections afforded by this district have been incorporated into the City Code to apply to many other districts, i.e., building site plans, setbacks from low density residential, and detailed landscaping. It should also be noted that no properties have been rezoned as Transition District. The proposed ordinance also includes amending Section 18-1-1-107 to reflect the current zoning districts of the City Code.

The City Planning Commission held a public hearing on October 27, 2011. No one came forward to speak either for or against the proposed ordinance. The CPC, by a vote of 8 – 0, recommended approval of the ordinance.

Notice of public hearing for the City Council meeting was published in *The Lawton Constitution* on November 27, 2011.

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

MOVED by Burk, SECOND by Givens, to adopt **Ordinance 11-59**, waive the reading of the ordinance, read the title only. AYE: Givens, Zarle, Haywood, Wells, Shoemate, Bellino-Hall, Burk. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-59

An ordinance pertaining to zoning amending Section 18-1-1-107 and repealing Division 18-11-2, transition district, chapter 18, Lawton City Code, 2005, and providing for severability.

20. Consider waiving Council Policy 1-6, and if approved, reconsider adopting a resolution to support an Oklahoma Affordable Housing Tax Credit application by Zimmerman Properties, LLC to the Oklahoma Housing Finance Agency for property located at the northwest corner of NE Rogers Lane and NE Angus Place. Exhibits: Agenda item from November 15, 2011, Resolution No. 11-\_\_\_\_, Location Map and Site Plan.

Givens stated he had requested that this item be reconsidered. He understands that there will be a neighborhood meeting held to discuss this matter and he is requesting that this item be tabled until the council meeting on December 20<sup>th</sup>.

MOVED by Givens, SECOND by Haywood, to table to December 20, 2011. AYE: Zarle, Haywood, Wells, Shoemate, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED.

Burk stated the neighborhood meeting will be held on Thursday, December 15<sup>th</sup> at 6:00 p.m. at Pioneer Park Elementary.

21. Consider approving an application to allow access to a limited access roadway at three locations along NW Quanah Parker Trailway for the proposed Lawton Marketplace development project per City Council Policy 8-2. Exhibits: Application, Off-Site Exhibit, Quanah Parker Trailway Exhibit, Letter from Cates-Clark and Associates and City Council Policy 8-2.

Rogalski stated Cates-Clark and Associates, the engineer for the proposed Lawton Market Place development project located at the southeast corner of NW Quanah Parker Trailway and NW 82<sup>nd</sup> Street, submitted an application to allow access to a limited access roadway for three locations along NW Quanah Parker Trailway, along with an overall site plan for the project and a detailed traffic study. The applicant is Hunt Properties, Inc. The application included proof of ownership and the application fee for each of the three access points, totaling \$30,000. The site plan and traffic study were reviewed by staff and after meeting with the engineer and making some adjustments, it was determined that the proposed offsite roadway improvements to NW Cache Road, NW 82<sup>nd</sup> Street and NW Quanah Parker Trailway, as shown on the Off-Site Exhibit and referenced in a letter dated November 22, 2011, were reasonable mitigation of the traffic impacts of the proposed project. As all of the described improvements are predicated by the proposed development, the entire cost for the engineering and construction of said improvements will be borne by the developer.

Along with the overall traffic impacts, the access locations on NW Quanah Parker Trailway, a limited access roadway, were also evaluated for conformance with City Council Policy 8-2. While the spacing of the entrances, as shown on the Quanah Parker Trailway Exhibit, is in general conformity with the policy, the proposed median breaks do offer some concern. The policy provides for median breaks only at the one quarter mile marks and states that no additional median breaks will be allowed. The full median break proposed by this project is located very near the one quarter mile mark, meeting the policy objectives, but the engineer has

also proposed a “hooded” one-way median break to allow westbound traffic on NW Quanah Parker Trailway to enter the development. While this might not create a significant traffic impact, it is a divergence from City Council Policy 8-2.

Following action by the City Council on this application, the developer’s engineer will submit construction plans for the improvements to the public roadways which will be brought to City Council for approval. Following construction, the public improvements will be brought to City Council for acceptance and execution of the documents granting access.

The separations along the entry way do meet Council Policy 8-2. The minimum was 330 feet but it did allow some flexibility. It also provided for median breaks at the quarter mile mark and this location does meet that policy.

MOVED by Zarle, SECOND by Wells, to approve the application. AYE: Haywood, Wells, Shoemate, Bellino-Hall, Burk, Givens, Zarle. NAY: None. MOTION CARRIED.

22. Consider an ordinance creating Section 11-5-501 in Article 11-5 of Chapter 11, Lawton City Code, 2005, establishing and implementing a program to recover service fees from a responsible party for the costs associated with the deployment of city fire department assets to provide emergency response services for motor vehicle accidents, hazardous material (HAZMAT) incidents and/or technical rescue incidents that are additional services beyond the fire department’s primary function and scope of providing basic fire suppression and investigation, providing for severability and declaring an effective date. Exhibits: Proposed Ordinance 11-\_\_.

Chief Bart Hadley, Lawton Fire Department, stated a little over a year ago after some discussion and direction from Councilmembers Wells and Tennis, staff started investigating a concept of a cost recovery ordinance. He stated they talked with cities inside and outside of Oklahoma who had something similar in place. He stated one of the things that started this discussion is when they had a difficult and expensive trench collapse rescue and they were not able to recoup any of the out of pocket expenses for that event. They had \$6,000 to \$8,000 in overtime and supplies and there was nothing on the books that allowed them to recoup any of those costs. He stated this ordinance allows for cost recovery for response to motor vehicle accidents, but only to the at fault responsible party. It allows for cost recovery for hazardous material spills and leak response to the at fault responsible party. He stated it also allows for cost recovery for certain types of specialty technical rescue situations such as that trench collapse. He stated it establishes a fund that would be dedicated specifically for fire department equipment and/or material and supplies to replenish what was spent on a particular event.

Haywood questioned what other towns staff contacted.

Hadley stated initially they contacted Sapulpa and Sand Springs. He stated there are other cities in the state that charge similar fees.

Wells stated over the years the fire department has assumed a lot of additional duties. Now if they go out to an accident and if there is a coolant, oil or gasoline leak they have to perform

hazmat type functions. He stated this is very costly and this ordinance would help recover some of those costs. He stated auto insurance policies already had a clause built in to repay for clean up of an accident site. He stated they felt it was necessary to be able to put in for these costs of the wear and tear of the equipment and the additional training the fire department has to go through to be able to respond to these incidents.

Bellino-Hall questioned if legal staff has said we can do this.

Jensen stated we are authorized to recover these costs to the extent we can. It is being done across the United States. He stated we cannot recover for things like law enforcement activities, but we can for activities such as this.

Mayor Fitch stated this will affect incidences that go over and above what their normal routine would be. He stated insurance companies will pay for this, it is built into the policies because of these hazmat regulations that have changed.

Zarle questioned if this will be recovered from the insurance companies only, not the individual. We would accept whatever the insurance companies will pay.

Jensen stated that is not correct. We would be filing with the insurance companies initially and then we would have to make a decision about whether the responsible party has sufficient assets if they don't have insurance coverage.

Burk stated they would have to figure out who is the responsible party and that concerns him. If that is the case and someone's insurance does not pay, we would go after that Lawton citizen to recoup that fee.

Wells stated they suggested that the ordinance stated they will only go to the insurance companies.

Chief Hadley stated they would have to adopt a policy as to which events to collect from. This ordinance gives them the authority to collect but they would have specifics as to how to collect and who to collect from. He stated the policy could be written so that they try to go after the at fault. If no one is at fault, there would be no charge for the response. The policy itself would dictate how far they would go to recover anything from the at fault party. He stated they would welcome input from council in developing this policy.

Burk stated he does not want to see us out there charging the general public who are paying their taxes.

Wells stated it is a requirement to have automobile insurance so we should be going after the insurance company.

Burk stated that is the only way we should do it.

Wells stated that is the way the policy should be written.

Chief Hadley stated he feels it is unfair for everyone to pay for the responsibility of some individual.

Zarle stated he was under the impression that we would only go after the insurance companies and not go back on the taxpayers.

Jensen stated he will need to take out some language. He would recommend that they bring back the ordinance to say that they will file with the insurance company only, but in the right kind of case they should come to the council and request permission to proceed with claims against the at fault party.

Tim Wilson, Deputy City Attorney, stated during the past year they have been working on this ordinance, some of the feedback they were getting and the way the language is written with billing the at fault party, there is some concern that if they just say they are going after the insurance company, the insurance company may deny that claim, because it is not a valid claim against the at fault party. You have to basically say that you are going to submit a claim against the at fault party. When they prepare the policy, the City Manager can set certain parameters as to how that occurs.

Jensen stated the ordinance says that we are initially going to file against the insurance company, so we can do that. They need to do some modifications.

Burk stated he feels they need to have some oversight on that part. They should have a way to bring it back to discuss those individual items if someone does not have insurance. He does not want to see them go after citizens if the insurance does not pay.

MOVED by Wells, SECOND by Zarle, to table to January 24, 2012 meeting. AYE: Wells, Shoemate, Bellino-Hall, Burk, Givens, Zarle, Haywood. NAY: None. MOTION CARRIED.

23. Consider amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, as amended, by adopting a resolution establishing the Schedule of Fees and Charges for the fire department's response to motor vehicle accidents, hazardous material incidents and/or technical rescue incidents that are additional services beyond the fire department's primary function and scope of providing basic fire suppression and investigation, and establishing an effective date. Exhibits: Proposed Resolution 2011-\_\_.

MOVED by Wells, SECOND by Zarle, to table to January 24, 2012 meeting. AYE: Shoemate, Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

24. Consider a resolution approving the execution and delivery by the Lawton Economic Development Authority of a 2009 Economic Development Capital Improvement Reformed Note in the amount of not to exceed \$12,000,000 in aggregate amount outstanding at any one time for the purpose of establishing a later maturity date of March 5, 2012. Exhibits: Resolution No. 11-\_\_ and Revised Note.

MOVED by Wells, SECOND by Givens, to approve **Resolution No. 11-116**. AYE: Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

25. Consider approving an Ordinance amending Section 9-2-208, pertaining to Chapter 9, Court, by changing the location of where the marriage ceremony fee shall be paid.  
Exhibits: Ordinance No. 11-\_\_.

Rogalski stated currently when the Municipal Court Judge performs a marriage ceremony there is a fee associated with that event. The code requires the fee to be paid at the license and permit division which is located in a separate building. The ordinance would allow the fee to be paid at municipal court.

MOVED by Wells, SECOND by Givens, to adopt **Ordinance 11-60**, waive the reading of the ordinance, read the title only. AYE: Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-60

An ordinance pertaining to court, amending Section 9-2-208, Article 9-2, Chapter 9 Lawton City Code, 2005, by changing the location of where the marriage ceremony fee shall be paid, providing for severability and providing for an effective date.

AUDIENCE PARTICIPATION: None

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Jerry Ihler, Public Works Director, introduced George Hennessey, the new Assistant Director of Engineering.

Burk thanked those who attended the Lawton Enhancement Trust Authority banquet. He stated they raised \$5,000 for their matching grant program for the schools. He stated next year it will be held on the first Thursday in December.

Haywood reminded everyone of the reception at the airport on Wednesday from 5:00 p.m. to 7:00 p.m.

Givens thanked Burk for all his hard work for the LETA banquet. He stated his letter of resignation from the city council will be effective February 1, 2012.

Shoemate announced that the Museum of the Great Plains will have their luncheon on Wednesday at 11:45 a.m. and following that event the Comanche Nation National Museum will host an open house at 1:00 p.m.

The Mayor and Council convened in executive session at 7:29 p.m. and reconvened in regular, open session at 8:27 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

26. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case of City of Lawton v. Woodburn Jr, Donovan dba Hop & Sack #12, CV-2010-82, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #26. No action was necessary.

27. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending Workers Compensation claim of John Foster, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #27.

MOVED by Shoemate, SECOND by Burk, to approve **Resolution 11-117** authorizing the settlement of the Workers Compensation claim of John Foster, a police officer who suffered serious multiple injuries in the line of duty in the amount of \$230,000 including all costs and attorneys fees. AYE: Zarle, Haywood, Wells, Shoemate, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED.

28. Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property, incentive proposals, and financing in connection with the Lawton Downtown Redevelopment Project and other development projects under consideration in the City, and take appropriate action in open session as necessary. Exhibits: None.

Jensen read the title of item #28. No action was necessary.

29. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the Employment Agreement of Frank V. Jensen as City Attorney, and in open session take action as necessary. Exhibits: None.

Mayor Fitch read the title of item #29.

MOVED by Burk, SECOND by Haywood, to approve contract with a 5% pay increase. AYE: Haywood, Wells, Shoemate, Bellino-Hall, Burk, Givens, Zarle. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:31 p.m. upon motion, second and roll call vote.

/s/ Fred L. Fitch  
FRED L. FITCH, MAYOR

ATTEST:

/s/ Traci L. Hushbeck  
TRACI HUSHBECK, CITY CLERK