

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
NOVEMBER 5, 2013 – 6:00 P.M.
NEW CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Bryan Long, City Manager
Frank V. 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 Bob Weger, Bible Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One
Keith Jackson, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Dwight Tanner, Jr., Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT:

None.

PRESENTATION OF PROCLAMATION FOR NATIONAL HOSPICE AND PALLIATIVE CARE MONTH

Mayor Fitch proclaimed November 2013 as National Hospice and Palliative Care Month.

PRESENTATION OF PROCLAMATION FOR PSI UPSILON CHAPTER, OMEGA PSI PHI FRATERNITY, INC. WEEK

Mayor Fitch proclaimed November 17th-23rd as PSI UPSILON Chapter, OMEGA PSI PHI Fraternity, Inc. Week.

PRESENTATION OF PROCLAMATION FOR AMERICAN EDUCATION WEEK

Mayor Fitch proclaimed November 2013 as American Education Week.

REPORT OF ACTIVITIES AND NEEDS FOR CENTER FOR CREATIVE LIVING

George Durham, President of the Board, gave a brief report on the activities of the Center for Creative Living.

Mayor Fitch stated there are a lot of people in the audience that would like to speak to item #24. He would like a motion to go into executive session and they will discuss this item as a council and come back in open session.

MOVED by Wells SECOND by Burk to convene into executive session and discuss item #24. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at 6:19 p.m. and reconvened in regular, open session at 7:02 p.m. Roll call reflected all members present.

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending investigation of matters involving the Lawton Police Department, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #24.

MOVED by Jackson SECOND by Wells that under the authority of the Lawton City Charter, Section C-2-4, I move the Council direct an investigation of the Lawton Police Department to initially be conducted by the law enforcement consulting firm of Fidelis Group of Oklahoma City and if necessary, continue the investigation before the Lawton City Council with all the powers enumerated in Section C-2-4 of the Lawton City Charter. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

Mayor Fitch stated that the council has just acted for an investigation of the LPD so there can be no comments made in regards to the LPD because it is fully under investigation.

AUDIENCE PARTICIPATION: None.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF OCTOBER 8 AND OCTOBER 22, 2013.

MOVED by Wells SECOND by Zarle to approve the minutes of the Lawton City Council regular meetings of October 8 and October 22, 2013. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

CONSENT AGENDA

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

1. Consider approving a “Once In A Blue Moon Library Amnesty Opportunity” from December 16, 2013 – February 15, 2014 to facilitate the return of library materials by discounting late fee charges on delinquent customer accounts. Exhibits: None.
2. Consider accepting the RFP on the Fisherman’s Cove Concession and ATV Track Development Proposal at Lake Ellsworth and direct staff to negotiate a contract for operations with Buck Lafferty and Lafferty Motor Sports Inc. Exhibits: Lafferty Motor Sports RFP Proposal and Exhibit “A” – Site Map for Proposed Land Recreation Vehicle Park – Lake Ellsworth.
3. Consider approving Elmer Thomas Park standard lease agreement with Carson & Barnes Circus for two performances Friday and Saturday, May 2 – 3, 2014. Exhibits: Standard Elmer Thomas Park lease agreement on file in the City Clerk’s office.
4. Consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, by amending the fee relating to the construction inspection fee associated with revocable communication cables and pipeline permits. Exhibits: **Resolution No. 13-65** and Ordinance No. 08-28.
5. Consider a request from Darius Strobeck to waive all fees and contractor’s license requirements associated with the building permit to construct a pergola at “Children’s Corner Preschool”, located within the First United Methodist Church, at 2602 NW Ferris Ave. Exhibits: Request letter from Darius Strobeck.
6. Consider granting a revocable permit for a masonry retaining wall and parking and maneuvering in the public utility easement along the south lot line of Lot 2, Block 1, Arvest Bank Addition, addressed as 4250 NW Cache Road. Exhibits: Application, Site Plan. Revocable Permit (on file in City Clerk’s Office).
7. Consider approving the construction plans for a 10-inch waterline and a 15-inch sanitary sewer line to serve the Comanche County Memorial Hospital located at 3401 W. Gore Boulevard subject to conditions. Exhibits: Location Map.
8. Consider approving the Oklahoma Department of Transportation (ODOT) Change Order No. 7 for the NW 67th Street (Cache Road to Rogers Lane) Project #2003-7 authorizing staff to issue final payment to ODOT to close out this project. Exhibits: A copy of Change Order No. 7 is on file in the Engineering office.

9. Consider accepting a temporary easement and a warranty deed from J. Larry Fugate, Trustee of the J. Larry Fugate Revocable Trust Dated March 25, 2010 for right of way needed for the SE 45th Street Reconstruction (Between Lee & Gore) Project #2006-12, authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
10. Consider accepting a temporary easement from Mejia & Villagran Interprise, LLC for right of way needed for the SE 45th Street Reconstruction (Between Lee & Gore) Project #2006-12, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
11. Consider accepting a temporary easement from Amber Mills, AKA Amber Gregory and Jeffrey Mills for right of way needed for the SE 45th Street Reconstruction (Between Lee & Gore) Project #2006-12, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
12. Consider accepting two permanent easements and three temporary easements from Frederick A. & Elizabeth Roloff for right of way needed for the Nine Mile Creek Sanitary Sewer Interceptor Project#2008-2, authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
13. Consider approving Change Order No. 3, accepting the Carwash Facility Project #2012-1 and placing the Maintenance Bond into effect. Exhibits: None.
14. Consider rejecting all bids on (RFPCL13-033) Carpet and Tile Replacement. Exhibits: Department recommendation.
15. Consider awarding (RFPCL13-038) Fire Service Cost Recovery & Billing to LifeQuest Services of Wautoma, WI. Exhibits: Department recommendation, Price Bid Sheet.
16. Consider approving appointments to boards and commissions. Exhibits: None.
17. Consider approval of payroll for the periods of October 14 – 27, 2013.

OLD BUSINESS ITEMS:

18. Consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, by amending the fees pertaining to various business licenses. Exhibits: **Resolution No. 13-66.**

Richard Rogalski, Community Services Director, stated this item was tabled at the last council meeting because there was a question regarding the fees relating to circuses, carnivals and amusement rides. There was some wording that needed to be corrected and it was changed so

that the amusement ride inspections would be \$50 for each required inspection and the council committee is recommending approval of the item.

MOVED by Jackson SECOND by Wells to approve **Resolution 13-66**. AYE: Morford, Jackson, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: Tanner. MOTION CARRIED.

NEW BUSINESS ITEMS:

19. Consider an appeal from Mike Dave, Dave's Realty LLC, for charges for mowing and clearing property located at 4513 SW G Avenue in the amount of \$229.55. Exhibits: Notice & Administrative Order dated April 16, 2013, Notice of Amount of Costs dated September 19, 2013, Notice of Appeal dated September 20, 2013, Appeal determination dated September 23, 2013, Appeal to council dated September 30, 2013.

Rogalski stated this appeal is based on a notice of cost for a property that was abated by the Neighborhood Services Division. The original Notice & Administrative Order was sent to Mr. Dave on April 16, 2013 for the property located at 4513 SW G Avenue. Following this Notice, the violation was corrected by the owner. However, on August 15, 2013 that property was again found to be in violation of City Code, and a work order was issued to abate/clean the property. Due to the backlog of work created this summer, the actual mowing/cleaning for this offense was not performed until September 4, 2013. Upon receiving the Notice of Cost for this work, Mr. Dave filed an appeal with the City Clerk's office. On September 30, 2013, the appeal was heard by the Community Services Director. The grounds for Mr. Dave's appeal were that while he was out of the country, his tenant moved out of the rental home on the property without informing him. He asserted that this occurred during the same time period as the abatement work was performed. Mr. Dave made no assertion of an irregularity or error on the part of the City, but instead that the fault rested with his tenant. The appeal was denied, and it was explained to Mr. Dave that the assessed costs were not a fine, but a reimbursement of the public funds and staff time that had been used to mow and clean his private property. Only an error or irregularity on the part of the City would be sufficient grounds for approval of his appeal. Following the hearing, Mr. Dave filed a further appeal of the Notice of Cost to the City Council.

Rogalski stated in preparation for this appeal, it was discovered that the last time the property located at 4513 SW G Avenue had an active water account was October 31, 2012. The Revenue Services Division found that while there was some usage in December of 2012, perhaps due to a leak, no water at all has passed through the meter since February of 2013. This does not fit with Mr. Dave's assertion that the property had been occupied.

Rogalski stated Mr. Dave had also voiced a concern that he had not been sent another notice of the violation in August, prior to the abatement work being performed. I explained to him that Lawton City Code and State Statute do not require a subsequent notice within six months of a prior notice for the same offence. I further explained that in order to accommodate the need of landlords and property managers, City Code Section 15-2-204.H provides the opportunity to register rental properties with the City, and receive an e-mail notification of any future violations. Mr. Dave indicated that he would pursue this option.

Wells stated the original notice of administrative order dated April 16, 2013, paragraph 4, tells the person that within six months they can have something abated and taken care of without any further notice, so Mr. Dave did get his notice.

Mike Dave, appellant, stated last year the property was rented in November 2012. The tenant was there for one year and he never had a problem. He was out of the country and he feels like he should not pay this.

Morford questioned why the renters did not have water.

Mr. Dave stated they paid for one year. He has the lease dated November 2012. He does not know how they lived there without water. He cannot reach these people.

Morford questioned if Mr. Dave gets the water bill.

Burk stated those who own rental property have to take responsibility. He suggested if Mr. Dave goes out of the country he gets someone to take care of his property.

MOVED by Burk SECOND by Morford to deny the appeal. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

20. Consider adopting an ordinance prohibiting the retail sale, possession and discharge of consumer fireworks, providing for seizure of contraband fireworks, and providing for public fireworks displays; repealing Article 7-11, Division 7-11-1, Section 7-11-1-1101 through Section 7-11-1-1120 of Chapter 7, Lawton City Code; amending Section 11-2-208 in Article 2, Chapter 11 by clarifying changes to the International Fire Code; creating Sections 11-2-213 through 11-2-217, Article 2, Chapter 11 by allowing firework sales among retailers, distributors, manufactures and wholesalers, by providing for making application and permitting public fireworks displays, by prohibiting the possession and discharge of consumer fireworks, by providing for seizure of contraband consumer fireworks, and by providing for punishment for violations; and further providing for severability and for an effective date. Exhibits: Ordinance 13-__.

Mark Mitchell, Fire Marshall, stated they believe this is a functional, working ordinance that would slow down, if not stop, the illegal discharge of fireworks within the city of Lawton.

Wells stated he was appointed chairman of this council committee. They had a meeting which included Councilmembers Burk, Jackson and Tanner as well as staff members and representatives from a firm who sell fireworks in town. They listened to everyone and came up with a compromise for the fireworks firm to be able to sell through this next July 4th season so they can get rid of their stock they already ordered. Three council members felt that this ordinance should be approved. One council member felt the ordinance could be approved but he would like to sell permits this year to people who would like to set off fireworks out at the lake. The other committee members did not agree and the recommendation is to approve the ordinance as proposed.

MOVED by Wells SECOND by Bellino-Hall to adopt **Ordinance 13-35**, waive the reading of the ordinance, read the title only and declaring an effective date of July 6, 2014.

Tanner stated the fire department and city officials state that the current code is unenforceable. He stated there was a second proposal brought forward to satisfy those who had an issue with this proposal. He believes in free enterprise and basically they are running a certain industry out of business. It brings in a little revenue, approximately \$6,000. It bothers him when you start banning the possession of something, because what else can you ban? There are other things in the community that are a public safety hazard. We still allow the sale and possession of things like cigarettes. Guns are a public safety hazard, alcohol is a public hazard, are we going to ban the sale of guns, alcohol and cigarettes because something poses a public safety hazard and it sends a mixed message. The alternative proposal that the Fire Marshall brought forward was to allow the sale and possession of fireworks by permit and to use this permit to go to the designated areas to discharge. This ordinance is not an ideal ordinance but it does respect small business and individual freedom and liberty. That is what the 4th of July is all about. This will also bring in some revenue. He stated according to staff there are about 10,000 people that go out to the lakes every year to pop their firecrackers. This would pay for the clean up out at the lake and the rest could go to the fire department. We need to keep as much revenue coming in as we can.

SUBSTITUTE MOTION by Tanner to table the ordinance and direct staff to explore the alternative ordinance which would allow the sale and possession by permit which would allow citizens to go to the designated areas. MOTION DIED DUE TO LACK OF SECOND.

Bellino-Hall stated she received responses via email and her face book page. (She read an email from one of her constituents who supported the ordinance). She stated this reflects her feeling on this issue as well as a lot of people in her ward.

Morford stated there is nothing that says people cannot go out to the county.

Tanner stated the volunteer fire departments will need a lot more in their budgets.

VOTE ON ORIGINAL MOTION: AYE: Morford, Jackson, Bellino-Hall, Burk, Haywood, Wells. NAY: Tanner, Zarle. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-35

An ordinance prohibiting the retail sale, possession and discharge of consumer fireworks, providing for seizure of contraband fireworks, and providing for public fireworks displays; repealing Article 7-11, Division 7-11-1, Section 7-11-1-1101 through Section 7-11-1-1120 of Chapter 7, Lawton City Code; amending Section 11-2-208 in Article 2, Chapter 11 by clarifying changes to the International Fire Code; creating Sections 11-2-213 through 11-2-217, Article 2, Chapter 11 by allowing firework sales among retailers, distributors, manufactures and wholesalers, by providing for making application and permitting public fireworks displays, by prohibiting the possession and discharge of consumer fireworks, by providing for seizure of

contraband consumer fireworks, and by providing for punishment for violations; and further providing for severability and for an effective date of July 6, 2014.

21. Consider approving an ordinance repealing Section 2-3-2-315 of the Lawton City Code which designated the Municipal Planning Commission as the Metropolitan Planning Organization. Exhibits: Ordinance 13-__.

Rogalski stated the new transportation bill, Moving Ahead for Progress in the 21st Century, requires the membership of the Metropolitan Planning Organization to include elected officials, officials of public agencies that administer or operate major modes of transportation, and appropriate State officials. Effective November 1, 2013 the Transportation Policy Board was redesignated as the Metropolitan Planning Organization for the Lawton Metropolitan Area. Section 2-3-2-315 of the City Code states that the municipal planning commission is designated as the Metropolitan Planning Organization responsible for transportation planning for the Lawton Metropolitan Area. Due to the redesignation of the Metropolitan Planning Organization, Section 2-3-2-315 of the City Code must be repealed.

MOVED by Wells SECOND by Burk to adopt **Ordinance 13-36**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-36

An ordinance pertaining to administration, repealing Section 2-3-2-315 of the Lawton City Code, 2005, which designated the municipal planning commission as the metropolitan planning organization for the Lawton metropolitan area and declaring an effective date.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Burk announced that the 8th Annual Eye Candy Awards banquet will be held on December 5th in the banquet hall at City Hall.

Tanner stated they did not identify a funding source when they approved item #24.

Mayor Fitch stated the funding was discussed in executive session.

Tanner stated it was not announced. He questioned where it was coming from.

Jackson stated they instructed the City Manager to appropriate the money.

Tanner questioned where the money was coming from. He stated he just went to the OML training for newly elected officials and they said it was against the law for him to vote for something if we don't have the money to pay for it and that he could be criminally and civilly liable. He would like to reconsider his vote on item #24.

Jensen stated his department has a professional services account to pay for outside attorneys, investigators, experts witnesses, etc. If he did not have any money in that account he could not allow the council to vote on this item and approve the investigation from an outside firm. He does have money in that account but he will not have enough to pay for everything for the rest of the year. He stated if he thought this was illegal he would definitely tell the council.

Tanner stated he is concerned about his own liability.

Jensen stated there is a funding source, but he will have to have some more funding and the City Manager know that.

MOVED by Tanner to reconsider agenda item #24 until the council identifies a funding source.
MOTION DIED DUE TO LACK OF SECOND.

Haywood stated that Dr. Charles W. Whitlow was elected Oklahoma Missionary Baptist State Convention President for five years. He stated he will probably direct more meetings in Lawton which will bring more money into Lawton.

Wells reminded everyone that on November 11th at 9:00 a.m. there will be a Veteran's Day ceremony at Fort Sill. There is also a new war memorial being dedicated at Elmer Thomas Park at 11:00 a.m. The Sunset Memorial Gardens ceremony will be held at 11:00 a.m.

Long announced that the Revenue Services Division has relocated to the new City Hall. The Legal Department will be moving on November 22nd.

The Mayor and Council convened in executive session at 7:42 p.m. and reconvened in regular, open session at 8:16 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

22. Pursuant to Sections 307B.3, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the proposed purchase of land for the purpose of construction of a new fire station in the southwest area of Lawton and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #22.

MOVED by Burk SECOND by Haywood to accept a warranty deed from Norman David Owrey and Martha Jean Owrey as co-trustees of the Owrey Family Trust for the purpose of a new fire station/public safety facility and authorize the Mayor and City Clerk to execute the document and authorize payment of \$100,000 for the purchase of five acres of land on the south side of Bishop Road halfway between SW 52nd Street and SW 67th Street. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Haywood, Wells. NAY: Zarle. MOTION CARRIED.

23. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case of Joseph Harper and Vivian Wheeler vs. City of Lawton, CV-12-841-F, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #23.

MOVED by Wells SECOND by Haywood that the Lawton City Council adopt **Resolution 13-67** authorizing the City Attorney to prepare and file a journal entry with the terms of the settlement agreement discussed with the Council in executive session incorporated therewith as Exhibit A in the lawsuit styled Joseph Harper and Vivian Wheeler vs. City of Lawton, CV-12-841-F in the federal district court for the Western District of Oklahoma which shall include all costs, expertise witness fees and attorneys fees as a just and reasonable settlement for the disputed claims. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:19 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK