



# City of Lawrence

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CITY COMMISSION  
  
MAYOR  
MICHAEL H. DEVER  
  
COMMISSIONERS  
SUE HACK  
ROBERT CHESTNUT  
DENNIS "BOOG" HIGHBERGER  
MIKE AMYX

November 11, 2008

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Dever presiding and members Amyx, Chestnut, Hack, and Highberger present.

RECOGNITION/PROCLAMATION/PRESENTATION: None

## CONSENT AGENDA

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to approve the City Commission meeting minutes of October 28, 2008 and November 4, 2008. Motion carried unanimously.

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to receive the Lawrence Cultural Arts Commission meeting minutes of October 6, 2008; the Board of Plumbers and Pipe Fitters meeting minutes of September 17, 2008; and the Public Health Board meeting minutes of September 22, 2008. Motion carried unanimously.

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to approve claims to 353 vendors in the amount of \$4,451,643.21 and payroll from October 26, 2008 to November 8, 2008, in the amount of \$1,750,030.40. Motion carried unanimously.

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to approve the Drinking Establishment Licenses for Applebee's Neighborhood Grill & Bar, 3900 West 6<sup>th</sup>; Applebee's Neighborhood Grill & Bar, 2520 South Iowa; Club Liberty, 642 Massachusetts; Crimson & Brews, 925 Iowa, Ste: Q; the Retail Liquor Licenses for Hillcrest Discount Liquor, 905 Iowa; Alvin's Wine & Spirits, 4000 West 6<sup>th</sup> Ste: K; Diane's Liquor, 1806



Massachusetts; Glass House Liquor, 2310 Wakarusa Ste: C; and the Sidewalk Dining & Hospitality License for Mad Greek, 907 Massachusetts. Motion carried unanimously.

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the recommendation of the Mayor and appoint Scott Allegrucci, Michael Almon, Rex Buchanan, Rob Chestnut, Paul Dietz, Tom Kern, Joe King, Dean Palos, Dan Wildcat and Scott Zaremba to the Peak Oil Task Force. Motion carried unanimously.

Ordinance No. 8345, rescinding Ordinance No. 7022 which established “no parking” on the east side of Jana Drive between Harvard Road and Holiday Drive, was read a second time. As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to adopt the ordinance. Aye: Amyx, Dever, Chestnut, Hack, and Highberger. Nay: None. Motion carried unanimously. (1)

Ordinance No. 8346, establishing “no parking” along the north side of Eisenhower Terrace and “no parking” along the east side of Emerald Drive, was read a second time. As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to adopt the ordinance. Aye: Amyx, Dever, Chestnut, Hack, and Highberger. Nay: None. Motion carried unanimously. (2)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the Planning Commission’s recommendation to adopt the findings of fact and approve the request to rezone (Z-08-15-08) a tract of land approximately .134 acres from U-KU (University) to RM32 (Multi-Dwelling Residential), located at 1232 Louisiana Street; and, adopt on first reading, Ordinance No. 8343, rezoning 1232 Louisiana Street from U to RM32, subject to the following conditions:

1. The property shall not be used in any fashion for a parking lot except in strict compliance with the zoning standards of the Development Code. Parking facilities shall only be permitted if accessory to a permitted and approved principal use that is located on the same property that is the subject of this rezoning application.

Motion carried unanimously.

(3)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the Planning Commission's unanimous recommendation to approve a Comprehensive Plan Amendment (CPA-2008-04) to amend Chapter 6-Commercial Land Use – Lawrence – New Commercial Areas and Map 6-1 to correct inconsistencies between map and text; and, adopt on first reading, Ordinance No. 8341/County Resolution No. \_\_\_, amending Chapter 6-Commercial Land Use of the Comprehensive Plan Amendment (CPA-2008-04). Motion carried unanimously. (4)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the Planning Commission's unanimous recommendation to approve a Comprehensive Plan Amendment (CPA-2008-5) to amend Chapter 6-Commercial Land Use – to correct policy numbers under Goal 3 (duplicate numbers); and adopt on first reading, Ordinance No. 8342/County Resolution No. \_\_\_, amending Chapter 6-Commercial Land Use of the Comprehensive Plan Amendment (CPA-2008-05). Motion carried unanimously. (5)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the Planning Commission's unanimous recommendation to approve the Preliminary Plat (PP-08-10-08) Alexeis Addition, a one-lot, 0.16 acre subdivision, located at 825 Illinois Street; and accept the dedication of easements and rights-of-way. Motion carried unanimously. (6)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to concur with the Planning Commission's unanimous recommendation to approve text amendment (TA-08-15-08), an amendment to Section 20-403 and 20-1766 of the Development Code to permit Light Equipment Sales/Rental uses, which includes car rental agencies, as a permitted use in the CN2 (Neighborhood Commercial) zoning district, and to clarify that this use includes an accessory wash bay and storage of vehicles onsite; and adopt on first reading, Ordinance No. 8344, for Text Amendment (TA-08-15-08) an amendment to Section 20-403 and 20-1766 of the Development Code. Motion carried unanimously. (7)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to receive the third quarter report from Lawrence Freenet. Motion carried unanimously. (8)

As part of the consent agenda, it was moved by Chestnut, seconded by Amyx, to authorize staff to negotiate an Engineering Services Contract with Black & Veatch for Design and Construction Phase Engineering services in conjunction with Project WW0601, improvements to the Anaerobic Digester Process at the Kaw Wastewater Treatment Plant. Motion carried unanimously. (9)

#### CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said staff was reviewing the City Code regarding A-frame signs in downtown district; railroad crossing safety improvements were planned for East 11<sup>th</sup> Street; Public Works had completed its review of snow preparedness measures; the Third Annual Trunk or Treat was held at East Lawrence Recreational Center; the Health Department website won an award for Excellence in Public Health Communication; the State Legislative Joint Committee toured National Heritage Area; and information was presented regarding the 2008 Micro-surfacing Project.

Mark Thiel, Assistant Public Works Director, said a Micro-surfacing tool that was used was an asphalt polymer product to extend the life of pavement, 5 to 7 years. He presented examples of the City's Micro-surfacing Program. In 2007, staff completed 25.8 lane miles of micro-surfacing; and in 2008, staff projected 24 lane miles of micro-surfacing. The cost for Micro-surfacing was well below the cost for mill and overlaying those same areas.

Commissioner Amyx said he received feedback concerning repairs to 27<sup>th</sup> Street and if that street would wear down overtime.

Thiel said this was not the time of the year to perform Micro-surfacing because an ambient temperature of 50 degrees or more was needed. He said staff suspended the 2008 contract for the remainder of this year, but the contractor would be back in April.

Mayor Dever asked why the contractor was allowed to perform micro-surfacing with the temperature not being optimal for that project.

Thiel said the temperature was 45 to 50 degrees when the product was used. There were four more days to complete the project, but with the upcoming weekly forecast, staff felt those temperatures would not be maintained and the work was suspended. (10)

#### REGULAR AGENDA ITEMS:

Consider request from Paul Werner Architects to use eight (8) public parking spaces at 123 West 9<sup>th</sup> Street for construction staging.

Lynne Zollner, Historic Resources Administrator, presented the staff report. She said notification was sent to adjacent property owners and their response was if the staging area could wait and take place after December 28<sup>th</sup> .

David Corliss, City Manager, said traffic would still be able to circulate in the parking lot.

Commissioner Amyx asked if those parking spaces would be used and the City was not being asked to give up those parking spaces.

Zollner said correct. She said the project had changed and the owner was no longer going to build an addition that required the parking spaces and would simply construct a building rehabilitation on the structure with no addition. The applicant's option was to use those parking spaces instead of Vermont Street because it was a busy intersection at 8<sup>th</sup> and Vermont.

Paul Werner, Paul Werner Architects, said the building currently had no heat and hopefully, the site plan would be approved to pull a permit to establish heat in that building, but the applicant was ready for construction. He said there was a basement exit for dumpsters and construction, keeping equipment and construction off of 8<sup>th</sup> and Vermont.

Mayor Dever called for public comment.

KT Walsh, Lawrence, said she wanted the City Commission to consider a 30 minute parking area for the elderly.

Commissioner Highberger said this was a vastly improved option instead of considering selling the spaces. He said Walsh's suggestion could be referred to the Traffic Safety Commission.

Corliss said staff would discuss the issue of the temporary parking for the elderly with David Woosley, Traffic Engineer, but one issue would be enforcement. He said staff could work with the property owner to find out where the sign would make sense on 8<sup>th</sup> Street or the issue could be referred to the Traffic Safety Commission. He said temporary parking for the elderly might be an idea to try out on a permanent basis.

Commissioner Amyx said he agreed with Commissioner Highberger. He said he supported the request.

Vice Mayor Chestnut agreed in moving forward immediately. He said he appreciated the applicant working within the footprint of the building because to some extent, it preserved the historic nature of the structure.

Commissioner Hack agreed with investigating the short-term parking for the elderly.

Moved by Hack, seconded by Highberger, to approve the request to use eight (8) public parking spaces at 123 West 8<sup>th</sup> Street for construction staging. Motion carried unanimously. (11)

Conduct a public hearing to consider the vacation of an unused utility easement located in Lot 2, Block A, Haddock Addition as requested by property owner McDonald's Corporation.

Mayor Dever called a public hearing to consider the vacation of an unused utility easement located in Lot 2, Block A, Haddock Addition.

Chuck Soules, Public Works Director, presented the staff report. He said the area requested to be vacated was a utility easement that sat on the south side of McDonald's lot. He said that portion of the easement was not in use and new construction was being proposed over the existing easement.

Staff notified all adjacent property owners and utilities.

Commissioner Amyx asked if they were going to be building over that easement.

Soules said they were reconstructing the drive thru.

Mayor Dever called for public comment.

Upon receiving no public comment, it was moved by Hack, seconded by Amyx, to close the public hearing. Motion carried unanimously.

Moved by Amyx, seconded by Hack, to approve the Order of Vacation, for an unused utility easement located in Lot 2, Block A, Haddock Addition. Motion carried unanimously. (12)

Conduct a public hearing to consider the vacation of the east 10' of right-of-way of Arkansas Street adjacent to Lot 70 and the west 25' of Lot 68, in Block 34, West Lawrence Addition as requested by property owners Lawrence E and Patricia G. Graner.

Mayor Dever called a public hearing to consider the vacation of the east 10' of right-of-way of Arkansas Street adjacent to Lot 70 and the west 25' of Lot 68, in Block 34, West Lawrence Addition.

Chuck Soules, Public Works Director, presented the staff report. He said the property owners were requesting a vacation to build a new accessory garage that met setback requirements. All utilities and property owners within 200 feet were notified and no objections were received. He said staff had no objections, but Westar requested the City retain the utility easement.

Commissioner Highberger asked if they needed to retain a public access easement.

Soules said the way the vacation was written, it was both for utility easement and public access. He said that would be the reservation.

Mayor Dever called for public comment.

Mayor Dever asked if it was mainly a setback issue and the property owner wanted to build close.

Lawrence Graner, property owner, said yes, otherwise, he would need to cut another tree down. He said as it stood, he would probably have to cut one tree down already. He said if he did not get the right-of-way, he would need to cut a huge 3 foot wide tree.

It was moved by Hack, seconded by Chestnut, to close the public hearing. Motion carried unanimously.

Moved by Hack, seconded by Amyx, to approve the Order of Vacation, for the east 10' of right-of-way of Arkansas Street adjacent to Lot 70 and the west 25' of Lot 68, in Block 34, West Lawrence Addition. Motion carried unanimously. (13)

Consider adopting Ordinance No. 8350, repealing Ordinance No. 8293, and reenact its provisions rezoning approximately 155 acres (Z-04-08-08) located on the northwest corner of North 1800 Road and East 900 Road; I-70/K-10 Business Park, from A (Agricultural) to IG (General Industrial).

Toni Wheeler, Director of Legal Department, presented the staff report. She said Ordinance No. 8350 repealed Ordinance No. 8293, rezoning approximately 155 acres located at the Farmer's Turnpike and K-10 Highway. It reenacted its provisions clarifying the effective date of rezoning. Ordinance No. 8293, rezoning the property, was passed on second reading on September 2<sup>nd</sup> and published in the Lawrence Journal-World on September 9<sup>th</sup>, with the intent it be effective after the effective date of the annexation ordinance, Ordinance No. 8285. The annexation ordinance was published on September 8<sup>th</sup>. Because the publication occurred within 60 days of general election, there was a state statute that stated the annexation was not effective until the day after the election or November 5<sup>th</sup>. In order to clarify the effective date of the rezoning of those 155 acres of land, staff recommended repealing Ordinance No. 8293 and reenacting its provisions. Ordinance No. 8350 would be in full force and effect upon its passage and publication as provided by law. Because a valid protest petition was received, the passage of the ordinance required a supermajority vote. She wanted to make clear that Ordinance No. 8350 clarified the effective date of the rezoning only. It did not revisit the merits of the rezoning and the public hearing was lawfully held by the Planning Commission on June 25, 2008 and this body had previously considered the merits of the rezoning and acted on the Planning Commission's recommendation to rezone the property. The ordinance before them tonight did not affect the previous actions, but only spoke to the effective date of the ordinance. With that

in mind, if taking public comment on this item, she strongly advised limiting the public comment to the ordinance before the City Commission which dealt with the effective date of the rezoning.

Commissioner Hack said Wheeler did a great job and the explanation was straight forward.

Commissioner Amyx said since the issue was only about the dates and the ordinance was the way it was written before, he did not have any questions.

Moved by Hack, seconded by Amyx, to adopt on first reading, Ordinance 8350, repealing Ordinance No. 8293, and reenact its provisions rezoning approximately 155 acres (Z-04-08-08) located on the northwest corner of North 1800 Road and East 900 Road; I-70/K-10 Business Park, from A (Agricultural) to IG (General Industrial). Motion carried 4-1 (Highberger voted no). (14)

Conduct a public hearing for the dilapidated structure at 617 West 4<sup>th</sup> Street. Consider adopting Resolution No. 6813, declaring the structure unsafe and dangerous and ordering property owner to repair or remove the structure within a specific period of time. Should the property owner fail to comply, the City would contract for the removal of said structure.

Mayor Dever called a public hearing for the dilapidated structure at 617 West 4<sup>th</sup> Street.

Brian Jimenez, Code Enforcement Manager, presented the staff report. He said in the City Commission's packet was a report, pictures of the exterior, the chronology of staff's contacts with the people who had control of the property, and a memorandum from the Historic Resources Commission regarding their approval.

He said staff had extensive history with this property and enforcement was stepped up in late 2007. Staff met with the executors of the property to find a solution for repair work or demolition. He said staff asked for consent to inspect the interior, to get a full scope of the deterioration of that property, but were denied. In June 2008, one of the executors requested an extension of time, but he denied the extension based on the vast history of contacts with no action taken.

As a result of this structure being reviewed by HRC, Lynn Braddock-Zollner, Historic Resources Administrator, asked that he obtain a search warrant to look at the property. On September 5<sup>th</sup>, staff executed that search warrant and conducted a complete picture taking analysis of the interior. He said there was heavy vegetation around the structure and a large hole on the slope of the roof facing north. The foundation of the structure was made of limestone and had deteriorated to a point where the entire corner of the house was no longer being supported by the foundation. He said there were some bricks that were lying in a pile that were thought to once be part of the foundation but were not supporting anything. He said the room that was directly below the hole in the roof produced severe black mold and there was many years of water infiltration in the house. He said the ceiling at the east entrance of house was coming down. He said staff was trying to work with the property owner and at times, were too lenient, but the house continued to deteriorate. Staff was recommending demolition if substantial repairs were not made in a timely manner.

Commissioner Amyx said if the original inspection in 2002 on that structure was at a request of a neighbor.

Jimenez said he was not involved until late 2006. He said it could have been a result of staff initiation or a complaint. The neighbors were aware of the situation and had been in constant contact with him in which he provided the neighbor's updates. He said on September 18<sup>th</sup> this item was approved by the HRC and determined that in its condition, it was no longer a significant value of character to the neighborhood and voted 6-0 to approve the demolition.

Commissioner Amyx said in reading the chronology dated back to October 30, 2002, lenient was a nice word used. He said if the Commission declared the structure unsafe and dangerous, and someone asked for building permits, would the City issue those building permits based on what the person stated.

Jimenez said at this point, staff was in a position to request a very detailed plan of action that had some type of immediacy to the plan outlining exactly what was going to happen. He

said in his professional opinion, in seeing many older homes, the structure would need a new foundation because there was not much foundation to save.

Commissioner Highberger said this structure was in the environs of an historic district and if the owner wanted a demolition permit, what about a replacement structure.

Zollner said the replacement structures were required when it was a character defining element of the environs. This structure had been in such a state of deterioration before the district was actually listed that it was not a character defining element of the environs.

Mayor Dever called for public comment.

Daryl Graves, attorney for Jeanette Denton, said he had been retained by Jeanette Denton who was one of the owners of this property. This property had been in their family since 1961. The family had a number of deaths in the year 2006. Jeanette's mother passed away in February and her brother who was doing a lot of the repairs on the property passed away in October 2006. It had taken her a little bit of time to get her life back together and one of the problems was that Denton did not understand the gravity of this issue and had a hard time comprehending that anyone would tear down a house that their family had in their possession since 1961 and had such sentimental value to her. He explained that sentimental value was not going to go very far based on the homes history. They had some very frank talks in the last week since he had been retained and encouraged her to obtain bids on this structure so they were requesting at least 60 days to secure detail bids to try to save this house. He said Denton grew up in that house and wanted to live in it. He said Denton realized that it had been neglected but wanted to get the bids to see if it was at all possible to do the repairs to the structure. He said his client had ready talked to carpenters for bids on temporary repairs to the roof and a bid to take care of all the trees, which was over \$4,000. They knew there was going to be a lot of expense and believed they could come back and show that not only did they have the desire, but the finances to take care of this issue. He said he was asking for some time to secure bids to repair the structure now that Jeanette understood the gravity of the situation.

Steve Braswell, Pinckney Neighborhood Association, said in general, he would like to know how homes get to the point that the only remedy was demolition. He said the resolution talked about ordering the owner to repair or remove the structure. He asked if the City had a preference and was it totally up to the property owner because he had seen a number of cases over the years where property was allowed to get to a state to where the only solution was to tear it down. He said he would encourage allowing the property owner a little bit of time to see if something other than tearing the structure down could happen.

Commissioner Amyx said it would always be the City's preference not to demolish homes. He said staff had done a good job in this particular case, whether it was complaint or staff driven in trying to get that property up to City code or at least in a safe and secure state. He said he had been involved in declaring a structure unsafe and dangerous and ordering its demolition which was not a fun thing to do. He said every situation was different and the City Commission always tried to encourage the property owner to bring their structure up to code.

Braswell asked if there was much leverage before getting to this point.

Commissioner Amyx said he thought so. He said codes were in place to take care of this type of situation, but there would be circumstances beyond anyone's control. He said the City was fortunate to have citizens who took pride in their properties. He said a majority of the time, Jimenez and staff did a good job in encouraging people who had those types of problems to take care of their situation. He said staff had gone out of the way in retaining this property. He said the City Commission could give the property owner 60 days to come up with the necessary numbers to make it work, but somehow the structure needed to be secure.

Jimenez said regarding demolition by neglect, staff researched this issue with comparable cities, and Lawrence was on the low end of demolishing properties. There were some cities the size of Lawrence taking 20 – 30 structures down a year. He said overall, the community had good housing stock. Staff tried to do everything they could to avoid demolition, but sometimes a different route was needed.

It was moved by Amyx, seconded by Highberger, to close the public hearing. Motion carried unanimously.

Commissioner Amyx said as long the structure was secured he was not opposed to allowing the additional 60 days.

Vice Mayor Chestnut said he agreed with Commissioner Amyx. Obviously, with Graves getting involved recently, it might be the right set of circumstances to get things connected. He said there ought to be an expectation of having some of those safety issues addressed within a reasonable time, based on getting bids and how long that could take. If the homeowner was going to start making investments in temporary repair of the roof, removing trees, and everything else, there should be a pretty good feeling there was a good faith effort to try and save the structure. It might prove to be unattainable financially, but the City should go the extra mile to give them a chance to repair the structure. He said the structure needed to be secured as soon as possible.

Mayor Dever asked Jimenez if it would have been difficult for a person to get into the property.

Jimenez said there were at least three ways of getting into that structure. On the east side there was a fairly new door which was fairly secure. The door was secure and it took a locksmith to get in, but if someone had the will they could get in, but it was not staff's main concern.

Mayor Dever asked if Jimenez noticed any evidence of someone sleeping or living in that structure.

Jimenez said there was nothing to suggest that someone was staying in that structure.

Commissioner Hack asked Jimenez of his professional opinion of the foundation. She asked if it was repairable or beyond hope.

Jimenez said the foundation could be repaired, but it was one of the worst ones he had seen because the southeast corner was in really bad shape, one wall was being pushed out, and the foundation was not worth anything. Everything in the structure would need to be rebuilt

because of things like wood rot. It was the worst case scenario from his professional opinion of costs.

Commissioner Hack said she would be comfortable allowing 60 days as requested by the property owner. She said unless there was some serious progress in terms of what could be done, she could not go beyond that amount of time. The City had been patient, but there were also extenuating circumstances. She said she would not want to be a community that took down 20 – 30 houses a year, but understand how it happened in certain communities.

Graves said he appreciated the extension and they could work with Jimenez to come up with a solution, but might find out that it was cost prohibitive. He said there was a lot of passion with this property. If they could receive the 60 days, they would move forward.

Commissioner Amyx suggested revising the date in the resolution to January 11, 2009. That would give Graves and his client opportunity and time to show repair and maintenance of the house was going to be taken care of.

Toni Wheeler said the date could be changed. She said after reviewing the statute, staff would reword the resolution to state the repairs had to commence within 60 days and then be diligently prosecuted. If not, the structure could be taken down. Staff could move the date to January 11<sup>th</sup>, 2009 and revise the resolution.

Mayor Dever said they were asking for 60 days to assess the condition and consider rebuilding it. He asked if they required demolition in 60 days, would it have to be torn down.

Wheeler said no, which was why she was suggesting using the term “commenced.” The repairs would be commenced or proceed to demolition if they did not diligently pursue the repairs. The other option would be to not declare the structure dangerous and unsafe at this time and ask that the resolution be reviewed or brought back in 60 days and staff could put a revised resolution before the City Commission.

Mayor Dever said he was okay with the approval as long as the language was correct. He said when he read it, it seemed like they had to order the repair or demolition on or before

December 12<sup>th</sup>, which was 30 days from now. So they were ordering repair or demolition by January 12<sup>th</sup> or some date around it.

Vice Mayor Chestnut suggested deferring the item for one week and bring back the resolution with the language because he would imagine that between their counsel and Graves, there might need to be some wordsmithing and then the City Commission could approve the resolution.

Commissioner Highberger suggested deferring for 60 days.

Commissioner Amyx said his only concern was securing that structure.

Mayor Dever said the Commission could let the owner try and resolve the condition of the structure within 60 days and was comfortable revisiting this issue in 30 days. That would accumulate the time and would still get the end result they needed, which was sooner than later. This would only get worse with the winter weather.

Commissioner Highberger asked if 30 days was an adequate period of time.

Graves said the fact there was a lot of foundation work and this not a good time of the season for those types of repairs and he asked for 60 days.

Mayor Dever said the 30 days was to make the decision to repair, not actually making those repairs. If moving forward with repair, the City Commission needed to be reasonable. If they received the pricing back and it was excessive outside the realm of possibility for this property, then the City needed to move forward.

Moved by Hack, seconded by Amyx, to close the public hearing.

Moved by Amyx, seconded by Hack, to continue the item for 30 days to allow the property owner to receive bids and to determine the feasibility of repairing the structure. Motion carried unanimously. (15)

Consider changes to the Sidewalk Snow and Ice Removal Ordinance and Enforcement Program.

Jonathan Douglas, Assistant to the City Manager, presented the staff report. He said the current ordinance required sidewalks to be cleared within 24 hours at the end of a snow or

ice event. If a violation was confirmed, staff would send a letter giving the property owner 5 days to remove the snow and the property owner had not complied within that time period, the property owner would be subject to a \$20.00 fine. The options brought back for possible changes to the ordinance was a good neighbor option, which would eliminate the fine, but focus on quicker notification through a notice left on the property instead of a letter.

Another option was the abatement/assessment option, which would be a more aggressive enforcement program in which staff would give a 24 hour notice after the violation was determined and if the sidewalks were not cleared by that time, the City would have the sidewalks cleared and assess those costs back to the property owner. To do that effectively, there were concerns about needing a lot more staff resources dedicated to this program than what the City currently had.

The third option would be the incremental change option, which would reduce the notice period from five days to three days and raise the fine from \$20.00 to \$50.00. The City Commission could also make any combination of notice period and fine the Commission felt was appropriate.

The Commission could also make no change to the ordinance. The City currently had an ordinance that allowed the City to prosecute those violations.

Any of those options could be combined, such as adding the door hanger notification to the ordinance or incrementally changing the ordinance, which was similar to what was done with the trash abatement ordinance.

Mayor Dever called for public comment.

Dave Kyner, Lawrence, said he sent a letter two weeks ago concerning the use of cell phones when driving and snow removal. He said two years ago, he lived north of New York City, the City's ordinance stipulated that if a property owner did not remove snow from their sidewalks within 24 hours, a hefty fine was received. He said but in this town, the safety of people using the sidewalks was sitting on four days which affected children who were walking to school. The citizens in this community did not shovel snow within 24 hours and if a tougher

ordinance was adopted, people would start removing snow from their sidewalks in a timely manner. He said basically, the City was discriminating against people who did not have cars and had to walk to work or to a bus stop.

Bill Reynolds, Lawrence, said in his former career as a postmaster, there were approximately 50 - 60 people who worked for the post office, 302 days a year, walking down sidewalks to deliver mail. There were two types of sidewalks; public sidewalks that ran parallel to the street and the sidewalk up to a person's house. In general, residential property owners did not remove snow from their sidewalks, but the property owners that did, the postal service appreciated that a great deal. He said if the City issued citations to people not shoveling their sidewalks, the City would have 10,000 – 15,000 citations from a single snow storm. The snows were usually not that bad and the postal service had an option that if a walk was too dangerous and endangered the safety or health of the carrier, the carrier had the option of not delivering to that particular customer. Most of the carriers tried to deliver, and some were injured for that effort. This was a difficult question, because the problem was so enormous City wide.

He said a number of businesses cleaned their walks and he noticed that because his wife owned a shop on 9<sup>th</sup> Street. In that area, because he was the Vice President in charge of snow removal, he shoveled snow on 9<sup>th</sup> Street. He said the walk would be cleaned but as soon as the snow plows came by, all the snow from the street piled up on the sidewalk. The snow would actually hit the glass windows of the shop. He said he realized City workers had to take the snow off the street, but ended up with ice packed snow that could not be shoveled, and had to hire someone to remove that snow with the snow going right back into the street.

Commissioner Highberger said the current situation was not acceptable. If the City was going to be spending the money, just received, to build new sidewalks, the City had to make sure the sidewalks were usable. He said there was a staff problem with enforcement, but other cities had figured out a way. The enforcement tools were not adequate and he would like to see something like the abatement and assessment method apply to arterial streets or prime pedestrian routes. He said he would prefer keeping the current ordinance, shortening the

compliance period, adding the hanging tag, but moving toward adding the abatement and assessment option with a shortened compliance period on primary pedestrian routes.

Commissioner Hack agreed that 9<sup>th</sup> Street was a primary walking route. One problem with a sidewalk immediately adjacent to a street was that if a diligent property owner removed snow from their sidewalks, with staff removing snow on the street, the snow would go back onto the sidewalk. She said she liked the idea of shortening the notification time, the abatement and assessment option, and perhaps substituting that work out. She did not know what to do about the situation where to no fault of the property owners, they were once again in worse shape because they had the sand, salt and ice on the sidewalk.

Commissioner Highberger said he agreed and someone should not be penalized because of the City's action. He said on the sections where sidewalks were near the street on those prime pedestrian routes, he suggested using City staff to clear those sidewalks. He said he realized the City had limited resources, but since the City had resources to clear every local street 24 or 48 hours within a snow event, maybe there could be reallocation for those critical pedestrian routes.

David Corliss, City Manager, said in a situation where a property owner cleared their sidewalk and the Public Works Department put snow back on the sidewalk by clearing the street, the City would not issue a citation in that type of situation. He said if the Commission wanted to discuss allocating staff to clear certain sidewalks, he did not want to raise the citizens' expectations that staff could be attentive to all the different streets. He could see the situation where the City received a phone call indicating all the sidewalks on Iowa needed to be cleared. Staff did not have the ability to legally abate and assess in all those situations. He said staff could work with the Commission to designate specific streets and work to notify those property owners that the City would do some of that work. It was difficult to draft an ordinance and pick property owners to assess, but let the rest of the community proceed. He said he wished there was a good solution to this. The comments about putting the burden on the property owners

and changing the culture was something that could be done, but it would be a concerted multi-year effort.

Mayor Dever said Corliss mentioned staff did not have the legal right to abate and assess those situations, but asked if Corliss meant staff did not have the means to abate and assess.

Corliss said his concern was passing an ordinance singling out a few streets.

Commissioner Highberger said he thought staff could craft some wording that would withstand the rational basis test such as the phrase, “arterials or key pedestrian routes with sidewalks adjacent to the roadway.”

Corliss said with terrain issues that was a particular concern.

Vice Mayor Chestnut said he was in favor of a tiered approach. The only issue concerning the abatement and assessment option was not being in favor of moving forward at this time until charging City staff with figuring out how to do it rationally. He said from a budget standpoint, regardless of whether or not other communities did it, it was going to be an incremental cost to the City and would like to know that cost before moving forward. One challenge was in that 72 hour period after receiving 6 – 8 inches of snow, was when it impacted staff the most. It was not a matter of everyone working harder because there were a number of people in Public Works working 18 hours a day just to get done what needed to get done. It was looking at a staffing level to carry for an extra period of time. The City Commission needed to start getting Public Works involved. One of the suggestions was not clearing all the adjacent parking spaces so they did not clear snow off onto the sidewalk. He said he supported an incremental change, but needed to step it up. He said he would also support shortening the notice period and raising the fines as recommended.

He said in one of the proposed ordinances (Ordinance C), it discussed 3 days. He asked if it would remain within 48 hours or 24 hours. He said he wanted to look at abatement and assessment, but did not want to make a decision now because the Commission needed to ask the Public Works staff if it was feasible or how it would be done.

Mayor Dever asked Douglass if he talked to other cities to see how they handled the abatement and assessment option.

Brian Jimenez, Codes Enforcement Manager, said research showed that other City staff abated and assessed or that work could be contracted out. If contracting, the City would take bids from contractors for the removal.

He said 90% of the City snow removal cases were complaint driven and it was a complaint driven ordinance. Currently, only two staff people dealt with enforcement issues, but a third person could be added if needed. He said per year there was an average of 168 complaints which divided by 2 staff members was about 84 cases per year. The bad thing was the complaints were at a specific time period where staff needed to react. The good thing was it would be spread out through two or three snow events. If taking out years 2004 and 2006, enforcement had been manageable.

He said the City's current ordinance required staff to go out twice when a complaint was received. Staff would initially go out to review the complaint and after five days return to review the complaint. If there was an abatement process, there was the physical initial, return in five days to review the complaint, and after some type of abatement, staff would go out a third time to verify the abatement was taken care of. This process affected and staff asked if they could mimic the weed/grass abatement process. Currently, the City would receive a complaint and staff would send a letter to the property owner indicating the complaint needed to be addressed. If the property owner did not comply, their property would be mowed by the City. After the first time within the calendar year, staff did not need to notify the property owner anymore.

Vice Mayor Chestnut asked why staff went out twice.

Jimenez said if it stopped snowing today at noon and staff received a complaint at 1:00 p.m. the next day, staff would go out to verify the complaint was valid. Then staff had to give the property owner five days to remove the snow, so staff had to go back out to make sure the property owner was in compliance. It required those two inspections.

Vice Mayor Chestnut said if the property owner had 24 hours or 48 hours to comply, he asked if staff could go out once.

Corliss said staff had to establish the violation, and give the property owner the opportunity to abate.

Vice Mayor Chestnut said it sounded like there were cases where the City did not give people an opportunity. After 48 hours, everyone knew the snow was supposed to be gone but if it was not, was it a legal issue.

Corliss said there was not a Kansas statute on snow removal. Staff was arguing from an analogy of the weed abatement law that all Kansas communities used aggressively in the late part of the summer. He said if there was a complaint on a property and the sidewalk was not shoveled, someone would shovel the snow and give the property owner a bill.

Vice Mayor Chestnut said if taking the assessment part out of the equation, but moving from confirming there was a violation and going back out to see if the property owner mitigated the violation and if it was well known that 48 hours was the time period, the City would receive a complaint and knew when the snow stopped, going out after 48 hours to verify the snow was or was not there, he asked why staff had to go out twice.

Corliss said the reason for going out twice, was at the first instance staff notified the property owner saying they needed to clean the sidewalk. If the Commission wanted to skip the process, the Commission needed to prepare to respond to the citizens saying they did not have a chance to shovel their sidewalk after they were informed of the violation.

Commissioner Amyx said there were 326 total cases staff responded to in 2008 and asked how many of those 326 cases took care of their problem.

Jimenez said last year staff was running into the five day compliance period, so after five days they would start all over again because it snowed again. The longer period of time was problematic if it snowed repetitively and not once every two weeks.

Commissioner Amyx asked if most people took care of the problem once confronted.

Jimenez said most people let Mother Nature take care of the problem. He said depending on what side of the street a person was on could mean all the difference in the world, whether the snow was removed. He said 9<sup>th</sup> Street was a good example because there were sidewalks right next to the curb. He said with the reoccurring snow last year, there were sidewalks that had snow for a long period of time. It became a problem because the property owner had to get the benefit of the doubt with the five day compliance period and the clock started over many times. Past history suggested that within that five day period, warmer temperatures would arrive and things took care of themselves. He said there were situations where staff would drop the enforcement action against a property owner when staff knew the property owner cleared their sidewalk and the City's snow plow threw snow back onto the sidewalk. He said those issues were case by case and staff had a good idea of those locations.

Commissioner Amyx said there were two different areas, the business areas and residential areas. Obviously, business owners should shovel their sidewalks and parking lots immediately. Most businesses downtown had contractors or employees who took care of their sidewalks and parking lots, but residential areas would probably take extra time. He said in residential areas, sometimes it took a while to find someone to shovel snow. He said if staying with the current ordinance, the ordinance should be amended making enforcement stricter by fines and length of compliance such as a 24 hour period in a business district and 48 hours in a residential district. Also, it needed to be discussed what streets needed to be addressed first.

Mayor Dever said the majority of the Commissioners thought the time frame should be shortened and he agreed. He said he would be in favor of abating and assessing the problem, but needed to make sure the Commission understood the costs, staff commitment, and the actual ability to hire enough people to abate all the areas where the snow was not removed within two days. He said the time frame could be shortened to within 24 hours.

Commissioner Highberger said the Commission could hash out the details or agreeing there was consensus that the status quo was not acceptable and ask the City Manager to come

back, in a relatively short timeframe, for a plan to make the situation better and list performance measures to help gauge performance.

Corliss said there was Commission consensus on a shorter time period and increased fines. He asked if the Commission wanted to include Commissioner Highberger's comments about focusing on high pedestrian routes as far as enforcement activity.

Mayor Dever said he did not want to be arbitrary in the City's enforcement. He said all sidewalks were important and understood there were sidewalks used more than others, but he also hated to send mixed messages because some areas might be missed.

Vice Mayor Chestnut said he still did not understand the concept of two visits. He said if they really wanted to change the mentality when talking about a level of commitment in the community, if visiting once, especially when receiving a complaint, the fact was the general public should have a good idea that if it was past 48 hours after a snow and nothing still had not been done, that person would be in violation of City ordinance. He said he thought just fining the property owner could buy the City a lot of compliance.

Commissioner Highberger said the idea of a first time notice would be appropriate and after that notice, the City could presume the property owner had knowledge.

Toni Wheeler, Legal Services Director, said the City was authorized under law to give one annual notice under the weed ordinance because there was a special state statute that was passed by the legislature. She said apparently there were a number of communities having trouble with weeds and legislation was passed. There was not a similar provision that allowed for annual notice for violation of snow removal from a sidewalk and the City would not have the same authority from the legislature to grant that one annual notice.

Corliss said the issue was whether or not the City could proceed under the Home Rule Authority.

Wheeler said staff could look at that idea if the City was not going to assess the cost back to the property owner. When assessing a cost, there was a chance there could be a

financial consequence and the law required that certain due process be allowed to give an opportunity to avoid that financial penalty.

Mayor Dever said all the information needed to be considered in the time it would take to enforce and the labor associated with the City. He said when revisiting this issue, the Commission could discuss a one time visit to address Vice Mayor Chestnut's concern. He said the Commission just wanted to shorten the timeframe and consider the abatement and assessment method. (16)

Consider approving the submittal of the KDOT Five Year Plan and authorize the Mayor to sign the Request for Construction Project.

Chuck Soules, Public Works Director, presented the staff report. He said the City of Lawrence received approximately \$1 million a year in grants from KDOT. Last year, due to the federal funding challenges, KDOT had not requested new projects to the Five-Year Plan, but KDOT was lining up projects to show the need to continue to receive federal funding.

The proposed projects included: 2<sup>nd</sup> & Locust; 31<sup>st</sup> Street Haskell to O'Connell Road; Kasold Drive, 23<sup>rd</sup> to 31<sup>st</sup>; Wakarusa, Bob Billings Parkway to 18<sup>th</sup> & Bob Billings Parkway to Legends Drive; 19<sup>th</sup> Street, Naismith to Iowa; and Kasold Drive, Harvard to Bob Billings Parkway.

David Corliss, City Manager, said this was following the philosophy when the City received federal funds from the state, to concentrate on street rehabilitation maintenance. With the exception of 31<sup>st</sup> Street, those projects were not geared toward supporting development. The City had a development policy that provided the bulk of the costs were going to be paid for by the adjoining property owners. The philosophy was getting those in the primary areas for reconstruction and substantial maintenance which would also reflect top priorities for street reconstruction from the sales tax funds.

Soules said staff needed to get an order submitted and right now Kasold between 23<sup>rd</sup> and 31<sup>st</sup> should be the first project. He said if Wakarusa fell apart next year, staff could shuffle

projects around. In looking at the current conditions of the roads that was the priority those projects were placed in at this point.

Mayor Dever called for public comment.

Michael Almon, Lawrence, said East 15<sup>th</sup> Street, which was in his neighborhood, Brook Creek Neighborhood, east of Haskell Avenue it was built in two different qualities. At one time it was a crowned and ditched road, from Haskell to Prospect was paved and concreted, and east of the City limits was paved and asphalted. About five years ago, Summit Street to the City limits was milled and overlaid, but the section from Summit west to Haskell Avenue was not milled and overlaid, he was assuming, since it was a concrete pavement and considered in better shape. He said he was not sure if Public Works could tell anyone what the specs were on that concrete section of 15<sup>th</sup> Street. He thought it was substandard because Public Works did not spec, fund or build that section of street. It was funded by the CDBG funds and he thought it was substandard. Every year they tried to get the capital improvements plan to include that section and it kept getting knocked down the list because apparently the committee decided it did not meet the criteria for improvement. Every concrete seam on that section was suffering. The potholes of the seams were patched two to four times a year. He said that section was high maintenance and there was something wrong with that pavement. He said he would like the City to look at Haskell to Summit.

Moved by Hack, seconded by Chestnut, to approve the submittal of the KDOT Five Year Plan and authorize the Mayor to sign the Request for Construction Project. Motion carried unanimously. (17)

Consider changes to the City's regulations regarding panhandling

Scott Miller, Staff Attorney, presented the staff report. He said the last time he stood before the City Commission and talked about this issue was when the City passed the Aggressive Panhandling Ordinance in 2005. Since that time, he understood City staff and elected officials were contacted and complaints were filed by citizens and business owners who thought the Aggressive Panhandling Ordinance, as currently written, did not go far enough to

meliorate the problems that existed downtown caused by panhandling. With that in mind, he was asked to look at what other cities did regarding regulation of panhandling to see if the City's approach could be strengthened in any way. He said it was fair to say when analyzing other cities' approaches there was no standard approach in dealing with this problem. Some cities define panhandling as a problem; other cities had no regulation at all. Each city seemed to try to adopt regulations that were aimed at their local conditions and their local problems.

After talking to other members of City staff and after analyzing the issue, staff decided that perhaps the most effective regulation to meet the needs of the City of Lawrence was outlined in staff's memorandum. What staff proposed was a three part legislative response to the problems that were currently generating complaints. The first step would be to amend the current Aggressive Panhandling Ordinance and to make it illegal to panhandle anywhere within the City at night.

The second step would be to define the downtown area in the ordinance and make it illegal to actively panhandle, in other words, verbally solicit for money in the downtown area at any time.

The third suggestion was perhaps some regulation on passive panhandling, which would be using a sign to request donations. There would be some regulation on that activity keeping away from doors of businesses and outdoor dining areas in the downtown area. It was very important to understand that when talking about panhandling, they were dealing with something that was an issue of Constitutional magnitude. Panhandling enjoyed the full reign of First Amendment protections as any other speech would at least to the extent that most courts defined, some were viewed as more commercial speech, but the vast majority of courts view panhandling entitled to the First Amendment protection.

Any total ban city wide on panhandling, in his opinion, would be illegal and would be struck down by the courts and violating the First Amendment. Cities were allowed in public forums to pass content neutral time, place and manner restrictions that advance significant government interests as long as they were narrowly tailored and another alternative means of

communication available to get the message out. The alternative means of communication test was probably easier to meet if allowing passive panhandling in certain circumstances. It was harder to meet if banning panhandling downtown entirely. The reason this would be limited to downtown areas because, like a lot of other cities, the downtown area in the City of Lawrence was their center of commerce in the City and drew tourism and other cities had found those were significant government interests that needed to be protected among other significant government interests.

The plan before the Commission tonight was not the only plan, but one of several plans that could be adopted. What staff was looking for was input from the City Commission to decide whether or not there was any will to do something as far as legislative response was concerned and if a legislative response was looked upon favorably, what the dimensions of that response would be so staff could draft an ordinance and bring the ordinance before the City Commission, if that was the desire of the commission.

Mayor Dever called for public comment

Richard Renner, Vaudeville Entertainment Company, said he had lived in Lawrence since 2002 and enjoyed its artistic and eclectic environment. He said he represented a group of entertainers in town that produced the Lawrence Busker Festival. It was a dream of theirs made real with the cooperation of Downtown Lawrence, Inc., the Lawrence Arts Center, the Lawrence Arts Commission, the Kansas Arts Commission, many local merchants and many performers. The Busker Festival was originally inspired by the street performers already working downtown and the need to show Lawrence residents that the need for asking money on the street as a way of life for many people. It turned out to be a great success and brought in acts from all over the area and increased the business traffic downtown by an estimated crowd of 8,000 people over the three days. They were asked by merchants and citizens to keep this as an annual event. He said it was with this concern for the continuation of the Lawrence Busker Festival and street performing in general that he had concerns about any proposed ordinance on panhandling.

In the cities that were mentioned in the legal counsel's memo, panhandling ordinances have been enacted and effectively done away with street performers. Unlike panhandling, street performers work with specific skills, do a show, and consequently ask for a tip. This would qualify as active solicitation under the staff memo and could possibly be illegal. Without this act of solicitation, there was no reason for a performer to perform on the street. He said he requested that any future considerations or studies of this matter, attention be brought to the difference between a street performer and a person who was panhandling aggressively. Much like Boulder, Colorado; Ann Arbor, Michigan; and Toronto, he would like to see Lawrence's reputation as an arts community grow and include the performance artists that work downtown streets during the Busker Festival and the rest of the year.

Phil Minkin, President, Douglas County Chapter of the ACLU, said the ACLU dealt with this problem in Kansas City and he was glad Miller mentioned the First Amendment because that was the reason he was present. He said he cared deeply about downtown and wanted it to remain a viable part of Lawrence. He said he was Co-Chair for Citizens for a Better Downtown, which lead the effort to keep downtown as great of a place as it was now. As deeply as he cared about downtown, he cared more about the country's Bill of Rights even more. He said he hoped the Commission did not feel compelled to sacrifice the latter in attempt to save the former.

Presently, there was a perfectly fine panhandling ordinance that should solve the problems everyone heard about going on without interfering with free speech and assembly. In his opinion, the problem was an enforcement problem, not an ordinance problem. In his reading of the proposed ordinance, he saw several civil liberties issues, but would focus on just two.

The ordinance read, "Recently some cities have begun to completely ban panhandling in certain limited geographical areas." He said for instance, Kansas City; Fort Lauderdale; Madison, Wisconsin; and Atlanta, were examples of cities that had adopted those bans in limited geographical areas." He said in speaking with the attorney who challenged the Kansas City ordinance, they agreed that there were serious First Amendment issues, but went ahead

and passed the ordinance agreeing not to enforce the ordinance. In his opinion, that made a mockery of the law and caused people to disregard other laws and not respect the laws they had. He thought that was a poor option.

The other issue was that it stated in the ordinance, "Because such a regulation prohibited all passive appeals for money in these areas, street musicians and other performers who passively solicit tips or payments for their performances would be confined to play in places outside the buffer areas. Active solicitations by these performers would be barred by the Downtown Panhandling Ban. Street musicians and performers who did not solicit contributions would not be affected." He said that raised several questions including if an open guitar case or hat was used in soliciting money and asked if that was a passive solicitation.

He also asked if the ordinance would apply to Salvation Army bell ringers because they were playing an instrument and asking for donations or musicians that regularly played at the Farmer's Market and accept gratuities. There was also the issue of the religious group that was frequently downtown and aggressively proselytizing, and asked if that group would be stopped by this ordinance. Over the last few weeks, he was downtown promoting passage to questions 2 and 3 that recently passed. They had buttons, bumper stickers, and yard signs for which they asked a donation and asked if that would be allowed under this proposed ordinance. He asked what about those fiendishly aggressive Girl Scouts and their irresistible cookies, and asked if the ordinance could protect him from himself. He said he strongly suggested the City Commission's action should be to ask the Police Department to more stringently enforce existing laws before taking any actions that might violate the rights of the public and still not solve the problem.

Hubbard Collingsworth, Lawrence, said he agreed with the previous speaker that it was a First Amendment right and they needed to be very careful in crafting the ordinance, which he thought the previous Commission was careful in drafting the current ordinance. The review of the ordinance needed to be an ongoing effort not only by the City Commission but staff or the appropriate overseer so that everything was up to code.

Michael Tanner, Lawrence, said he was a street musician, and had concerns about this proposed ordinance. He said he wanted to compare ordinances passed in other cities and actions taken in those cities. He said he could tell everyone first hand the actions in other cities because he came to Lawrence from Kansas City and had been a street musician in Westport and The Plaza.

In 2001, Westport security and Kansas City police officers made a decision not to let him entertain people on their street corners anymore. He said he was assaulted by police officers and Westport security numerous times. He said he made \$200 - \$250 a night in Westport and Kansas City. He had a lot of fun entertaining people, too. He said before Kansas City adopted the panhandling ordinance, banning street musicians and panhandlers, they assaulted him on numerous occasions, breaking numerous bones. He said he had a lot of evidence in his storage unit, but did not bring the evidence because he did not know soon enough this issue was on the agenda. There was a right that every American had which was the right to free trade. He asked if the only people who had the right to free trade were those who could afford a business license. He said he was a street musician and worked hard at his business. He said he had to haul his equipment downtown and had battery powered amplifiers that did not go above the illegal decibel level to keep every one happy. He said he would not consider hauling his equipment downtown and playing, panhandling, but considered it a job. He said he did not consider himself a panhandler and did not ask anyone for money when playing in the streets. He said street musicians were hard workers and not panhandlers.

Greg Seibel, Lawrence, said the options listed were what other cities practiced, but the earlier presentation implied the consideration of all three of those options. He said he did not see any justification for a ban on passive panhandling. He said someone playing on the street with a case open or can out in front that someone could put money in he could not understand any justification for banning. If trying to have a buffer zone around business entrances, with the number of small businesses right next to each other up and down Massachusetts Street, it was effectively a ban. He said he did not understand how a person could be so afraid of other

people, that they could not handle walking by someone with a sign asking for money and not saying anything.

He asked the City Commission to remember that people the Commission heard from were the people who had complaints. Just because all the Commission heard was complaints did not mean that was what everyone was thinking, but was the people motivated enough to come to the City Commission to say something. They were not going to hear from the people who enjoyed the music downtown. The Commission's discussion of constitutional issues almost sounded like their approach was what the Constitution would let them get away with. The Commission's attitude should be what level of free speech would work. He said if the Commission had to draw a line it should not be between active and passive panhandling, but active and aggressive panhandling and the things that disturbed people.

Jane Pennington, Director of Downtown Lawrence, said DLI members appreciated the Commission looking into this issue. She said it was a growing problem in the City and kept people from coming downtown to shop and enjoy the restaurants and other things. She said DLI would support whatever decision the Commission made to help eliminate that issue from the streets. At the same time, DLI hoped there would be some type of licensing or permitting legitimate street performers to continue their craft and legitimate charities to continue that activity. The last thing DLI wanted to do was take away the great character downtown which was the street musicians and other community activities that happen downtown. While DLI was hopeful something could be done to eliminate that nuisance, DLI wanted to make sure they did not crush some of the great color that happened with some of the entertainers and vendors.

Win Campbell, Lawrence, said was fortunate to be a business resident on Massachusetts Street for over 44 years. In that time, he had seen the situation of panhandling go from absolute no problem at all to one that now threatened the ability for downtown to function normally as a pedestrian shopping/entertainment venue. He said he knew they were in a dangerous situation when he had close friends and customers continually state not using downtown as a shopping destination. Particularly if those people had children, they were

bothered about bringing children into the area. He said most if not all of the problem panhandlers were not residents of Lawrence, but transients of Lawrence who heard Lawrence was a great place to come, hang out and enjoy the surroundings until they received enough money to move on to the next place. He urged the City Commission to pass an effective ordinance which would restrict the panhandling in the downtown business district.

Bill Wachspress, Lawrence, said many people knew him as the Balloon Man, and he twisted balloon animals downtown for kids for a generation now. He said he knew that downtown business people liked him because they often hired him for events. He did not think that any ordinance under consideration was aimed at him, but he was not sure how far that aim was going to be. It was not so much about coming downtown when he was not hired somewhere else. He said he saw scary people downtown, too, while he was twisting balloons, and some people asked for money and some drove Hummers. He said he did not think poor people were going downtown for the great money they made begging for spare change. Jailing those people was a lot more expensive than giving those people a \$1.00 and those people would be back, more desperate than ever. Any ordinance against poor people asking for help was treating a symptom, not the cause. Many of them were downtown election night when Barack Obama reminded them that they were their brothers' keepers and sisters' keepers. It was easy to cheer but tougher to see those people who may scare them as their brothers and sisters and instead of shoving them out of site, taking some responsibility for their well being.

Bob Schumm, Lawrence, said he has been in business downtown since 1970 and had seen the downtown change dramatically from when he first started to today. He said this was a difficult issue and he would not want to be one to tread on anyone's First Amendment rights. There were other rights than First Amendment rights and his rights as a business person, shoppers' right of privacy as the shoppers walked down the street and not to be accosted. He paid a substantial amount of property tax for the right to do business in downtown Lawrence and that presumed the fact the City was going to do what it could for shoppers to be there for him to interchange with to make a living and pay his taxes. The shopper felt there should be a level of

security and be able to move up and down the street without being frightened or asked for something the shopper did not want to be involved with. The person who wanted to speak as freely as they could had a right also and it was up to the City Commission to balance all the different rights everyone had. The City had a huge investment in downtown Lawrence. For the City not to do something to nullify the situation was very short sighted and would be a difficult financial situation for the City. Businesses depended on foot traffic to sell their wares and goods and when failing at that, they would see vacancies. He loved the street musicians and street actors. It was something that acted in favor of downtown and hoped they would keep those people in mind if they crafted any kind of ordinance and would allow that to take place.

He said from a personal situation, he walked from his business at 719 Massachusetts to 9<sup>th</sup> and Vermont to go to the bank and was stopped five times by people asking for money. He said that was a little heavy and he was resilient to people asking for money, but he had people asking him to do something about it. Somehow people think the merchants downtown controlled downtown, but the merchants did not. The merchants were asking the City Commission to do something that worked for everyone and come up with an ordinance that was manageable so everyone could proceed with their livelihoods.

Commissioner Hack asked Miller to address the comments about licensing.

Miller said when regulating under the First Amendment, one of the most important things was to avoid a very high level scrutiny the City could not meet in this circumstance in his opinion. The ordinance had to be content neutral. The City could not pass an ordinance that would allow one group of people to solicit immediate contributions because their message was liked and select another group, telling that group it could not solicit for immediate contributions because their message was not liked. That was one of the consequences in thinking about an ordinance like this. In the current ordinance, panhandling was defined as a request for immediate donations. If defining panhandling that way, request for immediate donation, it applied to people who were requesting immediate donations, a verbal request for immediate donations whether they were the Girl Scouts, church group, or requesting donation for personal

needs. None of those would really matter if they were going to be content neutral. If the City wrote an ordinance that banned active panhandling, in order to be constitutional it had to apply to the other groups as well, which would be one of the consequences.

Commissioner Hack asked if it would be possible to draft an ordinance that would license performers, but asked if there was an issue of defining a performer.

Miller said some cities had licensed solicitations in general. He said Cincinnati was one of the cities that had a solicitation license. It would be possible to license panhandlers, civic groups and musicians. The benefit of that was when someone was licensed, there was the opportunity to make certain someone did not have warrants, wanted by the police or someone who had been engaged in a pattern of aggressive behavior. He said when soliciting donations, the City could place reasonable restrictions in terms of the time and manner of soliciting. The problem was, once again, the City could not be discriminatory upon viewpoint. If issuing licenses, the City could not issue those licenses for the legitimate charities and leave out the opportunity for people who were soliciting for their own donations to have a license. The issuance of the license had to be a ministerial act. If someone met all the requirements for licensure, the City had to give that person a license. It could not be a discretionary act when dealing with licensure under the First Amendment.

Commissioner Amyx said as a downtown business owner he did not have a problem with the street musicians who had the hat out or guitar case open and asked if that would be considered the passive side of panhandling.

Miller said correct.

Commissioner Amyx asked if the City wanted to do something with the aggressive panhandler that could make the ordinance stricter without interfering with the First Amendment rights.

Miller said some cities found they could pass legitimate time, place and manner restrictions that banned active panhandling entirely in limited geographical areas. The only city whose ordinance or regulation had been tested in the published case appellate court level, that

he was aware of, was Fort Lauderdale. For instance, Fort Lauderdale and the Fort Lauderdale Beach area banned panhandling as part of the parks regulation which was challenged to the Federal Circuit Court of Appeals in that jurisdiction. There were not very many cities that he was aware of that had total bans of panhandling. One of the cities that had a total ban on panhandling in a limited geographical area both active and passive, was Wilmington, North Carolina and had run into legal problems with their ordinance. The legal precedent that was involved was not so well established that he could tell the Commission without any equivocation whatsoever that if they took one more step they were not fine. He said a step that would be more aggressive toward regulation than what was done right now would be total ban of active panhandling meaning verbal solicitations, the getting up in your face type of solicitations. That might be defensible if findings were met that significant government interests were implicated by that behavior and if the court found it was a narrowly tailored approach addressing that issue. Until a court that controlled their jurisdiction ruled, he could not tell them with 100% certainty that it would be permissible in this jurisdiction. That particular step would keep people from actively panhandle the downtown area. If they did not regulate passive panhandling, such as holding up a sign that said "Please give me a donation," that would allow street musicians or anyone else and a step that would be intermediate.

Mayor Dever said the way the memo read, the City's current code stated verbal solicitation was the trigger to aggressiveness.

Miller said no, not the trigger to aggressiveness, but the definition of panhandling in general. The current aggressive panhandling ordinance did not affect any sort of passive panhandling. For example, just sitting idly with a sign as people pass by, under the City's ordinance, was specifically defined as passive panhandling. None of the aggressive panhandling ordinance applied to that behavior.

Mayor Dever said the verbal solicitation created the actual panhandling act and then the nature of that verbal solicitation was deemed either aggressive or not aggressive.

Miller said correct. For example, if a solicitor asked for money and that person refused and the solicitor followed that person down the street continuously asking for money that was aggressive panhandling and illegal. In other correspondence, a search was conducted of police records and in a 14 month period, in the downtown area, approximately 64 panhandling related calls were identified, but the problem was there was no call code in the police department's database to accurately identify those people in those situations.

Commissioner Hack asked if the trend was increasing over time.

Miller said the Police Department had seen an increase in the amount of contacts recently. Whether that trend continued, was anyone's guess.

Mayor Dever said there were a lot of people who aggressively panhandled downtown. It happened all the time, to him, and was something they all had experienced. Whether it made someone uncomfortable, annoying or part of being downtown, it did not matter. What mattered was they had people who felt a certain way and needed to decide whether the City needed to write a rule to help make citizens feel better. He said the City needed to step up enforcement efforts downtown such as increased foot patrol or stepped up police presence downtown would inhibit or reduce the amount of solicitations. He said if the City had a rule on the books and felt like it was a worthy rule that should be written, the City should enforce that rule more.

Commissioner Amyx said in 2005 the Commission was confronted with many of the same issues as today. He said the Commission heard from a number of shoppers and people who frequented downtown. The feeling, at that time, was that there was no concern with the street musicians or with people who had their hat out, but with the aggressive panhandler that was seen today. The City Commission, at that time, asked Miller to write the current ordinance dealing with the aggressive panhandler. He said he had no problem with the passive panhandler, but there was something to be said about the individual who was an aggressive panhandler.

Commissioner Highberger said he heard directly lately from individuals who felt threatened when they were downtown and business owners who said their customers were

uncomfortable and felt threatened downtown. On the other hand, he went downtown often and was usually a magnet for solicitation. He had not encountered a situation that made him feel threatened or uncomfortable and he was trying to figure out where that difference came from.

It was a similar situation that led them to adopt this ordinance three years ago. At the time, he felt they were going about as far as they thought was legally permissible. He was still in the same place and felt comfortable with more aggressive enforcement of the ordinance on the books now. He said what the ordinance addressed was something that citizens should not need to put up with when out in public, but it was not the role of the government to take care of every situation that made people feel uncomfortable. He said he did not feel comfortable adding anything to the aggressive panhandling ordinance at this time. There were other things they could look at and other ideas to address the situation.

Commissioner Hack said her recollection was the same as her fellow Commissioners. There were some situations where people felt uncomfortable. There was a difference now between feeling uncomfortable and feeling threatened and scared. That was what she was hearing and she had felt more than uncomfortable several times downtown. She knew the Wednesday afternoons drove people nuts because of all the junior high kids, but she was used to that and was not bothered by a group of 14 year olds. She felt differently with some other folks downtown and had felt more than uncomfortable on occasion. She thought the activities had been ratcheted up from where they were when they first started talking about it. She was concerned about kids and because they were encouraging the pedestrian traffic so much and an important part of the community, if anything threatened that it flew in the face of one of the goals they have had since she had been a City Commissioner, which was to take care of the downtown and preserve it as the central business location. .

She said she also believed the street performers and musicians added an interesting touch to downtown and that part of downtown made her proud. She said the Commission was compassionate and would do whatever they could to help others. She was very concerned about the reports she was hearing about the level of requests and how that was being handled.

It had escalated and became scarier to people than just uncomfortable. Whether or not the Commission moved to the passive versus active solicitation, she would need more conversation among the City Commissioners as to what that needed to be, but to her that was a fine line between the musician with the hat or guitar box and the person asking for something.

Vice Mayor Chestnut said it was important to recognize that everything the Commission did was a balance of rights. When talking about comments regarding targeting a certain population, the Commission balanced rights on land issues every day and told developers they had to have setbacks and this was the way the property had to be developed and he did not see this issue as anything different. He said he must walk with a fast gate because he did not get solicited very much, but his kids that were 12, 14, and 16 now, could not get a half a block without being solicited. He said it was clear there were certain groups perceived as more vulnerable that were being targeted and anyone under the age of 18 was more vulnerable which was very disturbing. He said from an ordinance standpoint, something needed to change because massive unintended consequence of this issue was to start seeing a deterioration of the vibrancy of activities in the downtown area because of the increase of activity in panhandling.

He said one thing he would like to consider was licensing needed to be content neutral and did not have a problem with that. It started to address the issue of street performers and others. If people went through the process of licensing, the question was if they were content neutral, he thought it started to allow all the activities wanted and did not want, but it might be a way to allow for the activity wanted. He said the City was on the cusp of having a real issue that could tip the scale. It was a balance of rights and he understood the free speech issues. He said he thought they had to get more restrictive in his opinion. He said he liked the distinction between passive and active because the difference between active and aggressive was more difficult to interpret. If the City could allow active by licensing it was an alternative that might address this issue.

Commissioner Hack said licensing, increasing foot patrol, and more enforcement was discussed, but those had dollar signs attached and they needed staff conversation about an assessment. If they wanted more officers downtown, they would not have officers in other areas. There was a finite supply in terms of their availability and also the cost of extra licensing.

Commissioner Amyx asked if licensing would be required for the children who went downtown door to door asking for money for their organizations.

Vice Mayor Chestnut said from what he understood from counsel, the Commission had to be truly content neutral. Based on the comments received from public comment, if they were talking about some of the people being transient population, the question was if the transient would go through the effort to be licensed. He did not think there was any alternative the Commission had but to be content neutral if going that way. He said with the 20 feet buffer, he did not see that as being practical in downtown Lawrence. He understood they did not want people to obstruct doorways, but that would effectively take out all of Massachusetts Street. He did not know in an area like downtown if that made much sense. He thought the passive versus active made more sense to him.

Commissioner Highberger said he did not think this ordinance would affect what happened to someone who walked into your business and asked for money, but applied to only the public right-of-way. One could control the panhandling in their business. He said a licensing ordinance would screen out people who wanted to stand on the street corner and ask for money. His concern would be that it would damper the spontaneous music and activity downtown.

Mayor Dever said he thought part of the solution might be an act of policing by business owners and if the downtown business owner called the police, the police would respond. It would be like a neighborhood patrol.

Commissioner Hack said officers were willing to meet the merchant off-site to get the information, because of increased retaliation toward that merchant that made that complaint.

Vice Mayor Chestnut asked if there was a way to license active panhandling.

Miller said yes.

Vice Mayor Chestnut asked if it would avoid an unintended consequence. If one wanted to go on the corner of 7<sup>th</sup> and Massachusetts, if they were not actively panhandling and they had the ordinance, passive was fine. The only time the license would be required was if they would actively panhandle, which would get to some of the street performers and others who were going to have a show and ask for donation in that part of it. He asked if that was an option.

Corliss said the City could have an ordinance that would ban verbal solicitation and have a license that would allow that.

Commissioner Hack said anyone verbally asking for a donation was active. If there was a sign, that was passive.

Corliss said one issue they had not discussed yet was night time which they identified as something a number of communities had prohibited and successfully defended.

Commissioner Amyx said as he heard from people during this time of year, going out to dinner, that were solicited a lot. He said a lot of businesses took it upon themselves to tell people to stop. The business owners made calls to the Police Department and the police had been great in taking care of problems if the business owner could identify the individual. He said he did not think that any of the businesses downtown had a problem with any of the passive situations going on. It was the aggressive panhandler that bothered people. He said regarding nighttime soliciting, he thought they were heading for a situation at night.

Mayor Dever said they were not prohibiting active panhandling, which was where they were having problems. He asked if they were licensing it.

Corliss said as he understood the discussion, they were talking about allowing non verbal solicitation but prohibiting verbal solicitation.

Commissioner Hack asked if they were also suggesting licensing verbal solicitation, which was active.

Vice Mayor Chestnut said that would put the street players and everyone else back into the mix.

Miller said what he heard was to keep the ban on aggressive panhandling and perhaps include in the definition of aggressive panhandling, panhandling at night. In addition, he heard interest in licensing what would be considered panhandling under their current ordinance in the downtown area. The current ordinance did not include in panhandling anything that was passive. Therefore, the new ordinance would not include that as well so there would not be any new legislation on that and it would be allowed.

Corliss said the net effect would be that the non verbal solicitation would continue to be allowed.

Miller said correct.

Mayor Dever asked Jane Pennington if this would address some of the issues for Downtown Lawrence and the kind of thing they were talking about. He asked how they would solve a problem like this because they could not make these people disappear and needed to be cognizant of their needs and be aware they were there, but they could also make people feel comfortable walking downtown. He said they needed to balance those things.

Pennington said if the Commission made any kind of active panhandling illegal under their aggressive panhandling ordinance, that it would go a very long way to address the situation. She said that would make significant strides in the problem. Most of the business owners were not bothered by the person who was sitting there with his guitar case open or with a sign and was quietly sitting on the sidewalk. It was the people who were actively or verbally asking, whether it was aggressive or not, was the biggest issue.

Schumm said as to the issue of calling the police, in his case when he left his building at 2:30 in the afternoon to walk to the bank, should he have called the police five times and what was the burden on the police department when he did that and the intake they had to go through to send an officer out each time. He said that was not going to work and he was not going to take time to do it. The police were going to get tired of sending someone out and would be short changed anyway. Further, they did not have police patrol downtown on a regular basis downtown and had been promised police patrol year after year and as shortages

occur, they said they had to reallocate those people to other districts, and he was sure that was what was going to happen. The fact was if some people were accosted five times within 20 minutes, asking for money they felt frightened and did not want to return to that district. The problem was people in your face asking for money no matter how they asked for it. Street musicians were fine, passive was fine, but people in your face was not fine and it made you feel uncomfortable and women and children were really uncomfortable.

Mayor Dever said they would not make it illegal because they would be licensing solicitation. If someone pulled out a license, they could actively solicit.

Vice Mayor Chestnut said that was an option.

Mayor Dever said he was not in favor of licensing because it was a whole other level of bureaucracy and compliance.

Vice Mayor Chestnut said the option then would be basically taking away street performers and any kind of solicitation for charities on the street if they did not allow active solicitation. It would be the only way they could have that activity if they were strictly interpreting and staying within reasonable constitutional bounds.

Commissioner Hack said if they were doing active versus passive, then that would take care of day or night. If they had defined street musicians as passive, then the Commission was covering that base by making active solicitation illegal.

Miller said the other thing he wanted to interject was that the Aggressive Panhandling Ordinance applied city wide, not just in the downtown area. If they added a nighttime solicitation ban to the aggressive panhandling ordinance, it would apply citywide and not just in the downtown area. A lot of the cities that enacted nighttime panhandling bans were not really worried about situations like downtown because visibility was pretty good. A lot of times the panhandling that was frightening at night was being approached in a parking lot or some place like that where it was a confined space and there was no opportunity to see or be seen. If they adopted the nighttime panhandling definition in the aggressive panhandling ordinance, it would cover that behavior anywhere in the City, which was the difference.

Corliss said if it was accurate that Miller's research indicated that would not have much constitutional problem.

Miller said out of everything discussed that was the least aggressive step they have talked about constitutionally because there was a pretty substantial and significant interest in preserving safety. People felt more threatened at night when they could not see or be seen as well.

Corliss said the non verbal solicitation was something that would be difficult to infringe upon constitutionally. The verbal solicitation was something they could prohibit.

Miller said as a legislative body, the Commission was called upon to determine what significant governmental interests were affected. In other words, the City Commission made findings about why they wanted to enact something like this and the court's ability to analyze whether what the Commission was doing was reasonable or not depended on how significant the interests found were affected. Part of the process was figuring out what interests were being protected specifically that included a legislative history of that fact so if it was challenged at some point in the future, staff could advance those interests and the City legislative body had determined those interest were implicated.

Miller said the Commission had the right to impose content neutral time, place and manner restrictions of speech provided they were narrowly tailored and serve a significant governing interest and leave an alternative form of speech. He said there was an argument to be made, based upon that test and based upon the significant governmental interest found that the City could take some legislative action like that. He said it would depend upon the City's specific findings of fact and the facts of any case that challenged that ordinance.

The City Commission directed staff to prepare an ordinance that prohibits active panhandling in the downtown area and prohibits panhandling at night citywide. (18)

Receive public comment and City Commission direction concerning homeless camping. .

David Corliss, City Manager, introduced the item. He said the City Commission had a couple of contacts from citizens regarding homeless camping situations in the community. City

staff had followed direction on this issue and was willing to take additional direction. There were a number of places of City owned property, primarily City park property that was occasionally used without City approval for camping. Staff periodically looked at portions of this property and followed a process where staff posted a sign at the property advising that items that had been left in the park would be cleaned out. The City had a code prohibition against overnight staying in parks. For example, the property to the east of the Riverfront Mall, there was a conservation easement on that property that prohibited any kind of human improvements or structures on that property. There were comments regarding that area and he received an e-mail communication from Hilda Enoch along with other comments as well. He said he could not recommend allowing any type of permanent or temporary camping on City property because City property was not conducive to camping for health and safety reasons as well as a potential liability associated with camping at that site.

Commissioner Amyx asked if the City Commission addressed illegal camping and the panhandling ordinance at the same time in 2005.

Corliss said the Commission addressed public right-of-way camping where someone would sit down on a public sidewalk and decided they wanted to stay there. The City did not have an ordinance that looked at all City property and prohibited someone from establishing a campsite.

Mayor Dever called for public comment.

Hubbard Collingsworth, speaking as chair of the Community Commission on Homelessness Concerns, said during their meeting there were people who were mildly upset to totally outraged by what happened when city staff cleaned out the campsite. He said he had asked, in the past, for the Commission to look at the enforcement of the ordinance and who was in charge of the oversight of the ordinance. He also asked Corliss to provide before and after photographs of the campsite that was cleaned out. He said he fully understood the meaning behind the ordinances and the conservation area. He said he suggested the City be very careful enforcing the ordinance and was looking for more of a patrol effort.

He said they were coming up on a “point in time count,” required by Housing and Urban Development and lost a primary opportunity due to tax dollars that went to the community outreach specialist which was wasted because the homeless had developed trust and now those people were totally scattered and they could not get an accurate count. If they had been a little more diligent in some areas, they could have avoided this issue and would have been ahead, but they needed to learn from this situation and move ahead. He said they had been developing trust amongst the camping homeless and anything they could do to gain that trust back would be in their best interest in the long run.

Michael Tanner, Lawrence, said he thought he heard Corliss say that there was no ordinance against camping in the City other than a violation to camp in City parks.

Mayor Dever asked if he wanted a clarification on urban camping or camping within the City limits.

Tanner said yes because he heard Corliss mention that in the City there was no ordinance other than in parks.

Mayor Dever asked Corliss what the rules were for camping.

Corliss said the City did not have an ordinance that prohibited camping in City parks, but had an ordinance that prohibited being in City parks, after certain hours. The City also had, in some cases, a conservation easement on property that prohibited any structures being on the property and obviously, as the City being the owner of the property the City could dictate what would be on the property at any time. It was not legal to camp in City parks in the sense that people did not have the permission of the property owner.

Tanner said Corliss mentioned there was no City ordinance against camping in City parks other than limited hours a person could be in the park.

Mayor Dever said he would like to receive a list of Tanner’s questions in order to give good answers and if Tanner had comments about what occurred or how to shape or address this issue.

Tanner said in the daytime, during the regular hours the park was opened, it was legal to take a nap. He asked if it was illegal to build in a specific conservation area.

Mayor Dever said on this specific deed, there was a conservation easement stating it was illegal to build any structures, picnic tables, residences or buildings or any kind of improvement. There was a deed signed in 1989 that prohibited any structure, permanent or temporary.

Tanner said the area they were in was not a conservation area. The sign said that it was a habitat restoration area.

Mayor Dever said it was his understanding that there was a conservation easement which was a legal document that was set up to protect critical habitat or any kind of habitat that an owner of a piece of land wanted to administer with the Parks and Wildlife Service. It was a legal document. What it was called on a sign or in general, might vary. He said it was a document developed by the State of Kansas and the City of Lawrence.

Tanner asked if it was legal for him or any other homeless person to protect himself from freezing to death. He asked if it was legal in the City limits to build a tree house.

Mayor Dever said he thought a permit would be required and it was obviously legal to protect yourself from freezing in the community.

Tanner asked about the people who were barred from the Lawrence Community Drop-In Center and the guy that died under the bridge. He said from information he gathered on the street, that guy could not get into the Salvation Army at a time the temperature dipped in the 20's. The police found him later and said he died of natural causes, but he did not believe that and believed the guy died of hypothermia and froze to death. He said there was an emergency shelter built on the Wildlife Restoration Area. There were also other structures that were previously built in that area. One of the structures was a 30 x 70 concrete pad and a place he called "Check Point Charlie". He said he hung tarps that he bought with his money, that he earned playing the guitar in the streets, and tried to cover entire concrete pad. Throughout the summer, many homeless people came to him for shelter and stayed dry because it had a 6 inch

retaining wall and had to build an irrigation system to where the water would drain. It took a lot of hard work. He said they housed more people at times than any of the shelters could house. When people came arrived, there were areas where those people could stay dry. Not just local homeless people, but people passing through on the trains were helped. He said they picked up everyone's beer cans, trash, and cleaned everyone's camp that left a big mess and hauled that trash out of that location. He said when the City employees came in with their machines and the damage they did not only did they sustain great losses, but so did the wildlife. He said they lost between 300 – 500 trees when the City came down. He said the concrete pad had lights, a burn barrel, a propane heater, and a very large fire extinguisher, which was worth a lot of money which the City took. The City did not give those people days to get out, but less than 24 hours. If they had 3 days to get out, he would have been able to get everything out of there.

He said when the guy died under the bridge they survived the cold snap because of the emergency shelter. He said with the City taking out those emergency shelters, could be a death sentence for people. He said he was a street musician and made most of his money at night from college kids. He said the Shelter would not allow him to work as an entertainer because he had to be in by 8 p.m. at the Lawrence Community Shelter and by 9 at the Salvation Army so he could not make money to support himself. Some people did not want to go to the shelters because they contract diseases in the shelter. He said last year he stayed at the Salvation Army and got the flu four times with being in such close quarters with people. Staying in the shelters was not an option for him.

He said two people were found dead on the site, which was a tragedy. They were always going to have people that go to the river to do drugs or drink alcohol. Unfortunately, those two kids were a couple of kids doing drugs and told them they needed to get out of his camp. When the police came in and investigated their deaths, he was taken downtown. He said they were told if they cooperated with the Police, the police would not retaliate against them for being down there, but yet it was police officers that notified the City of their location. There

was a matter of trust there between the homeless community and the City in that respect because the City betrayed their trust and did not keep their word.

He said he had problems with City codes in the past and problems with city code enforcement, in particular, because there were certain properties around the Community Drop In Center, that were in violation of city codes. He said he had been trying to get the City to enforce City Codes against James Dunn and his property for a year and a half. He had letters stating the City went to the property and found the property to be in violation of City Code. He said he came to City Hall to read the City Code books and found James Dunn to be in many violations of city code, which he tried to address. He said he would like to get this issue on next week's City Commission agenda.

Mayor Dever asked what issue he was referring to.

Tanner said it was the issue of City Code enforcement.

Mayor Dever said he had been talking for almost half an hour and there were other people that wanted to speak. If they were going to start planning next week's City Commission meeting, they needed to plan that another time. This meeting was to strictly talk about camping and associated issues. He wanted to make sure Tanner understood and did not want to go off in another direction because other people wanted to speak.

Tanner said the area they were camping at was ideal because it was within three blocks of facilities so people could not say they did not have access to facilities. He said he hoped the City would be compassionate to him and his homeless brothers and sisters and help them solve the dilemma of homelessness and defend themselves from the elements. They believed as humans they had a right to do that, regardless of whose property they were on.

Hilda Enoch, Lawrence, said she was a member on the Coalition of Homeless Concerns and had been for 30 years. She said Lawrence was lacking shelters in this community and the weather had gotten very cold. She said she never had met Tanner before tonight and did not know he would be speaking. She said it was a great offense to human beings that were vulnerable and particularly as the weather got colder and the fact that there was no place the

City tolerated outside camping. She hoped there could be a place set aside for outside camping for people that for one reason or another, their own reasons for not staying in the shelter. Many people were turned away from the shelters every night and the restrictions at the Salvation Army were much tighter and there was no room for people that the community needed compassion for and hoped they solved this issue.

Dr. Jeanette Parker, Lawrence, said she wanted to let the City Commission know that as an aspect of national scholarship, she attended the National Center Resources for the Homeless in California for compassionate care for the homeless. She was selected for this honor because it was unfortunate that the City of Lawrence was considered the second meanest City in the entire United States toward the homeless only to be topped by Sarasota, Florida.

She said she wanted to put a personal face on the issue of homelessness and people who did not use the City shelter for whatever reason. She said she wanted to talk about two personal cases she had worked with in the last year and a half. One of those cases was a Native American man who was a veteran and had a long term injury. That man attempted to try and receive services in the City of Lawrence for close to two years and during that time was not able to receive the services he deserved and needed. He was eligible for veteran services and could have had a waiver for \$31.00 a day to provide him housing so he would not have to camp out. He said his Native American heritage made camping an option that was better than a crowded situation within the shelter. Because of his brain trauma injury, he had difficulties with continued anger management and impulsiveness, therefore close quarters within the shelter he had problems with aggression between him and others and suffered retaliation due to his racial and Native American status.

She said the other person she worked closely with in the last two years was a gentleman who fled from a disaster site at Hurricane Katrina and had trouble with dealing with close quarters because of issues of post traumatic stress. She said she believed there were reasons for people to be in the non-shelter environment. The shelters were over filled many times and

due to the quota system, people were turned away. The option to be in a shelter was not always available to people.

She said she recently took part in legal training with the National Law Center for Human Rights and Homeless out of Washington, D.C. It had become increasingly possible that, a city might find itself facing, an international treaty human rights legal questions, regarding some of those situations in addition to constitutional questions.

Greg Seibel, Lawrence, said he had read the conservation easement made with the State of Kansas and it did mention improvements and structures, but it also specifically mentioned cutting trees. He said whatever the City was trying to mitigate, they did far more damage and violation with the conservation agreement with the State of Kansas by cutting all the trees and destruction going in to remove this property. He almost understood the City's perspective of not wanting people camping on their property because of a lack of services and facilities, but when they had cold weather coming and the result of taking actions to put people in more difficult situations and where they had people freezing to death already, then this action did not make sense to him at all.

He said he was thinking back to the topic discussed earlier and people shoveling their sidewalk. All people had to do was shovel their sidewalk and were given five days to do it. Here there was a group of people who were told to remove their possessions where they had been living and established and had less than 24 hours to do it. The City then came in and confiscated and destroyed everything they had there. The way this was dealt with was outrageous.

Loring Henderson, Director Lawrence Community Shelter, said he was closely associated with this issue and knew many of the people who were camping and lost their place to camp. The City funded outreach workers stated this issue had been a big setback because they had established relationships and were working with several people to get them out of homelessness, and now they could not find them. He said that was fact and unfortunate.

He said there was not enough room in the shelters and people were camping there because they needed a place to go. He said he was present to share concerns and the degree of being upset that this happened, but as a community they needed to discuss the issue and resolve in some way, how to house those people. He was a member of the Community Commission on Homelessness, and asked that the City Commission refer this item to the Community Commission on Homelessness and they would do what they needed to do to come back with a proposal.

KT Walsh, Lawrence, said she wanted to fill in a gap about the conservation easement. She said that was when the Riverfront Mall was being built and East Lawrence was concerned the area was going to be paved over as a parking lot so the City of Lawrence negotiated the conservation easement to preserve green space because they took out so much habitat putting in that mall. It was crazy the City went in with bulldozers and she was sad about the trees and people being driven further down the river. She said she hoped there were no more plans to do any more bulldozing and piling up people's belongings. She said a couple of people died doing drugs and that was sad and drug use happened all over Lawrence all of the time. It was no reason to drive people out of a place where they were living to try and stay out of the cold because they did not have enough beds. She said last night at the East Lawrence meeting they discussed this and it was hard for her to fathom why this was done at this time.

Mayor Dever said he apologized personally if the City did anything unfair or unkind, upsetting the balance at that location. He said they would hear about what occurred and see how the City could do better in the future and asked Corliss to provide some history on why the City removed the material from the area.

Corliss said the City Commission had directed staff to periodically go through parks, including this area, and give one day's notice they were going to remove materials that indicated there was camping. Staff had done that periodically, and if the Commission wanted City staff to stop, they would.

Mayor Dever asked if this City Commission had directed staff to handle that situation in that way.

Corliss said the previous Commissions had directed staff and it was a long standing practice as the owner of the property to do that. Again, if the City Commission wanted staff to stop, they would. He said the City needed to recognize its obligations under the conservation easement. He said Mark Hecker, Superintendent of Parks and Recreation, indicated 8 – 10 trees were removed to gain equipment access to the piles of trash that were removed and staff could respond to that issue.

Mark Hecker, Lawrence Parks & Recreation, said staff had to remove a few trees because there were such large quantities of material at that location. There were five dump truck loads and two 40 yard dumpsters full of materials. A lot of it was building materials such as lumber, windows, pipes, and a lot of things that staff had to have bigger equipment to get in and get that material out of there. He said staff was very selective in what trees were cut because it was a restoration area and looked at dead trees and places staff could go in with the least amount of destruction. It was a park and realized that because staff maintained parks all over the community.

Mayor Dever asked how staff gave notice to the occupants.

Hecker said the way notice was given for the last for four or five years were with posted notices where staff would go in with the Police Department and post notices in various spots in and around the campsites to inform the people that the removal of materials was going to happen the next day and if they had anything they wanted, they needed to take it with them. He said staff had not been through this area enough because the amount of accumulation was more than staff ever dealt with. He said the last time they were at that location was April or May. He said staff should be doing a monthly inspection of all those properties. It was not just this property, but the Burcham Park area, and the Riverfront Park. It was all along the river on both sides and the Brook Creek Park area.

Corliss said that was the previous direction in the past and if the Commission wanted to change that direction, staff would respond.

Commissioner Hack said the Commission should take the offer of the Community Commission on Homelessness. Parks and Recreation was acting on the direction of the City Manager who was acting on the direction of City Commissions that those were unsafe and unsanitary conditions and had the potential of being dangerous areas. She did not know if this site was one of those areas because she was not down there, but that had been the City Commission's direction. The conservation easement was something they wanted to protect the wildlife in the area and when there were a number of people in the area, it was not wildlife conducive.

Vice Mayor Chestnut said he appreciated the comments and there were a number of people present who worked diligently for a number of causes for the homeless. He said he agreed with Commissioner Hack on working with the CCH to talk about communication in particular. He said several of the public speakers said this was preceded by three deaths. He said they should take that into consideration and sort of passed by that. This was on public ground and the City Commission had responsibility to make sure they were protecting the public. He did not take that lightly and understood and appreciated the challenges with the homeless population, the upcoming weather, but preceded by three deaths was the preamble to a discussion and had to take pause by what they were saying. He said that matter was serious and had the balance of rights. There were rights they wanted to appreciate in the homeless populations, but had the responsibility to protect the public on public land. He said the comments that concerned him about the public welfare and safety were some of the comments that the fact that the enclosed nature of the shelter and had people that had issues with anger management and post traumatic stress syndrome, which were big issues that he appreciated. They were now moving to an uncontrolled situation on public land, which meant there was a possibility of significant issues that they were responsible for on public land. If they had a significant violent act, any kind of hazard such as fire or anything else, they had serious

responsibility as a municipality. This was a difficult situation, but not an acceptable solution as far as camping because it presented a significant safety hazard for the people participating.

Commissioner Highberger agreed the Commission should take the offer of the Community Commission on Homelessness to look at the issue and give a suggestion. Obviously, turning a blind eye on the situation was not the way to go but the shelters were full and winter was coming, they needed to do something and hopefully, the CCH could provide suggestions.

Commissioner Amyx said he did not have any problem referring this item to the Community Commission on Homelessness. He said he would take the responsibility as a Commissioner for the previous Commission giving direction to staff that the 24 hour notice be given. He said the problems were happening on public ground and the City Commission had to take this responsibility seriously. He said the City was opening themselves up to litigation in the future and something they all took very seriously. He said he was concerned that a shelter was being run on the river bank. He said if they were going to change the policy on notification that was fine. They needed to have a serious discussion about camping because in the end, the City was responsible because it was City property.

Mayor Dever said it was not the City Commission's responsibility to solve all the problems tonight. He thought they just wanted to discuss it and give clarification on the history and what went on.

Moved by Amyx, seconded by Hack, to refer the item of camping on city property to the Community Commission on Homelessness. Motion carried unanimously. (19)

Receive staff report regarding sales tax referenda items.

David Corliss, City Manager, presented the staff report. He said staff wanted to provide the City Commission with the beginning of the implementation of the voters' approval of the sales tax initiatives. He said the important ordinance documents would be on the City commission agenda next week along with an ordinance establishing a Sales Tax Audit Committee. He said it was important the City Commission look at the wording. It had been

staff's recommendation the way the language was set out in the sales tax items that this would be a committee that looked at revenues and expenditures after the fact confirming that the money was spent as authorized. He said it was very important in getting those documents to the State Department of Revenue and confirmed the State received those documents so the sales tax would become effective on April 1, 2009. There were a number of work related items associated with these items. He said there was no money other than sales tax money for running public transit next year and they would not be getting any sales tax money until June. Staff was working on transition and would tell the City Commission more about that when doing more inter-fund transfers in order to continue to operate the bus system, which was planned if the sales tax passed. He said the Mayor, him, and other staff members were going to be meeting with KU officials Thursday morning talking about a number of items including the hiring process for a new Transit Administrator, finalizing contracts with MV Transportation, how they could begin to look at their routes together and do route planning. He said they would need a consultant to help them with that.

There was also information in regards to the Burroughs Creek Trail as far as the acceptance of the grant. He said he was talking with staff in the next steps of design to involve the neighbors and adjoining property owners to finalize that design to begin construction of that project, the latter part of next year.

Moved by Amyx, seconded by Hack, to receive the report and direct staff to place the items on the November 18, 2008 City Commission agenda. (20)

**PUBLIC COMMENT:**

Greg Seibel said he would like to make three points. He said he wanted to remind the City Commission the deaths they were talking about during the camping agenda item were outside the encampment in question. The second issue was he was bothered by the fact the City Commission took follow up questions during the panhandling item from business owners only and no one else. He hoped they would take time to read his e-mail comments.

Mayor Dever said they were answering his question but would take the time to read his comments.

Steve Braswell said he wanted to make a comment on behalf the Lawrence Association of Neighborhoods. He heard Mayor Dever talk about tax issues that just passed and hopefully it put to rest the question of how much support those issues received in this community.

He said with the Audit Commission, they would like to see broad community representation on this audit group and see someone from their association on that Commission. The City Manager came to one of their meetings and talked about the tax issues and he asked about the audit group specifically and believed the comment was that they would deal with that later.

Mayor Dever said he thought most of those items were addressed on the material attached to the agenda.

David Corliss, City Manager, said the ordinance staff worked on had a five person committee appointed by the Mayor with the approval of the governing body, like the other 40 boards and commissions and there were staggering terms and the duties of the committee, which was to verify the approved sales tax revenue was being used properly and in accordance with the purposes set forth. There was not a specific designation for any of the five members. The City Commission could make that decision. He said he fully expected the group to want to know the good auditing standards and define and track where the revenue came from and take a look at the expenditures to confirm the money was spent to fix a road or other things. The committee was not designed as the policy making board, but the confirming board that those expenditures had been used appropriately. He said he did not see the committee had to do much work until there was money to spend, which as indicated would be in June. The City Commission had opportunity to decide on whom to appoint between now and then. He thought it was important as they enacted the ordinances for the sales tax that the City Commission consider and adopt the ordinance creating the audit committee because it was following through on that language.

The City Commission was the Steering Committee and would decide where the money went, although largely, the money has already been decided where it went through the ballot language. He said he saw the value of the audit committee primarily as confirming the expenditures had been validly spent and in eight or nine years when asking the voters to continue the sales tax or whatever was decided at that time, staff would be able to point at a great track record of fidelity to the sales tax proposals.

Commissioner Hack said the City Commission tried hard to make sure all the committees were broad based and it would not make sense for this to be different. It was a broad community and 70% vote showed the community was in support of all three of those measures.

Mike Tanner said the City Code issue with camping was brought up in the discussion. He said he wanted to present a possible solution. There was a 30 x 70 concrete slab on the edge of the restoration area that would make an excellent emergency shelter if the City could supply water and plumbing at that location.

Commissioner Amyx asked Tanner if he understood the City Commission referred this item to the Community Commission on Homelessness.

Tanner said he was just offering a solution. He said he wanted to ask about bringing up the City Codes Enforcement issue on next week's agenda. He asked for direction on how to get that on the agenda.

Mayor Dever said Tanner should meet with City staff and discuss the items he would like to address. He said many times the agenda was planned weeks ahead of time, but added this issue at the last minute to this agenda.

Tanner said city codes were enforced on the river, but yet staff was not enforcing the City Codes against other property owners.

Commissioner Hack said that was not happening.

Mayor Dever said if he had constructive comments, he would appreciate that but did not want to question people's character at this meeting. He said if he wanted to present fact and state his opinion, that was fine but not about people's character who work for the City.

Tanner said people's integrity was a concern to him.

Mayor Dever said this was not the forum to discuss people's integrity. He said if he had a complaint he could talk to a staff member about that.

Commissioner Highberger said he would like to make a recommendation for staff to investigate Mr. Tanner's allegations and report back to the Mayor to determine if this item should go on the agenda.

Corliss said Mr. Tanner needed to give the City Manager's office the address which he thought they did not enforce the code on and they would provide the report to the Mayor.

#### FUTURE AGENDA ITEMS:

- |          |   |
|----------|---|
| 11/18/08 | · Consider unanimous recommendation from the Traffic Safety Commission to approve a pedestrian activated crossing on Peterson Road, west of Arrowhead Drive.  |
| 11/25/08 | · Approve revisions to Downtown Design Guidelines. (PC Item 6; approved 8-0 on 10/20/08)  |
|          | · Adopt maximum assessment ordinance for Stoneridge and Kelly Drive Right Turn Lane Benefit District  |
| 12/09/08 | · Conduct public hearing to discuss the condition of the dilapidated structure at 1207 E. 13 <sup>th</sup> Street and to consider declaring the structure unsafe and ordering its repair or removal within a specified period of time.  |
|          | · Receive staff report on economic development issues and policies.   |
|          | · Consider changes recommended by the Eco2 Commission to be adopted into the Eco2 Plan for Douglas County.  |
|          | · Status update on Baldwin Woods Open Space Project.  |
| TBD      | · Consider approving Comprehensive Plan Amendment CPA-2008-6, amending Horizon 2020, Chapter 14 Specific Plans, to add a reference to and incorporate the West of K-10 Plan and adopt on first reading, joint City <a href="#">Ordinance No. 8340/County Resolution No. _____</a> approving CPA-2008-6. (PC Item 5; approved 6-2 on 10/20/08) |

**ACTION:** Approve CPA-2008-6, a Comprehensive Plan

Amendment to Horizon 2020, Chapter 14 Specific Plans, and adopt on first reading, Ordinance No. 8340 approving CPA-2008-6, if appropriate.

- Consider the following items related to Lawrence SmartCode (this item will be heard after the November 18, 2008 Study Session):

- a) Consider approval of CPA-2007-6, a Comprehensive Plan Amendment to Horizon 2020 by creating Chapter 15 – Place Making to ensure proper comprehensive plan language is in place for the proposed Lawrence SmartCode in the City of Lawrence. (PC Item 13; approved 8-0 on 5/21/08)

**ACTION:** Approve CPA-2007-6, an amendment to Horizon 2020 by creating Chapter 15 - Place Making, if appropriate.

- b) Consider approval of CPA-2007-7, a Comprehensive Plan Amendment to Horizon 2020, Chapter 14 Specific Plans, to add a reference to the Lawrence SmartCode Infill Plan. (PC Item 14; approved 8-0 on 5/21/08)

**ACTION:** Approve CPA-2007-7, an amendment to Horizon 2020, Chapter 14 Specific Plans, if appropriate.

- c) Consider adopting Text Amendment TA-11-24-07 regarding the Lawrence SmartCode and, Pursuant to the provisions of K.S.A. Chapter 12, Article 7, enacting a new Chapter 21 of the Code of the City of Lawrence, Kansas, establishing comprehensive zoning regulations and other land use regulations. The “Lawrence SmartCode” is an optional development code that is parallel to the City’s existing zoning and subdivision regulations and affects all property within the corporate limits of the City of Lawrence, Kansas. Copies of the “Lawrence SmartCode” are available for review at the Office of the Lawrence-Douglas County Planning Department, City Hall, 6 E. 6th Street, Lawrence, Kansas. The “Lawrence SmartCode” is also available at [www.lawrenceplanning.org](http://www.lawrenceplanning.org). Adopt Ordinance No. 8286 on first reading regarding TA-11-24-07 for the Lawrence SmartCode. (PC Item 15; approved 8-0 on 5/21/08)

**ACTION:** Approve TA-11-24-07 regarding the Lawrence SmartCode and adopt Ordinance No. 8286, if appropriate.

- K-10 and Farmer’s Turnpike Plan.
- Approve Text Amendment TA-06-12-08, to Section 20-810 of the Subdivision Regulations to clarify the natural resources and environmentally sensitive areas that are to be protected or preserved. Initiated by County Commission June 23, 2008. Adopt Ordinance No. 8317 on first reading for TA-06-12-08, to Section 20-810 of the Subdivision Regulations. (PC Item 3; approved 7-0 on 8/25/08)
- Consider approving Text Amendment TA-12-27-07, revisions to multiple sections of the City Development Code to revise the Protection Standards

for Environmentally Sensitive Areas and to provide more precise definitions. TA-12-27-07 with revisions to Sections 20-1101, 20-1109 & 20-1701 PC; item 18; approved 7-1-1 on 7/23/08 meeting. TA-12-27-07 with revisions to Sections 20-701 and 20-702 to maintain consistency throughout the Code; PC item 9; approved 7-0 on 9/24/08)

**ACTION:** Approve Text Amendment TA-12-27-07, revisions to Sections 20-701, 20-702, 20-1101, 20-1109 and 20-1701 of the City Development Code to revise Protection Standards for Environmentally Sensitive Areas and provide more precise definitions, if appropriate.

- Adopt on first reading, [Ordinance No. 8300](#), incorporating by reference, a Text Amendment (TA-04-03-08), to Chapter 20 of the Lawrence City Code (Land Development Code) to define and permit various homeless facilities. (Text Amendment approved by City Commission on 10/14/08).
- 2009 Legislative Priority Statement.

Moved by Amyx, seconded by Chestnut, to adjourn at 11:45 p.m. Motion carried unanimously.

APPROVED:

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Michael H. Dever, Mayor

ATTEST:

\_\_\_\_\_  
Frank S. Reeb, City Clerk

CITY COMMISSION MEETING OF NOVEMBER 11, 2008

1. Ordinance No. 8345 – 2<sup>nd</sup> Read, “No Parking”, E side of Jana between Harvard & Holiday.
2. Ordinance No. 8346 – 2<sup>nd</sup> Read, TSC – no parking N side of Eisenhower & E side of Emerald.
3. Ordinance No. 8343 – 1<sup>st</sup> Read, Rezone – (Z-08-15-08) .134 acres, U to RM32, 1232 Louisiana.
4. Ordinance No. 8341 – 1<sup>st</sup> Read, (CPA-2008-04) Amend Chapter 6, New Commercial areas & Map 6-1 for inconsistencies.
5. Ordinance No. 8342 – 1<sup>st</sup> Read, (CPA-2008-05) Amend Chapter 6, Correct Policy No’s under Goal 3.
6. Preliminary Plat – (PP-08-10-08) 1 lot, .16 acre, 825 Illinois.
7. Ordinance No. 8344 – 1<sup>st</sup> Read, Text Amendment – (TA-08-15-08) Light Equip Sales/Rental Uses, in CN2.
8. Lawrence Freenet 3<sup>rd</sup> quarter report
9. Contract – Black & Veatch, Anaerobic Digester Process at Kaw Wastewater Treatment Plant.
10. City Manager’s Report.
11. 8 Public Parking Space Uses – Paul Werner Architects, 1123 W 9<sup>th</sup>.
12. Vacation Order – Unused Utility Easement, Lot 2, Blk A, Haddock Add.
13. Vacation Order – E 10’ of ROW for Arkansas adjacent to Lot 70 & W 25’ of Lot 68, Block 34, W Lawrence Add.
14. Ordinance No. 8350 – 1<sup>st</sup> Read, reenact Rezone (Z-04-08-08) 155 acres, NW corner of N 1800 Rd & E 900 Rd, I-70/K-10 Business Park, from A to IG.
15. Resolution 6813 – unsafe structure at 617 W 4<sup>th</sup>.
16. Ice Removal Ordinance changes.
17. KDOT 5 Year Plan – Request for Construction.
18. Panhandling Regulation discussions
19. Homeless Camping discussions.
20. Sales Tax referenda discussions.