

Memorandum

City of Lawrence

Planning & Development Services

TO: David L. Corliss, City Manager

**FROM: Scott McCullough, Director
John Miller, Staff Attorney**

**CC: Cynthia Boecker, Assistant City Manager
Diane Stoddard, Assistant City Manager
Toni Wheeler, Legal Services Director**

Date: February 11, 2009

RE: Homeless Facilities Text Amendment Update

On October 14, 2008 the Lawrence City Commission gave initial support to a text amendment related to homeless facilities that more comprehensively addressed their location and use standards. The text amendment was requested by the Lawrence Community Shelter to provide flexibility in their objective to relocate within the city and permit shelters in industrial districts with a special use permit. The amendment was broadened in scope by staff to more comprehensively address homeless facilities from the Development Codes' perspective and also to facilitate a program initiated in Lawrence in 2008 known as Family Promise. This memo addresses concerns submitted to staff after the City Commission's initial approval for the religious institution portion of the text amendment but does not address the portion related to permitting shelters in industrial districts. Staff plans on separating the two issues and submitting the portion related to permitting shelters in industrial districts to the commission within a few weeks.

Currently, the Development Code permits Homeless or Transient Shelters (shelters) with a special use permit in the RSO, RMO, CO, CD, CC, CR, CS, GPI, and H districts. The code also permits shelters as an accessory use to a Campus or Community Religious Institution with approval of a special use permit. Campus religious institutions are permitted in the RM12, RM12D, RM15, RM24, RM32, RMG, and RMO. They are not permitted in any RS district. The code does not permit shelters in Neighborhood Religious Institutions. Neighborhood institutions are permitted in every RS and RM district. Staff understands that several of the religious institutions participating in the Family Promise program may qualify for either type of institution and exist in RS and RM districts, meaning that certain institutions would not be permitted to participate, even with a special use permit, under the current code.

Adoption of the new regulations requires approval of two readings of the adopting ordinance. After the commission's initial approval, the city received a letter concerning

the legality of the language from a member church participating in the Family Promise program and also several concerns from Family Promise representatives. As staff understands them, Family Promises' main concerns with the proposed amendments are related to other city code requirements in the fire code and also processing issues to implement the proposed amendment. Staff has interpreted the current fire code to require that religious institutions fully comply with the code if overnight sheltering occurs. Several institutions in the city are code compliant and several that desire to participate in Family Promise, as staff understands it, are not.

It should be noted that Family Promise implemented the program in several religious institutions and opened a "day center" use without site plan approval. Staff has informed Family Promise that they are in violation of the current code. They stated to staff that they are working on the site plan application.

The city's efforts have focused on researching the concerns noted above and seeking ways to balance the interests of neighborhoods, social service providers, and legal concerns. The city's Legal Department has reviewed the ordinance language in order to provide the City Commission with an opinion on whether the ordinance will meet legal scrutiny if challenged in court. The first and second reading of the adopting ordinance of the text amendment has been delayed, while this review is completed, in order to provide the commission this information and options to move forward with this important policy matter. Legal issues include:

- Compliance with the Religious Land Use and Institutionalized Persons Act (RLUIPA).
- Freedom of religion and religious practice protections of the United States and Kansas Constitutions.
- International Fire Code issues related to occupancy use changes for overnight sheltering in religious institutions.
- The City's police powers to regulate religious institutions as a land use.

The Legal Department has completed a thorough review of the associated legal issues and has concluded that, in an attempt to reduce the risk that a court would find the City in Violation of RLUIPA or the Kansas and United States Constitutions, the proposed code amendments should include the following:

- Provide a definition of homeless.
- Standardize the permitting requirements for shelters to be more consistent with how other land uses are regulated in the Development Code. Options include permitting shelters in religious institutions as an accessory use either by right with no limitations, by right with certain limitations, or by special use permit.
- If permits are required, make clear that there are neutral, measurable and objective standards for considering and approving or denying permits.
- Provide a distinction between social services traditionally provided by religious institutions compared with services provided by secular institutions.
- Remove the limitation of sheltering only families or families with children to avoid potential constitutional or RLUIPA claims.
- Remove the term "or to persons at risk of being homeless" from the code to avoid vagueness or claims of being overly broad.

A review of issues associated with other stated concerns includes:

- Whether the city's fire code should be modified to remove certain requirements for shelter use in a religious institution that would require costly retrofitting to comply, while maintaining other requirements that would serve the purpose of protecting life and property.
 - Discussion – The major issue with permitting overnight sheltering in religious institutions is the requirement for structures to comply with the fire code, which may include a requirement to have sprinklers installed and operational, and/or maintain a fire alarm system with manual pull station, and/or provide other forms of compliance measures so that minimum fire protection standards are established for the use. The Fire Department notes that several religious institutions do have sprinklers, but some that desire to participate in Family Promise do not. It is a policy debate on whether the fire code should maintain all of the current standards for the overnight shelter use and require Family Promise and similar programs to operate within the framework of the code or whether the code standards should be reduced to accommodate programs desiring to operate in the city in this manner.
 - Options - The options available include (1) maintaining the fire code as it currently stands, which may require religious institutions to provide sprinklers and fire alarms and which could limit the number of religious institutions available for the Family Promise program, or (2) modify the code to some agreed upon minimum life-safety standards and permit Family Promise, and programs like it, to operate in institutions that do not currently meet all standards of the fire code.
 - Fire Code Board of Appeals – On February 5, 2009, the Fire Code Board of Appeals discussed the two options noted above. The board recommended option one (1) above. Their minutes are attached.

As mentioned, the current code does not permit sheltering associated with religious institutions in RS districts. The City Commission, as staff interpreted it through the commission's support for the text amendment, took action to support shelters in RS districts when they are limited in occupancy and calendar days and when associated with religious institutions. Staff believes an appropriate code would permit limited shelters in any type of religious institution and in any zoning category up to a certain threshold, as limited shelters are, in staff's opinion, a compatible land use in the context of other types of recreational and educational accessory uses that the code currently recognizes for religious institutions. After that threshold is exceeded, a special use permit would be required and analyzed per code standards for land use compatibility.

Recommendations to Resolve

Given the conclusions of the legal review, staff recommends that the following two options should be discussed and considered in order to resolve the matter relative to permitting shelters in religious institutions.

Option 1

1. Permit by right, as an accessory use, a shelter for Neighborhood Religious Institutions and Campus or Community Religious Institutions up to a certain

threshold (based on occupancy and/or calendar days) regardless of the zoning district in which it is located. If the threshold is exceeded, then a special use permit would be required.

Option 2

1. Permit by special use permit only any shelter in a religious institution, regardless of its limitations on size or number of guests and regardless of the zoning district in which it is located.

Recommendations relevant to both options

1. Maintain the Fire Code and require that any program that includes overnight sheltering be required to meet all of the standards of the code, which could include sprinklers, fire alarm systems, or other forms of compliance measures.
 - a. Alternative - Modify the fire code to permit overnight sheltering up to some reasonable limitation in occupancy and/or calendar days while establishing alternative minimum requirements that may not require fire alarm systems and sprinklers for the sleeping or other areas. (See attached list of minimum requirements that the Fire Department has stated would be minimum protection standards for the use.)
2. Provide a distinction between social services traditionally provided in religious institutions compared with services typically provided in secular institutions.

Staff also recommends that the City Commission return this amendment to the Planning Commission for a hearing by which the public can comment on the proposed revisions and direction of the City Commission. The recommended options should simplify the amendment language; however, staff will need time to revise the language for the Commission's review.

Summary

Staff seeks direction on the following policy issues so that specific language can be drafted to meet the commission's intent.

1. Permitting process – which process balances the interests of the service providers, religious institutions, legal issues, and neighborhoods to the greatest extent – permitting overnight sheltering by right, by right with occupancy and/or calendar day limitations, or only with a special use permit?
2. Location of overnight shelters in religious institutions – should overnight sheltering, either in limited or unlimited fashion, be permitted in all zoning districts?
3. Fire code standards – should the city maintain the current standards or modify the standards to require a lesser framework by which overnight sheltering in religious institutions must meet?

Action Requested

Staff recommends that the City Commission consider these options, direct staff appropriately, and return TA 04-03-08 to the Planning Commission for a hearing on specific elements of the proposed language that the City Commission desires to be changed.

Attach: Memo from Legal Department
Letter from Caleb Stegall
Fire Code alternative compliance standards
Fire Code Board of Appeals Minutes of February 5, 2009