



City of Lawrence

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

February 24, 2009

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:

With Commission approval, Mayor Dever proclaimed February 28, 2009 as, "40 Years of Women's Sports at the University of Kansas;" and Assistant Public Works Director Mark Thiel presented an award for the 19th and Louisiana Streets Improvement Project.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the City Commission meeting minutes of February 10, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the Community Development Advisory Committee meeting minutes of January 22, 2009; the Community Commission on Homelessness meeting minutes of January 13, 2009; the Convention and Visitors Bureau Advisory Board meeting minutes of November 18, 2008; and the Sustainability Advisory Board meeting minutes of January 14, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve claims to 396 vendors in the amount of \$905,642.40. Motion carried unanimously.



As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the Drinking Establishment License for Eldridge Extended, 201 West 8th; and Dempsey's Irish Pub, 623 Vermont. 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 Roberta Suenram to the Community Development Advisory Committee, to a term which will expire September 30, 2011; appoint Paul Hunt to the Convention and Visitors Bureau Advisory Board, to a term which will expire July 1, 2011; reappoint Tracy Green and Jay Zimmerschied to the Fire Code Board of Appeals to terms which will expire January 31, 2012; reappoint Sean Williams and Jody Meyer to the Historic Resources Commission, to terms which will expire March 1, 2012; reappoint Larry McElwain, Allen Humphrey, and Dinah Lovitch, to the Lawrence Citizen Advisory Board, to terms which will expire March 1, 2012; appoint Kent Spreckelmeyer to the Library Board, to a term which will expire April 30, 2011; reappoint Gerald Pees to the Public Health Board, to a term which will expire March 31, 2012; and appoint Shirley Martin-Smith to the Public Health Board as the joint City/County representation, to a term which will expire March 31, 2012. Motion carried unanimously.

The City Commission reviewed bids for the 2008 Sidewalk Gap Program. The bids were:

BIDDER	BID AMOUNT
Engineer's Estimate	\$371,265.57
R.D. Johnson Excavating	\$235,801.05
GSR Construction Company	\$304,086.16
Graybeal Construction Company, Inc.	\$358,882.55
Meadows Construction Company, Inc.	\$391,892.00
Kansas Heavy Construction	\$422,431.00
Love Enterprise, Inc.	\$427,692.00
McAnany Construction, Inc.	\$428,962.00
Freeman Concrete Construction	\$505,845.80

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to award the bid to RD Johnson Excavating in the amount of \$235,801.05. Motion carried unanimously. (1)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to authorize payment of annual telephone maintenance charges per agreement with ISS, Inc., for \$20,639. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to authorize payment to Douglas County, not to exceed \$15,130.50, for updated 2009 aerial photography. Motion carried unanimously. (3)

Ordinance No. 8363, regarding revisions to Downtown Design Guidelines and amending Chapter 20, Article 3, Section 308, UC Urban Conservation Overlay District, was read a second time. As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to adopt this ordinance. Aye: Amyx, Chestnut, Dever, Hack, and Highberger. Nay: None. Motion carried unanimously. (4)

Ordinance No. 8369, authorizing the Special Use Permit (SUP-12-10-08) to allow Light Equipment Repair for Car Toys (stereo installation) at The Malls located at 711 west 23rd Street, was read a second time. As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to adopt this ordinance. Aye: Amyx, Chestnut, Dever, Hack, and Highberger. Nay: None. Motion carried unanimously. (5)

Ordinance No. 8372, to rezone 37,500 square feet located at 1740 Massachusetts Street from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip), was read a second time. As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to adopt this ordinance. Aye: Amyx, Chestnut, Dever, Hack, and Highberger. Nay: None. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to

authorize the City Manager to sign Operating Agreements regarding athletic fields with USD 497. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to receive 2008 Annual Utility System Development Charges Report. Motion carried unanimously. (8)

Betty Lichtwardt, League of Women's Voters, requested second and final reading of Ordinance 8370, rezoning (Z-11-18-08) 11,715 square feet located at 1245 Connecticut Street from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling residential Office), be pulled from the consent agenda for separate discussion. She said they sent a letter to the City Commission and the purpose of the letter was not to oppose a rezoning, but to clarify what was actually being done in this situation.

She said the problem with this rezoning was a use category, in the district, that was being adopted for this rezoning case. There were also two conditions that excluded two uses which had happened with staff and the Planning Commission for several years. She said they could not figure out how staff would handle the property once the property was sold and the use was supposedly reverted back to original zoning. She said what they realized, in reading the Planning Commission minutes, was staff's interpretation that this was a permanent change which changed the zoning district without proper procedure. This was actually a new district that was being created when staff recommended a condition on a zoning district. She said there was concern that staff was not following process.

The League's letter read:

"Because recently the staff has almost routinely been recommending conditional zoning to exclude uses as an approach in difficult rezoning situations, we realized that it could be because there is little public understanding of what is actually happening in these cases. We realized that the process has been mislabeled. The term "conditioning" the rezoning is inappropriate because this is actually a permanent change to the zoning district on a lot or parcel. What is actually happening here is that when uses are excluded by Ordinance on a single site, the specific Ordinance (law) enabling this is actually creating a new zoning district. This new district is permanent and is different form all our other existing districts."

“The basic problem that we see being created is that the proper procedure for legally making a permanent change to the City Code by creating new zoning districts is not being followed. What should be happening is that each new zoning district that has or will be excluding otherwise permitted uses, in order to legalize their status, should first be provided with a text amendment to the Land Development Code which would create a new and distinct district with its list of permitted uses tailored to the new district. Once the new district is available, a Zoning District Map designation should be adopted that will distinguish it from all other districts, and then the zoning map amendment can proceed. This would allow the new district to be legally adopted not only on the original site but the new district would be legal and available to all other citizens to use also.”

The crux of the problem was an exclusive right that a single individual had that was not available to every other citizen and was contrary to State planning law.

KT Walsh, East Lawrence Neighborhood Association, said when the 900 and Pennsylvania project went through they were allowed exclusion because no one wanted businesses such as payday loans and were allowed a list of 10 types of businesses to exclude. She said in conversation with Robert Baker, Consumer Credit Counseling, Baker said the difficulty for zoning was that some banks owned payday loan places. She said they talked about a study session and staff education. She said at this point they needed to talk to their state representative because payday loans and protecting citizens needed to happen at the state level.

Scott McCullough, Director of Planning and Development Services, said Lichtwardt was correct in that this had been an on-going discussion with rezoning applications and there were more recent examples than the one cited in the paper, the Krause's Restaurant. Each time this issue had come up, staff had looked to the City's Legal Services Department to give their opinion on whether or not the statute in the City's own development code, permit this type of avenue to condition rezoning request on certain property and it was staff's opinion which might differ from the League's, that the City had that as a process or avenue to address certain neighborhood concerns when those concerns arise. Those concerns were typically very publicly debated and discussed as it was at the Planning Commission hearing for this particular case and as it had been with some of the more recent examples, such as the Jayhawk Book

Store, rezoning industrial property to the northwest area of the City. Staff believed the process was available and the Planning Commission chose to use that process in this instance and was why this issue came to the City Commission with the Planning Commission's recommendation to exclude two uses of the zoning category.

Vice Mayor Chestnut said on this type of process, there was never a situation where uses were expanded in zoning, but always more restrictive.

McCullough said that was correct. He said staff agreed the zoning category could not be expanded and in every case he knew, with the applicant's consent, that it had been reduced or removed.

Commissioner Highberger said if the current ordinance would remove the use category of financial insurance from real estate and in McCullough's interpretation of the code, and asked if that would prohibit payday loan operations.

McCullough said yes. He said when the specific subject of payday loans came up, there was no category in the development code that stated payday loans and had defined the land use category that payday loans would have been described when staff came up with the land use category. There was quite a bit of discussion about that issue at the Planning Commission level and the idea that it was permanent, staff would agree with, but because it was being restricted through a public process, the way to lift that restriction was through a public rezoning process, lift the conditions and if at some future time the owner wished to sell or create a use, for example a bank or payday loan, the owner had to go through a public process to lift that condition.

Commissioner Amyx said they were right back to where they were several years ago regarding conditional zoning and whether or not it was legal to condition zoning. He said the two conditions that were placed on the zoning were items that East Lawrence Neighborhood brought forward.

Walsh said Lisa Harris, Planning Commissioner, brought forward the transient shelter and East Lawrence Neighborhood Association, the transient shelter.

Commissioner Amyx said the process the League of Women Voters brought forward, he asked if that process was something other communities were using by creating those new categories.

McCullough said it was not the type of process he was most familiar with. He said he had seen it with the City's own preliminary development (PD) process which allowed uses to be stricken that was one of the objections of the PD category, but not the only one and there were other waivers, reduction, and certain standards the PD category allowed and it was not just a use issue. He said the Planned Unit Development (PUD) process was more typical and Planners speak about creating those mini zoning categories, but staff believed this was another avenue and another tool in the tool box for getting at some of the concerns raised during those types of request.

Mayor Dever said the only concern, initially, was hearing the City was creating a new zoning designation that would not be available to all that might want that designation, when in reality, it was available to all, they would just had to go through the process of excluding that use to make it more acceptable in that area of the community.

McCullough said correct, to date it had always been with applicant consent to self restrict their uses. It was the same base zoning district as Vice Mayor Chestnut mentioned and as staff talked about with Jayhawk Bookstore rezoning and others, it still had every ability to use the uses of that category except which had been restricted through the ordinance.

Commissioner Hack said there was a fundamental disagreement with staff's interpretation and the League. She said she was comfortable with the interpretation that creating those individual zoning district would be a lot more cumbersome that going through the process of finding out what was appropriate in that area for the people that surround that particular piece of property.

Commissioner Highberger said he understood the concerns the League had raised and there was a down side of looking at the zoning map and not being able to tell with absolute certainty, what was allowed in every district, but the City's legal staff had consistently stated this was a tool that could be used and a tool to help protect neighborhoods. He said he was comfortable moving forward.

Vice Mayor Chestnut said the practical side of trying to create that many zoning districts could get to be quite elaborate. He said there was no case where they would actually add any type of use to a zoning district and it was always on a restrictive bases and it was usually based on neighborhood input or other stakeholders who want to make sure what was going to happen with that property. It was also appropriate that it came together with the property because if it did not, a change of ownership would make it moot and they would be back at the same process all over again. If it went back to a situation where it changed hands and someone was looking at a use and realized the use was not permitted, it would be appropriate and go back because the neighbors needed to understand what was happening and the fact that something that happened five years that was restrictive and now might come back into play and go back through the public process.

Commissioner Amyx said regarding the Jayhawk Bookstore, there was an automatic appeal if they were to change in use in that category. He said the City Commission might want to address that item because if there was a site plan on this property for the uses that were allowed in that district with the exception of the exclusions, it would automatically go to staff for approval.

McCullough said correct.

Commissioner Amyx said the City Commission might want to note the City Commission recognized this as a sensitive area because it was in a center of a neighborhood and might want that item to come before the City Commission, some time in the future.

McCullough said staff wanted to have a discussion with the Planning Commission about conditional zoning and how that zoning should be used, and as a tool, what was appropriate for its use. Staff wanted discussion regarding broad statement on East Lawrence not desiring certain use categories should be discussed and staff planned on having that discussion with East Lawrence, but staff felt very firm in their position that it was an available tool for staff.

Commissioner Amyx asked if Toni Wheeler, Director of Legal Services, could provide the City Commission with information provided in the past on conditional zoning and her recommendations would be helpful for future discussion.

Mayor Dever said he did not think the Commission needed to put together a patchwork quilt of zoning district. It would be difficult to read and more difficult to read at a site level. He said he was comfortable with the process and being a user of those designations and it was important to understand the process clearly.

David Corliss, City Manager, said it might be useful to inform the City Commission what staff knew about the likely use at that location.

McCullough said the reason for the rezoning was to create a mortuary at this location and he was not sure it was analogous to the Jayhawk Bookstore where there were a lot of concerns about potential site development. He said the main issues were the use itself of payday loans and homeless shelter and less concern about how it might develop in the future. He said he was not sure it would be necessary to put a site plan with conditions because it did not come up in discussions with the Planning Commission or Walsh. Again, staff understood the property owner wanted to move on redeveloping this site for mortuary use.

Ordinance No. 8370, to rezone (Z-11-18-08) 11,715 square feet located at 1245 Connecticut Street from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling residential Office), was read a second time. As part of the consent agenda, **it was moved by Hack, seconded by Chestnut**, to adopt this ordinance. Aye: Amyx, Chestnut, Dever, Hack, and Highberger. Nay: None. Motion carried unanimously. (9)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said items in his report included: water demand for Rural Water Districts; Annette Deganhad, Special Population Supervisor, and her staff, Angela Harris and Sally Trujillo, received the Outstanding New or Innovative Recreation Program Award; the 2008 activities of Lawrence-Douglas County Fire/Medical Department's Explorer Post No. 2555 Annual Report; the inspection and delivery schedule of three new pieces of fire apparatus; and an update from Brian Jimenez, Code Enforcement Manager, regarding 617 West 4th. (10)

Corliss said before the City Commission discussed the regular agenda items, he wanted to publicly acknowledge Joe Rexwinkle, a City Planner, and his work. He said Rexwinkle had accepted a position with the City of Leawood in their Planning Department and thanked Rexwinkle for his work in this City's Planning Department and on behalf of the community.

REGULAR AGENDA ITEMS:

Consider adopting on second and final reading, Ordinance No. 8371, to rezone (Z-11-20-08) 140,090 square feet located at 2141 Maple Lane from RS7 (Single-Dwelling Residential) to RMO (Multi-Dwelling Residential Office).

Joseph Rexwinkle, Planner, presented the staff report. He said this was a rezoning that was originally on last week's City Commission's agenda and the City Commission asked staff to bring this issue back on the regular agenda for public hearing and to meet with neighbors nearby this property which staff had done.

He said the property was located on 21st Terrace between Silicon Avenue and Harper. There was RM12 zoning to the east with a mixture of duplexes and single-family homes and RS7 to the north with mostly single family homes and some duplexes on the north side of 21st Terrace, RM12 to the west with mostly duplexes and apartments and to the south mostly commercial zoning with commercial development.

The RMO district was for Multi-Dwelling Residential Office and the proposed use was for an office building. The RMO district was intended to accommodate low and moderate intensity

development that was compatible with residential uses and was also intended to be used as a transitional zoning between high intensity commercial uses in zoning and residential neighborhoods and was why staff felt was appropriate zoning for that location. The request was in the area of mixed residential and use types and was located immediately adjacent to commercial uses.

He said regarding the public notice process, for any rezoning application, the standard notification requirements were newspaper notice, sign posting on the property facing public street, mailed notice to all property owners within 200 feet of the subject property, and mailed notice to all neighborhood associations that included the subject property or adjacent to that property. In addition, there was also a site plan for this property and that also had additional public notification requirements, all of which had been completed. The applicant also had conducted a neighborhood meeting to discuss the issue at length.

A signed petition had been received and the map showed the various properties of people who signed the petition. In order for a protest petition to be considered valid, it had to be submitted within 14 days of the Planning Commission public hearing and had to include signatures from property owners that owned at least 20% of the property that was within that required notification area and neither of those criteria were met and staff did not consider the petition to be a valid protest petition and staff's recommendation remained the same to approve the rezoning and adopt the ordinance on second reading.

David Corliss, City Manager, said it was important for the public to understand that was a distinction between a valid protest petitions that triggered a super majority vote on behalf of the City Commission. It was a valid petition in the sense it was petitioning the government to let people know their views, but did not trigger the super majority voting requirements for the rezoning.

Mayor Dever called for public comment.

Paul South said his petition might not be valid, but he had talked to 40 people in the neighborhood and three of those people had adjoining property. He said no one liked the idea of an office building going into that area. He said the neighborhood felt they were overlooked and they might not have understood the process, but the neighborhood would like to be heard and their opinions were important.

Commissioner Amyx asked how much trouble there was with the commercial property to the south.

South said the only issue with the business from the south was the diesel from the buses when they start up in the morning.

Commissioner Amxy asked if there was a way to buffer the proposed building, in the way the business to the south was buffered from the neighborhood.

South said neighborhood around Maple Lane was definitely against this rezoning because of the children that would come around the swimming pool. He said he did not know how an office building would be buffered in that neighborhood. He said he sensed a bit of apathy that it was a done deal and people were giving up, but would want to do something if they could.

Commissioner Amyx said if compatible zoning was placed around the neighborhood, RM12 zoning would be compatible zoning and the number of trips created by that additional housing could be equal to the number of trips with this proposed business. Over the last several years, stop signs were at looked and they might want to reconsider those stop signs. If the City Commission did not approve this proposed business, and an application came in for an RM12 zoning, they would be hard pressed to think about denying that zoning just because of the surrounding neighborhood. He said the construction would happen on that property. The question was in looking at the multi-family residential in the area, this particular request could place safeguards on and off this lot to take care of South's concerns.

South said the property owner talked about late counseling at that business and it was a different type of traffic. He said people that live in the area respect the residential area and people that come to area for business, there was a different mentality. He said what he had heard about the business being conducted at that location, they would be providing counseling and people coming out of intense counseling about their family was an entirely sort of experiences than someone leaving home to go to work.

Mayor Dever called for public comment.

After receiving no public comment, Mayor Dever said there were two issues. The first issue was this was the second and final reading of the ordinance and if there were any changes, the City Commission needed to think how to re-approach this issue. He said he wanted to see if the City Commission wanted to take into consideration the concept of valid versus invalid protest and whether or not there was ample time given to the community. He said he felt there was ample information provided to the community and the petition was not valid for administrative and procedural reasons. He said the City Commission needed to decide whether or not this was compatible land use on second reading.

Chestnut said he appreciated the opportunity to highlight this issue and tended to agreed with Commissioner Amyx that it would be the least dense land use. If the area ended up being RM12 it was intense and traffic wise, traffic would two or three times higher with that type of usage. He said if there was some type of submission there would be folks that did not like that zoning either. He said it was a compatible land use based on the boundaries and staff did a good job of highlighting that. He said it was compatible use with what was at that location and ancillary extension of what the school was doing and in supporting their mission, it was important to support this rezoning because it gave the opportunity to provide social services to folks and they needed the facilities to provide that service. He said there might be some extended evening hours, but there was no doubt about the fact that it was a less intense use than otherwise.

Commissioner Highberger said he didn't have much to add. He spoke regarding the petition being valid. He said the petition was not valid in the sense that it forced a 4-1 vote, but he certainly received the petition and South's concerns were being registered like it was a valid protest petition. He said he was not seeing the negative impact especially compared to some of the uses that could go in at that location.

In terms of the traffic concern, staff would be happy to help South take that concern to the Traffic Safety Commission. He said certainly everyone wanted kids to be safe. He said it was an interesting point South made about driving after being counseled, but given what could go in at that location and other circumstances, he supported the zoning request as it stood.

Commissioner Hack said the business was in a transitional portion of that neighborhood and she understood South's concerns about traffic, but it was more than likely, going to be developed at some point and this business did a better job at protecting the neighborhood from a more intense use that could create far more havoc. She said it was a compatible and expanded use and a service that folks needed. She supported the ordinance on second reading.

Commissioner Amyx thanked South for all of the work he did on behalf of his neighborhood. He said in looking at the site planning requirements, he asked how could they better buffer a development from the existing neighborhood. In looking at this particular application for this business, they had the safeguard in place to afford the neighbors that protection. He said he did not think there would be that protection with a multi-family residential and he wanted to make sure there was something of a lesser intensive use over the course of a 24 hour day at that location and this particular zoning did that.

Mayor Dever said he completely understood not wanting to see the change, but also believed this rezoning balanced the need to development and the community. He said South's negative impact would be less, but they never knew what happened in the future. He said he appreciated South bringing the issue to the City Commission's attention and the importance of

the neighbors. He said perhaps the change in land use would change the need for additional stop signs or pedestrian controls to help the community. He said he hoped South understood the Commission had to do what was best for both parties, and in this case, he had to support the rezoning on second and final reading.

Moved by Hack, seconded by Chestnut, to adopt on second reading, Ordinance No. 8371, rezoning (Z-11-20-08), of approximately 140,090 square feet located at 2141 Maple Lane from RS7 (Single-Dwelling Residential) to RMO (Multi-Dwelling Residential Office), was read a second time. As part of the consent agenda, **it was moved by** to adopt this ordinance. Aye: Amyx, Chestnut, Dever, Hack, and Highberger. Nay: None. Motion carried unanimously. (11)

Receive staff report regarding text amendment related to TA-04-03-08, shelters in religious institutions.

Scott McCullough, Planning and Development Services Director, presented the staff report. He said City Commission initiated a text amendment on behalf of the Lawrence Community Shelter to establish, as a special use permit process, shelters in industrial districts expanding where shelters could exist, outside religious institutions. Coincidentally this was the same date staff responded to a representative of the Family Promise Organization, on the process to establish shelters in religious institutions as an accessory use.

There were seven different additions to some draft language throughout spring, summer, and fall which were debated and discussed extensively by the Planning Commission, Community Commission on Homelessness and ultimately, the City Commission leading to an October 14th adoption of text amendment language, first and second reading on that ordinance had not been completed and that ordinance was still pending.

On October 24th, staff received a letter of concern on some of the legal elements of this particular text amendment. Turning to what the current code required of two types of different shelters, one was the Lawrence Community Shelter type and the other was an accessory use to a religious institution.

The first type was permitted in certain zoning district, RSO, RMO, CO, CD, CC, CR, CS, GPI, and H districts and only with a special use permit. Shelters were permitted by current code as accessory use to the Campus Community Religious Institution with approval by a special use permit in all RM districts and some non-residential districts except the IBP, IG, OS and GPI. The current code did address this type of land use.

As staff went through the process of a text amendment, last year, staff determined that they would broaden its scope for two reasons. One reason was when staff began the research for the Lawrence Community Shelter's initiated text amendment, staff believed the code could be expanded to capture additional types of shelter use, social service uses and those types of uses and gave the opportunity, while staff gave discussions with the Family Promise representatives to look at a type of code that would permit Family Promise in a different way. The Family Promise representatives used it as an opportunity to address some of their concerns when going through the process with the current code. Family Promise felt that attempting to receive special use permit for 13 plus different churches would be an extreme hurdle to establish this special service to the community.

He said in reviewing the revised code, a Type A shelter was created which was the one accessory to the religious institutions and had a restriction of only serving families with children and it came with that a process for administrative registration with public neighborhood input, with certain use standard, management plans, that would be renewed annually and there was also a Type A Day Center.

He said at the time of the process Family Promise was looking at various locations throughout the city some residential districts and some not residential districts. Staff focused and put a lot of effort into how to treat a Type A - Day Center use. Since then, Family Promise managed to locate in a district, by today's code, that permits them as a use by right with site plan approval, and staff was working with Family Promise to get approved at that location.

He said they also created a Type B Shelter. Staff highlighted that at this portion of the amendment, expanding shelters in the Industrial District, was not part of the challenge staff received after the City Commission's initial approval of the amendment. Because staff believed they would need additional process for the religious institution part of the amendment, staff's plan was to break off the Type B shelter portion of the amendment and try to get that to the City Commission in a relatively soon time frame so that the Lawrence Community Shelter could continue to work on the items they needed to work on.

He said staff had been researching legal items which included:

- Compliance with the Religious Land Use and Institutionalized Person 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; and,
- The City's police powers to regulate institutions as a land use

What staff had done after all the research on the legal elements was ask what they could do to build on the concepts the governing body already gave initial support to which included 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; and,
- Remove the term "or to persons at risk of being homeless" form the code to avoid vagueness of claims of being overly broad.

He said two options should be discussed relative to permitting shelters in religious institutions which were:

- Option 1** Permit by right, as an accessory use, a shelter for Neighborhood Religious Institutions and Campus or Community Religious Institutions up

Option 2

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; and, 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.

He said the first option was a “by right” up to a certain threshold and after that, staff believed that from a land use impact standpoint, after exceeding a certain threshold, the impacts deserved public process and public discussion.

He said recommendations related to both options were:

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 minimum requirements that may not require fire alarm systems and sprinklers for the sleeping or other areas.
2. Provide a distinction between social services traditionally provided in religious institutions compared with services typically provided in secular institutions.

Staff’s recommendation to the City Commission from a planning standpoint was permit sheltering by right as an accessory use wherever religious institutions were permitted with certain occupancy and/or calendar day restrictions and require the special use permit for shelters exceeding those restrictions. He said staff was not recommending the special use permit process solely. After discussions with the Fire Department and Fire Code Board of Appeals, staff was recommending to maintain the existing Fire Code standards. For practical purposes, this meant that organizations like Family Promise would need to exist in structures that already met the Fire Code for overnight stays. Staff believed there were a handful of those structures already available in the City.

Staff also believed the distinction between religious and secular social service uses should be clarified and recommended that the City Commission return this item to the Planning Commission for a public hearing. Once staff received policy direction from the City

Commission, staff needed to go back to draft the language, send it to the Planning Commission, then bring it back to the City Commission for consideration.

Toni Wheeler, Director of Legal Services, said as McCullough had stated, staff believed that religious institutions had certain protections under Federal Law against certain land use restrictions or regulations that other property owners did not have. Those federal protections and constitutional provisions were outlined in a memo from John Miller, Staff Attorney, to the City Commission that was part of the City Commission meeting packet. Staff believed that religious institutions that wished to temporarily house homeless individuals as part of their ministry might do so until a certain threshold was met, and by threshold staff meant the number of individuals housed or the number of days the institution housed them as an accessory use to the religious institution. Beyond that reasonable threshold, the use intensified in such that additional land use review was appropriate in staff's opinion. For staff, that review would be the special use permit process.

The Fire Code issues were separate from the land use regulations and staff believed they were on solid legal ground recommending compliance with the Fire Code. However, they recognized that the City Commission might desire to modify the standards as other communities had done to facilitate the housing of homeless individuals and religious institutions. The Fire Department had prepared some options for the City Commission to review.

Mark Bradford, Fire Chief, said he had three comments. The first comment was to make sure the City Commission received the information from the Fire Code Board of Appeals and the recommendation; second, a survey that was done over the past two days in response to some questions of the public and a meeting conducted last week regarding what other cities were practicing; and third, his personal recommendation as the Fire Chief.

On February 5, 2009, the Fire Code Board of Appeals met and their conclusion was in a unanimous vote that the building structure intended for sleeping purposes should meet the

provisions of the appropriate R occupancy and other requirements currently adopted in the International Fire Code and amendments.

The survey was conducted looking at the states that had Family Promise projects or affiliates in place. Staff looked at the website to determine that location. Family Promise operated in 39 of the 50 states, which was 78% of the states in the country. Staff contacted 72% of those entities and what they found was of the 60 respondents, 62% indicated they were not aware of Family Promise programs operating in their community and of that 37% of the affiliates were those agencies, and the fire department would require code compliance regardless of whether or not they knew the program was in place or not. Overall respondents that had no knowledge of the states contacted were 62% and those that had knowledge indicated that 37% of those would require code compliance.

Staff also looked at whether or not cities would view this as a change of use and found that respondents that indicated that Family Promise fell within the existing guidelines, which was 63% whereas 37% of those said there would be a change in use.

Staff also addressed one of the specific questions Mr. Segall mentioned pertaining to Denver, Colorado, specifically where the Fire Chief supported them entirely. Staff contacted the Denver Fire Chief and discussed the information with the Fire Marshall and were told by the Fire Marshall was that they would require full compliance with the code.

He said his recommendation was that if the City Commission looked at limiting the participation in the process, the Life Safety Code could be achieved currently in several participating churches. He recommended that the City Commission maintain the current Fire Code and require the program that included overnight sheltering be required to meet the standard of the code, which could include sprinklers, monitored fire alarm systems and other compliance measures. If the body found it appropriate to lessen the Fire Code, he recommended the City Commission limit the uses of those facilities that currently meet the code until those could be made compliant with the alterations to the proposed list. He said the

revised requirements were presented to the City Commission as a modification to the code outlining the minimal acceptable requirements. The requirements provide what he believed were necessary for life safety and the occupants in a temporary overnight residential use of the facility not protected by the full code.

Commissioner Amyx said he was aware there were several churches that had overnight events for children and not all the churches were sprinkled in town and asked whether Bradford had any concerns with those events.

Bradford said those activities were code violations.

Mayor Dever said Bradford was discussing only the facilities that currently met the code and encouraged or required the others facilities, if wanting to participate, to upgrade their facilities to meet the current code.

Bradford said yes, in two levels. The first level was that he believed there were current facilities in town that met the code that were presently member churches or facilities. He recommended the City use only those churches or facilities. If the other participating churches did not meet the full code by putting in the sprinkler systems, monitor systems and so forth, at least use the protected churches until the others met those requirements that the City Commission would require by waiving some of the current code.

Mayor Dever said staff was not creating a lack of service and allowing people to be in facilities that currently met code, but wanted all those facilities to meet the code.

Bradford said the structures needed to meet the code entirely or if the City Commission wanted to modify the code, then allow those facilities to bring their building up to the new minimum standard before occupancy.

Vice Mayor Chestnut said he wanted to make sure he understood the process. He asked when saying bringing it up to compliance, it was predicated on the finding that it was a change of use.

Bradford said that was correct.

Vice Mayor Chestnut asked if that was an issue in discussion in front of the Fire Code Board of Appeals.

Bradford said that was correct.

Vice Mayor Chestnut asked that in conclusion bringing up to code was based on the fact that it was a change of use. If staff did not conclude it was a change of use, the discussion would be moot.

Bradford said correct and basing the change of use on what the Fire Code Board of Appeals determined and what his belief was.

Commissioner Highberger said regardless of proposed minimum standards, in case the City Commission decided to waive full compliance, he asked how critical was grade level sleeping areas only.

Bradford said that most facilities would find that if it was not at grade level, the facilities would not have adequate egress square footage. It would be part of the review process if below grade and the egress travel distances were appropriate, then that would work. He said he thought it would be found that most facilities would need to be at grade level to meet that requirement. Normally, the windows below grade were going to be smaller and exit doors would not be enough.

Mayor Dever said with the eight survey respondents, he asked if all respondents required the bulleted items or was it a compilation of the code modifications required by all of those in total as opposed to all using the exact same modifications.

Bradford said the allowed modifications were somewhat similar to the modifications staff was recommending. Some of those modifications were slightly more mention of the differences such as open flames, no cooking, no candles, no smoking. There was cot separation, distance limitations no more than one person per 200 square feet, supervised alarm systems, all the occupants had to be ambulatory, annual use permits with and without fees, approval of the fire department inspections of the buildings of the building and health departments, a maximum

went into the timing such as so many hours, so many days of the week and so forth. The rest of the modifications were similar to what staff was requiring.

David Corliss, City Manager, said he wanted to remind the City Commission of his involvement. He said he and his wife were members of Grace Evangelical Presbyterian Church and was not involved in the substance in any of the legal work, but involved in encouraging staff to make timely progress on the issue.

Caleb Stegall, legal counsel for Grace Evangelical Church, said he currently served the citizens of Jefferson County as their district attorney and also been a member of Grace Evangelical Church for the last 15 years. He had the pleasure of serving that church on the Board of Elders as well. In addition, he was present in his official capacity as the church's legal counsel. He said he wanted to thank the City and the City Commission to take the time to seriously address the concerns that were raised as they do implicate very significant constitutional and liberty issues. It was a worthy thing that they take the time to look through those very carefully. He said he wanted to commend the legal staff, planning and development staff of the city. He said they had been a pleasure to work with and were able to establish a good faith rapport and come to agreement on a large majority of the issues.

He said the City Commission had heard a number of represented points of view and a number of people who had various competing concerns and interest. He understood that it was the City Commission's goal often in those situations to balance those interests. He said he wanted to state, with due respect to everyone concerned, that the interests at stake with this issue were not created equal. One interest rose above the others which was a foundational civil rights issue and was an issue in the interest that American had cherished and protected for hundreds of years, which was the right to the free exercise of religion which was enshrined in the First Amendment of the Constitution and enshrined in the state's constitution and in federal law. It had been recognized widely in courts across the country including Kansas courts. Kansas courts had regularly stated, "It was only interests of the highest order and those

interests that were not otherwise served which could overbalance legitimate claims to the free exercise of religion.” He said the only state regulations, municipal, etc. which could burden that free exercise which were those that were narrowly tailored to further a compelling government interest in protecting minimal health and safety standards which were permitted to burden the practice of religion.

He said Grace Evangelical Presbyterian Church was a church of approximately 1,000 people. He said the church was located on North Kasold Road north of 6th Street. Grace had been in Lawrence for about 20 years and he did not think they had an occasion for a representative of Grace to stand before the City Commission in all those 20 years. They were an upstanding citizen of the community and had strong relationships with their neighborhood and certainly had worked with City government in issues related to building their building and so on. He said he was pointing that information out, because they took this issue seriously enough to bring it before the City Commission.

Grace was a church that was consistent in their belief in their calling to show Christ’s love to all people they came into contact with, but particularly those who were less fortunate and those who had for years offered social services to a number of different people, including people who were poor, might be homeless or at risk of becoming homeless. He said that was something that had gone on prior to the excellent introduction of the Family Promise program which the church and its members have been enthusiastically in support of.

All of that was simply to say that they sought to fulfill their mission as they saw regarding to the calling God placed upon the church to practice their religion and offer those ministries that they believed were consistent and required.

He said this issue, as it related to services for homeless people, came before federal courts on multiple occasions and consistently been held that those government impositions which would restrict those ministries did substantially burden religious practice. He quoted from the Second Circuit Court of Appeal, “The church is ‘commanded by scripture to care for the

least, lost and lonely of this world' and administering to the homeless the church was giving the love of God. There was perhaps no higher act of worship for a Christian." He said various zoning and regulatory controls on the kinds of ministries to the needy and to the homeless that had been tried have been struck down by courts as violating the protections of religious liberty that was afforded in both constitutional law and statutory law.

He said he wanted to address the basic points of recommendation that McCullough represented to the City Commission. He asked the City Commission that consistent with their belief and religious conviction and consistent with the law that the City Commission adopt recommendation number one regarding land use which those kinds of ministries would be permitted as a matter of right and accessory use to religious institutions. He said he believed there was a threshold beyond which those uses were no longer accessory, which was a prudential judgment. He had talked to City staff about what that threshold might be and he suggested a 60 day per year threshold along with some sort of occupancy threshold. Below that level, he thought it was clear that any types of ministries that churches undertook under the Religious Liberty Clause and should be allowed as a matter of right. Any imposition of municipal regulation was subject to challenge in court. He said that was the recommendation on the land use.

He said he wanted to move onto the points of disagreement which had to do with the Fire Code. He said he wanted to remind the City Commission that in his view, the land use issues and Fire Code issues were subject to the same law. The Fire Code issues were not exempt from the constitutional prohibitions on governmental interference with religious practices. He said the Fire Chief's presentation demonstrated that were the City to impose International Fire Code, it would in fact be the minority of those jurisdictions the Fire Chief contacted. Only 37% of those jurisdictions would consider such a use a change of use. He said it was not a change of use and while the International Fire Code was appropriate for residential

use was onerous and would be onerous when applied to churches carrying out ministry to the needy.

Commissioner Amyx asked if it was Stegall's position that RLUIPA and the courts had given churches the opportunity to have shelters as a use by right.

Stegall said that was correct.

Commissioner Amyx said right now they were only talking about life safety and calendar limitations throughout the year that would cause the SUP to go into place.

Stegall said as legal staff and planning staff discussed this issue, they came into accord at least in principle that there was a point at which a use no longer became a religious use and drawing that line was a prudential judgment. He said he was confident that reasonable minds could come to an accommodation and line he suggested was a reasonable suggestion, which was not to say it could not be drawn anywhere else but needed to be drawn in a way that primarily accorded significant deference to the rights of religious institutions to practice their faith.

Commissioner Hack asked if they had a chance to look at the revised Fire Codes.

Stegall said he did not have a chance to look at those revised fire codes.

Commissioner Hack said she understood Stegall's comments about the prohibition of denying the use of a religious institution. She asked when Stegall looked at those fire codes she asked if he saw if there was any wiggle room in terms of citizen safety.

Stegall said he thought there would be without having looked at those fire codes. He wanted to emphasize as a representative of the church that they hoped to continue to work in good faith with the City to arrive at accommodations that were agreeable to everyone. He was not going to be able to agree with some of the presentation regarding the legal grounds the City stood on but the recommendation of the Fire Chief that the International Fire Code be imposed.

Bradford said he wanted to note that Grace Evangelical Church was in full compliance with the International Fire Code, including sprinklers and the automatic full station alarm system.

Mayor Dever called for public comment.

William Dinsdale said he failed to realize the implications put into this process and had always appreciated the support Family Promise had received verbally from the City Commission. He looked forward to helping find the best way to help neighbors in need. He said to remind the City Commission that they recognized the need serving families facing homelessness as well as the severe limits on City and public funding. The City Commission called on the community to help. The City Commission unanimously endorsed the concept of private help for people in need and the community had responded. Family Promise had assembled more than 20 congregations. Not all the congregations hosted people, but had over 700 volunteers. Together they assisted in feeding families all winter and were moving toward stable housing. Family Promise operated without funding from the government and was dependent on donations of time and money from individuals. If any program matched what the City Commission called for and needed, this was it.

He said if they moved forward with the program, the consequences real and imagined, was hosting people in churches would be regulated. It was not regulated before and there was no limit on the intensity of the hosting. Churches did limit themselves as it required a big effort and lot of people, space and time. Following staff's recommendation of hosting by right with limits on intensity was reasonable and one that Family Promise supported. They would avoid the imagined consequence of congregations all over town opening their own full time shelters.

He said the safety of the families was a concern. In reality, they were not safe living in their cars or doubling up in another family's apartment and sleeping on the couch or on the floor. Staying in a church for a short time and getting into permanent housing was safer. City staff's recommendation was that the churches be forced to be made even safer. He said it was a great idea. The unintended consequences were that churches would have to spend thousands of dollars to put in sprinklers and monitored alarms. Even the limited list required egress windows in every room, and housing on the ground floor, which would cost thousands. Having

egress windows on the ground floor also carried security risks. It would apply to every church where overnight sleeping occurred. Youth group lock-ins and scout troop overnights would require installation of egress windows, rehearsed fire drills and someone staying up all night to monitor. He said that was regardless if the church housed Family Promise or not and Family Promise would be dead.

He said Family Promise operated in 136 municipalities in the United States. 75 of the cities followed the identical fire code as Lawrence and not a single one of them required churches to do what was being proposed here. The families hosted would be in those spaces for less than 4% of the time and churches passed fire inspection every year as places of assembly for hundreds of people. Family Promise suggested the City Commission set a threshold to limit the impact of the hosting and accept that below the threshold and the assembly fire code classification would apply. Then they could move on with helping neighbors in need and move neighbors into long term housing. That was the real and best consequence that could be hoped for.

Michael Pomes, member of BridgePointe Community Church, said his church was one of the churches that were part of Family Promise. He said he attended the meeting last Wednesday where the City presented the options for the homeless facilities text amendment. His request was that the City Commission took the advice of City staff to come to the decision that did the most good. They needed to be aware of anything that would weaken the City Fire Codes. The codes were designed to preserve life and reduce injuries and doing anything less would hurt Family Promise, the member churches and the community as a whole. He said ambulances and fire trucks went to churches the same as they would at any other structure in the community.

Joe Rice said he came from BridgePointe Community Church where families were currently being housed. All the parents were single mothers and the children ranged in age from 2 – 11. The people who were serving those families came from four different

denominations; Catholics, Presbyterians, Free Methodists, and Church of God. The age range of people who were served was from 6 years old to 93 years old. It was the kind of ministry he encouraged to get families to get involved and a whole family could go together and minister to people who were in need. What struck him was that the families they served they would not recognize as homeless. They had operated Family Promise through rotation of churches and to his knowledge there were no complaints from the public.

He talked to the people from Family Promise national where they had operated for 20 years about the fire issue. He asked if there had ever been a fire in any of the churches that were serving Family Promise. Family Promise sent their staff out to research and found that there had not. They had one fire in their whole instance in which families were being housed in a house and not in a church.

He said when he started this program the thing he liked about it was that it worked and did exactly what it said it was going to do. It transformed the lives of homeless families and children who were people in a desperate situation and problems magnified about how to get their children in a safe environment, to school, and make sure their kids were fed. He said this program worked and was working in Lawrence. He appreciated the fact that everyone had spent a lot of time working on this and knew that everyone had the best interests at heart, but he would hate to turn those people away. It was a hard imposition on a church to give up all that space for one week every three months and recruit the 30 – 50 volunteers needed to get through the week.

Vice Mayor Chestnut asked for clarification on the distinction between social services provided by religious institutions versus secular institutions.

McCullough said the code of October, last fall, was a little complex in terms of how it treated social services that could be traditionally deemed more secular. In the Type A – Day Center, which he believed in certain zoning districts, was by special use permit. The concern was the way the City defined Type A Shelter with those lists of social service uses, one

interpretation of that would be that if a religious institution wanted to do the same type of uses, which was traditionally deemed as part of the ministry and function of religion, they would have a special use permit. What the City did in their research was agree with that assessment and say that it was an unintended consequence of how that code was framed. Staff felt like they needed to go back and clarify that distinction. In other words, it was never staff's intent to have the code be interpreted that if a church was conducting group counseling sessions, for example, marriage counseling, or credit counseling that was typical for a pastor, church or church members to perform, they would need a special use permit to conduct those services.

Mayor Dever said under the new code, churches would need a special use permit and not just secular institutions.

Commissioner Amyx said by going along with what McCullough indicated, they met the spirit of RLUIPA.

McCullough said with the revised options, staff believed they more firmly met the spirit of the constitutional issues in RLUIPA.

Commissioner Hack asked to distinguish the assembly fire code requirements versus what the City was looking at that existed in a church.

Rich Barr, Fire Marshall, said the difference between assembly occupancy and residential occupancy was typically, a person would sleep in a residential occupancy and some of the residential requirements associated with residential occupancy were smoke detectors. Evacuation drills could apply to both. Residential sprinkler systems in the code the City Commission adopted in January 2008 required new residential to sprinkle, which was the change of use issue. The issues between assembly and residential typically revolved around people sleeping and all the fire fatalities that had occurred in the community had occurred in residential occupancies. Staff was saying residential occupancy was being placed in an assembly building. Staff's concern related to ensuring that the people who were sleeping in the residential occupancies inside the assembly were adequate protected.

Mayor Dever said the City Commission needed to address the land use issue and the fire code as well. Staff had come out in favor of one solution and the City Commission needed a solution for the fire code and life safety issue.

Vice Mayor Chestnut said he appreciated all of the comments and was happy for the churches in town to get involved with this program. He said he had been involved in several of the ministries throughout the years and as a founding member of Heartland Community Church in Overland Park, he was involved in help, support and plant Grace a long time ago.

He said he would take a step back and say that he was not a constitutional lawyer. He said the problem in this case was that life, liberty and property were all involved in this issue. He thought that was something they had to balance out. The liberty issues of the First Amendment rights were first but then there were personal security rights the Fire Chief was representing and the property rights that were represented by planning staff. The City Commission had to balance all of those rights and when one started to infringe upon another, there were issues. One of the things that was true and hoped it would never happen, but if something happened the City had responsibility and took that burden seriously. Having said that, he believed there was a permit by right which was basically Option 1, which was recommended by staff. If they were to look at all the zoning codes, they would find multiple issues and it was clear within certain limitations that they had rights. It was important to recognize there were certain limitations and believed that it was not a change in views. With the level of usage and way it was being managed, he did not see it as a fundamental change of use. There was a suggestion of a lesser framework, but the issue was once he concluded it was not a change in use, he did not know if a lesser framework was being imposed and they were almost making the admission that it was a change in use. This was one of those things that he knew were codes and rights, but would like to see a spirit of cooperation between staff, the Fire Department and churches involved. He asked if they needed to codify the lesser framework or was it a matter in the spirit of cooperation going through the churches and offering

suggestions if they were passing fire code inspections to improve and knew on occasion there would be people housed and to make sure they had the appropriate level of safety. He thought that it might form itself into a framework and would like to see a transitional period of working together to try to resolve everyone's issues. Personal security was on the City Commission's backs and if there was an event, the City Commission would have primary responsibility. He said there should be a way to work this issue to a reasonable solution in going through those churches and seeing that as assembly institutions, they had most in what they were looking for.

Mayor Dever said to understand the logic, by assessing the compliance with code, Vice Mayor Chestnut was inferring there was a change in use so they would have to be compliant with that code, but in Vice Mayor Chestnut's opinion, they were not changing use.

Vice Mayor Chestnut said correct. If they were searching for a lesser requirement, they were saying there was some kind of change in use and he did know if this met the threshold if what would be defined as a change in use. The primary use of all the places of worship was to conduct services and do all the things that churches do. He said as a community they have said that assembly was the primary use of those institutions and once in a while there were different activities that went on. He respected the Fire Chief's position, because personal security was the right he was most predominantly responsible for, but did not know the interpretation was one he could agree with because if they started looking across the zoning codes, when they talked about single family, if he had someone stay in his home for two months while looking for another home after moving to Lawrence, he would have changed the use of his single family home. It seemed that instead of going for another framework, in spirit of cooperation, it was his belief that there was no change of use but work together to figure out how they could to whatever extent they could get the Fire Department comfortable, they might have some suggestions that would be appropriate for distances and so on.

Commissioner Hack said she agreed with the Vice Mayor. She said they appreciated the work that had gone into this item from staff, the Fire Department and the people working

with the homeless communities. She said some of the e-mails she received had been very critical of the Fire Department for raising the bar in people's estimation for this requirement. She thought it was important to remember that neither Chief Bradford nor Chief Barr would be doing their job if they said it did not matter who was in there or the safety precautions were and would not be serving Lawrence or Douglas County if they felt that way. It was important to acknowledge that their primary responsibility was the life part of life, liberty and property.

Given that, she thought the idea for land use that it was not a change of use and Option 1 with some conversations about limitations in terms of the amount of days per month a church could house someone.

She said in terms to Fire Code, the people in the churches, the pastors and members were just as concerned about the safety as the City Commission were, unfortunately this was the doorway to having it happen or not happen according to regulations. No one wanted to be in a situation where someone was hurt or lost their life because the City was not doing the right thing in terms of safety for the citizens. There were some ways they could accomplish this without putting Family Promise out of business and that would be the worst thing they could do. She was hopeful they could have some conversation and group thinking on how to make those facilities as safe as possible for those less fortunate in the community.

Commissioner Amyx said he wanted to thank everyone. He said the separation in allowing Type B to proceed was something to follow and it gave everyone the opportunity to go through the process. He thought they were making this a little too hard.

He appreciated the letter from Stegall and realized there was another part of the law the City needed to look at. He knew the constitution protected the churches and the rights along with that, but gave them the opportunity to address the concerns in the constitution.

He said as far as the change in use it was apparent to him that churches had the opportunity to have this type of use exist on this property. They had a responsibility on the life safety part.

He had the opportunity to work with Chief Bradford and Chief Barr and the professionalism that went on at the Fire Department was second to none.

If there was a way to accommodate the churches and Family Promise organization at the suggestion of the Vice Mayor, he would probably go along with that suggestion, but the City had the responsibility to make sure people were safe.

He said they should look at the threshold closely because in a way they might be pushing the change of use just a shade. If it was something they could come to agreement so that it was not a permanent arrangement that would be fine. He said he thought this could be worked out and something they could be proud of in the end.

Commissioner Highberger said he supported staff's first recommendation with a threshold and they could have some discussion on what the threshold was in terms of the number of days and people and could happen with the planning staff and public input process.

He disagreed with sleeping arrangements and had suggestions of people sleeping up to 60 days a year in a structure that regardless of a change of use, the Fire Chief pointed out that when people were sleeping in a structure there was a heightened need for safety. He supported the set of requirements proposed by the Fire Department. He said maybe they could discuss to see which churches were involved and see what churches were critical for life safety and keep those. If they were talking about people sleeping that long in structures, it was reasonable to have enhanced fire safety requirements.

Mayor Dever asked Bradford to comment on what requirements the Lawrence Community Shelter was held to.

Bradford said when the facility was created, the City was under a different code and at that time, they met all the requirements regarding sprinklers, low grade and pull station alarms along with smoke alarms and egress. The Lawrence Community Shelter went through and retrofitted the facility to meet the code.

Mayor Dever asked about the non physical improvements of the building, but those changed with the need because obviously there were a number of people that went to that shelter and were turned away everyday. He said he had a hard time believing there was a 200 square foot per person, based on the stories he heard.

Bradford said the Lawrence Community Shelter did a good job regarding sleeping areas and those areas were actually plotted out and did a good job of monitoring.

Mayor Dever asked if the Fire Department did the inspections.

Bradford said yes.

Mayor Dever asked how often.

Bradford said inspections were done annually, but they were in the building quite often.

Mayor Dever asked about the Salvation Army.

Barr said the structure was existing and did not retrofit.

Mayor Dever said there was a majority of Commissioners that compelled to agree with the recommendation from staff on the suggestion on framing this discussion. There were a couple of things that came up that needed to be pointed out. If by limiting the number of churches that could participate, it would open up the door to how many days a person was allowed to stay in the facilities and thus creating another situation in which they needed to reach a consensus on how many days they would let them and placed an additional burden on a use. He said by regulation they might end up compounding the problem and causing problems for the neighbors. He said he thought the City Commission could mess things up if they got too involved in the process. The City Commission made a call to the community and was proud of everyone who did so. He believed they would have to end up asking more help from people in the future and would have to get this right and needed to do it in the least restrictive way that complied with the law and the spirit of regulations in place to protect the property and people who slept there.

He was a little torn on how to do that in the life safety and fire inspection issues and was in favor of staff's recommendation. He was compelled to ask that if there was not really a change, they could not demand anything but they could come to an agreement. He agreed with Commissioner Highberger in that there were things they needed to see about and see if there were easy, low cost, reasonable requirements to put in place. Then again, if they got to messing with it, were they throwing out the argument it was not a change in use. He said he would support going forward with the concept there was no change in use.

Vice Mayor Chestnut said to address Commissioner Highberger's concerns, it got back to the personal safety part of the natural right speech that they had a responsibility. It seemed to him that maybe a recommendation would be for the Fire Department, Planning staff and the churches got together just to look at the facilities and see how much diversity there was and start to have a dialogue on making it better. He thought the churches had the best interest in mind as well and wanted to be safe. He was moving away from a "framework" and if he concluded there was not a substantial change in use, he had a hard time supporting and creating a code for something that was not a change in use. He said he was proposing clear direction on Option 1 which staff knew they had to come back with a permit shelter by right with certain limitation and define the limitations and instruction to the Fire Department, Planning staff and churches to get together and talk about the situation was and any recommendations from the Fire Department would be well received and something that was less obtrusive and cost prohibitive and see where it ended up.

Mayor Dever asked about the permit process.

McCullough said if it was allowed by right up to a certain threshold, they would have the ability to just operate. There might be some use standards in the development code that talked about the limitations and kick it into the Special Use Permit process, but their thinking to date would be to simplify it uncomplicated from where it was today, back to something that was more reasonable based on some of the challenges staff had researched.

Commissioner Amyx asked if there was anything in the International Fire Code that if the City would deviate from the code a procedure the City Commission had to follow.

Bradford said the City Commission could amend the adopted fire code to include basically anything they wanted. If they were to modify the code to various options, they could do that. He said there were three options and all three were based on if the City Commission believed there was no change in use. If the City Commission believed there was no change in use, then all the code requirements were out the window and staff could provide a list of recommendations to the facility to add what they thought was the best protection. He said or, the City Commission could say there was a change of use and they would have to follow the code or it would be a change of use and staff would modify the code for this particular type of occupancy.

Commissioner Highberger said it made a little bit of difference where they drew the threshold. If they were talking about a week every quarter, that seemed like it might not require anything extra. If they were talking about 60 days or more for that, it seemed like they were getting more to a use.

Vice Mayor Chestnut said it was always his understanding that with “certain limitations”, once they passed the threshold, it would define the change of use. Once they moved over that, everything came into play.

Moved by Amyx, seconded by Hack, to direct staff to proceed with Option 1 as provided in the February 18th staff memo; determined this activity was not a change in use; to work with the Planning Commission on the limitations (such as the number of days); and work in the community spirit on the Fire Code issues. (12)

Consider authorizing staff to submit FY2010 Federal Appropriations (earmark) requests to the city’s congressional delegation.

David Corliss, City Manager, introduced the item. He said this item was about the traditional earmark requests going to Federal Legislators. The Legislators had been uncertain

about the process. He said staff continued to follow through with their priorities which were rebuilding and also 31st Street project.

He said the City would not buy any more total buses as far as a combination of transit and paratransit. Staff was pursuing with the clean cities grant options and alternative fuel buses and would put together a mini task force, internally, involving other stakeholders to make sure there were technical and financial knowledge to proceed.

There were also the stormwater requests as well.

Community shelters were seeking an earmark and the Community Commission on Homelessness would be supporting that earmark and probably was appropriate for the City to speak toward that issue.

Staff had been in discussions with KDOT and part of the Transportation stimulus was divided into the Transportation Enhancement Projects (TE Projects) which was part of Federal Transportation law for over a dozen years. One of the first Transportation Enhancement Projects was the rehabilitation of the depot in North Lawrence and was the first TE Project in the State. Staff also wanted to apply for the available TE money, which was approximately 10 million dollars statewide.

Corliss said staff also thought there was a good project in the renovation of the Carnegie Library, but were not proceeding with that project because of the economic challenges which was estimated at approximately 1.5 million and would not be entirely funded with TE money, but could get a portion of that project funded. He said if that was not a sufficient portion to participate in, staff would not proceed and would look at other priorities as listed.

Mayor Dever asked about the library and what did it have to do with transportation.

Corliss said that was a good question, but in staff's statement to KDOT was that staff saw that as the home of the Freedom's Frontier National Heritage Area and the home of the Convention and Visitors Bureau (CVB) and was a destination center. He said he did not know whether staff had a chance to put in all the criteria that they looked at, but similar to how the

depot was used in North Lawrence, the library building was essentially a welcome center and headquarters for Freedom's Frontier for 41 counties, both Kansas and Missouri use. He said staff saw there was an application and transportation link in that as visitors come to the community for Freedom's Frontier, those visitors would take benefit of that building. The planned use for the top portion of that building was for Parks and Recreation uses and might have some eligibility issues, but staff was continuing to look for funding opportunities. He said the use was not being changed because of the funding stream.

Commissioner Amyx questioned the library too, but there were the three categories listed which were historical, bicycle pedestrian, and scenic.

Mayor Dever said the City would be making a commitment and he wanted to make sure that was the commitment.

Corliss said there was an informal process with the different agencies in which staff would provide a list to the delegation and they would indicate what would likely be funded and then there was the actual formal application. He said there needed to be some level of commitment. There was operating costs when the Carnegie would be fully operating, but there would be somewhat of a savings in that staff had made a commitment to house the CVB and eventually the City might be in a situation where they did not need that currently rented space because they moved some of the other uses out and save some money as well.

Vice Mayor Chestnut asked if the money would come straight to the cities and counties or go to the Metropolitan Planning Office (MPO).

Corliss said the money would not go to the MPO except in the Kansas City Metropolitan Area and in Wichita. It had to be approved through the Metropolitan Planning process.

Vice Mayor Dever asked if there would be an allocation process from the MPO standpoint.

Corliss said the check would not be written to MPO, but to the City of Lawrence.

Casey Toomay, Interim Transit Administrator, said she wanted to highlight the transit portion of the City's earmarked request. The City backed into the number of 1.6 million looking at the alternative fuel issue. She said earmarks that were currently received and the stimulus money that was estimated for the City of Lawrence at 1.9 million, the City currently had enough resources to replace the City's 12 fixed-route fleet vehicles with traditionally fueled vehicles.

The Mayor and others had indicated a strong desire to proceed with alternative fueled vehicles. She said what that meant exactly, staff did not know, but at this point staff only began their researching efforts. She said she had been talking through the Clean Cities Coalition Grant Application process with other communities and the region that was using different types of alternative fuel vehicles which was compressed natural gas vehicles or some type of bio diesel vehicle. Staff had also been talking to other people in the area, such as KU's Transit Department and also the Transportation Research Institute on campus. Staff also contacted the Federal Transit Administrator (FTA) to ask for success stories of other communities and transit folks that were using other types of vehicles in their fleet. She said the FTA's recommendation to staff was rather than starting out with a complete replacement of the City's entire fleet with a certain type of vehicle, not to put all the eggs in one alternative fuel basket, but to start with one or two vehicles as a pilot project to see how that worked.

She said if the stimulus funding turned out to be the 1.9 million that was seen in the preliminary numbers, the City would have the funding between that number and the local match in the City's equipment reserve fund to replace all 12 vehicles. This additional earmark request of 1.6 would provide the City with the additional resources to continue to explore some type of alternative fuel vehicles. Without that earmark, the City would still have that ability whether it be through the Clean Cities Grant or with those existing resources the City had and it just might reduce the number of vehicles at one time.

She said a quick version of the math was a traditional fuel vehicle was estimated at \$320,000. She said Steve Stewart, City's Fleet Manager, indicated that in his experience an

alternative fueled vehicle was about one and a half times that cost. Staff used the \$480,000 as the number when preparing the cost estimates. She said the Federal Government would reimburse the City 83% for a vehicle provided the vehicle was 100% ADA accessible and that was where staff came up with the 1.6 million.

Commissioner Amyx said with the alternative fuel bus, the estimated cost was \$480,000 and asked if that was one of the larger buses and if they made multiple sizes of buses.

Toomay said that would be a 30 foot heavy duty vehicle.

Mayor Dever said smaller vehicles were made and the proper mix and application of size as far as the buses, was discussed. He said the price Toomay was giving was for the largest bus the City would buy.

Corliss said it would be helpful for the City Commission to authorize staff to submit the federal appropriations request. Staff thought they received good direction earlier from the list the City Commission provided to work informally with KDOT on the Transportation Enhancement Projects, but the Commission might want to discuss the prioritization. He said staff would try to enter into some discussions with KDOT about those TE projects because the City wanted to get as much help as possible. He said in looking at what KDOT had funded on the stimulus, KDOT was essentially using that money to finish up the Comprehensive Transportation Program (CPT) which he thought was appropriate, but that meant the City already had its CTP project which was 6th Street between K-10 and Folks Road and the City was not likely to get a new project. He said other communities were coming out a little better because of the stimulus project. He said Lawrence was not one of the major metropolitan areas like Kansas City or Wichita that would receive a large chunk of the money, but were competing with the smaller amount.

Diane Stoddard, Assistant City Manager, said in looking at the forms that Senator Robert's would be requiring on those earmark request, they were looking for some type of prioritization of all the earmarked request with one another and asked if the City Commission

had any particular comments. Overall, the earmark priority of the transportation project was in line with the transit projects that would be helpful for staff in completing the forms available for Senator Robert's.

Mayor Dever asked if prioritization was needed because the funding for those requests would be coming out of the same theoretical pot of money that might be available.

Stoddard said she gathered, but did not know for what purposes the senator and his staff would use that information, but at least asked if multiple earmark requests were submitted, the community's priority.

Commissioner Hack asked if Stoddard was thinking Senator Robert's needed to know priorities for the surface transportation, transit and storm water funding or was 31st Street more important than 5th and Maple.

Stoddard said it was not just prioritization within those categories. She said staff needed the overall priority of all those projects with one another. She said staff had not been apprised of any other formal forms from any of the other congressional offices.

Vice Mayor Chesnut said this might be the challenge of trying to prioritize. He said for instance, there were three projects between surface and storm water that were fairly equal in funding being 31st Street, Kasold, and 5th and Maple Pump Station and then a smaller project at 23rd and Ousdahl. He said one of the concerns was if putting the small project first and that project was chosen, then the City would lose out on the opportunity which became a game of poker.

Stoddard said as point out, if the City request and earmark, it was not necessarily a guarantee the City would get the full amount.

Vice Mayor Chestnut said some of the projects might be partially funded.

Stoddard said yes.

Chuck Soules, Public Works Director, said the City had to use the money within 10 years.

Mayor Dever called for public comment.

Carey Maynard-Moody said with the transportation enhancement funding, the Amtrak Depot had a shoveled ready project which was a \$63,000 roof replacement. She said when thinking of transportation, it never received TE funding.

Corliss said it was not accurate that the Amtrack Depot project was shovel ready. He said the City did not own the facility and did not think KDOT would fund a building the City did not own. What they had was an estimate of the cost to do the roof work, but there were no specifications.

Mayor Dever said the City would be using federal funds to repair a privately owned building and that was worrisome.

Maynard-Moody said if someone did not ask, it would just go away and thought it needed to be presented it over again at every eligible opportunity and that was just because today it was privately owned and did not mean at this very moment it was not seriously being considered for an ownership transfer and the City Commission did vote 4-1 that the City Manager's Office should explore and pursue an ownership transfer which the City had been doing. There was an earnest effort to change the ownership. In other words, it was really important not to go mute at an opportunity that might not come their way again.

Mayor Dever said he respected that explanation.

Corliss said that ownership transfer would be an agenda item and staff had done a lot of work on the Santa Fe Depot. The concern was the City might have a project that would not eventually become eligible because the City did not own it. He said Stoddard just received the application to allow volunteers to do volunteer work on the facility which was pretty substantial and looked like a major undertaking.

Stoddard said staff had been working with the BNSF and would like to provide the City Commission with a more comprehensive update. She said back in November staff sent a comprehensive list and letter to the BNSF requesting a variety of improvements to see if the

railroad would proceed with any of those improvements. The list was extensive and staff had not received any formal response and hoped to receive some type of formal indication of making repairs, prior to any ownership transfer occurring. BNSF had undertaken some plumbing repairs which was one of the major priorities that were identified by the depot volunteer group as important related to the structural integrity of that historic structure and the roof being one of the other major priorities that directly impacted the integrity in the short term. She said the Depot group received an estimate of what the costs might be for the roof. She said related to this earmarked pot of money there might be some issues in that the City did not have ownership at this point and certainly might be something to explore if somehow denied transportation enhancement funding at this point when that opportunity came back around. Staff had not gotten to the point of the overall project and what would be desired at the depot if the City owned the depot and what would be the improvement project that would be needed. There was some historic restoration that needed to be done and as indicated before, ADA improvements as well as a number of cosmetic issues, but there had not been a comprehensive evaluation, design, and cost estimate on the total project.

Corliss said they might be able to have the roof work ready to bid within the 120 days, but that was assuming the railroad was going to move on the ownership issue which had not been forthcoming.

Mayor Dever said that seemed to be the reason the City would be denied money. He said it would be the easy cop out for the federal government and their designee and would be a justification for not giving the City that money. He said it was not just this project, but all project. That was concerning picking and choosing something that might or might not be ready and to prioritize it as such, hoping they could have the project ready and the documents clearly stating the project was not ready and the City would lose and need to go to the back of the line. He said that was where the City needed to be careful in asking for money that was definitely ready.

Corliss said the Carnegie was ready and the other items such as bike and pedestrian, Clinton Parkway, multi use trail would be put the sufficient in-house engineering resources to get that project ready within 120 days, but could not, through the City's procurement process, get there. He said it was the same for Burrough's Creek, the City was in the process of designing and would not have the entire project ready to bid within 120 days and this would be part of the project that were not currently funded through the State and staff could go ahead and design some of those sidewalk connections to Burrough's Creek in 120 days. In the Brook Street project, staff did a good job on Ohio and encouraged getting that ready within 3 months as well. He said it did not mean the City was not going to pursue other funding avenues for the Santa Fe Depot, but the ownership issue needed some resolution and there would probably be public funds into that building.

Mayor Dever asked if it would help if he or someone on the City Commission were involved in trying to stimulate a response on the BNSF on where they stood. He said there had not been a formal response, but he suggested not leaving this issue in limbo. He said if BNSF had talked to the City about the ownership transfer.

Stoddard said they had visited about the ownership transfer. She said she had not exchanged letters with BNSF, but staff had certainly talked with BNSF about ownership and she had a good indication of what their issues would be. One of the issues was they would not transfer the underlying ground to the City. The other issue was that BNSF needed their interest protected regarding their leased space and equipment at the depot. Those were the two big issues, but in general, BNSF had been open to discussions about transferring possibly in a form of a donation, the building. The issue had been trying to see what they might be willing to do in terms of putting in their money into the depot and that would lessen whatever money the City had to put into the depot.

Mayor Dever suggested that one of the City Commissioners could get involved or write a letter to receive some sense of urgency to this issue so the City could ask for money if money was available.

Soules said it was 120 days to get the project ready, but staff needed to tell KDOT in the next couple weeks if the project could be done and KDOT would make their decision in two to four weeks.

Mayor Dever asked if there were different pots money and there could be another allocation that was related to rail or surface transportation, alternate forms of transportation where the City could get funding.

Corliss said Amtrak could respond to that question and as staff understood, Lawrence was going to be one of the Kansas cities that received the eligibility to directly apply and received money through the U.S. Department of Energy for energy efficiency grants that could help on a lot of items at the depot such as HVAC, windows and those types of improvements. There were also other City needs for that money as well and the City Commission would decide that prioritization. Staff was looking at all the different angles.

Stoddard said staff just received new information from Amtrak and was not sure there was a clear answer. On Friday, staff had a conference call with Amtrak officials and it was indicated they recently sent a report to congress related to their request for funding for improvements at their stations and staff had been informed Amtrak had taken a position that for stations that were privately owned like the BNSF Station in Lawrence that Amtrak was responsible for those repairs. An Amtrak official was present at an earlier meeting and she was not completely clear on Amtrak's position.

Maynard-Moody said that Amtrak was absolutely responsible for the ADA upgrades for the facilities they owned, but Amtrak had never received the subsidies needed and did not own very many facilities. She said it might be that they could surmise that after tending to their own facilities with whatever funding was available to them through the economic stimulus package

with the new authorization from congress, if there were monies left over Amtrak would help depots that were privately owned. She said they needed to ask for more clarity about those depots that were owned by municipalities and whose responsibility it was. She said within Amtrak itself, there were funding opportunities they could leverage for ADA compliance upgrades. She said she was sorry it was so confusing and thanked the City Commission in their interest in another voice. She said Stoddard had done a wonderful job in working with them and BNSF volunteers. She said the bottom line was you don't not apply because you think you'll be denied.

Corliss said the direction would be to submit the federal appropriations request and one of the issues highlighted by Stoddard was the importance of prioritization and did not know if the City Commission wanted to choose between storm water and transit and surface transportation. He said the city had luck with transit funding and might want to make it a priority to help with the alternative fueling and proceed with the 31st Street and Kasold and storm water projects.

Commissioner Amyx said he was hearing transit first, road projects and storm water last.

Corliss said he was just suggesting.

Commissioner Hack said since the sales tax vote was overwhelmingly in support of transit, she was thinking that citizen survey talked about that east/west connection. She said her preference would be to have the east/west connection first, transit, and then storm water because there were other avenues to pay for both transit and storm water with sales tax money.

Vice Mayor Chestnut said Corliss indicated some intuition relative to what would be funded. He asked if Corliss felt that transit was the highest probability.

Corliss said when looking at what the City had historically funded, in the past, the City was able to get some money for transit.

Mayor Dever asked if there were people competing for funds.

Corliss said yes, it was decided nationwide there was going to be so many transit earmarks and the City was able to compete.

He said he agreed with Commissioner Hack's comments about the east/west connectivity and it was very likely, the City alone would not do the 31st Street project and would need county or state participation. He said the City had an opportunity to do a lot with the goals for those transit buses. He said those projects were not prioritized and was hard to prioritize at this time.

Stoddard said the only guidance was the placeholder on the form that indicated that if multiple earmark submissions were sent, the community's priority for those earmarks. She said that prioritization was only on Senator Robert's forms that she had seen.

Commissioner Hack said the City had worked hard to develop a relationship with the Senator as a community and thought they should follow the Senator's rules. She said that form should be filled out correctly.

Mayor Dever said last time they were in discussions with Senator Robert's, they talked about transit being the high priority in this community and looking to the future not knowing where it would be, asking for additional funds.

Corliss said historically the City had received some money for transit almost every year.

Toomay said correct.

Corliss said they had not even finished the 2009 budget which started October of last year and was following an earmark request submitted a year ago.

Toomay said staff just received notification today that the committee had put forward their 2009 Appropriations Bill which would go to the house tomorrow for a vote which included an earmark for the City of Lawrence transit system for \$950,000. She said she did not know where that would end up but for the request in the previous year that started at 2.2 million for a joint transit facility with K.U., resulted in an earmark of \$147,000.

Commissioner Amyx said in talking about 31st Street and the City not being able to do that project on its own, he assumed he would include the County. He asked if the County had access to the same funding sources as the City.

Corliss said the County could make the same Federal Appropriations request.

Commissioner Amyx asked if it would be appropriate to ask the County that if following along Commissioner Hack's guidelines, to have discussions with the County about making 31st Street their top priority also.

Corliss said that would be appropriate for the County. He said he did not know what the County's appropriations process was, but staff was finding out about those forms when starting the appropriations process about this time last week.

Commissioner Amyx said from the standpoint of Senator Roberts wanting the City's highest priority and if it came from the City and County as the priority project would help in the decision.

Corliss said the communities that speak as one voice usually were more successful than those that did not bring all the partners along.

Commissioner Amyx asked if the City had a week to receive input from the County.

Stoddard said the deadline for Senator Roberts was the first week in March.

Commissioner Highberger said coordinating with the County was a good idea, but he would like to keep transit as the top funding priority.

Commissioner Hack said Commissioner Amyx brought up a good point in that if the City and County were able to speak as one voice, the success rate might be better and then transit second and storm water third.

Mayor Dever said the County could not ask for transit.

Corliss said the County could ask for transit on the City's behalf, but it was not likely. He said the County would support the City's Appropriations request, but Commissioner Amyx's recommendation was that both the City and County make 31st Street the top federal earmark request.

Commissioner Amyx asked if this was the one opportunity to replace the entire fleet all at once.

Toomay said it would not be her recommendation to replace the entire fleet at one time then 12 years down the road, the City would be in the same boat. She said she hoped they would continue to make an earmark request each year because even with the sales tax revenue those additional federal dollars made that money go further and it would be her recommendation to setup a plan to replace one fixed route vehicle a year for a staggered approach.

Commissioner Hack said the memo indicated that to date, the City received almost 2 million from federal earmarking for transit and 1.9 in the stimulus funding. She said the City had received some federal transit money and only received \$800,000 for 31st Street. She said the city had not received much at all for a major east/west thoroughfare in this community.

Mayor Dever asked how much the City received already guaranteed.

Toomay said the preliminary estimate for the stimulus was \$1,930,000.

Mayor Dever said if the City asked for that money or would get that money regardless because the City had a transit system.

Toomay said the transit system stimulus funding was being allocated using the formula.

Mayor Dever said theoretically, Toomay's concept made perfect sense and he as going to advocate for a phased approach because the useful life for a bus could be extended a little longer.

Toomay said all of the City's vehicles in the fixed route were scheduled to reach the end of its useful life this year.

Mayor Dever said if they were going to follow Toomay's logic, the City really did not need all the money right now, if not replacing all those buses.

Toomay said alternative fueled vehicles was a higher priority because with the funding secured right now, the City could either replace all 12 vehicles with more traditionally fueled vehicles or replace fewer more expensive alternative fueled vehicles.

Mayor Dever said the City would not want to replace all 12 vehicles all at one time anyway because the City would run into the same problem it had now.

Toomay said correct.

Mayor Dever said they could do the moderate approach which was to buy alternate fueled vehicles and to replace less to those vehicles with the already secured money to get a decent fleet going. He asked if \$900,000 for earmark request into the future based on historical data.

Toomay said the City would want some rational basis for the amount of the earmark request.

Mayor Dever said the City should go with what they had the highest level of getting the most money which was transit and he would go for the sure thing, but if the City Commission wanted to go for something that was more equitable or fair then they had the opportunity to direct staff to do so.

He said the City would need to spend half of that earmarked money in 180 days and asked how long the City had to spend the other earmarked money.

Toomay said once that earmark was the City's then it was the City's, but the FTA did not want a city to hold on to it forever. She said that appropriation bill also included some recissions. Eventually, if that money was not spent, the money would be taken back.

Mayor Dever said the money could be phased.

Corliss said there was likely to be some equipment and facility costs associated with alternative fueling.

Mayor Dever said the community stepped up and put the City Commission in this position to get the money and would like to get the money if they could. He said he also understood the need and would love to make some headway on the east/west route.

Moved by Hack, seconded by Amyx, to authorize the submittal of FY2010 Federal Appropriations requests to the City's Congressional Delegation; directed staff to prioritize

Senator Roberts form with Transit; Transportation; and Stormwater requests; and directed staff to present to the County the 31st street federal funding recommendation. Motion carried unanimously. (13)

PUBLIC COMMENT: None

FUTURE AGENDA ITEMS:

- 03/24/09 · Consider adoption of economic development policies and cost benefit model.
- 03/31/09 · Receive recommendations of Mayor's Climate Protection Task Force.
- March · Discussion of panhandling issues per City Commission request on December 9, 2008.
- Receive audit recommendation follow-up report from the City Auditor
- Discuss continuation or expiration of the quorum ordinance.
- TBD · Conduct public hearing and consider approving Site Plan SP-02-10-08, for a sidewalk hospitality area for Eighth Street Taproom, located at 801 New Hampshire Street. Submitted by Paul Werner Architects for Louise's Inc., property owner of record.
ACTION: Approve Site Plan (SP-02-10-08) for a sidewalk hospitality area for Eighth Street Taproom, located at 801 New Hampshire Street, if appropriate.
- Authorize the City Manager to execute an engineering services agreement with Black & Veatch for Design Phase Engineering services in conjunction with project WW0601, improvements to the Anaerobic Digester Process at the Wastewater Treatment Plant.
- Conduct public hearing to discuss the condition of the dilapidated structure at 1207 E. 13th Street and to consider declaring the structure unsafe and dangerous and ordering its repair or removal within a specified period of time.
- Receive 2008 TASER usage report and authorize expanded deployment of TASERs by the Police Department.
ACTION: Receive report and authorize the expanded deployment of TASERs by the Police Department, if appropriate.
- Consider the following items associated with the Oread Hotel:
 - a) Road closure schedule
 - b) Final development plan revisions
 - c) TIF redevelopment plan revisions to public improvements

- Utilities Master Plan
- ***This item was heard by the CC on 02/10/09.*** 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. Consider adopting [Ordinance No. 8304](#) on first reading regarding TA-12-27-07 for revisions to multiple sections of the City Development Code to revise the Protection Standards for Environmentally Sensitive Areas and to provide more precise definitions. (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 and adopt on first reading, Ordinance No. 8304, if appropriate.
- Receive staff report regarding transferable development rights
- 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)
- 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).
- Maple Leaf Square rezonings, dedication of easements and rights-of-way, and waiver from the requirement of the Subdivision Regulations that sidewalks be constructed on both sides of the street.

COMMISSION ITEMS:

Moved by Chestnut, seconded by Highberger, to adjourn at 10:10 p.m. Motion carried unanimously.

APPROVED:

Michael H. Dever, Mayor

ATTEST:

Frank S. Reeb, City Clerk

CITY COMMISSION MEETING OF FEBRUARY 24, 2009

1. Bid – 2008 Sidewalk Gap Program, RD Johnson for \$235,801.05.
2. Annual Telephone Maintenance – ISS Inc. for \$20,639.
3. Payment – DG Cnty, updated 2009 aerial photography, \$15,130.50.
4. Ordinance No. 8363 – 2nd Read, revisions to Downtown Design Guidelines, amend Urban Conservation Overlay District.
5. Ordinance No. 8369 – 2nd Read, SUP-12-10-08, The Malls, 711 W 23rd.
6. Ordinance No. 8370 – 2nd Read, Rezone (Z-11-18-08), RS5 to RSO, 1245 Conn.
7. Ordinance No. 8372 – 2nd Read, Rezone (Z-12-21-08), RM24 to CS, 1740 Mass.
8. Operating Agreements – athletic fields with USD 497.
9. 2008 Annual Utility System Development Charges.
10. City Manager's Report.
11. Ordinance No. 8371 – 2nd Read, (Z-11-20-08) RS7 to RMO, 2141 Maple Ln.
12. Text Amendment (TA-04-03-08), shelters in religious institutions.
13. FY2010 Federal Appropriations requests to City's Congressional Delegation.