

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" from 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 adequately 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