



# City of Lawrence

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## CITY COMMISSION

**MAYOR**  
ROBERT CHESTNUT

**COMMISSIONERS**  
MIKE AMYX  
ARON CROMWELL  
LANCE JOHNSON  
MICHAEL DEVER

August 4, 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 Chestnut presiding and members Amyx, Cromwell, Dever, and Johnson present.

## CONSENT AGENDA

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to approve the City Commission meeting minutes of July 14, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to approve claims to 323 vendors in the amount of \$2,156,513.81 and payroll from July 19, 2009 to August 1, 2009 in the amount of \$1,841,471.19. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to approve the Drinking Establishment Licenses for Stone Creek, 3801 West 6<sup>th</sup>; Tres Mexicanos, 1800 East 23<sup>rd</sup> Ste: H; El Mezcal, 1520 Wakarusa Ste: F&G. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt on first reading, Ordinance No. 8437, adding to the City's existing rights under various agreements, leases, and liens used to regulate the Lawrence Community Housing Trust and enabling the county to consider resale restrictions for purposes of determining the fair market value of land trust properties. Motion carried unanimously. (1)

Ordinance No. 8431, allowing worksite utility vehicles to be driven on City streets, subject to insurance and other requirements and providing penalties for their illegal operation, was read a second time. As part of the consent agenda, **it was moved by Amyx, seconded**



**by Johnson** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson.  
Nay: None. Motion carried unanimously. (2)

Ordinance No. 8412, allowing possession and consumption of alcoholic beverages on certain City property, pursuant to Angler's Seafood House Sidewalk Dining and Hospitality License, was read a second time. As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6854, amending Resolution No. 6776 relating to the improvements to the water and sewer system and the issuance of general obligation notes and/or bonds and water and sewer system revenue bonds for the purpose of paying the costs thereof for the Bowersock Dam project. (4)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6855, providing for the improvements to the waterworks and wastewater treatment facilities and providing for the costs thereof for the Lawrence Municipal Airport water and sewer lines project. (5)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6857, establishing the maximum annual bonding amount for public improvements, pursuant to Charter Ordinance No. 27. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6856, designating a recovery zone pursuant to the American Recovery and Reinvestment Tax Act of 2009 for the purpose of issuing recovery zone economic development bonds and recovery zone facility bonds. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6858, authorizing the sale of general obligation notes and bonds to finance various projects. Motion carried unanimously. (8)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to adopt Resolution No. 6859 authorizing the improvement or re-improvement of certain main trafficways within the City of Lawrence and providing for the payment of costs thereof. Motion carried unanimously. (9)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to receive a letter from the Chamber of Commerce regarding the proposed Development Code modifications; and refer to staff for a report. Motion carried unanimously. (10)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to approve the temporary use of right-of-way permit for the closure of Massachusetts Street between North Park Street and South Park Street from 9:30 a.m. – 6:30 p.m., on Sunday, August 23, 2009 for the Kansa State Fiddling and Picking Championships, subject to the conditions which may be imposed by Police and Fire Medical Departments. Motion carried unanimously. (11)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to receive Kansas Point-in-Time information regarding number of homeless in Lawrence and Douglas County. Motion carried unanimously. (12)

As part of the consent agenda, **it was moved by Amyx, seconded by Johnson** to authorize the Mayor and City Clerk to execute a Memorandum of Understanding (MOU) with IAFF Local 1596. Information will be updated after the employee group votes on the MOU on Saturday, August 1, 2009. Motion carried unanimously. (13)

#### **CITY MANAGER'S REPORT:**

David Corliss, City Manager, presented the report. He said the Eagle Bend Golf Course was featured in Kansas City Fitness Magazine for August/September; the Lawrence-Douglas County Metropolitan Planning Organization coordinated with the Mid-America Regional Council and St. Joseph MPO in developing a 1-day training program, educating communities in

collecting data on bicycling and walking using a consistent methodology that would assist with estimating demand and usage; and, Lawrence Parks and Recreation gymnastics participants competed in the Sunflower State Games held in Topeka. (14)

**Consider establishing a school reduced speed zone on George Williams Way adjacent to Langston Hughes Elementary School, and authorize an expenditure of \$10,000 for school zone beacon installations.**

Chuck Soules, Director of Public Works, presented the staff report. He said on July 7<sup>th</sup> the City Commission directed staff to provide a recommendation for reducing the speed in front of Langston Hughes.

Staff recommended reducing the speed zone 200 feet south and north of the two entrances to Langston Hughes Elementary and installing flashing beacons. He said all school reduced speed zones on collector streets in Lawrence had beacons, or were being installed to alert drivers of the reduced speed.

Vice Mayor Amyx said if the school zones were seven hundred feet and asked if the beacons would be at the 200 feet mark at the north and south end.

Soules said yes. A school zone was typically established, within a pattern, where pedestrian's or children use that school zone.

Mayor Chestnut called for public comment.

Paula Peppin, Site Council for Langston Hughes Public Schools, said traffic and children's safety issues came up every year and their council tried to respond to the questions and concerns. The council was grateful for the use of crossing guards because an average of 200 children walked or rode their bikes every day to school. There was only one entrance used to enter the school and was monitored at least once a year to review traffic flow to make that area safe for the children.

A man asked why a beacon was needed coming out of the roundabout on the north end of the school zone and asked if the beacon would be better located far south.

Mayor Chestnut said there was approximately 400 feet before the entrance of the school and it was possible to pick up speed coming out of that traffic circle going to the south. He said the location of the beacon was standard based on other schools, but it was appropriate because of the potential speed after coming out of the traffic circle, if they did not know, with that beacon flashing, that it was a school zone.

A man asked if the Mayor already knew that area was a school zone.

Mayor Chestnut said traffic studies indicated the average speed in front of that school, at times, was in the upper 30 mph. He appreciated the attempt to save money but the beacon was important to slow traffic down.

A man said the beacon would not make a difference, but a uniformed policeman would.

Vice Mayor Amyx said staff had done a good job making sure the area in front of that school was safe. He said he did not realize that stretch of road was only 200 feet to the north and south. He said the traffic circle slowed traffic down somewhat, but shared the concern about some of those vehicles coming off of the traffic circle.

He said another concern was that kids would cross anywhere they could find that was close to the school.

Commissioner Cromwell said that he was happy that common sense had prevailed over the written traffic safety program. He said he was also pleased with the recommendations.

Commissioner Johnson appreciated staff's work and was in support of the reduced speed zone.

Commissioner Chestnut said it was the same situation with St. John's, but that school did not meet code because there were no crosswalks.

**Moved by Cromwell, seconded by Amyx,** to establish a school reduced speed zone on George Williams Way adjacent to Langston Hughes Elementary School, and authorize an expenditure of \$10,000. Motion carried unanimously. (15)

**Consider authorizing the City Manager to send a letter to KDOT requesting the inclusion of certain improvements to the plans for the reconstruction of the 23<sup>rd</sup> Street Bridge.**

Chuck Soules, Public Works Director, said the 23<sup>rd</sup> Street Bridge project was not funded yet, but plans were being finalized. He said he proposed that the Commission consider additional improvements with City participation to enhance the visual appearance and pedestrian usage of the bridge.

He said staff requested to authorize the City Manager to send a letter to KDOT requesting additional improvements to the plans for reconstruction of the 23<sup>rd</sup> Street Bridge.

Chris Norton, KDOT, said the project began in August of 2007 with HNTB and they considered several bridge and traffic handling alternatives during construction.

The project was presented to the City Commission in June of 2008 and was followed by a public meeting at the 4-H grounds in which they went over the concepts and recommendations. He said a field check took place, April 29, 2009, and were currently 60% complete with the plans. The executive staff authorized final design, but they were not authorized to acquire right of way at this point.

Also, they would go over some potential letting dates and the project team realized the project would be built in 5-6 months. They would probably start construction after the basketball season and try to finish before football season.

Brenda Foree, HNTB, said the project would be between Barker and Haskell, 23<sup>rd</sup> St and K-10, near Haskell Indian Nations University and Douglas County Public Works yard.

The existing bridge was built in 1931 and was widened for 4 lanes in 1971. The bridge had a narrow four foot wide shoulder on the North side and the bridge was showing its age. KDOT was keeping a close eye and inspecting that bridge every 6 months. She said it was safe to carry current loads.

Ryan Robinson, HNTB, said that along with the new bridge, 23<sup>rd</sup> Street would be widened to five lanes between Barker and Haskell Avenue with curb and gutter on both sides.

The frontage roads on north and south sides would be reconstructed with minor geometric improvements. The narrow sidewalk along the north side would be lowered along the frontage road and would run that entire stretch and tie back into the east end, tying into the proposed rail trail. Currently, no sidewalk existed on the south side between Stadium Drive and along some of those businesses. A six foot sidewalk would be constructed that ran the entire length along the south side going over the bridge. Also, a retaining wall would be built on the southeast quadrant of the project. There would be four twelve foot lanes and one center, fourteen foot, two-way left turning lanes which increased safety of that left turn movement and eased traffic flow.

The existing profile showed a large hump because the railroad was no longer active, the clearance requirements were much lower and the profiled could be lowered approximately eight feet at its highest point which totally leveled the hump and helped the site distance along the entire corridor.

Foree said the new bridge would be a three span reinforced concrete haunched slab bridge which was economical and a low maintenance costs type bridge. The frontage road and the rail trail would be located under the center span. The length of the new structure was 120 feet total.

Robinson said four lanes would be maintained during construction with two, two-lane shoofly detours on the north and south side. During construction, Stadium Road and Learnard Avenue would be closed, along with the frontage road underneath the bridge. No left turns would be permitted during constructions.

Foree said they were well into preparing the final plans and would be completed by the end of next year. The project could be built by 2011 or 2012, depending on construction funding.

Mayor Chestnut called for public comment.

Tim Lindhorn, resident of Learnard Ave, said a lot of traffic was funneling onto 23<sup>rd</sup> Street and was deeply concerned how this project would affect the area with major traffic backups. He said he hoped the City Commission would make their decisions with caution.

Robinson said the bridge was a signature bridge coming into town and asked if there were any visual appeal preferences to the bridge

Soules said the current bridge was not visually attractive. He said KDOT had mentioned the 14 foot center turn lane, but a turn lane was not needed for several hundred feet across that bridge and staff and KDOT discussed placing medians in that center lane. There were also discussions about railing and pedestrian lighting and staff was asking for Commission direction.

Michael Almon said he was a member of the original Burroughs Creek Plan Committee, which was currently referred to as the Eastside Neighborhood Coalition, the three neighborhoods that brought forth the Burroughs Creek Trail.

He said the purpose of this item was to submit some requests to KDOT from the City of Lawrence to make some design changes in the plans, acknowledging this plan was a 100% KDOT project and KDOT had complete design control. He said he would like to suggest one or two changes.

The original plan called for three trailheads with parking stalls: one at 11<sup>th</sup> Street at Hobbs Park, one at 15<sup>th</sup> Street at Parnell Park, and at 23<sup>rd</sup> Street. At the June public meeting, he spoke with City staff and several parties involved in this project with this area interfacing, particularly the parking which was initially indicated as a temporary fix because the plan was that any of those trailheads were not going to be part of the first phase construction, but simply coordinated with future projects and tied in when upgrading Hobbs Park or building the splash park at 15<sup>th</sup> Street and when this bridge would be built at 23<sup>rd</sup> Street. He said he also mentioned to David Cronin, City Project Engineer, that area interfacing. The City Engineer said at this point, even those parking stalls were not included in the current construction plans for the

Burroughs Creek Trail and right now they were getting nothing as far as parking or trailheads goes.

At the June meeting for this viaduct project, it was noted of the four quadrants, the only area available that did not have a small space with a retaining wall or existing frontage roads was in an area where everyone thought that was the logical place to put a trailhead and/or parking. He said this was the point where it was to be coordinated with the major project and would like the City to consider adding that coordination with the design considerations staff was requesting KDOT to include.

Mayor Chestnut said if that coordination could be incorporated into discussions about improvements because he was assuming the City would need to pay for that coordination.

Soules said if the City was willing to participate, KDOT would take that into consideration. He said that would be beyond the scope of what KDOT was anticipating and KDOT's responsibility was for the bridge. He said staff was happy KDOT was constructing the multi-use path and the sidewalk which the City paid for when constructing the new bridge on the KTA at Michigan and Kasold.

Mayor Chestnut said the City Commission was being asked to authorize a letter to KDOT requesting an inclusion of certain improvements. He said in the Commission's request, he asked if they wanted to include some type of design phase for the trailhead only after finding out those costs.

Commissioner said that he agreed with this area being a gateway into Lawrence and the comments on the trailhead.

Vice Mayor Amyx said that he did not believe a woven wire fence was something that would be very good on a gateway road coming into town, but liked the recommendations of using the iron and LED lighting for vehicles and pedestrians.

He said if the roadway that ran by the County shop would remain and was the parking in the center of the road as proposed in Almon's drawing.

Soules said yes, but the north side might be considered. He said with the multi-use path on the north side of the bridge going down east and west, tying into the Burroughs Creek rail trail, it might be a better spot. He said they could have further discussions with the Eastside Neighborhood Coalition and include Parks and Recreation.

Vice Mayor Amyx said after the shoofly detours were no longer needed, he asked what happened to those roadways.

Robinson said those roadways would be ripped out, but with most of those shoofly detours, those detours were designed in such a way to sometimes remain as access roads, especially the south side and northwest quadrant. The northeast detour might provide some opportunity to leave hard type surface for trailhead parking.

Vice Mayor Amyx said the shoofly roadway would be a hard surfaced road.

Robinson said that area would be lighted during construction to light the detours at night. He said there would be some major adjustments in front of the County shop to get tied back in to 23<sup>rd</sup> Street and those turns would not be 90 degrees, but designed for speeds of 35 mph, but would be posted as 30 mph during construction.

Commissioner Dever said he questioned the medians because sometimes those medians worked out and other times the medians end up looking good initially and end up looking poorly after awhile. He said he preferred putting money into something that they knew would look good and more utilitarian as far as lighting and safety.

Commissioner Cromwell said he appreciated the consideration of pedestrian bike safety. He said it was an opportunity to make a great impression to those entering town.

Commissioner Johnson said it was a good time to look at that gateway, and as far as a choke point, if KDOT wanted to finish the second leg of the bypass, that could help alleviate some of those construction schedule issues.

Commissioner Chestnut said it was a necessary project, but would be a very disruptive. He said from pavement index and other such things, those routes staff knew needed to be

worked around would off load more traffic onto those routes. He said staff should be cognizant that traffic counts would go up on those roads and think a year a head of time, placing those routes on the mill and overlay program because of low indexes and those routes would get chewed up fast.

**Moved by Dever, seconded by Cromwell,** to authorize the City Manager to send a letter to KDOT requesting the inclusion of certain improvements to the plans for the reconstruction of the 23<sup>rd</sup> Street Bridge, including consideration of the Burroughs Creek trailhead along with parking. Motion carried unanimously. (16)

**Conduct a hearing pursuant to Section 20-1306(I) of the Land Development Code to consider an amendment to SUP-01-02-07 to increase the overnight participant occupancy from 31 to 76 (82 total including staff) at the Lawrence Community Shelter, 944 Kentucky Street.**

Scott McCullough, Director of Planning and Development Services, presented the staff report. He said this was a hearing to consider amending, suspending or revoking SUP-01-02-07 for the Lawrence Community Shelter. Staff understood the shelter had exceeded its SUP permit, limitation to occupancy of 31 overnight participants.

He said staff understood this violation was directly linked to the Salvation Army closing its doors on May 31, 2009. Approximately 42 people were currently sleeping at the 944 Kentucky site, either in enclosed space or outside on the Shelter's patio. Of the three options, the Community Shelter desired that the City Commission amend the SUP to allow an increase up to 82 people total in that building, 76 sleeping and 6 staff. The Shelter had outlined plans to modify the structure to account for the increase occupancy.

An important element of the existing SUP was the time frame of three years, which was provided to permit the Shelter the opportunity to relocate to a more appropriate area in the community.

Procedurally, staff encouraged the City Commission to make a finding that a condition of SUP had been violated by increasing the occupancy at the Shelter and that staff had offered an

appropriate motion, if the Commission desired to amend the SUP to increase the occupancy at the Shelter.

Mayor Chestnut said the information provided on the costs, the total was approximately \$50,000 and understood the egress and construction in the lower level of the Shelter was around \$30,000 and then the sprinkler system and alarm, but the total amount of \$50,000 was for the entire expansion of the middle and bottom floor, the retrofit fire alarm and upgraded panel along with expanding the sprinkler system.

McCullough said correct, the sprinkler upgrade would be to other portions of the main level and the basement level.

Mayor Chestnut asked if the cost was just to the main level, it would be less costs just for the retrofit of the alarm and sprinkler system.

McCullough said correct.

Mayor Chestnut called for public comment.

A resident of the Lawrence Community Shelter said that he relied on the Lawrence Community Shelter as a place to live and he appreciated the Commission's help and support.

Loring Henderson, Director of the Lawrence Community Shelter, said he was in support of the Shelter's request to amend the SUP to increase the night time sleeping occupancy from 33 to 82 individuals. He said this request was based on the decision of the Salvation Army to close its night shelter where a maximum of 42 people had been sleeping. When the Community Shelter was informed of the Salvation Army's decision on February 19<sup>th</sup>, they started searching for a place to house those homeless people and found a building at 13<sup>th</sup> and Massachusetts that was owned by Douglas County. A portion of that building, a former church was used as storage and was available as a possible shelter. He said because of the search for the building and in working with the County, architect and contractors to develop plans and obtain estimates for renovations costs and submitting a request to the Douglas County Commissioner's, took several weeks. The Salvation Army was asked to extend their date of closing from April 30<sup>th</sup> to May

31<sup>st</sup>. However, it was not sufficient time to present the former request to the County and prepare the space as a shelter.

Discussions were initiated with the First Christian Church and the LINK Soup Kitchen which already had sufficient clean space with bathrooms and several exits, but did not have a sprinkler system. He said he made the decision to house the homeless in the LINK space beginning Monday, June 1, but not to advise the City because he did not want to put the City Commission and City Staff in an awkward position of saying “no” to the homeless, until he had a plan to present to the City which he thought he could finalize two evening later on Wednesday, June 3<sup>rd</sup>, with his appearance before the County Commission. He said by Wednesday evening, another decision had been made to table the Community Shelter’s request to the County and to proceed with the former request to the City to use the LINK space, rather than the County building. He said it was not a good decision on his part because it clearly gave the impression to the City that he was trying in some way to circumvent codes and regulations and apologized.

Discussion then started with the City after the County tabled the Shelter’s request and a review meeting was held at LINK, Wednesday, June 10<sup>th</sup>, with City officials, LINK, First Christian representatives, and the Shelter. At this meeting a list was developed of fire code renovations that needed to be done to add sprinklers to all three floors, to the wing of that church and to improve the fire exits and access to existing bathrooms.

On Thursday June 11<sup>th</sup>, the First Christian Church advised him that they could not continue to shelter these individuals and those individuals had to move out by Saturday morning and gave the Shelter two nights to find another place.

He said having learned his lesson by not advising the City in advance on June 1<sup>st</sup>, he sent an email that Thursday, late afternoon, to Mayor Chestnut, Commissioner Dever, City Manager Corliss, Planning Director Scott McCullough, Assistant Director Margene Swartz and County Commissioner Craig Weinaug, stating that he had to move out of the First Christian Church and that he needed help finding a space that would pose a minimum of code and safety

issues. He said before that email and after words, he spoke with Salvation Army about the possibility of reopening with their buyer's agent about other real estate possibilities for alternative space.

He said receiving no answer from his first email he sent a second email to Mayor Chestnut and the same list of addressees advising that he had not been successful in finding another space and asked about the possibility of using the lower level of the Community Building, which was not available due to other commitments. However, if he could not find an alternative then his plan was to house the current residents in the current Lawrence Community Shelter building.

On Saturday, June 13<sup>th</sup>, the Shelter began sleeping additional guests on the floor of the upstairs day room and the floor of the two downstairs rooms. This move seemed to come as a surprise to some of the Commissioners at their City Commission meeting on June 16<sup>th</sup>, but was equally surprised because he thought his emails on June 11<sup>th</sup> and 12<sup>th</sup> had prepared the City for the move from LINK to LCS Building, even though no one responded to his emails.

The sleeping arrangement had several problems and was obviously not in keeping with the SUP. There was a meeting with the Fire Department, Planning Office and LCS representatives on June 19<sup>th</sup> where it was agreed that LCS would stop using the lower level for sleeping, but that the Fire Department was comfortable with the use of the upper level day room floor to sleep 21 individuals because that room had adequate front and back exits.

Estimates were received from contractors to extend the fire sprinkler system, to add a shower, and to construct a window well egress at a projected cost of approximately \$49,000. An application was then made to the City to amend the SUP to increase from 31 to 82 sleeping spaces. He said 82 sleeping spaces seemed large, but it covered the existing approved 33, plus the 42 spaces that were at Salvation Army, plus staff and volunteers at LCS and was a number that fit into the upper and lower level rooms that were planned for sleeping, by dividing their square footage by the required 25 square foot per person required by the fire code.

Since the meeting with the City on June 19<sup>th</sup>, LCS had been sleeping 21 people on the floor of the day room and a varying number outside, but never more than 21 individuals, on the cement, under the carport awning. This was where those people were sheltered when it rained.

By and large the people of the Shelter understood the reasons for some people needing to sleep outside temporarily and had taken the current situation without complaint. Those people were looking forward to the time when they were able to sleep back inside. With the prospect of winter, there was a growing sense of dread, if the situation was not improved.

He said he apologized for his personal mistake in moving people into LINK on June 1<sup>st</sup> without prior notice to the City which led to a serious misunderstanding between the Shelter and the City. The LCS and he personally had always strived to follow the necessary codes, meet deadlines, enforce regulations, and be a productive member of the community. He said it had been clearly been proven through several SUP's and countless meetings with Planning and Fire personnel over the years, that he was a person that respected City ordinances and codes as well as the necessity to save lives.

The requested increase number of sleeping spaces would have some effect on the LCS programs, but the main effect had already been felt with the larger number of people using the facility in the day time for the past few months. As always, the pressure on the program was most seriously felt by the inadequate space for programs and staff that was inherent in that small building. All of the Shelter's programs were outcome based and measurement of those programs did not show a drop in recent months nor had there been a proportional increased police calls with the absorption of the additional people from Salvation Army. I

This request was not a perfect resolution, but it was adequate since it was temporary and it was in response to a community emergency. The current LCS request does not ask that it is an exception to the code and that it was not acting out of disrespect for the code. He said what had happened to LCS was like a small tornado hitting Lawrence and 42 people losing their homes. If that had actually happened, the Red Cross and other resources would immediately

been brought to their aide, but it was not an actual tornado and the people affected were homeless people who had no where else to go.

The Lawrence Community Shelter was not asking for special consideration with this request to increase occupancy because they wanted to meet the need and have a space that met codes. There were examples where related types of agencies had not been required to meet code or have limited restrictions, but that was not what they were asking. The Salvation Army because it was grandfathered into the new codes, for example, never had fire sprinklers in its sleeping space, and were legal because of that grandfathering, but the people sleeping in that building were still at risk, if there had been a fire, and the City allowed the situation to continue for years. The current LCS did not ask that the LCS be an exception to the codes, but wanted it to be recognized that they did what the Red Cross would have done and was not acting out of disrespect for the code. Now LCS was seeking approval of the next step to provide a longer term, but still temporary space in accordance with the code. There was an emergency situation with the need to house people experiencing homelessness, in a building that was small, but did have sufficient legal room to provide shelter.

He said the LCS very much appreciated the City Commission's support of the Shelter's current, future site and programs. He said he also appreciated the increased communication with the City in the past months about the Shelter and its future location.

Lain Johnson said that the closing of the Salvation Army put a great pressure on the LCS, but LCS did a great job in helping people. He said he was from Philadelphia and had not seen this type of action in a community and commended the City Commission, because it took a lot of work dealing with homelessness. He asked the City Commission to open their hearts and help speed up the process because some families and their children did not understand homelessness.

A semi retired veteran, stationed at Ft. Leavenworth, said that there was no space for injured veterans coming back from Iraq, Afghanistan, and Honduras and the reality was that

they were all Americans. A lot of the veterans were sleeping under bridges which was a disgrace. God did not make people to throw away and without veterans, we might not have America.

Cameron Smith, resident in area of 10<sup>th</sup> and Kentucky, said he was proud of the service that LCS provided and it was a necessary service. However, it had been an unpleasant experience living in that area because people had slept on his porch and drank in his backyard. He said he wanted the Commission to consider what the change would be if the capacity increased in that neighborhood and take into consider that the Shelter was not in the best location.

Vice Mayor Amyx asked if the incidents had increased since June 1<sup>st</sup>.

Cameron said that he had experienced four incidents and two had been since June 1<sup>st</sup>. and had lived at that location for one year.

A resident in the area said she supported individuals and families that did not have a safe place to sleep, but the existing services did not provide a safe neighborhood. She said in the past six months she had been whistled and yelled at by many individuals at the Shelter. She said she also had individuals sleeping on her porch, socializing in the back yard and did not respond when she asked those individuals to leave. Individuals, day and night had jumped out of the bushes, heard fireworks early morning hours during 4<sup>th</sup> of July, and individuals jumping out in front of cars. She said what measures would be added or changed to ensure those behaviors that made her feel unsafe in her house, porch, backyard and neighborhood, did not increase in frequency as the occupancy was increased 2 ½ times.

Don Huggins, President of Lawrence Community Shelter Board of Directors, said the LCS had 14 video cameras position in and around to survey the shelter. He said their staff had full access to monitor the system from any computer at the Shelter which was convenient because staffing was always an issue. He said the Shelter had made a real attempt to improve the safety in and around the facility.

He said the number of police calls before and after LCS began accepting the Salvation Army guests had actually decreased by 12%, according to police figures. There was also a 19% decrease in police calls comparing the 2007-2008 period to the 2008-2009 period. He said the Shelter was continuing to lower that number. He said 75% of the police calls were during the day time and not the night time.

He said it had been almost a year since the Salvation Army closed its doors and the LCS was just now asking for an increase to take care of a night time service.

The LCS had increased their staffing from 9 to 18. The ratio of monitors to individuals was now 1-19 between the periods of 8 pm and 10 pm because it was the period when people were checking in and settling down. The ratio was 1-25 between 10 pm to 8 am.

He said in 2008, police data indicated that 2.6% of all police calls went to the LCS area or 1.3 police calls a day. He said that they were comparing that to other cities because he did not know if those numbers fell high or low. However, he said they were aware that they needed to do a better job with security, supervision, and safety.

Katherine Dinsdale, Chair of Community Commission on Homelessness, said the Shelter was right on the cusp of a new day when they could quit having conversations on this issue and the Shelter would be in an adequate location where care could be provided.

She said she had learned in dealing with homelessness that it was really a messy business in listening to a litany of issues a person faced with homelessness or eviction. She said the community wanted to be generous, but were facing problems downtown that the community had never faced before. She said they needed to get law enforcement and City codes in order to deal with those problems. She said there was one shelter in this community that was trying to help with the homelessness issue and they were dealing with the issue as best as they could.

She said she was happy the way City government was ran because they could respond emotionally, but had to balance that issue with the fire and police codes with what our code

stated was safe and wise. She said they could come up with a number for the SUP that the City could handle. The LCS was the only provider that had taken on this responsibility and needed to enable the shelter to move forward until they could find a more permanent solution.

She said there were parallel points of progress, the E-housing Connector was coming up with more units of transitional housing, Family Promise was doing a good job providing other housing and there were other people in town trying to rise to the challenge to support the Community Shelter to make their job a little easier.

Brandy Sutton, downtown business owner and neighbor of the Lawrence Community Shelter, said that she, as well as her staff, had been harassed by individuals from the LCS. It was an ongoing problem that had gotten worse. She said they were not present to argue whether the LCS was doing a good or bad job, but was about an SUP which had been in violation for 60 days. It was a crime that was stated in City Code, 20-1606(g), yet it was allowed to continue. She said it was not yesterday everyone found out the Salvation Army was closing and while she agreed something had to be done and people needed a place to stay, she had not heard from the LCS how they were going to contain the externalities that already existed under the current SUP let alone if they took 2 ½ times the amount of individual in a confined area.

In addition, she did not think the code was ever designed to use the amendment provisions under 20-1306(l) for positive amendment. The code actually stated the City Commission shall make one or more following findings if it seeks to amend, suspend or revoke, all of which talked about violations. She did not think it was meant that the City should fix the SUP so that it was not an issue anymore.

She said the City Commission needed to look hard at the violations, make definite points with the LCS about how they should deal with this SUP. There were issues that were not being addressed and adding people to the LCS would only make it worse. She said she would urge the City Commission to make the shelter a dry shelter and no longer be permitted to house

people who were intoxicated, on drugs, or actively participating in that life style. The Salvation Army residents that were coming over to the Shelter were trying to make a better life for themselves and a lot of people from LCS were trying to make a better life for themselves, but they could not do that if they were in a drug and alcohol ridden environment. She said she definitely was asking the City Commission not to allow 82 people and to place strings on the SUP to do what they promised for years.

Brad Cook, social worker placed at Lawrence Community Shelter, said he favored the expansion to the LCS. He said he wanted to speak on the issues of safety and about the culture of fear that was placed upon the homeless.

He said he also served as a field instructor for the School of Social Welfare at the University of Kansas. Last year, he provided field instruction to two students and would have two or three students this year. He or Henderson would not feel comfortable having student interns at LCS if the area was unsafe.

In 2005 he a previous student offered a safety plan for the shelter which had been in use and given to staff and volunteers.

On numerous occasions he heard it stated that the homeless were dangerous to be around in this community. He read multiple comments in the Lawrence Journal World in their blogging site of persons afraid of having the shelter being near or close to their neighborhood or how they would need to avoid the area, if the shelter was at that location, avoiding parks, or bicycle trails. There seemed to be this unfounded correlation that all homeless were violent or unstable and was ludicrous. People that are housed have the same possibility to be violent and unstable.

He said a vote tonight for the expansion of the shelter to offer more bed space was a step in the right direction. A vote in favor of the shelter acknowledges the dignity of the homeless populations. A vote in favor of expanding the shelter was a chance to show that society could learn and move forward in their lives without repeating past mistakes.

Phil Hemphill, Lawrence, said that he was concerned about the homeless and would not have served on the Homeless Commission for quite a long time if he was not concerned. He had seen a substantial increase past his house and in his neighborhood, especially since the Salvation Army Facility closed. It saddened him to see so many young mothers, usually with kids in tow going between the convenient stores and the shelter. He said he wanted it to be known that he was sensitive to the problems of the homeless and did care about the homeless, but his beef was with Loring Henderson and the Board at LCS.

He said the police see a KU Alumni drinking beer on KU Football game on the sidewalk, public property, and it was up to a \$300 fine and a mandatory court appearance. The Police see every single day, the homeless and their addictions on public property and commit any number of misdemeanors and the police did nothing which was basic economic discrimination. He said the officer on the street was not responsible because those officers had been told how to behave toward the homeless.

The homeless had partly learned their behavior from Henderson and the Shelter because they seemed to be able to break rules, ordinances, and provisions of their SUP within impunity. If the shelter received any pressure in breaking the rules, Henderson pulled out their “ace in the hole” and stated, the City had to let the Shelter do what they wanted to do, otherwise, the community was uncaring, insensitive and did not believe in helping the homeless. He said the majority of the City Commission caved into that “ace in the hole” every time. He said he was against the increase for the SUP and was sorry it fell hard against the homeless. He said the LCS was understaffed and the security cameras were not enough. He was against the increase and wanted the LCS moved from 9<sup>th</sup> and Kentucky.

He said the LCS had wasted two years of a three year permit and the LCS was just now announcing they would have a capital campaign to raise three million dollars. He said what LCS was doing for the last two years. After the permit was approved for two years, Henderson

was talking to a person and stated that there was not way to get this project done in less than five years. The LCS never intended to honor the end of this permit.

John Tacha, Lawrence Community Shelter Board of Directors, said LCS had the most caring, hardworking, and hard reaching group that he experienced. He said that group had looked at over 60 sites in the past two years and had been turned down 60 times. It was important that the community and City Commission realized that it had been a difficult thing to come up with a site. He said it had not been a waste of time and the LCS Board had spent countless hours, way beyond the norm, for no pay and never had come up with a site. He said he always felt a community was important as how they treated the least unfortunate. He said he could say that Henderson had always tried to do the right thing.

A resident of Lawrence since 1948 said he had seen a lot of changes, but staff at LCS had been overwhelmed and taken advantage of. He said this was a homeless, alcohol, and drug problem. He said his question was more directly toward the young homeless people and asked where their families were and why were the young homeless people in Lawrence and not back home. He said this City had to approach this issue more seriously. Homelessness was one thing, but some of those homeless were using that facility as a cause.

He said someone mentioned the location of the new Shelter on 23<sup>rd</sup> Street and in another topic, someone mentioned 23<sup>rd</sup> Street Bridge being a focal point. If someone was coming into Lawrence off of K-10 from Kansas City and with the new proposed Shelter location as well as double the amount of homeless people in that location, that would be the exposure to Lawrence.

John McMillan said he arrived in Lawrence two years ago, not by choice, but circumstance. He said he was homeless when he came out of prison with nowhere to go and there was no help anywhere else and Lawrence was where he was sent. During that time, the shelter helped him get his life back together, get a job and move out into a place of his own which lasted a year. He said circumstances again, put him back into homelessness and did not

like it any better than anyone else. The shelter provided a way for those who wanted to change to change. He said he spent 25 years of his adult life in prison, but life styles could change and people could change. Not everyone at the shelter was bad and asked that the community not to let a few bad homeless people make the decision for the majority. He said everyone could be one check away from being homeless themselves. He said the main problem was keeping employment so that he could keep an apartment. He said the help had to be out there and if the City Commission shut it down, he could not get that help. He said there needed to be programs available that weeded out the homeless people that were not trying.

Robert Wilson, builder, said he worked on the property across the street from the LCS for over a year and constantly saw police coming and going. The problem could not be resolved by putting more people in that one area. He said everyone had laws and rules to be dealt with, but what he heard was that the zoning rules were being thrown out the window. He said he was not in favor of the increase in LCS and the shelter was breaking the law.

Marci Francisco, resident of the Oread Neighborhood for over 30 years, said she had come to City Hall on a number of occasions to talk about public urination. It came from students that were drinking and people that did not have a home.

She said the City was making the rules and trying to balance concerns of the downtown economy, neighbors investing in their properties, and people who were struggling for a short period of time or perhaps for their lives. She said the Oread Neighborhood had said this was a small building, but even a smaller site for this purpose and had always been difficult to manage because people should have outdoor space as well as indoor space. At this point, it might be better to get more people indoors, if this was truly a temporary solution. The dollars the City was using from CDBG were dollars that were appropriated to address housing and it seemed to be an inappropriate expenditure. Those dollars would go further in some temporary solution than if they took those same dollars and started a program somewhere else and would not be

able to house as many people for this limited amount of time. She said she was speaking in favor of increasing the capacity for the overnight shelter.

Steve Ozark, volunteer in the community for 16 years, said he started the interfaith initiative 4 ½ years ago. He said he echoed many of the incentives tonight including the people that were opposed to continuing the SUP and the stress it placed on the neighborhood, it was no doubt caring for the people who were homeless that were not in programs were worse off in this community.

He said the facility at 10<sup>th</sup> and Kentucky was not sufficient for the amount of people that were at that facility since the Salvation Army closed. However, no one wants the shelter anywhere near their home, business, or community. He said he would ask the people that were most opposed to this SUP, if the permit was not passed, and those folks were left on the community's doorsteps and in the parks without anywhere to go at night to be safe and secure. Hopefully, the shelter could get approved on something permanent and something that would satisfy the community. He said he was asking the community to think with their hearts as well as their minds that those homeless people were in a desperate situation and had lost all hope if the community took away what was left of that hope and he would not be sure what Lawrence stood for.

The semi retired veteran said that there was federal funding available. Also, the armory in Lawrence was no longer active.

Mayor Chestnut said federal funding was financing the renovations and the armory was the federal government's responsibility and not the City's.

Greg Seibel, Lawrence, said the people he had seen urinating the allies were much more often people coming out of the bars and not the homeless population. The people he saw drinking downtown were people having a drink on the way to the bars downtown than homeless. He had seen the police run homeless people off the steps of the church at 10<sup>th</sup> and Vermont during the day and was enforcing behavior that was expected.

He said what was at issue was the number of people who were allowed to stay at the open shelter at night. The issue was not the way the Drop In Center was being ran during the day, the question was would more people be allowed to sleep at that facility during the night. The people who were on Massachusetts Street at 10 pm or 11 pm at night, panhandling, and making inappropriate comments were not the people who were staying in the shelter at night. The more people turned away each night, the more people would end up on Massachusetts Street with nothing to do until 2am or 3 am in the morning when things quiet down and could find a hiding place to sleep. A lot of those issues were going to be worse if the City Commission denied the increase of the SUP.

There were a lot of people working hard to find a better place for the shelter. A lot of people in the community were working to create a program to help people get out of homelessness with steps for transitional housing and working their way into permanent housing which took time. This was a request for a temporary increase in that number for an SUP because the need was there and there were no other options that could be put into place in the next month.

People that were turned away might find another way to get through the night now, but in the winter, there were no other options to get through the night. If this SUP was denied, people would freeze to death in the woods and under bridges.

A person said when he left the U.S. Navy he was homeless and lived on the streets of Oklahoma for about a year, but was no longer homeless and was a director for a major government contractor. He said he would not have gotten out of homelessness without the help he received. He said he did not have clothes to wear to get a job, take a shower, or a place to sleep and he found a shelter that helped. That shelter helped him get a job and from that point, it changed his entire life and now had a home, car, and an education. There were so many veterans coming home and needing help and would very much appreciate the funding going through because a solution was needed. He said he agreed there could be a better place for a

shelter, and that some people needed specific counseling for specific issues. He said the community had the opportunity to get those people off the streets and into a place where they had a chance to be helped.

Lane Johnson said approving the SUP would be a correct action because it would avoid those extra people being in the downtown area at night.

Herman Leon, affiliated with LINK, said that the Commissioners were dealing with a more explosive social reality due to the severe cultural and economic crisis. He said LINK was sponsored by 40 different churches in Douglas County. He said about 5,000 members of the community had put their faith in positive responses to distressing and painful problems. He said the Salvation Army absconded from its responsibilities without letting the City Commission know that it was intending to shut down. The LCS took in over 40 people that were basically thrown out of the Salvation Army and it was incumbent on a City Commission that cared about all of its citizens to say that exceptional steps were needed and it took courage to bend rules.

A person named Phil said he stayed at the shelter on and off for approximately 2 years and the shelter did work and showed compassion. He said the improvements to the shelter would make the building more attractive to rent out after the shelter changed locations.

A person that had been in Lawrence for two years said anytime Lawrence wanted to do something, it was done. She said groups get together with very little resources and get things accomplished. She said there were about 400 homeless people in Douglas County and LCS was the default homeless shelter. The SUP now only handles about 10% of the homeless population. The increase would move it up to 25% and that was a more appropriate number.

Shirley Martin Smith, Community Commission on Homelessness, said her biggest concern was the safety of the homeless. She said it was important that the public knows that the shelter was not the only solution to the homeless problem. The Lawrence Housing Authority, with the approval of their board, put money into the e-connection which was designed to provide temporary housing for families.

Commissioner Cromwell asked about the status of the violation.

McCullough said currently, there was a violation of the SUP and that was what initiated the hearing. A hearing was established on July 7<sup>th</sup>, to discuss the violation and when staff was presented with a land use violation, staff recognized that the shelter had historically been a unique land use to process and locate.

Staff had several meetings with Henderson and board members on how best to proceed to this point where staff knew there would be a lively debate and the City Commission would have some decisions to make about what the Community Shelter was presented with which was the Salvation Army's closing. If not for the Salvation Army closing, staff would not be present tonight talking about increasing the Lawrence Community Shelter. He said while staff recognized there was a violation, one avenue to seek relief from the code standards was to amend the SUP. The position staff took because of the impacts of taking a hard approach to enforce the 31 limitation of the shelter would have more negative impacts than permitting some temporary relief to increasing the occupancy on the first floor and the outdoor sleeping arrangements. Depending on what the City Commission determined, staff would take the next step. If the determination was to not increase the occupancy then staff had legal ways to enforce the Special Use Permit. If the SUP was increased then staff would draft an ordinance that increased the occupancy. He said staff fully recognized that there was a violation which was well documented in previous Commission meetings and by the staff report.

Vice Mayor Amyx said when the SUP was extended to a 3 year extension there was a list of conditions that was placed on that SUP and asked if staff looked at placing more conditions on that SUP because of the increase from 31 people to 82 people.

McCullough said staff reviewed the current conditions and understood the Shelter was in compliance with the list of conditions. The last couple of years, the Shelter had been fulfilling some of the compliance conditions and provided annual reports and police reports to the City Commission for review and acceptance. He said staff had not looked to see if there could be

additional mitigation in increasing the occupancy. Staff recognized in some ways that the individuals moving from the Salvation Army to the Community Shelter, in large part existed downtown because of the Salvation Army's location. Staff fully believed and hoped this was a very temporary arrangement. He said from staff position, staff would rather expend the efforts in whatever relocation effort there might be recognizing all the externalities downtown, rather than keeping at this issue about how to account for the Salvation Army closing. Staff already expended a great deal of effort, both the Shelter and staff on various locations in the City.

Vice Mayor Amyx said it was obvious LCS had outgrown their current location and making changes to the facility to accommodate life/ safety issues needed to be done. He said in a land use issue, he asked what number should be allowed at this facility. He said the next step was to find another location for the Shelter. He said the City might have slowed down the process for zoning, because of the new zoning code that was discussed for over a year. He said it might be the shelter needed more security.

He said that he did not believe the number needed to be greater than fifty. There was also an issue with winter approaching and the number, during winter time, might need to be increased. He asked about the timeline for capital campaign and move to a new location.

Henderson said they would be starting a capital campaign. He said there were pieces he could give the Commission, but not a timeline.

Mayor Chestnut asked Margene Swarts, Assistant Director of Development Services, regarding the CDBG (Community Development Block Grant) funds, if there was a possibility for expenditures over \$25,000 and if this request was temporary in nature, those funds would not be refunded.

Swarts said the issue with the CDBG funds dealt with the federal regulations that if spending over \$25,000 on rehabilitations and improvements on real property, the national objective needed to be maintained. In this case, staff was helping low and moderate income people and there was a five year timeframe. She said there were a couple of caveats. It did not

necessarily need to be the exact activity those funds were originally spent on. Rehabilitation could be done on that building and ensure that a future use that helped low and moderate income people were using the building after the Shelter relocated. If that was not to happen and it was less than the five years and exceeded the \$25,000, then technically the money needed to be repaid to the CDBG Funds from a non federal source.

Mayor Chestnut said if the City Commission was to move ahead with expenditures, greater than \$25,000, there was an occupancy, everyone concluded not past next April, but not five years, and that building reverted back to some type of commercial use, then that money needed to be repaid to the federal government.

Swarts said correct.

Commissioner Dever said he wanted to thank Henderson for the clarification of the timeline. He said he also wanted to thank the neighbors in the neighborhood or near the shelter because it was a testament to their patience. He said he agreed the downtown location was not a good location for an overnight shelter. The economic conditions were not good and there would be more homeless people and veterans returning from war with service to our country. He said he also thanked the Community Commission on Homelessness and their board.

He said the Salvation Army did a great job and the City allowed the Salvation Army to house people in a building that did not have fire sprinklers. The closing of the Salvation Army was something that was unknown during the SUP process, but the Shelter had done a good job in managing the flow of the new residents.

If looking at the Police statistics, there were 1 to 2 calls a day and there were statistically less calls than last year which was a testament to the conditions that had been placed on the SUP and the good neighbor process. He said there had been a decrease in police efforts at the shelter.

The community had a responsibility to respond to this issue and the City had a responsibility and opportunity to help which did not mean the City could afford to pay for everything, but the community could help, and then the City could help facilitate.

He said the Commission needed to acknowledge some delay in this process over the last year. He said no one else stepped up, but they had someone in the community that was willing to help and the City needed to help facilitate if possible as long as it was safe and done in a law abiding way.

He said Family Promise needed to be commended because they had stepped up and provided the community with some success stories.

He said it was not reasonable to believe more people could be housed in that building without major improvements. He said it was the best plan seen since he was on the Commission and they needed to set milestones in order to allow extension of the SUP or addition of residents to be housed at that location. He said he wanted the SUP extended for a year. He said they needed to keep in mind those opportunities to help low and moderate income at the Shelter location, once the shelter moved, so they would not need to return that money back to the federal government. He said he would like to see as many people possible in that building, but most importantly acknowledge they needed to increase the number tonight.

Commissioner Cromwell said he appreciated all of the hard work. He said he also understood the concerns from the neighbors. He said he wanted to ensure laws were being enforced. Security issues needed to be considered due to the high density of people in that area. He said protecting the homeless as well as the neighborhood was something he would like staff to consider on how it could be improved. The building changes were also important for the residents, as well as fire fighters.

He said he was in favor of coming up with a number that would hold throughout the winter because this issue would continue to arise. He said he wanted to work toward alleviating the issues that were brought up. He said he wanted to see increased security to help prevent

some of those problems. He said he was in favor of increasing the occupancy of the building with a timeline being put in place and an increase in security.

Commissioner Johnson said the compassion of LCS was felt, but they also needed to look at the rest of the community. He said he would like to solve the new permanent shelter. He said he was not for revoking the SUP. He said there was a common thread on both arguments which was behavior and enforcement. He said there was perception of homeless people that people did not feel safe coming downtown. He said he would challenge LCS to work on enforcement, tough love, and zero tolerance. He said whether LCS moved out of that location, they still had problems with "homelessness" and encounter people that did not go to LCS.

He said he did not know if housing more people at the LCS was a good idea, but he would support increasing the number, but needed to know the costs of improvements. He said he would like LCS and the City to practice the idea of zero tolerance in this community.

Mayor Chestnut said no matter what decisions were made, he cared deeply about this problem and was a priority to find a permanent location.

He said it distressed him to listen to comments regarding hate, because those people in adjacent properties had suffered along with the homeless. He said the neighbor's basis was not hate or prejudice, but frustration and helplessness about the fact that many of those people had been property owners in the adjacent area over the last 20 to 30 years and had suffered.

He said also, comment regarding money and power to move through the process. He said this process had moved faster and had more leniency than any development situation or any other situation in the community. If said if the same problems were in a development project, the project would have been ceased and there would have been no question. He said it was important to remember City staff had spent countless hours working through the issues to try to come to a resolution about this issue. He said the city had significant competing interests

and it was challenging to find a solution. However, the City staff and the City Commission had the community's best interest in mind.

He said he had grave concerns about the critical mass. He said it was his understanding with the memos provided about the breakdown of expenses, was to finish the main floor on the ground level to house 50 beds was essentially less than \$10,000 and was not a risk the City would not get refunded CDBG funds. He said he would also support whatever proceeds, which the City allocated \$80,000 in CDBG funds and directly allocated that money to the new facility to continue in the efforts of the Shelter.

He said he was concerned about the comments of enforcement. He said in riding along with the Police on occasion, he realized law enforcement made priority choices everyday. He said the Police Offices practice judgment because they had limited resources and those limited resources were being significantly constrained by some of this activity. He said the City had greater needs than resources and City staff spent everyday trying to make those decisions. It was a critical issue in this economy, but the number being recommended, he could not get his head around what the unintended consequences would be.

He said he was also concerned about investing money that the City might not recover. Although, in the scheme of things that cost was minimal, because LCS was talking about a capital campaign that would be a million and a half or two million dollars. He said he would like to support increasing the SUP amount, but 76 people was a big number, was a small property, and had very little buffer. He said he would support 50 people.

Commissioner Johnson said where that figure came from.

Mayor Chestnut said in the memo it talked about the occupancy. There was the 31 people existing, 19 on the first floor, and would be the maximum density on the entry floor off of 10<sup>th</sup> Street. The other 26, below grade, was where they got into the egress issues, doors, and a lot of moving walls which was about 80% of the construction cost to complete the total finish out.

Vice Mayor Amyx said he agreed so that everything would remain on the same floor. He said the balance of those funds would go for the development of the new facility. He said he did not want to extend the SUP to the April 17<sup>th</sup> deadline.

Commissioner Cromwell said that 50 number was an increase of 19, from the current permitted use. He said they lost 42 beds from Salvation Army, which was less than half so it was not adequate.

Commissioner Dever said the Commission mentioned limiting it to the first floor because they did not want to spend money on the lower level.

Mayor Chestnut said that they were creating more critical mass on a property that was having greater and greater adverse impact and it would be increased, day and night. He said there were a lot of other initiatives going on to help with this problem. He said with that property there were health and safety issues. The law enforcement had to pick and choose, because if they arrested people that took one or two officers off the street for two hours. If 20 officers were deployed in the community at any given time, it depleted law enforcement numbers quickly.

Commissioner Dever said that this was not the best location, but there was a deficit of over twenty beds and the number of homeless people would increase. He said there was no harm in putting everyone in one place and serving those people with limited resources, with an ultimate plan of moving those people somewhere else. He said he did not believe 19 beds were going to be enough.

Vice Mayor Amyx said the positive was that there would be a new site. He said it came down to if the majority of the City Commission believed that the request that came forward to allow 82 people to sleep at that location or pick another number.

Commissioner Dever said he wanted to put milestones in place and move forward.

Commissioner Cromwell said that any number larger than fifty will require basement improvements to be made.

Mayor Chestnut said construction cost wise, it would be more efficient to do the entire thing now.

Commissioner Johnson said there were a deficit of beds and asked if there was any other space in Lawrence, that was vacant that would allow bedding people at night for a six month period of time. It said it did not make sense to cram 82 people in one place and it might make sense to put 30 people at another location.

Vice Mayor Amyx said the last resort was property the City owned, rather it be the community building or public facility would probably be the only place they would be able to find, but every program the City had, were already taking up those spaces.

**Moved by Amyx, seconded by Dever**, to make a finding that a condition of the special use permit (SUP-01-02-07) has been violated by increasing the occupancy of the shelter from the restriction of 31 overnight participants; and to amend the special use permit. (17)

**Moved by Dever, seconded by Cromwell** to amend the special use permit (SUP-01-02-07) to allow overnight occupancy of 73 total, including 6 staff members. Aye: Dever, Cromwell. Nay: Johnson, Amyx, and Chestnut. Motion failed. (18)

**Moved by Amyx, seconded by Cromwell** to amend the special use permit (SUP-01-02-07) to allow overnight occupancy of 57, which included staff, with all of the other conditions of the SUP remaining, with allocation of CDBG funds to finish the space, and allowing the overnight occupancy to increase to 82, which included staff, from October 1, 2009 to April 1, 2010. Aye: Amyx, Cromwell, and Dever. Nay: Johnson and Chestnut. Motion carried. (19)

**Consider authorizing the City Manager to execute a Video Service Provider Agreement between the City of Lawrence and Community Wireless Communications, Co. and authorize the City Manager to send a written request to Community Wireless Communications, Co., to pay a video service provider fee equal to five percent (5%) of the gross revenues received for the services provided within the corporate limits of the City.**

John Miller, staff attorney, presented the staff report. He said the agreement was similar to a franchise agreement, but that was not specifically that type of agreement. The KCC

(Kansas Corporation Commission) was the authorizing authority under this legislation giving Community Wireless Communications (CWC) video service authorization on July 17, 2009. The act made that the service authorization was subject to and applicable to City right-of-way ordinances. Staff had presented an agreement that covered those conditions and responsibilities for being in the City's of right of way. It was similar to what was done with other entities that had franchise agreements and those that had equipment within the City's right of way, including the Sprint right-of-way agreement.

Staff had spoken to the legal representatives of CWC, and they had disagreements with the terms of the agreement. He said CWC would like to present an alternative agreement to the City Commission.

He said regarding the changes staff was recommending from the current agreement, in Section 2, subsection A, stated that CWC would start providing video services on or after August 15<sup>th</sup>, 2009. There was concern raised about the location of underground equipment facilities. He said CWC wanted to provide wireless services. However, underground facilities might make it difficult to provide wireless video service. Also, CWC would be asking to provide fiber optic cable within the right-of-way and in addition, and wanted to provide wireless video service within the City.

Miller said Section 5 stated: "nothing in this agreement prevents the video service provider from collocating on the existing above ground facilities with the owner's permission. Wireless video service equipment may be allowed above ground in the City of right of way with the permission of the City and such approval shall not be unreasonably withheld."

He said Section 12 dealt with poles and CWC had concern about language that stated: "video service provider shall not install, construct or erect poles or other above ground facilities without the City's approval" and added the language, such approval shall not be unreasonably withheld to Section 12.

CWC also raised concerns about the insurance requirement and performance bond. One of the concerns of CWC was in the proposed agreement there was a \$2 million aggregate insurance and a \$1 million dollar per occurrence insurance requirement. However, CWC had a 1 million dollar aggregate amount. Staff changed the bonding requirement to be exactly like that of the World Company's 1998 franchise ordinance, which stated only a \$20,000 bond amount payable to the City. Originally, it was a \$50,000 bond amount, but based upon a conversation and the fact that the World Company only had a \$20,000 bond amount in 1998, staff reduced that amount. He said he did not know if CWC agreed with the change.

He said Section 4 indicated to authorize the City Manager to execute an agreement with CWC and to send a written request for 5% of the gross recipients.

Vice Mayor Amyx said if this agreement mirrored other agreements made with companies that provided this type of service.

Miller said the City did not have an agreement with a company that provided video service subject to the Video Competition Act. The last change to the World Company's franchise agreement occurred sometime in 2007, but was a change to franchise ordinance, not to the agreement. CWC would be the first entity going through the process with the request for an agreement.

Shon Qualseth, attorney for Community Wireless Communications, said those modifications were discussed with City staff, but CWC did not agree with those modifications. He said he respectfully disagreed with the Legal Department's opinion that the proposed agreement complied with the Kansas Video Competition Act and Kansas State law. He said he wanted to offer an agreement that complied with the Video Competition Act and Kansas State law.

He said CWC obtained an order from the KCC approving their application to be a video service provider in Lawrence. The Video Competition Act was a framework of rules for video services providers and it governed those providers, as well as their relationship with

municipalities. The video services authorization that was issued to CWC required they comply with federal, state and municipal ordinances regarding public rights of way.

He said KSA 12-2023 stated:

“A video service provider shall provide notice to each municipality with jurisdiction in any locality at least 30 calendar days before providing video service in the municipality's jurisdiction. Within 30 days of the time notice is delivered to the municipality, the video service provider shall execute an agreement substantially similar to the following, which shall be filed with the city or county clerk and shall be effective immediately.”

He said KSA 12-2024(f) stated:

“(f) The holder of a state-issued video service authorization shall not be required to comply with any mandatory facility build-out provisions nor provide video service to any customer using any specific technology. Additionally, no municipality of the state of Kansas may:

- (1) Require a video service provider to obtain a separate franchise to provide video service;
- (2) impose any fee, license or gross receipts tax on video service providers, other than the fee specified in subsections (b) through (e) of K.S.A. 2008 Supp. 12-2024, and amendments thereto;
- (3) impose any provision regulating rates charged by video service providers; or
- (4) impose any other franchise or service requirements or conditions on video service providers, except that a video service provider must submit the agreement specified in subsection (a) of K.S.A. 2008 Supp. 12-2024, and amendments thereto.”

He said KSA 12-2023 made it clear an agreement had to as specified as in KSA 12-2024.

He said their proposed agreement between CWC and the City listed the exact requirements that were contained in KSA 12-2024. CWC was granted authorization, it would begin providing video services on that date; phone numbers for CWC for the City and customers to contact; updated the contact information, an acknowledgement and an agreement to comply/operate with the City's right of way ordinance; and, an agreement that neither they City or the CWC give up any rights of way rights under the agreement. He said that was exactly nine sentences contained in KSA 12-2024. He said the City of Lawrence had nine pages long.

Mayor Chestnut said if this information was presented to the City's legal staff.

Qualseth said the information was presented to the legal staff earlier this afternoon.

Mayor Chestnut said that he would not make a ruling on Kansas State law tonight. He said he was going to rely on City staff to give an opinion on the proposal.

Qualseth said that he wanted to point out that the agreement had to be substantially similar to the language and the City's was not substantially similar. CWC believed their proposed language was substantially similar to the language and complied with the statute. He said he agreed the agreement was similar to a franchise agreement that was offered by staff, but the statute was clear they were dealing with a video service provider agreement.

He said there were statutory responsibilities mentioned in the City Manager's email yesterday, that the City had statutory responsibility for the CWC agreement. He said CWC was requesting that the City Commission authorize the City Manager to execute the video service provider that was offered tonight.

Mayor Chestnut said he assumed the CWC agreement made no allowance for collection of franchise fees.

Qualseth said the agreement did not require collection for franchise fee.

Mayor Chestnut said that there are significant differences from the two proposed agreements.

Qualseth said City staff's agreement did not provide for collection of franchise fees.

David Corliss, City Manager, said that the bottom line was that the attorney indicated that an agreement was acceptable that stated CWC would follow all the rules, regulations, policies, resolutions, ordinances, now or hereafter adopted which were promulgated by the City relating use of the right-of-way relating to the use of the right of way, to the extent that the ordinances, statutes, rules, regulations, policies and resolutions were applicable to the video service provider. He said staff placed all of those rules and regulations in the agreement so that it was clear. He said that was general practice and believed that it was allowed under the state law. The City was not trying to put any substantial burdens on CWC except staff believed there was great value in having the regulations and requirements explicit.

Mayor Chestnut said if the CWC agreement had no stipulation for bonding or insurance.

Qualseth said yes because it was not required by state law.

Corliss said that it could be required by the City. It might be necessary to go to court, which was unfortunate because they were not that far apart to reaching an agreement for the use of right-of-way.

Mayor Chestnut said that the formulation of the agreement with a culmination of the type of agreements the City had for anyone that would be accessing the City's right-of-way, relative to bonding and insurance because CWC was moving into the City's right-of-way. If, for whatever reason CWC was not able to perform, the City would be left with the responsibility of having whoever left off or if there was a significant action of liability with no insurance, it would fall back on the City.

Qualseth said that it was a concern for the State Legislature and the Kansas Corporation Commission. He said he acknowledged that they had to comply with the City's ordinances for right-of-way.

Mayor Chestnut said that there were currently two agreements to negotiate and the next step was to negotiate something that was mutually agreeable.

Commissioner Dever said court was not the answer.

Corliss said the City did not want to go to court, but the City did not want to be afraid to go to court to protect their rights.

Commissioner Dever said if staff was familiar with the nine items.

Corliss said he was familiar with the law and knew the nine items had to be incorporated into the agreement. However, today was the first time he had heard Qualseth's concerns.

Commissioner Dever said why law suits were being brought up.

Corliss said that it was unclear where to move from here.

Qualseth said that it was late in the afternoon when he was able to work through this issue so he would be happy to defer this item for a week. This way the Commission could see both of the agreements.

Mayor Chestnut said the City Commission placed a lot of priority of posting information in advance and probably had not allow the public to have enough viewing of the information. Since there was a different agreement from the City's and the agreement had not been viewed by anyone, it was appropriate to defer this item.

Corliss said the City was not that far off as far as the use of the right-of-way, but might be off as far as where those requirements should be placed. He said staff was going to strongly recommend that any entity that had a legal right to be in public right-of-way had insurance requirements. He said it was also important to have bonding requirements so if disturbing the public right-of-way, the City had some means of having the public right-of-way restored to its functional use. He said in this situation, staff was putting those in the agreement.

Miller said the language that Qualseth brought up were in Section 2 of the City's agreement. The issue of trying to substantially comply with the KSA 20-1224 was in the agreement and extended the language as the City Manager indicated. The concern about August 11<sup>th</sup> was that the statute stated the City had to enter into an agreement with the video service provider within 30 days. The 30 days started when the KCC adopted their order on July 17<sup>th</sup>. Therefore, August 11<sup>th</sup> still put the City within the timeframe, if extended, he recommend that CWC be willing to extend the August 11<sup>th</sup> timeframe.

Mayor Chestnut said given this was the first time this community was executing this type of agreement, he guessed there were hundreds of those types of agreements in the public domain to look at for reference.

Miller said staff looked at multiple versions.

Mayor Chestnut said if Miller believed the City's agreement reasonably emulated those types of agreements.

Miller the agreement that the CWC provided was more similar to other communities. However, the City had just filled in additional material and provisions within the actual agreement and staff thought the agreement substantially complied with statutory requirements. Chestnut said that the item should be deferred until next week.

**Moved by Dever, seconded by Cromwell,** to defer consideration of Video Service Provider Agreement between the City of Lawrence and Community Wireless Communications, Co. for one week. Motion carried unanimously. (20)

**Receive a staff memo regarding the joint Transit Maintenance Facility with the University of Kansas.**

Diane Stoddard, Assistant City Manager, presented the staff report. She the KU/City Transit Planning Team had been working hard to identify a number of areas where coordination could be improved with KU in the realm of transit. One of the discussion topics that had been on their plate was discussion of a facility. Currently, the City and KU contract through MV Transportation the City contract transit provider for the facility at 31<sup>st</sup> and Haskell. By having the agreement for the facility through that management contract, the City arguably paid somewhat of a higher cost because it was spread over a fewer number of years then perhaps if looking at ways to remove that from the management contract and look at different arrangements partnering with the University and other options. She said the current lease agreement was ending at the end of 2010 and therefore it was an opportune time to have those discussions about how to move this issue forward.

She said a joint transit facility was important and a number of reasons spelled out in the memo from an operational standpoint and how the City was working with KU in how to continue to move that cooperation forward and into the future. Obviously, that cooperation had shown the City had been able to yield savings in the current management contract.

The current plan was for KU to issue a RFP related to a facility that would enable them to look at a variety of different options such as a lease purchase or purchase of a facility, related

to the lease options for a 10, 15, or 20 year term. She said having all those options at one time would allow them to make a determination and move the issue forward.

She asked the Commission for some indication and direction related to the joint transit maintenance facility and was the City supportive of that concept and did the City support in general, the idea of the issuance of the RFP.

She said the City had been blessed with a great amount of stimulus money and to work on its fleet maintenance. It was possible this stimulus money had the flexibility to be directed to some of the KU fleets and facility needs.

Mayor Chestnut asked if the stimulus money was for fleet maintenance only.

Stoddard said it was written in terms of fleet or buses or bus facilities. She said that they had identified a possible mechanism to work it out to free up other funding possibilities.

Robert Nugent, Transit Administrator, said the two stimulus grants they had were for vehicles only. He said they were suggesting buying vehicles for KU which would free up money to purchase property.

David Corliss, City Manager, said that idea was to hopefully reduce operating costs which would allow for things like an increased frequency of routes.

Mayor Chestnut said the concept of the joint transit maintenance facility was straight forward, but the issuance of the RFP and what staff was asking direction on, was for the RFP process to be driven by the University.

Stoddard said correct. Staff was looking at some of the restrictions the City had through the Federal Transit Administration for any mingling of money the City had with KU, given KU's charter service. She said there had been many discussions about being creative, but completely within the regulations and guidelines.

Mayor Chestnut called for public comment.

After receiving no public comment, Vice Mayor Amyx said the idea of a joint transit maintenance facility was something the City had always envisioned as one system. He said he liked the idea of having multiple options and the timeframe of the RFP.

Commissioner Cromwell said Lawrence was too small to have two bus systems so the combining of the T and KU on Wheels was smart.

Corliss said no action was needed, but was understood the City Commission was in favor of the joint RFP.

Mayor Chestnut said he echoed the support for the joint maintenance facility. He said he appreciated the City and University working together. He said he wanted to thank Commissioner Dever for his efforts in transit because it was his vision for the sales tax and his ideas were starting to manifest.

Commissioner Dever said he wanted to thank the public for their support and he was excited to see the comingling of those two systems and the savings.

Mayor Chestnut said he wanted to also recognize the University's effort. (21)

**PUBLIC COMMENT: None**

**FUTURE AGENDA ITEMS:**

- 08/11/09
  - Conduct public hearing on the proposed 2010 City budget. Ordinances adopting the budget, rate adjustments for water, sanitation and wastewater, and the Charter Ordinance on the guest tax will accompany budget approval.
  - Executive session on property acquisition, 5:00 p.m.
- 08/18/09
  - Adopt on second reading, Ordinance No. \_\_\_\_\_, adopting and appropriating by fund the 2010 budget for the City of Lawrence.
  - Approve a request for a 24 month extension of the approval for SP-12-93-06, a site plan for a new office building at 501 Rockledge Drive.
  - Approve a request for a 24 month extension of the approval for SP-06-54-06, a site plan for Glenwood Apartments located in the southeast corner of the intersection of Wakarusa and Eisenhower Drives.

**Defer consideration until August 18, 2009 of Comprehensive Plan Amendment, CPA-3-2-09, for revisions to Horizon 2020 Chapter**

**Four – Growth Management and Chapter 6 – Commercial Land Use to expand the possible locations of conference, recreation, or tourism facility uses in the rural area of Douglas County. Initiated by the Planning Commission on April 20, 2009. Requested by Rockwall Farms, LC. (PC Item 4; approved 6-2 on 5/18/09, BoCC approved 3-0 on 6/24/09) *This item received notice of consideration on July 28, however, consideration will be deferred to August 18.***

- 09/08/09 · Public hearing date to discuss the condition of the dilapidated structure at 426 Perry Street and to consider declaring the structure unsafe and ordering its repair or removal within a specified period of time.
- 09/15/09 · Ordinance No. 8387, for the Rezoning (Z-2-2-09) of 1725 New Hampshire Street from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip)
- 10/27/09 · 2009 LEAP Awards Ceremony
- TBD · City Auditor update on scope and method of performance audit related to solid waste.
- Consider Electrical Board recommendation to adopt the 2008 National Electric Code.
- Discussion of financing methods for traffic calming devices.
- Contracting for Professional Services
- Fairfield East maximum special assessment hearing
- Recycling report
- Consider a request from the Oread Neighborhood Association to enact a moratorium that would prohibit permitting Boarding Houses in the City of Lawrence while a text amendment to the Land Development Code to revise standards pertaining to Boarding Houses is processed.

**COMMISSION ITEMS:**

**Moved by Dever, seconded by Amyx,** to adjourn at 10:47 p.m. Motion carried unanimously.

**APPROVED:**

\_\_\_\_\_  
Robert Chestnut, Mayor

**ATTEST:**

\_\_\_\_\_  
Jonathan M. Douglass, City Clerk

## **CITY COMMISSION MEETING OF AUGUST 4, 2009**

1. Ordinance No. 8437 – 1<sup>st</sup> Read – Agreements/Leases/Liens regulating Lawrence Community Housing Trust & Cnty to consider resale restrictions for fair market value of land trust.
2. Ordinance No. 8431 – 2<sup>nd</sup> Read, Worksite Utility Vehicles on City Street subject to insurance & other requirements.
3. Ordinance No. 8412 – 2<sup>nd</sup> Read, Angler's Seafood, alcohol consumption in sidewalk dining area.
4. Resolution No. 6776 – GOB – water sewer system revenue bonds for Bowersock Dam project.
5. Resolution No. 6855 – Waterworks & wastewater treatment facilities providing for costs of Airport.
6. Resolution No. 6857 – Max annual bonding for public improvements –Charter Ordinance 27.
7. Resolution No. 6856 – Recovery zone economic development bonds & recovery zone facility bonds – American & Reinvestment Tax Act 2009 Ordinance No. 8435 – 2<sup>nd</sup> Read, Annex 448 acres, former Farmland Industries.
8. Resolution No. 6858 – GO Notes & Bonds to finance various projects.
9. Resolution 6859 – Improvement or re-improvement of main trafficways providing payment.
10. Chamber of Commerce Letter - Development Code modifications.
11. Temp Use of ROW – Mass between N Park & S Park – 9:30 am to 6:30 pm for KS Fiddling & Picking Championships.
12. KS Point-in-Time - No. of homeless in Lawrence & DG Cnty.
13. MOU – IAFF Local 1596.
14. City Manager's Report.
15. Parking – School reduce speed GWW adjacent to Langston Hughes Elementary – expenditure of \$10,000.
16. Letter to KDOT – include certain improvements for reconstruction of the 23<sup>rd</sup> St Bridge.
17. Community Shelter violation SUP-01-02-07
18. Community Shelter – amend SUP-01-02-07 – 73 total including 6 staff members
19. Community Shelter -

- 20 Video Service Provider Agreement – Community Wireless Communications.
21. Joint Transit Maintenance Facility with KU.