



DAVID L. CORLISS
CITY MANAGER

City of Lawrence

CITY MANAGER'S OFFICE

City Offices
PO Box 708 66044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
ARON E. CROMWELL
LANCE M. JOHNSON
MICHAEL DEVER
ROBERT CHESTNUT

June 8, 2010

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

RECOGNITION/PROCLAMATION/PRESENTATION:

With Commission approval Mayor Amyx proclaimed June 15, 2010, to be "Elder Abuse Awareness Day."

Mayor Amyx removed consent agenda item no. 6 for a question regarding minimum standards for the Lawrence Municipal Airport on insurance requirements.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to approve the Mechanical Board of Appeals meeting minutes of May 4, 2010; Board of Plumbers & Pipe Fitters meeting minutes of March 24, 2010; Hospital Board meeting minutes of April 21, 2010; Traffic Safety Commission meetings minutes of November 2, 2009, January 4, 2010, March 1, 2010 and April 5, 2010; Parks and Recreation Advisory Board meeting minutes of May 11, 2010; Board of Zoning Appeals meeting minutes of April 1, 2010; and, the Historic Resources Commission meeting of February 18, 2010, March 25, 2010 and April 15, 2010. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to approve claims to 257 vendors in the amount of \$1,811,150.86 and payroll from May 23, 2010 to June 5, 2010, in the amount of \$1,853,719.23. Motion carried unanimously.



As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to approve the Drinking Establishment license for Carlos O'Kelly's, 707 West 23rd; and Red Lyon Tavern, 944 Massachusetts. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the recommendation of the Mayor and appoint Barbara Carswell, Donna Osness and Erika Dvorske to the Social Services Advisory Board to terms that expired August 31, 2013.

The City Commission reviewed the bids for the comprehensive rehabilitation projects at 1609 Barker Avenue and 44 Winona Avenue. The bids were:

1609 Barker Ave (B1029):

Bidder	Base Bid	Alternate #1
T & J Holdings, Inc.	\$18,470	\$2,200
Schmidt Contracting, Inc.	\$20,000	\$3,000
Staff Estimate	\$15,636	\$750

44 Winona Ave (B1030):

Bidder	Base Bid
T & J Holdings, Inc.	\$24,340
Schmidt Contracting, Inc.	\$27,870
Staff Estimate	\$23,187

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to award the bid for 1609 Barker Avenue to T&J Holdings in the amount of \$1,100; and 44 Winona Avenue to T&J Holdings in the amount of \$24,340. Motion carried unanimously. (1)

The City Commission reviewed the bids for the comprehensive rehabilitation project at 1601 West 26th Street. The bids were:

1601 West 26th Street (B1030):

Bidder	Base Bid	Alternate #1
T & J Holdings, Inc.	\$28,350	\$1,100

Schmidt Contracting, Inc.	\$38,195	\$600
Staff Estimate	\$27,500	\$450

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to reject the bids for 1601 West 26th Street because both bids exceeded the program limits. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to approve change Orders No. 1 (\$4,170.39) and No. 2 (\$5,131.00) for Fairfield East Addition No. 1, Exchange Place and Fairfield Street for street, storm sewer, and waterline improvements for a total amount of \$9,301.39. This is one hundred percent (100%) special assessment benefit district cost. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to waive bidding requirements and use sole source purchase of booking station and associated reconfigurations and software from Sagen Morpho, for a total of \$56,946.00. Motion carried unanimously. (4)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to receive memo from the Sustainability Advisory Board (SAB) not to recommend the Advanced Alternative Energy Corp. technology/proposal. Motion carried unanimously. (5)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to construct a traffic signal at the intersection of Clinton Parkway and Atchison Avenue. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish a yield sign on the Clinton Parkway Frontage Road at Atchison Avenue/Breckenridge Drive. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish no semi trucks in the Old West Lawrence Neighborhood. Motion carried unanimously.

(8)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation for traffic calming devices not to be installed on 5th Street between California Street and Iowa Street. Motion carried unanimously.

(9)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation that no changes be made to the City's School Crossing Control Policy. Motion carried unanimously.

(10)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish no parking along one side of Wimbledon Drive between Inverness Drive and Turnberry Drive. Motion carried unanimously.

(11)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish stop signs on 24th Street at Ponderosa Drive. Motion carried unanimously.

(12)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish no parking along both sides of Stone Meadows Drive approximately 120 feet north of Stone Meadows Court. Motion carried unanimously.

(13)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to establish

no parking along the west side of Sunset Drive between Cambridge Road and Harvard Road. Motion carried unanimously. (14)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to permit parking on 13th Street in front of 833 East 13th Street. Motion carried unanimously. (15)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to deny the request to construct speed humps on Edgewood Lane. Motion carried unanimously. (16)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever** to concur with the Traffic Safety Commission's recommendation to deny the request to establish a stop sign on Crestline Drive at 24th Street and a stop sign on Melrose Lane at 25th Street. Motion carried unanimously. (17)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever**, to concur with the Traffic Safety Commission's recommendation to adopt on first reading, Ordinance No. 8531, establishing a stop sign on Troon Lane at Camel Drive. Motion carried unanimously. (18)

As part of the consent agenda, **it was moved by Chestnut, seconded by Dever** to approve the Final Development Plan (FDP-5-7-10), for the Oread, located at 1200 Oread Ave, requesting outdoor terrace enclosures. Motion carried unanimously. (19)

Mayor Amyx said a discussion took place during the agenda meeting regarding revisions to the minimum standards for the Lawrence Municipal Airport for insurance requirements for skydiving operators. He said there was a deadline for filing a document with the FAA and asked if that was regarding the question brought by the applicant from the skydiving school a year ago.

David Corliss, City Manager, said the correct answer was yes. The City had an individual seeking to conduct skydiving operations so that parachutists would land on the Lawrence Municipal Airport property. He said staff had consistently believed that was not an appropriate use of that airport property and had been the recommendation of the City's Aviation Advisory Board. He said staff had been making sure that the City's policies reflected the appropriate City interests. Obviously, with any type of airport operation there were substantial concerns for safety and liability. He said in this instance, staff was working on making sure the City had the appropriate insurance requirements in place that reflected the City's concerns.

Mayor Amyx asked if the FAA was suggesting appropriate requirements on the insurance.

Chuck Soules, Public Works Director, said the FAA asked the City to clarify the insurance requirements for skydiving activities. The previous minimum standards had generic language for all insurance requirements which included product liability insurance. A skydiving operation might not produce a product and therefore, would not be required to carry that type of insurance. For clarity, the proposed revisions specifically did not require purely skydiving operations to carry product liability insurance, but if the business packed parachutes, sold rigging or other items, then that business needed to carry product liability insurance. The FAA reviewed the changes and concurred those changes were appropriate.

Mayor Amyx said the formal complaint that went to the FAA, in which the City had to respond, was not the final determination of the item that went to the FAA.

Soules said there were two aspects to that area, the airport property that could accommodate the skydiving activity which staff had a response and this agenda item was the insurance part of the skydiving operation, but staff was still working on the area issue with the FAA.

Mayor Amyx called for public comment.

After receiving no public comment, **it was moved by Cromwell, seconded by Chestnut**, to approve revisions to the minimum standards for the Lawrence Municipal Airport for insurance requirement for skydiving operators. Motion carried unanimously. **(20)**

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss reported that the sculptures for the 22nd annual Outdoor Downtown Sculpture Exhibition were installed by Parks and Recreation staff and a opening reception was held at the Lawrence Arts Center; and, Planning and Development Services Director Scott McCullough provided the year-to-date plan review statistics for residential and commercial permits processed through the Development Services Division. **(21)**

REGULAR AGENDA

Consider approving the Management Plan for Lawrence Community shelter, located at 214 W. 10th Street. Per conditions of SUP-10-09-09, the Management Plan must be approved by a supermajority vote.

Sandra Day, Planner, presented the Management Plan for the Lawrence Community Shelter. She said the financial plan was included in the City Commission's packet and was reflective of the operations currently provided at the existing site on 10th Street. Notably there were a number of different things that were in place, even before staff considered the Special Use Permit in February which included the actions and consequences, rights and responsibilities, and safety, which were all part of existing documents that were in place at that time or even before.

The management plan reflected changes to the site that the applicant had been responding to, through various comments that were made in the public, including this site being a dry shelter and that guest were prohibited from drinking, possessing, distributing alcohol

and/or controlled substances, although, it allowed an individual to sleep at that location that might be under the influence.

Evening dinner meals were provided only for the guest staying at the shelter and the shelter maintained a newsletter and website to provide continuing communication to the public about their on-going activities. She said those were the changes to the management plan for that site.

Mayor Amyx called for public comment.

Don Huggins, President of the Board of Directors for LCS, said the LCS Management Plan was seen as a guidance document that set certain standards, expectations and procedures for how LCS conducted business and provided for the needs of the homeless that sought LCS assistance. In addition, this Management Plan provided a framework and basic set of tools that were used by LCS staff to ensure proper behavior when guest were receiving LCS services.

As much as was practical, they used this plan to influence guest behavior off-site as well and there were consequences for those individuals that chose to engage in behaviors and actions that were considered unacceptable that was outlined in the management plan.

The term "accountability" was used by a few of the City's citizens to describe what was most needed at LCS. In this same vain some argue that the management plan document needed to be more detailed in how LCS staff and administration would address every detail of every guest behavior, both on and off site, how swiftly and successfully guest should move through their plan and what LCS response should be for an individuals progress in moving out of homelessness or in addressing their negative actions.

Those details would take into account each guests, prior personal history, their current mental and emotional state of condition, whether or not they suffered from mental illness or addiction or both and other circumstances that would have bearing on LCS staff's selection of an appropriate consequence regarding their case management plan or behavior.

LCS and other social organization understood that people, their behaviors and attitudes were formed by their complexity of their genetics, childhood, and parental care and abuse, education, culture, authority figures, and life experiences.

He said his point was that LCS did not make or trade in widgets, but dealt with people that were financially destitute and often suffer broken lives, but were as unique as everyone. LCS used its management plan as a guide in selecting the most appropriate consequences for an individual's case and behavior while a guest of LCS. By avoiding a "one size fits all" management approach, LCS allowed their staff to fit the consequences to that person's behavior and the causes of that behavior.

He said the very same thing applied to LCS Case Management, where staff developed a plan with each guest so that the individual received what was needed to address and overcome homelessness. Their Management Plan had accountability built into the plan at a number of levels, but all their efforts did not mean there would not be any incidences that were negative for the guest, LCS, and the community at large.

They worked with people that were financially broke, or often physically, emotionally, and morally broke as well. He said while guests might quit, LCS never quit on guests. However, LCS had the means to remove an individual from their programs and facilities when doing so was in the best interest of LCS, the community, and the other guests.

LCS was accountable and wanted to remain accountable, but they must have flexibility and means to best address their mission, one individual at a time. They truly appreciated the City's and community's input to their management plan and appreciated confidence in LCS staff doing their jobs.

Loring Henderson, Executive Director of LCS, said the City Commission asked that a proposed management plan be developed similar to the current site at 214 West 10th Street. He said the big difference was that the current site had a Drop-In Center while the future site did not. The management plan included the introduction with the purpose and descriptions of the

program, the rights and responsibilities, actions and consequences, the good neighbor agreement, and the safety plan.

The introduction was very much the same as the management plan for the proposed Franklin Park Site except it did not have the program level 1 - probationary step and level 2 - advanced sleeping space. It did however have the 90 day stay period, unless actively engaged in the program and working with a case manager on a plan to get out of homelessness.

The Rights and Responsibility section was similar to the plan for the new site without the 2 levels and without some of the rules of the "family living" section, which would be more separated in the new shelter and in the current site management plan did not have a dog contract section. The right and responsibility plan was a contract that was agreed to and signed by all guests as part of the intake process at LCS.

The Actions and Consequences was a set of house rules that were posted on several walls all throughout the shelter and was the longest standing document at LCS, the first version which was done upon opening up the original "Lawrence Open Shelter" in 2003. Actions and consequences was the basis for staff frequently handling situations "in" and "around" the Shelter. An individual guest might be banned for varying lengths of time and sometimes those lengths of time might be reviewed after cooperation or following remedial steps, but usually bans were enforced for the stated length of time. At this time, the actions and consequences were the same in both management plans.

The good neighbor agreement at the current site was written after a series of five (5) public meetings in 2006 with residents of the Oread Neighborhood Association or neighborhoods. Each year, since then, there had been two (2) public meeting and semi-annual and annual reports of activities, neighborhood cleanups and an annual block party. This good neighbor agreement was similar to an agreement that was included in the management plan for the Franklin Park site and was discussed in public meetings with those neighbors and would be presented to the City Commission.

The Safety Plan was written in conjunction with the KU School of Social Welfare for the primary benefit of student interns, but generally useful for and distributed to, all new volunteers at LCS and was included in the management plan.

Brian Blevins said he had been involved with the Shelter for approximately 6 years and wanted to inform the City Commission what was expected outside of what LCS had in writing, which was the nature of what happened within an organization that did not fall under the regulations and what type of characteristics to expect.

He said what he had seen in the past six (6) years was that the City was dealing with a group of people (LCS) that cooperated with the community and the neighborhood, regardless of what was on paper and did it with goodwill for those around with the good will of the community always in mind.

Brad Cook, Social Worker and Co-Chair of the Coalition of Homeless Concerns, said he was present to speak in support of the management plan for LCS at 214 West 10th. Among many things, the management plan that was currently formed, offered a detailed description of the operations of the Shelter, rights and responsibilities, and other information offered by the Director of LCS.

Over time, LCS came to be criticized as a wet shelter, but the shelter did not allow drug or alcohol usage on its property. The shelter did not turn away persons that had been drinking or wanted a safe place to stay for the evening. The shelter services were not offered exclusionary to one group of persons, but to all who required safety and the desire to change their lives. All individuals were in different stages of change and each person was starting from their own unique place. The Shelter did not give up on people, but continued to work with them.

While the Shelter respected individuals that utilized LCS services, the management plan detailed specific actions and consequences for those whose behavior was not conducive to the Shelter environment. The management plan fitted with the day to day operations of the Shelter.

LCS served a vital need and was an important part of this community and the community's humanity.

It was hopeful the City Commission would approve the management plan and allow the Shelter to continue to operate in its current facility until time came to move to its new location in Franklin Park.

Mayor Amyx said in looking at the page that dealt with actions, consequences, and house rules, some of the items listed, such as inappropriate behavior and charges that might be filed, that there was not a police report that should be part of the consideration.

Henderson said yes.

Mayor Amyx said that needed to be changed in the report to reflect that the police had to be present when charges were filed.

Mayor Amyx said 90 days out of a 12 month period, 72 hours in which someone was assigned a case manager and a plan would be put in to place in helping an individual getting out of homelessness. He said that would be when the plan began because a plan could not be written in 72 hours.

Commissioner Dever said regarding documentation, he asked if LCS was going to require official identification for their guests in case there was any question about their actual identity.

Blevins said one of the things that they just recently started investigating was whether they were going to hire an individual supporter that ran a detective agency where they could, on a case by case basis, investigate the identity of someone that was in question or whether or not to buy an on-line site where investigative background checks could be made. The problem with that type of on-line site was that there was no visual identification. He said they did not need it often because most people came to LCS with identification. He said some measure of accountability as to who those people were at LCS would be taken. He said normally, LCS received a copy of their driver's licenses, social security card, or some type of identification, as

well as a picture taken to be placed in a file. Other information required was date of birth, next of kin, and their living history which was compiled on an intake form.

Commissioner Dever said that was a good explanation and there were two reasons he thought that type of information was important. One reason was turnover in caseworkers or questions of person's identity and if the guest did receive some type of expulsion or there were some inappropriate behaviors that might allow the guest to come back later. He said someone could change the way they look radically and some one might not notice especially if the guest was not at LCS very long. It was important to have accountability as to who people were, their background, and any possible way to identify who they were was important, especially if the guest was being served and mixing those people in with other people in the LCS.

Blevins said he agreed and LCS also looked at medical history and it became very imperative that LCS received a thorough and comprehensive look at the person.

Cook said if a person did not have all their notification, the shelter helped pay for identification such as birth certificates and would call hospital and medical facilities for medical records.

Commissioner Dever asked if that was a standard protocol to get things squared away.

Cook said yes.

Commissioner Chestnut said the management plan indicated if there was an excess number of guests, those guests would be housed in a backup building or church as a prior arrangement with the City and/or organization and did not know if that statement should stay in that plan. He said that process was a special use permit process and that statement contrasted to the City Code.

Mayor Amyx said that issue was resolved as part of the church issue and Family Promise.

Scott McCullough, Director of Planning and Development Services, said there was some on-going discussion and the two options for backup was to come to the City Commission

through a Special Use Permit Process, as when the Salvation Army closed, to expand that population on site. This past year, a recent text amendment worked which allowed up to 15 guests within a religious institution as a way of sheltering. The Shelter used one or more churches this winter and LCS did not need to seek that approval from the City. He said through public comment, a question arose about what to do with overflow. He said one option was that the temporary shelters that required Special Use Permit would go through those processes.

Mayor Amyx said the rules that pertained to other groups that were using the church facilities were being followed and there was no separation between the guests of LCS and other organizations.

McCullough said staff believed churches were using at least two different shelter programs which were LCS and Family Promise, using that part of the code.

Commissioner Chestnut said if level one and two existed at the current location.

Henderson said no.

Commissioner Chestnut said essentially, it was safe to say that what currently applied was the 90 days within the 12 month period for anyone because there was no program that would house people as long as those people were actively participating in a case management or working toward a goal.

Henderson said yes, level one and level two was a luxury because there was more space in moving from level one to level two.

Commissioner Chestnut asked how people would be transitioned out of that level, once hitting that 90 day mark.

Henderson said if actively participating in a program and their program was not completed through no-fault of that person, then that person could stay. He said if that person was in the program and it was completed but was not actively engaged in the program, then that person had to leave and was not moved to another program.

Commissioner Chestnut asked if Henderson knew of the average stay of a guest.

Henderson said 1/3 of the guest stayed 10 days or less; 1/3 stayed 10 to 20 days, 1/3 more than 20 days.

Commissioner Chestnut asked if there were any cases where LCS had forbidden someone to return.

Henderson said yes.

Commissioner Chestnut said LCS forbidding someone from returning was not spelled out in the actions and consequences that discussed total expulsion that had happened in the past.

Henderson said the management plan quoted "long-term", but did not state the word "permanent" because LCS did not give up on people.

Mayor Amyx said there was a one year minimum possible long-term.

Commissioner Johnson said he appreciated the work that had been done.

Commissioner Chestnut said the comments of the people were appropriated. The management plan was an organic document and worked as situations presented themselves. He said he appreciated the changes that were made. He said in some of the email comments he received, it was about administering and demonstrating there were controls and consequences to behavior, but he knew it was a challenge because every situation was unique. He said the management plan provided those guidelines, realizing there were probably going to be exceptions where LCS would be more severe than what the document stated and sometimes less. He said reliance on the judgment for the people who were working cases in understanding the individuals was needed.

Commissioner Dever said it served the need the City Commission was trying to fill and it was difficult to take a plan for a totally different type of location and make it viable, but the Commission had done a good job in trying to spell out the rules and regulations of the facility. He said it was made clear, to the public, what was acceptable behavior. He said for example, not a lot of people realized there not suppose to trespass on other private property and if done,

there was a consequence and LCS staff would be monitoring those types of behaviors. It was just not about letting people hang around because there were timeframes and all this together showed the plan and purpose and the management plan served that need.

Commissioner Cromwell said he appreciated the additional work that was done, over the last year, on the management plan and had delivered a level of transparency to the public about policies which were largely in place at the shelter, but people were not aware of the actions and consequences might be and what was allowed. While, the community did not have ownership of this site, there was a level of accountability that the public was entitled to and believed this management plan went a long way toward providing this transparency that helped everyone understand what was trying to be accomplished and the means by which those were occurring. He said he appreciated the greater specificity of the document, as compared to some of the earlier versions and it was good to have this version that was closer to the new version in place and give it the opportunity to work out any of the bugs that might exist within this management plan before a new plan was implemented at a new site.

Mayor Amyx said he appreciated the work that went into the management plan and when looking at what the management plan meant to the community, it was a good working document. He said Huggins brought up a good point about the flexibility that was still needed in the document when dealing with individuals on a case by case basis. There was not a list of words that could not be put down that was going to fit every program that came along or individual that came along. It was a solid document and was written in such a way to take care of the majority of people that found themselves in the situation of being homeless.

He said, the current site was taking care of 83 people, in the winter, and the new site would take care of up to 125 people. He said he appreciated the work on the management plan as long as the changes were added that he suggested regarding the "actions and consequences" if the Commission concurred.

Moved by Chestnut, seconded by Cromwell, to approve the Management Plan with amendments suggested by Mayor Amyx for Lawrence Community Shelter, located at 214 West 10th Street. Aye: Amyx, Chestnut, Cromwell, Dever, and Johnson. Nay: None. Motion carried unanimously. (22)

Receive 2009 Annual Report for SUP-01-02-07, Lawrence Community Shelter at 944 Kentucky Street.

Scott McCullough, Director of Planning and Development Services, presented the 2009 Annual Report for the Lawrence Community Shelter (LCS). He said in February 2010, the City Commission extended a 3 year Special Use Permit timeframe, for the downtown location of LCS until April 2011. He said the conditions to demonstrate that accountability were approved and reports would be forthcoming to the City Commission later this year. He said this was a condition of the previous term and covered the 2009 Year and that report was provided to the City Commission.

Mayor Amyx said the address on the agenda gave the address of 944 Kentucky Street, but the staff memo indicated the address of 214 West 10th Street.

Loring Henderson, Director of LCS, said that was the other side of the building.

McCullough said staff was commenting on 944 Kentucky, although there might be others that might have a different prospective.

Mayor Amyx said it was a straight forward report and laid out the annual information.

Mayor Amyx called for public comment.

Loring Henderson said the report had been submitted in March, but not presented until now, because everyone had been so busy. He said in addition to the annual report was the family program, which was outstanding. He said as LCS was getting closer in designing the new shelter, they might design more of a family space than what was first envisioned.

Moved by Chestnut, seconded by Johnson, to receive staff report for SUP-01-02-07, Lawrence Community Shelter at 944 Kentucky Street. Motion carried unanimously. (23)

Receive staff report concerning the impact of the State's Indoor Clean Air Act on the City's smoking regulations.

Scott Miller, Staff Attorney, presented the staff report. He said Kansas legislature passed Senate Bill 2221, the Kansas Indoor Clear Air Act and was modeled, but not identical, to the City's existing ordinance. Some of the policy choices that were made in the drafting of that statute resulted in provisions that were more stringent than the City's current code which lead to a problem in that the City could not have provisions in its law that were less stringent than those in the Kansas Statute.

He said because the provisions in the Act were more stringent than those in the Lawrence's ordinance, legislative action was necessary to the State Law's effective date of July 1, 2010. The options were:

- Option 1 Repeal the Lawrence ordinance and let all enforcement occur under the Act.
- Option 2 Incorporate the provisions of the Act into a local ordinance, and perhaps include those parts of our existing ordinance that are more restrictive than the provisions of the Act.
- Option 3 Repeal or amend the existing ordinance but adopt new regulations in the City Code meant to plug some potential gaps that may exist in the Act that could make enforcement problematic.

He said some of the ways that Kansas law was more restrictive than Lawrence's ordinance were:

1. Near the access points of buildings where smoking is not otherwise allowed. Access points are the areas within a 10 foot radius of a doorway, open window or air intake into a facility where indoor smoking is illegal.
2. In places with walls and either ceilings or roofs, if the places do not have openings in their walls that are permanently open to the elements and that are equal in size to at least 30% of the exterior wall area of the location. Lawrence has a similar standard, but the openings only need to be 20% of the exterior wall area under our current ordinance.
3. No more than 20% of the guest rooms in a hotel may be designated as smoking rooms under the Kansas law. Lawrence also restricts this percentage but allows up to 25% of rooms to be designated as smoking guest rooms.
4. The Kansas law contains no exception for private functions in hotel conference and meeting rooms, but the Lawrence ordinance does exempt some of these facilities.
5. The Lawrence ordinance has an exemption for certain smoking break rooms that preexisted the passage of the ordinance. The Kansas law has no similar exemption.

He said some of the ways the City of Lawrence was stricter than the Kansas statute were

1. The Lawrence law covers places where food is prepared for off-premises consumption.
2. Lawrence's ordinance makes no exception for gaming floors, although there are no facilities in Lawrence that meet that definition.
3. Both the Lawrence and Kansas laws ban smoking in private residences where day cares are operated, but the Lawrence ordinance also includes adult day cares and home health care facilities as areas where smoking is not allowed. The Kansas law exempts these areas.
4. The Lawrence ordinance and Kansas statute both provide exceptions for tobacco shops. The Lawrence law only allows the sale of items that are not tobacco or tobacco related accessories if those sales are merely incidental. Under the Kansas law, anything may be sold in a tobacco shop, provided 65% of its sales are from the sale of tobacco.
5. The Lawrence ordinance includes the smoking of non-tobacco vegetation in its smoking ban. The Kansas law is limited to tobacco smoking only.
6. The Kansas law allows for the designation of smoking areas in adult-care homes and long-term care units provided they are adequately ventilated. The Lawrence ordinance does not allow smoking in these areas.
7. The Kansas law allows Class A or Class B clubs licensed before 2009 to allow smoking if they file an election to that effect with the Secretary of Health and Environment. Lawrence's law does not.
8. The Kansas statute permits smoking in outdoor recreation facilities such as country clubs or shooting clubs in areas where minors are not allowed. The Lawrence ordinance does not exempt these facilities.

Other significant differences between the laws were:

1. Enforcement of the law is primarily assigned to the Fire Department under the Lawrence ordinance, while under the Kansas statute that duty would fall to the Police Department or the officers of some other law enforcement agency.
2. The Director of Alcoholic Beverage Control is allowed to adopt regulations that are meant to prevent the circumvention of the Kansas law. There is no rulemaking authority granted under the Lawrence ordinance.
3. Violations are termed tobacco infractions under the Kansas law, but are deemed misdemeanors under the Lawrence City Code.
4. Required design and posting of no smoking signs differs between the laws.

He said because provisions of the City's ordinance were less stringent than provisions of the Kansas statute, the City's current ordinance should be repealed or amended to eliminate discrepancies which he had stated earlier in his presentation.

David Corliss, City Manager, said he looked at this issue with two options. The first option was whether the City Commission wanted to have a local ordinance or not and the second option, was if the Commission wanted a local ordinance, then what areas needed to be more restrictive than the State law.

Mayor Amyx said it was discussed on what would be necessary to change the City's ordinance with requirements from the State and what direction was needed from the City Commission.

Miller said the City could amend its ordinance to include the provisions that were stricter than the current provisions and also try to square some of the language between the State law and the ordinance because that gave them an advantage in two ways: it made it easier to track legislative changes and respond to those changes in the future and the other advantage was if there was similar language and if there was any case law decided by court, interpreting the language, the City had the advantage of having an interpretation that might apply to the City's law as well. He said the City would probably need to change some of the wording of its laws, but the intent of the ordinance was to preserve and everything would operate just the way it operated now.

Mayor Amyx said the City's ordinance had withstood the legal challenge and by making any changes that were governed by the State, he asked if the City would be jeopardizing the legal side of Lawrence's ordinance.

Miller said when Lawrence's ordinance was challenged, the court decided based upon whatever narrow question was before it in that court case. If the City changed the language on something that was the City's Supreme Court case, the City might run the risk of future litigation, but the main issue, in that case, was whether or not the City had the authority to be more strict from the State law in the first place and the City had the authority that was clearly established, once the Supreme Court changed its mind.

Commissioner Dever said the part that he was confused about was regarding enforcement and the Police Department versus the Fire Department's role in this process. He asked if there were a substantial number of historical prosecutions or cases for the law that was on the books so far.

Miller said there had been several prosecutions after the law first went into effect.

Commissioner Dever said if the City had to change its law to incorporate police enforcement.

Miller said the police already did enforcement, under the current City's law. The law stated it was enforceable by the Fire Department or anyone else who had the authority to enforce the general laws of the City, which was the Police Department. The City Commission that was empowered, at that time the law was passed, decided that the basic enforcement should be through the Fire Department and that was written into the ordinance.

Commissioner Dever said if there was a State law, if it was normal for the local municipal sheriff's, for example, to enforce the State law or was it a State responsibility for enforcing those State laws if this regulation was not in place.

Miller said if the regulation was not in place, the Police Department would enforce this provision, just like with all the criminal laws that existed. The City had a fairly limited municipal, criminal code when it came to things criminalized. He said all that meant was that instead of having trials in Municipal Court, if those offenses occurred, a trial would take place in District Court and would be still enforced.

Commissioner Dever said it was the trial portion that was different. He asked if the City did not have the rule, would there be a trial and prosecuted in District Court.

Miller said correct.

Commissioner Dever said the Fire Department would no longer have any authority to enforce the rule.

Corliss said the history on that issue was when staff was looking for enforcement issues, one of the programs the Fire Department had was night consultants that did occupancy load checks in the City's Drinking Establishments and staff thought that was likely to be an area where there might be violations. It seemed to be appropriate to give the Fire Department that citation authority in this case. He said in the few circumstances where the City issued citations, it would have been just as likely for a police officer to have issued the citation. The police officer would be called to accompany a night consultant. He said he did not think the City issued very many citations. In some cases it might have been significantly after-the-fact. He said it was fairly self policing and other patrons were going to likely insist upon compliance.

Miller said there was one other additional difference between the City's law and the State statute which was the City's definition of "smoking" was wider. He said for example, before K2 was illegalized, it would have been legal, under the State law, to smoke K2 inside some place, provided it did not contain tobacco. The City was trying to avoid situations like that in the future if anything else came forward that people were smoking that was vegetative, but not a control substance. He said he would recommend if keeping the City's current ordinance, to keep the definition of "smoking" as well.

Mayor Amyx said if the City was to retain its ordinance with the changes from the State and the items outlined by staff, he asked if there was time to get it done by the July 1st deadline.

Miller said yes, it would be on the City Commission's agenda next Tuesday if that was the Commission's desire.

Mayor Amyx called for public comment.

James Dunn, Lawrence, said he was not familiar with those laws, but the local ordinance required that properties that were multi-family, with common hallways, be marked and no smoking in those common hallways. He asked how the State law related to those properties with the 10 foot rule that would be coming into effect.

Miller said that answer was covered in the State Statute as well and he would get Dunn a copy of that statute.

Dunn said with multi-family properties, the 10 foot rule would apply in all those instances.

Miller said it should apply because access points were defined as a 10 foot radius.

Kim Ritchner, Lecompton, said she encouraged the City Commission to consider adopting the State law and then amending the City's ordinance up to that State law. She said there were a couple of things that were settled and people were comfortable with this issue in Lawrence, which included the definition of "smoking" as well as how "tobacco shops" were defined. People seemed to understand and if changing the definitions, then the City might get people that were trying to be creative. She said the current law seemed to be working well and people were happy with that law.

She said with the upcoming elections, they did not know who was going to be elected at the State level or what kind of challenges would be in place to that State law. Most people were proud of the current ordinance. She said Lawrence's clean indoor air could be at risk if anything happened at the State level and if the City kept its current ordinance, Lawrence would keep its air clean no matter what happened.

Dan Partridge, Director of the Lawrence-Douglas County Health Department, said he wanted to thank the City, for taking action six years ago, in creating a social norm in Lawrence, one which helped improve the health of this community. Recently, Lawrence was ranked the 4th healthiest County in the State of Kansas. In part, that could be attributed to the smoking ordinance that was passed. He said he urged the City Commission to retain the ordinance in its strongest form possible.

Vice Mayor Cromwell said he was in favor of keeping the stricter aspects of the City's current ordinance, tying the language into the State language to make that easier in moving into the future. If there were changes made at the State level, the City could more easily find where those changes were in the City's ordinance, although, the State ordinance was largely based on

the Lawrence's ordinance. He said it would be a mistake to take away the good ordinance that was in place now. In the beginning there was some resistance, but the community had learned to live with this City ordinance and found that the sky was not falling on those restaurants and bars that were concerned. He said the statewide ban helped too and people could not run-off to a neighboring community and spend their money in that community. He said it was important to keep the idea of being one of the healthiest communities in Kansas. He said it would be sending the wrong message to take away the language in the City's ordinance. He said the City needed to keep making that strong statement of community health.

Commissioner Chestnut said he agreed with the Vice Mayor in amending the current ordinance and continuing to have the more restrictive aspects of the City's current ordinance.

He said there was a staff comment about implementing a licensing law for tobacco shops, but it did not seem to be an issue right now and might be something to address later. Until the City Commission saw evidence that people were purposely moving around the law and its intent, he was not sure the City needed to necessarily put it in place at this point.

Mayor Amyx asked if Commissioner Chestnut would not want to increase the percentage of sales on a tobacco shop.

Commissioner Chestnut said right now there was no way to measure it and people might try to use that lower percentage to their advantage, but he had not seen evidence of people circumventing the law right now, but it was something that staff should continue to monitor.

Mayor Amyx said Commissioner Chestnut might want more information from staff to help him with his concern.

Miller said he read an article about a tobacco shop, RJ Reynolds Co., in Chicago when Chicago's smoking ban went into effect, RJ Reynolds opened up a tobacco shop that was actually a bar which was the type of thing he worried about. He said specifically, he worried about having mandatory purchases, such as tobacco, to get into a tobacco shop. As a result, someone could claim that the majority of their sales were from the sale of tobacco or tobacco

related products, but the consumer was essentially paying a cover charge and using that as an access to their restaurant or bar. Those were types of concerns that existed with the 65% amount, specifically because it was not verifiable. He said the definition could be read under the City's current ordinance, comparing it to the definition of the State statute. There was no current percentage in the City's current ordinance, however, the statement as a lot stronger than in the current statute.

Some of the suggestions he had, short of a licensing scheme, was making a regulation that tobacco shops could not be licensed premises. In other words, tobacco shops could not be licensed to sell alcoholic beverages. The Commission might want to include a provision that stated tobacco shops could not be entirely contained inside another business so it could not be used as an exemption to setup an interior smoking room and calling it a tobacco shop with a separate cash register. He said he also suggested requiring that tobacco shops had external entrances of their own and that they did not have any public interest from another building and had to be organized separately as a businesses. Certainly, if the Commission wanted to wait to see what happened then respond, the City could put an ordinance in place in fairly short order, but did not know if the Commission wanted to take preemptive action or not.

Commissioner Chestnut said he understood, but there was discussion that was not contained in the memo. He said he was much more amenable to talking about some of those restrictions that staff discusses, which were physical location types of restrictions. The thing about licensure and verifying tobacco sales up to a certain percentage was that now all of a sudden, they were talking about a whole bunch of measurement stuff the City Commission had to get involved in. No matter where they set the percentage, if it was not verifiable at one level, then it would not be verifiable at another. He said some of the other suggestions such as the way the building were setup, would be preemptive. He said he was better with that idea rather than getting into a licensure and measurement type of thing.

Mayor Amyx asked if Commissioner Chestnut would like to see some options, rather than the licensure portion.

Commissioner Chestnut said yes.

Miller said the reason he did not include that information in his memorandum was to not give anyone ideas that they did not have.

Vice Mayor Cromwell said if that concern came up, the City Commission would deal with it in short order anyway. He said the percentage of sales was definitely prudent. There were ways around any type of language. He said sending the message that the City was going to continue to restrict that, whatever exception someone might come up with, was good. He said he did not think the City needed a licensing board of tobacco shops and would be a waste of resources.

Mayor Amyx said when he ran for office for the City Commission, he was asked if he supported Lawrence's smoking ban. He stated "yes" as he was an avid smoker for over 30 years and people found it hard to believe. He said some things changed overtime and he did not have a smoking habit anymore. He said when the smoking ban went into effect there were a few things that happened, but in the end, this was a healthier community.

He suggested continuing with the City's current ordinance, adding additional changes with the State's statute. He suggested staff provide options concerning tobacco shops to the City Commission as suggested by Commissioner Chestnut. (24)

PUBLIC COMMENT:

A person said the City's Legal Staff was phenomenal.

FUTURE AGENDA ITEMS:

- | | | |
|----------|---|--|
| June | • | Upon conclusion of 2010 Kansas Legislature, review and consider possible changes to City primary election law. |
| 06/15/10 | • | Receive status update on the property at 331 Johnson Avenue on violation of City Code Sections 9-6011 (A) and (C). Receive additional code enforcement information as directed by the City Commission. Authorize staff to proceed with enforcement actions if appropriate. |

- Consider approving Text Amendments, TA-1-1-10, to the City of Lawrence Land Development Code, Chapter 20, Sections 20-403, 20-509(3), and 20-524 of the Code of the City of Lawrence, KS to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment district. *Initiated by City Commission on 2/2/10.* Adopt on first reading, Ordinance No. 8530, for Text Amendment (TA-1-1-10) to the City of Lawrence Land Development Code, Chapter 20, Sections 20-403, 20-509(3), and 20-524 of the Code of the City of Lawrence, KS to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment district. (PC Item 5; approved 6-2 on 5/24/10)

ACTION: Approve Text Amendment (TA-1-1-10) to the City of Lawrence Land Development Code, Chapter 20, Sections 20-403, 20-509(3), and 20-524 of the Code of the City of Lawrence, KS to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment district, and adopt on first reading, Ordinance No. 8530, if appropriate.

- Follow-up regarding Community Improvement Districts (CID).
- Approval of Farmland acquisition documents.
- 07/06/10 Receive public comment on proposed Library expansion referendum. Consider adoption of Charter Ordinance placing item on November 2010 ballot.
- November Receive status report on LCS relocation efforts.
- TBD Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties. Additionally, staff is working on a memorandum discussing possible annexation of the Miller/Wells acres area.
- Receive Lawrence Human Relations Commission gender identity report.
- Approve Special Use Permit, SUP-3-4-10, for the construction of the North Bowersock Mills & Powerhouse, Utility and Service, Major, located at 1000 Powerhouse North Road. Submitted by Bowersock Mills & Power Company, property owner of record. Adopt on first reading, Ordinance No. 8529, for Special Use Permit (SUP-3-4-10) for the construction of the North Bowersock Mills & Powerhouse, Utility and Service, Major, located at 1000 Powerhouse North Road. (PC Item 1; approved 7-0 on 5/25/10)
- Receive request from Lowe's for formation of a Community Improvement District (CID).

Moved by Cromwell, seconded by Johnson to adjourn at 8:04 p.m. Motion carried unanimously.

APPROVED:

Mike Amyx, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF June 8, 2010

1. Bid – Rehab at 609 Barker Ave.-\$18,470 & 44 Winona Ave.-\$24,340 to T&J Holdings
2. Reject Bid - Rehab.1601 W. 26th Street - all bids were over the project limits.
3. Change Orders - Fairfield East Addition No. 1, Exchange Place & Fairfield St.-SSS & waterline - \$9,301.39.
4. Sole source purchase-booking station & reconfigurations & software-Sagen Morpho, \$56,946.00.
5. Minimum Standards revision-Lawrence Municipal Airport-insurance requirement for skydiving operators.
6. SAB - No recommendation, Advanced Alternative Energy Corp. technology/proposal.
7. TSC Deny - traffic signal - intersection of Clinton Parkway & Atchison Avenue.
8. TSC Deny - yield sign on the Clinton Parkway Frontage Road at Atchison/Breckenridge.
9. TSC Deny - no semi trucks in the Old West Lawrence Neighborhood.
10. TSC - No traffic calming devices installed on 5th St. between California & Iowa.
11. TSC - No changes to the city's School Crossing Control Policy.
12. TSC Deny -no parking along one side of Wimbledon between Inverness & Turnberry
13. TSC Deny - stop signs on 24th St at Ponderosa Dr.
14. TSC Deny -no parking-both sides - Stone Meadows - 120 ft. N of Stone Meadows Ct.
15. TSC Deny -no parking along west side of Sunset Dr. between Cambridge & Harvard.
16. TSC Deny - permit parking on 13th St. in front of 833 E. 13th.
17. TSC Deny - speed humps on Edgewood Lane.
18. TSC Deny - stop sign on Crestline at 24th & stop sign on Melrose Ln at 25th.
19. Ordinance No. 8531 – 1st Read – TSC establish stop sign on Troon Ln at Carmel Dr.
20. Final Development Plan (FDP-5-7-10)1200 Oread Ave, outdoor terrace enclosures.
21. City Managers Report
22. Mgmt Plan for Lawrence Community Shelter, located at 214 W. 10th.
23. Staff report - SUP-01-02-07, Lawrence Community Shelter at 944 Kentucky Street

24. Staff report -the impact of the State's Indoor Clean Air Act on the City's smoking regulations