



City of Lawrence

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CITY COMMISSION

MAYOR
ARON E. CROMWELL

COMMISSIONERS
ROBERT J. SCHUMM
MICHAEL DEVER
HUGH CARTER
MIKE AMYX

October 18, 2011

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 Cromwell presiding and members Amyx, Carter, Dever and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. None.

B. CONSENT AGENDA

Commissioner Dever asked that consent agenda item number 6a, second and final reading of Ordinance No. 8678, be removed from the consent agenda for a separate vote.

Mayor Cromwell asked that consent agenda items 6b, 6c, and 6d, be removed from the consent agenda for a separate vote.

It was moved by Amyx, seconded by Schumm to approve the consent agenda as below, with the exceptions of items 6a, 6b, 6c and 6d. Motion carried unanimously.

1. Approved City Commission meeting minutes from 10/04/11 and 10/11/11.
2. Received minutes from various boards and commissions:
Board of Zoning Appeals meeting of 07/07/11
Sister Cities Advisory Board meeting of 09/14/11
Lawrence Cultural Arts Commission meeting of 09/14/11
3. Approved claims to 169 vendors in the amount of \$1,893,465.47.
4. Approved licenses as recommended by the City Clerk's Office.

Drinking Establishment Licenses for India Palace, 129 E 10th, Taste Bar & Grill, 804 West 24th, Class A Club License for VFW Post No. 852, 138 Alabama Street, Retail Liquor Licenses for Ten Ten Liquor, 1010 North 3rd, Roy's Wines & Spirits, 721 Wakarusa Ste: 107, Harper Liquor, 2220 Harper Ste: C, Sidewalk Dining & Hospitality License for The



Sandbar, 17 East 8th, Aimee's Café, 1025 A Massachusetts and Wa Restaurant, 740 Massachusetts.

5. Bid and purchase items:
 - a) Set bid opening date of November 1, 2011 for the 2011 Master Street Tree Project.
6. Adopted on second and final reading, the following ordinance(s):
 - a) THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR A SEPARATE VOTE. Ordinance No. 8678, authorizing a \$25,000 forgivable loan to 3840 Greenway Circle, LLC for economic development purposes.
 - b) THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR A SEPARATE VOTE. Ordinance No. 8675, Text Amendments (TA-8-13-11) to Article 3 of the Lawrence Land Development Code and to the 8th & Pennsylvania Urban Conservation Overlay District, including the *Design Guidelines 8th and Penn Neighborhood Redevelopment Zone*.
 - c) THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR A SEPARATE VOTE. Ordinance No. 8676, for Rezoning (Z-8-22-11) approximately .56 acres from CS (Strip Commercial) to RM32 (Multi-Dwelling Residential) within the 8th & Pennsylvania Urban Conservation Overlay District, located at 619 E 8th Street.
 - d) THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR A SEPARATE VOTE. Ordinance No. 8677, for Rezoning (Z-8-23-11) approximately .27 acres from CS (Strip Commercial) to RM12D (Multi-Dwelling Residential) within the 8th & Pennsylvania Urban Conservation Overlay District, located at 804-806 Pennsylvania Street.
7. Approved the following items related to Intelligent Transportation Systems (ITS) fiber optic cable project:
 - a) Approved Change Order No. 1 in the amount of \$90,000, to K & W Underground, to extend fiber optic cable along N. 2nd Street.
 - b) Adopted Resolution No. 6950 authorizing the issuance of general obligation bonds for the financing of fiber optic improvements along No. 2nd Street.
 - c) Authorized the Mayor to sign a City-State Agreement to extend fiber optic along 23rd Street from Iowa to Harper Street.
 - d) Adopted Resolution No. 6949 authorizing issuance of general obligation bonds for the financing to extend fiber optic along 23rd Street from Iowa to Harper Street.
 - e) Authorized staff to submit a request to the Secretary of Transportation seeking approval to award the 23rd Street ITS project in FY2012.

8. Approved the following items related to 3900 W. 24th Place:
 - a) Approved Rezoning, Z-7-21-11, approximately 3.3 acres from RSO (Single-Dwelling Residential-Office) to CN2 (Neighborhood Shopping Center), located at 3900 W. 24th Place. Submitted by Landplan Engineering, for Corporate Holdings II, LLC, property owner of record, and Hy-Vee, Inc. as contract purchaser. Adopted on first reading, Ordinance No. 8673, for Rezoning (Z-7-21-11) approximately 3.3 acres from RSO (Single-Dwelling Residential-Office) to CN2 (Neighborhood Shopping Center), located at 3900 W. 24th Place. (PC Item 3A; approved 9-0 on 9/26/11)
 - b) Accepted dedication of easements and rights of way for Preliminary Plat, PP-7-7-11, of Inverness Park Plaza Addition No. 5, a Replat of Lot 1, Block 1, Inverness Park Plaza Addition No. 1, for a two lot commercial development, located at 3900 W 24th Place. Submitted by Landplan Engineering, for Corporate Holdings II, LLC, property owner of record, and Hy-Vee, Inc. as contract purchaser. (PC Item 3B; approved 9-0 on 9/26/11)
 - c) Approved Special Use Permit, SUP-7-4-11, for Gas and Fuel sales, also known as a convenience store, with a carwash and office building on approximately 3.3 acres of vacant property located at 3900 W 24th Place. Submitted by Landplan Engineering, for Corporate Holdings II, LLC, property owner of record, and Hy-Vee, Inc. as contract purchaser. Adopted on first reading, Ordinance No. 8674, for Special Use Permit (SUP-7-4-11) for Gas and Fuel sales, also known as a convenience store, with a carwash and office building on approximately 3.3 acres of vacant property located at 3900 W 24th Place. (PC Item 3C; approved 9-0 on 9/26/11)
9. Received the external quality control review of the City Auditor's Office.
10. Authorized Mayor to sign a Letter of Support for the TIGER III Application for the Interchange at K-10 highway and Bob Billings Parkway.
11. Received proposal from Bowersock Mills & Power Company for the replacement of current manually-raised flashboard system on the Bowersock Dam with a rubber dam. The estimated capital cost to the City is approximately \$425,000. Referred request to staff for a report and recommendation.
12. Approved a temporary use of public right-of-way permit for use of various city streets, including the closure of the northbound lane of downtown Massachusetts Street from 8:30 a.m. – 8:55 a.m., on Sunday, December 11, 2011, for the Jingle Bell Run 5K.
13. Authorized the Mayor to sign a Release of Mortgage for Margaret Hill, 317 Florida.

It was **moved by Schumm, seconded by Carter** to approve consent agenda item number 6a, second and final reading of Ordinance No. 8678. Motion carried 4-0 with Dever abstaining.

It was **moved by Amyx, seconded by Dever** to approve consent agenda items 6b, 6c, and 6d, second and final readings of Ordinance Nos. 8675, 8676 and 8677. Motion carried 4-0 with Cromwell abstaining.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the City Manager's Report.

D. REGULAR AGENDA ITEMS:

1. Consider revisions to the City's Transportation Development District, Community Improvement District, and Neighborhood Revitalization Act Policies.

Diane Stoddard, Assistant City Manager, presented the staff report.

Schumm asked if the criteria were available in the agenda materials.

Stoddard said the draft policies were linked from the memo and pulled them up on the presentation screen. In the TDD policy, Section 1 reaffirmed that TDD would be used for those items that went above and beyond regular city requirements, that it would be consistent with the policy statement, unique retail, and substantial enhancement of the economic climate of the city. In the CID policy it was emphasized that it be used for redevelopment and infill, similar language to the TDD policy was included, and it was stated that it must meet the majority of the additional criteria in the policy. Under the NRA policy's other criteria, it would have to meet the policy statement and the majority of the criteria which were in the current policy.

Amyx said CID and TDD said projects would be viewed more favorably if they had at least 15% equity, and he asked where that came from.

Stoddard stated it was not in the statute, but something other communities had included.

Mayor Cromwell called for public comment.

Hank Booth, Lawrence Chamber of Commerce, thanked the Commissioners for attending the Valor Awards earlier in the day. He said regarding the economic development policies, the Chamber's number one priority was to work with the commission to create partnerships to create and keep primary jobs in this community. Occasionally we are asked by

our members who are in retail to join them in supporting employment in their industry, and often times we provide help and make public comments. He simply asked the commission to adopt policies and make consistent decisions based on those policies. He said he would be willing to work with staff and others on the signage for the TDD and CID districts. He said it was important to be consistent after setting the rules.

Carter said on the signage, on the wording we had suggestions from the Chamber and there was wording from Wichita, but where did this language come from?

Stoddard said they were trying to make it as simple as possible. The State of Missouri also had language but it was rather unspecific.

Carter said with the additional criteria, perception wise, a few words made a big difference in how it sounds. He asked what the Chamber language was.

Stoddard displayed the suggestion on the overhead, and said she thought it had been provided by Tom Kern at an earlier meeting.

Cromwell said he liked the positive message in the beginning of Wichita's language. He said he also liked the direction on where to go to for additional information. Those were both positive things we could use in our signage.

Schumm said it was possible to make it a positive message, but to make it transparent it needs to have the exact rate above the standard rate that would be paid at the location. CID and TDD went in different increments and the rate could vary.

Cromwell said he liked that.

Amyx said we should have the rate up on the sign. Someone is going to ask for the use of the special district and the rate needed to be on the sign.

Schumm asked about the location of the signs, and said that should be pretty specific. He wouldn't want a large plant to grow up in front of the sign, for example. The whole issue is transparency so the consumer can make an informed decision. He asked if the applicant could request more than one of these tools at the same time.

Cromwell said he thought they could.

Amyx said Booth brought up an interesting point, which was if we felt comfortable telling staff and others to tell applicants that if they met these criteria they would be able to use these tools.

Cromwell said before he would not have been able to say that, but with these policies he thought he could feel comfortable with that.

Schumm said there still was a reasonable amount of interpretation under the but for criteria because we would have to feel that the project would not go forward without the tool. For example at the 27th Street project, they said the project would not happen, but now we may see that it goes forward anyway. There was still reason for the Commission to ask questions about the but for calculation.

Carter said there would always be some level of judgment. The Chamber could say “if” an applicant meets the criteria, they could use the tool. It was not a question of how deep the applicant’s pockets are, it was a question of whether it made financial sense. He said he appreciated the additional criteria. The projects had to be evaluated without regard to how deep the applicant’s pockets were.

Amyx said his main concern was if we were going to offer these tools, the people selling this community to applicants could say in confidence that the tools would be available or not.

Cromwell said regarding the sales tax rate, he would be more interested in the additional rate, not the total rate because the base may change. We don’t want to force people to change the signs if other jurisdictions change their rates. The additional rate was the key. Overall he appreciated the work of staff on this. We had a number of discussions and these were difficult issues and policies and there were diverse goals coming into conflict. He said he believed these changes would lead to a lot more transparency for the applicants and the public.

Schumm asked if it was still possible to involve a person in the district who didn’t want to join the district.

Stoddard said there was a 100% requirement in the policy.

Dever said he talked to people in other jurisdictions and it was disappointing that some people were hesitant to tell people what they were paying. He said we could prove we were being more informative and less political in our motivation for using this. We got a lot of feedback and he was proud we were in agreement to make things transparent. He said he thought the number needs to be on there.

Carter said with these policies we wouldn't have to hear the term "sneaky tax" anymore and he hoped that would be the case. Carter said he had a few comments on NRA. He asked about the language regarding "typical."

Schumm said he had said the norm should be 50% and we could deviate upwards for good cause. That was how he recalled the discussion. The reason was that we needed revenue and growth and if we give up all the equity in these projects we are spinning our wheels.

Carter said doing the 50% allows more things to be considered than might typically be. The other question he had was regarding PIRC involvement.

Stoddard said the policy clarified that PIRC would be involved. The first policy had been a little confusing.

Carter said if we had a policy that said these were the only criteria considered that added a lot of predictability. Other factors should not be brought in. We still had the but for that required some judgment. It was important not to let the particular developer or applicant be criteria that would be considered. Could we say that additional criteria would not be considered?

Cromwell said that is what the policy was, that these were the criteria considered. He thought it was implicit.

Carter said he didn't feel like it was happening though. He said we were capable at this level of making the decisions and PIRC added some more unpredictability. He didn't discredit their opinions, but it did add less predictability. He had heard things like "this person or this applicant shouldn't get it."

Cromwell said a lot of time PIRC had entities that needed to be involved like the County and school district.

Stoddard said related to NRA it had been helpful to have representatives of the County and school district. It made the process go a little more smoothly when the project got to those bodies.

Carter said it should be clear that we don't look at who the applicant was by PIRC or this body.

Schumm said each project should be looked at on its own merits.

Carter said it should be also looked at regardless of the applicant.

Dever said he thought it was implicit. Maybe more direction needed to go to PIRC. He thought if at PIRC there was some confusion we needed to clarify it.

Carter said he thought at all levels it was an issue. There should be specific criteria and have nothing to do with the particular chain, the particular developer. Who the applicant is seems to be a factor sometimes.

Cromwell said regardless of the applicant, the project should be considered on its merits. He thought it was implicit but a reminder or clarification could be OK.

Amyx asked if the 50% was the minimum level.

Dever said no, it said it was the max unless it was extraordinary.

Amyx said the final decision would come from a majority of this body.

Stoddard said the determination of that amount was at the discretion of the commission.

Cromwell said with the changes we maintain our flexibility but some standards are put out there to let applicants know.

Schumm asked if TDD and CID should be reviewed by PIRC.

Stoddard said that wasn't in the policy but could be. The one request we had received for CID had been taken to PIRC.

Corliss said the most recent request was for a NRA at 27th and Iowa. At 23rd and Ousdahl there had only been City Commission discussion. He said the TDD at Bauer Farms was only at the City Commission. He didn't recall regarding Oread Hotel.

Schumm asked if it made sense to require PIRC review. He said it made it a little more formalized.

Dever asked if PIRC would do the but for analysis.

Stoddard said staff would present some of the analytical work.

Carter asked if it was not transparent if the City Commission already got all the information, the meetings were public and the information was all online. It didn't add transparency to add PIRC; it only added a layer and slows things down. It can't get more transparent than what we are doing here.

Schumm said at PIRC we have an inclusive study on the numbers on which to judge the project. He wasn't sure if we would get that at this level.

Stoddard said the policy required the but for analysis and we would bring that to the City Commission.

Schumm said the TDD and CID would not have any concern for the county and schools because it was a sales tax rebate and not property taxes.

Stoddard said yes.

Amyx said then TDD and CID wouldn't go to PIRC.

Schumm said he was okay with that since we would get the analysis here and the rebate was only of sales tax.

Amyx said we could always ask one of our advisory boards to look at something if we needed additional analysis.

Dever said he would like to keep it optional.

Amyx said language could be added to make it clear that the application could go to an additional board if needed.

Cromwell said the policy could explicitly say that TDD and CID “may” be referred to PIRC.

Corliss said when we had these we put them on the consent agenda to refer to PIRC or to staff. Applicants want certainty of process. Unless you feel strongly it should go there he wouldn't recommend that you put it in the policy. He said that language regarding looking at the merits of the proposal under this policy without regard to the applicant's status such as out of town status, who the developer is, etc. could be crafted

Cromwell said he wasn't sure what that meant.

Corliss said how about “the merits of the proposal under this policy should guide the decision without regard to the applicant.” He said he was trying to get at the thought of regulating the development and not the developer. He said we would take direction and bring back resolutions later with the exact language added.

Joe Patterson said in regards to CID, you had been talking about new jobs, new businesses. Have we ruled out existing businesses?

Cromwell said no, it was open to people who were here. New jobs could be created at existing jobs.

Patterson said it needed to be clarified. He had a real problem if any existing business could apply for CID.

Schumm said one of the things we were doing was restricting the use to redevelopment or infill which would eliminate many locations. If an existing business was going to redevelop they would be able to apply for this.

Cromwell said that was the point, that anyone, regardless of who they were, if they met the eligibility requirements they could apply.

Patterson said he was a firm believer that he should pay the same sales tax at any business he went to in Lawrence.

Moved by Amyx, seconded by Carter, to direct staff to prepare resolutions adopting the policies for future city commission consideration. Motion carried unanimously.

Mayor Cromwell said we could take general public comment and the rest of the agenda before recessing into executive discussion. . . .

E. PUBLIC COMMENT:

Shawn Maupin said Commissioners were doing a great job in Lawrence, Kansas. He was speaking on behalf of Occupy Lawrence and thanked the commission for their support. They were keeping it peaceful and said he appreciated everything they were doing for them.

F. FUTURE AGENDA ITEMS:

David Corliss, City Manager, outlined potential future agenda items.

G: COMMISSION ITEMS:

Cromwell said he had been contacted by the tennis players interested in the lights at Centennial School. He wanted to make sure this body had an opportunity to take a look at this. He wanted to make sure we would be following all advisable notifications and such for the neighbors. He asked who would need to be notified.

McCullough said 200 feet plus adjacent neighborhood associations, and usually 20 days notice.

Corliss said we would also want to work with the advocates to make sure the date worked.

Amyx said we may want to look at right after Thanksgiving.

Corliss said we would find something that worked. He said we would get all the information out and take the commission's direction.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items.

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

D2: Consider a motion to recess into executive session for 30 minutes for the purpose of consultation with attorneys for the City on matters deemed privileged in the attorney-client relationship. The justification for the executive session is to keep attorney-client matters confidential. The regular meeting of the City Commission will resume in the commission meeting room at the conclusion of the executive session.

Moved by Amyx, seconded by Schumm, to recess into executive session for 30 minutes at 7:52 p.m. for the purpose of consultation with attorneys for the City on matters deemed privileged in the attorney-client relationship, with the justification for the executive session to keep attorney-client matters confidential. Motion carried unanimously.

The commission resumed the regular session at 8:18 p.m. No action was taken at the conclusion of the executive session.

Moved by Amyx, seconded by Schumm, to adjourn at 8:18 p.m. Motion carried unanimously.

APPROVED:

Aron E. Cromwell, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk