



City of Lawrence

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CITY COMMISSION

MAYOR
MICHAEL DEVER

COMMISSIONERS
MIKE AMYX
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM

August 27, 2013

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Dever presiding and members Amyx, Farmer, Riordan and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. Proclaim September 14 – 15, 2013 as the Bike MS Kansas City Ride Event.

B. CONSENT AGENDA

Vice Mayor Amyx asked that consent agenda item number 3 (claims only, not payroll) be pulled from the consent agenda for separate vote.

It was moved by Schumm, seconded by Farmer to approve the consent agenda as below, minus claims. Motion carried unanimously.

1. Approved the City Commission meeting minutes from 08/06/13 and 08/13/13.
2. Received the minutes from various boards and commissions:

Homeless Issues Advisory Committee meeting of 05/07/13
Lawrence Cultural Arts Commission meeting of 05/01/13
Public Incentives Review Committee meeting of 05/14/13
Sister Cities Advisory Board meetings of 04/10/13 and 07/10/13
Sustainability Advisory Board meeting of 07/10/13
3. THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR A SEPARATE VOTE.
Approved claims to 168 vendors in the amount of \$18,576,185.95 and payroll from August 11, 2013 to August 24, 2013, in the amount of \$1,845,244.45.
4. Approved the Drinking Establishment Licenses for Biggs Bar & Grill, 2429 S Iowa; Saints Pub & Patio Lawrence, 2329 Iowa; and Bambino's, 1540 L Wakarusa Drive.
5. Bid and purchase items:



- a) Authorized the purchase of five (5) Motorola radios for the Lawrence Police Department, off the State of Kansas contract, for a total of \$20,158.46.
 - b) Authorized purchase of various components for a Station Video Conferencing System for the Fire/Medical Department, off the State of Kansas contract, for a total of \$53,671.
6. Adopted on first reading, Ordinance No. 8901, authorizing the issuance of up to \$2.5 million in industrial revenue bonds (IRBs) and authorizing the Mayor to execute the necessary bond documents for the Neuvant House Project.
 7. Adopted on second and final reading, Ordinance No. 8891, to rezone (Z-13-00191) approximately 5.09 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 2200 East Hills Drive. (PC Item 3; approved 5-1 on 7/22/13)
 8. Authorized the Mayor to sign Releases of Mortgage for:
 - Marilyn Figueras, 2044 Emerald Drive,
 - Shirley C. Wedd, 3009 Stevens Drive, and
 - Alan H. Patterson, Jr. and Patricia Ann Patterson, 223 North 6th Street

Moved by Schumm, seconded by Farmer, to approve claims, minus claims related to Rock Chalk Park, in the amount of \$17,255,097.98 and payroll from August 11, 2013 to August 24, in the amount of \$1,845,244.45. Motion carried unanimously.

Moved by Schumm, seconded by Farmer, to approve claims related to Rock Chalk Park in the amount of \$1,321,087.97. Aye: Dever, Farmer, Riordan and Schumm. Nay: Amyx. Motion carried.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. **Conducted a public hearing regarding the request for a fifty percent (50%) property tax abatement from Sunlite Science & Technology, Inc., on property at 4811 Quail Crest Place, Lawrence, Kansas.**

Britt Crum-Cano, Economic Development Coordinator, presented the staff report.

Diane Stoddard, Assistant City Manager, presented a report regarding the PIRC discussion.

Jeff Chen, Sunlite Science and Technology, gave an introduction to the company. He said their company was founded in 1996 and moved to Lawrence to establish an LED chip and wafer manufacturing company. In 2006, they decided to develop their own LED lighting products. Their products were much smaller, lighter and brighter and he explained the technology behind their LED lighting. He said their product had a lot of potential. Right now, their company was still small, but had a 23% gain in revenue compared to last year. He said in order for their company to grow in the lighting market, the company needed to spend additional money. If the City of Lawrence granted their company a tax abatement, it would help his company grow and therefore able to hire more employees.

Riordan asked about the size of their company.

Chen said his company had 5 employees in Lawrence and over 30 employees in China that assembled parts for their LED lighting. He said they hoped to hire 40 more employees in Lawrence.

Riordan asked if Chen would look for a 9 fold increase in company size, in the United States.

Chen said yes.

Amyx said under the section that dealt with Health Insurance and the 70% minimum the company would provide, he asked if that language was within the Performance Agreement as well as the job creation targets.

Stoddard said yes. She said on page 5, the agreement discussed the Health Benefits and staff would look at those benefits with the company's annual reporting.

Amyx said if for some reason the 70% health insurance benefit changed, he asked if the company would still be in compliance or was it 100% participation by the company.

Stoddard said the agreement indicated the company needed to be in compliance with the City's current policy which was the 70%.

Moved by Amyx, seconded by Riordan to open the public hearing. Motion carried

unanimously.

Kirk McClure said he was present to recommend that the City Commission learn from the prior experience of the City of Lawrence, Kansas. He said for quite a long time, like thousands of other cities in the United States, this city had gotten on the bandwagon of giving away tax abatements. The research had been done for many decades and the research said all the same thing, there was only one thing important in economic development and that was bringing basic jobs to the economy. Most simply, a basic job was a job that brought income into a community from external to their own economy, whether that was tourism, manufacturing, selling a service outside a City's boundary, but only grow their economy to the extent of bringing income inside their economy. He said the phrase has changed where it was "basic industry", but now it was "primary industry" and that was what it was all about. The research on tax abatements was very clear, property tax abatements had nothing to do with the creation, retention or enhancement of basic industry jobs. Tax abatements were simply a "give away" to firms to do what they would have done otherwise. As a consequence, the tax abatements were inherently unfair to those businesses that had to pick up tab for the lost revenues. He said it was a very business "unfriendly" operation. He said their experience in Lawrence was actually a little worse than the average across the country. Over the 6 years that he was on the Public Incentives Review Committee, he followed this process very closely and for a few years after he was on the committee. The abatements were only successful, and understand we're giving a good deal of leniency, and called it a success if the company meant 90% of the promised investment, 90% of the promised jobs, and the jobs paid 90% of the area average wage. He said Lawrence was pretty generous on the phrase "successful." The program was only successful only 35% of the time. The firms were non-compliant 40% of the time and went out of business or just simply failed to report 25% of the time. He said that tells you that this was not a program they should continue. He said he thought the City had moved away from tax abatements and was surprised to read that the City was considering doing it again. It took

exceptional merit for a project to merit a tax abatement when the experience was that poor. The comments had been made about enhancing small scale. He said he had studied that research closely and there wasn't an easy answer, but this was the rough answer "small scale did produce more jobs", but if measuring net jobs after loss of jobs, big firms had the great advantage and small firms die much more quickly. He said on wage and benefit levels, large firms have the definite advantage over small firms. The one advantage that small firms had was that when the economy went up, big firms go up more than small firms, but pleasantly when the economy went down, small firms go down a little less than large firms. If thinking through the experience the City had in town with firms like Sauer-Danfoss and so forth, they saw that phenomenon in this town. They were all after that primary industry and this was a firm that made the conscious decision to send its manufacturing jobs overseas. He said there were a lot of firms struggling to keep their employment in Lawrence, Kansas. He said he didn't think this town should be in a position of subsidizing firms that had made the conscious decision to send their jobs out of town. Finally, on the issue of the benefit-cost-analysis, he said to remember that this was routinely misused. Benefit-cost-analysis only states whether or not a firm should be considered and it didn't tell you whether it merited being considered. The problem with the Benefit-cost-analysis that it assumed that the jobs would not have happen had the subsidize hadn't been given, but the City's experience and the experience of everyone else was that sure enough the property tax abatement had no impact on whether the jobs were created, retained, or enhanced. He said he recommended that they were lacking the exceptional merit to give tax abatement to this firm.

Schumm said McClure was familiar with the incubator program this year and asked if McClure agreed or disagreed that it was a good program.

McClure said he agreed. There were real simple rules in economic development which were called the 3 "L's", labor, land, and loan. He said you should have the right price, right skilled labor, and land available. Often times you have to provide some sort of financial

assistance. The incubator came into that process of finding the right human resources and right facilities, the land component of it.

Schumm said McClure's comments were interesting, but from his perspective, he asked how they graduated out of the incubator with success. They were not usually a seasoned business by the time their graduating. This was the first graduation and asked what would you do to support a business to get the business to the next stage of being big and capable to withstand severe economic shocks.

McClure said the same thing he just stated. It was simply providing the right labor, right land, and right financing. The notion of the property taxes would take a weak firm that was not yet sufficiently matured to make a go of it was simply a giveaway of dollars. If the firm was not sufficiently ready to stand on its own, then stay in the incubator longer or admit that not everything that came out of incubator was going to be a success.

Schumm asked if the subsidy of property tax create a climate of a better financial opportunity because that business had that cash to use with the inputs in their business.

McClure said when talking basic industry, the property taxes were such a tiny percentage of the overall operating expense. When comparing the property package to the benefit package, wages, and the cost of materials, it was miniscule. Any firm for which the property taxes would make a difference on the feasibility of the firm, it wasn't ready to go because it was way too small a share of the operating expenses.

Riordan said this was a firm that had 5 people employed currently. He said the firm estimated that at the end of 10 years, they would have 45 more employees for a total of 50 employees. He asked how that didn't create jobs.

McClure said the research told them that if that firm had a good business plan, without tax abatement the firm would still be there with the same 45 employees.

Allen Ford asked what bank owned the building.

Stoddard said Emprise Bank, but it had recently been acquired by Sunlite.

Ford said Sunlite already bought the building. He said the amount of investment which was 2.3 million, which was less than the 5 million dollar standard that was mentioned earlier. He said if looking at the 2.3 million dollars and tax abatement, what they looked at was the immediate impact on the community if granting tax abatement. Again, they were talking about 2.3 million dollars when the building cost 1.1 million dollars. A million dollars of that investment came in on year 9. The million dollars of estimated investment in year 9 certainly shouldn't have any bearing on this particular decision. Everyone could make estimates and guess about how much investment they would have over a 10 year period, but there were a lot of things that could happen between now and 10 years. He said he submitted that the investment that was relevant was 1.1 million which again brought them substantially below the 5 million dollars which was a minimum that was created and was not adjusted for inflation. If looking at the 40 new jobs created, they were looking at 10 years and were not very many jobs. He said the threshold was 20 and they were substantially under that 20. He said the City wasn't going to enforce the Performance Agreements. He said those claw back provisions were very popular and sounded good, but they wouldn't be applied. He said the City had companies that had substantially under performed. He said if the City was putting a lot into the Performance Agreement, the City was misallocating their time. The benefit to cost ratio was 1.25 which was the standard, but mentioned this firm was below that standard. He said the City was in conflict with 3 requirements on this proposal already. There were four parties to tax abatement, the bank, the applicant, the federal government, and taxpayers. In that group were three winners, the bank that sold the property and had a chance to get a higher price because it was a tax abated asset, the applicant, the federal government and the taxpayers would be the losers. He said he visited with Chen and tried to make it clear to any applicant that he wasn't attacking the applicant, but the tax abatement. He said Chen had ideas that were worth listening to, regarding small businesses and wanted Chen's business to be very successful. He said this building was currently on the tax rolls and was not talking about adding some new investment to the City's

tax base. He said they were actually trying to reduce the tax base in this situation. Abatements were unfair type instruments. If looking at a company like Hallmark, that company had 650 jobs and they were fixing to go to 700 jobs and they had no subsidy in a 15 month period, Hallmark was increasing 200 jobs with no subsidy and now they were discussing investing 1.1 million dollars.

Chen said if his company was the size of Hallmark, he would definitely not apply for a tax abatement. Again, his company moved to Lawrence in 1997 and paid property tax for over 3 or 4 years and they didn't ask for any tax abatement, but now they needed some cash to help his company grow and in turn, it would help the community too because they would hire more employees in the future.

Moved by Schumm, seconded by Riordan, to close the public hearing. Motion carried unanimously.

Schumm said it was the same old classic argument, "do you or don't you." He said first of all Hallmark was increasing their workforce because they were moving jobs from Topeka and consolidating some other activity and that was bad for Topeka, but good for Lawrence. He said he was of the opinion that along the way, he recalled Hallmark enjoying IRB's and other things that they might have enjoyed earlier in their career and it was not to say that Hallmark hadn't been compensated in some way. He said this was a new company and it seemed the City was accomplishing what it set out to do with this incubator. He said this was a little company that was going to sprout out and try to grow. He said this company had five employees and would add one and he realized it was not a lot, but everyone knew that this technology, lighting would be universal in a few more years and people wouldn't be buying incandescent or florescent lighting any more, but would buy LED lighting. He said this was cutting edge technology and everyone would be buying this type of lighting in one form or another. He said this was an absolute great opportunity for the City to demonstrate that the city had faith in their technology sector, the incubator system, and it was doing exactly the City spent a lot of money to bring in

new technological business and see it through its success. He said they were asking for a small amount of money to support their business in terms of tax abatement. He said Ford mentioned that the taxpayer was the loser, but he didn't agree with that statement. This company was demonstrating 1.15 percent return on the investment and that wasn't losing. He said that might not be making as much as some other instances, but the community could be a huge winner on this endeavor. Again, it wasn't a lot of money, but yet it would help Chen accomplish what he was trying to do.

Amyx said he appreciated Schumm's comments. He said this company was taking an existing building and doing an adaptive reuse of an existing building. He said they were moving from the incubator facility to an existing building and it was staying on the tax roll. The opportunity under the performance agreement whether or not someone wanted to believe in it or not, the truth was that they had that agreement and there would be a decision based on that agreement. He said this was an opportunity for people to have jobs in this community.

Farmer said from a process perspective they were bending the rules a little bit for something that might need clearer policies set forth which was discussed last week. He said there were policies that needed to be looked at, but it was not a reason for denial. He said he agreed with Schumm's comments about the community setting out to do with the BTBC (Bioscience and Technology Business Center). He said there was discussion by the community and previous Commissions about jobs leaving and the investment the city made in the BTBC for this company to be in Lawrence for the past 16 years, all those jobs would go somewhere else and that wasn't what they wanted. He said the argument that this wasn't a significant amount of money helped him make this point. He said if he were to come to the City Commission during budget time and say "If the city invested \$25,800 a year for 10 years in "Just Food" they could create 45 people to be self-sufficient and making an average wage of \$40,000 per year, he would hope that would generate a lot of community excitement. He said a lot of non-profits that the City funded through regular City services it was just to continue doing the same great

things that they did every year. He said there wasn't a lot of return on investment in the sense of job creation and health insurance wages. It was an investment that was made as a city into social services and non-profits that did such great work and he was glad. He said it seemed counterintuitive that they would be okay with those types of investments, but not the kind of investment where they would have a return of jobs, people in the community being able to work and ultimately something else that innovatively told their story from an incubator to now and having its own place in this community. He said for \$25,800 a year, over ten years, the City Commission would approve it if a non-profit came to the City Commission every year and asked for \$25,000 to do the great work they did. He said now they were talking about the risk of the business not working, the business closed or didn't meet all those criteria. He said they were talking about a much more potential impact than investment the City Commission made thus far and the same people that were present weren't ever present to speak against the City Commission making investments in non-profits.

Riordan said there were some businesses that they recognized, but there were some mitigating factor associated. The fact that this business was homegrown in BTBC as an incubator was a reason to approve this tax abatement. The fact that this was a small amount of money was also a positive thing, but a small amount of money to a company like this could be very significant. The other aspect was that if he went into BTBC and saw that this was a benefit and they were continuing to back up and be supportive of those companies, he would be more interested in staying in Lawrence after that. He said they were creating an environment that was friendly to businesses. He said there were some negatives, but when looking at the positives, the positives outweigh the negatives.

Dever said there were many factors that went into considering tax abatements, unfortunately, he, as a Commissioner hadn't had to rule on too many tax abatements in the last 6 years. He asked Corliss if the city had issued any new tax abatements in the last 5 or 6 years.

Corliss said in looking at the staff memo, the City hadn't done many tax abatements. The city's portfolio had actually shrunk. He said there were currently 3 active tax abatements. When comparing that to the total of the city's assessed valuations, it was a relatively small amount. Every dollar was important, but it was relatively small. He said they hadn't examined the policy since they had the BTBC.

Dever said he asked the question knowing the answer and the public needed to be aware that there isn't this large cash giveaway, at least not in the last 5 or 6 years. He said he would argue that as a Commission they were subsidizing this business by its existence the BTBC. He said the taxpayers were helping promote the growth of this business currently and hoped the community would follow through on that commitment to grow technology based companies in Lawrence Kansas. He said they were looking for green collar jobs and this business was a low energy, low raw material investment in the future and those were the types of jobs he would like to see end up in this community. He said he didn't like to give away money especially taxpayer money, but he had to understand that that money was going to be turned around and invested in at least one more employee in the next 15 months and believed that the city wanted to try and encourage the growth of businesses out of the incubator and into the community. He said this was a vacant building that once had 20 or 30 jobs in it and was gone and sat empty for the last two years. It was an unusual location and Chen had invested in the community by buying that building which sat vacant and not producing jobs. This was what he hoped to be a success story in the future. It was the type of business that they wanted in this community. This was a real decision and it was about following through with the commitments being made in this community to the growth of small business in technology. He said he loved the idea of showing other companies that were in the incubator that the City was serious about keeping those companies in Lawrence and that was the biggest and most difficult thing associated with incubating companies, because those businesses incubate and leave the community. He said the City's first graduate wanted to stay in Lawrence and that was the

business environment that this community wanted to create. He said he sat on the Board for BTBC for the last years and had been waiting for this opportunity to show the others that were there and those that want to come to this community that this community was serious about technology and helping grow small businesses. He said for him, he might be a little too close since he was involved in the BTBC and was also part of the Public Incentive Review Committee and all members thought it was a good decision and the City Commission needed to take that to heart and understand that that didn't happen that often. He said people needed to know that this business appeared to be a decent and good next step for this company.

Moved by Farmer, seconded by Schumm, to receive the Public Incentive Review Committee recommendation; adopt Resolution No. 7042, a resolution exempting from ad valorem taxation fifty percent (50%) of the appraised value of the land and building located at 4811 Quail Crest Place in Lawrence, Kansas, used by Sunlite Science & Technology, Inc., for the manufacturing of articles of commerce, conducting research and development, and storing goods or commodities which are sold or traded in Interstate Commerce, as provided by Article 11, Section 13 of the Constitution of the State of Kansas; and, to authorize the Mayor to execute a performance agreement with Sunlite Science & Technology, Inc., setting forth the related performance requirements for the tax abatement. Motion carried unanimously.

2. **Considered authorizing issuance of a Temporary Use of Public Right-of-Way Permit, with conditions, for the Color Run on Saturday, September 14, 2013.**

Jonathan Douglass, City Clerk/Assistant to the City Manager, presented the staff report.

Farmer said we would charge the actual cost of City Services with Police, Fire/Medical, and Public Works for that day, and asked who else the City did that with.

Douglass said the City had not done that with a lot of events, most events were much smaller. He said they had about 52 or 53 street events last year, but most of the 5-K events involved 200 people and took very little City services. He said there were two main differences,

the scale was much bigger and it was a for-profit event, which did give some proceeds to a local charity.

Farmer asked how many runners.

Douglass said it was about 7,000 runners.

Dever said some of those discussions about helping pay for public services had come up in the last 4 or 5 months where the police had indicated they were having trouble fitting it in their budget. He said it had incrementally increased over the last few years. He said it was great, but had to come up with the cash to pay those people, especially over-time.

Mayor Dever called for public comment.

Bob Sanner, Lawrence Sports Corporation, said they had 6,800 participants last year and 77% were female, 47% were between the age of 19 to 30 years old, and only 23% of the participants were from Lawrence. He said he brought those participants into the City in the morning to early afternoon. In the Color Run business plan except for Lawrence, they go into cities with a minimum population of 1 million. He said they were willing to work hard and do things differently than what those runners were accustomed to and were happy to have the Color Run back.

Amyx said he wanted to thank Sanner for this idea in bringing that many people to the City of Lawrence.

Sanner said it fit the character of the community because this community strived to be a little different from most communities.

Amyx asked about the post cards mailed to adjacent properties.

David Corliss, City Manager, said staff had a little bit of a delay getting some of the post cards.

Douglass said the post cards were processed through the US Postal Service on-line.

Corliss said that was one of the costs that the City would account for in their process. It was important to let property owners know because if they had plans to be out during the race

time. He said unless there was an immediate emergency, those property owners won't be able to access their property and need to plan elsewhere.

Douglass said they sent out a thousand post cards and five hundred post cards for the other event. He said they sent the post cards to the property owner and the tenant.

Riordan said this was a great event. He said as someone that lived on Tennessee Street, they would be blocked off. He said as he was reading about this event and hadn't seen any notification which was a little irritating. The second thing was that they were going to close the street and there would be marshal's available. He said if he was sitting inside his house, he asked how he would get to the marshal's to get out. He said if he was on call, he had to get out immediately and that could present some problems, especially if he hadn't thought ahead. He said he thought how about a different way in not closing down two entire streets for that many blocks. He said he wrote a note to Corliss about needing to understand this better. He said on Monday, he received the post card and thought it was well done. He said he mentioned to Corliss that there was an inconvenience for a few citizens so the majority of citizens could benefit by this. He said that was a very important concept that sometimes was forgotten. He said when an event comes to town and was interested in how much money they could get, not on historic preservation or helping the City, he said it was forgotten that there were times within the City that they needed to take into account that even though they were being inconvenienced and were having difficulties, the majority of the people were going to benefit. He said the earlier tax abatement that was discussed was another example. He said if someone came before the City Commission and didn't have that concept in mind, then he would challenge that person. He said he found that in Lawrence, you would be challenged on many things that you do. He said that was a good thing because that was democracy in action. He said overall, this event was a great event even though it was inconveniencing to him. He said it needed to be kept in mind that a few people would be inconvenienced for the benefit of many.

Amyx asked if parking was not going to be allowed along those streets.

Douglass said he thought that was the plan.

Sanner said they would have a color zone approximately every kilometer. The placement would be in a location and obviously they wouldn't want to place a color zone at an intersection. The whole key was to open the streets back up as quickly as possible. He said the stretch of Tennessee that Riordan lived on, they were prepared, when it was safe to do so, allow traffic out and head down. He said it would be handled similar to the Tour of Lawrence. He said they send the runners in waves of 500 every few minutes.

Riordan said whatever they did was fine. He appreciated that they were trying to minimize the problems. He said this was a great run and Van Go was a great organization to be sponsoring this event.

Moved by Schumm, seconded by Amyx, to authorize issuance of a Temporary Use of Public Right-of-Way Permit, with conditions, for the Color Run on Saturday, September 14, 2013. Motion carried unanimously.

3. **Considered authorizing issuance of a Temporary Use of Public Right-of-Way Permit for the Glow Run on Saturday, October 12, 2013.**

Jonathan Douglass, City Clerk/Assistant to the City Manager, presented the staff report.

Schumm said this was another nice event, but he wondered that 8:00 pm on a Saturday night was prime time downtown with diners coming and leaving. He said even though they close off Massachusetts Street there was almost 5 blocks, 3000 feet, and some runners would run through quickly and others would straggle. He said he had a concern that if people thought the runners were gone and try to back up. He said he saw a conflict with people who were trying to get out and the runners coming by. He said he knew it would only be 15 to 20 minutes total, but still might have some conflict.

Douglass said staff's experience with some of the parades that it was easy enough to see that there was an event was going by when approaching their car. The runners would be pretty compact that it was at the very beginning of the race. The stragglers shouldn't be

straggling too far behind at that point. He said there would be police escorts and the police department felt they could manage that event safely.

Amyx said along with Schumm concern, his concern was that it starts getting dark at that time in October.

Douglass said it would and that was the idea of the glow run. He said that run had been done in numerous other places and they were able to pull it off safely. He said that was a concern from the police department that it was at dusk and that was a more difficult time for traffic. He they have a good plan for closing down the streets. He said there would be 10 police officers dedicated for the event to be at any particularly conflicting points for traffic and runners.

Mayor Dever called for public comment.

After receiving no public comment, **it was moved by Schumm, seconded by Riordan,** to authorize issuance of a Temporary Use of Public Right-of-Way Permit for the Glow Run on Saturday, October 12, 2013. Motion carried unanimously.

4. **Considered adopting on first reading, Ordinance No. 8900, regarding upholstered furniture on porches.**

Mark Bradford, Fire/Medical Chief, introduced the item.

Schumm asked who would be the policing department for this particular ordinance.

Bradford said the ordinance itself would reside in the property maintenance code and currently that would fall under Scott McCullough's, Planning and Development Services, responsibility for enforcement.

Riordan asked if outdoor furniture that was made for outdoor use would be prohibited.

Bradford said no. He said specifically any of the materials that might have a padded piece that went with it or something that could be added, what would be approved was something that was rated for outdoor use. He said they would have a tag, similar to the tags on your pillow. He said that indicated that it had been tested and approved for outdoor use. The question did arise in the agenda meeting that if someone had a wooden piece of furniture and

they took a cushion off of a sofa and took it outside, it would be technically in violation. He said whether that would be noted on a drive by or walk by inspection, he didn't know. The key is we've reduced the amount of material that they are bringing out so that it's not a full type couch or loveseat that would cause a problem. We are significantly reducing the risk even if they did that.

Amyx asked why it's important to keep bringing up 'yard' in the city code?

Bradford said the current property maintenance code talks about yard storage or usage and just having a couch sitting out in the yard. So, this goes along with that in addition to a non-enclosed porch area.

Farmer asked for clarification on the previous code without this amendment. He said it seems to him this was, in a sense, already in the code without any enforcement. Can you speak to that as far as, 'It shall be unlawful for any person to allow in any yard or other exterior area of any premises furniture other than outdoor furniture', it seems that city code already says an upholstered couch on the porch is not OK.

Randy Larkin stated that originally when this was drafted these two sections were drafted in tandem and were to work together. The first was a general prohibition and was aimed more for refrigerators and other things that might be scattered around the yard. Then this upholstered furniture was to be related specifically to decks, balconies, etc. For some reason they were pulled when this was originally enacted as the property maintenance code, right before the codification. Now we are adding this back in. Those two sections are to be read in tandem and would give us the protection we are looking for and the teeth we need to enforce. I agree you could read it that broadly but they were meant to be in tandem.

Farmer said his question is two-fold. If it's already technically illegal how are we doing enforcing that so far?

Larkin stated we're not because that is was not really the intent of the general prohibition but it could fit under there, but that was never our intent. These two were to be done together and at some point these would be added back in.

Farmer asked Scott McCullough if his staff, that is already overworked and busy and has rental registration coming up, is going to be able to handle this?

McCullough said we'll have to absorb it. There is a myriad of codes that the property maintenance code addresses. We get a lot of complaints on the exterior yard conditions which you'll see in the code today. We can't determine what the demand will be if this code is adopted. If it's overwhelming we'll come back and have that discussion.

Dever asked Larkin if Jeremy was right. It's in there, we just haven't been interpreting that or enforcing that section, other than the yard.

Larkin said we would like to have something more specific. Broadly, yes, you could do it that way but we, and the fire department, would rather focus in and talk about the balconies, porches and un-enclosed decks specifically. That was how they originally drafted it. It got pulled out and reading one alone wasn't the intent.

Dever asked if he could explain why we had to divine enclosed porch.

Larkin said that is to make sure you can have upholstered furniture inside a screened off, windowed deck with a locked door. That we didn't prohibit upholstered furniture from those types of things, where it's basically another room that may just be windows, screens or something of that nature.

Dever asked why being locked is important?

Larkin said that's to differentiate it from another deck. This was something the fire department requested and we were fine with it.

Dever said we are talking like a three season room. Many older homes have them in the back, front or side. You have a door, it's a porch, you walk in and it's got screens but then there

is another door to the building typically. So why is being locked important? Can you address that?

Bradford said the issue on having an enclosed space is not whether it's lockable but whether it's all enclosed as one space. That would significantly reduce someone coming in and just throwing a cigarette in or walking down the street and shooting off fireworks or lighting something off and keep walking. Our opinion is that those spaces are more like the interior of your home. In some cases, if not most, they are constructed different than just an open porch. Depending on how closed in it is, they may or may not have smoke alarms there. The character of the furniture you're going to have in that space is significantly different than the character of the furniture that you might find sitting out on a front porch that's in the elements.

Dever asked if the request that the door is capable of being locked came from the fire department?

Bradford said that it's securable.

Dever asked if it was the fire department's request.

Bradford said that was correct.

Riordan said in regards to why this is needed he thinks it's interesting that we just recently had a law suit that we prevailed on, and one of the big points was that a common person could understand the regulation. I think this would create a situation where the common person could understand this regulation and it would be constitutional in that way. The other part is there are no fines, it's just unlawful. What would happen if someone says they're going to leave it out there? Walk me through what happens.

Larkin said this fits within the property maintenance code and there are administrative and criminal procedures that can flow from that depending on how the city decides to prosecute it. There are penalties for it. I don't remember what the penalties are for violation of the property maintenance code but it is within the larger scheme of that.

Riordan asked if this will be built into that and is taken care of under that.

Larkin said yes.

Riordan asked if somebody says no then we have to go to court and do all kinds of things. No one is going to go out and remove it from their property or anything like that?

Larkin said there is a specific penalty under property maintenance.

Corliss said we aren't going to be on someone's property to remove it unless we bring the proceedings before you to say that it's a dangerous structure. If this proceeds what we envision is a fairly healthy public education effort first to get the word out. That is usually very effective. It takes a little bit of a bubble off of the violations. There will be a surge in the violations at first and then it usually tapers down as we get the word out. We are not trying to balance the budget with fines here. We are trying to get at a public safety issue so usually the education effort results in compliance.

Amyx said he read this over and over last night. What's in the current code, which is Section 302.11, shall be unlawful for any person to allow in a yard other than exterior area of premises furniture other than outdoor furniture and that term is defined in the chapter. Under the definition of outdoor furniture, weather resistant furniture designed and manufactured for outdoor use. He then asked isn't that exactly what you said that this new tenant says? Is it that those materials are going to come from the manufacturer whether it says that's what it's for. Isn't that what our current code says?

Bradford said, as Mr. Larkin mentioned, I think that's correct. This more clearly defines that area other than porch. This is what we are trying to clarify. It's only to put the language in there so people know, without this type of dialogue, where one person sees it one way and one sees it another. This language takes all the ambiguity out of it.

Dever asked Randy if he could enlighten him as to why trash receptacle is defined in this ordinance. I'm trying to find where it's cited in the ordinance somewhere.

Larkin said it would be within the property maintenance code as well. The property maintenance code is a number of sections and these are just specific sections of the property

maintenance code that are being amended. This does include that in the definitions so it's just for the re-numbering. But there are other sections relating to removing trash receptacles from the street within a certain time.

Mayor Dever called for public comment.

Candice Davis said she lived in the Oread neighborhood and likewise, with commissioner Amyx, realize this has been in the code but hasn't been enforced. I recall years ago there were discussions by the city commission and I think in part the question was we don't know what that looks like. I am really happy that the fire department perhaps is making this something that now is going to be enforceable or will take a more serious look at it. I think most everybody here knows what upholstered furniture looks like if we were to walk through the neighborhood. I enthusiastically support this and as commissioner Riordan mentioned I believe this is really for the greater good. I witnessed a house on Indiana St. go up and it was the balloon framing. A young man jumped out of the 2nd floor window and it went up in about an hour. It was a fire cracker on the overstuffed furniture on the front porch. I think this is really important. A fine, like \$25, to the renter not the landlord might make this easier. Thank you.

Eric Hurt thanked the city employees and commissioners who showed up to the good neighbor initiative. He asked if this would be a court, jail time issue or a ticket if you don't comply with it. He crunched the numbers and saw that 10 out of the 463 fires only make up 2% of fires in Lawrence since 2007. I wanted to make sure if we go through with this ordinance we are doing something to tackle those other 98% of fires. I want to be clear that I see this as a big problem and if one person loses a life or gets hurt from this we should do something about it.

Farmer thanked Eric for speaking and said he is a student government representative with KU, the student senate. He is glad to hear what he thought of the issue.

Dever asked if there is any other public comment and there wasn't. He asked Scott to answer the question raised by Mr. Hurt regarding the penalty for not complying.

McCullough said that we are given the option of abating the violation with governing body approval. So, bring you a resolution and remove it ourselves. Then we can site them in municipal court and levy a fine between \$100 and \$500. Plus, jail term of not less than 5 days or more than 3 months.

Dever asked if it's fine plus jail time.

Larkin said fine plus. Or, it's going to be a ticket. Most people are fined. I doubt that anyone is going to go to jail over it. It's most likely going to be a fine, not unlike speeding. Something of that nature.

Corliss said that each day can be a separate offense. So that's one of the ways to get some attention on it.

Dever said we would try to abate if compliance did not occur. The question would come up for this body to issue an order for abatement of the condition. At that point a ticket would be issued.

McCullough said we typically start with citing them and prosecuting in Municipal Court. Depending on the severity we may seek abatement. I believe we have had jail time in the city for these kinds of issues before. Not this small of an issue but larger property issues. We do have some options. We start with citing and prosecuting in Municipal Court.

Dever asked Bradford to answer the questions regarding what we will do to address the other 98% of fires. My opinion is the adoption of the new fire code will help with some of those issues.

Bradford said that every fire that occurs in Lawrence we investigate as to origin, location and cause. A couple things derive from that. One, we continue to look at ways to educate the public. As an example, if we have a variety of Christmas light and tree fires we can look at the type of lighting and get that information out. There is going to be a lot of fires that we have across the country that have a human factor. They have done something stupid or it's an accident type of approach. That again goes back to education. There are fires that are

intentionally set. We look at those like any other type of incident to find out how and who and prosecute those. There are auto fires that are mechanical in nature that none of us have control over. There are natural fires. We don't have forest fires but across the country we see those things. Lightning strikes. There's not much we can do about those but extinguish the fire. It's a derivative of the causation of the incident on what we do. A lot of the fires that we have simply occur out of various types of nature and there's not a lot of prevention that you can do for that.

Farmer asked who would be cited if there is more than one person living in the house.

Corliss said we enforce the environmental code against property owners. The property owner has a responsibility to have a good lease agreement with the tenant that says the tenant needs to comply with the laws of the land in regards to the uses of the property. Most lease agreements say this. It is the property owner who has the responsibility of the maintenance of their property.

Dever asked if the person who would get the citation would be the property owner. Subsequent enforcement and or violations would be the property owner?

Corliss said the normal course of action would be Brian, and/or his staff, make a visual inspection. They talk to the tenants, indicate the concern, see if there is a verbal agreement toward compliance. If that doesn't resolve itself then we find out who the property owner is and contact them. Sometimes inform them, sometimes go directly to notice of violation. If that's not complied with we can immediately go toward a citation by referring it to the prosecutors' office. If that's not effective then we bring it to you because of a safety concern. We usually get good results when we seek voluntary compliance. When we don't think we are getting good results or think that you will concur we bring it to you to try to move things along. I want to stress, if this proceeds, we really are going to start with an educational effort to point out the hazards. He commented on the question from Hurt regarding what we are doing regarding other structure fires. To the great credit of the fire service, to Mark, Jim, their colleagues and the people who have worked before them we don't see as many structure fires, nationally or even locally. A lot

of it is due to their great inspection work and bringing codes to us on how to make structures better. We have seen progress. It's not always linear, sometimes you get a situation here where we want to clarify the code to get at what we think is a particular issue.

Dever said we are clarifying the code, we aren't doing anything new except enforcing the code that already exists.

Corliss said he thinks we are because we now have a more specific prohibition. If you're going to go to Municipal Court and prosecute someone you want to have a specific prohibition. I don't know if our prosecutors feel like we have the ability to specifically point out that there is an upholstered piece of furniture on this porch and what that means. Now we are going to have that with this ordinance. You could argue the earlier language was helpful but if you want to try and prove all the elements of a crime, beyond a reasonable doubt, you want to have more specific language which is what we have here.

Dever asked if there are any other examples where we get into the individual rights of property owners to use and enjoy their property. With some, that would not have a negative benefit on their neighbors. I understand how letting your lawn grow 3 feet impacts the neighborhood. There are unsafe conditions that can exist based on that use of your property. But, having a piece of furniture on your porch, it's your house, your porch. Can you point to an example of us dictating what type of furniture someone can have on their property or another example of that in our code?

Corliss said we can come up with a number of examples where you walk through any structure where government has said we want to make sure that, that stereo has the right URL numbers and that it's not going to explode, blow up or turn into a fire. For good or bad we've made those public policy decisions in any number of different situations. This is, to some extent, protection for those individuals. It's protection for their visitors, for their neighbors, for the fire fighters that have to go to those situations. That's where there is merit to that intervention by government to say what we are saying here. It's a good point we don't take this

lightly. We have tried to write this where furniture that clearly doesn't belong there, wasn't built for that, hasn't been certified for that type of use and where we have an experience where it has caused problems, we don't think it should be there.

Dever said he thinks an extension cord is a good example of that. We tell people they can't use extension cords under certain conditions and it's their house and their stuff.

Corliss restated it's for their safety and the safety of visitors, neighbors and fire fighters.

Riordan stated that, not on a local level, but the slats on a crib are regulated for safety. There is good precedent for doing these types of things for safety reasons.

Amyx said he hates to keep harking on how the language is written, but when we are talking doing away with upholstered furniture, why haven't we started this education program already? I read this as couches aren't allowed. Upholstered couches aren't allowed if I read this right. It's not designed and manufactured for outdoor use are they? Isn't that what we are saying? Under the current code?

Larkin said these two sections were originally written together to be read in tandem. The first was a general prohibition. Its antecedent was in the old environmental code and it specifically dealt with items in the yard. There was a whole list of items which is where this section came in. We generalized it to address just situations in the yard. This next section regarding upholstered furniture is aimed specifically at upholstered furniture on the deck, balconies and porch. That didn't make it into the revised property maintenance code when we combined the two in June. We rushed that in to get it before the codification. It was a little more general than what we anticipated but it was never meant to be aimed at upholstered furniture. It was never specifically, and as the city manager said, I think we would have difficulties because of the general nature of it, of applying it specifically to upholstered furniture and we'd rather have this additional language because the two were originally drafted in tandem to work together to provide that protection.

Amyx said it seems to him it says you can't have it unless it was designed for outdoor use.

Dever said I think he said it's not in there anymore. Correct?

Larkin said, no, that's the section that exists now but those two were drafted together. They were part of the same section originally. We pulled out the sections relating to upholstered furniture before we went to the property maintenance code so we could get that into the codification. We then are just adding that back in to the original. And the original intent, like I said the first section, the first part of that section, was from the old environmental code and dealt with items in the yard. Then we were going to add in this section that specifically dealt with upholstered furniture on decks, balconies and porches.

Dever said his point is when you rushed to get the other section into the code this was not a part of it. You extracted that language out.

Larkin said the upholstered furniture part, yes.

Dever said so it's not in there now. They took that language, which used to be in the code, which is no longer in, because we changed the code. And, we took that language and we inserted it into ordinance 8900 to create a tandem rule which was addressed previously but really no longer exists because you appended or changed the original code.

Larkin said that is correct.

Dever asked if it is technically not in there right now?

Corliss said we have never had specific language in the environmental code, the property maintenance code, that calls out upholstered furniture, what it is and where it shouldn't be. Is that correct?

Larkin said that is correct.

Corliss said what we don't want to do is have this debate in municipal court when we are trying to prove this beyond a reasonable doubt whether or not that furniture was designed for

outdoor use. We don't want to have that debate. We want to have it specifically spelled out that it is upholstered furniture and that it's not allowed.

Amyx said he appreciated what the mayor had said and the work Randy had done. He stated that the existing code, the way he reads it, talks about outdoor furniture. And, that it shall be unlawful for any person to allow on any yard or other exterior area of any premises furniture other than outdoor furniture as the term defined in the chapter. And it goes to say outdoor furniture defined as weather resistant furniture designed and manufactured for outdoor use. Doesn't that say the same thing?

Larkin said it can be read that broadly but if we went before the municipal court for prosecution I think we would have some difficulties regarding the vagueness of that language. Regarding, specifically, upholstered furniture. We might be successful but we might not. This new language would give us the teeth that we really need to succeed.

Riordan said he would somewhat agree. When you talk about words like exterior, the definition of that sometimes can become difficult. What I read that as, you might read it as differently. To me this just very specifically says, once again, according to what the common man would read, I don't think there is any doubt. I think there is definite doubt on the previous one and you could argue that.

Dever said exterior area of any premises. I could argue that a porch is not exterior. It's part of my house. It's covered by my roof.

Farmer said this should be about safety. I feel that human factor plays a lot into that. If somebody shoots a bottle rocket at my front door, regardless or not if there is an upholstered couch, it's probably going up in smoke. I'm not sure that this makes a whole lot of sense, overwhelming so. In addition to the upholstered furniture debate, I think what we could do to mitigate some of the safety concerns is leave the code 'as is' and begin an educational campaign to inform folks about the risks associated with having upholstered furniture on. I see this more as telling people what to do and where does that stop. A lot of folks I've talked to

have felt the same way. Dozens of people. I probably got more comments on this than I did receiving funding for the humane society. One person out of the 40 people I talked to said this is a good idea. These aren't people who hate safety, Chief Bradford, I'm not somebody who hates safety, but most folks were overwhelmingly against it. That would be my suggestion, to leave it the same, and do the educational campaign. I'm not sure we need to outlaw upholstered couches on the porch.

Riordan stated he doesn't understand that. If we already have it on the books, which I'm not sure that we do, in a reasonable way, we're telling them that. If we tell them that with this ordinance, we're telling them that. I don't see the difference and I don't understand how it's different. You're telling them the same thing. Don't put a couch on the front porch. With the old ordinance I don't think it's totally clear. I think with this ordinance it is. But either way you're telling them so how can you not be telling them something with either one? The city is doing the same thing. How is it different?

Farmer said to me, one carries penalties and the other doesn't.

Riordan said no the other one has the same penalties. All this is, is codifying it, clarifying it, where you just said we are doing the same thing. We are telling people not to put couches on the front porch with the previous one. So, if you say that we're already doing it. We've already done it. The city's done it. We just haven't said it tonight. What's the difference?

Farmer said then let's enforce what we already have before we have something else.

Riordan said I disagree but because I think the common man could easily read that differently and I think you could lose in court with that. I think all this is saying is what we are actually saying and why don't we say it clearly. Why are we against saying it clearly? Are we afraid to enforce safety? What's the difference? Are we afraid what peoples' comments are if they don't understand it? This is a safety issue, we should do it.

Dever asked if we do not accept this ordinance this evening is there any language in the current code that addresses the item that Vice Mayor Amyx brought up regarding outdoor furniture or has that been removed? If we don't pass it tonight, what happens if it isn't there any longer?

Corliss said your current code is largely shown here. In that the underlined language would not be enacted. The stricken language would still be the law.

Dever said OK.

Corliss said that would be 302.11 it's unlawful for any person to allow on any yard or other exterior area of any premises furniture other than outdoor furniture as that term is defined in this chapter. Then you go up to outdoor furniture, which is currently defined in the city code and it says weather resistant furniture designed and manufactured for outdoor use.

Dever said OK. So, when we made the changes and adopted them, this 8900 wasn't part of it or was?

Corliss said it was not. When you codified all the different ordinances it was not. What we're trying to do with this ordinance is more specifically define, what we believe is appropriate to prohibit, upholstered furniture. Could you make that argument? Our appellate courts have three judges, I've got five here. I'm counting different opinions as to whether or not it would be prohibited now or not. When we're prosecuting somebody in municipal court we've got to prove all those element beyond a reasonable doubt. Prosecutors probably would have a difficult time with it, that's why we want to codify. You all decide whether or not it is good public policy based upon your judgment and after listening to city staff as to whether or not it's appropriate.

Dever said OK. So, one more thing then, in response to Jeremy's point. If it's already in the books, was the reason we weren't enforcing it because we thought it was a grey area?

Corliss said he believes so, yes, because you're going to have issues about was it designed for outdoor use. Well, we don't think so. Most common people would say, no, it's not, it's upholstered furniture. We'll probably find somebody in town that might think so. We also

have the issue of is the porch an exterior area of any premises. Well, it's outside the general locked door but is it? You're going to have some of that grey area as well. We are trying to be more specific. That's the way I look at this ordinance.

Schumm said in addition to those comments, in your clarification, you include mattresses and other similar items. You don't talk about those in the original ordinance so you've got those things that have been lumped in with the upholstered furniture. I just think it makes it a lot clearer and a lot more enforceable. I can see how this could be a mess down at municipal court. If the goal is to provide safety, that's my goal. I'm not trying to tell people how to live or what lifestyle they should socialize in but I think this is clearly a safety issue. It's kind of parallel to the pop bottle rockets. I used to love shooting those things off but they just cause too many fires. They land on peoples roofs. So, someone told me not to shoot them off anymore. Some city commission did, which was appropriate. Somewhere along the line you've got to give up a little bit to provide the safety. I think this clears it up.

Dever said he is clear. If we did nothing, we'd still have the same existing language in the code. We could choose to enforce it even though it's a grey area. It seems to be it was the intent but it's not clear and this is simply a clarification thereof. Which I thought it was, I just wanted to make sure that in response to what you said, if we don't do anything, what happens. So, I just wanted to make sure I understand what the consequence of voting no to this ordinance is.

Schumm said his understanding of court is, if it gets thrown out of court, prosecutors can no longer prosecute. The judge says, bad ordinance, then the whole thing stops until this body changes it. So, that's the outcome of it. You can leave it the way it is but as soon as there's a discussion where it gets thrown out or the judge says it's no good, then it's all over.

Amyx said so everybody is clear on this, under Ordinance 8900, the only change as I see it is that in Section 302.12 that is the addition that pretty much changes the whole ordinance.

Corliss said he thinks that is correct.

Larkin said there is also the addition of the definition of enclosed porch. Those are the only two changes.

Moved by Schumm, seconded by Riordan, to adopt on first reading, Ordinance No. 8900, regarding upholstered furniture on porches. Motion carried 3-2 with Amyx and Farmer in dissent.

E. PUBLIC COMMENT:

Candy Davis said related to the new rental registration, you're going to find out who all these property owners are and in your communications it would be really easy to update them on this code change. This would help code enforcement.

F. FUTURE AGENDA ITEMS:

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

G: COMMISSION ITEMS:

Schumm said he would like to remind staff about ideas on if we can increase parking on Rhode Island St., from 7th to 9th. I know the engineering has been busy but we just heard last week the lack of parking in the area with the library and the tax consultants, so if we can find that extra free parking that would be good.

KT Walsh said she lives at 732 Rhode Island and since you brought that up last time, I've done a survey of 7th through 9th and there is only person who doesn't have a place to park in the alley and that is the person who keeps coming to East Lawrence and sending emails. That person has two vehicles now. Everyone else has parking in the back of their property. I just wanted to let you know.

H: CALENDAR:

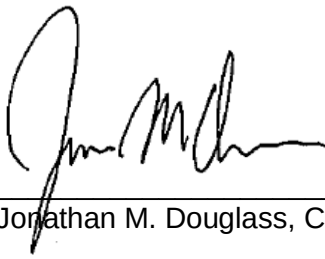
David Corliss, City Manager, reviewed calendar items

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

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

Moved by Amyx, seconded by Schumm, to adjourn at 8:49 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON SEPTEMBER 17, 2013.

A handwritten signature in black ink, appearing to read 'Jonathan M. Douglass', is positioned above a horizontal line.

Jonathan M. Douglass, City Clerk