



# City of Lawrence

## CITY MANAGER'S OFFICE

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### CITY COMMISSION

**MAYOR**  
JEREMY FARMER

**COMMISSIONERS**  
LESLIE SODEN  
STUART BOLEY  
MATTHEW J. HERBERT  
MIKE AMYX

April 28, 2015

The Board of Commissioners of the City of Lawrence met in regular session at 5:45 p.m., in the City Commission Chambers in City Hall with Mayor Farmer presiding and members Amyx, Boley, Herbert, and Soden present.

### **A. STUDY SESSION (3:00 – 5:15):**

1. City Commission Study Session. Topics: Budget update, status of projects, and department orientation.

### **B. RECOGNITION/PROCLAMATION/PRESENTATION:**

1. Recognized of the 2015 Fair Housing Month Poster Contest winners.
2. Proclaimed the month of May, 2015 as National Preservation Month.
3. Proclaimed the month of May, 2015 as Community Action Month.

### **C. CONSENT AGENDA**

**It was moved by Amyx, seconded by Soden, to approve the consent agenda as below. Motion carried unanimously.**

1. Received minutes from various boards and commissions:  
Horizon 2020 Steering Committee meeting of 04/06/15  
Planning Commission meeting of 03/23/15
2. Approved claims to 239 vendors in the amount of \$2,023,402.59.
3. Approved licenses as recommended by the City Clerk's Office.

### **Cereal Malt Beverage-Off Premise**

### **Expiration**

Tobacco Bazaar  
Shafeen Retail LLC  
14 E 8<sup>th</sup> St.

New License

4. Approved appointments as recommended by the Mayor and adopt Resolution No. 7118, appointing Leslie Soden as the City's designee to the Board of Directors of the Bioscience and Technology Business Center.



**Homeless Issues Advisory Committee:**

Appoint Teri Smith to a position that expires 12/31/15.

**Lawrence Alliance:**

Appoint Ashley Rasmussen to a position that expires 11/30/14 and Scott Criqui to a position that expires 11/30/14.

**Traffic Safety Commission:**

Appoint Dave Crawford to a position that expires 04/30/16.

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Below is a summary of the City Commission assignments to various boards, commissions, and/or employee groups:

**Bioscience Technology Business Center (BTBC):**

Vice-Mayor Soden

**Destination Management, Inc. (DMI):**

Mayor Farmer

**Economic Development Council (EDC):**

Mayor Farmer

**Joint Economic Development Council (JEDC):**

Vice-Mayor Soden will move to the CC representative, which opens an at-large position that will need to be filled.

**Metropolitan Planning Organization (MPO):**

Commissioners Boley and Herbert

5. Bid and purchase items:

- a) **REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION.** Set bid date of June 2, 2015 for Bid No. B1528, Project No. PW1501 - KLINK - Iowa Street, from South of 23<sup>rd</sup> Street to 19<sup>th</sup> Street, North of 19<sup>th</sup> Street to South of 15<sup>th</sup> Street, and South of Harvard Road to South of 6<sup>th</sup> Street.
- b) Awarded the bid for two (2) half ton 4X4 trucks for the Public Works Solid Waste Division, to the low bidder, Laird Noller Ford, for \$50,756.
- c) Authorized the City Manager to execute Change Order No. 3 to the existing construction contract with Schuetz Construction, LLC, for Project No. UT1314, Lawrence Avenue Waterline Replacement, increasing the contract amount by \$28,652.50.

6. Authorized the City Manager to sign the "BizFuel" Memorandum of Understanding during 2015 Small Business Week (5/5/2015). "BizFuel" is a Public/Private Partnership that will employ a collective impact approach to assist Small to Medium Enterprises (SMEs) to start, grow, add jobs, and succeed. Partners will work collaboratively to provide strategic efforts for SMEs in Lawrence and Douglas County.

7. Approved a \$10,000 funding request for support of the 2015 Busker Festival to be held the Final Friday in May in downtown Lawrence.
8. Approved the Lawrence Cultural Arts Commission Community Arts Grants as recommended by the Lawrence Cultural Arts Commission.
9. Received Bert Nash Community Mental Health Center 2014 4<sup>th</sup> Quarter Report and 2014 Annual Homeless Outreach Summary.
10. Authorized the Mayor to sign a Release of Mortgage for Neva Marie Blair, 1508 Haskell.
11. Authorized the Mayor to sign loan modification documents for Charles A. Bemis, 1515 Vermont Street.
12. Approved as signs of community interest, a request from the Lawrence Arts Center for the temporary display of art at various locations throughout the community for the Lawrence Inside Out Project.
13. Approved as signs of community interest, a request from Lawrence Inside Out for the temporary display of art at 701 Massachusetts Street for the Lawrence Arts Center project, Kids Can Change the World.

Amyx removed consent agenda item 5a for separate discussion regarding setting a bid date of June 2, 2015 for Bid No. B1528, Project No. PW1501 - KLINK - Iowa Street, from South of 23<sup>rd</sup> Street to 19<sup>th</sup> Street, North of 19<sup>th</sup> Street to South of 15<sup>th</sup> Street, and South of Harvard Road to South of 6<sup>th</sup> Street.

Amyx asked, "We have work that's going to be done with the University with the viaduct and are we planning on working in conjunction with the university on when this overlay is going to happen?"

David Corliss, City Manager, stated, "The answer is absolutely we are planning on coordinating the mill and overlay work there, south of the Irving Hill bridge which is going to be rebuilt for pedestrian and esthetic purposes by the University of Kansas."

Chuck Soules, Public Works Director, stated "I have a construction meeting next Tuesday morning with KU on this very issue so yes, we will coordinate it."

Amyx stated, "The item on the agenda calls Iowa Street from south of 23<sup>rd</sup>. Are we going south of 23<sup>rd</sup> through that intersection again?"

Soules stated, "No, we're going from Irving Hill, south to 23<sup>rd</sup>, on Iowa."

Amyx stated, "It says Iowa Street from south of 23<sup>rd</sup> to 19<sup>th</sup>. I assume its north of 23<sup>rd</sup> and then 19<sup>th</sup> to 15<sup>th</sup> and then south of Harvard to 6<sup>th</sup> Street."

Soules stated, "Yes."

Amyx stated, "We're not going to shut down 23<sup>rd</sup> and Iowa?"

Soules stated, "No."

Mayor Farmer called for public comment.

**Moved by Amyx, seconded by Herbert,** to set the bid date of June 2, 2015 for Bid No. B1528, Project No. PW1501 - KLINK - Iowa Street, from South of 23<sup>rd</sup> Street to 19<sup>th</sup> Street, North of 19<sup>th</sup> Street to South of 15<sup>th</sup> Street, and South of Harvard Road to South of 6<sup>th</sup> Street. Motion carried unanimously.

**D. CITY MANAGER'S REPORT:**

David Corliss, City Manager, presented the report regarding Indian Hills Neighborhood Public Meetings; 5<sup>th</sup> Annual Downtown Olympic Shot Put Event; 151 Tons of Compost and Woodchips Distributed During Second Spring Sale Event; City Recycling Activities Report – First Quarter 2015; Vermont Street Bridge Watermain Inspection; City to host Budget 101 meeting for outside agencies; and, Planning and Development Services Annual Report Now Available.

Farmer stated, "You may notice that we have made a couple of changes to how the agenda is done. We're now going to do public comment; we're not going to make you wait until the end of the meeting to do public comment. The additional thing that we're going to be doing is we'll be shutting down the Commission meeting around 9:45 p.m. so we're not going to make folks stay here till 11:00 at night. I will try to see if we can get a motion for adjournment around 9:45 p.m. Many of the staff got here at 7:00 a.m. We've been in meetings since 3:00 p.m. We don't certainly want to make you wait that long. Going forward we're going to be doing public comment at this point in the City Commission meeting and then trying to shut things down around 9:45 and we'll kind of test drive that to see how it goes. In relationship to public

comment now, since it's before the regular agenda items, folks are allowed to speak to any items or issues that are not scheduled on the agenda and we're not going to make decisions or discuss or debate the items, but we can refer the items to staff for follow-up. Now we'll do public comment of a general nature, not relating to anything on the agenda if anybody has anything to say.

**E. PUBLIC COMMENT:**

Ted Boyle, North Lawrence Improvement Association, stated, "What I want to talk about tonight is the new pump station in North Lawrence. We've been waiting 20 years on this pump and I've had various meetings with Chuck Soules and Matt Bond and I think next week it's going to be officially on the agenda, but I wanted to get an early start on this. It seems like we're going to be \$300,000 or \$400,000 short on completing this project and in the grand scheme of things, that money is not a lot of money, especially when you're talking about 4 million is what that pump is going to cost. At the beginning when the stormwater study was done, that pump was estimated at 3.9 million dollars which was back in 2005 or 2006. We're a year behind schedule. It was supposed to be ground breaking a year ago last December and probably if that would have happened, we probably would have been in budget, but since it didn't we're about \$300,000 short from completing this project. We spent millions of dollars on the Fire Department. We spent millions of dollars on transit and infrastructure, streets and sidewalks. I'm on the sales tax audit committee since this sales tax was approved so I know where every penny went. Not till the last 4 or 5 years any money went to that direction, except for the purchase of the property and so now it comes time to build this pump and we're \$300,000 or \$400,000 behind so my request is for you guys to get busy and find that \$300,000 so we can complete this project at one time instead of doing partial now and 2 or 3 years down the road completing the rest of it. This pump involves the health, safety and welfare of North Lawrence residents just as much as the Fire Department, streets and sidewalks do. I'd like to see you dig a little deeper and find that money."

Laura Gloeckner, Indian Hills Neighborhood, stated "I would like to personally thank Mayor Farmer for coming to our neighborhood meeting and listening and responding to our concerns. We do plan on coming to the May 4<sup>th</sup> budget hearing to present our letter and the signatures that we've gotten for funding for the 27<sup>th</sup> Street traffic calming for budget 2016. With that being said, traffic calming for 2016 does not fix the immediate danger in the fact that the street is hazardous to our children and residence today and continues to be. 27<sup>th</sup> Street has been being used as the unofficial detour for the closure of 31<sup>st</sup> Street, yet there was no planning or funding allocated to this street for this project to ensure the traffic could be detoured down our neighborhood street without creating a hazardous environment to the residents and children trying to access the schools and the parks. As of today, there are families living on either side of 27<sup>th</sup> Street that cannot cross the street safely to be able to access the parks or houses of their neighbors on the other side. Residence living on the north side of the street cannot get across the street to access the sidewalk on the other side safely. Residents on 27<sup>th</sup> Streets cannot get out of their driveways safely. Drivers continue to speed through our neighborhood and crosswalks at reckless speeds at the first absence of police enforcement and even when enforcement is present on the street the sheer volume of cars attempting to use the street is hazardous. As the summer approaches, the hazardous situation drastically increases. Our neighborhood people will be out trying to cross 27<sup>th</sup> Street, riding bikes and walking on the side streets with no sidewalks that are also seeing dangerous cut-through traffic as a result of the traffic on 27<sup>th</sup> Street. Instead of having concentrate specific times when most children and teens will be attempting to cross 27<sup>th</sup> Street, before and after school, they will be trying to access the Broken Arrow playground and Broken Arrow and Naismith Parks at all times during the day and in smaller groups of 2 to 3 so there is less visibility and with cars going 30 to 40 miles an hour down the street with no crossing guards and no speed zone to help slow traffic. We are already experiencing this as our children and teens are out and about in the evenings, some on the weekends in the nice weather. To further express the urgency of the need of 27<sup>th</sup> Street, I would

also like to inform the Commissioners that Broken Arrow Elementary School will be hosting a summer Boys and Girls Club Program and South Middle School will be hosting the Lawrence Boys and Girls Club Teen Program. Taking the position that 31<sup>st</sup> Street will be open soon, so let's hope no one gets hurt in the meantime and the assumption that this will fix our situation is dangerous and irresponsible. We as a neighborhood are doing everything that we can to help raise awareness and increase safety on our street. We have started an awareness campaign. We have printed our own yard signs. We have a mother out there at the Belle Haven crosswalk in a safety vest, before and after school to help bring attention to the crosswalk and we're showing up at your meeting and we're making our concerns vocal and public. We expect the Commission to also do everything in your power to fix this problem. If there's no action taken by this Commission to fund safety measures immediately to our street to ensure the safety of our children's families, every one of you will not escape the burden of being responsible if a fatality or an injury occurs due to your lack of action."

Farmer stated, "In the City Manager's Report there was a list of traffic calming project rankings and just for the benefit for those that haven't read it, 27<sup>th</sup> Street is number one on the list."

Mike DuPont, Indian Hills Neighborhood, stated, "I'd like to say I support Laura in her efforts and I just wanted to bring up one or two points that I thought were important. I was researching into other cities and how they handle detours and many other cities that I could find, they actually had a checklist when they create a detour that they actually do traffic planning ahead of time and say we're going to re-route the traffic to this street and they do capacity planning on that street, traffic count and they actually check ahead of time and have a checklist that says, this street is capable of handling this traffic. I think the City of Lawrence should also consider that as a possible option as a check list in the future, saying if we're going to route traffic to this little street over here, maybe we should actually check it thoroughly and make sure it can handle it and that there are no safety issues created by that. I am not able to find any

planning document that mentions the 27<sup>th</sup> Street as a detour and that it was planned as a detour route either by KDOT or by the City of Lawrence so I'd like to ask you guys to double check that and if you have any documentation on what was done to plan 27<sup>th</sup> as a detour route, you can make that available to us. We did an informal survey of our neighborhood on-line and we got 60 different responses and the number one request from our residence is to complete the sidewalk on the north side of 27<sup>th</sup>. Finishing that sidewalk would make the park accessible which is not accessible right now for many of the people living on the north, because you'd have to walk across the grass, gravel and in people's yards. I saw a bicyclist and his expensive bicycle, pushing his bicycle on the north side, across the grass because he just couldn't cross the road. I think if we could complete the sidewalks it would make a big difference and maybe some type of zebra crossing would be appropriate or one of those yellow signs that says pedestrian crossing. That would be a starting point. We could use a couple of those maybe. So those are some of the issues. I have a big list of things that people have given to me. I can make that available to you. We also have a mailing list and website, indianhillslawrence.us. If anyone is interested in that they can check it out."

Soden asked, "Do we have some spare stop signs hanging around, we can just throw up some temporary stop signs?"

Farmer stated, "We're going to do traffic counts now so that we can get an idea for how fast cars are going and how much traffic is going down that road. The police department patrolled 14 hours in 4 days. They've stopped over 70 cars in that neighborhood. I think the idea of documentation of what was done to plan 27<sup>th</sup>, was that a KDOT project or was that a City project, that traffic got detoured to 27<sup>th</sup> Street and where can we get that documentation for the neighborhood?"

Soules stated, "Traffic is using 27<sup>th</sup> Street as a result of the closure of 31<sup>st</sup> Street which was part of the SLT project. Not that we weren't involved, don't get me wrong. We were with KDOT all the time. We knew 31<sup>st</sup> Street was going to be closed. I think the thought was that



people would use 23<sup>rd</sup> Street and Iowa and not cut through the neighborhood, right or wrong. I'm not aware of any study that KDOT did. I will check and find out."

Farmer asked, "Do we have something in our processes as far as traffic capacity planning for how detours get handled and that sort of thing?"

Soules stated, "Usually with our projects we try and identify a detour. We don't have a specific check list like he was necessarily saying where we would check road capacity. 27<sup>th</sup> Street is a collector street. I don't know what the volume of traffic is out there right now. I know there's a lot more, but I'm assuming it's sufficient to carry that volume of traffic, but probably not the speeds. I'll check with KDOT to find out if they did anything with that, but they probably assumed that people would use 23<sup>rd</sup> Street, not thinking about that cut-through area."

Farmers asked, "Can I make a suggestion to the group? If only we had a Commissioner that served on the Traffic Safety Commission in looking at policies to ensure that maybe this is something that we don't have to deal with again in coming up with that check list. Would you be willing to sit down with Mike and Chuck and kind of figure that out going forward?"

Boley stated, "I have a question for Dave. The 27<sup>th</sup> Street was top of the list before this. These are old numbers on that."

Corliss stated, "That's correct. That's my understanding."

Boley stated, "It was top of the list before 31<sup>st</sup> Street was closed?"

Corliss stated, "That's right."

Boley stated, "Maybe we ought to tumble to that too; when we close 31<sup>st</sup> Street. I'd be happy to work with you."

DuPont stated, "The question came up with additional funding. We as a neighborhood association should also consider a special tax. I think many of the residence will be willing to make a special use of tax for our area to improvement safety."

Farmer asked, "You're talking about a special assessment benefit district?"

DuPont stated, "Yes."

Farmer stated, "So we got the two issues. We're going to be dealing with budget season. I think getting the updated traffic counts is a good way to go. Can we get those traffic counts back with maybe a recommendation to the City Commission in the next couple of weeks so that we can talk about what we want to do with this really pressing need and if we want to just go ahead and pull the trigger and do something, we can kind of have that conversation. I think Stuart, having you work with those folks as far as making sure that going forward this doesn't happen again, because your expertise in that area is second to none."

Soden asked, "Can we put up some temporary stop signs in the meantime?"

Soules stated, "We can. We should probably take a look and let me get with David tomorrow morning and find out where it would make sense and what would be most appropriate. Just because we stick stop signs up, it could cause more problems than help. People don't see them and go flying through them and it could have serious consequence for somebody else. We need to really look. David has the authority with Commissions approval to do temporary traffic regulations for 60 or 90 days. We can extend it. We've done things like this before."

Corliss stated, "I was going to say, direct us to come back with a recommendation in a couple of weeks on stop signs, where we are in traffic counts and where we are on the estimates on the traffic calming devices and if there's ways to do that, we might want to look at that as soon as possible. One of the questions is going to be, do you want to do it now while they're still in this situation or do we want to do it later? I think that's a good question, but let's just say in two weeks we're going to be here and we're going to have that information which basically means we have a week to prepare the report which is what we'll do."

Soules stated, "The traffic calming items are hot and cold, it's like roundabouts. I know there are a lot of neighbors that want them, especially the ones that live on that street, but there are a lot of people that use that street that live in the neighborhood that may or may not. That's

a hot and cold issue. The construction is another closure of a road so we can get these things done, but we will come back in a couple of weeks and let you know.”

Farmer asked, “Do we need a motion for that?”

Corliss stated, “I think we’ve got good direction. Two weeks from today is May 12<sup>th</sup> so that’s when they’ll have the report.”

Farmer stated, “Make sure you notify Laura and Mike when that’s going to be on regular agenda, not the City Manager’s report.”

Corliss stated, “Sure, Chuck will take care of that.”

**F. REGULAR AGENDA ITEMS:**

1. **Considered the following items related to the Utilities Department and the Wakarusa Wastewater Treatment Plant:**
  - a) **Received staff presentation on Utilities Department overview and the status of Utilities Department capital projects.**
  - b) **Considered awarding Bid No. B1519, Project No. UT1304 - Contract 4, Wakarusa Wastewater Treatment Plant and Conveyance Corridor to the low bidder, Garney Construction, in the amount of \$45,201,000 and authorize the City Manager to execute the contract.**
  - c) **Considered authorizing the City Manager to execute Supplemental Agreement No. 5, in the amount of \$4,498,410., to the existing Engineering Services Agreement with Black & Veatch Corporation for Project No. UT1304 - Wakarusa Wastewater Treatment Plant and Conveyance Corridor Facilities.**

Dave Wagner, Utilities Director, presented the staff report regarding an overview of all the projects they we’re doing.

Mike Lawless, Deputy Director, gave an overview of how the projects were financed and what they did with the money.

Amyx stated “One question I have, or more of a comment, all of this we’ve done and all of the contracts we have out, our rate model still works.”

Lawless stated “Yes.”

Amyx stated, "That was something that was really important to the previous commission and I know will be to this commission also; to make sure that any contract that we sign is going to be done, for any of the work that's done under this capital program, make sure that that rate doesn't change.

Lawless stated, "Right. What we've got for the current plan we've established what those rates are, based on the chart that's here, but what we want to do is take a look at going, in the future and trying to provide a...the current rate model we have is pretty complex and the inputs have been looked at in quite a while so we want to take a look at those and use the new master plan or the integrated plans that we did in 2012, kind of update the base information under that model so we get a fresh look and good information based on the new master plans."

Amyx stated, "But again, based on those \$161 million worth of improvements that are going to be made, this is going to be the rate and this is what we've been able to tell customers, rate payers, that this is what they are going to pay and no more.

Lawless stated, "Correct."

Farmer stated, "So, the last page, the typical residential monthly utility bill comparison, this is before the rate increase, right?"

Lawless stated, "Actually, this is taking the rates that are in place in 2015 and saying if we looked at all the communities around, what would that 4000 gallons per month cost in each of those communities."

Farmer stated, "So, over the course of the next 5 years it will increase \$15?"

Lawless stated, "Well, from 2013 to 2017."

Farmer stated, "Do you just want to comment on what we talked about in agenda review yesterday with what other communities are doing because Topeka's rates are about ready to go up, David mentioned Kansas City's rates are about ready to go up; just to get some context."

Lawless stated, "I think that's something that all the utilities on this list and all around the nation are going to have to deal with is; how do we pay for the new regulations, the wet weather

treatment we have to do, the infrastructure maintenance so that we maintain what we have. Each year, as we go into the budget process we actually look and we call other communities and find out what are your plans for rates. So, last year when we did the 2015 rates all we could show you, what we were proposing for Lawrence for 2015 and what the other communities have for 2014 because they hadn't adopted their rates for 2105 yet. So, what we did this month, or prior to this meeting, is we called around and said, OK, what rates do you have in place for 2015 and then as we go to the 2016 rates we'll call them and say what are your thoughts, what are you thinking you're going to do for rate increases in 2016. We think most of them will probably be on the way up."

Farmer stated, "Do we need a formal motion, can we do all three of them at once or do we need to do them separately?"

Corliss stated, "We still want to brief you on the bids. I think you just do them all together."

Wagner briefed the Commission on the Wakarusa facility.

Melinda Harger, Project Manager, presented the project history and provided an updated project status.

John Keller, Black and Veatch, went over some of the details of the design.

Boley stated, "You talk about the second 2.5 million gallons a day. What's the capacity for the force mains and Pump Station 10? Would they have to be increased to do that as well?"

Keller stated, "No, the Pump Station 10 and all the force mains have been designed for future capacity so we've already built that in. We drop in the future basins and no additional work in the force mains."

Boley stated, "So, it would just be that piece?"

Keller stated, "Correct. We may have to replace another pump in Pump Station 10, but nothing between the two facilities so it's really just the basin itself. We've all laid it out so it would be easy connection in the future."

Boley asked, "The building that is being taken off, what's the plan for that function that it was going to serve? What's the plan to do that in the meantime?"

Wagner asked, "The vehicle equipment in the storage building?"

Boley stated, "Right."

Wagner stated, "When we looked at the cost of that building, I think it was about \$775,000 that we would get on deduction. We think we can deliver that function for significantly less money than that \$775,000. I think as we go through the project, we're still going to look for opportunities to reduce some cost and as we do that, we may come back and make some suggestions for adders whether we take that on ourselves or we talk to the contractor about delivering a different way. As a matter of fact, I think over the course of the last day, we found another \$45,000 that we're going to reduce the project cost by. Maybe we'll have opportunities for those things if we can get a good buy on those and go back and provide that function. In the meantime if we don't have that we'll have to supply staff with rain suits so in inclement weather we'll park the equipment outside. We think over the course of time, we'll be able to deliver something cheaper."

Amyx stated, "Back in 2003 when we talked about the original design being 7 MGD, I think that we had anticipated at that time that we would design for a population of 150,000 people and I assume that was for both plants to be able to take care of population of 150,000. Is that correct?"

Wagner stated, "That's correct."

Amyx asked, "What's the current capacity the Kaw Plant can treat?"

Wagner stated, "It's designed somewhere around 105,000. Whenever you talk about that there are some dependencies. A true boiler plate is 100,000. It's got some extra capacity built into it, in some of the process units, but not all of them so we're kind of splitting the difference and saying 105,000. I think it will perform well for that."

Amyx stated, "Now we're looking at a project here that's going to take us to a population of 120,000."

Wagner stated, "At least. That was for 2 MGD, we're going to 2 ½ MGD"

Amyx asked, "So what is that population at 2 ½?"

Wagner stated, "It would be another \$5,000. It's about a million dollars per 10,000."

Amyx asked, "So we're at 125,000. We're going to increase our capacity by 15,000 to 20,000 people, correct?"

Wagner stated, "Yes, we're currently at 94,000 people. If the community added 30,000 over what we are today, assuming the makeup of commercial to industrial to residential use stays the same, we should be able to go 125,000 without having to do additional work."

Amyx stated, "So our design is pretty much equal when it looks at increasing population or new people in the future. It's equal to wet weather events as much as it is population correct?"

Wagner stated, "Yes, to some degree. When we start talking wet weather, the other components that start limiting us is the ability to transport, especially when we have two different facilities, depending on how growth occurs and how successful we are with our wet weather programs where that wet weather capacity would actually land. The flexibility allows us to take Pump Station 10. Whatever we can't take to the new plant, we can still continue to send to the existing plant."

Amyx stated, "So then as we look at population growth in the future, it talks about taking everything that's pretty much north of 6<sup>th</sup> Street, to the Kaw Plant, everything south of 6<sup>th</sup> Street is going to come down and go to the new plant, correct?"

Wagner stated, "Yes, the vast majority of that."

Amyx asked, "So what do we anticipate the population difference between north of 6<sup>th</sup> Street and south of 6<sup>th</sup>, any idea? I guess the big thing is do we have the capacity on the area

north of 6<sup>th</sup> Street, and that population base is going to expand, to take care of that increased population? What are we doing here to move all this stuff?"

Wagner stated, "Based on the planning estimates that we used in the integrated plan and the location of that, yes. We'll be able to serve through 2030 with what the projected growth rates are, north of 6<sup>th</sup> Street and taking that flow off of the existing plant will allow more growth to occur there and treat for those areas north of 6<sup>th</sup> Street."

Amyx asked, "We have figured in what that new population is going to be, north of 6<sup>th</sup> Street that's going to be heading to the Kaw plant, there's enough room there?"

Wagner stated, "Yes, if it happens as we project."

David Corliss, City Manager, stated, "As the growth occurs in the location that we project."

Wagner stated, "The nice thing is, is with the ability to move flows between the two plants a little bit. We do have some flexibility for change there that a lot of communities with two plants won't have. Within our capabilities, part of what we bought, was some abilities to adjust our treatment system in case growth does occur somewhere where we didn't anticipate, which it seems like it always does."

Amyx asked, "So what figures did we use north of 6<sup>th</sup> Street, the number of people per acres?"

Wagner stated, "I don't have any idea, off the top of my head."

Corliss stated, "We use what was in our current planning projections. One of the limiting factors about growth north of 6<sup>th</sup> Street is the fact that a lot of it is going to be in different school districts. A great school district, but most of the people that live in Lawrence want to go to the Lawrence public schools so you're not going to see, in our opinion, a lot of urbanization at the density in the Perry/Lecompton School District as you're likely to see in the Lawrence public school district balance. We've taken that into account. We also know that the topography as you go north is just as challenging as if you go west. We think that it's unlikely that you're going



to see the urbanization of that area, for example, north of the turnpike requesting City utility services just because of its school district location and some of its topography challenges. That's largely reflected in our planning documents. It doesn't mean you won't get those requests, Commissioner, but I think one of the things quite frankly I've been adding on and we've been fairly successful over the past decade is that we don't make annexation commitments, we don't make coming to the City commitments, unless we know that we can provide utility services. We've said no to some projects that wanted to violate that."

Amyx stated, "Dave, I know you and I've kind of been up to our necks in this project for a long time. I appreciate the thorough report that was done and it just brought more questions and as somebody that was involved with you in the good old days, the sewer summits and making sure that we're able to meet the projection that we have."

Corliss stated, "We believed so and we've triple checked them. We've gone through a number of different analyses. We had a different firm prepare the master plan which Black and Veatch prepared these plans. One of the great benefits of what happened between the previous project and this project is that we now have Pump Station 10 which is really a very good solution toward the ability for us to divert flow either to the existing plant or to this plant and to really serve as a regulator for the system much in the same way that this community benefitted from the fact that we have two different potable water treatment sources and potable treatment plants. The analogy breaks down pretty quick, but somewhat similar for the two different wastewater treatment plants."

Wagner stated, "That's correct. All of the information that we present for a million dollars per day and rate of flows, really goes back to a population estimate and growth estimate for those facilities. I didn't bring those numbers today that generated that, but that's how we're generating the numbers moving forward, is based off that population projection. There's some factor in there that we can use and divide by and give you those estimates in more specific detail."

Amyx stated, “Seven, eight, nine years ago when we first started talking about this in all earnest, we were making projections of 150,000 in population and the need for this new plant. When I see the capacity at the existing plant being 105,000 and 120,000, we’re picking up 15,000 people and I’m thinking, wait a minute, this is a pretty big expense for an increase in population of just 15,000 people. I want to make sure that as we look at that and we consider the wet weather challenges that we have and everything that goes along with it, is this the best deal and is this what we really bargained for when we started looking at this in 2003.”

Wagner stated, “The original master plan called for a population of 120,000 to be a 2 million gallon a day facility. Given that we’re going to 2 ½ we should be able to do 25,000 above 100,000 so it’s more than we have today. I think the other thing as we face pressures and regulatory requirements to expand the existing plant to nutrient removal that takes tankage, the more capacity we have at the new plant, maybe the cheaper that project will be for the community down the road. We may have to use some of the existing capacity at that plant to meet that new regulation. That’s a decision that’s going to be evaluated over the next 8 years as we gather data, but also a decision probably for other people when they face that decision on how to take nutrient removal to all of Lawrence’s wastewater which we know is coming. There are complexities there for what the future holds for treatment capacity for Lawrence.”

Amyx stated, “Understand, I’m one of the biggest supporters of this. I just want to make sure that we have it right.”

Soden stated, “The way that education budgets are being slashed, you know the State Legislature is bankrupting our state itself, the idea that we’re going to add 26,000 to our City in the next 15 years seems very aggressive projection and the idea that we’re going to put 45 million into that and not know what’s coming down from the State. I’ve heard that my friends are thinking about pulling their kids and moving to another state because of education. It just seems a little overly optimistic to me. Also, considering that there are three new Commissioners here that have been on the job for two weeks, the idea that I feel like I’m approving the City

growing by 26,000 people seems a little early for me to do, especially considering all the needs that have been put off already since 2007 in all of our other departments. The idea that we need to meet our needs now, rather than project out on top of that, seems to be a higher priority.”

Wagner stated, “One comment on that, we’re not only building the expansion for growth, but for handling existing issues of over loaded sewers in the 31<sup>st</sup> Street Corridor. Whether it’s growth or not growth, its meeting more than just capacity needs for treatment. It’s also doing a level of treatment that the state expects us to move towards for environmental purposes as well. Two other drivers behind the project are not related to growth, the regulatory capacity as well as meeting existing issues with wet weather treatment and over loading sewers on the 31<sup>st</sup> Street Corridor.”

Boley asked, “What regulatory action would you anticipate if we didn’t go ahead with this?”

Wagner stated, “We have a brand new kind of methodology to negotiate with the regulator call, an integrated plan and within our permit requirements. We have an agreement about approximately what we’re going to do. The City has a lot of control in that; it’s one of the advantages of it. What’s typically happened to utilities or entities that aren’t moving forward as agreed to or as required, they typically get a court ordered consent decree that will be a negotiated process with a bunch of lawyers in the room. It takes years to do and they’ll finally issue a consent decree. Some of those consent decrees, the rates will be established by court. I think we see that Topeka faces a 308 letter which is the first step of that for them and the last month, Kansas City, Kansas; Kansas City, Missouri and I’m not sure if Wichita is on one or not. Actually the vast majority of entities I know are going that way. In the case of Kansas City, Kansas, its billions, billions and billions of dollars, and it’s not as flexible a process, I can tell you that. It would take a long time, I think, for the regulator to respond that way, but that would be the eventuality of it.”

Herbert stated, "I followed this project for quite a while when it stalled out a number of years ago and when we originally proposed it, we were talking building a facility that could support 150,000 population and I don't know if this is the right question for you or maybe I need to address this to Garney. How much money are we saving to this 120,000 population model facility versus the original proposed 150,000 population model? I guess the root of my questions is that I think Commissioner Amyx and I, both have the same concern and that concern is I see our list of deductive alternatives and I understand the need to shave cost where we can shave it. My concern would be that we spend a whole lot of money and get something that we didn't really want. In an effort to save pennies, we cost a lot more than that. I guess what I'm looking for is what is our savings with the model that you present today, versus if we went to the full 150,000 population model that was originally looked at 10 years ago?"

Wagner stated, "Within the existing bid we did carve out and we have monies. We know what the bid would be if we said build a 5 million gallon a day facility, would be an additional 4.5 million or 4.6 million dollars if we want to build that right now. That's an option that would be on the table. It is not within our existing rate plan to be able to deliver that project to you today. That would be very close to the population projection of 150,000 and the ability to serve that, if you wanted to buy it. One of the problems with that is there is not enough sewage in the 31<sup>st</sup> Street Corridor to use it. It's something we could be but we have no way of using it."

Herbert stated, "I guess that last statement you made perhaps answers my question. I want to make sure we didn't cut that to save pennies, but we cut it because it wasn't necessary."

Wagner stated, "It's not necessary and right now we couldn't even use it."

Herbert stated, "That's what I needed to hear."

Corliss stated, "In addition to that, existing rate payers would be paying for that, something that we couldn't use and we don't need which we think is violating our desire to try and run an enterprise fund in a user system that you're paying for something that you're going to use."

Mayor Farmer called for public comment. None.

Herbert stated, "To me the last comment you made was huge. When I was looking at this, like I said I've been following this for a long time when it stalled out a number of years ago, one of the big things I talk about that are job is, is public safety and infrastructure and that's it to me, that is the job of a City Commission. The infrastructure piece this is obviously it. To me the concern is not whether or not this is necessary, but the concern for me was whether or not this is substantial enough. The first red flag that appears to me when I see a list of deductive alternative is that I fear that we made cuts and we end up offering a lesser service in order, on face, to save money. I feel pretty comfortable hearing that these cuts are logical and its millions of dollars that we don't need. I understand the Vice Mayor's concerns regarding population. Are we projecting a population increase that will never happen, but at the same time I also look at just in the three weeks we've been doing this, we've talked about massive expansions at Venture Park, we've talked about doing all of these things that necessarily cause population growth and I just think it's not very smart to talk about economic development and population growth if your city's infrastructure can't support it. I think that's just planning, that's bad management and so from that point of view, I would just assume our City spend our money on City infrastructure then on accessories that I don't necessarily deem necessary. I think this is a good use. I thought this was a good use 10 years ago when we were first were talking about it before it stalled out. It's one of those things where the longer up put something off, the more expensive it gets."

Amyx stated, "One of the things that were important to me as we've been involved with this project for a long time is to make sure that our infrastructure needs take care of today's needs plus the future's needs. We try to guess a lot of times on what those future needs are going to be in this community and making sure that we do it right. I think in 2007, when City Manager Corliss came to me and other members of the Commission at that time and said, we need to put this on hold because it looked like some of our projections were off, well were

getting ready to head into a little bit of rocky time and that was probably one of the smartest things that we could have done because as was suggested, it gave us that time to go through and re-evaluate a lot of the things that we needed to have happen and it made a lot of sense and Dave, thank you for doing that. We could have truly made a big mistake about that capacity if we would have proceeded at that time when it was something that we truly didn't need at that time and as we said a little bit ago, it's something that we couldn't justify today if we even built it now because we couldn't use that capacity. I appreciate the answers to the questions that you've given me. Commissioner, you're absolutely right that several weeks ago when the item came back before the Commission after the bids came in too high and we started talking about deductions in the future. One of the things that was important to me is somebody who has sold this project to rate payers, are we giving them something that we promised. I was assured at that time and even more assured tonight that yes, in fact, we are providing them with the capacity that they need to take care of the events today and those future improvements that are going to be necessary to take care of the waste that it's designed to do. I still think it's a great project. It's one that it's time to do and I appreciate the work that's been done on getting it to a point where it's still within what was done by the rate studies."

Boley stated, "I would just like to thank the folks for the work on this. I think it's very important to meet our environmental responsibilities and I like the idea that we have some flexibility in working with the regulators where others might not, if we do this project."

Farmer stated, "I'm really proud of you guys being an example in the house and the senate as a model."

**Moved by Amyx, seconded by Herbert,** to receive the staff presentation on Utilities Department overview and the status of Utilities Department capital projects; awarded Bid No. B1519, Project No. UT1304 - Contract 4, Wakarusa Wastewater Treatment Plant and Conveyance Corridor to the low bidder, Garney Construction, in the amount of \$45,201,000 and authorized the City Manager to execute the contract; and, authorized the City Manager to

execute Supplemental Agreement No. 5, in the amount of \$4,498,410., to the existing Engineering Services Agreement with Black & Veatch Corporation for Project No. UT1304 - Wakarusa Wastewater Treatment Plant and Conveyance Corridor Facilities. Motion carried unanimously.

The City Commission recessed at 7:40 pm for 5 minutes.

The City Commission reconvened at 7:45 p.m.

2. **Continue discussion on proposed City Fiber Policy and fiber leasing framework. Consider adopting Resolution No. 7097, adopting the city fiber policy and fiber leasing framework.**

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

Herbert asked, "I want to guarantee that we are requiring this to be symmetrical high speed service, correct?"

Stoddard stated, "Correct."

Herbert asked, "Do we have any assurance in the language of this contract that one individual company would not be able to buy up all available dark fiber?"

Stoddard stated, "One thing that we do require is that they can't just buy it and sit on it, they have to be showing that they're using it. They need to be providing a plan to us about how they would be using that. We don't think that anybody would probably have the need for all of it at any one time and that would be something of course that if you get a request that you could consider whether that was really necessary or worthy."

Herbert stated, "We talk about creating this level playing field and I'm all on board with that. There would be some incentive in the market to kind of buy and squat."

Stoddard stated, "Right, and that we definitely wrote in here that you can't do that."

Soden stated, "If I remember right, on Monday we were talking about it and that any contract that someone wants would have to come to us again. That's another check and balance in there."

Stoddard stated, "Yes, it would because we were thinking that at least this framework gives a good place for a company to begin in that okay, here's where the City's lease will start and of course they would need to identify how much fiber they would want to use, what their service area is and all that would come back to you and you would consider whether or not to approve that lease."

Herbert stated, "Terrific, thank you."

Amyx stated, "Competition neutral, you know we had a lot of discussion about this before. In the correspondence that we received talked about that we're only going to give service to the wealthiest of neighborhoods and richest of neighborhoods. If we were to require that they have to provide service to different areas of the community, does that affect that competition neutral by us regulating them in any way?"

Stoddard stated, "I might have legal help me with what your thoughts may be on that. I think perhaps if it was uniformly applicable."

Randy Larkin, Senior City Attorney, stated, "As long as we applied it to every entity that came then it would be a level playing field."

Herbert stated, "I'm looking at the lease agreement and 4b addresses what we talked about providing an incentive in terms of no payment of service for five years if they are able to provide to 300 households and there is also 140 percent of the net income eligibility requirement. I think it creates incentive while certainly in a free market system you're going to have an element of cherry picking and I think that provides an incentive to at least build out into other markets. I think we're seeing companies that are building out in neighboring cities. It would be kind of hard to say that we're cherry picking Baldwin City, right?"

Stoddard stated, "That was kind of our thought was to maybe set it up as more of an incentive situation. I think that maybe the consideration on more requirements that you make on everyone, does it unintentionally create a disincentive for someone to want to use this to help with internet service anywhere and maybe that's the other side of the coin."



Amyx stated, "The most important part to me is if having fiber to every household and every business in town someday, I want to make sure that somebody isn't left out, but I don't want to get into the regulation business."

Soden stated, "One of the things that we also talked about was that I was worried about cherry picking and that's the thing that made me feel better about it is knowing let's just see what this policy does for a year or two and if it does start to create the scenario where only people over a certain income are the neighborhoods that are getting it then that's an issue we need to address in the future, but this is more a matter of getting the ball rolling."

Stoddard stated, "I know in a number of communities, even Google, they're kind of focusing more on the business customer currently and that may be an interest focus area of companies initially, for example. At least that does give you an opportunity to see what happens and make adjustments."

Mayor Farmer called for public comment.

Joshua Montgomery, owner and operator of Wicked Broadband, stated, "I did want to respond to some of the things that Diane had said. The committee that was formed to review policy had actually received four proposals from companies that were interested in building out the community. Out of those four proposals, one was responsive, that was our proposal and amongst the recommendations they recommended that the City pursue an open access number and the City pursue the type of model that we had proposed. That was also included in the recommendations. When Google built out their community, they had no business service at all. It's just recently that they've launched a business service. That really wasn't the focus of their initial project. I have a short presentation. I think this policy represents half measures. I think that what's going to happen is this is going to result in a hodge-podge network. Up at 6<sup>th</sup> and Wakarusa, in the new neighborhoods that are being built out west, you're going to have people build comprehensive coverage because those families can afford to pay \$120 a month for internet and TV. A lot of them already do. You'll probably see more than one company build in

some of those neighborhoods and even the neighborhoods where the build out cost are expensive or where you have low income families, no one's going to build. I'm certainly not going to build in those neighborhoods. I'd be much better served to take my money and invest in a S&P 500 mutual fund then invest in a fiber network anywhere east of Massachusetts Street. There's no incentive to build out full neighborhoods in this policy. What you're going to have happen is you're going to have people come in and cherry pick the best, the richest, the most capable of paying neighborhoods, a few of them, not even a whole lot until their capital is exhausted. The other neighborhoods are going to be left out. If the goal is to incentivize companies like ours that have expressed an interest, have capital, have an operating history to build networks, it won't work. The company that brought this to you, the reason we're talking about this today, is probably not going to participate certainly in the free component of that policy and definitely not in the building out of complete neighborhoods portion of that policy. The other thing that this does is it sets up a scenario where you're going to be giving away access to the right-of-way. You're probably very familiar with the fact that television and voice communications are moving to the internet. Just this past month we had HBO Now which allows you to subscribe to all of the HBO's content for \$14.99 and you had DISH launch Sling TV which is a basic cable package that has the all the basic channels, ESPN, CNN and all those others and it's delivered over the internet instead of being delivered as a traditional television package. What that means is as more and more households move to these over the top technologies, your revenue as a franchise organization is going to start declining, both for your video packages and your voice packages. Right now, you don't get any money at all for internet service in terms of franchise fees, we're the only company that pays 5% of revenue for internet and we do that partially for use of the right-of-way and partially for use of other City assets. What's going to happen is that the middle mile providers are going to come in and say, I want a right of way agreement to use the City's fiber ring, and the City, wanting to encourage broadband adoption is going to grant that. The thing is federal law overrules the City's ability to

charge franchise fees for use of the right-of-way. It's forbidden by the feds. As a result, these new companies will pay zero dollars in taxes, zero dollars in sales taxes for delivering their service, while their silently starting to eat the market share that is provided by the cable and the phone companies. The net result of that is going to be declining franchise fees. As this Commission is making multi-million dollar purchases that are going to extend for many years in the future, in terms of payment, with shrinking franchise fees, it means you're going to have to increase taxes either through property taxes or sales taxes. That money's got to come from somewhere. Even Google, because they launched a video product, pays a 5% fee in Kansas City. Under this policy, I can't highlight this enough, you're going to end up in a situation where people are digging up people's front yards and they're paying the public nothing for use of the right-of-way. Another substantial issue is that Lawrence deserves a comprehensive solution. If you look at the overall market and if Google or another big player is going to make a substantial investment in a system, are they going to do that in Manhattan where there's only one provider to compete against or are they going to do it in a community that's got four or five little enclaves that have scoop up all of the highest value customers and they have to compete against 4 or 5 additional players. Google has everybody in the whole country banging on their door saying build a network. This put's Lawrence last in line for investment and for a comprehensive solution. With no common carriage requirement it means that whoever builds a neighborhood first is going to be the provider in that neighborhood forever. If the cable market is any example of what's going to happen in future, what will happen is various different companies will build out different systems. They'll eventually get bought up and will consolidate and what you'll end up with is a single provider who has 100% of the network which is exactly where you are today with the local cable company. The Time Warner Comcast deal that fell apart this past week could be really bad news for Lawrence. It's been brought to my attention by reliable sources that the cable company's been for sale in Lawrence for a number of months. They've certainly made the changes to their policies by raising rates and laying off people, juicing their profits to get a good

price. This could be Comcast country tomorrow and if you think that dealing with a big cable company is an issue now, imagine dealing with a company that's shedding 2 billion dollars in cash every ninety days. With no common carriage requirement, you end up with a monopoly. There's no build out requirement in this document and it means that you can just build out the richest and most lucrative customers and that's the business model and that's what makes sense. That's the way it works is that you make the most money you can for your investment. Anywhere, where I have to pull a \$1,000 worth of fiber optic cable to hook up with a customer that can only afford to pay \$19.99 a month for internet, that house isn't going to get hooked up. Finally, there are no franchise fee payments as I've been through before. Open access in a public system is the way forward. We brought the City a proposal that would have done this through the private sector and that would have been great, that process now has been completed. There are a number of alternatives that work. Like you're consultant Joanne stood up here and said, there's a model that works, but we don't think essentially Lawrence is good enough to do it, but the Champaign/Urbana model works. In that community that City partnered with their local university, with other local stakeholders and they built a fiber network that first hooked up the lowest income neighborhoods and then hooked up the richest neighborhoods later. They eventually spun that into a non-profit and it's self-supporting, self-sustaining, paying its own bills out of revenue. Stockholm Sweden made this investment 20 years before we did and in that country they're shedding \$16,000,000 in cash off that network. Simultaneously, if you move into an apartment in Stockholm Sweden, you can have a choice of 5 gigabit fiber providers, anyone of which will sell you service for \$20.00 a month. In that case, that city owns the system and they operate it as a wholesaler. There's a bunch of private retailers that compete to bring prices down and their city cashes a check every month, for use of this wholesale system. That's a really excellent model and it's something that could definitely work here in Lawrence. It's having a huge impact on communities that have pursued these types of models. Chattanooga, Tennessee is generating jobs and Lafayette, Louisiana is generating jobs

hand over fist. With our proposal off the table, you have an opportunity, right now, to initiate a process taking all of the experience that the past Commission put in place and initiate a public process, bring all the stakeholders to the table and get something solid done. If you do a half measure policy, something that's designed to be fast and non-comprehensive, what you do is create a bunch of disincentives. When you have two or three companies that have spent millions of dollars building out their individual little enclaves, how hard of a fight do you think those guys are going to put up to prevent a public network from being built. They're going to be spending money and they're going to be doing what it takes to prevent it from happening. The way forward with this is some kind of public utility, some kind of a public solution, some kind of a comprehensive solution, it doesn't have to involve me, I don't care, we've moved on and we're doing other things. The policy that's laid out here is definitely not the way forward. Two years from now you're going to be right where you are today, instead of being a leader in this, the way Champaign/Urbana is or a leader that Chattanooga and Lafayette are. Don't let fast be the enemy of good. We've been dealing with this for two years. The past Commission put it on hold for month after month. Lawrence no longer has an opportunity to be a leader in this and all the other cities have surpassed you. Since that's the case, why not take some time. You've only been in office for two weeks. Learn about the issue and create some kind of comprehensive solution going forward that solves the problem. Don't let fast be the enemy of good."

Mike Bosch, CEO of RG Fiber, stated, "RG Fiber's mission is really simple and it can be summed up by this statement: We want to bring speed to the people. We created RG Fiber because our software development company in Baldwin City outgrew the internet capacity and local incumbents refused to do anything to help us so rather than wait for someone else, we decided to raise private capital, we did a complete raise, and we created a model that is scaling pretty quick right now in terms of investment from private investors and we've been part of this process and this discussion that's been taking place. Even with our recent announcement to build Eudora, RG Fiber is still very interested in building gigabit in Lawrence. We need two

things: one is on the agenda, this fiber policy framework and the other would be license agreement as Diane mentioned that we would bring back to you. Over the last couple of years there have been really two main voices that have spoken to this issue and these two voices have two very, very different opinions as to how we should move forward. One is Josh Montgomery's voice on the side of Wicked and the other is this industry expert who was hired for their unbiased advice. They're not trying to operate a network here. They've testified before congress. They've spoken at many of the hottest fiber conferences around the region and nation. We could provide a quick summary in this correspondence that was attached and I think a brief walk through of it would help illustrate the differences of opinions on how Lawrence should move through. Before I walk through it, at the end of the day this isn't about me or RG Fiber, this isn't about Josh or Wicked, this is about who's Lawrence, Kansas. That's the question up for debate. The voters have empowered you, this new Commission, to answer that differently than the way the last Commission answered the question. As we look at this letter, Mr. Montgomery says that it would make it difficult or impossible to achieve universal high-speed access and that it encourages companies to connect only the richest customer as astutely pointed out in section 4b. There's a waiver of the fee for those that provide free service to non-profits like the Mayor's, Just Foods, low income housing and there's, as we like to call it, RG Fiber to get off your ass and build something clause. This Wicked letter goes on to say that low income neighborhoods, high bill cost, or low population density areas would never get service. Perhaps you haven't heard about RG Fiber building out low population density areas, high cost areas and lower income, better known as Baldwin City and Eudora. Quite frankly, we had to build from K-10 to go to Baldwin. It cost me a half a million dollars. I didn't pick up any customers along the way and still can't, but I chose to do this because quite frankly, profit is not my only motive. There are business owners who yes, love the free market, but we still give a damn about our neighbors. This letter goes on to make the claim that franchise fees make up a significant percentage in the number that was quoted was quite inflated because it included gas

and electric franchise fees. The number would all together be different. This is also another interesting point in why we approached the City and asked for a license agreement as opposed to a franchise fee because the license agreement that we proposed that is yet to get passed, which is the second component that we would need to move forward, would save the City almost \$300,000 of bill cost and created another leg of the loop on the east side of town, precisely where Mr. Montgomery is saying these low income neighborhoods would not get built out. We voluntarily came to Jim Wisdom, Information Technology Director, and said we would like to build it, how can we work together and that was the route he chose. That is the route that the City would benefit, connecting, I believed, 19 City facilities. Jim also asked us to dedicate fiber all the way down to the medic station for the fire department when they serve an ambulance in Baldwin City. We went ahead and agreed to do that as well. We don't make any money on that, but we still think it's worth it. The license agreement was our way to give you far more than a franchise agreement would be able to give you. On the next page it says the City's own consultant has made it clear that the only way private enterprise is going to solve this problem is if we grant a de facto monopoly on service in selected neighborhoods. Further down Wicked states, the City's own consultant has highlighted Champaign/Urbana, Illinois as a community where this comprehensive approach has been wildly successful. Let's see what the industry expert actually said. Page one of this report also in your attachments from CTC, states in the background paragraph sentence one, our understanding is the City is considering on the recommendation of one of its private sector partners requiring companies that build to make their fiber open access. It goes on to say, 'we do not think Champaign/Urbana example is analogous here,' a very convenient omission by Wicked Fiber. The industry expert goes on to say, very candidly, 'The theoretical benefits of the open access to the home - however attractive seeming – are, in our professional judgment, highly unlikely in the foreseeable future. That may change over time, but the promised benefits are illusory in the short and medium term, while the disadvantages of such a requirement are significant.' The industry recognized expert goes on

and says quote, 'our national policy has been to pursue competition that is, facilities based and meaning competition among providers who own and offer service over their own infrastructure.' This letter is flat out deceptive of its handling of the facts, the question is, who is Lawrence? I can come up with a multitude of different examples, but there's one that cut me deep when a board member in a non-profit in Lawrence called Tenants to Homeowners reached out to me about their project. I pulled this from their website, 'Tenants to Homeowners is a local Lawrence, KS nonprofit that has helped more than 350 families become homeowners since 1992. TTH also provides 54 affordable rentals and reaches more than 300 people annually through homebuyer education workshops and presentations to help equip families to be successful homeowners. For its homeowners, TTH also provides maintenance workshops, post-purchase counseling and foreclosure prevention advocacy. The Housing Trust has a 0% foreclosure rate since it was adopted in 2005.' My hat's off to them. What does this have to do with fiber? Their newest project is a, '14 unit Cedarwood Senior Cottages will be the first Tenants to Homeowners (TTH) rental project designed to address the fastest growing adult population – seniors aged 62 or older', many of which I will add my own commentary on fixed income. 'The fully accessible Cedarwood units will offer award winning Energy Star efficiency as well as gardens, walking paths and a community center for low to moderate income seniors. All units will rent for below fair market rental and 10 of the units will meet state income restricted requirements for senior households earning less than 60% of median area income', this is where it gets really exciting for me personally, 'In addition to being an affordable senior community offering the joys of independent living without the responsibilities of homeownership, Cedarwood will be a twenty first century, smart tech community with a base system of sensors providing greater flexibility, health and safety for senior occupants.' This 21<sup>st</sup> Century technology that they're deploying is a company based out of Kanas City. When talking with Greg, one of the co-founders there, he said, 'part of the reason we're in Kansas City is google fiber.' I said that's funny because I'm trying to build fiber in Lawrence and here are big hearted Lawrencians doing



great things for their neighbors, trying to attract more people to call Lawrence home and they need a 21<sup>st</sup> Century infrastructure. As I mentioned this is not about me, it's not about Josh Montgomery; it's about the question, who is Lawrence. Right now where they're building is right behind the United Way facility. Today, there's only one bidder for their project. I've walked the site, I've helped engineer and caught all of our engineering because I think what they're doing is really cool. All they ask that you provide them with more choices. How can they ensure affordable access to seniors, if they don't have multiple choices to provide the infrastructure which is the key differentiator on this project? When they implement this 21<sup>st</sup> Century technology, they're eligible for multiple grants, but right now, there is only one provider. So these two voices that are calling for your attention, they want to help you answer this question. Again, it's from Wicked, their attempt at a million dollar tax payer loan guarantee failed, their bid for political office failed, they need time to come up with a new plan so they advise you with the following and I read this out of the letter, 'Before adopting a solution, lets convene a group of local experts and local stakeholders, before rushing take some time, do nothing', that's my paraphrase. Don't put it up for a vote, drag your feet. Let other towns in the region continue to take the lead. There is no shortage of demand knocking on RG Fiber's door. We have delayed, we cannot anymore. I'm not asking for a perfect policy and I'm not saying I'm going to be perfect coming out of the gate, but I am saying I'm here. I'm willing to put my own capital to work because I believe in the things that are happening in Lawrence. I believe that this could help raise a regional economic development strategy founded in a tech center future. The industry recognized expert's advice for you is this, 'We thus recommend that the City stay the course with respect to its existing strategy, in which City assets such as conduit and fiber are offered for lease', this is precisely what this fiber policy does. The City staff worked very hard to keep in compliance with state and federal laws when the incumbents and us, began to complain. They also balanced Wicked's request to have incentives specifically for their business model. Their business model was written into paragraph 4b. There are no other players that

offer that business model today. The past Commissioner Riordan said this, 'My fear is if we do nothing, we'll miss out on the opportunity.' That statement has become pathetic. I don't have as much capital now that we've made other commitments. How long does Lawrence have to wait? This is not about me, not about RG Fiber, we have other opportunities, but I am here tonight because I want to build here. I need your permission to do that. I need your permission to help Lawrence have a 21<sup>st</sup> Century infrastructure. In some, special interest politicking wants you to do nothing. They want you to delay. Don't vote on this policy. I hope you answer the question, who is Lawrence a lot differently. Thank you."

Soden stated, "As everyone knows, I'm totally in favor of pursuing a municipal fiber project, but we don't have to do that right this second as well. We have this, let's give this a try. If it doesn't work out we can still pursue that option so I feel comfortable voting on it. I have gotten my questions answered and this is just step one of many steps. I don't see this as the final steps that we're taking."

Herbert stated, "Eighteen months ago we drafted this policy. Is that correct, give or take and for eighteen months I've come to varying City Commission meetings as a non-elected official. I've sat in that seat right there and I've watched as the Commission talked about and talked about and quietly convened into the night and no progress was made. I'm really sick of stagnation and I'm ready to pursue our fiber policy. I said when we set our goals with City Manager Corliss, this was my top priority and I'm here tonight to back that up with a vote."

Amyx stated, "Diane, a question about the license that Mr. Bosch talked about. We've got to have a license agreement as part of this also, right?"

Randy Larkin, Senior City Attorney, stated, "Commissioner, I think I can answer that. We have an existing agreement with RG Fiber's predecessor and it's just a matter, I believe, of converting that over."

Amyx stated, "We have one on hand that any company that wanted to come up that met all the requirements of the resolution, they could get done, on the agenda and licensed all in one."

Larkin stated, "Right, if the policy is put in place then will follow it and put together that type of agreement based on the circumstances of each case. We still have some flexibility within the template to create specific things for the needs of whoever the applicant would be. We do have an agreement, as RG Fiber has talked about, running through the east part of town that would connect some of the City's buildings with Dawn Fiber which is a predecessor of RG Fiber. It's just a matter getting that converted over and changing the names."

Amyx stated, "Diane, I appreciate you and Dave and everybody on staff that put together this policy. It's something that's been a long time and I appreciate all the work."

**Moved by Herbert, seconded by Soden,** to adopt Resolution 7097, adopting the City's Fiber Policy and fiber leasing framework. Motion carried unanimously.

3. **Conduct a public hearing and consider recommendations from the Historic Resources Commission to designate the following properties as Landmarks on the Lawrence Register of Historic Places:**

- a) **L-14-00556: 1501 Pennsylvania Street, The Samuel Riggs House**
- b) **L-14-00562: 900 New York Street, St Luke AME Church**
- c) **L-15-00046: 1711 Massachusetts Street, Goodrich House**
- d) **L-15-00047: 947 Louisiana Street, Greenlee House**
- e) **L-15-00048: 809 Vermont Street, Lucy Hobbs Taylor House**

Mayor Farmer conducted a public hearing to consider recommendations from the Historic Resources Commission to designate certain properties as Landmarks on the Lawrence Register of Historic Places.

Lynn Zollner, Historic Resources Administrator, presented the staff report.

Mayor Farmer opened the public hearing.

Farmer asked, "So this is 14 that we've added in the past couple of months."

Zollner stated, "Yes."

**Moved by Amyx, seconded by Boley**, to open the public hearing.

Dennis Brown, President of the Lawrence Preservation Alliance, stated, "The National Register of Historic Places began in 1966 with the passage of the National Historic Preservation Act. The Register of Historic Kansas Places began in 1977 with the passage of the Kansas Historic Preservation Law and the Lawrence Register of Historic Places began in 1988 with the passage of the Lawrence Preservation ordinance which is Chapter 22 of our City Code. To qualify for these historic registers, a property must be documented to have significance in the areas of history, architecture, engineering, archeology, or the culture of an area. The property must be at least 50 years old so it stood the test of time and particularly on its exterior should have a high degree of architectural integrity so that we can see from the public right-of-way what we see there is similar to what our ancestors would have seen years ago, but architectural integrity is different from general condition to illustrate when LPA bought the Turnhalle had an incredible degree of architectural integrity, but it's general condition was horrible. It's come a long way since then, but it still has a lot of work to do but those two things have different definitions. Of the 3 historic registers, the threshold of significant integrity that has to be met is highest at the national level and lowest for the local level which is how it should be. There are rehabilitation tax credits available for state and national listed properties, but no financial incentive for the local register. That, plus the relative newness of the local register has created an upside down effect in Lawrence where are community has a number of properties that have already passed the threshold to be listed state and nationally but have not been nominated for the local register. The Lawrence Preservation Alliance has been working with City staff over the last two years and Jeremy you're correct, to nominate these properties to our local historic register. These excellent properties before you tonight are among them and we have just a few more to go before we're all caught up. Once this project is complete, LPA will begin focusing on other historic properties in our community that have not been documented for any historic register and begin nominating them for our local register first, before state and national which is

really the way the process should operate. We're very fortunate to have the Lawrence Register of Historic Places, our historic honor roll and LPA will continue working to ensure that our younger sibling of the state and national registers will become all it can be."

Farmer stated, "Dennis thanks for all your hard work with LPA. It's been amazing."

Candice Davis stated, "I want to say that my house happens to be one of the houses at 945 Louisiana and I wanted to let you know that I'm Candice Davis, the owner of that house now for about 17 years. It is in that unusual and energetic neighborhood of Oread. What is really interested about that house is that it's the first house that was saved by the Lawrence Preservation Alliance and they called it the Louisiana Purchase. This was in 1984 and thus the beginning of the Lawrence Preservation Alliance and I'm so grateful for that. My house is on the National Register and State Register and so I'm delighted that it would be on the local registry as well. I just want to emphasis to you as new Commissioners how important it is to maintain our historic buildings, the integrity of our community and I think it's these very buildings that augment and allow our history to unfold and helps Lawrence to be a destination. It's not about just fluff and a pretty house, it really adds to substantially to the attraction of our community. I also want to thank Lynne Zollner who has been so active in helping preserve so many structures, writing grants, doing so many things that have helped our community, including in Oread where we're now working on an overlay district. One thing I want to say is thank you Lynne you've really done a great job and of course, Dennis Brown as well. I wanted to let you know that Horizon 2020, the taskforce that is underway right now did an ETC Institute survey and in that survey they sent out a questionnaire as to what was important to the citizenry and I wanted to remind you that 83% of the respondents to the survey agree that revitalization of older City center neighborhoods is important. 92% of the respondents agree that preserving historic buildings in areas is also important and 89% said the same thing about our downtown. I just wanted to remind all of you how important our history is and having a visual reminder of that adds so much. Thank you."

**Moved by Soden, seconded by Amyx,** to close the public hearing.

**Moved by Soden, seconded by Amyx,** to adopt on first reading, Ordinance No. 9103, Ordinance No. 9104, Ordinance No. 9105, Ordinance No. 9106, Ordinance No. 9107, for landmark designations of 1501 Pennsylvania Street, 900 New York Street, 1711 Massachusetts Street, 947 Louisiana Street, and 809 Vermont Street to the Lawrence Register of Historic Places. Motion carried unanimously.

4. **Considered approving a Special Use Permit, SUP-15-00019, for the 12<sup>th</sup> and Haskell Recycle Center, to permit expansion of a Scrap and Salvage Operation, in conjunction with a Recycling, Collection and Processing Center, located at 1010 E. 11<sup>th</sup> Street on approximately 5.83 acres. Submitted by Bartlett & West, Inc., for Robert B. Killough, property owner of record. Considered adopting on first reading, Ordinance No. 9100, for a Special Use Permit (SUP-15-00019) for the 12<sup>th</sup> and Haskell Recycle Center, to permit expansion of a Scrap and Salvage Operation, in conjunction with a Recycling, Collection and Processing Center, located at 1010 E. 11<sup>th</sup> Street. (PC Item 3; approved 8-0 on 3/23/15)**

Sandra Day, Planner, presented the staff report.

Soden stated, "On Monday I was asking you if the EPA proactively go out and do inspections or if it's on a complaint driven bases and you were going to look that up."

Day stated, "Yes. I think it was KDHE that we're speaking of. I did actually speak with somebody with the Kansas Department of Health and Environment this afternoon and while there is some permitting that is required through the State for this particular use, they do not do annual inspections. It is complaint driven."

Soden stated, "Right now the rezoning that we're looking at is that there is no review process in place for it, if this is approved as it is."

Day stated, "There is no scheduled review that's associated with this. We would respond to complaints from residents, surrounding property owners, the neighborhood, if there was a need to go out and look at this property. I don't know if through our floodplain program if we occasionally look at properties for that particular piece of it, through the CRS reporting piece. That is what our local floodplain development permit is for is the documentation of that use and activity."

Soden stated, "So if we did a special use permit on an annual basis then that just means it comes back here once a year, that doesn't necessarily mean that you'll go out and review every year."

Day stated, "It would depend on how you structured that condition so that could be anything from this special use being put back on your agenda on an annual basis and holding a public hearing about it, whether that's on your regular agenda, your consent agenda, if you direct staff that you want that annual review to come with an report, we would go out and inspect that property annually as well."

Soden stated, "I'm more concerned about just annual inspections for at least a few years then having a big show here. I'm not sure how to achieve that I suppose. Do you have any other recommendations for how to achieve that?"

Scott McCullough, Planning and Development Services Director, stated, "If the concern is environmental inspections then we're going to have to go outside of our department, that expertise and likely going to have to coordinate with KDHE and warrant some sort of annual inspection which we can ask them if their willing to do and coordinate with them on that. That to me would be the path to address the concern. We could certainly do any number of inspections to make sure its complying with our local codes, but the codes were talking about are the environmental codes of the state."

Boley asked, "What would trigger one of those?"

McCullough stated, "A complaint typically and there was one or two as I recall, five years ago, that was triggered from a complaint, not by our making. We did have several fire calls out to the former site that the City handled, but the KDHE involvement was based on complaint."

Soden stated, "Am I remembering wrong that the EPA was involved in the other locations somehow?"

McCullough stated, "KDHE was involved."

Amyx stated, "Vice Mayor, I think that we had received information on any place that had a SUP (special use permit), then we would have the opportunity to bring that forward for our review, wouldn't we?"

McCullough stated, "If it's not complying with our development code laws and standards, yes. Typically, these businesses are mandated by any number of federal or state. Businesses can have any number of federal and state compliance issues as well that we don't necessarily get involved with. It doesn't necessarily impact their land use entitlements either. There usually dealing with that agency on their own."

Amyx stated, "I'm going to think that we would have the opportunity to review one of these. If we felt it was necessary for whatever reason. If a complaint came forward we can bring that to this body."

McCullough stated, "Sometimes we'll put a condition that it needs to comply with all federal and state laws and standards so that it's got a local hook in it."

Day stated, "This one has that note."

McCullough stated, "So we've got that condition that could in fact connect it to your review if there were compliance issues."

Randy Larkin, Senior City Attorney, stated, "Before we open for public comment, this is a special use permit and like the rezoning issue coming up next, you are sitting in an quasi-judicial capacity when you consider it that basically means you're looking at the facts, applying the law, making a decision. The rule of thumb is if you're talking about an individual property and you're sitting in a quasi-judicial capacity and you're talking about a fiber policy regarding the whole City, you're ruling legislatively. So when you're sitting quasi-judicial, there are certain due process requirements that attach and one of those was let there be no bias and one of those requirements is that you disclose ex-parte communications. Ex-parte communications you have outside these chambers with a third party upon the subject matter being discussed. The reason that due process requires, the reasons are two fold, so that all the Commissioners have the



same information from which to make a decision so that proponents and opponents of the subject have an opportunity to respond or rebut. At this point in time when you make ex-parte communication disclosures, state who you talked to and when, the subject of it is sufficient. If you receive something through the United States mail that's written such as a letter, it's usually a good idea to submit that in writing and put that in the record. If you have any questions regarding that, I can respond. If not, I can let you make ex-parte disclosures at this time."

Boley stated, "I spoke with Michael Almon on the 26<sup>th</sup> and maybe another day like the 16<sup>th</sup>, and I've gotten some emails."

Soden stated, "I've gotten some emails from Michael, but I think they were sent to all of us, I don't think it was just me."

Farmer stated, "I visited with Mr. Killough on a couple of occasions and also with Melinda Henderson just about things that have already been said."

Amyx stated, "I've gotten a couple of emails from Michael and again, as the Vice Mayor said, we all got the same email. Right before this meeting, I was outside on the telephone and visited with Michael a second, but it was the same information that was involved in the email."

Herbert stated, "The same email everybody else got. I'm a regular customer out there at the scrap yard, but I don't talk to anybody other than to say hello and waive when I drive up on the scale."

Mayor Farmer called for public comment. None.

Amyx stated, "Staff's review of this request is incredible. I applaud staff on the work that they've done in making sure that everything has been considered as to not have a situation that happened before. I appreciate the fact that the business seems to be doing very well and thank you for the hard work. No complaint, that's a great deal and I'm very happy about that Mr. Killough. Anyway, with all the information that staff has provided and I believe that all the safe guards that are built into this recommendation, I believe that our opportunity to review this SUP

if necessary is within our bounds. I would support as recommended by staff, the conditions that we have and concur with the Planning Commission's recommendation."

Soden stated, "I'm in favor of some kind of annual review. I don't see that as a particularly large hardship if everything is functioning normally then it shouldn't be a hardship."

Herbert stated, "I don't love the idea of creating bureaucracy where it doesn't need to exist. Clearly people have had their eye on this business. It's not for a lack of knowledge that people aren't complaining. Five years ago, people raised issue, the proper channels were addressed. I don't know that we need to create bureaucracy where there doesn't need to be. If people complain, then I think we inspect and we follow the normal channels, but I don't see a big need for that."

Boley stated, "I concur with Commissioner Herbert. I think that we have the opportunity in the agreement to follow through if there's a problem."

**Moved by Amyx, seconded by Herbert**, to approve the Special Use Permit (SUP-15-00019) for the 12<sup>th</sup> and Haskell Recycle Center, to permit expansion of a Scrap and Salvage Operation, in conjunction with a Recycling, Collection and Processing Center, located at 1010 E. 11<sup>th</sup> Street. Adopt on first reading, Ordinance No. 9100. Motion carried unanimously.

5. **Consider approving rezoning, Z-15-00022, approximately 0.27 acres from CS-UC (Commercial Strip with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District with modification to the zoning restriction to permit a bar use without a food sales requirement, located at 804 Pennsylvania St. Submitted by Flint Hills Holdings on behalf of Ohio Mortgage Investors LLC, property owner of record. Consider adopting on first reading, Ordinance No. 9101, to rezone (Z-15-00022) approximately 0.27 acres from CS-UC (Commercial Strip with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District with modification to the zoning restriction to permit a bar use without a food sales requirement, located at 804 Pennsylvania St. (PC Item 4; approved 6-2 on 3/23/15)**

Mary Miller, Planner, presented the staff report.

Randy Larkin, Senior City Attorney, stated, "This is a rezoning matter so you're sitting quasi-judicial capacity so we need to disclose ex-parte communications. When you disclose,

please disclose who, when and the substance either for or against and if something that's already in the records, it's sufficient to say it's already in the records."

Boley stated, "I believe I talked to K.T. Walsh about this on the 24<sup>th</sup> and she was against it. I got emails from Phil Collison and David Lowenstein today and I think they were against it."

Soden stated, "I didn't know how far back to go with ex parte because I lived at the Poehler Building. I don't think there's ever been a month that's gone by that the neighborhood hasn't been concerned about alcohol use in the neighborhood. I really have no idea of dates and times. I can just tell you it's multiple. It's a constant concern. I'm sorry I don't have any dates. I would have kept a log if I would have known I should have."

Farmer stated, "I've just gotten emails that we all have."

Amyx stated, "I got the ones from Mr. Lowenstein, Mr. Collison, and Mr. Ogle today."

Soden stated, "Aaron Paden."

Amyx stated, "Yes, Aaron Paden, for or against."

Farmer stated, "I haven't seen that one today."

Herbert stated, "Aaron Paden was today, Ogle was a week ago, Phil Collison was today as well as David Lowenstein. Every email I received was a neighbor with concerns, all were against."

Farmer stated, "They were sent to all of us, right?"

Herbert stated, "I believe so."

Soden stated, "Shall I only go back to the time I was a City Commissioner?"

Larkin stated, "Yes."

Soden stated, "Okay, I thought I over disclosed rather than under disclosed."

Mayor Farmer called for public comment.

Tom Larkin, applicant, stated, "There are a few things I wanted to pass along, a few misconceptions about this particular idea. The first one is that Mary touched on this, operationally this won't change. It would remain a place where food trucks can serve. There will

be items inside that are sold that are non-alcoholic, non-alcoholic beverages, merchandise, and potentially baked goods; anything that is basically a venue for other people to serve their items out of if an agreement is reached. Additionally, like she said a sticking point for this was that the reporting requirements associated with somebody that's invested so much personally in this and their own business, having to rely upon another business owner like the food trucks for their livelihood. There were some concerns with that. I met with a lot of people one on one, in groups and committees about their concerns and some of those are addressed by items such as we change the entry from the alley side to creating a new curb cut on Pennsylvania Street so there wouldn't be an increase in alley traffic. We increased the landscape buffer between the Poehler Building and the Bistro Building to act as kind of a sound buffer between the two. We've reduced the outdoor seating capacity to about 15 percent of the neighboring Cider Gallery and also we've limited the outdoor amplified music to 11:00 p.m., and these are all items which if we went through a special use process they would be basically as is if not, very similar. I mentioned the Cider Gallery they hold about 90 events a year some of which are upwards of 250 people and there's not been a noise complaint, to my knowledge. Most of them are outside and they're able to take beverages outside. That is right across the alley from the Poehler Lots as well and I have not received one complaint from a Poehler resident as to the goings on at Cider and I like I said this would be significantly fewer patrons at this establishment. Also to that note, the same ownership group that owns the Poehler building also owns the Cider Gallery as well as this Bistro building and if there were ever an indication that what was happening at the Bistro was deterring residents from wanting to live at Poehler or people inquiring about events at Cider, decided to go elsewhere because of the goings on next door, then that would be a major concern for the ownership group and steps would be taken immediately to resolve that. If not, shutting down completely and looking at another alternative if there was no way for all of those to peaceably exist. I think that's an important thing to pass along. Along with the emails you mentioned there were a lot of correspondence in favor of this, business owners, there were

residents that had talked to me that had been looking forward to this for years because there's nowhere within 6 blocks that they can really do it in that area right now, also the property owners and I mentioned a lot of business owners and people working that area as well. Just to touch on quickly, the Horizon 2020 document, some of the items in policy 2.2 points out locate less compatible uses towards the interior of commercial areas and there are restrictions in place with the 8<sup>th</sup> and Penn overlay district and those will remain in place. Something that needs to be pointed out as a common misconception is this whole district is going to be rezoned to allow the removal of the 55% and that's obviously not the case, it is only for this property and there will be a due process in place if people are concerned about this turning into an entertainment district or a bar district. I think that would be detrimental to everything happening down there and that's why this request is specific to this property. That really restricts kind of allowing the ball to roll downhill so to speak without being able to stop unintended consequences. Further on the Horizon 2020 document, achieving integration with adjacent land uses, providing transitions through alleyways, variation development intensity, this works in favor of that by providing a mixed pallet of uses in this district. There is not anywhere for somebody to get an alcoholic beverage in the area. I don't think it's too much to ask to have this one and to offer it in a way that makes it a business model that can work that can be successful for a potential operator. Finally, incorporating existing structures where ever possible, this is a historic structure and I think our history as preservationist speaks for itself and this is just an asset that would be beneficial to the neighborhood."

Kyle Johnson, founder and CEO of Bixy, stated, "We are an ad technology start up that puts consumers in charge of ads. We're basically anti-tracking and sort of like this consumer powered brain on to of Google's big ad engine double click. We look like we should be from Silicon Valley, but we're not and we're dedicated to staying here and building tech companies here even though frankly, there's a lot of challenges to building tech companies in Lawrence or Kansas City or the mid-west in general. There are a lot of things here that don't exist that we

need, that do exist in Austin, Boulder, Boston, Silicon Valley, Chicago, New York, etc... We're starting to get these things. In fact, I've started kind of agitating behind the scenes for some of these things and we're going to continue to work on getting these assets, but some of those things include space like the Cider Gallery, we're a tenant inside the Cider Gallery. We move our company there maybe 3 or 4 months ago and we're starting to hire and we'll continue to hire. We're raising a round of capital right now trying to bring outside capital investment into Lawrence which will create jobs and in particular, tech company jobs which will be higher paying, but what we need frankly is a space like Cider Gallery and we need as silly as it may sound, a bar next door to the Cider Gallery, even if it isn't like a typical bar. We're not looking to make this a bar district. It's helpful to have food and beverages right next to the Cider Gallery so that it's a fun and hip cool place that seems kind of like Austin, but definitely not out of control. A professional environment that we can bring clients and other folks to our office and kind of show off the fact that yes, Lawrence does have a startup community. It may be small, but we're working on it, we're building on it and building these assets, putting these assets in place, I think is essential. I think we can do that in a way that doesn't turn this into a bar district. I guarantee, Bixy will leave if this turns into a bar district. It's not in my best interest to have it a rowdy and noisy place either. I don't think that's the intent so I just kind of wanted to pass those sentiments along. I don't claim necessarily to represent every startup everywhere, I represent just me, but also I've been in the startup world long enough. I won Pipelines Innovator of the Year Award in January 2012, Pipelines and Entrepreneurial Fellowship and I've been to Austin, Boston, and Silicon Valley, all these places and I know what it takes to build a startup community. I just view this as one of those things that would help."

Herbert asked, "You said you're looking for a place that has food and drink, correct?"

Johnson stated, "Correct."

Herbert stated, "If I understand this correctly, they want this food provision lifted."

Johnson stated, "The food would be supplied from the food trucks, right across the street."

Herbert stated, "Okay, I guess I do not understand why."

Johnson stated, "Let me expand on that, Austin in particular has this awesome food truck vibe to it and that's one of the things that make Austin weird and cool. What you see in Austin is art, tech, music and you have to have food and drink along with that so that's kind of the microscopic level of what I think could be built over there. So the food trucks would supply the food and this venue would supply drinks. I'm not part of the project, I've got my own stuff to worry about, but this would help."

Will Ogle, resident at Poehler Lofts, stated, "I just have a couple of concerns mainly. The way that it was presented originally, the property manager came door to door presenting what she said was a petition for a bistro and there was no mention of alcohol when she went door to door. I did bring that to Tom Larkin's attention and he did get back with me and tried to remedy that confusion and everything. I think it was a little too late though by the time you got a new letter out to the residents, it had to be turned in the next day and number two, I just feel like it's not fair to the rest of the bars and restaurants for one place to be able to be exempt from the non-alcoholic sales reporting requirement that was put in place a few years ago. As far as a noise complaint, we've had a couple actually from Cider Gallery and it was actually more from the food truck generator that parks in the alley way in between Cider Gallery and Poehler Lofts, I have two young children and they can't open their windows and even with the windows closed, you can hear the generator and the music on some nights. I would like to have a restaurant there, a bistro, but I feel that it's just going to add to more commotion and rowdiness. If they were willing to go along with the 55 percent reporting requirement and make it more of a bistro restaurant, I would probably be more in favor of it, but as it stand now, I'm pretty much against it."

K.T. Walsh stated, "Will Ogle, whose grandpa started the Lawrence Bus Company, anyway, I'm speaking somewhat for ELNA (East Lawrence Neighborhood Association) and somewhat for myself tonight, but we're all on the same page. ELNA is not opposing the bistro, in fact many people are looking forward to it as you can see from some of the letters you received and once again Mr. Krsnich is restoring a historic property which is wonderful, very much in favor of that, but representing ELNA I'm asking you tonight to delay your decision for a week to give us an opportunity to talk with Tony Krsnich and Tom Larkin at next Monday's ELNA meeting and here's why. In late February our president and a few board members met with Tom Larkin. He said they would be requesting this and he agreed to come to our March 2<sup>nd</sup> meeting to discuss the changes proposed, unfortunately, Tony and Tom got an award and had to be out of town so we assumed they'd be at the May meeting next Monday. Instead it was at the Planning Commission, March 23<sup>rd</sup>, the same night as the first big public meeting on the East 9<sup>th</sup> Street project at the library. We made the choice to go to the East 9<sup>th</sup> Street project building, our bad, but there's a lot going on. So this is not an excuse, but an explanation for why we weren't at the Planning Commission. Nevertheless, our board has not met with them and voted on our stance to rescinding the 55/45 percent rule. Neighbors with kids, especially neighbors to the west want to talk about family friendly closing times too. ELNA's previous stance on the 55/45 was to keep it more neighborhood friendly place and not simply a rowdy bar. The 55/45 has worked well downtown and the previous commission approved a new restaurant bar in the 6<sup>th</sup> and Wakarusa area, but restricted them to the 55/45 rule. Apparently it works as a viable business plan. All three letters that I saw sent to the Commission supporting the removal of the 55/45 said they were looking forward to beverages and the food. So it appears everyone is hoping food will be a serious part of the menu. Incidentally, the support letters mentioned that there is no place near to get a drink and something to eat within seven blocks so I just wanted to remind you that Decade Coffee House at 9<sup>th</sup> and Delaware serves breakfast and dinners with evening musical entertainment and is hoping to get a liquor license. If we can wait for the owner



of Charlie's Bar and Grill to get over his hip surgery, you'll be able to have his fabulous tacos and Mexican specialties soon again. Culinary at 9<sup>th</sup> and New Jersey is hosting sit down dinners, gourmet dinners which would be a fabulous place to take clients and Mr. Krsnich received a rezoning for the east end of 9<sup>th</sup> Street if you go past Delaware within the metal warehouses so a bar restaurant and perhaps a drive through, but not a fast food business could go in there also. I would also point out that 5 short blocks away are La Familia, Sand Bar Sandwich Shop, Cielito Lindo, the New Port Fonde and Milton's. It is not really a restaurant desert. I would nice to have the bistro, but it's not the only food nearby so we're hoping you'll vote to wait one week and allow us to have a conversation."

Dave Loewenstein, ELNA board member, stated, "I want to concur with K.T. Walsh on this and hope that you'll decide to defer any action on this until at least one week later so that we have an opportunity to discuss further these issues with Tom Larkin and his associates. We missed that opportunity before because they were called away at last minute to receive an award out-of-state and we'd really like to be able to discuss this further since there were some unresolved questions in regards to this matter."

Herbert asked, "Tom, do you have a business lined up to go there? As I thought I understood it, you said that you did not and that's part of the reason you want the rezoning, correct?"

Larkin stated, "That's correct."

Herbert asked, "In terms of if we delay this one week that does not affect any business plans?"

Larkin stated, "It won't affect the business."

Soden stated, "As a former resident of the Poehler Building, apparently I lived right above Will Ogle for about a month. The Cider Gallery is an issue for noise and drinking. I have the same windows he has right above him where it is super loud and you have drunk people yelling. I call the cops on things there twice so I guess I never technically complained to Tom

Larkin, but I did call the cops twice. I certainly understand the issues that already exist down there. That was August that I moved out so I haven't moved out a year yet. I want to support those concerns, you might say. I would be happy to defer it back to the Planning Commission because now that I think about that it reminds me two years ago when there was a similar petition that went around for the rezoning, that put on the 55 percent, people came up to me and said, 'Hey Leslie, I signed your petition to not allow alcohol there,' and I was like 'I don't have a petition and I don't know what you're talking about.' By the time I saw it later that evening at the Planning Commission and read it, it was obviously actually a letter for support for alcohol and food use and that night I believe when Tony Kresnich, the developer came and said, 'Well we're going to back track a little bit and keep the 55 percent.' I certainly understand the issues with the petition as well because I witnessed them first hand two years ago and I find it really disappointing that we have the same issues right now, tonight. I would be in favor of deferring this back to the Planning Commission with an actual better worded petition which would actually be a letter of support from the surrounding business owners. The thing with zoning is it doesn't matter who owns the property, the zoning stays with the property. Conceivably it could be rezoned to this use that allows a bar or a tavern and then it could be sold within a year and they have that zoning to do what they want so while people may have a lot of support for Tony, for what he wants to do with it, he can sell it in the future and that zoning stays with that property. I personally am not in favor of lifting the 55 percent food sales requirement. As I said at our last candidate forum, no one in this town has asked me to put in another bar in Lawrence and that's what we'd be doing."

Herbert stated, "As for me, I guess I'm confused as to why we would even need to lift the requirement because I read through all the correspondence and there's a couple of things that I kept reading over and over again. Let me quote from the directly from the warehouse arts district, letter of support. Now this is a letter of supporting lifting the 55 percent ordinance, and yet the letter within its own language says, 'We're looking for a place for people to stay for

lunch, dinner and a drink.’ I don’t understand why you would have to lift a 55 percent rule if you’re looking for lunch, dinner and a drink.”

Boley asked, “Would you like another week to figure that out?”

Kyle Johnson stated, “I appreciate you speaking. You said you wanted a place with food and drink, a place for business, lunch and drinks. This is what I keep hearing over and over again. That can exist with a 55 percent rule. I don’t need another week. I don’t see a reason to lift it. Everybody that’s in support of it says they want a place to eat and drink, we can do that with a 55 percent rule.”

Amyx stated, “I suggest you give them a week.”

Corliss stated, “Yes, let’s give them a week.”

Amyx stated, “Before we send it back or not even deal with lifting the 55 percent, you have the neighborhood association coming to us and see if they can work out some suitable recommendation. I’m always in favor of doing that.”

Boley asked, “Can we recess the public hearing for a week? How do we do that?”

Corliss stated, “Technically, you’re not having a public hearing and you can just continue this item for another week.”

**Moved by Boley, seconded by Amyx,** to defer for one week, the approval of rezoning (Z-15-00022) approximately 0.27 acres from CS-UC (Commercial Strip with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District with modification to the zoning restriction to permit a bar use without a food sales requirement, located at 804 Pennsylvania St.; and, adopted on first reading, Ordinance No. 9101. Motion carried unanimously.

6. **Considered authorizing the Mayor to execute an employee agreement for Interim City Manager with Diane Stoddard.**

Toni Wheeler, City Attorney, presented the staff report.

Amyx stated, "It's a super choice for an Interim City Manager. I've known Diane forever and it's really great."

**Moved by Amyx, seconded by Soden,** to authorize the Mayor to execute an employment agreement for Interim City Manager with Diane Stoddard. Motion carried unanimously.

**G. FUTURE AGENDA ITEMS:**

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

**H: COMMISSION ITEMS:**

Soden asked, "When are we going to work on these goals?"

Farmer stated, "As we said during the study session, we're going to find a time, maybe 10 to 5 a period of about 7 hours, a big chunk of time. We're going to have a work plan website that's going to be put up next week with all the attachments with the six things, public safety, non-personal motorized transportation and then we'll have that conversation once we kind of get a date locked in to figure out whether or not we're going to just have it amongst ourselves or a facilitated conversation. If you have some suggestions for who that might be, send those to me or Diane. Hopefully some time during the month of May. I think we need more than two hours. That's the suggestion. I think at that meeting too, it might be good for use to talk about the City Manager's search process, in addition to all the other stuff."

Commissioner Herbert stated, "Are we doing a study session next Tuesday?"

Corliss stated, "It's not scheduled."

Boley stated, "I just wanted to say thank you to Sgt. Haden Fowler, who took me on a ride along on Saturday night and Sunday morning. I spent from 10:45 pm until 3:45 am in the company of the Lawrence Police Department. I had a chance to observe and admire the work of our officers as they're taking care of their duties and a very busy evening and morning. Especially noted were the OUI investigations that I got to see and observe the bar closing which

was very interesting. I recommend to all the Commissioners and I really appreciate the chance to spend some time.”

Corliss stated, “I highly recommend it and if any Commissioners are interested in it, let me, Diane or Tarik know and they will come pick you up, take you on a tour and bring you back home.”

**I: CALENDAR:**

David Corliss, City Manager, reviewed calendar items

**J: CURRENT VACANCIES – BOARDS/COMMISSIONS:**

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

**Moved by Soden, seconded by Amyx,** to adjourn at 9:34 p.m. Motion carried unanimously.

**MINUTES APPROVED BY THE CITY COMMISSION ON JULY 7, 2015.**

  
Diane M. Bucia, Acting City Clerk