



MIKE WILDGEN, CITY MANAGER

# City of Lawrence KANSAS

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**March 11, 2004**

**Mr. Terry Campbell  
Barber Emerson L.C.  
1211 Massachusetts  
Lawrence, Kansas 66044**

**Re: *Permit Fees***

**Dear Terry,**

**It is my understanding that a meeting is scheduled for Friday, March 12, 2004, from 8:30 a.m. to 9:30 a.m. to continue our discussions regarding City permit fees.**

**The City does not regard these discussions as relating to a "settlement." The City is not aware that any claim has been filed against the City nor is the City staff empowered to negotiate the terms and conditions of a "settlement" based on the content of the two (2) letters that you have provided. Instead, City staff is continuing to cooperate with the Lawrence Home Builders Association in developing a special revenue fund proposal for City Commission consideration in the development of the City's 2005 budget. If your understanding of our discussions is different, then City staff is not able to continue with the discussions.**


**After City staff's request, you did provide a copy of Mr. Purinton's October, 2003 three-page report approximately two weeks ago. Unlike your characterization of the report, it fails to claim that building permit fee revenue substantially exceeds the costs of regulating building activity. In fact, the report makes no such claim. The report does not make any conclusions that either the expenditures are inappropriate or the revenue collections are excessive in violation of the law. An important caveat of the report indicates that the report has not undergone any independent verification or direct contact with City of**



**Lawrence management. Obviously, an "accounting compilation" that avoids contact with the very entity it seeks to review is severely handicapped from its' inception. This is unfortunate since it violates our attempt to work on this issue cooperatively and compounds the errors of assumption from the report.**

**The City still desires to work cooperatively with the Lawrence Home Builders Association. To this end, City staff has prepared the attached draft report. It is a draft because we still value the input of LHBA in agreeing upon assumptions and understandings, thus, the City reserves the right to alter the report based on additional information that may be obtained through our continuing review and also through our discussions with the LHBA. Your pre-litigation approach to this matter complicates our ability to discuss the assumptions and conclusions that can be drawn for the report. To that end, it is the position of the City: that this report only represents staff's draft attempt to respond to certain issues raised to-date, because the report is incomplete it specifically can not be represented as the City's exhaustive accounting of relevant revenues and expenditures, and the draft report is expressly not to be used in litigation as representing the opinion or findings of the City.**

**Respectfully,**

A handwritten signature in black ink, appearing to read "D. Corliss", written in a cursive style.

**David L. Corliss  
Assistant City Manager &  
Director of Legal Services**

**cc: City Manager Mike Wildgen  
Debbie Van Saun, Assistant City Manager**

**DRAFT CITY STAFF ANALYSIS OF BUILDING PERMIT FEES**  
**DRAFT as of March 11, 2004**

**This report only represents staff's draft attempt to respond to certain issues raised to-date, because the report is incomplete it specifically can not be represented as the City's exhaustive accounting of relevant revenues and expenditures, and the draft report is expressly not to be used in litigation as representing the opinion or findings of the City.**

This draft report is broken down into three initial areas: general legal standards for the issue; a draft attempt to allocate City expenditures related to the regulation of building activity; and a comparison of revenues and expenditures.

**1. General Legal Guidance on Building Permit Fees and Expenditures for Regulating Building Activity.**

To date, City staff has not located relevant statutory authority concerning the issue of building permit fees and related expense of those fees. To date, City staff has not located specific Kansas court decisions speaking to the issue of building permit fees and related expenditures for the regulation of building activity. Our research on these issues continues. It is generally possible to look to other Kansas cases regarding fees and charges and related expenditures for legal guidance on this topic.

***A fee is not a revenue measure, but a means of compensating the government for the cost of offering and regulating the special service, benefit, or privilege...The distinction between a fee and a tax does not depend upon its label, but rather on the nature and function of the charge. Any applicable statutes must be considered in determining the validity of such a charge... it is necessary to determine whether the amount of the assessment is reasonably approximate to the cost of regulation because once adequate remuneration has been secured the police power is exhausted. Exact precision is not required; the courts will tolerate some discrepancy as long as there is no evidence of legislative intent to utilize the fee as a revenue raising measure.***

A significant source of law concerning this issue is found in Chapter 5 of the Code of the City of Lawrence, Kansas, 2003 Edition, which adopts the 1997

Uniform Building Code. The UBC provides in relevant part the specific purpose and scope for the Code:

***SECTION 101--TITLE, PURPOSE AND SCOPE***

***101.1 Title*** *These regulations shall be known as the Uniform Building Code, may be cited as such and will be referred to herein as "this code."*

***101.2 Purpose.*** *The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, **use and occupancy, location and maintenance of all buildings and structures within this jurisdiction** and certain equipment specifically regulated herein.*

*The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code.*

***101.3 Scope.*** *The provisions of this code shall apply to the construction, alteration, moving, **demolition, repair, maintenance and use of any building or structure within this jurisdiction**, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.*

*For additions, alterations, moving and maintenance of buildings and structures, see Chapter 34. For temporary buildings and structures see Section 3103 and Appendix Chapter 31.*

*Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.*

*Wherever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted.*

**(Emphasis supplied)**

Significantly, the Uniform Building Code clearly indicates that the purpose of the Code itself goes beyond simply construction, but also use, occupancy, maintenance and repair. A community's responsibility for a building does not end with occupancy but also includes other appropriate uses throughout the life of the structure, including appropriate repair, maintenance and demolition of the structure. The UBC clearly contemplates this level of regulation of building

activity. A review of expenditures related to the regulation of building activity appropriately includes City activities and functions concerning the use, occupancy, maintenance and repair of such structures.

Similarly, the City's adopted Uniform Fire Code contemplates the maintenance and prevention of fire and related hazards in structures.

- 1997 Uniform Fire Code (UFC) as adopted by the City of Lawrence  
**Section 103.2.1.1** authorizes the Fire & Medical Department to enforce all ordinances of the jurisdiction pertaining to...the maintenance of fire protection and the elimination of fire hazards on land and in buildings, structures and other property, including those under construction.

**Section 103.3.1.1** states "the Fire & Medical department shall inspect, as often as may be necessary, all buildings and premises, including such other hazards or appliances as the chief may designate for the purpose of ascertaining and causing to be corrected and conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose of provisions of this code and of any other law or standard affecting fire safety. However, this shall not be interpreted to require the fire & medical department to routinely inspect one and two family dwellings with the exception of determining compliance with Appendix 1-A Section 6 Smoke Detectors

## **2. City Expenditures Related to the Regulation of Building Activity**

With the above as general background, it is next appropriate to examine City expenditures related to the regulation of building activity. Payment of the building permit fee allows for the issuance of a building permit and the commencement of building activity. As we repeatedly note in this draft report, the commencement of building activity does not end the City's regulation of the structure the construction provides. This draft is an attempt to begin determining City expenditures that can be reasonably related to the regulation of building activity.

### **Code Enforcement Budget & Fire Inspectors**

Full Time City Salaries Related to the Regulation of Building Activity:

- Director – 0.5
- Building Inspector – 6.0
- Inspections Supervisor – 1.0
- Building Inspections Manager – 1.0
- Secretary – 1.5
- Zoning Enforcement Officer – 3.0

- Fire Inspectors 2.0

This represents 15 full time City positions related to the Regulation of Building Activity. The Director of Neighborhood Resources is allocated ½ to the Regulation of Building Activity and ½ to the administration of the CDBG program. Based on workload estimates, allocating 1.5 of secretary full time equivalent appears reasonable because the two support staff positions devote a substantial majority of their time to the Regulation of Building Activity (versus CDBG program activity). We note that our research is not complete on the appropriate allocation of Fire Inspectors but believe that for purposes of this draft a full time equivalent of 2.0 is appropriate. Further review of the entire inspection activities of the fire department will likely increase this number because all operations personnel have some inspection responsibilities and it is also appropriate to allocate supervisory and department administrative overhead to these positions.

It is appropriate to allocate the entire \$780,988 2004 budget of the Code Enforcement Division as a valid City expenditure in the Regulation of Building Activity. The City is not aware of any 2004 budgeted expenditures that can not be validly allocated for the Regulation of Building Activity. As noted in the law establishing the building permit fees, the codes that are enforced exist, in part to ensure the appropriate use, maintenance and repair of structures. Thus, it is appropriate to include inspectors whose functions include zoning and the maintenance of structures (e.g. zoning inspectors and environmental inspectors). Additionally, an allocation of salaries and related contractual services, commodities and capital outlay for the fire inspectors is also appropriate and is estimated at \$10,000 as Fire Administrative Overhead. The appropriate draft salary allocation (pending further review of fire department inspection activities) is \$115,622 (Total of 3 inspectors salaries \$173,434; average \$57,811; \$57,811 times 2 full time equivalent.) Benefits (excluding health care) should be added to this number.

The City rents the space in the Riverfront Plaza for the Code Enforcement Division, CDBG, and the Fire Inspectors at a cost of \$5,395 per month (\$64,740 per year). The City allocates for Fire and Code Enforcement the cost of \$3,291 per year which is not paid out of either Department's budget. CDBG pays \$2,104 per month.

### **Health Care Costs**

The City of Lawrence self-insures for health care costs, with certain administrative expenses (BCBS of Kansas administers the program), re-insurance costs and internal administrative costs. The true cost of this program for each employee includes the appropriate per capita allocation, internal administrative

costs and the value of the City's retained earnings. For the 2004 City budget, the City allocated \$6,457 in City expenses per full time employee for the health care program. City expenditures for health care costs for 15 full time employees would be \$96,855, not including internal administrative costs (e.g. administration of annual election of benefits, staff administration, supervision of program, etc.). A further review of these costs will increase this allocation to the regulation of building activity.

### **General Administrative Overhead Costs Associated with the Regulation of Building Activity**

Administrative overhead is a necessary part of any organization, public or private. Bobbie Flory, LHBA Executive Director, noted in a July 9, 2003 e-mail that "We were always agreed that an enterprise fund should include a determined administrative cost. Obviously, the regulation of building activity can not solely rely upon the inspectors staff and their direct costs. It is also not appropriate to allocate all of the costs of administrative departments to the regulation of building activity. Because the City is most knowledgeable to estimate the cost of general administrative overhead costs, we provide the following discussion about the relation of general City departments and services as they relate to supporting the Regulation of Building Activity:

City Commission (2004 Budget \$67,800) Elected officials responsible for the enactment of City laws, including the building and related codes (e.g. recent code review work). Response to constituent concerns about the implementation of City policies and laws, participation in the Code Review Committee, and other activities related to the Regulation of Building Activity.

City Manager's Office (2004 Budget \$289,934) Administrative support services from City Manager, Asst. City Manager-Community Development Services, Communication Coordinator, Executive Secretary. These services include the oversight of the department, the preparation of the City Commission agenda which will include items related to the Regulation of Building Activities, the preparation and oversight of the budget for the Regulation of Building Activities, response to citizen concerns regarding the issuance of building permits and other items related to the regulation of building activity.

Administrative Services (2004 Budget \$1,623,435) Administrative support services for the City Clerk (records retention), Personnel Division and Risk Management Division. These services include job hiring, retention and recordkeeping; benefits administration, purchase of various insurance policies for the City, including property insurance, administration of worker's compensation, and recordkeeping functions.

Finance (2004 Budget \$328,380 excluding utility billing and general City overhead account) – accounts payable/accounts receivable; payroll services; budget services and financial accounting, purchasing and financial analysis services.

Legal Services (2004 Budget \$ 1,131,333) – legal advice and counseling; review and interpretation of ordinances and City policies; legal research and drafting of new code provisions (e.g. contractor licensing); prosecution of violation of City laws, including violation of building code laws; municipal court adjudication of City law violations. For example, in 2003 the City prosecutor's office prosecuted 15 violations of Chapter 5 (Building Code), including violations for work without a permit or proper license.

Human Resources/Human Relations (2004 Budget \$301,070)– staff training on diversity education, etc.

Information Systems (2004 Budget \$841,768) mainframe and personal computer support and maintenance, training, programming, repair and troubleshooting. See attachment on discussion of Information Systems Department support for Neighborhood Resources Department.

The total from these departments for 2004 is \$4,583,720. As indicated earlier, it is not appropriate to allocate the entire general administrative overhead costs to the Regulation of Building Activities. Clearly, these departments provide support to other City departments and activities. It is appropriate to allocate a portion of their expenditures to the Regulation of Building Activity. Without a City Commission to approve new building code ordinances, without a City Manager's Office to supervise the Department, without Administrative Services to coordinate the hiring and retention of inspectors and other personnel, without a Finance Department to process payroll and invoices, without a Legal Department to advise on code interpretations, without a Human Relations Department to provide diversity training, and without an Information Systems to keep the computers running – the Regulation of Building Activity would not occur.

The accounting issue is to determine the appropriate allocation of these overhead costs. There does not appear to be a clear legal requirement, beyond the direction of reasonableness. While it might be "reasonable" to conduct an audit of actual hours and costs from these overhead departments, there does not appear to be the legal requirement for such inquiry. Instead, an estimate of overhead costs appears to be reasonable.

Dividing \$4,583,720 by the number of City employees (724) provides a \$6,331 per City employee general overhead cost. This multiplied by 15 employees ( $6,331 \times 15 = \$ 94,965$ .) would provide an estimate of general overhead of \$94,965. Staff is still researching this data. Staff believes that some departments (legal, information systems) provide greater support to the building activity function, than to other functions, as would be measured on a per employee basis. This is because some departments such as police and fire have numerous employees and they have their own information systems support personnel. For this draft purpose, it appears reasonable to use the \$94,965 amount as general overhead.

Another reasonable method that could be used would be to divide the \$4,583,720 by the number of operational departments (Neighborhood Resources, Utilities, Parks & Recreation, Planning, Public Works, Police, and Fire/Medical) which totals 7 departments.  $\$4,583,720$  divided by 7 = \$654,817.

While reserving the right to use the department allocation method, staff will use the more conservative "per employee" number for this draft report.

### **Planning and Public Works Department Expenditures Related to the Regulation of Building Activity**

An additional City expense which is reasonably related to the Regulation of Building Activity are a portion of expenditures from the Planning and Public Works Departments. The work of these departments significantly involves the regulation of building activity. Buildings are not allowed to be built nor maintained unless certain City laws governing their construction, use and occupancy are met. The Planning and Public Works Departments support the enforcement of these laws. Not all of the laws and requirements related to the Regulation of Building Activity solely come from inspectors in either the Neighborhood Resources Department or the Fire/Medical Department. Examples include the requirement for connections to City sewer services in order to construct a building within the City. The City Engineer's Office has primary responsibility for enforcement of this law. The Public Works Department seeks to ensure that other appropriate public infrastructure is in place prior to the issuance of a building permit. For example, the Public Works Department halted building permits and building activity in a western subdivision last year because building was proceeding prior to the completion of necessary sanitary sewer improvements. This is an example of the Department's involvement in the Regulation of Building Activity. The Planning Department ensures that appropriate land use and historic preservation laws are met prior to the issuance of a building permit and that construction and maintenance of the structures, pursuant to land use and historic preservation

laws, are met. An example of Planning Department involvement in the regulation of building activity is enforcement of set-back requirements on new construction. This may involve extensive Planning Department work: review of building plans, review of plats and other land documents, interpretation of relevant City Codes, review of requests for variances before the Board of Zoning Appeals, etc.

In short, it is appropriate to look to the expenditures from the Public Works and Planning Departments as related – in part - to the Regulation of Building Activity. In 2004, the Planning Department is \$884,562. Douglas County provides \$147,426 as payment for services to the unincorporated County, leaving City general fund support for expenditures at 737,136. Conservatively, it appears appropriate to allocate 10% of these expenditures as support for the Regulation of Building Activity, at \$73,713. The Public Works Department Engineering Division 2004 budget is \$670,902 (this does not include expenditures for construction and maintenance activities of the City.) Conservatively using the 10% number as well, it appears appropriate to allocate \$67,090 to the Regulation of Building Activity.

#### **Other Reasonable Overhead Costs**

Staff is still researching the legal authority to include overhead costs. We believe it is appropriate to include other costs which are not yet allocated above. The cost of the operation of City Hall (maintenance, utilities, etc.) should be included in the Regulation of Building Activity and is not reflected in the allocations above. City expenditures from liability reserve, worker's compensation, and other similar funds are not reflected in the above allocations. The above allocations do not include the City costs for use and maintenance of the Riverfront parking facility that is used by the Neighborhood Resources and Fire/Medical Department staff, but are still annual City expenditures. For current draft purposes, it appears appropriate to include an additional \$10,000 in other reasonable overhead costs, as this item is further researched.

**DRAFT estimate of budgeted 2004 City Expenditures Related to the Regulation of Building Activity:**

|                |                                                             |
|----------------|-------------------------------------------------------------|
| <b>780,988</b> | <b>Code Enforcement Budget</b>                              |
| <b>39,492</b>  | <b>Rent for Code Enforcement and Fire Inspection Space</b>  |
| <b>115,622</b> | <b>Fire Inspectors Salaries (does not include benefits)</b> |
| <b>10,000</b>  | <b>Fire Administrative Overhead</b>                         |
| <b>96,855</b>  | <b>Health Care Costs</b>                                    |
| <b>94,965</b>  | <b>General Administrative Overhead</b>                      |
| <b>67,090</b>  | <b>Public Works allocation</b>                              |
| <b>73,713</b>  | <b>Planning Department allocation</b>                       |
| <b>10,000</b>  | <b>Other Reasonable Overhead Costs</b>                      |

**TOTAL    \$1,288,725**

**3. Revenues from Building Permit Fees and Comparison of Expenditures**

The actual permit revenue was approximately \$845,135 in 2003. Even assuming a 10% increase in building permit fees, revenue would only be \$929,648 in 2004, nearly \$360,000 short of the City's conservative estimate of planned expenditures in the Regulation of Building Activity. Even if some of the assumptions contained in the City's allocations would be considered unreasonable, it is difficult to believe that such adjustments would make up the \$360,000 difference. As noted throughout the report, there appears to be strong backing for these expenditures and the likely possibility that continuing further review will increase those allocations. We also strongly contend that maintenance of a balance-forward is an appropriate fiscal management requirement for the Regulation of Building Activity. In other words, it is appropriate that revenues expend expenditures to ensure the continuation of the necessary regulation during times when building permit revenue activity declines.

**4. Next Steps.** Continue discussion with the Homebuilders Association and other interested parties to determine the structure of a special revenue fund for accounting of revenues and expenditures for the Regulation of Building Activities.