



City of Lawrence

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CITY COMMISSION

MAYOR
MIKE AMYX

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

May 4, 2010

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

RECOGNITION/PROCLAMATION/PRESENTATION:

With commission approval Mayor Amyx proclaimed Friday, May 7th, as KJHK Day; Saturday, May 8th, as Sertoma Bar-B-Q Book Off Day; the week of May 9 through 15 as Peace Officers' Memorial Week; Saturday, May 15 as Peace Officers' Memorial Day; and, the month of May as Mental Health Month and National Historic Preservation Month. Motion carried unanimously.

Mayor Amyx pulled consent agenda item 5(d) Ordinance 8518, establishing 15-minute parking spaces downtown for a separate vote.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to receive minutes from the Planning Commission meeting of March 22 and March 24, 2010; the Aviation Advisory Board meeting of March 22, 2010; and, the Public Incentives Review Committee meeting of November 16, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve claims to 477 vendors in the amount of \$3,683,772.58. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve the Retail Liquor License for Dangermond Retail Liquor, 1010 North 3rd Street; the



Drinking Establishment License for Set'em Up Jacks, 1800 East 23rd Ste: G; and, the Sidewalk Dining & Hospitality License for Yummy's Over the Top Yogurt, 1119 Massachusetts. Motion carried unanimously.

The Commission reviewed bids for (Bid No. B1021) uniform rental and bulk facility service for the Public Works Department. The bids were:

VENDOR	TOTAL PRICE PER WEEK
Walker Towel and Uniform Service	\$464.35
Ameripride Service	483.00
Aramark Uniform Service	507.30
Unifirst Corporation	582.54
G & K Services	588.64

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to the award bid to Walker Towel and Uniform Service, in the amount of \$464.35 a week or \$24,146.20 a year. Motion carried unanimously. (1)

The Commission reviewed bids for (Project No. PW1001), 23rd Street (K-10 Hwy), West of Haskell Avenue to the east city limits, for the Public Works Department. The bids were:

VENDOR	TOTAL BID
Engineer's Estimate	\$601,091.50
Bettis Asphalt & Construction, Inc.	\$570,420.05
Sunflower Paving, Inc.	\$572,292.47
Hamm, Inc & Subsidiaries	\$672,833.25
Little Joe's Asphalt, Inc.	\$695,242.05

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to award to Bettis Asphalt & Construction Inc., in the amount of \$570,420.05. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to set bid date of June 1, 2010, for the comprehensive rehabilitation program at 1609 Barker Avenue, 1601 West 26th Street, 44 Winona Avenue, and 216 North Minnesota Street. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to set bid date of May 25, 2010, for (Bid No. B1033- Projects 08W008 and 08S013) Bauer Brook Estates Benefit District Waterline and Sanitary Sewer Public Improvements and approve a variance from City Code 19-214B for addresses 4545, 4565, 4605, 4625, 4645, 4665, 4670 and 4650 for Bauer Brook Court. Motion carried unanimously. (4)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to authorize the purchase and installation of 29 400 Mhz radio units and antennas for the Public Transit Department to TFMComm, Inc., for \$8,919. Motion carried unanimously. (5)

Ordinance No. 8520, authorizing the sale, possession, and consumption of alcoholic beverages at Broken Arrow Park on May 7th & 8th, 2010 for the Lawrence Sertoma BBQ Cook-off and fundraiser, was read a second time. As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to adopt the ordinance. Motion carried unanimously. (6)

Ordinance No. 8511, for rezoning (Z-1-1-10) of approximately 5.252 acres from IG (General Industrial) to IL (Limited Industrial), located at 151 McDonald Dr., was read a second time. As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to adopt the ordinance. Motion carried unanimously. (7)

Ordinance No. 8512, for Text amendment (TA-1-2-10) to Sections 20-403, 20-601(b) and 20-601(b)(1), to permit Hotel/Motel/Extended Stay Use as an allowed use in IL Zoning, revise the maximum height in the IL District and add reference to the IL District in footnotes 14 and 15 in the Density and Dimensional Standards, was read a second time. As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to adopt the ordinance. Motion carried unanimously. (8)

Ordinance No. 8516 amending Chapter 6 Article 14 of the City Code regarding Licensed Street Vendors, was read a second time. As part of the consent agenda, **it was moved by**

Dever, seconded by Cromwell, to adopt the ordinance. Motion carried unanimously.

(9)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve request for extension of Preliminary Development Plan (PDP-08-8-06) for Mercato. Motion carried unanimously.

(10)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve temporary right-of-way permits for Art Tougeau to allow closure of the top level of the New Hampshire Street Garage on Friday, May 21, 5:00 p.m. – 10:00 p.m. and the closure of 10th Street from Massachusetts to New Hampshire on Saturday, May 22, 1:00 p.m. – 5:00 p.m. Motion carried unanimously.

(11)

Mayor Amyx said he voted against the first reading of Ordinance 8518, establishing 15-minute parking spaces downtown and pulled the item for a separate vote.

Moved by Dever, seconded by Johnson, to establish 15-minute parking spaces downtown. Aye: Chestnut, Cromwell, Dever, and Johnson. Nay: Amyx. Motion carried. (12)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss updated the City Commission on the 2010 Census campaign; the RFP for US-40 / K-10 Management Plan was published April 29, 2010; Lawrence Parks and Recreation Department was seeking volunteers for its annual Project May Flower on May 1, 4, 5, 6, 13, 14 and 15; the Library was seeking citizen input on needed services and programs; and, reported on the County-wide sales tax distribution over time.

(13)

REGULAR AGENDA

Conduct Public hearing to consider the vacation of an unoccupied utility easement located at 927 New Hampshire (Lot 2, Downtown 2000 Addition), as requested by City of Lawrence, 6 E. 6th Street, Lawrence, Kansas..

Commissioner Johnson abstained from discussion of this item and left the room at 6:59 p.m.

Mayor Amyx called a public hearing to consider the vacation of an unoccupied utility easement located at 927 New Hampshire (Lot 2, Downtown 2000 Addition).

Chuck Soules, Public Works Director, said the City was the owner of Lot 2 of the Downtown 2000 Addition Plat in which a 10 foot utility easement was identified on the north of Lot 2. The City entered into an agreement with 9-10 LC to allow for an outside courtyard/seating area and the easement was not being used.

All utilities and City staff reviewed the request and had no objections. Also, all property owners within 200 feet were notified and no objections were received. Staff recommended approval of the order of vacation.

Mayor Amyx called for public comment.

Aaron Gaspers, P.E., Peridian Group, said he was present to respond to any questions the Commission or public had.

Moved by Chestnut, seconded by Cromwell, to close the public hearing. Aye: Amyx, Chestnut, Cromwell and Dever. Abstain: Johnson. Motion carried.

Moved by Chestnut, seconded by Dever, to approve the Order of Vacation of an unoccupied utility easement located at 927 New Hampshire (Lot 2, Downtown 2000 Addition). Aye: Amyx, Chestnut, Cromwell and Dever. Abstain: Johnson. Motion carried. **(14)**

Commissioner Johnson returned to the meeting at 7:01 p.m.

Receive staff report regarding a request from Community Wireless Communications (CWC) to execute a comprehensive right-of-way agreement with the City to include existing agreements between the City and Lawrence Freenet.

Diane Stoddard, Assistant City Manager, presented the staff report. She said the purpose for the report was for staff to provide comments related to issues raised by the request from Community Wireless Communications and to seek Commission guidance on several policy issues related to the request.

She said CWC requested a 20 year comprehensive agreement with the City that covered access to the City's right-of-way and easements. Also, CWC requested the City aggregate the current agreements with Lawrence Freenet into an agreement with CWC. The City had a variety of agreements with Lawrence Freenet, a non profit company, related to its access to certain infrastructure in the City including access to certain water towers and infrastructure in the downtown area, and traffic signals throughout the community.

Stoddard said that in exchange for the access, CWC proposed the City receive a payment equal to 5% of its broadband revenue. The City had no legal right to request such payment, but CWC was offering that revenue in exchange for the access under the proposed agreement.

Currently, CWC had a video service agreement with the City in which they provided 5% of their video service revenue to the City which was approved last summer. She said Freenet had a number of agreements with the City and that CWC was a service provider to Freenet.

Stoddard said there were three major areas staff was seeking direction on from the Commission.

- 1) The merging of Right-of-Way (ROW) and property specific (water tower, traffic signal, etc.) agreements. She said that CWC was also asking about the infrastructure for Westar street lights that were in the community, but the City could not grant access because the City did not own those street lights. Staff believed a master agreement that included the right-of-way and all the individual water tower agreements and other agreements, was something staff believed would not be in the best interest of the City. Traditionally, the right-of-way agreements were longer term agreements, and the more specific agreements related to certain infrastructure were individual agreements which were usually for a shorter period of time;

- 2) The shifting of current practice regarding equal treatment of “for profit” companies. CWC’s request was to have a 5% amount be provided in broadband revenue in exchange for access. CWC seemed to be open to a market arrangement related to access on the infrastructure. The City applied the same rationale to current “for profit” agreements, the only difference was the City’s agreements with Freenet, were recognized as a “not for profit” and recognized there was community value in extending the infrastructure access at no cost to Freenet in exchange for them providing internet service to low or moderate income people for free or at reduced cost; and,
- 3) Radio Frequencies. Originally, CWC indicated it be granted exclusive use of certain frequencies on poles and water towers. Subsequently, after the original request, CWC requested that a “first come, first served” policy regarding use of certain frequencies on City infrastructure and that a notification provision of any other provider plans to use frequencies that would interfere with its frequencies. She said staff suggested having that standard language be a part of the agreement with CWC and any other company that located on the water tower infrastructure. The frequencies CWC had requested exclusive use for were open channels and were not regulated by the FCC.

She said if standard language was included in the agreements it would address Freenet concerns and also, language in the agreements that would not allow a company to put up so much equipment that it took up the entire open spectrum frequency. She said the City had some key infrastructures and because of the water towers, the City had a very important point of access for communication systems and it might be important for the City not to limit competition in the future.

Joshua Montgomery, President and CEO of Community Wireless Communications, said he understood the current agreements for water tower sites, with most of the other companies, were five year agreements that had four extension periods.

David Corliss, City Manager, said Montgomery was generally correct regarding five year agreements with four year extension, but there were probably some agreements that were outside that exception.

Montgomery said that was essentially what they were asking for, not specifically a 20 year agreement, but one that was a five year agreement with four additional extension periods rolled into it. He said that would give the people writing large checks, to put this project together, some confidence that their business would still be there in five years and their rates would not go up precipitously overnight five years down the line.

Montgomery said regarding merging all the agreements into one master agreement, it did not really matter to CWC, but thought it would be easier as a single agreement. He said if it turned out to be easier to do one agreement for right-of-way and another for each tower site CWC was agreeable too and was their goal to make it simple. He said when reviewing the Freenet agreements, each agreement was similar, but had slightly different terms and CWC wanted to be sure that all of their agreements had similar terms in order to simplify the process and operation.

He said if the City took the standpoint that the poles were Westar property, and the City had no role, that meant that Westar could rent those poles to anyone, for any reason, at any time. If someone wanted to build a telecommunications organization in the City that organization would not need to talk to the City, but to Westar, putting Westar in control. He said in other communities which had community wireless networks; the access to the utility poles was a key item and was regulated by cities throughout those agreements. He said CWC had a separate attachment agreement with Westar that was similar to what any cable or telecommunications company, had with local power utility, allowing CWC to install on those

poles. He said that agreement was held in Freenets name and they were in the process of transferring that agreement. It was important from CWC's perspective that the City continued to regulate the right-of-way so that it did not come down to Westar Energy making decisions about who could or could not do business in Lawrence. He said that was part of the reason CWC was offering to part with the five percent. He said Westar required the City to agree that CWC would be able to be up there before executing the agreement. It was his understanding that Westar required a right-of-way agreement with the City before allowing CWC to install on those poles.

The last issue was regarding similar treatment for "for profit" companies. In terms of the intensity for the use of the site, Freenet had 48 square feet of building at the 6th Street Water Tower Site where AT&T had 286 square feet. The use at the top of the tower with the antennas was similar, where AT&T was using 3, 4, 5 or 6 times as much wind loading area on top of that tower. He said CWC wanted to be careful because they noticed the pricing for the cellular vendors at the other site was included in the information the commission received. He said CWC wanted to be sure they were doing an "apples to apples" comparison when talking about use of the site, so the project was not left paying \$2,000 a month for 50 square feet where another vendor might be paying \$2000 a month for 300 or 400 square feet. He said those were pretty significant buildings the telecommunication companies built at those sites and CWC was amicable to any reasonable solution to the problem that would not put CWC out of business.

Montgomery said the Board of Directors for "non profit" had agreed to the agreement. He said they were busy pursuing KAWR, who was building a public radio station in town, and had refocused their efforts in conjunction with Americana Music Academy and had been successfully fundraising for that effort.

He said Freenet had agreed to continue to meet their commitments related to the low income families that were using the system which included the Lawrence Housing Authority where they were working with a large number of families and also included the Homeless

Shelter's existing site and were hoping to provide data access at the new Shelter site, O'Connell Youth Ranch and many other families in the community who Freenet provided services for. He said he hoped Freenet would continue to add low income families to the service over time. He said they were not abdicating that responsibility in order to do this. This effort was dotting their i's and cross their t's to raise money and build in Lawrence.

Commissioner Chestnut said CWC commented in a memo that they already had access to the right-of-way as part of its video franchise agreement. Since the video service was still quite a way from launch, it meant the company had access to the right-of-way at no cost. He said CWC had access to the right-of-way through a state franchise for video services, but not for broadband services. The statement of having access to the right-of-way, but only for video services, it was implied CWC had the access to the right-of-way for any service CWC provided, but did not think that was not correct.

Montgomery said he understood the way that existing cable and telecommunication companies provided broadband services, without paying the City anything, was that the federal government had exempted those services from franchise fees. So the local cable provider, The World Company, paid a franchise fee for their video service, but did not pay a single penny for their broadband service, nor paid any sales tax on those services. He said, effectively, the only thing The World Company was paying for was the video services provided within the community. He said he understood the state statute and the federal regulation lead him to believe a data service could be provided on top of a video service agreement and there was no obligation in the state law to ever launch a video service and so this was CWC trying to get this effort on a paying basis as quickly as possible. He said they might be a year out from launching the video service and thought that Sunflowers attorney's had made that point, very concisely, when they were negotiating the agreement. He said this agreement would make them the only provider in the community who would be paying a 5% fee on its broadband revenue. Both

AT&T and The World Company continued to pay zero franchise fees for their broadband service.

Mayor Amyx called for public comment.

Patrick Knorr, Chief Operating Officer for The World Company, said they were concerned about the “non profit” status of that wireless operation, and were actually happy to see that potentially an agreement would resolve that issue. It would be a positive step to see CWC operate as a “for profit” organization.

The issue which the agreement did not resolve was disparate treatment between operators and companies, and that continued to be the primary concern. He said it was the World Company’s understanding and interpretation regarding the state video franchise agreement, he agreed it allowed the offering of broadband service, which classified as an information service and required the deployment of video services that fit the FCC definition of a video service. He said that just providing internet access to You Tube did not fit the definition. He said that did not meet the standard and there did not appear to be a time line to deploy services that would meet the FCC definition of a video service.

Knorr said they would like to see everyone treated equally and believed there were several things in the proposal that were in violation of current law. Unfortunately, as much as they were in support of the 5% fee they offered to pay, the reason The World Company and AT&T did not pay that fee was that it was their interpretation that it was illegal to do a franchise fee on internet services, both to pay the City and to pass along to their customers. He said it was also their interpretation that the open frequencies’ would be a violation of FCC laws, for the City to codify exclusivity of any open frequencies as part of an attachment agreement.

Mayor Amyx said what was the difference was in the price tag for AT&T and Verizon at the Stratford Water Tower site.

Stoddard said the monthly rate for AT&T on the Stratford Tower, was \$2,265.00 which began in 2004. The Verizon rate was \$1,970.00 per month which began in 2003. She said she

understood the agreements were negotiated by the City looking at the equipment the company provided, the market rate for the access, and the value of the presence on the key tower. She said that while they varied slightly they did vary in congruence with one another. The City was treating the companies similar and might differ with the company's equipment.

Mayor Amyx said if there was a difference, in the timing, as to the market value.

Corliss said, yes. While there might be a size distinction on the ground, the City was not selling what was on the ground, but being on top of the tower, which was the driver for those costs.

Vice Mayor Cromwell said Montgomery had alluded to the amount of disparity regarding the material on top as well as on the bottom and asked if that was looked at.

Corliss said it could be something the City could look at, but as the City being the landlord, the City Commission could regulate the criteria. He said the City generally looked at market rates. One of the key guiding principles used over time was the order of priorities. The City's first priority for those facilities was to use it for its intended purpose. Staff wanted to make sure that any use would not diminish the City's ability to perform the important utility function. Secondly, as a good example, Stratford Water Tower, had very important City telecommunications, or City/County telecommunications, and the City wanted to be sure nothing was done to interfere with that usage, whether it was frequency or just access. The City wanted to be good stewards and recognize the City could receive some revenue to help offset operating costs. He said it helped other businesses, and also helped the City from a land use standpoint, as the City did not have a lot of other requests for cell towers and other things elsewhere in the community. He said staff had not spent a lot of time figuring out the amount of antenna work that any particular tenant had desired to be on that tower. The plans presented were required to have an engineers stamp so those plans could work from an operational standpoint for the utility work. Utility staff looked to make sure that tenants had not affixed attachments or drilled into the towers that defeated the purpose of the tower. He the City allowed it to proceed along as it did

not violate some of those major principles about interfering with that use. He said the City however, wanted to insist that there was no interference because of the City being landlord to other tenants, but more importantly to the public safety communications apparatus.

Vice Mayor Cromwell said he thought the City Manager was concerned about potential interference and he was pointing out it was the same equipment.

Corliss said Montgomery was just transferring ownership.

Vice Mayor Cromwell asked if there was another way of establishing a market rate.

Stoddard said the City's Legal staff had been involved in looking at tower access, in general, to determine some market rate information.

John Miller, Staff Attorney, said if a new provider wanted to locate on a City facility, staff would look at internally or externally, the market rate and in some circumstances, hired appraisers to determine what it might be, so staff could negotiate and come back to the City Commission with the market rate when the request came in, and how to negotiate the rent or lease amount for that site.

In terms of unlicensed broadband, he was not sure of the answer to that question. In the past few weeks he had been trying to communicate with different communities that had done some of those types of activities, but had not yet been able to get an idea as to how those communities determine that market rate.

Vice Mayor Cromwell said the City was not sure yet how to come at that market rate.

Miller said that he had communicated with the City Attorney in Desoto, KS to find out how that City handled the exclusivity and how they handled the lease situation. On the exclusivity aspect the City of Desoto had left that up to the people who wanted to access the tower and did not grant exclusive rights for a particular individual. Once an entity went on the tower, that entity would essentially let the market determine how they wanted to use the unlicensed radio spectrum.

Vice Mayor Cromwell said City staff was currently investigating other communities and how they determined market rate.

Miller said yes, he had communicated with the City of Minneapolis and attempted to get in contact with the City of Philadelphia, two of the larger communities that had experience with this issue. He said it might not be a great comparison, but he wanted to see how those cities handled that issue and how they worked with city/private entity partnership to provide some service within their community on a wireless mesh.

Mayor Amyx asked if City staff made a determination that what current companies on the City's sites were paying was consistent.

Miller said yes. He said for example, because AT&T and Verizon had different dates their option periods could change, and there could be a 3% escalator between option periods that would be reflected in a difference in how it worked. He said rates for pad sites on City property, staff generally looked at it from square footage basis what the rent would be, in addition to their location on the facility itself. How those time frames stagger and what those entities were providing per each individual agreement, might result in what was seen in that diagram. Every time a request for an amendment came in, it went through a site planning process, even changes to tower apparatus or cable size. Staff looked at all of those things before bringing any amendment to the City Commission or recommendations for cost of what the site lease would be.

Commissioner Dever said Stoddard brought up some points the City would like to address and try to standardize and Montgomery also brought up some things to standardize based on Montgomery's business prospective.

He said the City should evaluate the footprint in relationship to those costs being that the footprint varied somewhat. If the physical size of the structure on the ground was a certain dimension, the City could theoretically sell that same space to three or four others and occupy the same square footage as one of Verizon or AT&T's footprints. He said Montgomery inferred

the document indicated that CWC provided that same space and might be consistent on the towers. He said it was fair and reasonable to presume there might be some change in the fee based on the size of the footprint. He said he did not know how that connected into the next issue which was interference, and thought that there should be some language, not granting exclusive rights, but saying entities could not interfere with other people's spectrum. He said the City needed to rectify the cases where Community Wireless or Lawrence Freenet's equipment was interfering with other people's equipment.

He said Knorr pointed out that through governmental grants, an entity had to be given access to the right-of-way for video franchise and was a moot point if they did not plan on moving video, then he did not have access to the right-of-way.

He said the City should continue to negotiate until figuring out the best rate for the City and the service, it was important to continue to offer viable wireless services in the community.

Commissioner Chestnut said he thought the implication was that there was an interpretation issue about whether or not the video services needed to be provided to have the access to the right-of-way. Regardless, the City needed to do work on its own to understand the federal laws. It was complicated, but the City needed to treat everyone the same.

There were several different structures with Freenet and CWC and there was a lot of trying, on both sides, to accommodate. The City struggled, because it always tried to balance out fairness to the other providers, which seemed to be very difficult. He said the City needed to approach this issue as having "for profit" organizations that wanted access to right-of-ways and how to treat everyone on a level playing field.

He said it was important to look at what other communities were doing, but the problem he had was that the footprint of the equipment was irrelevant to the amount it could transmit. The amount of data that could be put in frequency over and the potential for interference on the top of the tower really had a lot more to do with what impact it would have on the right-of-way. He said the City should consider what CWC was proposing, but also look at what other

communities were doing, and come up with a fair treatment that took into consideration all providers and the best way to allocate the available frequency in a fair and impartial manner.

He said he was concerned whether or not Knorr's comments were correct as far as what the City could and could not do in the spectrum and thought the City needed to do work understanding the City's interpretation of the federal law because the City Commission heard two interpretations from two alternate vendors.

Vice Mayor Cromwell said it was his understanding that there were some communication issues with the bandwidth and that CWC was not asking for exclusive rights, but rather a lack of interference on the tower which was a typical agreement the City had. He said he cringed at the thought of giving someone exclusive rights to bandwidth.

He said they were moving along down the path to a fair and equitable agreement, transferring the Freenet side over to Community Wireless and thought that staff and CWC were working well together.

Commissioner Johnson said he was good with where staff was on this issue and thought it was a good idea to look at other cities and see what was being done.

Mayor Amyx said over the last five years, the City had the opportunity to see a not-for-profit company (Lawrence Freenet). Last year, Montgomery and others came forward stating Freenet was going into a new "for profit" deal with CWC. It was important that there be a consistency and that everyone understood the rules, and there was no reason to bring everyone and their lawyers to City Hall every three or four months to talk about new ways of doing business. There were other communities dealing with similar things and there had to be a consistent way to deal with "for profit" companies as those companies looked at bandwidth and exclusive rights.

He said the City Commission needed to direct staff to look at the ideas brought forward regarding the use of space on the towers, contact other communities, and come up with a cost plan for the City's equipment. He said he would like staff to provide information regarding the

rights of Westar and the City's use of those poles and if Westar could grant use to anyone at anytime. Also, direction was needed on the exclusivity issue.

Commissioner Dever said he remembered reading "a first right of refusal" and did not know what that meant.

Stoddard said the way she interpreted Montgomery's second request was that the agreement would state a company would be operating at "X" frequency and the City agreed not allowing other equipment at "X" frequency, it actually named the frequency.

Commissioner Dever said if CWC wanted to switch frequencies and leave its equipment in place but perhaps alter it, CWC would have the right to do that before handing it over to somebody else.

Stoddard said staff suggested that rather than specifying a specific frequency in the agreement would be to have standard language in not being able to interfere with someone else, that way the City avoided getting into areas of exclusive rights. The City might want to avoid a situation where someone could take all of the open and unregulated channels.

Montgomery said he understood if the City wanted to continue to negotiate, but wanted to be sure that an agreement that everyone could live with. He said it was CWC's goal to still be in business at the end of negotiations. He said CWC did not want someone to pay the City to light up a piece of equipment on top of one of those towers that took internet off line for 300 families, which was the reason for the exclusivity.

He said CWC was on the city owned light poles at Massachusetts Street and on a lot of traffic control signals and wanted to be sure CWC could strap on to new traffic control signals and wanted to know if they could get some type of master agreement.

Corliss said that right now there was a master agreement with Freenet which was now transitioning to CWC and thought the City could work on coming up with the right way to price the use of City facilities in the public right-of-way for "for profit use".

Mayor Amyx said consistency was needed with all agreements with any company that came forward and that all providers understood that it was the same throughout.

Consider the following Utility Master plan items: Update on Wastewater Master Plan efforts, Award bid for wastewater and water modeling software to the Utilities Department to Bentley Systems, Inc., for \$35,350; authorize staff to negotiate an Engineering Service Agreement with Burns & McDonnell/BG Consultants for the preparation of the Water System Master Plan.

Dave Wagner, Director of Utilities, said staff engaged with Burns & McDonnell/BG Consultants and began working on a master plan last fall. He said staff would discuss the work on growth and land use projections through the year 2030 including regulatory requirements now and into the future, as well as what was needed to maintain the existing systems or any new systems.

Mike Lawless, Assistant Director of Utilities, said the existing Wastewater Master Plan scope required that the City provided data or information to the City's consultant in order for work to be done on the Master Plan. To date, some of the data provided for the plan had been; the flow and rainfall data from the flow monitoring program; waste water treatment plan and pump station flow data and configuration; GIS data on the sanitary sewer collection system; and, MPDS permits and correspondence with the state and EPA. There were a few things that were not provided yet and he would talk about those tonight. He said there were several other pieces of data staff needed to provide, some of them were the population data for the design years in the plan, a plan boundary, as well as the modeling software in order to do the modeling for the collection system.

He said over the past several months Utilities and Planning staff was working to prepare the plan area and population estimates for the design year 2020, 2030 and a build out of the planning area for the Master Plan. In addition to the population data, staff needed to provide the distribution of that population within the planning boundary. He said Burns and McDonnell would use the distribution of the population data through the basins within the boundary to

define the flow for each of those which would in turn helped define the infrastructure needed within the particular basin boundary.

The proposed master planning boundary started with the existing UGA and city limits, and then looked at the sector and planning studies that had been done including the Southeast Area Plan, the West of K-10 Plan, the K-10 and Farmers Turnpike Plan, and the study that was underway in the Northeast area. Staff took all of that information and asked what made a logical planning boundary for 2020 and 2030, where the city would grow, and where water and sewer service was needed. This was the planning boundary staff believed was reasonable and made sense. He said not only did it provide the basis of input for the water and waste water master plans, but also had implications in the future for storm sewer, roads and other utility infrastructure.

Scott McCullough, Director of Planning and Development Services, said the planning office was asked to provide population and growth distribution input into the master plan and staff it was important to get a snap shot of where they were today and what was available. There were 126 single and two family permits in 2009.

Currently, there were 1335 vacant lots in the City which did not equate to dwelling units because the vacant lots could include multi dwelling developments as well. Staff added in to their analysis the approved, or potentially approved, projects within or adjacent to the city limits and assigned unit counts. When factoring in unit counts to projects such as the Mercato project that had approval, but not yet developing, there were approximately 5100 units available, or potentially available, without going far outside the city limits. Those projects probably served a pretty narrow market, there might be a narrow price range in the housing stock and it might or might not be very diverse. There were always the elements of developer timing to develop the properties, other unknown externalities about what large employers might come to the City and was not crystal clear when projecting out, over time and development was not static. He said for example, Oregon Trail Subdivision had some approvals and extension of time and staff was

just now beginning to talk to the developer about developing a first phase of that development. Also, in tonight's consent agenda extended a zoning approval for Mercato. In developing that map there was a project known as Casita's which staff thought there was 160 units available and as that project had changed, that same developer had moved over to the east side of that quarter and was developing 46 units that would go to the Planning Commission in May and to the City Commission. Development was hard to gauge precisely, but he believed it was a good snap shot. He said staff took that information and used a range of population growth, a low and a medium, to calculate the number of years of potentially available inventory and believed there were between 8 and 12 years of potential residential inventory within the city limits, but again a lot of unknowns. He said staff assumed and recognized that they would likely go outside of the City to pick up additional green field lots, through those 8 and 12 years. He said it did lead to questions about how much inventory was healthy for a community, or how much ahead of the curve the City needed to be as far as inventory and questions that staff had not fully analyzed to arrive at answers.

The interesting thing about our potential or approved inventory was that it could absorb approximately 11,700 new residents into the community, and under the low range that would take approximately 12 years, and 8 years if the population rate increased.

Staff looked at the future population growth as highlighted in Horizon 2020 and distributed to proposed development scenarios as input into the Wastewater Master Plan.

He said staff knew that between years 2000 and 2008, the population rate was approximately 1 ½ percent annual growth and believed the City was somewhere between the low and medium and used the low rate to arrive at the 2020 number and bumped it closer to the 2030 range to get to that time range.

By the time 2020 occurs the new growth in the community was approximately 113,000 residents, bearing in mind that not all residents would be within the city limits or be served by city services which was based on transportation analysis zones, a census determination of

where residents were located. He said again, there were a lot of things could change some of the assumptions, such as the interchange development of Bob Billings Parkway and SLT and whether the SLT was built, how strongly and what rate KU and other universities grow in this community, how the City attracted employers, and whether or not developers and owners held or moved on land.

He said by 2030 the City would be approaching between 125,000 and 130,000 residents within the plan area assuming the new facility was on-line and that growth continued to the west and south.

The build out scenario anticipated 250,000 people in the plan area which was why staff believed the City's sector plans and designations could absorb, but it could take to the year 2150 to get that far under the current rate of growth.

Lawless said the two scenarios 2020 and 2030, where the population projection and the distribution of that population had been shown and had the build out scenario in that if the entire area built out, what it would take. He said by having the build out scenario it gave the City the opportunity to look at what it needed to serve that entire basin if the population projects or distributions provided in 2020 and 2030 scenarios changed.

He said through the months of May and June staff planned to take the presentation and share it with members of the Planning Commission, the Board of County Commissioners, the School Districts and invite other stake holders to attend those meetings or provide comments to City staff, including universities, Chamber of Commerce, developers, engineers, neighborhood associations and others to provide their input and tell us what they know about 2020 and 2030 and the City's build out scenario. Staff expected to bring that information back before the City Commission sometime in July with a summary report of the input received for consideration and approval. In addition to the Planning Commission, County Commission, school districts and stake holders, staff provided a website of information as well as an opportunity to comment directly from the website and the dates of the meetings with those entities.

Mayor Amyx said the City was allowing more participation compared to 2003 Master Plan. He said if staff was trying to identify the amount of development.

Corliss said, staff had been working on this issue for a number of weeks and the work was appreciated. This was an important issue in defining what the community was going to be in the years and decades to come.

He said he agreed staff was trying to do an extensive job of involving the public. Staff was struggling to know the future economy was going to be like as far as growth. As a city organization, they built a lot of expectations on the growth the City had historically experienced. Staff had to recalibrate in almost every department, the new growth and new challenges entailed and probably no department felt that more than the Utility Department. The Utility Department expanded the City's water treatment plant capacity, expecting growth quicker than it was occurring. The City deferred proceeding with the waste water treatment plant because the City was not experiencing the growth that would necessitate its immediate construction nor provide the rate base to finance that plant. Staff believed they needed to proceed with that facility sometime this decade and needed to talk about how to finance it. One challenge was where the City would grow and how quickly the City would grow. He said if the City was going to grow at a slower level, the City's challenge would be the choices about where to extend infrastructure and needed to be that much more precise because the City would not have the rate base to support extensive extensions of utilities.

He said staff would launch this information into the community, receive input from the community and continue the dialogue with the City's consultants because this was the data that generated the Master Plan. The Master Plan was only as good as its input.

Mayor Amyx asked about the bids for the Wastewater and Water Modeling Software.

Lawless said one of the things staff needed to supply in the waste water master plan was the modeling software that would be used for the project. City staff along with Burns and McDonnell developed four minimum criteria for a software vender to be viable for supplying

software for this project. Those criteria included being a commercially available software package that was actively supported, updated and improved over time. It had to have a dynamic model and a GIS interface because that would be where all of Utility data and infrastructure was managed. Finally, staff wanted the vendor to supply both a water model and a waste water model. Staff wanted to learn how to use one package and if it were made by the same company they would have the same flavor, the same look and feel even though one would do water and the other would do waste water, we felt it would be better than dealing with two separate packages.

He said after reviewing the available software, against the identified criteria, 2 vendors met the criteria, MWH Soft and Bentley Systems. Staff provided each vendor with both waste water and water data from the City's GIS. The vendors were allowed to take that data and pull the data into their software and prepare presentations for our Public Works and Utility staff and consultants. Public Works sat in on the presentations because the sewer modeling software could be used for both sanitary sewer and storm sewer systems.

After the vendor demonstrations, staff evaluated the software on a number of different criteria ranging from the hydraulic features to the annual maintenance cost. After staff discussion, checking references and follow up questions to vendors, Bentley Systems was chosen as the best and most cost effective solution for both Utilities and Public Works and staff was requesting City Commission consideration for Sewer Gems and Water Gems product from Bentley Systems.

Mayor Amyx said if this was the same software that was discussed a few months ago.

Lawless, said correct. The software integrated all of the City's GIS data, using the flow and population data which would let staff know the type of system improvements needed.

Corliss said one of the key values that the commission indicated, and staff concurred with, was the City would drive the model.

Lawless said part of the process was that when completing the master plan, the data and how the data was input into the model would be part of the training that staff received. Staff might be able to be involved in the actual construction of the model and as new system and new development came in, staff could update and run the model for future development.

Mayor Amyx said that idea was important during the discussions with the engineers that were a part of the Commission.

Mayor Amyx said the other part of this same issue was to authorize staff to negotiate an engineering service agreement with Burns and McDonnell and BG Consultants for the preparation of the water system master plan.

Lawless said staff was asking for consideration to negotiate with Burns and McDonnell and BG for the water systems master plan. Late in 2009 RFP's were advertised for the Water Master Plan and received two responses; Bartlet and West teamed with PEC and Burns and McDonnell teamed with BG Consultants.

A review committee from the Utilities Department and The City Manager Office reviewed the proposals and selected the team of Burns and McDonnell and BG. Burns and McDonnell provided a detailed project approach along with a comprehensive task list in the proposal.

In addition to the project list and task, by selecting Burns and McDonnell and BG, we would provide a consistent integration of the Water Master Plan and the Waste Water Master Plan, including the way the GIS data was pulled into the models, the integration of stakeholder information, the familiarity with the gross scenarios, and when working through the Waste Water Master Plan there would be consistent CIP costs estimating in going through the water side, as well as in the report preparation, so it was consistent between water and waste water. For those reasons staff felt that Burns and McDonnell with BG was selected for the project.

Mayor Amyx called for public comment.

After receiving no public comment, Mayor Amyx said that as they looked at development issues in the future it seemed the City had a very good start on the way they were going to

handle development, especially with the City’s wastewater needs in the future. He said in looking at the modeling software, staff picked up on what the City Commission had asked for several weeks ago.

The City Commission reviewed the bids for wastewater and water modeling software for the Utilities Department. The bids were:

Bidder	Initial Cost	5 Year Cost (Purchase & Maintenance)
	1 License Each <u>Water & Sewer</u>	1 License Each <u>Water & Sewer</u>
MWH	\$42,000	\$81,000
Bentley	\$35,350	\$59,350

Moved by Chestnut, seconded by Johnson, to award the bid to Bentley Systems Inc.

Motion carried unanimously. (16)

Moved by Chestnut, seconded by Johnson, to receive the update on the Wastewater Master Plan efforts and authorize staff to negotiate an Engineering Services Agreement with Burns & McDonnell/BG Consultant for the preparation of the Water System Master Plan.

Motion carried unanimously. (17)

Receive Performance Audit Plan for 2010 from the City Auditor

Michael Eglinski, City Auditor, said he needed to receive direction on audit projects going forward. He said there were 30 projects and 9 of those projects were presented as higher priority. The code required bringing this information to the City Commission for approval and required coordination with the City Manager regarding those audit projects.

The higher priority projects included the following:

Potential performance audit topic	Details
A	<p>Financial indicator analysis</p> <p>Reviewing a set of financial indicators, comparing them over time and with medians, to describe the city’s financial condition and identify “warning trends.”</p> <p>The performance audit would involve updating analyses done the last two years.</p>

B	Taste of water	<p>Citizens identified the taste of drinking water as the water/waste water issue that should receive the most emphasis in coming years (2007 citizen survey).</p> <p>A performance audit could evaluate management's approach to monitoring and controlling the taste of drinking water and make comparisons with similar water utilities.</p>
C	Capital improvement planning and budgeting	<p>Capital assets include streets, buildings, water and sewer lines, storm water systems, and city equipment. These assets are important to the city's future financial condition and to the ability to continue to provide services.</p> <p>Citizens identified maintenance of streets and infrastructure as the major area that should receive the most emphasis in coming years (2007 citizen survey).</p> <p>A performance audit could compare the city's processes for planning and budgeting with practices recommended by the Government Finance Officers Association.</p>
D	Outside agencies	<p>The city provides funding to a number of outside agencies and requires those agencies to provide progress reports and financial information.</p> <p>A performance audit could review the extent to which the agencies comply with the reporting requirements.</p>
E	Fees and service charges	<p>The city collects a variety of fees and service charges.</p> <p>A performance audit could compare city policies and practices with recommended practices – such as those of the Government Finance Officers Association and the Government Accountability Office.</p> <p>The scope of a performance audit could be broad – covering a wide range of departments and charges – or narrow.</p>
F	Vendor information review	<p>The city maintains information about vendors in the financial system. Accurate and complete information helps ensure payments to vendors are appropriate.</p> <p>A performance audit could involve reviewing the completeness and accuracy of vendor information.</p> <p>The topic was submitted by a member of the public. The topic was included in the 2009 audit plan but was put on hold while the city worked to implement the Innoprise financial system</p>
G	Recommendation follow-up	<p>City Code requires the City Auditor to follow-up on previous audit recommendations. The follow-up report provides information on management's efforts to implement audit recommendations.</p>

H	Street specifications	<p>Citizens expressed concern about the condition of the city streets in the 2007 citizen survey.</p> <p>A performance audit could look at specifications for construction and maintenance of city streets and compare the city's specifications and practices with recommended practices and with other jurisdictions.</p>
I	Selected Police Department Performance Audit	<p>A preliminary survey of the Police Department's Administrative Bureau will be released soon. That report will identify several potential performance audit topics for future audit work.</p> <p>After the preliminary survey is released, it would be appropriate for the City Commission to approve a yet-to-be-named audit topic for inclusion in the 2010 audit plan.</p>

He said he was relatively close to having a preliminary survey of the Police Department Performance Audit which identified potential audit topics in that department.

Commissioner Chestnut said what was meant by relatively close.

Eglinski said he had a rough draft and was beginning the process of referencing, making there were supporting documents for specific text. After the referencing was completed, he would share the document with management, including the City Manager. He said he would like to provide the information to the City Commission within 2 months, but he had been wrong before.

Commissioner Chestnut said he liked the list, but Capital Improvement and budgeting was always a big list in understanding the prioritization and undergoing that process. Also, the Fire Department did an evaluation of their capital assets which could be expanded. He said it was important to offer comments on the processes that were used to make recommendations to the City Commission.

Another issue was the practices of the Governments Finance Officers Associations, and the lack of clarity about equipment getting paid for from fund to fund and how that equipment reserve was used and allocated. He said the Commission needed a recommendation for auditing what the City did and the rationale behind it.

On street specification, he was interested in an updated review of the pavement index, integrating specifications on the materials.

Eglinski said a follow-up was required by code, the Financial Indicator Analysis could be done internally, and suggested the City Commission pick three to five of the listed projects. He said he would suggest Fees and Service charges, Capital Improvements, Taste of Water and Street Specifications.

Mayor Amyx said he agreed with three of the four suggestions by Eglinski, but suggested Vendor Information as the fourth.

Vice Mayor Cromwell said he concurred with Mayor Amyx.

Commissioner Chestnut said the Taste of Water could be hard to figure out some empirical ability to do it. He said when talking to Utilities there were so many permutations such as weather and thought the Vendor Information Review was very much an analytical type of thing.

Mayor Amyx said Vendor Information Review was better information and asked if there was anything specifically the City Commission should ask Eglinski to review other than the four topics of: Street Specifications, Vendor Information Review, The Fees and Service Charges and the Capital Improvement Planning and Budgeting.

Commissioner Dever said he thought evaluating the solid waste structures and costs should be continued because the City was going to continue to face competition and cost increases to effectively mount any aggressive tactics that outside agencies might have and the City knew costs and what kind of value the City could provide to the community in the future.

Eglinski said he would address the solid waste activity in the Financial Indicator Analysis and there would be a six month follow-up out in September.

Commissioner Dever said it seemed the numbers were all over the board and he wanted to make sure there was a better understanding and an idea of what it would cost to run in the future and how the City would pay for those costs.

Eglinski said management would bring information with the annual rate study.

Corliss said staff had been working on the Public Works Department budget this week and did not know if staff would discuss it at their May or June Budget Study Session.

Mayor Amyx said the City Commission would receive information from the City Manager during the regular budget process and the six month update from Eglinski and asked if Commissioner Dever wanted more information.

Commissioner Dever said no, but wanted to keep an eye on the ball and if the majority of the City Commission felt it was a focus point, then they continue to figure out where the City stood relative to a year ago and how the City could pay for some increases to balance the budget.

Eglinski said the way the code was written, he had to perform a follow-up within six months of making recommendations which the recommendation were out in January and he could do a follow-up sooner if the City Commission was interested. He said he understood that solid waste was implementing some of the recommendations.

Mayor Amyx said it might be helpful to get that information from the auditor as part of the budget process in June or July.

Eglinski said he would follow up a little sooner on those recommendations and bring a memo to the City Commission. **(18)**

Mayor Amyx asked if there was any public comment on items discussed about initiating the Audit Work Plan for 2010.

No public comment received.

PUBLIC COMMENT:

Elsie Higgins, Community Affairs Director for KU student government/Student Senate, said she wanted to introduce Brad Rector who would be transitioning into her position and would be at City Commission meetings working on items such as boarding house issues and lighting or whatever else may come up that would affect students.

Mayor Amyx said that the University was very well represented over the last year by Higgins and he looked forward to a continued partnership with the University.

FUTURE AGENDA ITEMS:

- 05/11/10
- Consider adopting the 2010 Action Plan and Investment Summary of the 2008-2012 Consolidated Plan and consider adopting Resolution No. 6888, authorizing the Mayor to execute agreements for the 2010 CDBG and HOME programs and other such documents as may be required to be submitted to the U.S. Department of Housing and Urban Development for such programs.

ACTION: Adopt the 2010 Action Plan and Investment Summary of the 2008-2012 Consolidated Plan and adopt Resolution No. 6888, authorize the Mayor to execute the agreements for the 2010 CDBG and HOME programs, if appropriate.
 - Consider approving an update to the 2008 CDBG-R Substantial Amendment to the 2008 Consolidated Plan for the Lawrence Community Shelter, 3701 Franklin Park Circle – Property Acquisition for Emergency Shelter site - \$78,789.

ACTION: Approve an update to the 2008 CDBG-R Substantial Amendment to the 2008 Consolidated Plan for the Lawrence Community Shelter, 3701 Franklin Park Circle Property Acquisition for emergency shelter site for \$78,789, if appropriate.
 - Receive economic development policy proposals for consideration and adoption.
 - Receive 2009 Tax Abatement Report.
 - Summary of changes recommended by PIRC
 - New language that would provide tax abatement bonuses for firms that provide high-wage jobs
 - Update to IRB policy to account for changes to state law and guidelines for retail and multifamily use A new CID policy establishing the criteria, financing, processes and fees for these districts in Lawrence
 - Adopt Ordinance No. 8519, amending Article 16 of Chapter VI of the City Code providing for the licensing and operation of oversized pedicabs within the City of Lawrence.
- 05/18/10
- Conduct public hearing for the dilapidated structures located at 1313 Haskell Avenue. Consider adopting a resolution declaring the structure unsafe and dangerous and ordering the property owner to repair or remove the structure within a specified period of time. Should the property owner fail to comply the City would contract for the removal of structures.
- May/June
- Upon conclusion of 2010 Kansas Legislature, review and consider possible changes to City primary election law.

- 06/08/10 · Receive status update on the property at 331 Johnson Avenue on violation of City Code Sections 9-6011 (A) and (C). Receive additional code enforcement information as directed by the City Commission. Authorize staff to proceed with enforcement actions if appropriate.
- November · Receive status report on LCS relocation efforts.
- TBD · Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties. Additionally, staff is working on a memorandum discussing possible annexation of the Miller/Wells acres area.
- Receive Lawrence Human Relations Commission gender identity report.

Moved by Chestnut, seconded by Cromwell to adjourn at 8:43 p.m. Motion carried unanimously.

APPROVED:

Mike Amyx, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF May 4, 2010

1. Bid - Walker Towel & Uniform Svc, \$464.35 a week or \$24,146.20 a year
2. Bid - PW1001, 23rd Street (K-10 Hwy), W. of Haskell to E city limits - Bettis Asphalt \$570,420.05.
3. Bid date - June 1, 2010 - comprehensive rehab program @ 1609 Barker Ave, 1601 W. 26th, 44 Winona Ave, & 216 N. Minn.
4. Bid date - May 25, 2010 - Bauer Brook Estates BD & variance for 4545, 4565, 4605, 4625, 4645, 4665, 4670 and 4650 for Bauer Brook Court..
5. Purchase & Installation of 29 400 Mhz radio units & antennas for Public Transit - TFMComm, Inc., - \$8,919.
6. Ord. 8520 – 2nd Read, alcoholic beverages @ Broken Arrow Park, May 7-8, 2010 - Lawrence Sertoma BBQ Cook-off and fundraiser
7. Ord. 8511 – 2nd Read, rezone (Z-1-1-10) 5-252 acres, IG to IL, 151 McDonald Dr.
8. Ord. 8512 – 2nd Read, (TA-1-2-10)t Hotel/Motel/Extended Stay in IL zoning
9. Ord. 8516 - 2nd Read, Amend 6-14 City Code regarding Licensed Street Vendors
10. PDP-08-08-06 – Mercato PCD
11. Use of ROW - Art Tougeau top level of NH Garage May 21, 5-10p.m and close 10th St. from Mass. to NH, May 22, 1-5p.m.
12. Ord. 8518 – 2nd Read, 15 minute parking spaces downtown
13. City Manager's Report
14. Public hearing, vacation of easement @927 New Hampshire
15. Telecommunication - CWC for comprehensive ROW with City including existing agreement
16. Bid – Waste and water modeling software to Bentley Systems.
17. Wastewater Master Plan.
18. Audit plan