



City of Lawrence

DAVID L. CORLISS
CITY MANAGER

City Offices
PO Box 708 66044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
MICHAEL DEVER

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

September 3, 2013

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

A. RECOGNITION/PROCLAMATION/PRESENTATION:

1. Proclaimed September 5 – 11, 2013 as International Literacy Week.
2. Recognized the Lawrence Police Foundation's "Car 54 Where are You?" Golf Tournament.
3. Proclaimed the month of September, 2013 as National Preparedness Month.

B. CONSENT AGENDA

Commissioner Farmer asked that item number 5b, Ordinance No. 8899 regarding dogs in cemeteries, be pulled from the consent agenda for separate discussion.

Amyx requested that item number 6b, Ordinance No. 8900 regarding upholstered furniture on porches, be pulled from the consent agenda for separate discussion.

Dave Corliss, City Manager, said a citizen had requested that item 7a be deferred because they had not been notified of the meeting and would like to be here for the discussion.

It was moved by Schumm, seconded by Farmer, to approve the consent agenda as below, minus items 5b, 6b, and 7a. Motion carried unanimously.

1. Approved City Commission meeting minutes from 08/20/13.
2. Received minutes from various boards and commissions:



Bicycle Advisory Committee meeting of 06/18/13
Planning Commission meeting of 07/22/13
Traffic Safety Commission meeting of 08/05/13
Mental Health Board meeting of 07/30/13

3. Approved claims to 291 vendors in the amount of \$725,773.91.
4. Approved the drinking establishment licenses for Lawrence Pizza Pub, 1200 Oread Avenue Ste: B103; Panda & Plum Garden, 1500 W 6th Street; Harbour Lights, 1031 Massachusetts Street; Noodles & Company, 8 West 8th Street; 715 Restaurant, 715 Massachusetts Street; Ramen Bowls, 125 E 10th St; and, Basil Leaf Café, 616 W 9th.
5. Adopted on first reading, the following ordinances:
 - a) Ordinance No. 8902, 2013 Standard Traffic Ordinance, Edition 2013.
 - b) THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Denied adoption of Ordinance No. 8899, amending the City Code to prohibit dogs in city cemeteries, with exceptions for service animals and leashed dogs on cemetery roads.
6. Adopted on second and final reading, the following ordinances:
 - a) Ordinance No. 8901, authorizing the issuance of up to \$2.5 million in industrial revenue bonds (IRBs) and authorizing the Mayor to execute the necessary bond documents for the Neuvant House Project.
 - b) THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Adopted on first reading, Ordinance No. 8900, regarding upholstered furniture on porches.
7. Concurred with the following Traffic Safety Commission recommendations
 - a) THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Tabled for one week, consideration of traffic calming devices on Alabama Street at 7th Street. (TSC Item#2; approved 9-0 on 8/5/13). Funding is not currently available for construction of these traffic calming devices.
 - b) Approved establishing a Bus Loading Zone 7:00 am – 9:00 am and 1:00 pm – 4:00 pm, School Days, along the west side of Hilltop Drive from Harvard Road north 600 feet, and adopted on first reading, Ordinance No. 8877, establishing the Bus Loading Zone. (TSC Item#4; approved 9-0 on 8/5/13).
8. Authorized the City Manager to enter into a cost share agreement with the Kansas Water Office and approved payment to the Kansas Water Office in an amount of \$52,640 for ongoing Kansas River Algal Study.
9. Approved as “signs of community interest”, a request from the Pilot Club of Lawrence to place a sign at the northwest corner of Harper and 23rd Streets

advertising their annual antique show and sale, September 20 to September 21, 2013.

10. Approved as “signs of community interest”, a request from Health Care Access to hang bras on the Kansas River bridge railings, and place two signs promoting the “Bras Across the Kaw” breast cancer awareness event near the entrances to the bridges, from September 29 to October 13, 2013.
11. Authorized the City Manager to sign a Memorandum of Understanding for the 2013-2014 Safe Winter Walkways Program.

Regarding item number 5b, Ordinance No. 8899, related to dogs in cemeteries, Farmer said he received calls today after the article in the paper. One caller said, “last week it’s couches and this week it’s dogs”. He thought they needed to be pro-active by putting posts with animal waste bags and trash receptacles encouraging folks to clean up after their dogs.

Amyx asked if dogs were currently required to be on leashes in the parks.

David Corliss, City Manager, said all dogs had to be on a leash unless they were within a fenced confined area, or were part of an electronic fence system on private property. All dogs within a city park had to be on a leash.

Amyx said he understood why they were being asked to consider this ordinance that allowed people to take their animal in the cemetery as long as it’s on a leash. He thought there were people who visited and paid their respects, and had their dog on a leash, were respectful to the grounds. He said the Commission could consider as long as the dog was on a leash, and someone was with the dog, caring for the dog, they could take the dog anywhere in the cemetery. He would remove ‘dogs that enter the cemetery must stay on the cemetery road’ and everything else was fine.

Dever asked if that wasn’t just reiterating current policy so the Commission would just not approve it.

Corliss said that’s the current law so that would be not to enact this ordinance.

Riordan said he agreed, particularly when there were no safety issues. It was covered adequately by the present stipulations. It could cause some problems for people who wanted to visit with their dogs and dogs were very important to a lot of people. Sometimes people like to take their dogs to visit someone who was important to them. He didn't see any reason for this ordinance.

Schumm said cemeteries were quite a bit different than a general park in that people should respect the people who were permanently interred in cemeteries. He suggested signage that stated all dogs must be leashed, even though it was a city law, to remind people that it was a strict requirement, and something that stated all waste must be removed. This might help identify the cemetery as a place that deserved a higher level of respect than just a regular park.

Amyx said he agreed one hundred percent. He had family members that were buried in public cemeteries and appreciated the work and patrol that went on in the cemeteries. In this case, he believed that as long as the animal was on a leash, and someone was tending to the business of that animal, people should be allowed to take their dog in the cemetery and not just on the cemetery street.

Farmer asked if that was the direction, the Commission needed to have signage stating all dogs were required to be on a leash as well as supplying appropriate receptacles for waste.

Moved by Amyx, seconded by Riordan, to deny on first reading Ordinance No. 8899, amending the City Code to prohibit dogs in city cemeteries, with exceptions for service animals and leashed dogs on cemetery roads. Motion carried unanimously.

Dever instructed city staff to install the appropriate signage and accoutrements that allowed careful dog owners to pick up after their animals.

Regarding item number 6b, Ordinance No. 8900, regarding upholstered furniture on porches, Amyx said he requested this be pulled in light of the vote last week.

Mayor Dever called for public comment.

Patricia Sinclair stated she lived at 331 Johnson Ave. She was sorry that a combination of illness and an internet breakdown kept her from submitting written remarks in advance after putting in much research on this ordinance. She hoped that others would contact their commissioners about their feelings on the priorities and conduct of the environmental code department, perhaps using social media as well. Tonight, she asked the City Commission to not approve Ordinance 8900 on its second reading. It was presented as the upholstered furniture ordinance, but that was just a smoke screen. Perhaps fire concerns could be addressed by enforcing our fireworks ban. Ordinance 8900 actually did something very drastic by introducing a new definition, that of enclosed porch and changing its existing definition of a traditional porch with a roof to the same thing as an exterior portion of the exterior or yard of your property. This meant that indoor furniture or anything else that you felt was appropriate to be on your porch or your yard was forbidden. Outdoor furniture was only required in the yard since a memo in 2004 when bikes and lawn mowers were also allowed to be placed in the exterior. If that's not clear, there was even a memo written that clarified the outdoor furniture that was the requirement didn't apply to furniture on your porch and at that time, a porch was a porch with a roof that accessed an entrance to your home. She said the Pandora's box that she opened as she traced the ordinances back showed Ordinance 8873, from this past June, that made sweeping changes by repealing all, all, of the existing environmental code. Chapter 9, Article 6, as well as Chapter 5, Article 10, parts of the property management code. This latter code was only changed in part, the full code only by reference. Visit City Hall if you want to read the whole thing. By that she meant the ordinary citizen hasn't got a prayer knowing what this was. Please consider rescinding this ordinance that was passed in June. So, they were left without any guidance as to the authority, purpose, enforcement standards, previously that a condition should be readily visible from any

public place, from any surrounding private property. She found it very strange that such massive changes were made just before the arrival of our new assistant director at planning, Kurt Schroeder, who oversaw the city's environmental code as well as some other areas. Surely he would want a say in what changes were needed and some time to get a feel for things. Brian Jimenez, Code Enforcement Officer, had for years wanted the entire city to be judged the same, but it wasn't built the same, and some of us still believed in privacy without privacy fences and in freedom. Much of Lawrence was covered by covenants that govern residents of those neighborhoods but many of us do not have a two car garage. Previous commissions had expressed concerns with having the department focus on avoiding demolition by neglect. Now it was complaint driven and those complaints were only investigated or cited selectively. She would like to get rid of commercial uses in residential neighborhoods, for example. The city had some very serious problems that deserved more focus such as the apartment building that needed to be condemned one year after Jimenez saw it, the Haskell Recycling Center, the Packard property and the property that discharged hazardous waste repeatedly. She thought it was on Pennsylvania, but she wasn't sure. Thank you for your consideration of this. She just felt that it's time to stand back a minute and let our new assistant director assess things and not continually make changes to a code that citizens weren't even aware of and particularly this one was kind of scary. She said just reading about how was one to determine if your windows lock correctly. It struck her as odd. Thank you about the cemetery. As one with loved ones buried in Ottawa she had seen people let their dogs run and poop on her parents grave and she had been outraged.

Schumm said they were not restricting the use of porches or decks or any of the other ancillary architectural appendages that they talked about in the ordinance. What they were doing was restricting a certain kind of furniture for the safety of the inhabitants, neighbors, and fire fighters. He didn't see that they were reducing the liberties and the

individual rights of people in any way that's significant. There were a lot of people getting very upset about this. You could use your porch and furniture, as long as it was an outdoor certified furniture that's not going to explode and cause a structure fire and hurt or maim the people inside, or hurt and maim fire fighters. It's very simple, it's a safety issue.

Moved by Schumm, seconded by Riordan, to adopt on second and final reading, Ordinance No. 8900, regarding upholstered furniture on porches. Aye: Dever, Riordan and Schumm. Nay: Amyx and Farmer. Motion carried.

Regarding item number 7a, traffic calming devices on Alabama Street at 7th Street, Corliss said this item would be continued for one week.

Moved by Amyx, seconded by Riordan to table for one week consideration of item number 7a, traffic calming devices on Alabama Street at 7th Street. Motion carried unanimously.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. Consider a request to establish a crosswalk with a pedestrian hybrid beacon on 11th Street at Delaware Street. (TSC Item#3; denied 7-2 on 8/5/13)

David Woosley, Transportation/Traffic Engineer, presented the staff report.

Amyx asked if staff received comment from the neighborhood association.

Woosley said staff did not.

Schumm asked what the volume of traffic was like in that area.

Woosley said it was just below 8,000 vehicles a day.

Schumm asked if that was a 24 hour day.

Woosley said yes.

Schumm asked if most of the traffic was in the day.

Woosley said yes.

Schumm asked how that compared with streets like that and was it high, low, medium.

Woosley said it's fairly typical for a collector street and 11th Street was classified as a collector street. He said that was about normal for a street like that.

Mayor Dever called for public comment.

KT Walsh said she was on the board of the East Lawrence Neighborhood Association and the reason staff hadn't heard from the neighborhood association was that their meeting was postponed due to Labor Day and they would discuss it next Monday. She stated she hadn't seen any chatter about it so far.

Amyx asked Walsh if she knew what the usage was like at the beacon on 11th, between New York and New Jersey.

Walsh said she didn't have statistics but she saw it used all the time, especially during the school year and at night. It's so hazardous on 11th Street that she saw it used by adults at night a lot. She said it took five years and a lot of really committed young parents to get that one so she thought if they were trying to get another one they had to gird their loins and talk about it next Monday.

Amyx said the night they discussed placing that particular beacon, they received quite a bit of comment. To be honest, he hadn't heard from anyone this time.

Walsh said it's probably because the school year started and there were a lot more young kids in East Lawrence now and that was her guess.

Schumm said they should have it deferred until after the meeting.

Amyx said to let the association talk so they could get some kind of word back.

Walsh said they would do that.

Moved by Amyx, seconded by Schumm, to defer for 2 weeks consideration of the request to establish a crosswalk with a pedestrian hybrid beacon on 11th Street at Delaware Street. Motion carried unanimously.

2. **Consider adopting on first reading, Ordinance No. 8898, establishing discretion for a Municipal Court Judge to order recoupment fees for convicted defendants who have been appointed counsel and/or served jail time for which the City incurred costs.**

Maria Kaminska, Assistant City Attorney, presented the staff report.

Farmer said if the judge had discretion and determined this person could pay, but this person couldn't, he thought that's discretionary based upon somebody who really might not understand someone's predicament. He asked what would happen.

Kaminska said it was a case by case basis. The judge would be obligated to assess reasonable attorney fees. In Farmer's example, there was always an appellate process. She was not sure it would happen that the judge would order someone to pay if it's unreasonable or not feasible. There was always an appeal that could be possible and that would be subject to review.

Farmer asked if the person had the option to do community service to work off those fees.

Kaminska said in some cases the municipal court judge did order community service in lieu of those fees. That would definitely be possible in this case if the judge had discretion to do so.

Amyx asked if someone had to hire counsel to go through the appeal process even though they might not be able to afford that either.

Kaminska said she did not believe that counsel was appointed on appeal, but might defer that to the municipal court manager.

David Corliss, City Manager, said yes.

Kaminska added that last year it was estimated that the city spent approximately \$102,000 on public defender fees, none of which was recovered by the city.

Dever stated the city was on track for spending almost the exact same amount.

Kaminska said that was correct. She said for the first half of the year it was approximately \$51,000 so it's on track to be about the same amount.

Riordan asked if a person stated that they could only pay \$50 or \$100, he asked if that would continue, and if so, was that part of the process where the judge looked at their ability to pay.

Kaminska said staff wouldn't say that just because a person could pay \$50 that's what it's going to be. That question might come out if the judge had discretion to assess reasonable attorney fees because \$50 might not be the reasonable amount. Or if the person could \$100 it might be less than that. The reasonable amount might be more or less than that. It wouldn't depend entirely on what the person had said. That was an indicator for the court that in some circumstances a person could pay something, but not the cost of the entire attorney fee and that it's never recovered.

Riordan said if a person knew they could put down zero dollars, he asked if the judge still had the discretion to decide independent of that amount.

Kaminska said circumstances could certainly change during the course of a criminal case. Sometimes cases took several months and people weren't able to afford those costs in the beginning, but in a few months could provide some kind of recoupment costs for the city. It really was a case by case basis in which the judge had discretion.

Amyx said if someone was arrested, would staff ask whether or not that person had or could afford counsel and if not, would counsel be appointed.

Kaminska said it was a questionnaire that helped the judge determine whether to appoint counsel initially, but the judge would usually go through the process with the defendant and appoint counsel if the judge determined counsel was needed.

Amyx said the defendant would be given counsel one way or another.

Kaminska said if there was a chance the defendant might be incarcerated if convicted, then there was an obligation to appoint counsel if counsel could not be afforded.

Amyx said this ordinance was about collecting fees and whether a defendant could or could not afford to pay. If not, the judge had the latitude to waive that fee.

Kaminska said exactly.

Schumm said Kaminska sited other cities in the report and asked if staff had any information as to what those cities collected.

Kaminska said Olathe had a flat fee of \$100 that was set by a resolution. Olathe reported that they collected \$26,368 in year 2012 and \$27,000 in year 2011. It certainly wasn't 100% of the cost, but was a percentage.

Riordan asked if those charges were only for people that were convicted.

Kaminska said yes and also if they entered into a diversionary agreement because very frequently, people that had attorneys helped the convicted obtain diversion. In cases such as DUI, for example, a diversion for DUI was considered a conviction as far as sentencing was concerned and staff was asking that it applied to both.

Mayor Dever called for public comment.

Patricia Sinclair said she would like to make it clear about several things about how this worked. A lot of people had said and written in the City that a conviction in Municipal Court was a conviction. If it was appealed, once it was appealed to district court which was no easy process, it was then not considered a conviction anymore and a person had a trial de novo which was like from the start. So they really needed to be really careful when talking about convictions and people who had convictions because if they won on appeal or the City at any point decided to dismiss the case, there was no conviction. As far as something very strange at Municipal Court, they say they're down to only one law firm, but it was really one lawyer she thought that was here and thought he spent part of

his time in another city. She said they use to give a person Douglas County Legal Aid because a person had to do that or have a valid reason written. Now Chuck Briscoe retired and they didn't have that anymore and it actually was one lawyer doing everything which struck her as odd. Also, as far as the cost, she was once told they were paid by the hour and then she was told they were paid flat rate which was a disincentive to have a trial and therefore, if you ever sat there and watched how many minors in position, DUI's, and that kind a thing were bargained out and so forth and so on. The form the judge had, they tell you it was completely up to the judge. The form was completely out-of-date and had a poverty level that was years and years old as well as no guidelines as to whether they would give that or not. She said if someone was in jail, wasn't necessarily guilty and if they could get out of jail, they probably would. Leaving them in jail was certainly not going to bring in the bucks to help them pay, but she guessed a minimum wage job would be \$72.41. She said she had some real issues with even the appeal that Commissioner Amyx discussed, that in itself was a difficult process to get the right forms and the right information and the right number of days, how to do it, how to file it and so forth and so on and certainly nothing that happened when you first go to jail. She knew that because she was sent to jail even though she had no criminal history and apparently she decided to take it up in her old age. She said she wasn't perfect, but she didn't even have a moving violation and she was a retired social worker. She had a problem with a neighbor whose cat kept coming in her yard and killing birds. She said she spoke to animal control and it was one of those things where she did everything possible to avoid humanely trapping the cat. She said she could only surmise that was the reason he falsely accused her of a felony. She said you didn't want to pay anything to be in jail, you just want to kill yourself. She said there was no Miranda and 3:00 am was the first time she was allowed to use the phone. There was no lawyer waiting for you and no one telling you anything. It was a nightmare and if she hadn't owned a home, she wouldn't have been able to get out on

bond. She said nine and a half months later, when the tape she had recording was played after the preliminary hearing was played for the assistant ADA. She said she was saying some revealing things about herself, but she would like to say that she would have had to spend nine and a half months in jail, losing everything. Nobody even cared if her cat was dead or alive or if she was picking up grandchildren. It was all false and she didn't get that \$400 back or the money when the City illegally towed her car. She just wanted the City to have a little sympathy for people who were in jail and realize that they were in jail, but not necessarily guilty. She said it was difficult for those people to get out and if they had the additional cost of paying for an untoasted English muffin. She said forgive her for loving cardinals, but when she was in her own yard and saw the cat with a cardinal. She said she was sorry for bringing it up, but she didn't know anyone else that would speak up to say they were not convicted, but that was your city's tax dollars at work, you paid for that one.

Farmer asked Kaminska if a sliding scale been looked at because in the non-profit field, if going to get health care or if you asked someone how much they could pay, that person might answer that accurately at zero or might say \$100 and really couldn't. He said that was a lot of money for someone in poverty. He asked if that had been looked at to where it was less up to the judge. He said everyone had bad days and he didn't want someone that had a bad day sent to jail, and asked if a fee had been looked at.

Kaminska asked if Farmer meant a flat fee.

Farmer said a sliding scale based upon the amount a person made which seemed to be more consistent than just discretion because he could only imagine two people making the same amount of money and one get stuck with paying \$100 and one get stuck paying \$500 for whatever reason. He said it would be more feasible to look at a sliding scale where everyone paid the same based upon the amount of money they made.

Kaminska said that could be possible, but right now they were basing this language off of the state statute that stated that municipal court could assess those things and not anyone else reviewing the municipal court judge's decisions. She said it was discretionary but there currently were and would continue to be monthly check-in's and if someone was ordered to pay those types of recoupment fees, the judge would have them back on a monthly basis to determine whether they made any payments and if they couldn't, tell the judge their reason and how much progress they made if any. If there was any reason that the defendant was not able to pay then it could be waived at that time. She said there could also be a payment plan setup for those that couldn't make the full payment and it certainly wasn't required upfront.

Amyx asked if those payments were established by the judge.

Kaminska said it would be a reasonable amount of attorney fees. The municipal court cases weren't very complicated, but different. It ranged on how far a case went and someone could come to court, perhaps with their attorney and plead guilty for example or it could go beyond that and ask for a bench trial or an appeal for example. She said it varied, but there was no schedule for those costs in each case.

Amyx said section 12-105.1 of the ordinance dealt with state law as currently written.

Kaminska said with the discretion for the municipal court judge. She said staff language was the recoupment fees and staff made it two fold, but all the language about court discretion, reasonable amount of attorney fees were all from state statute.

Riordan said he had a concern about asking Municipal Court to plead guilty or not guilty, but he worried that someone that didn't have money, that it might influence them on their choices on whether they plead guilty or not guilty. He said he would hate to see that happen to someone that didn't have money to have a situation where they didn't ask for a

court trial because they thought they couldn't afford it. He asked if that was a reasonable worry.

Kaminska said she didn't think so in those cases where the entire amount could be waived or not ordered at the very end. The defendant would ask for an attorney. She said even if the court found that the defendant was indigent, the court would appoint an attorney unless the defendant outright waives counsel. It was the court's obligation, but the defendant didn't necessarily ask for an attorney and the discretion that was provided at the end saved any type of repayment if it really wasn't feasible.

Riordan asked when that was decided.

Kaminska said the repayment of the attorney fees would be only upon conviction so it was at sentencing at the conclusion of the case.

Riordan said it was at the end and probably wouldn't have that worry.

Dever asked Kaminska if there was a set fee per client or was it a sliding scale or pay did they pay hourly to the City appointed attorneys.

Kaminska said she believed it was a sliding scale.

Vicki Stanwix, Court Administrator, asked Dever if he was asking if the City's hired attorneys were paid by case or by the hour

Dever said yes. He said one of the speakers suggested that the attorneys were paid a flat fee so they were less likely to help their clients take care of a case whether they were paid by the hour, case, person, and asked how outside council was repaid.

Stanwix said the contract was paid on a monthly basis, but was a set fee per month. She said that was for the average number of cases historically that the City had. If the case load became extremely higher than that average, then they would be compensated for the additional case load incurred.

Dever asked if it was based on how much work was done.

Stanwix said correct.

Farmer said he would like to see the City utilize a sliding scale. He said asking someone how much money they could pay wasn't a good question. He said any non-profit in town that charged a fee for service, did so by a sliding scale. He said at that point, if the judge wanted to have discretion to waive the fee or institute a payment plan made the most prudent sense. He said asking for how much money someone made and then from that time and use a chart so that everything was the same. He said he was concerned that if there was a difference with someone that made \$24,000 a year paid \$100 and someone that made \$24,000 paid \$250.00, he could see that being an issue. He said rather than risk that liability, he thought a sliding scale across the board would make the most sense.

Dever said that would be for the attorney or council provided and asked about a sliding scale for served jail time.

Farmer said he thought the same thing. He said obviously it wouldn't be the same amount because obviously attorneys cost were higher than jail fees. He said that would be smart.

Schumm said the only concern he had with that thinking was if you had two parties making the same amount. One might be single and not have a lot of obligations and could very easily afford that amount and the other might have 3 or 4 children, an elderly mother that they were providing for, or other bad debt kinds of problems that would keep them from being the equal of the first example. He said this ordinance was to allow the judge ultimate freedom in deciding how much someone should pay, or if they could pay anything at all. He said he saw where Farmer was going with that thinking and it was an equity issue in terms of how the person convicted of an offense would look at it, but on the other hand he didn't think you would get two equals out the same group. He said there would be a lot of different variances.

Farmer suggested going by household size and amount of money would be the sliding scale. Obviously, a single mom with three children was different than a single person. He said currently the judge had the discretion to waive that fee completely.

Kaminska said the current ordinance, as written, did not order any type of attorney fees.

Toni Wheeler, City Attorney, said regarding the sliding scale question, she asked the City Commission to keep in mind that Municipal Court did have a high volume of cases. She said she checked with the court manager and in 2012, they had between 3,000 to 4,000 cases last year of appointed council and seven clerks. If they had to perform an individual analysis that could be time consuming and could increase Municipal Court's workload quite a bit. She said when they proposed this ordinance they did look at what the statute allowed and what other communities were doing. They selected the across the board flat fee because it was a reasonable fee for the amount of service that were receiving. The discretion the judge had at the end did provide some protection for the person that did not have the means to pay. That was the reason for the flat fee as opposed to a sliding scale fee.

Dever said the term "judge" was fairly clear as to what the judge's roles were in assessing those fees. The judge was someone who's held accountable to the City and the City Commission to fairly assess fees. He said he was afraid they would start creating additional burden where those fees were trying to recoup some of the costs of operating those court activities and he didn't want to add to the cost. He said he understood what Farmer was saying, but he hoped the judge would be fair and unbiased about how he assessed fees. He said if he wasn't, then the City clearly needed a different judge. Ultimately, that was the judge's job to be fair and unbiased and to take into consideration all facts in the case.

Farmer said he wasn't necessarily meaning the judge, but talking about the client.

Amyx said if someone needed to appeal the ability to pay, did they appeal it to the Municipal Judge.

Corliss said if a convicted defendant was appealing the decision about the amount of the recoupment fees that were being assessed to the defendant, the judge had already made his decision and the appeal would probably go to the district court. He said he had a lot of confidence in the Municipal Judge in his ability to make those discernments. The other item not emphasized was that those were important fees and would hear more discussions about traffic fines. He said this was an important revenue source for the City and staff needed to look at other communities to see what they were doing and see if staff couldn't learn from them as far as their abilities to do that and those communities had those types of recoupment fees. He said they had costs with associated appointed counsel and costs associated with jail and taxpayers were paying those costs. The question was did they want to try in a reasonable fashion to try to recoup some of those fees.

Dever said when Corliss said "revenue" did he mean the means to pay for what they were already spending and not being reimbursed for.

Corliss said correct.

Farmer asked if the revenue would go into the general operating fund.

Corliss said it went into the general fund revenue source. He said if looking at the Municipal Court fund revenue, it was declining over recent years.

Moved by Schumm, seconded by Riordan, to adopt on first reading, Ordinance No. 8898, establishing discretion for a Municipal Court Judge to order recoupment fees for convicted defendants who have been appointed counsel and/or served jail time for which the City incurred costs. Motion carried unanimously.

- 3. Consider adopting on first reading, Ordinance No. 8897, establishing a traffic infraction fines and fees increase for speeding and defective equipment.**

Maria Kaminska, Assistant City Attorney, presented the staff report.

Dever said the presentation was fast and was about more money.

Kaminska said it also had a deterrent effect for speeders as well. The reason staff did periodic reviews was so they didn't have those reviews every 10 or more years and the increase would be gradual and not shockingly high.

Amyx said if the number of citations had gone down and the speeding fines changed in 2009, he asked if the fines were what made the citations go down.

Kaminska said she was not sure there was a direct correlation and would like to think drivers were being safe.

Dever asked if he missed the total cost relative to other cities for the ticket fine plus court costs.

Kaminska said she only listed two to show a perspective of the two cities that had low fines. She said she had that information and Stanwix had done research earlier this year.

Dever said according to that information Manhattan and Hutchison were \$25 and \$18 and a high court cost fee.

Kaminska said the amount that Hutchinson kept was \$55.00. The state mandated that \$20.50 of court cost go to the state and the City only kept part of the court cost and not 100% and represented the money the City kept and was higher. She said Lawrence kept \$39.50.

Mayor Dever called for public comment.

Patricia Sinclair said she could be wrong, but she thought the City had a grant or grants for speeding enforcement. At one time there was a speed trap on Michigan between 9th and 6th at the little round traffic circle thing and perhaps some other ones. Someone other than her might know but that might have influenced the number going

down if those grants dedicated to putting specific officers on that assignment. She said the City just had a dedicated thing to seatbelts and DUI over a weekend and that might contribute to those numbers changing.

Dever said the Commission talked about why they might have seen a decrease in the number of tickets and might be related to the fact of sitting in the car waiting with a radar gun doing saturation on speeders. In fact the number of officers was down and they were busy doing other things. He said he didn't know if there was a direct correlation or not, but they definitely changed that and the Commission asked officers to do a little bit more saturation on speeding and enforcement with the rules the City had.

Amyx asked about the 2009 increase.

Corliss said he didn't recall. He said as Kaminski indicated staff tried to periodically look at the fines and fees and see where the rest of the peer communities were and make appropriate adjustments. He said they didn't want to be too high or too low because if they didn't tend to fines overtime, the trend had been that the city had a major jump in fees and fines. He said the clear reason why the City wasn't issuing as many citations was not anything to do with the productivity of the City's officers, but the fact that the officers had higher demands in many cases as far as where they needed to be. He said the officers didn't have discretion to run patrol. The Police Chief Khatib had to disband the formality of the city's traffic unit which concentrated on speeding and accident work as well and fold those staff members into patrol units in order to have adequate coverage for the community. He said this ordinance reflected the fact that staff wanted to periodically look at fees and fines to update to be similar to other communities.

Dever asked if Kaminska had that number.

Kaminska said in 2009 it was changed to \$50 as the base which was previously \$30. She said this increase was in line with the previous increase.

Amyx said they had not really discussed the fair amount to pay. He said rather than going to \$30 at one time, to go half that amount over a two or three year period. He asked if that was reasonable to consider.

Corliss said he couldn't say it was unreasonable. He said what staff was proposing was appropriate due to the fact that staff was off to other things to look at those fees on an annual basis. He said staff wanted to be similar to where other communities were at. He said he also pointed out the importance of the revenue source in the general fund.

Schumm said he had an email where someone asked why the city was raising fines and was irritated. He said you wouldn't need to pay the fine if you wouldn't speed and run red lights and then you would never have to worry about the issue. He said obey the law and you wouldn't have those fines. He said for those people that wanted to get there faster, want to push the red light and want to be a safety risk then they needed to pay a fine.

Riordan said when looking at this at a low it was a 60% increase and on the high it was an increase of 22.5%. He said when averaging those costs it was 30% or 5% a year for the past 5 years which wasn't an exorbitant amount. He said in some ways he looked at this as graduating those costs in over 5 years, by not increasing on a yearly basis. He said that seemed a reasonable way because it was easier that everyone knew those costs. On the other hand, there weren't any increases below 10 because no one received tickets below 10. He said they were talking about people going 10 mph above which was a safety issue and one of the reasons doing this was to make it uncomfortable to speed. He said Schumm was correct in that people could choose to obey the law. He said he didn't think it was an excessive amount when talking about 5% a year. He said he was in favor of doing it all at one time.

Farmer said 10 mph and over was definitely a safety issue.

Moved by Schumm, seconded by Riordan, to adopt on first reading, Ordinance No. 8897, establishing a traffic infraction fines and fees increase for speeding and defective equipment. Motion carried unanimously.

4. **Consider initiating a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to include Bar or Lounge as a permitted use in the CN2 (Neighborhood Commercial Center) District.**

Scott McCullough, Planning and Development Services Director, presented the staff report.

Schumm said if this text amendment moved along they could consider the size of the establishment or the number of tables. He said some kind of limitation that would protect the neighborhood from a 2,000 capacity blowout crowd on Friday and Saturday nights.

McCullough said yes, parameters like outdoor seating or size of the bar. The City's Code had those use standards established in a different chapter that helped limit the size. There were use standards already established for not obviously the straight bar in the commercial districts but for their use as accessories to hotels, for their use in the CD (Commercial Districts) where an outright bar was not allowed without the food sales requirement. He said it would be a tool staff needed to explore.

Riordan said Bullwinkles was being refurbished and asked if that was an example that would be covered.

McCullough said no, that was actually an example of a bar in the MU District which received a rezoning. Bullwinkles was a non-conforming bar, but today it was conforming under a special use permit.

Farmer said the applicant was at 2017 East 17th Street. Was that was their place of residence or where they were proposing the establishment go?

McCullough said that must be their place of residence. They didn't have a distinct place right now and were looking at several different areas in the CN2 district.

Farmer said it wasn't at 2017 East 17th Street.

McCullough said no. He said they weren't looking at a new place to zone to CN2, but an existing CN2 area.

Amyx said the corner of 14th and Massachusetts was zoned CN2, he said with the school across the street he asked if there were additional things that needed to be gone through to be located at that location.

McCullough said yes. To receive a liquor license there were other criteria involved as well.

Amyx asked if those criteria would remain in place.

McCullough said yes.

Riordan said when thinking about neighborhood bars, he thought of situation that could be difficult for neighborhoods. He said it didn't look like that any place in the CN2 District would happen with Bullwinkles which was surrounded 100% by homes.

McCullough said it could occur. Those were all identified nodes in the City's Comprehensive Plan for neighborhood commercial uses. They existed primarily at intersections of arterial streets. It wasn't that you couldn't get CN2 rezoned somewhere else, more interior to a neighborhood, but under today's parameters and framework of how they looked at commercial nodes, they are primarily at those major intersections.

Riordan said someone could create a situation similar to Bullwinkles and put it right next to someone's house if they received the CN2 designation.

McCullough said with adoption of a rezoning ordinance.

Riordan said regardless of what the designation was around it.

McCullough said yes, in a situation like that one of staff's tools was to employ conditional zoning. Usually when that happened, staff looked at their list in table and say was every use in that zoning district was compatible with its surrounding context and if not,

typically work to strike those uses. While that zoning would be available for use there was no guarantee that they get that use in the future through the rezoning effort.

Mayor Dever called for public comment.

After receiving no public comment, Dever said this was a use that was stricken and now being asked to apply.

Riordan said he didn't see any reason this needed to be done. There wasn't a dearth of drinking establishments and worried him that they could create a situation where you could get a drinking establishment in a neighborhood.

Dever said it was a use that was previously allowed when the zoning designations were changed in the exact same locations that they were speaking about. He said by code, they removed a permitted use, not on purpose.

McCullough said it was done purposely based on the diagnostics, but they also didn't know that they had detailed discussions about every use when the 2006 code was employed. He said staff had done many text amendments, once they've identified that there might be an issue involved or at least a different perspective and had typically gone through that process of text amendment.

Dever said as things came up they typically went through this process.

McCullough said zoning districts separate uses and the 2006 worked to make clear distinctions in the zoning districts. The other way staff made clear distinctions was through their use standards that he displayed where the use might be allowed across the board, but limited in different ways, in different districts, where it was necessary.

Dever said the reason why was that the people that owned that property and use to be an acceptable use, but the code was changed and was no longer a permitted use.

McCullough said the other component was that the CS district which there was ample CS zoning along strip development, but the City's Code prohibits its use for new developments. Where there were nodes at the major arterials where more likely going to

be at its highest use, CN2, unless it was a regional community commercial like at 6th and K-10 for example, where it was a much more intense use. While they couldn't employ, the MU district was not likely going to be employed very much in the west part of Lawrence. The CD district was downtown, the CCR was more regional in scope and the CS was not used anymore as strip development, CN1 and CN2 were really intended to try to replace CS, but without all of the uses. He said that was an important component as well because without the use you're not likely to see very much except at the very auto centric commercial sites which were much more intense and see the bar uses. He said you're not likely to see anywhere close to the neighborhoods.

Schumm said with a bar neighborhood setting that the Commission was considering, under the restrictedness, could they restrict hours of operation as well. In Kansas you could sell liquor up to 2:00 am and if it was a popular bar with an outdoor component you're going to have noise, music, and people. He asked how they could protect the city and the neighbors and yet go ahead and accomplish what the applicant was asking.

McCullough said staff would explore all of those situations. Most of the use standards related to the physical development of a use, but that was a fair question and a fair thing to direct staff to look at which was all of the operation characteristics as well to see if there were standards. Staff might also look at the Special Use Permit vehicle versus allowing it outright. If you really wanted to judge the use by its context and how it operated, then it might be that a Special Use Permit was the most appropriate vehicle like it was in the MU district, so that you understood and asked the questions about the operations. He said staff was likely to present a couple of options to the Planning Commission and City Commission about what they thought made this a compatible use.

Schumm said right now, a special use permit could not be used in the CN2 zoning district.

McCullough said it was prohibited use all together.

Schumm said if the City Commission decided that was the way they wanted to go, the Commission needed to move this forward and then when the City Commission approved it, approve it for a special use benefit only.

McCullough said correct. There were two ways that staff allowed uses, one was by the "P" which stood for permitted use outright and sometimes that had use standards associated and sometimes it didn't. It was a permitted use and a site plan could be done, building plans, and move in starting the operation. The other way to get a use established was via the special use permit and that was the process that went to the Planning and City Commissions and was at the discretion of the City Commission whether or not that was granted at that location at a specific location.

Dever said to help clarify, there was a CN2 district at the southeast corner of Bob Billings Parkway and Wakarusa and there were currently two bars at that location. He asked how those bars got to that location.

McCullough said staff's research showed those bars were established when it was zoned C2.

Dever said those two bars existed before. He asked if one of those bars closed down and another bar wanted to open under a separate period of time, it would not be allowed at this current location.

McCullough said that bar could lose their grandfathered right to that use. He said that was an unintended consequence that staff was realizing with this request. It had not been presented to staff by any of the other owners that that situation existed.

Amyx said the action was to initiate the text amendment that would allow as a permitted use in the CN2 and asked if there needed to be any change in that language or the initiation that would direct staff to take this request to the Planning Commission the special use permit.

McCullough said that was a general way to say, “explore all of the possible methods” and staff would.

Riordan asked McCullough to explain what happened after tonight if this text amendment was passed.

McCullough said staff would set this text amendment for a Planning Commission hearing date and any member of the public could testify and present information to the Planning Commission. Staff would draft a report with one to three options for the Planning Commission to discuss and then the Planning Commission would make a recommendation to the City Commission. He said it was ultimately the City Commission’s decisions about whether to adopt the language that would become code, if adopted and supported, it would allow an establishment to open a bar or lounge use in the City’s CN2 district with the appropriate process to establish it after that. He said that would either occur as a permitted use, either with or without use standards so staff could look at size and outdoor dining and noise etc..., or establish a special use permit vehicle where they would actually need to, once adopted, apply for a special use permit and that would be processed through the Planning and City Commissions as a special use permit application.

Riordan said there seemed like there were some inequities based on the going from CC to the CN2. He said in realizing those types of things that Schumm mentioned which was noise and all the other things that bars go through, as long as they mitigate those concerns and right some wrongs done by previous changes he would be amenable to that but had some significant concerns about safety and the difficulties about having bars in a neighborhood situation.

McCullough said he appreciated those comments, and the City Commission would be receiving a lot more information about this as it went through the process.

Amyx asked if this text amendment would be on the September Planning Commission's agenda.

McCullough said no, but possibly October or November.

Moved by Amyx, seconded by Schumm, to initiate a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to include Bar or Lounge as a permitted use in the CN2 (Neighborhood Commercial Center) District. Motion carried unanimously.

E. PUBLIC COMMENT:

Patricia Sinclair said this was not of a general nature and the cameras had left, but she shared something with the City Commission that was deeply personal, hurtful to her today and she misread the clock and was addled by that and she wanted to say that without a doubt when the ADA got a copy of the tape that was made by her at that time and had her accuser come in and hear it, they had a hearing very shortly afterwards in which the ADA asked the judge to dismiss the case because he felt he could not get a guilty verdict. The witnesses in this case were persons across the street against whom she had, but did not currently have, a protection from stalking order and his girlfriend he lived with. So she just wanted to tell the City Commission that ending. It was a terrible thing and ruined her life and when she came back home she received a notice from you guys to come to court for housing violations so she was just saying that she called the Chief's office last year and asked to make a complaint against the officer because he had the same tape to listen to and so forth and there were various other odd oddities about the whole situation. She never got a response from the Chief, but higher power prevailed and that officer drank himself three times the legal limit of alcohol and on January 2nd crashed into the pole at 6th and Wakarusa and her complaint was satisfied because he was out to kill somebody that night and she was glad he killed himself instead of some innocent person.

Dever said that was inappropriate and asked Sinclair not to say another word regarding any of those issues whatsoever. If Sinclair had nothing else to say he asked Sinclair to sit down.

Sinclair said she tried to go through channels and the police department was not interested.

Dever asked Sinclair not to talk about that subject anymore.

Sinclair asked what could she say.

Dever said she could talk about anything she wanted to, but not about that subject.

Joseph Harvey said he was the dogs in the cemetery guy. He said he didn't know if the City Commission had an opportunity to read the letter that he sent to the Commission on the 21st of June, but to introduce himself he would like to reread a section of the letter to the Commission which read:

Dear Commissioners

"My family and I have lived, gone to school and worked in Lawrence for nearly 25 years. We have a great city. Since last year we also had family buried here. Several times in the last few months I personally encountered dogs in the cemetery. Some had been on leashes, some have not, and some have had electronic collars. To have dogs walk across graves and to both defecate and urinate on graves is to my understanding legal as long as the dog owner picks up the feces, since the cemeteries are part of the parks system. We can all agree that the parks of Lawrence are beautiful and dog owners should be able to enjoy them with their beloved pets. I'm also sure that they all readily agree that to walk dogs in the cemetery with all that it means to walk a dog is wrong. It was not matter of morality, it was a matter of human respect and ethics is what ought to be done, not what is done, but ought to be done. That's what ethics is all about. It's filthy, contemptible, and disrespectful with regards to honoring and remembering those that have left this life."

He said he was not sure what sort of discussion or decision making process was handled with the City Commission, unfortunately he was out of town on business until a few minutes ago and meant to be present. It was a difficult thing to consider that this would be an ordinance that wouldn't be widely acclaimed. He said Schumm made a great comment earlier about speeding laws, but you couldn't pass a law against speeding and expect people not to speed, but what you could do was tell people if they did speed, you could speed all you wanted, but it would cost you something. He said as a child of the 60's, you couldn't legislate morality, but legislation was exactly that, which was an attempt to bring morality, but again, this was much higher than morality, morality just described how they were. Ethics was how they ought to be and people, you would expect, would have the common decency to not allow their dogs to walk across someone's grave. He said he wouldn't walk across some grave himself. He said he would walk on his own kid's grave if he wanted to and no one else would do that to his kid's grave. It was just a common decency and unfortunately our culture did not have that common decency. Even though we all knew that we should drive the posted speed limit or at a safe speed, it was not safe anymore at 10 mph passed the speed limit and the City needed to fine those speeders and he agreed with that because we don't have common sense and we weren't respectable people. He said he wasn't sure what the City's processes were, but urged the City Commission to reconsider something that was very simple and completely ethical by any human standard.

Dever said the City Commission considered the ordinance and felt like there were multiple reasons why the addition of this ordinance would not be approved by this Commission, but would be happy to discuss this issue privately with Harvey about what the City Commission decided or why the Commission didn't feel like moving forward at this time.

Harvey asked if it would be appropriate for him to resubmit his request.

Dever said that could be done. He said the City Commission believed they could do more to help protect and preserve all of the public parks, but particularly cemeteries where things that could desecrate the property and the grounds might cause people some anxiety and concern. He said the City Commission voted to deny the ordinance unanimously.

Harvey said everyone had the right to be wrong.

Dever said yes. Again, he said he would be happy to discuss this issue after the meeting.

F. FUTURE AGENDA ITEMS:

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

G: COMMISSION ITEMS: None.

H: CALENDAR:

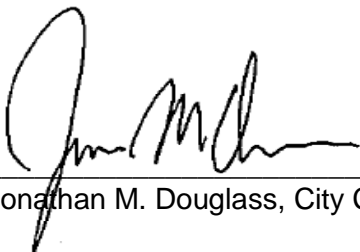
David Corliss, City Manager, reviewed calendar items

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

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

Moved by Schumm, seconded by Amyx, to adjourn at 8:19 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON SEPTEMBER 24, 2013.



Jonathan M. Douglass, City Clerk