

**APPROVED MINUTES  
REGULAR COUNCIL MEETING  
April 13, 2010  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Meidinger  
Vaughn Nun, Heath Horyna  
Chuck Warren  
Tom Haynes, Mark Staats

COUNCIL MEMBERS ABSENT:

WARD I  
WARD III  
Jim Craig  
Cheryl Bannon

Flag salute was led by Council Member Staats. The invocation was led by Pastor Brad Beets, Pleasantview Baptist Church.

**CONSIDERATION OF MINUTES**

Minutes of the March 23, 2010 Regular Council Meeting.

MOTION: Haynes moved to approve. Meidinger seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**PUBLIC FORUM:**

**Council Member Haynes** expressed his appreciation to those who attended Process for Success at the high school last week.

**Kathy Sexton**, City Manager, stated that we continue to tweak our sound system and hopefully we will get positive comments from those watching at home. For those in the audience, we also have "hearing enhancers" available that are hooked into our sound system and you should be able to hear all the speakers regardless of where you are sitting. They will be available on the table inside the door to the council room.

**ACE GRANT PRESENTATION**

**Ron Wolf**, Derby Historical Society, made a presentation regarding the ACE Grant Award they received last year.

DISCUSSION:

**Council Member Warren** thanked Mr. Wolfe for the work he and all the volunteers put into the museum. He commented to the citizens of Derby, if you have not taken the time to visit the museum, there is a lot of interesting stuff to see. It might not show as nice as some of the high dollar museums but the displays are excellent.

**Mr. Wolf** advised the museum is open the 2<sup>nd</sup> and 4<sup>th</sup> Saturdays of the month from 10:00 a.m. to 2:00 p.m.

**Council Member Horyna** agreed with Mr. Warren. Strong roots start with understanding and knowing your history. If you don't learn from your history you are compelled to relive it. The historical museum is a great place to learn about Derby history.

**Council Member Haynes** appreciates the volunteers' time given towards the museum.

**Mayor Avello** advised he and his wife went in there one day and were totally blown away at the military room and all the work that has been done.

## **BOARD AND COMMISSION APPOINTMENTS**

**Mayor Avello** commented on the number of volunteers who applied to be on a board. There are 12 new appointees this year because he believes we should change these boards over to give the people who want to volunteer a chance to make this a better community. He thanked the 12 outgoing board members for serving their community.

### **Background:**

- In February, the Mayor requested applications to fill expired terms and vacancies in City advisory boards and commissions.
- Many good applications were received. Due to the strong interest, the requests of several current appointees for reappointment were not able to be accommodated. The Mayor's recommended appointments are as follows:

<b>ADA Board</b>	Victor Straub (reappoint) Fred Trautman (reappoint) Tina Dillon (appoint)
<b>Construction Trades Board</b>	Rich Schmidt (reappoint) Margaret Langley (appoint) Bruce Weber (appoint)
<b>Derby Recreation Commission Board</b>	Ken Mulanax (appoint effective September 2010)
<b>Economic Development Board</b>	Marsha Volz (appoint) Durrel Kelley (appoint) Ben Swigart (appoint)
<b>Library Board</b>	DeAnn Barr (reappoint) Lisa Pappas (appoint)
<b>Ordinance Review Advisory Board</b>	Betty Wilken (reappoint) Thane Rockhill (appoint)

Gunter Hansen (appoint)

**Parks & Urban Forestry Board**

Chris Gadd (reappoint)  
Steve White (reappoint)  
Jennifer Brown (reappoint)

**Planning Commission**

E. Keith Volz (reappoint)  
Kelly Farber (reappoint)  
Tasha Brackeen (appoint)  
Randy White (appoint)

**Senior Services Advisory Board**

Eleanor Underwood (reappoint)  
Marilyn Newkold (appoint)  
Mickey Bowie (appoint)

**Zoning Appeals Board**

John Riggerbach (reappoint)

- Recognition of those people who are retiring from service on the various City boards and commissions is planned for the City Council meeting on May 11.

**Legal Considerations:**

- All appointments are made by the Mayor with the consent of the Council pursuant to the following ordinances and statutes:
  - ADA Board – City Code 2.16.280
  - Board of Construction, Trades and Appeals – City Code 15.08.010
  - Derby Recreation Commission Board – K.S.A. 12-1926(a)
  - Economic Development Board – City Code 2.16.070
  - Library Board – K.S.A. 12-1222
  - Ordinance Review Advisory Board – City Code 2.16.230
  - Parks & Urban Forestry Board – City Code 2.16.120
  - Planning Commission – City Code §2.16.030
  - Senior Services Advisory Board – 2008 Ordinance #1937
  - Zoning Appeals Board– City Zoning Regulations §1001

MOTION: Haynes moved to approve the Mayor’s reappointments and appointments to Derby Boards and Commissions. Nun seconded.

**Council Member Warren** commended the Mayor for his choice of appointees. In some years past we have struggled to find people to volunteer, but this year we had a lot of people volunteer, really quality candidates.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**ARTISTIC, CULTURAL & ENTERTAINMENT GRANT AWARDS**

**Stephanie Knebel**, Assistant City Manager, presented the staff report.

**Background:**

- In 2006, the Derby City Council established the Artistic, Cultural & Entertainment (ACE) Grant program as a means to financially partner with organizations to provide artistic, cultural, or entertainment events or programs that contribute to the quality of life in Derby. The spirit of this grant program is to encourage development of activities to bring people to Derby or, likewise, keep Derby residents in town for their leisure time. Historically, the following amounts have been awarded:

<u>Year</u>	<u>Amount</u>
2006	\$6,500
2007	\$7,500
2008	\$8,000
2009	\$5,900

- Applications are received annually and reviewed by a selection committee made up of two members of the City Council and City staff. The selection committee makes recommendations for allocating grant funding to the City Council for approval.
- The selection committee met on March 29 to discuss the ACE Grant applications and determine its recommendations to the City Council.
  - Members of the selection committee include: Council Member Heath Horyna, Council Member Jim Meidinger, City Manager Kathy Sexton, and Assistant City Manager Stephanie Knebel.
  - The selection committee made the following recommendations:
    - DCCPHC Summer Fest \$2,500
    - DRC Rock N’ Route Triathlon \$800
    - Derby Twins Parents Week \$2,000
- The Derby Community Coalition Promoting Healthy Choices (DCCPHC) requested \$2,500 for its fourth annual Summer Fest in High Park, scheduled for August 28. Last year’s event drew more than 80 participating booths and an estimated attendance between 1,600 and 2,000. This event is designed to expose families to a range of healthy and fun activities in which they can participate together on an on-going basis. Historically, the City has participated in this event since its inception as follows:

<u>Year</u>	<u>Request</u>	<u>Award</u>	<u>Other</u>
2007	\$1,500	\$750	with \$750 match
2008	\$2,500	\$1,000	with \$750 match; City also provided free rental for shelter and amphitheater
2009	\$2,500	\$1,000	with \$300 match of other cash contributions; City also provided free rental of shelter and amphitheater and use of gator

Because the committee recognizes the quality of this event and the support it provides for many local organizations, it recommends a grant award of \$2,500. DCCPHC and its cadre of volunteers and community organizations have made this event successful for several years. The committee believes that given its proven success, eliminating the requirement for a cash match is appropriate in 2010. The committee recommends requiring an in-kind match of \$2,500 from booth rentals, concessions, and prizes, which given the event's history, should not be difficult to accomplish.

The City also would continue to provide free rental of the shelter and amphitheater, the use of one gator, and staff support from Fire and Rescue, Police, and Public Works Departments. The City would receive recognition by having its logo on all promotional advertising.

- The Derby Recreation Commission requested \$1,500 to support the Rock River Rapids Rock N' Route Triathlon, the 2<sup>nd</sup> year of this event. This triathlon consists of a 400-meter swim at Rock River Rapids, a 12-mile bicycle race with a route through Derby, Sedgwick County and the City of Mulvane, and a 5K run through High Park. The committee recognizes that this event should continue to grow and should be supported financially by the City for one final year, after which its success should be secured by self-generated revenues and by the DRC. The committee recommended an award of \$800 with no match required. In addition, the City will provide free rental of Rock River Rapids and staff support from the Fire and Rescue, Police, and Public Works departments. The City would receive recognition by having its logo on all promotional advertising. Historically, the City has participated in this event:

<b>Year</b>	<b>Request</b>	<b>Award</b>	<b>Other</b>
2009	\$1,500	\$400	Originally awarded \$1,000 if \$1,000 match in cash contributions was raised; award was later reduced to \$400 to match the amount of cash contributions raised.

- The Derby Twins summer baseball organization (college age) requested \$2,000 to sponsor Parents Week June 30-July 7, which would provide free admission for all attendees of 5 home games (currently scheduled games include Haysville and Hays [3 games]). Besides this benefit to Derby residents, the community will host parents of the ball players who will be in town visiting their sons during this week, which the committee deemed to be of economic benefit to area merchants. The committee recommended an award of \$2,000 with no financial match required. The City will request the Twins track the number of room nights used by the Twins and visiting teams at the Hampton Inn. The City will receive recognition on an event banner, in all correspondence related to Parents will, in game programs, and on the electronic sign located at the Madison/Woodlawn intersections. Historically, the City has participated in this event:

<b>Year</b>	<b>Request</b>	<b>Award</b>
2006	\$1,500	\$1,500
2007	\$2,000	\$2,000
2008	\$2,000	\$2,000

2009	\$2,000	\$2,000
------	---------	---------

- The only other grant application received was from the Miss Derby/Miss McConnell/Sunflower Princess Pageant and Arts Awareness Initiative for \$2,500 to assist in pageant start-up costs. The committee felt that the request: 1) did not meet the spirit of the ACE Grant to benefit a reasonably broad public audience; 2) did not meet the requirement to have multiple financial supporters to ensure that the ACE Grant is not the sole source of funding; and 3) did not provide a clear direction of how the Art Awareness Initiative tied the arts community into the pageant program.

**Financial/Sustainability Considerations:**

- ACE funding is derived from 25% of revenues from fireworks stand permit fees from the previous year.
- \$35,975 is available for 2010 ACE Grant awards, including \$18,750 from 2009 fireworks stand permit fees plus an additional \$17,225 from prior unspent allocations.
- The committee’s recommendation totals \$5,300, which leaves \$30,675 available.

**Legal Considerations:**

- The City Council has empowered the selection committee to make recommendations for allocating available funds to successful applicants based on program guidelines as evaluated by the committee.

**Policy Considerations:**

- The selection committee finds that the grant application from the DCCPHC, DRC, and Derby Twins fit within the scope and intent of the grant program.

MOTION: Horyna moved to approve ACE Grant awards to the Derby Community Coalition Promoting Healthy Choices for the Summer Fest 2010 in the amount of \$2,500, to the Derby Recreation Commission for Rock N’ Route Triathlon in the amount of \$800, and to the Derby Twins for Parents Week 2010 in the amount of \$2,000. Haynes seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**REQUEST FOR REZONING BRETHERN CHURCH PROPERTY ON WOODLAWN FROM R-1 TO I-1**

Bud Newberry, City Planner, presented the staff report.

**Background:**

- This property, described as Lots 17 & 18, Block 2, Derby Heights Addition and Lot 19, Block 2, First Addition to Smithmoor Highlands, is located on the east side of Woodlawn just north of Madison.
- A long standing policy of the Derby Planning Department has been to encourage the owners of land with uses that do not match the established zoning on the property to re-zone to the district most compatible with their use.
- In recent years, new churches have been required to obtain the I-1 “Institutional District” zoning on their proposed building site prior to beginning construction. The I-1 district is the least intensive of the commercial zoning districts and is intended to be used adjacent

to residential uses or to serve as a buffer between residential uses and more intensive development. Churches are an outright permitted use in the I-1 district.

- The existing church building located on this site was built prior to adoption of zoning regulations in Derby and is now zoned R-1.
- Notice of the public hearing conducted by the Planning Commission on March 18, 2010, was published in the City newspaper and sent to nearby property owners.
- The Planning Commission recommended approval of the proposed rezoning by a vote of 7-0.

**Financial/Sustainability Considerations:**

- Re-zoning will not result in additional city expenditures.
- If the property is re-purposed for use other than by a religious or non-profit organization, it will become taxable, thus increasing the City's tax base.

**Legal Considerations:**

- All conditions precedent to consideration and approval of this proposed zone change by the Council have been satisfied.

**Policy Considerations:**

- This property is presently shown in the Comprehensive Plan as Institutional, which is compatible with the proposed zoning district.
- No protest petition was filed within the prescribed 14-day protest period.

ORDINANCE NO. 2013

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS, FROM R-1 "SINGLE FAMILY RESIDENTIAL DISTRICT" TO I-1 "INSTITUTIONAL DISTRICT;" AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

MOTION: Staats moved to approve an ordinance rezoning Lots 17 and 18, Block 2, Derby Heights Addition and Lot 19, Block 2, First Addition to Smithmoor Highlands from R-1 "Single Family Residential District" to the I-1 "Institutional District", based on the Findings of Fact presented by the Planning Commission. Horyna seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**RESOLUTIONS FOR PUBLIC IMPROVEMENTS TO SERVE STONE CREEK 5<sup>TH</sup> ADDITION**

**Bud Newberry**, City Planner, presented the staff report

**Background:**

- Stone Creek 5<sup>th</sup> Addition is located approximately ½ mile west of Rock Road and just north of Patriot Avenue.
- The Final Plat of this addition was approved by the City Council on March 9, 2010.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewer, water lines, streets, drainage and sidewalks.

- The plat has now been recorded, and Gilmore & Bell, the City’s bond counsel, has prepared the corresponding resolutions for Council consideration.

**Financial/Sustainability Considerations:**

- The benefit district defined in the street, sewer, water and sidewalk resolutions includes only those lots within Stone Creek 5th Addition.
- The benefit district defined in the drainage resolution includes all lots in Stone Creek 5<sup>th</sup> Addition, plus a portion of Stone Creek 4<sup>th</sup> and Stone Creek 2<sup>nd</sup> Additions.
- The resolutions for infrastructure improvements (sanitary sewer, water lines, streets, drainage and sidewalks) total \$369,000. All of this cost will be paid by the benefit district.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

**Legal Considerations:**

- The resolutions were prepared in accordance with Article 12-6a of the Kansas Statutes.

**Policy Considerations:**

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 17-2010  
 SANITARY SEWER IMPROVEMENTS/STONE CREEK 5<sup>TH</sup> ADDITION  
 RESOLUTION NO. 18-2010  
 WATER LINE IMPROVEMENTS, PHASE 1/STONE CREEK 5<sup>TH</sup> ADDITION.  
 RESOLUTION NO. 19-2010  
 STREET IMPROVEMENTS-PHASE 1/STONE CREEK 5<sup>TH</sup> ADDITION.  
 RESOLUTION NO. 20-2010  
 STORM WATER SEWER IMPROVEMENTS/STONE CREEK 5<sup>TH</sup> ADDITION.  
 RESOLUTION NO. 21-2010  
 SIDEWALK IMPROVEMENTS-PHASE 1/STONE CREEK 5<sup>TH</sup> ADDITION.

MOTION: Haynes moved to approve resolutions for public improvements to serve Stone Creek 5<sup>th</sup> Addition. Meidinger seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**CHARTER ORDINANCE – REVISION OF WARD BOUNDARIES (REPEALS CHARTER ORDINANCE NO. 6)**

**Phil Alexander**, City Attorney, presented the staff report.

**Background:**

- Charter ordinance no. 6 provides for revision of ward boundaries whenever the number of registered voters in a ward exceeds the number in any other ward by 20%.
- At its January 20, 2009 retreat, the City Council discussed how and when ward boundaries should be updated.

- The consensus at the time was that no changes in the number of wards or the number of council members were warranted, only that ward boundaries should be based on population rather than registered voters.
- On January 27, 2009, the Council added the project to the list of City Council Priorities for staff to accomplish as time allowed.
- At its March 23, 2010 meeting, the City Council considered a draft charter ordinance and directed revisions to provide for “grandfathering” of Council members in the event redistricting changes their residence from one ward to another.
- Under the revised proposal:
  - Current ward boundaries would remain in effect until completion of the 2010 U.S. census, when boundaries would be revised based final census data.
  - Thereafter, boundaries would be revised every ten years when official census data become available.
  - When redistricting results in a Council member’s residence being moved from one ward to another, he or she would serve out the balance of their term.
- The current practice of adding newly annexed territory to the ward to which it is contiguous will continue.
- No boundary revision would be effective within 30 days before an election or a filing deadline for candidates, whichever comes first.

**Financial/Sustainability Considerations:**

- The cost of revising ward boundaries is primarily s function of the staff time required.
- Tying boundary revisions to census data will enable better planning and budgeting of the cost since redistricting would occur at regular 10-year intervals.

**Legal Considerations:**

- This charter ordinance would become effective 61 days after publication unless a petition is filed requesting that it be put to a popular vote.

**Policy Considerations:**

- Basing ward boundaries on population is the “gold standard” in terms of ensuring that Council members represent approximately equal segments of the community.
  - Boundaries based on registered voters may result in over- or under-representation of specific areas within the community.
  - The City Council should, insofar as possible, represent all segments of the community equally.
- Wards based on population rather than voting patterns are more likely to result in equitable representation on the City Council

CHARTER ORDINANCE NO. 49

A CHARTER ORDINANCE PROVIDING FOR REESTABLISHMENT OF WARDS AND WARD BOUNDARIES WITHIN THE CITY; AND REPEALING CHARTER ORDINANCE NO. 6 OF THE CITY.

MOTION: Staats moved to adopt a charter ordinance providing for revision of ward boundaries every ten years based on the most recent U.S. census population data. Horyna seconded.

VOTE: Motion carried 7-0, Mayor Avello voted, Craig and Bannon absent.

## **FIRST READING OF PROPOSED AMENDMENTS TO SIGN REGULATIONS IN ARTICLE 7 OF THE ZONING ORDINANCE**

**Bud Newberry**, City Planner, presented the staff report.

### **Background:**

- The Planning Commission periodically recommends amendments to the Zoning Ordinance when changes seem warranted and do not conflict with Kansas State Law or other ordinances of the City.
- Due to an increase in the number and variety of signs being used by residents and businesses in Derby, staff presented a recommendation to the Planning Commission to amend portions of the Sign Code, Article 7 of the Derby Zoning Ordinance.
- A public hearing was advertised in the City's official newspaper and was conducted by the Planning Commission on April 1, 2010, followed by a vote of 7-0 to approve the proposed amendments.

### **Summary of Major Changes to Article 7 of the Derby Zoning Ordinance**

The following are the primary changes to Article 7 of the Zoning Ordinance proposed by city staff and approved by the Planning Commission. Article 7 contains the regulations which designate the type, size, location, number, and duration of display of the various types of signs. Several minor corrections also are proposed that are not discussed in this summary.

1. Signs in rights-of-ways. Currently, some signs may be placed in the city right-of-way (most notably signs advertising housing subdivisions), but many others may not. The proposal is to allow all signs in right-of-way so long as they are placed a minimum of eight (8) feet back from the curbing, unless conditions will not allow for 8 feet. In that instance, less will be acceptable if conditions will allow the sign to be placed without blocking the sight lines for motorists. This will facilitate enforcement. (See Sections 702 and 704.)
2. Signs allowed in the "Special Event Commercial" category. Currently, the ordinance allows up to four signs to be permitted for a total of 100 days a year. Compliance is nearly impossible to track, both for business owners and the City. The proposal would allow four signs when the special event is either a grand opening or a going-out-of-business sale. Grand opening signs could be displayed for 21 days; going-out-of-business signs for 30 days. All other types of signs would be considered promotional signs and would be permitted for 30 days at a time. Only one such sign could be displayed at a time, but could be replaced after 30 days with another permitted sign. (See Section 705.)
3. Naturally Energized Signs. This type of sign or decoration (usually strings of pennants, streamers, spinners, etc.) is normally seen at automobile dealerships and occasionally in other locations. Currently, they are not regulated, either as to location or duration. The proposed amendment would allow them only in the B-4 and B-5 districts where automobile sales are a permitted use. They could be used in lieu of their one permitted promotional sign, but would require a permit. (See Sections 705 and 706.)
4. Real Estate Signs. These signs would be required to be placed at least eight (8) feet from the back of the curb and ten (10) feet from the edge of any driveway for motorist visibility purposes. (See Sections 704 and 705.)

5. Special Event Non-Commercial (governmental bodies, religious organizations, civic, educational, general public). This is our most problematic type of sign to control. Most of the people involved with such organizations are not familiar with sign regulations in Derby. Staff recommends allowing up to ten (10) signs, either on or off-site, for up to ten (10) days, inclusive of the day or days the event is held. These signs must be removed within 48 hours of the completion of the event. (See Section 705.)
6. Garage Sale Sign. This new category is proposed because they do not fit well into the Special Event Non-Commercial category. The proposal would allow four (4) signs to be placed either on or off-site for 24 hours prior to the sale; they must be removed within 24 hours after the sale is concluded. No permit would be required, but the 8 foot setback from the curb would apply. (See Section 705.)
7. Penalty for Violation of the Ordinance. This new provision is adapted from the Wichita sign code. Violations are punishable by a fine of up to \$500. Also, signs impounded by code enforcement personnel would require payment of a \$5.00 redemption charge. This charge is already included in the City's fee resolution. (See Section 709.)

**Financial/Sustainability Considerations:**

- This clean-up of sign regulations is expected to result in more productive use of time by code enforcement and management personnel. For example, time that is currently spent attempting to explain the reason why some businesses are treated differently from others in terms of placement locations for signs in right-of-way could be redirected to more productive endeavors.

**Legal Considerations:**

- This proposed amendment to the City's zoning regulations is a permissible exercise of the Governing Body's authority.
- All conditions precedent to consideration and approval of this proposed amendment to the zoning ordinance by the Council have been satisfied.
- The Governing Body has the same options available to it as with any other zoning amendment.

**Policy Considerations:**

- City staff will conduct an extensive program to educate the public of the changes to the sign regulations prior to beginning enforcement of new regulations.
- Upon approval of the proposed amendments, publication of the ordinance, and completion of the educational program, staff will begin to collect \$5 for redemption of any sign impounded by Code Enforcement personnel.
- The City Council's recently established policy is to discuss ordinances with major policy changes at one council meeting followed by action at a second meeting. Action on this zoning amendment is anticipated at the April 27 meeting.

DISCUSSION:

**Council Member Meidinger** asked about energized signs. He has seen flags and pennants used for birthdays, open houses, and apartment openings in B-4 and B-5. He asked how that would be addressed.

**Mr. Newberry** advised that we will continue to allow those for grand openings and events that were mentioned by Mr. Meidinger, but on a day-to-day basis a business won't be able to put them up just to have them up.

**Council Member Meidinger** indicated that when looking at consistency he is not sure that's a good idea. In provision 7 it states there is a \$500 fine and if you allow them at an apartment complex or garage sale, the neighbor will call up and say the sign ordinance does not allow these in R-1. How are we going to address that?

**Mr. Newberry** stated that grand openings and going out of business are two events that are specifically spelled out for different periods of time.

**Council Member Meidinger** indicated he is not opposed to these types of things at all but just wants to be consistent since we are redoing this.

**Mr. Newberry** advised we can make sure before we come back that we have it spelled out specifically so people will know. We will continue to allow them for short periods of time for grand openings and things like that but not for extended periods of time.

**Council Member Meidinger** asked if we are giving some type of validity to pole signs since there is a definition provided.

**Mr. Newberry** advised we are not. We have never had a definition of a pole sign in the ordinance for whatever reason. One of the reasons may be that a lot of the companies substitute the word pylon sign for pole and we want to be sure they understand that a pylon sign is a pole sign and pole signs are not allowed.

**Council Member Horyna** asked how enforcement will be monitored. Will it be complaint driven or monitor driven, or both?

**Mr. Newberry** advised it would be both. We do a lot of enforcement because of complaints. One of the things we are going to start doing once the ordinance changes are made and we feel we have done a good job of educating people about the new requirements, is to have a code enforcement officer working on at least Saturday mornings. We haven't really decided for sure how long they need to work on Saturday, we are still working on that but at least there will be some enforcement on the weekend to make sure the new code is being adhered to.

**Council Member Horyna** asked about the penalty for violation. Is there a fine matrix established? He would hate to see somebody get a \$500 violation for a garage sale sign.

**Mr. Newberry** advised it is up to the judge to determine the amount of the fine. He can fine up to \$500. He would think that a first time offender would be something less than that.

**Council Member Horyna** clarified that municipal court would make that determination.

**Mr. Newberry** advised that was correct.

**Council Member Warren** agreed with Mr. Meidinger on the naturally energized signs. He will occasionally put up banners as part of his open house and as he reads this ordinance, that would technically be illegal. There are a number of situations where those kinds of signs have been used, are effective and should be allowed to continue to be used. He thinks that area needs to be reworked. Another area of concern is allowing up to 10 signs for special events, non-commercial. He finds that to be way too small of a number. This might fall under the aspect of unintended consequences. A few weeks ago they had an Easter celebration and on his block alone there were a number of "He is risen" signs in the yard. If those were owned by a church and they had more than 10 of those then they would be in violation of our ordinance. A number of times in the past we have honored our police department with police appreciation signs and we will put those throughout the community. If he is reading this right that would be a violation. He does not think that is the intention of what we are wanting to do. The other thing is we do use these signs and organizations that are operating on a shoestring budget and are trying to get the word out about an event or something special that is going on, this is undoubtedly the most cost effective way they can do that. Even if we limited signs to 2 per major intersection so that people on both sides can see the sign without too much trouble, there are 4-5 major intersections along Rock Road so we could put 10 signs along Rock Road alone to get the word out. He would see another 5 intersections along K-15 that would need to be identified. Depending on the event or organization you may want to put some signs on the intersections along Buckner because that is where the traffic is. He would like to see that number raised to at least 30. That would allow us to cover all aspects. He would also like a complete exemption on personal residences so people can put signs on their own property. If they want to put a cross, a police appreciation sign, we might limit the number of days that they would do that but he thinks there are some free speech aspects of this. He doesn't want to tell people that they can't express their views based on signs.

**MOTION:** Warren moved to exempt personal residences from the special non-event number and to amend the ordinance to allow up to 30 special event signs. Haynes seconded.

**Ms. Sexton** pointed out that per the last governing body manual update it is the policy of the council that you wanted to take the first reading and then action at another meeting on ordinances of major policy. She doesn't know that you need to have a motion today as opposed to this being a first reading. It's very helpful to hear what your issues are because we can go back and write up some potential amendments. People weren't really expecting to have a vote tonight.

**Council Member Warren** withdrew his motion. Council Member Haynes withdrew his second.

**Council Member Warren** asked if they could direct staff to make adjustments for us to look at at the next meeting that are in line with his motion.

**Ms. Sexton** advised that you don't really want to have a first reading and everybody just sit and listen. If there is something you feel needs to change it is better to tell us so we can make some changes and bring some suggested amendments. It's a zoning ordinance so once the Planning Commission did their thing she doesn't know that we need to go back to them. If we change something the Planning Commission did do we need to go back to them or can the council just change it without going back to the planning commission?

**Mr. Alexander** advised it would be dealt with like any other zoning amendment. The council could adopt it by super majority or refer it back and adopt the changes as a simple majority.

**Mayor Avello** stated that we have one amendment suggested by Mr. Warren. If anyone else has any we will just list them out and you can come back with changes at the next meeting. He asked if we were in a rush to do this.

**Ms. Sexton** advised we were not. To clarify what Mr. Warren wants, to exempt personal residences, it's fair to say when we were working on this we weren't really thinking about signs on people's own property as much as we were right-of-way signs, other than garage sales, those are always put in residential areas. Typically most of the signs we are talking about, especially for special events, would be at high traffic intersections. She asked if part of the motion included changing the number of signs from 10 to 30.

**Council Member Warren** advised that was correct.

**Ms. Sexton** stated this was a topic with the Planning Commission. No one with the Planning Commission suggested 30 but they definitely asked how we came up with 10. There is not a lot of science involved. We knew there were a few groups in town that put out a lot of signs. It's not all bad, we want people to come to events as well but it can reach a point of saturation. In thinking about normal driving patterns and how big the city is getting, and will probably continue to expand, she talked with code enforcement staff. Basically we are talking about Meadowlark/Rock, James/Rock, Madison/Rock, Madison/Woodlawn, and Madison/K-15. There are signs put in other places and you would think there would be more on K-15. There is a lot of stuff going on on K-15 and it would be difficult to have your sign seen in a lot of that area with the frontage road and KDOT. There are five major ones where most people put them most of the time and if you figure five per intersection. You could put them at Chet Smith/Rock and Patriot/Rock so you would have them at five intersections along Rock Road. If you limit it to thirty a lot of people will put four at each intersection trying to hit all four ways of traffic. Some signs are two sided and some aren't. It is a subjective decision. The reason she suggested ten and the Planning Commission approved it, they didn't talk much about it, the idea was, given the complaints we have received we felt like we were trying to reduce down from what is happening now. We've talked to a couple of groups that put them out, the DRC has big events, the City has big events, like the fireworks. The routine ones are the monthly Senior Center breakfast and the historical museum being open on Saturdays and a couple of churches in town that put up event signs. The vast majority of them are governmental entities that the rule didn't apply to because on the very first page we inserted the word "permanent". It says "this article is not intended to regulate traffic, public schools or governmental signs". We inserted the word "permanent" so it

would be clear that if the school district, city or DRC is having a permanent sign it's a governmental sign. If it's just because you are having a concert in the park you are treated like all the other non-profits. As far as the number it is very difficult. We will abide by whatever the council wants. We can prep an amendment to that effect if others have other thoughts on that matter. She also pointed out that Mr. Newberry mentioned the only change regarding real estate signs was the 8-foot back from the curb. A lot of the housing developments now put them right up on the curb. The other phrase in that sentence mentioned 10-feet from the driveway.

**Mr. Newberry** explained that means you can't put a sign within 10-feet of the sides of a driveway.

**Ms. Sexton** clarified that is more of a safety thing that an engineer came up with. Sometimes some of the complaints on the signs is that people from out-of-town put signs in town trying to get people to go out-of-town to their event or business. We put a new clause in this that specifically says no real estate or special event signs from out-of-town. Sometimes it's the haunted house in Mulvane or Douglas, or someplace south and they just plaster Rock Road for all the commuters. Sometimes it's the Riviera or housing development that maybe has a rural Derby address and they want to direct people off of Rock Road or K-15 and we are thinking that's worthy of being regulated out of the community. We have plenty of signs and they aren't taxpayers here in Derby. On Item 5, the special event signs would be removed within 48 hours. If you have a concert on Saturday afternoon we would love for you to take your signs down right after the event is over. A lot of people will. The reason we put 48 hours instead of 24 hours is because for some people it's paying overtime to have people come in on Sunday, for example, to take down signs when it's just as good to take them down Monday morning.

**Council Member Warren** indicated one of the things he would be willing to concede on this as we are trying to clean up the number of signs, he would not object to limiting to two signs per intersection so we don't overload an intersection. As the city grows the number that you need to have to cover the city will grow. He can see regulating it to two signs per intersection would be an adequate way to get the word out.

**Council Member Staats** does not have a problem with what Mr. Warren is suggesting as far as moving it up to thirty. He also likes his idea of limiting it to two signs per intersection. When it comes to private property, he wouldn't mind seeing a time limit. If someone has a for sale sign up in their yard for over a year you can't make them take their sign down because they still want to sell their house. He doesn't think we can regulate private property. If someone wants to put a sign up, let's say XYZ organization has their 30 signs up in intersections throughout town but they have an extra 15 signs up that people want to put in their yards, he doesn't think that should count. If somebody has a business out of their home do we have ordinances for that?

**Mr. Newberry** explained that we do have an ordinance that allows for home occupations but one of the statements in that section says that there can't be any outward signs of the business being conducted on that property, like material being stored in the yard or something like that. We do currently allow them to put one sign on the face of the home that has their business advertised; it is fairly small, maybe 2 x 2. Mr. Newberry explained that what they deal with mostly in private yards are the sub-contractors like roofers and fence people. They like to put up

a little sign in the yard. We found out a couple of months ago that some of these companies actually offer the homeowner a discount on the cost of the work that they do if they allow them to put that sign in the yard for 30 days. What we have been doing with that is treating it like it's a construction sign. On construction sites contractors are allowed to put their sign up but it has to come down within a certain period of time after the work is completed. What we are finding out is in most of these cases the homeowners have to leave the sign there for 30 days to get their \$500 discount so we've been letting them do that but we do say at the end of that 30 day period the sign has to come down. Personal property is kind of a touchy situation. We have a few people that sell firewood and they have a small sign in their yard, or cucumbers and we work with those people. We try to allow them to do it without getting carried away with it.

**Council Member Staats** commented on section 7, is the \$5 redemption charge per sign or is it a one time deal?

**Mr. Newberry** advised it was per sign. He thinks that charge was approved by the council last time new fees were approved.

**Council Member Haynes** agrees with Mr. Warren's comments as well as the limit of two per intersection. Regarding an exemption of personal property, he has a hard time telling someone what to do with their own personal property. He doesn't think we want to get into dictating what they can and can't do with their own personal property and signs. Some people go to the extreme but 99.9% of the people in Derby understand that and are respectful with the signs they put up whether they are yard sale, political or business signs. He thinks personal property needs to be exempt, with some regulation on lighted signs.

**Mr. Newberry** indicated that we don't deal with very many private residential sign issues at all.

**Council Member Haynes** commented regarding garage sale signs, he agrees with the 24 hours but does not agree with the four signs, he thinks that number should be increased. We do a lot of garage sales in Derby and it's an activity that a lot of people participate in and we have our annual garage sale day. If you live in a residential area you use your 4 signs to help people find you before you even get to a main road to help people find your sale. He suggested 8-10 signs, 8 signs would cover most areas. He asked about a matrix for the fine, he agrees with Mr. Horyna. He would hate to think that if he put a sign up thinking he was in the right and all of a sudden gets fined \$500 for a first offense. Repeat offenders need to be regulated and it's good we have that in there but for the average citizen we need some type of matrix in writing.

**Council Member Meidinger** stated we could do a matrix similar to what we do with weed control. Isn't there a larger fine for 2<sup>nd</sup> time offenders?

**Mr. Newberry** advised that most of the penalty clauses we have indicate you can be fined up to \$500. He always assumed that was a function of the court to decide what the penalty would be. He asked if we could specify what we think is an appropriate amount to be fined?

**Mr. Alexander** indicated that we do have a few ordinances that have graduated fines. It's not the rule but there are a few of them.

**Council Member Meidinger** commented on signs not requiring a permit on Page 16, Section B. It does address private property and would cover the various signs people have on private property.

**Ms. Sexton** advised that you have to be pretty clear about the details. It's not a matter of private property per se; it's a matter of what we are regulating and what we're not. For example, section F says political signs are okay, section B says holiday decorations are okay on public or private property. Section D says memorial signs on private property are fine. There is a whole list of things not regulated by this article. You can see most of this is language that is already in the code, we are not changing very much at all. If anybody wants to review the three pages of things not regulated, if there is anything specific that is not included we can make some amendments. A number of the ones that have already been mentioned are already in this section and are not regulated by this ordinance.

**Council Member Horyna** stated it's his understanding this is really intended to regulate commercial advertising. When it comes to the residential signs he asked if staff could consider adding security signs.

**Ms. Sexton** agreed that is a common thing and we will check that one out.

**Council Member Haynes** mentioned he is glad Mr. Meidinger pointed out the section of the ordinance regarding exempt signs.

MOTION: Horyna moved to schedule the proposed ordinance for City Council action on the April 27, 2010 agenda. Haynes seconded.

**Mayor Avello** advised he came down Rock Road on Saturday and there were approximately 15 signs by the aquatic park sign at the intersection of James and Rock Road. It didn't look right, it didn't look like us. How will we regulate every corner having 15, 20, 30 signs? That can happen, especially with this weather coming up. He doesn't think we can stop it.

**Ms. Sexton** agreed that is a problem and yes we can stop it. Council has asked us to put this on the priority list and we have been working on this diligently for some months. Part of it is enforcement, she has been hesitant to fully enforce the ordinance on the books because she felt it had some issues that needed updated. She thinks most of those are addressed in these updates we have brought to the council. Essentially, it is not the right of a private individual to put a sign on public property and that is what is happening when you talk about really close to the curb. It is the city council's responsibility to regulate how public property is used that is owned by the city. If you don't want any signs at all out there you disallow signs in the right-of-way period. What we have tried to put forward to you today is really a middle ground. It says we will allow some signs in the right-of-way as long as they are 8-feet away from the curb. That by itself will clean up your look and feel of the intersections tremendously. Right now it's like a competition in who can get the closest to the street. It's not only ugly but you do get into some visibility issues when you are trying to watch pedestrians, strollers and motorcycles, it's too much visual clutter. It is a matter for the council to decide how far they want to go. We feel this proposal is

a middle ground, allowing some signs but not too many. It allows them in the right-of-way, which many cities do not allow, period. What we have on the books now only allows certain signs in the right-of-way but not other signs. That is the part that's hard for city staff to enforce. It's really hard to tell a small business owner that they can't put their sign there but the guy advertising a housing development out of town can. We are on the right track.

**Council Member Warren** commented that there are a lot of homes being built to the east of Rock Road along James Street so there are a lot of houses that are being held open and each of those agents want to get people to their property. Two to three years from now it may be back to Madison or 71<sup>st</sup> Street; it just depends on where the next subdivision goes in. It changes from time to time.

VOTE: Motion carried 6-0, Craig and Bannon absent.

## **CONSENT AGENDA**

**Kathy Sexton**, City Manager, presented the consent agenda.

### **Annual Revision of Derby City Code**

#### **Background:**

- Pursuant to an ordinance adopted by the Council, staff contracted with Municipal Code Corporation to prepare a comprehensive supplement updating the Derby Municipal Code.
- Passage of the proposed ordinance is necessary to adopt the new code; adoption does not change the substance of ordinances already in force.
- The city code is available on the City's website and is used by stakeholders of the city, so it is important to keep it current.

#### **Financial/Sustainability Considerations:**

- None.

#### **Legal Considerations:**

- The City's code should be kept current to provide easy access to all ordinances of general application.
- Adoption of the new code repeals all ordinances of general application unless they are included in the code or expressly excepted from repeal.
- Charter ordinances, bond ordinances and other special purpose ordinances remain valid and are unaffected by adoption of the new code.

#### **Recommend a Motion to:**

- Adopt an ordinance providing for recodification and supplementation of the Derby Municipal Code to incorporate all ordinances of general application effective on or before November 18, 2009.

ORDINANCE NO. 2014

AN ORDINANCE PROVIDING FOR RECODIFICATION OF THE DERBY MUNICIPAL CODE; PROVIDING GENERALLY FOR THE REPEAL OF CERTAIN OTHER ORDINANCES OF THE CITY NOT INCLUDED IN SUCH CODE; EXCEPTING SPECIAL AND CERTAIN GENERAL ORDINANCES OF THE CITY FROM REPEAL; SAVING RIGHTS, DUTIES, FORFEITURES AND PENALTIES; AND PROVIDING RULES FOR CONSTRUCTION THEREOF.

### **Easements for SE Sanitary Sewer Interceptor Project**

#### **Background:**

- The adopted 2009 Capital Improvement Plan includes construction of a 36-inch sanitary sewer interceptor located near 83<sup>rd</sup> Street South and Rock Road traveling northeast to 79<sup>th</sup> Street South (Madison Avenue) and Webb Road for approximately 1.5 miles. This interceptor is one of several interceptor projects that will eventually be needed to provide sanitary service to approximately 8,150 acres within the Spring Creek Drainage Basin north to 55<sup>th</sup> Street North.
- The final alignment of the interceptor was based on a number of factors including expected depth of the line, environmental impact, depth of ground water, topography and flood plain.
- Construction of the interceptor will eliminate the pump station located on the south end of High Park as well as provide relief of any surcharging flows by connecting to the Rock Road Interceptor near Valley Stream Drive.
- The City engaged Land Acquisitions, Inc. to assist in acquisition of needed easements and right-of-ways.

#### **Financial/Sustainability Considerations:**

- Easements presented for the Council's consideration total \$29,000 and include the following:
  1. Virginia Duncan (Now Known as Virginia Lawrence) and Herbert Lawrence: \$20,000 for 1.748 acres of permanent easement and 3.507 acres of temporary easement.
  2. Rose Marie and William Bradford: \$9,000 for .143 acres of permanent easement and .581 acres of temporary easement.
- These are the final easements required for this project.
- The total project estimate is \$5,000,000, of which \$970,000 is from a federal grant. This estimate includes engineering, land acquisition (easements), and construction.

#### **Legal Considerations:**

- The City Council is authorized to accept easements in support of these improvements and determine an appropriate level of compensation.

#### **Recommend a Motion to:**

- Accept the temporary and permanent easements, authorize payments as noted above, and authorize one residential sanitary sewer hook-up to the city's system for each of the referenced properties.

## **Sanitary Sewer Improvements to Serve Prairie Acres 2<sup>nd</sup> Addition**

### **Background:**

- Bids for construction of Sanitary Sewer Improvements to serve Prairie Acres 2<sup>nd</sup> Addition were opened on Tuesday, March 30, 2010. The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<b><u>Contractor</u></b>	<b><u>Bid</u></b>	
Nowak Construction	\$61,859.00	
Mies Construction	52,260.00	
Dondlinger & Sons	49,990.00	
McCullough Excavation	45,800.00	
Duling Construction	41,825.00	
Utilities Plus	36,358.75	
	Engineer's Estimate*	\$48,996.00

*\*Engineer's estimate prepared by Young & Associates, P.A.*

### **Financial/Sustainability Considerations:**

- Due to the small size of the project, temporary financing has not been issued. The project costs will be included in a future special assessment bond issue.
- Costs for the improvements will be paid 100% by the benefit district.
- Special assessments will be spread against the benefit district properties over a 15-year period.

### **Legal Considerations:**

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for planning and securing financing for capital improvements.

### **Recommend a Motion to:**

- Accept the bid of Utilities Plus in the amount of \$36,358.75 and authorize execution of a contract for construction of Sanitary Sewer Improvements to serve Prairie Acres 2<sup>nd</sup> Addition.

## **Purchase of a Used Semi-Truck**

### **Background:**

- The City fleet includes a 1977 Kenworth semi-tractor truck which is no longer road worthy and is incapable of hauling equipment.
- This vehicle is used to transport heavy equipment (primarily the bulldozer and excavator) to job sites throughout the community.
- The replacement is identified in the 2010 Vehicle Replacement Plan with an approved budget of \$15,000.
- Public Works staff contacted all local trucking vendors, including Doonan Trucks, Roberts Trucks, Kenworth and Kansas Truck Center, for a price quote for a used vehicle that would meet our needs.
- Staff also searched the internet and local trucking magazines to find a comparable vehicle. None was found.

- Kansas Truck Center provided a quote for a 1996 Freightliner with a trade-in for \$14,900. This quote includes work to install the fifth wheel and hydraulic pump for our trailer.
- Kansas Truck Center is the only vendor with an appropriate vehicle within our budget.
- The Bid Board approved selection of the 1996 Freightliner semi-tractor on March 29.

**Financial/Sustainability Considerations:**

- This vehicle is identified in the 2010 Vehicle Replacement Plan with an approved budget of \$15,000.
- The purchase price of \$14,900 is within the approved budget.

**Legal Considerations:**

- The City’s purchasing procedure was followed in soliciting quotes for this purchase.

**Recommend a Motion to:**

- Authorize the City Manager to execute a contract to purchase the 1996 Freightliner for \$14,900 from Kansas Truck Center with the trade-in of a 1977 Kenworth.

**Library Links Sidewalks Design Consultant**

**Background:**

- The Capital Improvement Plan (CIP) includes the design and construction of sidewalks to connect the recently constructed Library to existing sidewalks on Rock Road, Madison Avenue and James Street.
- City staff sent a Request for Statement of Qualifications to qualified consulting engineering firms, soliciting their interest in designing the project.
- Statements of Qualifications were received from 5 engineering consultants.
- Consultant’s proposals were evaluated and rated based on the firms experience with similar projects, proposed schedule, estimated fee range, and familiarity with the project.
- Staff recommends selection of Schwab-Eaton, P.A. as the design consultant, with a proposed design fee of \$12,500.

**Financial/Sustainability Considerations:**

- The approved CIP includes \$90,000 for design and construction of the project. The cost for design and construction will be paid for by the Library Sales Tax.
- The proposed design fee leaves \$77,500 for construction of the project. Staff believes the remaining funds will be sufficient to construct the project and that the design fee is appropriate.

**Legal Considerations:**

- This solicitation and selection of a recommended consultant was performed in conformity with applicable City policies and procedures.

**Recommend a Motion to:**

- Authorize the City Manager to enter into an agreement with Schwab-Eaton, P.A. for design of library links sidewalks at a cost of \$12,500.

MOTION: Haynes moved to approve Consent Agenda as presented. Meidinger seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

**Mayor Avello** stated that when he came home on Saturday, the southeast corner by Lowe's has been cleaned up very nicely. It has always been an eyesore coming into the city. When he saw it Saturday it was clean and he thanked the code enforcement employees for keeping the city clean, they are doing a great job.

**Council Member Horyna** reminded people to water their grass, not the street, and to apply fertilizer as instructed by the manufacturer. If you over apply it, it will run off into your pond and you will have a fish kill.

**ADJOURNMENT:**

MOTION: Meidinger moved to adjourn at 7:55 p.m. Haynes seconded.

VOTE: Motion carried 6-0, Craig and Bannon absent.

ATTEST:

\_\_\_\_\_  
Dion P. Avello, Mayor

\_\_\_\_\_  
Jean Epperson, City Clerk