

**APPROVED
REGULAR COUNCIL MEETING
April 28, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President Mark Staats.

The invocation was led by Pastor Joplin Emberson, Cross Way Church.

**CONSIDERATION OF
MINUTES**

Minutes of the April 14, 2009, Regular Council Meeting.

MOTION: Horyna moved to approve minutes of April 14, 2009 Regular Council Meeting. Meidinger seconded.

VOTE: Motion carried 8-0.

PUBLIC FORUM

David Lies, Vice President of Lies Trash Service, a family owned business since 1961. Two haulers from the Independent Trash Haulers Association work in the City of Derby: Lies Trash Service and Derby Disposal. They have been hauling trash in Derby since 2001. They came to Derby because residents were calling them because they only had two choices: Waste Connections and Waste Management. At that time Waste Connections hauled about 75% to 80% of the City of Derby. Since then they have acquired over 1,000 customers by being a locally owned company, good prices, family owned, good service and they've been doing that for seven years. They offer curbside recycling as well for \$2.00 a month. They don't charge that much and it doesn't cover the cost, but they believe in recycling and have been recycling in his house for 10 years. He is not opposed to the city looking for ways to recycle. He is all for that because the tipping fees at the transfer stations continue to rise. The transfer station to the north is owned by Waste Connections and the transfer station to the south is owned by Waste Disposal who is under a contract with Waste Management guaranteeing the tonnage to go into that facility, and Waste Management sets the price. Waste Management and Waste Connections are two of the largest trash companies in the United States, they are controlling the tipping fees, and Waste Connections owns the landfill in Harper County. He used to sit on the board of the

Sedgwick County Solid Waste Committee and at that time when they were trying to build the landfill at Harper, Jim Spencer came to speak to the committee saying that if he could get the Harper County site he would lower tipping fees to \$28. As you can see that never happened, they have gone up ever since the Harper County site was built and they are \$57 at his facility today. That's one reason the price of trash has gone up over the last seven years. He does not believe franchising is the way to control the price of trash and continue with quality service because once you franchise with one company, Waste Connections, you take away the right of the customer to choose their trash company. If they do not like the service they are getting from Waste Connections they cannot quit, they cannot pick up the phone and call Lies Trash Service or Derby Disposal or any other company that is operating in the City of Derby, you've taken away their right. He doesn't think that is what America is about, taking away people's right to choose who they do business with. He doesn't think that is what America is about to take away his right to haul trash in the City of Derby. He built this route, he went out when customers called him and asked him to haul their trash. They are not quitting him because another company is giving better service or another company is giving a better price. He is going to loose his 1,000 customers. The City of Derby is going to take them away and give them to Jim Spencer. Jim is his #1 rival and he's from California. Lies is a local company. He does not believe that is the right thing to do. The more cities that do this and take business away from him, you're going to put him out of business. They have been doing this for 40 years and invested \$2.5 million in the last seven years to grow their business from 5,000 customers to over 40,000. We've taken on all this debt and if cities keep putting us out of business how are we going to pay that debt back? He is out here two days a week. If you franchise he will have to replace that. He advised that Derby Disposal is a local company with an office in Derby. He started his business five years ago in the City of Derby. Eighty percent of his business is in the City of Derby. If you franchise and take away his customers and my customers you're going to put that man out of business. He doesn't live in Derby, but his office is in Derby and his kids go to school in Derby. He does not believe that he's living the American dream and then the city council votes and you crush his American dream. It's over with, he's out of business, he's bankrupt and lost all his money he has invested in his business, he's out of business. He does not believe that is right and hopes the council will take that into consideration when you vote on franchising for the City of Derby.

Jacob Strange has lived in this community for 10 years and has never felt passionate enough to come to a council meeting and express his feelings. He lived in a community 20 years ago that took these steps and he thinks this is long overdue and is excited the City of Derby is taking this initiative to handle our waste. This proposal cuts the cost for trash and recycling in half for an ordinary member of this community. He doesn't mean to be misleading in that, he's not talking about trash, he's talking about trash and recycling. He is not signed up for recycling today because he does not believe recycling is something you should pay for. We came to this community as a member of McConnell Air Force Base, and the base makes a significant amount of nonappropriated funds from recycling waste. It never made sense to him why we charge and he has never lived in a community before that charged. He is glad today the council and the city has gone out looking for a way to serve our community and encourage recycling. He thinks there is a lot of misunderstanding out there about this proposal that recycling is going to be mandated. He has done his research on what has been presented and he doesn't see anything that says it's mandatory, just that he will be provided an affordable service that is cheaper than what

he is paying today for regular trash service and will have the benefits of both. He believes that with the city having this contract customer service will be a top priority and if he has a problem with that he can call his council member and it will be taken care of. This decision will also cut waste truck traffic by more than 75%. Almost every day in his community there is a trash truck that comes through and typically they do not drive appropriately, they usually drive at a high rate of speed in a very large truck. In addition to that speed, those trucks often make a lot of noise and they typically come through at 5:00, 6:00, 7:00 in the morning. He has small children and it wakes them up. It's not uncommon on Friday morning at about 6:30 there is a truck out there grinding and waking his kids up. He would rather they get a good night's sleep. In addition to that, it's responsible. We are going to cut our carbon footprint in this city by having all these diesel trucks coming through here. One week we have four trucks coming through, the other week we have the recycling trucks in addition to the waste trucks so we have 7-8 trucks coming through that week. He is currently a Lies customer and has been a Lies customer for a long time. He respects Mr. Lies's business; however he is only his customer because of his pricing. He is not aware he is family-owned, nor would that influence his decision. He thinks most people are motivated by what it costs, or service. No, he's not the cheapest but he is the most reliable for the cheapest cost. He knows this is a tough decision for the board; there are a lot of decisions to weigh. He has nothing against Mr. Lies, he has nothing against the other haulers, but he does think trash service in this city costs too much. He believes there are probably problems with the transfer stations; he thinks there are problems with the pricing in Harper. The county addressed these concerns when they decided to close Brooks and he was very disappointed that the county did not get more aggressive about how they handled that problem. They passed it off for another day, so he is happy to see Derby is taking that on today. He reviewed the proposals and the board minutes from the citizen's advisory board, and he is pleased to see that they have selected Waste Connections. He thinks it's a very fair proposal and he would be happy to pay that price for the services that they have offered. Tonight he encourages all the city council members to vote for that proposal. He knows there are a lot of folks that are concerned about how the constituents are going to vote at the next election based on this. We can vote for anyone to come expand a plat of a development or approve a business decision, but what we vote for is a leader so when tough decisions like this come up you know how to vote the right way for what is right for the community. He encourages the council to vote for what they think is right. Listen to all the options and realize that most people that are for this don't take the time to come and tell you they are for it. Usually it's those that are against it.

Sally Kriege originally from California and stationed at McConnell. She advised when they first moved to town it was a little creepy because she had seen movies where the city is really small and they are all really friendly and it's kind of creepy. They received the welcome packet and she was really happy and surprised. They are a young couple and it's a good thing to walk into. One of her first jobs was at Rock River Rapids and she was glad to see something like that in a small town because it brings everyone in from Wichita and as far away as McPherson. Derby has everything going for them, including Target and Wal-Mart. They started out with Derby Disposal because they were the cheapest but it turned out the business was very unprofessional. Their trash wasn't always picked up and it was picked up at random times. She switched to Waste Connections and is paying \$75 every three months and that is a lot of money. She is willing to pay it because all that counts in her mind is the way you treat your customers. She heard about the proposal with a payment of \$44.25 every three months and she can deal with

that, she will gladly go from \$75 to \$44. She is all about small businesses, her husband's dad ran his small business in California for 20 years, but you have to be able to match up the pricing and going green.

Jack Halldin was on the trash advisory committee and thanked all the people that bid. There was a lot of effort involved in putting out those responses and everybody was at a lot of our meetings. Whenever there is anything like that there are always winners and losers, all of the proposals had positives and negatives but the overwhelming positives went with Waste Connections. He definitely sympathizes with the free market argument, but in terms of how services are delivered to the city he gets his electric from a company, his gas from a company, there are efficiencies that occur in a marketplace when one provider is providing the service. One of the advantages of the Waste Connections proposal is they do have a call center in Wichita for customers and he is sure no one will be hesitant to contact any member of the city council when they are having problems and giving the volume we are going to have with Waste Connections he would anticipate they are going to be extremely responsive. Some of the advantages to the Waste Connections proposals are that they already service the greatest percentage of customers in Derby today so that would be a smaller number of people getting changed over than if we had picked the other bidders. The price was really outstanding; Derby people will save \$120 per year that have a comparable service, a little more if they have the recycling service in there. The recycle bank and the education that will come along with this is really phenomenal and he thinks everyone that is in Derby will be a tremendous beneficiary of that. The single stream recycling expanded even beyond what we had asked for in the proposal where everything is going to be able to be tossed. He is not a recycler; he is not a green person. He came on this committee originally just to get involved in the community but they are going to make it so easy anybody can participate in the program. There are advantages and disadvantages to working for a large company. They are going to have the resources and the things to support Derby as we grow. He doesn't think anybody is flying in from California to drive these trucks and manage these accounts. These are all people who live here in Kansas; he has never really been a big fan of the local argument. Waste Connections was the only provider that offered to look into what they could do to reimburse people who had to have their cart picked up that are with other carriers today. For all those reasons he thinks Waste Connections is the one to go with and that is the one the committee recommended.

Steve Spaulding advised he is excited and wishes all these seats could be filled at every meeting and have more involvement by the residents of the city. We could get a lot more done, it would be more fair and the council would not be pressured into making all the decisions for what is best for Derby. Everybody gets a pet project or something they get excited about. To him it's not just about saving money, if that were the case we started with five haulers and we are now down to two. Derby Disposal, as small as it is, is not much competition for Waste Connections because Derby Disposal did not have a recycling program in place. That was their downfall. He really wants to do recycling himself, but it's not just about saving money because Derby Disposal had the cheapest proposal. He thinks it's more about control and how everything would be run better. It's easier to control when you only have one thing to focus on instead of having three or four haulers in the city. He is a little bit concerned about that aspect. When he sat through last month's meeting and listened to everybody speak, Mr. Craig, Mr. Horyna, Mr. Warren and Mr. Staats all had reservations about this proposal they were going to vote on, all of

them had stated reservations. Some were 50/50, needing more information and Mr. Horyna had mentioned that the majority of calls he received were against this proposal. Mr. Craig said the same thing yet we didn't have one person vote against it, seven were for it. He is a little bit concerned about that because what's next? This is only one project and there are many many projects to come for this city. He's excited about that, but what's next? If the citizens of this city are not going to be listened to, what's the point of having a city council? Let's just appoint one person, have a mayor and let them make all the decisions, there's no reason to have a city council. He thinks the city council needs to be more responsive and listen to what the citizens are saying and don't make assumptions that a certain number of people didn't call that were for it. Now it's too late, now we're down to two people and we know which way we are going to go with this.

Dan Ingram owns a home at 241 Valley Stream. He is here to speak about the volume of water that has destroyed his pond, his neighborhood and his backyard. This is not just a one-time event that occurred this past weekend; it's a problem that has steadily become worse since he moved in his home approximately five years ago. What used to be an occasional backup of water now is a torrent of water that rapidly spills over the top of the dam of his pond, eroding grass and top soil from his property and neighbors. The soil-laden water also kills the plants he has in his backyard due to the soil left on the plants, it blocks the sunlight and nothing can grow, it all dies. He had a nice stand of grass in his backyard that is totally destroyed. This has also happened to the neighbors to his north. The pond was the initial wow factor that caused him and his wife to purchase the home, the pond was attractive and we watched many sunsets reflecting off of the water. Also, the pond has been great recreation for his three children as it's teeming with fish and the conveniences of going to the backyard without the expense of going to the lake like most people have to do. The dam on the pond is nearly cut in two now. A steady number of floods have severely damaged the pond and soon the pond will no longer hold water and the fish will eventually be killed. Many of the natural water features and water fowl that we are accustomed to seeing everyday will also disappear. The end result will be a muddy hole of stagnant mosquito-infested water that is overgrown with noxious weeds and littered with trash. It will be nearly impossible to keep the pristine appearance of the waterfront property that we purchased our house for. He has followed the network of tributaries to the north that drain into the creek that enters his pond. What he found is that vast improvements were constructed to rapidly drain the properties to the north of Madison Street into Timberleaf Lake. Holding ponds in the Glen Hills area have barn door-sized storm drains coming into the top of the ponds with large spillways to rapidly exit the water. There is a large aqua duct system lined with stone walls nearly 15 feet high to drain water from the streets and ponds near Rock River Rapids. This system drains into a ditch nearly 100 feet wide that runs nearly a mile into the length of the top of Timberleaf Lake. All of this water suddenly enters a meandering little creek that's nearly 6-8 feet wide. He is not a city engineer, but it's very clear that city planning and dollars spent to move water rapidly were completely forgotten for the existing taxpayers south of Madison. The recent zoning of property for construction of Hamilton Estates and Derby Medical Campus has only aggravated the situation. The brown water that we normally see is now red with soil eroding from these two properties. Little concern has been extended to their neighborhood since the contractor for the Derby Medical Campus did not even construct a holding pond to contain the storm water draining off the parking lot and the roofs of the new structures. In addition, he has seen plans that Derby intends to enlarge Madison Street into a four-lane roadway which will

only heighten water draining off of both sides of the street. In his opinion the idea of a 100-year flood plan currently used by our city engineers is obsolete based upon recent climate studies involving global warming. A recent study published this last year from the University of Miami and the University of Reading in the United Kingdom were based upon 20 years of satellite observations. These institutions confirmed a link between warmer climates and more powerful rain storms. It was of utmost concern that heavy rainstorms become more common and more intense with warmer climates due to increased moisture available from condensation. In other words, the current storm water retaining ponds that are constructed are improperly built and too small. This is evident by the storm last year that caused water to overtake the dam at Timberleaf Lake and the lake at High Park causing the road to close. The City of Derby had to effect repairs to Timberleaf Lake from the damage. The recent rain event we experienced last weekend produced more than seven inches of rain in some locations very close to Derby. This is going to be a common weather pattern for years to come. He has spoken with the city engineer Dan Squires and the city attorney Mr. Alexander last summer about a possible solution. He was told at that time that nothing could be done due to the land being owned by private hands. He has a hard time believing that the City of Derby is not aware of the water coming into their pond. He has read the meeting minutes for the zoning of the Derby Medical Campus and the issue of the water was questioned by city council member Cheryl Bannon about the water coming into her back yard. He also noticed that Charlie Brown stopped the discussion for the water drainage. The developer of the neighborhood he lives in worked with City of Derby engineers to develop the pond with surrounding properties. The man he bought his house from was Tom Stroud who purchased one of the first homes constructed in the area. Through emails he learned that Tom communicated with Charlie Brown by name nearly 15 years regarding the spillway for their pond. If the City of Derby does not step up to help us he believes they should be compensated for the damage and loss of property value they are experiencing by being the toilet for the benefit of community growth. He wishes the City of Derby would live by its own mission statement.

Lucas Jobe also lives on Valley Stream. He is a new resident of Derby and is also concerned with the issues of the stream that runs behind his house. He has seen it flood several times and has been quiet about it. His biggest concern is all of the houses and businesses that are being built upstream, and they truly are becoming the toilet bowl area for the City of Derby.

Sharon Ingram has lived on Valley Stream Drive for 3 ½ years. It used to be if it rained the pond would raise a little bit and everything would be fine. Now it floods every single time it rains, not just this last weekend, every single time. She hopes that the city will help them.

Everett Scovel also lives on Valley Stream. They want restoration of their property rights. Their dam is owned by two people, each piece of the pond is owned by the homeowners around it, so they are paying for all that water and most of it is going down stream, and most of the dam is washed out. They need to have an adequate spillway, Glen Hills has about 38 sq. ft. of drainage going into two 24-inch culverts, they don't handle it. Just across the street there are two 36-inch culverts. They need a covered spillway and a dam that is solid. That will solve their whole problem; he doesn't think it's a great expense. Geese can't even live in it anymore, particularly when it floods. An adequate spillway should take care of it. It's not a great expense, but access will be a little bit of a problem, but he is sure it can be managed. That and dredging

the pond back at least to its original. That pond was originally a farm pond and he thinks it was built under the conservation program many years ago. He thinks that would solve our problem.

Mayor Avello thanked everyone for speaking this evening and advised they would get with staff and go from there.

Council Member Meidinger advised they will be discussing trash service for the City of Derby and its citizens. There have been many meetings and many hours devoted to this subject. He thanked staff and the members of the trash advisory board for their time and efforts. The small business is the backbone of our economy, both nationally and of course here in Derby. What does this statement have to do with Derby, quite honestly, a lot. Tonight we will be discussing the pros and cons of choosing a large nationally owned business for our trash service versus choosing a small locally owned trash company. Derby has city policies that in the past have supported small business. For example we have tax abatements and sales rebates on the motel, tax abatements for quality of life businesses, favorable agreements for land purchases at our industrial park, underwriting various costs for street improvements and he is sure there are others. These all have gone to help small businesses. Tonight the Derby city council will be deciding on a trash hauling/recycling agreement. Will the city council support a small business or will we go to an outside business? Will Derby become part of a national trend to outsource their labor and business needs? Much to-do has been given to the rewards and recycling bank. His thoughts on that program are that Warren Buffet and Bill Gates didn't make the big bucks by joining rewards programs. They made their money by buying low, selling high or providing a good service. Is our reward going to be putting a Derby company out of business? Do we really need a rewards program that badly? According to an article in the Wichita paper on the 26th of this month landfill volume is down. This point addresses the recycling points offered by one of the companies, less volume means less points. Will the recycling point program be a valid program in the years to come? A recent article in a national publication indicated RecycleBank had lost quite a bit of money. In one of the interviews the gentleman from RecycleBank indicated they hadn't made money in two years. Last week, he received a notice from a credit card company that said the rules have changed, live with it. There is no argument of the merits of a big company, larger staff, more equipment and of course more money. The bottom line is, will the Derby City Council want to help nurture a small Derby business or take the route of a big business? He will not be responsible for local people losing their jobs or a business. Even President Obama states that small business is the backbone of the United States. Waste Connections will be responsible with or without Derby business. He will support a small Derby business, Derby Disposal.

Council Member Bannon thanked the people that spoke about the flooding issues on Valley Stream. There is a beautiful pond at Timberleaf and that pond has three 36-inch drainage tubes coming out of it. On Valley Stream, which is in the Spring Creek subdivision, there are two and they are either 24-inch or 30-inch, and they handle those three drainage tubes plus all the street drainage that goes off of Valley Stream. That is something that needs to be looked at she believes. The gentleman was correct, there is supposed to be a drainage pond built where the new med center is going, sooner would be better than later given the current rain. She knows it's difficult and doesn't know at what point in their building process that drainage pond is supposed to be built, but she knows it is in the plans. She would like to see that done as quickly as

possible. She asked the council to think about this. Even though they are privately owned parts of ponds and it's one of the only subdivisions we have that she knows the pond is divided up that way, thankfully the city learned from that point. We have as a city went into some areas and taken on some projects that needed redone and she asked the council to keep that in mind.

Mayor Avello advised he heard today that there were two deaths from the Swine Flu in California and it's a growing deal. He asked everyone to listen to the health experts and do what they say. This could be something or it could be nothing. A simple few rules can save lives if it's an epidemic that may happen.

PROCLAMATIONS:

Mayor declared May 2009 as Older Americans Month in the City of Derby. Dee Williams and the Derby Senior Center advisory board accepted the proclamation.

Mayor declared the month of May 2009 as National Water Safety Month in the City of Derby. Darcy Parkhurst and Tonya Young of the DRC accepted the proclamation.

TRASH & RECYCLING PROGRAM UPDATE

Kathy Sexton, City Manager presented the staff report.

Background:

- Collection and transportation of solid waste in Derby are currently performed by four private businesses. Rates and service quality vary. Curbside recycling services are offered by some of these providers but are rarely used due to inconvenience and the pricing structure used in South Central Kansas. Prices charged for trash and recycling collection in this region are among the highest in the country.
 - Last year, the Sedgwick County Commission asked cities to consider use of a franchise system to change the nature of how trash and recycling collection are provided.
 - In establishing its policy priorities, the Council directed staff to examine alternatives to the *status quo*.
 - In July 2008, the City formed an advisory board to determine the level of service desired by the community, craft a Request for Proposals (RFP), evaluate proposals received from businesses, and make recommendations to the City Council.
 - Four proposals were received by the March 17 deadline and reviewed by staff and the Recycling/Trash Advisory Board. The assistance of Sedgwick County Director of Environmental Resources Susan Erlenwein was enlisted due to her experience and knowledge in these matters.
- The Advisory Board first reviewed Steve McLeland's proposal for a survey and a community recycling program rather than curbside collection. After discussion, the Board determined that the proposal did not meet the needs of the City and recommended it not be considered further.
- Interviews were scheduled for the week of April 6 with the other three companies that submitted proposals. Waste Management withdrew its proposal and declined an

interview. [Waste Management's proposal represented the highest rates and, upon reflection, the company determined it was in its best interest to withdraw.]

- The Advisory Board conducted interviews with Derby Disposal and Waste Connections, followed by a board meeting on April 14 to discuss both proposals and determine its recommendation of the best proposal. Interview notes and minutes of all meetings of the Advisory Board are available at www.derbyweb.com. All meetings of this Board since it began meeting in August 2008 have been open to the public, and frequently guests were invited to speak.
- At its April 14 meeting, the City's Trash/Recycling Advisory Board decided to recommend to the City Council that a contract be negotiated with Waste Connections to provide curbside trash and recyclables collection beginning in September 2009.
- Highlights of the Waste Connections Proposal:
 - \$44.25/quarter for 95-gallon cart, with up to 10 extra bags free/collection
 - \$38.25/quarter for 65-gallon cart, plus \$1 per extra bag
 - Services include biweekly recyclables pickup + reward points through RecycleBank Program
 - Recyclables include cardboard, chipboard, plastics #1-7, steel & aluminum cans, clean aluminum foil, glass, newspaper, magazines, junk mail, phone books, other light-colored paper
 - No sorting necessary
 - RecycleBank points are earned for every pound recycled and can be used to shop for rewards like groceries or gift cards at local businesses & on the internet or to donate to non-profit organizations
 - Free roll-out service for disabled and elderly
 - Free coupon for one bulky item pickup per year
 - Free coupon for one pickup truck load taken to Waste Connections Transfer Station
 - Discounted rates for community parades, festivals, and park events
 - Discounted rates for small businesses
 - Free service for city-owned facilities
- The Advisory Board determined that the Waste Connections proposal provided more services than residents currently receive and more than the other proposal.
- The Waste Connections proposal also would cost MOST residents less than they currently pay for trash service and ALL residents less than they currently pay for trash and recycling collection.
- Waste Connections has a strong track record, provides the best quality recycling program available in the market, has shown its commitment to customer service (phone availability to customers, training & accountability systems), and is financially able to take on an account the size of Derby.

Financial/Sustainability Considerations:

- Residential refuse collection and transportation would continue to be performed by a private firm—albeit under contract with the City—with the cost of the service paid by customers.

- The contractor(s) selected would pay a franchise fee of 5% of gross revenues to the City.
 - Fee revenue would offset the cost to the City of developing and maintaining the program, including staff time associated with developing the RFP and contract, staffing the Advisory Board, some public communications about the transition to a new system and the ongoing implementation of a curbside recycling program, and ongoing administration of the contract.
 - Fee revenue would be available for use as determined by the Council during the annual budget process.
- Commercial and industrial refuse collection and transportation would continue to be performed by private firms under existing regulations.

Legal Considerations:

- State law (K.S.A. 12-2101 et seq.) and city ordinance authorize the City to undertake solid waste collection and transportation, either directly or through a contractor.

Policy Considerations:

- Most U.S. communities (54%) have franchised private trash collection. Most of the remaining 46% have public collection (city-owned trucks & city staff).
- Private collection and transportation of solid waste has been the general rule in Kansas for many years. The dearth of local regulation has some unwelcome consequences:
 - Wide variation in fees charged for waste collection service.
 - Excessive wear and tear on residential streets used by collection trucks representing multiple contractors.
 - Absence of a uniform or widely used recycling program.
 - Inability of local government to address complaints about quality of service.
- Municipal or franchised refuse and recyclables collection typically is designed to provide uniform services throughout the jurisdiction.
- Franchising changes the nature of competition by the city periodically having a competitive process for one hauler, rather than each customer having a daily ability to switch to another hauler. The desire of some residents for personal choice of haulers is balanced against issues of direct and indirect costs, as well as quality and scope of services.
 - A key component of the competition is ensuring quality customer service.
 - The City's intent is to include customer service expectations in the contract.
- Some neighborhoods in Derby that have organized Homeowners Associations (HOAs) negotiate with local haulers for mini-franchises, which require a certain percentage of households to use one hauler.
 - A survey of Derby Homeowners Associations in August 2008 revealed the following quarterly prices in various neighborhoods: \$36.30, \$37.50, \$40.84, \$45.67, \$45.92, and \$57.98. All companies have implemented price increases since then. Currently, the lowest known price is \$36.97, and many HOAs pay in the mid-\$40s.
 - Residents NOT living in a Homeowners Association have reported a range of quarterly prices including \$57, \$65, and \$82. Most recently, new customers (non-HOA) in Derby (at last check) are being charged \$63, \$76, and \$83.

Jim Spencer, Vice President of Waste Connections advised he did not fly in from California; he is a Wichita native and has been in the trash business in Wichita for 28 years. Ms. Sexton has done a great job of explaining their proposal; it is a very large proposal and she summarized it very well. The single stream recycling program is one of the new and exciting features of Waste Connections that we have brought to this market in January of this year. In 1988, with the help of Wichita Mayor Bob Knight, we started the Dillon's drop off program. That was put together and BFI funded the containers and provided the hauling service to get that program started. That was really the beginning of large-scale recycling in the Wichita community. Two years later that was followed up with the introduction of curbside recycling. Many of you may be familiar with the blue tubs that we started with that were a laundry basket size, an 18 gallon tub. We charged for that service, it's a subscription based market and to provide labor and trucks to move recyclables costs money, we had to charge for that service. All along customers always complained that they are being penalized to recycle because they had to pay to recycle. Some people have the belief that the commodity sales should pay for the service. Quite frankly, the commodities do not pay for the service. He will give you all the commodities you want if you think you can make a living off of the commodities. With that said, he has been looking for years to find a program that would reward the citizens for recycling instead of penalizing them through paying an extra fee. He ran across a program a little over a year ago that was a little over three years old called RecycleBank. It's a company that is strictly a rewards program. The neat thing about the program is that it rewards the consumer for recycling. Now he had a way to provide recycling for the consumer, they would have to pay him for the service because he has to buy the trucks and pay the drivers and fuel to get it collected but the consumer could not only get enough money back through the RecycleBank rewards program to offset the cost of recycling, in many cases they also will offset the costs of their trash service too because the average consumer right now is getting about \$20 worth of RecycleBank rewards every month. What we are looking at here today is a proposal that would provide the trash and recycling for a cost of \$14.75 a month so the consumer household actually stands to make money and at the same time have their trash removed and recycled. He introduced Andy Korman from RecycleBank. They are a partner of Waste Connections, and they have signed an exclusive agreement to partner with them in South Central Kansas and to administer the rewards program in the areas that we determine that RecycleBank would be a great program.

Andy Korman advised that RecycleBank is a rewards and loyalty program that motivates residential curbside recycling similar to other rewards and loyalty programs such as American Express or mileage programs like United Mileage Plus or Advantage Miles for American Airlines. The value that RecycleBank brings at the highest level is threefold. First, we reward the resident, putting money into the pockets of the citizens of the City of Derby. These rewards amount to approximately \$20 in savings per month, which is \$240 annually per household. Second, there is an economic stimulus component to the program to the tune of roughly \$1 million for the City of Derby based on a conservative estimate of the significant increases we would see in recycled materials through the use of this program. Finally, there is a community component to this that creates an environmental impact that is substantial. This is happening nationally, every citizen would be able to monitor his or her impact in terms of trees saved, gallons of oil saved. Local businesses, regional retailers as well as national businesses would participate to create an economic impact and an environmental impact. The program has three basic steps. The first is recycling. Materials are going into a single container, it is single stream.

The second step is recording the weight of the material; they use a small RFID chip, about the size of four quarters stacked on top of each other, affixed to the cart by a plastic rivet. There is some technology that will be on the truck which will record that the household has participated and the weight will be recorded. Each pound of material will convert to 2.5 RecycleBank points. The final step is the reward you will receive, which is not handed to you without your say in what it is; it's a reward that you actually choose. You will go onto the website, www.recyclebank.com and monitor the point balance and choose the reward you want. Mr. Korman presented a video to the audience about the program. The foundation of the program is the web-based system; he gave an overview of the website to the council. Rewards are typically fulfilled in 5-7 business days, if not less. Online rewards are fulfilled instantly. If you do not have a computer you can call the customer service line, and a printed list can be provided and you can redeem rewards by telephone. The companies that choose to partner with RecycleBank enjoy significant benefits, including association with a tremendously successful green program which is currently in 20 states, rewarding roughly 350,000 households and expecting to be rewarding roughly 1,000,000 households by the end of the year with exponential growth thereafter. This is a tremendously successful program that is growing at an increasing pace year after year. Subway, Coca Cola, Dick's Sporting Goods, national brands participate alongside local businesses. If it's approved in the City of Derby, we will send in a team of people who will spend a couple of weeks in the city to make sure we have a robust selection of local businesses that participate in the program. This is what helps us to drive money into the local economy; this is what helps create that third point of value he referenced earlier. They have everybody involved, not just large retailers and this is indicated when you look at redemption behavior. Over half of all rewards redeemed in nearly every program in every one of the 20 states where they are deployed are from local businesses. They also have an e-waste opportunity for points to be awarded for your I-pod, laptop, or cell phone. You simply put in the model number and they have some backend technology that actually has three different electronic waste partners bidding and you are automatically given the bidder who will give you the most points, you print a mailing label and ship it to us and we cover the shipping. You would see those points in your balance and would have another opportunity for redemption. In addition to the 1,500 local, regional and national brands that participate in our program, with rewards we have opportunities for donations at over 500 charities. Any local organization that is an approved 501(c)3 can participate. There is a simple approval process to make sure the cause is kosher, so to speak, and then it could be included in the program. There is also a green school program funded by Coca Cola, which is one of their primary investors and it creates opportunities for local schools in the City of Derby to receive grant monies based on how many points people donate to a particular school. This is a proven program that has measurable impact in terms of recycling tonnage. He provided information on four early-stage programs in other cities. They see well over 100% increases in recycling in most cases. Conservatively speaking, they are forecasting 60 lbs per household per month; they consider that \$1 million of annual economic impact the RecycleBank would have on local businesses here in the City of Derby. He wants to emphasize that all of their estimates to date have been extremely conservative. The technology would enable them to give reporting back to the municipality, back to Waste Connections so that enhancements, efficiencies and levels of service can continue to increase. The City of Derby will enjoy press as a result of this program. If you go to YouTube and enter RecycleBank you will see probably in excess of 150 videos in different areas where they have deployed in more than 100 communities in 20 states and growing. The bottom line is that communities enjoy the program for a number

of different reasons. They receive and enjoy a tremendous amount of recognition, and they are proud of the recognition because of the mission they have set themselves to accomplish. Most recently the United Nations and the World Economic Forum both gave them honors for being a Pioneer of the Earth and a Champion of the Earth.

DISCUSSION:

Council Member Bannon thanked everyone that spoke this evening and everyone who has put in a lot of time on this project, especially the young woman from California. She really enjoyed her honesty and passion. A lot of times we deal with emotional issues. Luckily this is one of those times as far as she is concerned that they can take emotion out of it and deal with the facts. The world has finite resources. No more land is being made, with the exception of Hawaii, and it's not going to be ready in her lifetime. Fuel, air pollution are all major items we have to be concerned with. To her, reductions in a landfill is not a bad thing. That means it's working. It means the economy may not be as good so people are not buying those recyclable consumer items, but it means the recycling is good. Everyone she has talked to, recycling is something we all seem to agree on. Single stream has been proven, and she has done a lot of research. Single-stream recycling is what works for everyone. The cost savings in town, there is no way to argue with that, it's a fact. You can look at the figures; it's there in black and white. The County made a challenge, we've always prided ourselves on being a forward-thinking group; on this one we are not out in front, but we do need to be on board. As far as she is concerned Recycle Bank is a great bonus; it's not a must have for this, because we get more services, less money and single-stream recycling with or without RecycleBank. Whenever you lump on the money consumers can save with RecycleBank, that's a no brainer. If you happen to be a trash hauler and you've been in business as long as some of the companies that she knows were interested in bidding on this have been, and you have not honestly been looking at single-stream recycling and/or franchising, it's time to update your business model. This is not anything new; it's been around a long time. There are a lot of small towns that still need this service. Our children are leading the way on recycling. We always want to be role models to our children, in this particular instance our kids are ahead of us, and they are waiting for us to catch up. This is the right choice for our town, its future and our children's future.

MOTION: Bannon moved to accept the recommendation of the advisory board and direct staff to negotiate a contract with Waste Connections for council approval at an upcoming meeting. Craig seconded.

AMENDMENT: Warren moved to allow for multiple franchises with companies that would be willing to provide recycling service and willing to post their rates to allow for open competition. Nun seconded.

Council Member Warren thanked Council Member Nun for seconding his motion. He knows he favors a single franchise but in an effort to allow him to get his piece in, Mr. Nun agreed to second his motion even though he's not in complete agreement with him. He thanked everyone who has spoken tonight and has called on this issue. He also thanked the committee that has been looking at this for a long time; they have worked very hard on it. He doesn't know where everyone on the council stands on this and he's not going to criticize anyone on whatever side they take on this because there is a lot to be talked about here. It actually seems like the choice will be obvious, lower trash rates, curbside recycling, reduced wear and tear on the streets and

reduced noise pollution due to fewer trucks. How could anyone be opposed to these things? There is a segment of our population that is afraid of what happens when government steps in and imposes its will on the rights and freedoms of the individual and/or the individual business owner. They are afraid of what happens when you take control out of the hands of the people and that control goes to a few. You then create a monopoly and circumvent the free enterprise system. Many years ago, shortly after he came on the council a gentleman who he considers to be a pillar in the community, Mr. Gerald Miller, got right in his face and “don’t tell me who I’m gonna use for my trash service.” To him, it was important that he retain that right to choose. He has had many other individuals over the last couple of months who have expressed the same sentiment in one form or another. This afternoon over lunch as he was reading an article talking about how in 2004 the Environmental Protection Agency put into effect new regulations aimed at reducing air pollution by requiring an increase in ethanol production. The debate still goes on today as to whether that decision had the desired effect. Ethanol production is more costly and damaging the environment in a way that people wouldn’t have thought about years ago. Production today is only practical if it is subsidized by the federal government that means your taxes. What were the effects? Corn farmers loved it, beef farmers hated it, it raised the cost of food dramatically around the world by increasing demand for the grains to make gas rather than for our own consumption. Taxpayers are subsidizing an industry that may be doing as much harm as it is good. What does that have to do with trash franchising, only this, when government sticks its nose into the free enterprise system, when it changes the rules of the game it often has unintended consequences, most of which are unfavorable. Please do not mistake his comments as retreat from recycling; our environment is too precious of a gift not to make vast improvements in this area. It’s just that he feels the goal can be accomplished without running individual businesses out of town. While he will not criticize those who favor a single franchise, he must speak out for those who feel it is an infringement on our rights and an unwise intrusion into the free enterprise system.

Council Member Nun asked Ms. Sexton if the board looked at doing multiple franchises, and if they did what was the reason they chose not to?

Ms. Sexton advised they did look at that. The board considered two different things. First they considered splitting the city. There would be a franchise for half the city and a franchise for the other half and that would be done however many ways you want to do it. Basically they considered that (1) there would not be a financial benefit in terms of the pricing structure, and (2) you would have what could easily be considered unequal service. One company might provide a recycling program that only takes 1 and 2 plastics and cans and paper but another company on the other side of town might provide lots of different items and rewards points. There are inherent benefits in terms of not hurting a business but there are also inherent disadvantages in terms of residents feeling like they are on the wrong side of the tracks and the city set it up that way. The other way would be to simply allow more than one service over the whole city. With that, you don’t get the financial benefit as much and you still have the street wear and tear issue with multiple trucks going down the same street.

Council Member Warren clarified his motion is to allow multiple franchises throughout the entire city. His goal here is not to save any companies; his goal is to retain the right for people to choose. He agrees the disadvantage of his motion is that we will have multiple trucks going down our streets. The disadvantage of his motion is that we may not get the best rate possible but what he is hearing from a significant number of his constituents is that they want the right to choose. His motion would allow any company to come into the city to provide service provided that they do provide a recycling service and they post their rates publicly so they would be readily available so anyone who comes to the city can see who provides service and what their rates are and hopefully that would bring about some competition.

Council Member Meidinger asked what would happen to these rates that have been quoted if we had four or five different trash haulers come into town, are these rates still good.

Ms. Sexton stated that if the council decided to change directions at this point, she would recommend rejecting all proposals and beginning the RFP process again. That way, we are clear with all companies that they would not be getting 7,500 accounts like the current RFP said, so they would have to redo their mathematics of assuming how many accounts they could get.

Mayor Avello indicated it would stand to reason that if you divide the city into four quadrants you aren't going to get a lower price, strictly on volume.

Ms. Sexton agreed that was accurate.

VOTE ON AMENDMENT: Warren yea, Staats nay, Meidinger nay, Nun nay, Bannon nay, Haynes nay, Craig nay, Horyna nay. Motion failed 1-7.

Council Member Haynes asked about the discounts for small businesses, including non-profits, will they be offered the RecycleBank like the homeowners are?

Mr. Spencer advised if you are in the RecycleBank program, you can get the points.

Council Member Haynes clarified that includes small businesses and non-profit organizations.

Mr. Spencer advised they are limited to 450 points a month and 5,400 points a year, just like a resident.

Council Member Haynes pointed out that if we go with single-source franchising it appears we may lose some jobs for the other companies. Having a history with government contracts, when we would bid a new contract, if we won that contract a certain percentage of the employees would remain in place and basically pull off the old patch and put on my patch for my company. He asked if Waste Connections would be willing, if someone loses their job from these other companies, to give those employees an opportunity for employment. That would be a plus for him if they would give those people a look.

Mr. Spencer advised in their business finding people with trash experience is a plus. Those people would get a first look from them because of not only their trash experience but their experience with the local community and the knowledge they already have of the area would be a big plus for us.

Council Member Haynes asked for a summarization of business philosophy relating to customer service.

Mr. Spencer advised customer service is paramount to their business. They are a service business, that's all they have to offer is service. The customer comes first.

Council Member Horyna asked how the two proposals were rated. Typically we get a matrix presented on what decision was made and why. He did not see that, he just sees that we want to go with Waste Connections.

Ms. Sexton advised the advisory board did not use a numerical type rating system assigning points to different things. They did produce a spreadsheet that compared the two, it was a three-page spreadsheet that covered all the issues that were listed in the request for proposal that were important to them, price being the main one. She recalls in early meetings of the advisory board when they specifically talked about what is important to them, because they can't have everything. They really prioritized price and benefit to the consumer as the number one thing and then they had a high priority on customer service and making sure that the program was simple and clearly communicated. Another primary criterion was the ability of the company to service the city and do a good job for all of the households here, given the size of the city, to make sure there is not too much risk for the City as a party to a contract.

Council Member Horyna asked what the residents who are not customers of Waste Connections are to do with their current service and contract with their current provider if this goes through?

Ms. Sexton advised the transition plan touches on that a little bit. Residents should do nothing until they get the letters in the mail specifying what they should do. One of those things is responding to those letters telling Waste Connections what size cart they want and do you want to do recycling or not, so they can order the appropriate items and let them know what their billing cycle date is, that way they can get the cart to them at the right day. Otherwise, sit tight until they get all the carts delivered and accounts set up in September. There will be instructions about when to cancel service with their current provider and what they need to do to get on board.

Council Member Horyna asked how we as a city will address customer service issues if we experience sub par performance.

Ms. Sexton advised if the council authorizes staff to negotiate a contract there are a lot of details to work out in the contract in this regard. Certainly there will be customer service expectations set in that contract including reporting requirements. She would anticipate the first year of the franchise would have quarterly meetings to review information and make sure we understand and make sure we are all on the same page. After that, we will probably have annual meetings. There will be provisions in the contract that will be graded; we won't cancel the contract for screwing up one thing. You don't do that for any kind of contract you are in but you certainly do have ramifications, and in this case it might be financial penalties. There might be other steps before you get to that point, in other words, opportunity to remedy a situation.

Council Member Horyna advised he has received a lot of phone calls and emails on both sides. This is a tough decision to make. He is 100% for recycling and he thinks from what he hears that is pretty much where we want to go, we do need to recycle. He was somewhat disappointed to only see two proposals. When we solicited a whole bunch of bids he was expecting to get a whole bunch of proposals. Having only two in front of us, he knows we are going after good quality service at a low cost. We are getting phenomenal service at a low cost provided through Waste Connections. We didn't go with the low bid which is different from what a lot of governments do. Waste Connections was not the lower of the two, and that's part of him that

was disappointed why additional companies didn't submit proposals because some of us were honing in on that low cost, but that was not recommended. He is leaning toward this recommendation.

Council Member Craig thanked the committee and Mr. Lies for submitting a proposal. He too was disappointed in the number that said they would participate in this and when it came down to the finish line they decided not to.

Ms. Sexton noted that Lies did not submit a proposal.

Council Member Craig advised that when he first got on this council one of the things that was really difficult was water. It had to do with equity and fairness in cost of water. We worked that issue for three years but finally got it worked out that if one person uses 10,000 gallons and another uses 10,000 gallons, they both pay the same amount. This is the same thing. Sunday he spoke with someone paying \$83.46 per quarter for trash and recycling. They could not believe it when he told them today that his cost will be \$177.00 per year for the same service, resulting in a savings of \$156.84 for a reduction in cost of 47%. It even gets better when you go with the smaller deal. He is glad we dragged this out because at the very beginning everyone that was saying no called quickly. Over a period of time it has evened out, with maybe a slight edge to those in favor of this. Our first focus was equity of cost, followed by preserving our streets and recycling as a way of life. For him, it had to be one bin he can throw everything in, and that is what is being offered. He wants to commend the young lady for calling him last week and speaking this evening, her candid words spoke tons. It is very important that young people come forward. He worked hard to provide fair and equitable utility services for all Derby residents and this is one time we have the opportunity to do that. This company has a strong reputation and it is a first-rate company providing a fair and equitable cost for trash and recycling service for our entire community, and it's a genuine initiative toward a better environment and we are right on target. He knows what Mr. Meidinger is saying, and he respects his position just as he respects everyone who has presented this evening.

MOTION: Craig called for the question, Bannon seconded.

VOTE: Motion carried 7-2, Meidinger and Nun nay.

VOTE ON ORIGINAL MOTION: Motion carried 7-1, Meidinger nay.

The council recessed at 8:34 p.m. and returned at 8:45 p.m.

Mayor Avello announced that Mr. Staats had left for the evening.

**SALE OF TEMPORARY
NOTE SERIES 2009-1
AND SERIES 2009-2**

Jean Epperson, City Clerk/Director of Finance presented the staff report.

Background:

- Bids for the purchase of Temporary Note Series 2009-1 and 2009-2 will be received via facsimile, mail, and the Internet for the notes to be opened at 2:00 p.m. on April 28th.
- Results of the bid opening will be presented during the council meeting.
- Upon acceptance of the best bid, the next required action would be approval of the resolutions authorizing and directing the sale and delivery of each series of notes.

Financial/Sustainability Considerations:

- Temporary Notes Series 2009-1 will provide interim financing during the construction of infrastructure projects throughout the City of \$2,755,000.
- Sales Tax Temporary Notes Series 2009-2 will provide \$4,125,000 of interim financing for construction of the Derby Public Library. This is the second series of sales tax notes to finish the project. The 2008-1 note series was issued last May for \$3,025,000.

Legal Considerations:

- The legal work for this process is being performed by the City’s bond counsel, Joe L. Norton of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which ultimately governs the special assessment process.

Policy Considerations:

- The various steps taken to complete the process of permanent financing of these projects are in compliance with existing city policy.

RESOLUTION NO. 24-2009

A RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY OF \$2,755,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2009-1, OF THE CITY OF DERBY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX, IF NECESSARY, FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID NOTES AS THEY BECOME DUE; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

RESOLUTION NO. 25-2009

A RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY OF \$4,125,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION SALES TAX TEMPORARY NOTES, SERIES 2009-2, OF THE CITY OF DERBY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX, IF NECESSARY, FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID NOTES AS THEY BECOME DUE; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

DISCUSSION:

Greg Vahrenburg, Piper Jaffrey advised the two temporary notes being sold this evening have final payments in the year 2011 and are pre-payable in 2009. The intent of issuing temporary notes is to provide temporary financing for a project until the city is ready to convert those temporary notes to permanent financing. When we put together the details of the temporary note issue we work with the rating agencies to have a rating assigned. The city has received the highest possible rating from both Standard and Poor and Moody's. That is based upon the credit quality and financial condition of the city. That helps us achieve the interest rates presented this evening. The Series 2009-1 issue received one bid with an average interest rate of 1.434%, that bid was submitted by UMB Bank, and we have verified the accuracy of that bid and it is correct. The Series 2009-2 temporary notes, we received three bids ranging from 1.449% submitted by UMB Bank to 2.19%. The other two bidders were Country Club Bank and Commerce Bank. We have verified the accuracy, and the bid submitted by UMB Bank is correct and we recommend you accept that bid.

Council Member Bannon indicated that 2.7 million is probably not that big in a lot of markets, but why just the one bid?

Mr. Vahrenburg indicated that part of that is driven by what we have seen in terms of interest rates this year. There has been a dramatic improvement in interest rates coming off of the disruption in the financial markets last fall. We watched short-term interest rates drop significantly and with interest rates on temporary notes dropping to such low levels, many investors do not want to tie up their money for 1.4% for two years. As investors have been reluctant to buy those temporary notes, we are seeing fewer bidders at these interest rate levels. The good news is with the lack of bidders you are getting a very good interest rate.

MOTION: Craig moved to accept the bid of UMB Bank and authorize and direct the Mayor and City Clerk to execute the bid form selling the 2009-1 note series to the best bidder on the basis of said bid and the terms specified in the Notice of Note Sale, and approve a resolution, authorizing and directing issuance, sale and delivery of temporary notes in the amount of \$2,755,000. Warren seconded

VOTE: Motion carried 7-0, Staats absent.

MOTION: Craig moved to accept the bid of UMB Bank and authorize and direct the Mayor and City Clerk to execute the bid form selling the 2009-2 note series to the best bidder on the basis of said bid and the terms specified in the Notice of Note Sale, and approve a resolution, authorizing and directing issuance, sale and delivery of temporary notes in the amount of \$4,125,000. Warren seconded.

VOTE: Motion carried 7-0, Staats absent.

ANNUAL REPORT ON OPERATIONS OF DERBY MUNICIPAL COURT

James Wilson, Municipal Judge presented the staff report.

Background:

- Derby Municipal Court continues to remain busy, however not as busy as in 2007. Both the number of cases filed and dispersed decreased from 2007 to 2008.

CASES FILED this PERIOD				CASES DISPERSED this PERIOD			
2007	2008	# INCR	%	2007	2008	# INCR	%
5,298	4,473	-825	-15.57%	4,324	4,141	-183	-4.23%

- Specific offense comparisons reflect this trend:

OFFENSES	2007	2008	# INC R	%
Reckless Driving	6	3	-3	50.0%
Driving Under the Influence	45	56	11	24.4%
Fleeing a Police Officer	0	2	2	NA
Other Traffic Violations (excluding parking violations)	2,999	2,161	-838	27.9%
Crimes Against Persons (assault, battery, etc.)	145	126	-19	13.1%
Crimes Against Property (theft, vandalism, etc.)	68	77	9	13.2%
Cigarette and Tobacco Infractions issued to Minors	46	49	3	6.5%
Other Crimes (public safety, public morals, etc.)	1,341	1,334	-7	-0.5%
Failure to Appear/Bench Warrants	648	665	17	2.6%

- Even though there is a decrease in the numbers, a majority of cases resulted in guilty pleas in 2008.

	2007	2008	# INC R	%
Guilty Plea	3,524	2,998	-526	14.9%
Dismissals	680	1,031	351	51.6%
Trials	5	7	2	40.0%
Diversion	115	105	-10	-8.7%

Financial/Sustainability Considerations:

- Revenue increased 4% in 2008, which is a result of a slight increase in the number of warrants served; the mailing of reminder, payment due, and overdue payment letters; and the inception of a part-time court service officer with consistent office hours.

ANNUAL REVENUE	
2007	2008
\$639,372	\$665,538

WARRANTS				
	2007	2008	# INC R	%
Issued	694	700	6	0.86%
Served	333	349	16	4.80%

Legal Considerations:

- None.

Policy Considerations:

- Changes in revenue are used as indicators of workload and effectiveness in processing cases. Raising revenue is not a primary objective of the court.

DISCUSSION:

Council Member Warren asked where the community service projects come from.

Mr. Wilson advised they have a list of people, including charitable organizations as well as the City. The parks department gets a lot of able bodied people.

Council Member Warren asked what would happen if someone were hurt while providing community service through the city.

Mr. Wilson indicated he is sure that the City has some insurance on them but would defer to the City Attorney.

Phil Alexander, City Attorney, indicated that our workers compensation policy would cover them.

Council Member Craig commended Mr. Wilson in moving that way; community service helps us out more than the dollars do.

MOTION: Horyna moved to receive and file the annual report of the Derby Municipal Court. Nun seconded.

VOTE: Motion carried 7-0, Staats absent.

Ms Sexton mentioned that if anyone has opportunities for community service they would like the City to consider they should contact Sgt. Larry Alumbaugh at the police department at 788-1557.

BOARD & COMMISSION APPOINTMENTS

Mayor Avello presented his recommended appointments.

Background:

- In March, the Mayor requested applications to fill expired terms and vacancies in City advisory boards and commissions.
- Many good applications were received, and the Mayor’s recommended appointments are as follows:

ADA Board

Reba Livingston (reappoint)

Judy Morris (reappoint)

Phillipa Pottinger (appoint)

Board of Zoning Appeals

Barney Tull (reappoint)

Construction Trades Board	Stuart Sharp (reappoint) John Riggenbach (reappoint) Wayne Bowman (reappoint) Michael Beck (appoint)
Economic Development Board	Kevin Chase (reappoint) Paula Langworthy (reappoint)
Library Board	Karen Nichols (reappoint) Linda Slack (appoint)
Ordinance Review Advisory Board	Richard Brown (reappoint) Dan Billman (appoint)
Parks & Urban Forestry Board	Jason Griffin (reappoint) Judy Morris (reappoint) David Peebler (reappoint) One vacancy to be appointed in May
Planning Commission	Dolan Pelley (reappoint) Eric Tauer (reappoint) Shawn Riley (appoint)

- 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 12.

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 Zoning Appeals – City Zoning Regulations §1001
 - Board of Construction, Trades and Appeals – City Code 15.08.010
 - 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

Council Member Horyna thanked those that applied for the open positions.

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

VOTE: Motion carried 7-0, Staats absent.

**ORDINANCE VACATING
PLATTED STREET IN EL
PASO HEIGHTS
ADDITION**

Bud Newberry, City Planner presented the staff report.

Background:

- The El Paso Heights Addition to Derby was recorded on October 5, 1979. This plat is located between K-15 and Woodlawn and between 91st Street South and 95th Street South.
- When platted, Ponderosa Street provided access from this development to K-15 Highway. In 1995, a major reconstruction of K-15 project funded by the Kansas Department of Transportation relocated the access point for El Paso Heights to 95th Street South. This action left Ponderosa as a dead-end street. (without connection to K-15)
- The lots abutting this portion of Ponderosa are zoned B-1 and B-3, are vacant and are owned by the applicant.
- Although the city does not have any utility main lines located in this street, there is a 4” gas main owned by Kansas Gas Service which is currently being abandoned at the owner’s expense. There is, however, an existing drainage ditch which will require that an appropriately sized drainage easement be established in this location.
- Notice of the hearing was mailed to all affected property owners and to the utility companies on March 20, 2009.
- The Planning Commission held a required public hearing for this request on April 2, 2009. There was no one in attendance to present comment.
- Following discussion of this request, the Planning Commission approved it by a vote of 9-0
- If this ordinance is adopted, Ponderosa Street will be vacated with ownership reverting to the property owners on both sides.

Financial/Sustainability Considerations:

- This vacation action could result in an increase in the value of the adjoining lots.

Legal Considerations:

- All procedures prescribed in the City’s subdivision regulations for vacation of this street have been followed.
- If a protest against this ordinance is filed within 30 days of publication, the Council will hold a hearing on the matter.
- After the required hearing, the Council may either confirm the vacation by resolution or void it by taking no action.
- The County Clerk and Register of Deeds will be notified of the vacation so that it can be entered on land transfer records.

Policy Considerations:

- Similar requests in the past have been approved by the City Council when found to be in the public interest.
- Approval of this ordinance will be subject to retention of a drainage easement necessary to allow for use and maintenance of an existing drainage ditch. That easement will be recorded simultaneously with the vacation ordinance.

ORDINANCE NO. 1982

AN ORDINANCE ADOPTED PURSUANT TO SECTION 1003.C OF THE SUBDIVISION REGULATIONS OF THE CITY OF DERBY, KANSAS, VACATING A PLATTED ALLEY LOCATED WITHIN THE CITY.

Council Member Craig asked if the city was maintaining this now.

Mr. Newberry advised the owners mow it. They will continue to do that; the drainage easement won't release them from that responsibility.

Council Member Craig verified with the property owner they were okay with doing that. They indicated they were.

MOTION: Haynes moved to adopt an ordinance vacating Ponderosa Street located adjacent to Lot 14, Block 4, and Lot 1, Block 5, in El Paso Heights Addition to the City of Derby, accept the dedication of a drainage easement across the same property, and authorize staff to certify the ordinance to the Sedgwick County Clerk and Register of Deeds. Horyna seconded.

VOTE: Motion carried 7-0, Staats absent.

UPDATE COUNCIL PRIORITIES

Kathy Sexton, City Manager presented the staff report.

Background:

- On January 27, 2009, the Council last updated its priority list.
- Today, an updated priority list is provided for Council consideration. Three new projects have been added to the list since January.
 - Update B-5 zoning for retail in APZ.
 - Update financial policies on debt management and fund balances.
 - Update water disconnect/reconnect fees.
- Five projects were completed since January and removed from the list.
 - Develop a marketing plan for the community.
 - Recycling & trash franchising initiatives.
 - Notification of future special assessments.
 - Develop and implement a performance measurement system for City services.
 - Implement 360 Performance measurement for the Water Company.
- Work is underway on many of the 21 priorities on the city list, as well as the 3 priorities on the Water Company's list.

Financial Considerations:

- None at this time. Implementation of the priorities will necessarily involve staff time and various expenses that will be determined at a future date and budgeted for as appropriate.

Legal Considerations:

- None.

Policy Considerations:

- It is important for a governing body to agree on a set of priorities to guide the productive use of staff time. The list does not represent everything the Council has directed staff to accomplish, rather it includes projects and programs to enhance the city to be worked on as time allows amid other routine responsibilities.

City Council Priorities for the City Manager

as of April 28, 2009

Successes Planned

- 1 **Update B-5 zoning for retail in APZ**
- 2 *Noise ordinance*
- 3 Ordinance for Council monthly \$100 stipend
- 4 *Update nuisance ordinances (signs)*
- 5 *Public Works relocation*
- 6 *Equity Buy-in fee for sewer*
- 7 *Ordinance to restrict truck traffic on residential streets*
- 8 Update wards based on population (instead of registered voters)
- 9 *K-15 Frontage Road traffic management*
- 10 Update subdivision regulations re: park in-lieu-of fees
- 11 *Develop land acquisition plan*
- 12 *Alcohol for special events at High Park, DRC, & new Library community room*
- 13 *Plan for services to seniors & national accreditation of senior center*
- 14 Review Vicious Animal Ordinance & Implementation
- 15 **Update financial policies for debt management and fund balances**
- 16 Unilateral Annexations
- 17 Update turnpike signage
- 18 "Green" initiatives: alternative fuel for city vehicles; educational messages
- 19 BZA process update
- 20 Work to obtain All-America City status
- 21 Comprehensive Plan - Implementation Actions

Italics = Working on

Bold = New since Jan. 2009

Water Company Board Priorities for the President

as of April 28, 2009

- A *Marketing of water assets*
- B *Equity buy-in fee for water*
- C **Update Disconnect/reconnect fees**

DISCUSSION:

Council Member Warren asked about item #1, while we have a huge interest in making sure we do things that protect the viability of McConnell Air Force Base, we also have an obligation to protect private property rights. It would be very easy to say we are going to restrict everything and we will be safe on the McConnell side but to do so in his opinion would violate the Fifth Amendment of our Constitution. There is a taking by ordinance or zoning, and that is a component that he wants to make sure that as we delve into that that we protect the private property rights of people that own land in that area.

Council Member Craig asked if updating financial policies would include the revenue stream that is coming in from the half-cent sales tax. He knows we are meeting a debt service obligation, but he would like to see us understand where that money is coming from and how much it is. Is it changing because of the economic situation?

Ms. Sexton advised we can definitely get you an update on that. We try to give you updates on that every other month in terms of Jean's bi-monthly report so that is probably the most recent one you've seen. We are holding our own in terms of sales tax revenue in Derby. People aren't spending like they were before, but the benefit for Derby is that we have so many new retail businesses so it is counterbalancing it at a perfect time. That item is more about putting on paper things like our practice that we don't go below 15% in terms of fund balance, but that's not on paper anywhere. Every time the rating agencies call they always ask about the policies and do you have those written down yet, it's really more of a technical matter.

Council Member Craig clarified that this is related to the omissions the rating agencies saw that we did not have these policies in place.

Ms. Sexton indicated that is why we would like to get it done.

Mrs. Epperson advised there is a very old document, but we were not able to locate where it was approved by the governing body. That's why we say in the budget we are following an unofficial policy because we can't tell in the minutes if it was ever adopted by the council.

Mayor Avello advised McConnell is growing by 349 Airman. They are closing down Grand Forks and that will make this the biggest tanker base in the world. The estimated number of people coming in with their families is about 1,000 with an added payroll of well over \$1 million. Derby is sitting in a pretty good position to stay above board.

MOTION: Warren moved to approve the Council's updated list of priorities. Bannon seconded.

VOTE: Motion carried 7-0, Staats absent.

CONSENT AGENDA

Justice Assistance Grant (JAG)

Background:

- The Justice Assistance Grant (JAG) provides federal funds to local law enforcement agencies. It serves as a means for agencies to purchase necessary law enforcement equipment.
- Four agencies in Sedgwick County have been designated to receive JAG funding. The agencies are: Derby Police Department, Wichita Police Department, Sedgwick County Sheriff's Office, and Haysville Police Department.
- Through the use of an Interlocal Agreement between the above entities, Sedgwick County will serve as the fiscal agent and will submit a joint application for the total eligible allocation.

Financial Considerations/Sustainability Considerations:

- Upon receiving the award, the City of Derby will be allocated \$26, 320.
- There are no matching funds required for this grant.

Legal Considerations:

- The Interlocal Agreement has been reviewed by the City Attorney.

Recommendation:

- Approve entering into the Interlocal Agreement to receive the awarded funds.

Bids for Storm Water Sewer Improvements to Derby Medical Campus Addition

Background:

- A bid letting for the construction of Storm Water Sewer Improvements for Derby Medical Campus Addition was conducted on Tuesday, April 21, 2009 at 2:00 P.M. An invitation for bids was disseminated to qualified contractors. The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>	
Middlecreek Corporation	\$191,180.00	
Dondlinger & Sons, Inc.	189,563.00	
Utility Contractors, Inc.	174,786.50	
Mies Construction, Inc.	164,701.00	
Duling Construction	148,131.00	
McCullough Excavation	145,800.00	
	Engineer's Estimate*	\$255,048.00

*Engineers estimate prepared by Baughman Company, P.A.

Financial/Sustainability Considerations:

- Funds for the construction work will be included in the 2009-1 temporary note issue.
- Costs for the improvements will be paid 100% by the benefit district and none by the City-at-large.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The City followed all statutory procedures and local policies in planning and securing financing for the project and in soliciting and analyzing bids.

Policy Considerations:

- McCullough Excavation has satisfactorily completed several projects in Derby.
- McCullough Excavation has submitted all required bonds and financial sureties for the project.
- Upon approval of the bid, staff will prepare the required contract documents.

Recommendation:

- Accept the bid of \$145,800 and authorize execution of a contract with McCullough Excavation for construction of Storm Water Sewer Improvements to serve Derby Medical Campus Addition.

Lease Agreement – Big Daddy Fireworks, L.L.C.

Background:

- The city has leased the property adjacent to the water meter station to Big Daddy Fireworks the past two years. This year, a Request for Proposals (RFP) was sent to several vendors due to interest expressed by others.
- The RFP to lease the property for the 2009 fireworks season was sent to all holders of 2008 fireworks stand permits in the City of Derby. Two proposals were received:
 - Big Daddy Fireworks - \$10,500
 - Wholesale Fireworks - \$7,800
- The term of the lease will be from June 24, 2009 until midnight, July 6, 2009. This allows access several days before and the day after the selling period for fireworks. The sale of fireworks is allowed only during the time that the use is permitted by city ordinance.
- The proposed lease requires that the property be restored to its original condition. Installation of the utility service and removal of the utility pole is at the expense of Big Daddy Fireworks, L.L.C.

Financial/Sustainability Considerations:

- The RFP required payment of the rent with submittal of the proposal. Checks for payment of the rent were attached to both proposals. The rent received from Big Daddy Fireworks of \$10,500 is an increase of \$5,500 from last year.
- In addition to the rental revenue, the city will receive the fireworks stand permit fee of \$7,500 as required by city ordinance.
- The lessee will furnish a Certificate of Insurance coverage naming the city as an additional insured.

Policy Considerations:

- Fireworks stands are a major fundraiser for various non-profit groups in the community, so the RFP requested a description of the financial and other benefits to the community. The intent is to broaden the decision to include intrinsic value to the community.

- The First Christian Church of Derby will operate the Big Daddy stand, and St. Mary's parish would have operated the Wholesale Fireworks stand. Both proposals appear to be equal in the intrinsic value to the community.

Legal Considerations:

- The City holds fee simple title to the property to be leased. The property may be used for any lawful purpose. The proposed lease has been reviewed and determined to be satisfactory in the form presented.

Recommendation:

- Authorize the City Manager to execute a property lease agreement for the land at 407 W. Patriot in the City of Derby in substantially the form presented.

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

VOTE: Motion carried 7-0, Staats absent.

ADJOURNMENT

MOTION: Meidinger moved to adjourn at 9:16 p.m. Warren seconded.

VOTE: Motion carried 7-0, Staats absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk