

**APPROVED MINUTES
REGULAR COUNCIL MEETING
August 10, 2010
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:
WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:
Jim Craig, Jim Meidinger (arrived at 6:36 p.m.)
Heath Horyna, Vaughn Nun
Cheryl Bannon, Chuck Warren
Tom Haynes, Mark Staats

Flag salute was led by Council Member Vaughn Nun. The invocation was led by Council Member Chuck Warren.

CONSIDERATION OF MINUTES

Minutes of the July 27, 2010 Regular Council Meeting.

MOTION: Craig moved to approve. Horyna seconded.
VOTE: Motion carried 7-0, Meidinger absent.

PUBLIC FORUM:

Judy Bennett, Director of Derby Public Library, stated in April Kathy Sexton was a keynote speaker at the Kansas Library Conference. Her topic was “Collaboration between Local Governments and Public Libraries.” A Derby contingent of four library board members and Judy were proud to be in attendance and to witness to other libraries the successful collaboration between the City of Derby and the Derby Public Library. Not only is our new library building envied throughout the state, the collaboration between the City of Derby and the library is also envied and it’s a leading role model for the state. The Kansas Library Association and the Friends of Kansas Libraries each donated \$100 to the Derby Library as a thank you to Ms. Sexton. Knowing how important economic development is to the council and the Derby community, we have selected ten titles to add to the library’s business collection. The books focus on economic development, small business start-ups and ideas about leadership in business communities. We already have several of these that have been placed on hold by library users. She thanked the council for allowing and permitting Ms. Sexton to spend her time addressing the libraries in the State of Kansas.

Jerry Lucas, Chairman of Derby’s Independence Day parade, thanked the council for their support of the parade that was sponsored by the American Legion and the Derby Veterans of Foreign Wars. On July 10, the Wichita Eagle published a letter to the editor he had written. He read the letter to the council. He also thanked Lt. Jimmy Queen and the Derby Police Department, the Public Works Department, as well as the Mayor, Mr. Haynes and Mr. Warren

for participating in the parade. He invited all council members to be in the parade next year on July 4th.

Council Member Haynes thanked Mr. Lucas and members of the VFW and American Legion for all the work done in the community.

Mr. Lucas thanked the members of the ladies auxiliary. He stated that Derby is a great city and one worth supporting.

Council Member Warren also thanked Mr. Lucas for all his work. It is a lot of work to put on a parade and he appreciates all of Mr. Lucas' efforts.

Council Member Craig thanked all those who participated in the parade, including those from McConnell and their families that came out.

Bill Christian, Transportation Planner at WAMPO, advised they are gathering data on travel behavior of households in the region for use in their transportation planning efforts. They have contracted with ETC out of Olathe, Kansas. They have guaranteed us that 3,200 households will be actively participating in the survey, which may take 15,000 to 20,000 calls, to get a statistically valid representation of the entire region. These households will be asked to keep a 24 hour travel diary of the travel habits and the modes of transportation that they use. They will also be asked to provide information on a transportation policy survey seeking their support for taking transit, walking, bicycling and other modes of transportation. There are issues with air quality and other related issues they can use. All contacts will be by phone or mail; no one will be knocking on doors. The only exception to this, 300 of the households that will be participating will be given a GPS unit so they can verify some of the travel diary results. The results are confidential and will not be shared with anyone. The survey will run from the middle of August through October and we will compile the data. There is an open house scheduled for August 19th at the Water Center when the survey materials will be presented to the public. If you would like to participate and haven't been contacted we can get you in touch with the people so you may participate. The results will be due in late December and will be taken to our transportation policy body in January for approval. We will have a 2nd open house sometime in February or March to present the results of the survey. We are making presentations to city councils across the region to let you know this is a legitimate survey.

Council Member Warren asked what WAMPO stands for and what they do.

Mr. Christian explained that WAMPO stands for the Wichita Area Metropolitan Planning Organization. They are the designated metropolitan planning organization for Sedgwick County, the City of Wichita, all the cities in Sedgwick County and Andover and Mulvane. They are a federally mandated agency and are not part of city planning. They are a standalone organization who just happens to lease space out of city hall in Wichita.

Council Member Craig stated that a week ago we laid a very fine gentleman to rest that not many people know. From the time we left the church to the time they arrive at the cemetery, every person that met the motorcade pulled off the side of the road with due respect. He knows

that doesn't occur a lot in the larger urban areas but it sure speaks well of the people of the surrounding communities and how they view life. He thanked everyone, especially the police department for their involvement in the escort.

Council Member Bannon announced a new art show at the library called "Just Down the Road" of landscape oil paintings by Rob Compton and Joan Swearington. There will be an art reception next Thursday evening from 6:00 p.m. to 7:30 p.m. There will be a concert by Jessie James at Rock River Rapids on Friday at 1:00 p.m. We had a full capacity crowd last Friday for the concert and we are expecting a lot of people again this week.

Ms. Sexton pointed out that Brad Ward from the Planning Commission was in the audience tonight. She thanked the Planning Commission for all the time and effort they put into making Derby a better place.

2009 COMPREHENSIVE ANNUAL FINANCIAL REPORT

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

Karen Linn, Berberich, Trahan and Company provided the council with results of the audit.

Background:

- The firm of Berberich Trahan & Co. conducted the audit of the city's financial statements for the year ended December 31, 2009. The independent auditor's report on the audit of the financial statements can be found behind the Financial Section tab.
- The auditor's report on the City's internal control over financial reporting begins on page 94 and is followed by the Schedule of Findings and Responses on page 96, which includes the City staff's response to the one finding for 2009.
 - The trial balance is reviewed periodically throughout each month and at each month end. The number and size of adjusting entries were related to the significant adjustment of the city's infrastructure assets and restatement of the prior period. The prior period adjustment of \$69,624,022 essentially doubled the infrastructure value of streets and added right-of-way to the land category.

Staff recognized that the value of streets estimated when the City first complied with GASB 34 in 2003 was low. An independent valuation was obtained from a firm that specializes in valuation of government infrastructure, and the resulting value was significantly higher. Although not required, the City's right-of-ways were also assigned a value for the first time, to utilize the service of the analyst and in the event it becomes a requirement in the future.

The assistance of the auditor was sought in preparing the adjusting entries, reconciling to the existing financials and the new fixed asset software module that was installed in February this year. Due to the timing of the software installation, the adjusting entries were not made until the year-end closing process was well underway.

- This comprehensive annual financial report (CAFR), in addition to the basic financial statements, involves statistical reports as well as additional data in the notes to the financial statements.
- The statistical section begins on page 76 of the report, which provides a broad range of financial and demographic information useful in assessing a government's economic condition. Most of the reports present ten-year trend data, but schedules on pages 76-79 contain seven years of data, since the City implemented GASB Statement 34 beginning in fiscal year 2003 and the reporting of accrual information in the financial statements.
- The audit of El Paso Water Company, also prepared by Berberich Trahan, has been provided for your review. The plan is for the Board of Directors of El Paso Water Company to officially receive and file the audit during the August 24th Board meeting, but Ms. Karen Linn from the audit firm is here tonight to address any questions concerning that audit as well.

Financial Considerations:

- Acceptance of the report will have no financial impact.

Legal Considerations:

- K.S.A. 75-1122 requires an annual audit of the books and financial records of the City.
- The Kansas Department of Administration establishes the standards by which municipal audits are conducted.
- The audit firm selected by the City is qualified pursuant to Kansas law to perform municipal audits.

Policy Considerations:

- A key duty of the Governing Body is oversight of the financial affairs of the City organization. A primary tool in performing this oversight is the annual audit and financial report.
- The CAFR will be placed on the City's website to provide easy access to Derby citizens and users of the information. In addition, paper copies are available for viewing at City Hall and the Derby Public Library.

DISCUSSION

Council Member Craig asked about the reassessment of infrastructure value, is the \$69 million an additive or total?

Mrs. Epperson advised that is an addition.

Council Member Craig asked who the company was and when did it take place?

Mrs. Epperson stated it was Appraiser Valuation Advisory Group out of the Carolina's. It took place in February.

Council Member Craig clarified that this is just an estimate of the infrastructure, correct?

Mrs. Epperson advised that was correct.

Council Member Craig stated that staff felt it was underestimated and the additional \$69 million seems fair, we didn't stretch anything did we?

Mrs. Epperson stated absolutely not, \$30 million of that was right-of-way that wasn't included in the valuation before.

Council Member Craig asked why we made the decision to include that now.

Mrs. Epperson advised that there is a GASB pronouncement coming down the road that would require valuation rights-of-way so we are actually ahead of it.

Council Member Craig indicated a concern from a deficiency that is a repeat from last year. When saying an issue has been resolved, is there a better word, such as "closed" that would be used?

Ms. Linn clarified he is looking on page 97 and explained that was a finding from the 2008 audit and with the work that was done in 2009 that one is no longer an open comment. It is closed. The only one open for the current year is on page 96.

Council Member Craig asked Ms. Linn if they will be able to test the full effectiveness of the new software that is in place now.

Ms. Linn explained, in terms of the functionality of it, on a day-to-day basis, that is not necessarily something we would be looking at but we are looking at the output and the information coming out of it. We would be able to look at the end result.

Council Member Horyna advised he had not had an opportunity to review the information and did not feel comfortable receiving and filing it tonight.

MOTION: Horyna moved to delay receiving and filing the report until the next council meeting on August 24th. Warren seconded.

VOTE: Motion carried 5-3, Bannon, Craig and Staats nay.

Mayor Avello ruled that questions and comments would still be in order at this time since our guest was here from out of town. No further motions would be in order since the item was just tabled.

Council Member Bannon clarified that the \$69 million was not net assets; it was our total assets, correct. Is the remaining 14.15% what we have left to issue bonds and pay debt service with?

Ms. Linn explained that some of that is segregated into items that are restricted or non-expendable, like your capital assets. It doesn't necessarily represent cash or spendable items but is a reflection of the health of the city in terms of how that number increases or decreases over time.

Council Member Bannon commented on the water portion, in 2008-2009 we have almost a half a million dollars in uncollected monies from bills that have been unpaid. She quoted numbers from page 9 of the El Paso Water Company report regarding uncollected monies.

Mrs. Epperson explained that the unremitted sewer charges are funds El Paso collected but had not paid to the City of Derby.

Ms. Sexton clarified that every day water company employees collect money for sewer and water bills, but only once a month does El Paso remit to the city the sewer monies. They collect it on the city's behalf but only once a month write a big check to the city. At any given time you could do an audit or run a financial statement and you will always have 28 days of collections sitting there.

Ms. Linn presented the El Paso Water Company report.

Council Member Craig clarified that since the entire report was tabled, is there any way to receive and file the El Paso report?

Ms. Sexton explained that we never planned to do that tonight because the El Paso Water Company board of directors needs to do that at next week's meeting. Tonight is all about information and we will take action at the next meeting.

AMENDMENT OF CITY CODE REGARDING CLEAN INDOOR AIR

Phil Alexander, City Attorney, presented the staff report.

Background:

- In 2008, the City Council adopted a Clean Indoor Air Ordinance, now chapter 8.48 of the City Code, generally prohibiting smoking in public places and places of employment. It included an exception permitting smoking in outdoor dining areas and patios.
- The Derby VFW subsequently expanded its facility to include a smoking area that met the requirements of the ordinance.
- In 2010, the Kansas Legislature generally prohibited smoking in public places and places of employment.
 - Class "A" and "B" clubs licensed on or before January 1, 2009 were exempted from smoking restrictions; and
 - Smoking is allowed in areas that either –
 - Have no roof or ceiling, or
 - Have at least 30% of the total perimeter wall area open to the elements.
- On June 8, 2010, the Derby City Council passed ordinance no. 2023, adopting the "30% open to the elements" requirement of state law as the standard for a permitted smoking area under City ordinance.
- The VFW is the only Class "A" club in Derby that qualifies for exemption from state smoking restrictions.

- Because only about 13% of the perimeter wall space of the VFW smoking area is open to the elements, it does not currently qualify as a smoking area under the City Code.
- The VFW requested that the City Code be amended to allow continued use of its smoking area without modification.
- City staff drafted the proposed ordinance and presented it to VFW representatives.
- The proposed ordinance is acceptable to the VFW.

Financial/Sustainability Considerations:

- The proposed ordinance would not affect either the cost of enforcement for the City or the cost of compliance for the VFW.

Legal Considerations:

- A city ordinance may be more restrictive, but not less restrictive, than counterpart state law.
- With respect to Class “A” clubs such as the Derby VFW, and class “B” clubs, the City Code is currently more restrictive than the newly enacted state law.
- The proposed ordinance would allow patrons of the VFW to continue to smoke in the club’s existing smoking area.

Policy Considerations:

- By ordinance, the Council has declared its support for a general prohibition on indoor smoking in Derby.
- The proposed amendment would preserve the *status quo* for the VFW, as it existed prior to adoption of statewide smoking restrictions, by allowing continued use of its designated smoking area.

ORDINANCE NO. 2030

AN ORDINANCE AMENDING §8.48030 OF THE DERBY MUNICIPAL CODE, PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, SUBJECT TO CERTAIN EXCEPTIONS; AND REPEALING ORIGINAL §8.48030 OF SAID CODE.

DISCUSSION:

Council Member Bannon is fully in favor of this but wants to make sure we are okay in the way we are doing this. We did not see this at the last meeting; we did not have a first read through. The last time was when the VFW came and asked for the exception.

Mr. Alexander apologized for misspeaking. He believes we have followed the council’s direction in trying to address the concerns of the VFW.

Council and staff had a discussion to clear up confusion as to whether this was a first reading or a second reading. It was determined this was a first reading.

Ms. Sexton explained that council policy is to do a 1st and 2nd reading only on new ordinances of general applicability or major policy changes.

MOTION: Bannon moved to adopt an ordinance to amend the requirements for smoking areas in Class “A” clubs licensed and existing as of January 1, 2009. Horyna seconded.

Council Member Haynes stated that the State of Kansas exempts Class A businesses. It is his understanding the VFW has a letter from the State of Kansas that exempts them under the Class A restriction. He would like to consider a total exemption under the Class A restrictions from the state and asked the council members how they feel about exempting the VFW totally as a Class A private club.

Council Member Craig advised that is a good thought but at the last meeting the council set a course for what was to be accepted. The VFW has had numerous meetings about it, they have a nice smoking area and he is sticking with what we set down as our original ordinance. This amendment makes it okay for the VFW to continue operating as they had under our original ordinance. He would not be in favor of it.

Council Member Bannon stated that back when we addressed this whole smoking issue part of it was about children. The VFW has a great restaurant, kids are in there, they have cleaned, repainted and she has had members tell her they are very happy with the two separate areas. Since the VFW asked us last week to exempt just the annex, she is not willing to change her motion.

VOTE: Motion carried 8-0.

2011 BUDGET AND 2011-2015 CAPITAL IMPROVEMENT PLAN

Eddie Shephard, Budget Analyst, presented the staff report.

Background:

- A Public Hearing will be held during the council meeting for the purpose of hearing comments of citizens related to the proposed 2010 Operating Budget.
- The proposed 2011 Operating Budget provides for maximum budgeted expenditures of \$41,572,059.
 - This amount includes the General Fund cash reserve and transfers between all budgeted funds.
 - It does not reflect reserve funds (CIP Reserve, Wastewater CIP, Capital Projects Fund and Law Enforcement Trust Fund) totaling \$606,856 and are exempt from budget requirements.
- The budget differs from the statutory budget maximum because it includes the El Paso Water Company yet is reduced by the amount of transfers between funds and cash reserves.
- Once cash reserves and bond proceeds are excluded, **expenditures planned for 2011 total \$34,707,240, which is an increase of \$3,166,946 (10%) from revised 2010 expenditures of \$31,540,294.**
- The amount of ad valorem tax projected to be levied for 2010 is \$8,448,036 based upon a mill levy rate of 47.756.
- Several corrections and updates to the budget from the Manager's Recommended Budget presented on July 13th are recommended:

- Vehicle Replacement Plan - The crime scene vehicle (\$100,000) has been moved from 2012 to 2014.
- Vehicle Replacement Plan - The Multi-Purpose Response Vehicle (\$150,000) for the Police Department has been placed in 2012 after inadvertently being left out of the Manager's Recommended CIP.
 - This vehicle has been in various out-years in the CIP for several years, as staff has attempted to obtain grant funding, find partnering departments, and otherwise refine the specifications for this vehicle to ensure maximum value for the investment.
 - As currently envisioned, the vehicle would be used for (1) high-risk warrant service, (2) a mobile command post for missing persons, disasters, and hostage rescue incidents, and (3) transporting up to 10 personnel and securely storing equipment for the Special Operations Team, which is currently using a 1981 Ford Econoline ambulance that is becoming increasingly unreliable.
- All America City Award – Since the contingent of Derby people returned from the presentations in Kansas City in late June, they have debriefed on the idea of when to pursue this award and determined that the investment of approximately \$35,100 and a great deal of staff and volunteer time is not the best use of City resources in 2011. The \$35,100 remains available in the Economic Development Reserve Fund in the event that other community marketing or economic development opportunities arise and are approved by the City Council.
- Fire Department operating budget – An error was discovered in the calculation of wages and the correction made to reflect an increase of \$11,010 in the 2010 Revised column and \$13,103 in the 2011 column. The contingency account has been reduced by the same amounts, so there is no effect on the General Fund total expenditures.
- Law Department Professional Fees – Recommend increasing outside counsel fees in 2011 from \$25,000 to \$50,000 based upon historical activity (\$29,569 in 2008; \$41,300 in 2009; \$37,702 in 2010 so far).
- Water System Bonds 2004-A – We learned from REAP that the 2011 membership assessment for the Water Coalition increased from \$4,000 in 2010 to \$5,719 in 2011. The assessment is paid by the El Paso Water Company, so overall expenditures will increase by \$1,719 for 2011.

Legal Considerations:

- State statutes govern the timetable for budget preparation, publication, public hearing, adoption and certification.
- The Notice of Public Hearing and Budget Summary for the 2011 Operating Budget and Amended 2010 Budget have been published in *The Derby Informer* in accordance with state statutes.

Policy Considerations:

- The policy priorities to be implemented in this budget and CIP include the following:
 - Maintain infrastructure, especially streets, storm water management, parks, bike paths, and wastewater treatment.
 - Position the staffing level so the City organization can meet the public safety and other needs of our growing population.

- Balance the needs of new development with maintenance and enhancement of existing neighborhoods.
- Maximize the use of grants and funding providing by federal, state, and county sources when possible and practicable.
- Provide the quality of services that Derby citizens enjoy and expect.
- Partner with the school district, Chamber of Commerce, and other community partners to get the most service possible out of limited public dollars.

DISCUSSION:

Council Member Meidinger mentioned an article in the Wichita Eagle that indicated there are approximately 16,000 people that are late or not paying their taxes on time. What happens to our budget when the citizens of Derby stop paying their taxes? How will that affect the budget and what will we do when that happens?

Mrs. Epperson stated that we monitor throughout the year the distributions we receive from Sedgwick County. The last distribution we received came in very well. The numbers were adjusted in this year's revised budget and in next year's budget we used a 4% delinquency rate which is a conservative number, we are not there yet. We receive our first half distribution in January and we can compare that to the rate that we received in January of 2010. Then, if it is significantly lower we will evaluate some of the budgeted items in next year's budget and delay some. Directors that have been here for awhile remember those days of delaying purchases until later in the year when we felt comfortable that the funds were there.

Council Member Meidinger asked if we get distributions from the county on a quarterly or monthly basis.

Mrs. Epperson advised there are seven dates throughout the year. Most people pay their taxes in May and December so we receive the first half the following January and the second half comes in June.

Mayor Avello opened the public hearing at 7:35 p.m. With no one present to speak the public hearing was closed.

MOTION: Craig moved to approve the amended 2010 budget for the Senior Services Board fund and approve the 2011 operating budget as proposed to fund the City of Derby services from January 1 to December 31, 2011 and approve the 2011-2015 Capital Improvement Plan. Bannon seconded.

VOTE: Motion carried 8-0.

FINAL PLAT OF THE DERBY KINGDOM HALL ADDITION

Bud Newberry, City Planner, presented the staff report.

Background:

- This property, 2.12 acres in size and located approximately 600 feet south of Chet Smith Avenue on the west side of Rock Road, is zoned R-1 Single Family Residential.
- A Conditional Use, allowing this property to be used for the proposed church use, was approved by the Board of Zoning Appeals on August 11, 2005.
- Existing land uses in the area include three other churches located on the west side of this ½ mile stretch of Rock Road. Most of the other properties located in this area are developed with residential uses, or are anticipated to be developed for residential use.
- The Final Plat for this addition was approved by the Planning Commission on November 17, 2005, by a vote of 6-0.
- The purpose of this plat is to allow for the construction of a new church building.

Financial/Sustainability Considerations:

- As required by the Subdivision Regulations, the developer has submitted the required petition as guarantee for the construction of sanitary sewer improvements. 100% of the estimated cost of \$69,000 would be assessed against the benefit district.

Legal Considerations:

- By approving the proposed plat, the Planning Commission has determined that it conforms to Kansas law and Derby's subdivision regulations.
- The resolution for sanitary sewer improvements was prepared in accordance with Article 12-6a of the Kansas Statutes Annotated.

Policy Considerations:

- The applicant has complied with all requirements of the Subdivision Regulations.
- Staff has submitted the sewer petition to Gilmore & Bell, which prepared the corresponding resolution for Council consideration.
- This property was annexed into the city on October 10, 2006.

RESOLUTION NO. 39-2010

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF A CERTAIN INTERNAL IMPROVEMENT IN THE CITY OF DERBY, KANSAS, AND SETTING FORTH THE GENERAL NATURE OF THE IMPROVEMENT, THE ESTIMATED OR PROBABLE COSTS THEREOF, THE EXTENT OF THE IMPROVEMENT DISTRICT TO BE ASSESSED FOR THE COSTS THEREOF, THE METHOD OF ASSESSMENT, AND THE APPORTIONMENT OF THE COSTS BETWEEN THE IMPROVEMENT DISTRICT AND THE CITY AT LARGE; AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENT IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY (SANITARY SEWER IMPROVEMENTS/DERBY KINGDOM HALL ADDITION/TANGLEWOOD CHURCH OF CHRIST ADDITION/UNPLATTED TRACT NO. 1).

DISCUSSION:

Council Member Horyna asked if we would be providing water and sewer utilities.

Mr. Newberry advised we would be providing sewer and anticipate providing water.

MOTION: Horyna moved to approve the Final Plat of Derby Kingdom Hall Addition and authorize the Mayor to sign the plat and Developer's Agreement; approve the petition and resolution submitted as guarantee that certain required improvements will be constructed; and instruct staff to record the Developer's Agreement, Certificate of Petitions and the Final Plat. Haynes seconded.

VOTE: Motion carried 8-0.

AMENDMENTS TO MUNICIPAL CODE, CHAPTER 15.04 (TRADE LICENSES AND CERTIFICATES)

Charlie Brown, Director of Community Development, presented the staff report.

Background:

- The Kansas State Legislature recently upgraded requirements for continuing education for certain building trades. Previously, 12 hours of continuing education were required over two years. Now, the new law requires 6 hours of continuing education per year.
 - Chapter 15.04 of the Derby Municipal Code, covering the administrative aspects of Title 15 "Building Construction and Trades" should be updated to include the new state requirement.
 - During review of Chapter 15.04, it was determined that other City regulations were outdated and no longer consistent with local practice.
- An internal committee (Assistant City Manager Stephanie Knebel, City Attorney Phil Alexander, Director of Community Development Charlie Brown, Building Official Dale Wasinger, Building Trades Administrative Assistant Jamie Spencer and Planning Administrative Assistant Stephanie Cox) reviewed and drafted amendments to Chapter 15.04, including the following substantive changes:
 - Created new license categories and requirements for Fire Alarm, Fire Sprinkler, Concrete Flatwork, Roofing, and Siding contractors and removed Gas Fitter contractor.
 - Created new licensure requirement for "handy man" contractors (New "Class D General Contractor").
 - Refined the table in Section 15.04.01 to reflect updated license categories, requirements for obtaining those licenses, and revisions to City certificate requirements.
 - Created new definitions for each new license category and amendments to several other definitions.
 - Extended renewal period from 1 year to 2 years for all licenses.
 - Updated provisions for fee refunds to reflect established procedures.
 - Amended the maximum punishment for violations from \$500 fine and 30 days in jail to a maximum punishment of \$1,000 fine and 30 days in jail.
- The first reading of this proposed ordinance was considered by the City Council on July 27, 2010. The Council suggested a few minor wording changes which have been incorporated into the final ordinance.
 - Definitions of "lawn sprinkler contractor" and "well driller" have been revised to clarify that they are mutually exclusive.

- Paragraph 15.04.100.B has been revised to clarify that a property owner is allowed to construct his or her own home or accessory structure but is restricted from constructing certain utility services.

Financial/Sustainability Considerations:

- Revising license categories and the renewal period will require minor modifications to software used by the Building Trades Division, estimated to cost less than \$500.
- Though violations are typically dealt with administratively and only rarely prosecuted, the potential exists to realize increased collection of fines.

Legal Considerations:

- The City is empowered to enact building trade licensing and certification requirements that do not conflict with state law.

Policy Considerations:

- The Board of Construction, Trades and Appeals voted unanimously to recommend approval of the proposed ordinance.
- The proposed ordinance harmonizes the City Code with policies and procedures presently used.
- The proposed 2-year renewal period is being used by the City of Wichita and Sedgwick County.

ORDINANCE NO. 2031

AN ORDINANCE AMENDING CHAPTER 15.04 OF THE DERBY MUNICIPAL CODE, PERTAINING TO REGULATION OF CONSTRUCTION TRADES AND PROVIDING FOR CERTIFICATION AND LICENSURE OF PERSONS ENGAGED IN CONSTRUCTION TRADES WITHIN THE CITY; AND REPEALING ORIGINAL CHAPTER 15.04 OF SAID CODE.

MOTION: Bannon moved to approve the proposed amendments to Chapter 15.04 of the Derby Municipal Code. Haynes seconded.

VOTE: Motion carried 8-0.

RENEWAL OF EMPLOYEE HEALTH INSURANCE PLAN FOR 2011

Kathy Sexton, City Manager, presented the staff report.

Background:

- The City of Derby contracts for health and dental insurance for its employees and includes Library employees in its policy.

Health Insurance

- In an attempt to ensure adequate funds were budgeted for 2011 to account for various changes that are occurring in the marketplace as a result of federal legislation and local market conditions, quotes on health insurance were requested in July rather than in September.

- The City’s benefits advisor, Hardman Benefit Plans, requested quotes for both self-funded and fully-insured health plans. The City has traditionally used a fully-insured plan but was advised to explore the possible benefits of a self-funded plan.
- Quotes received for self-funded plans were not guaranteed, as a full 10 months of data are required to receive guaranteed rates. Self-funding would require waiting to make a decision on insurance until December, as quotes would have to be requested again in early November.
- Four companies provided estimates for self-funded plans, but the estimates do not include key components currently included in our fully-insured plan, such as an integrated wellness program, so additional research is needed.
- City staff recommends pursuing self-funded options next year, so that additional time can be spent in the planning stage, including finding a quality wellness program that can operate in conjunction with self insuring. Hardman Benefit Plans advised that typically employers seeking to convert from fully-insured to self-funded plans spend approximately 18 months in the research and planning stage.
- Quotes were received from three companies for fully-insured health plans and for approximately the same coverage as currently provided. Monthly insurance premium quotes are as follows:

Plan	Type	PPK	BCBS	United Health
		Monthly Premiums	Monthly Premiums	Monthly Premiums
Plan G (premium)		\$118,261	\$131,258	\$133,642
Plan K (base plan)		\$ 19,485	\$ 21,342	\$ 21,903
		\$137,746	\$152,600	\$155,545

- Renewal with PPK represents a 6.5% increase, Blue Cross Blue Shield of Kansas (BCBS) an 18% increase, and United Health a 20% increase over 2010 premiums. The benefits proposed by BCBS and United Health also were less than the PPK proposal.
- Employees who select to continue Plan G (Premium Plan) are responsible for the difference in cost between Plan G and Plan K (Base Plan). In 2010, the City began offering a base plan to give employees an option to choose a plan that best meets their health care needs as well as their financial priorities.
- Employees who are non-tobacco users receive a \$10 reduction in their premium per month when they sign a statement declaring that they are and will remain tobacco free for the duration of 2011. This discount began in 2010 and would continue in 2011 for the purpose of providing an incentive for employees to benefit from taking good care of their health.
- Highlights of differences between Plan G and Plan K include the copayment amounts for the following services:

<u>Item</u>	<u>Plan G</u>	<u>Plan K</u>
Primary Care Physician	\$ 15	\$ 25
Specialist	\$ 30	\$ 40
Obstetrical Services	\$250	\$300
Inpatient stay (per day)	\$200	\$250
Outpatient Surgery	\$250	\$300

- The non-tobacco incentive will reduce the premium for non-tobacco users by \$10 per month and will add approximately \$13,200 to the City's cost for a total of \$1,341,413.
- The Library will reimburse the City for all costs associated with Library employees (approximately \$31,117).
- Based on the current number of employees participating in the dental insurance benefit (113 Family and 42 Single), the total cost for dental insurance will be approximately \$125,505.
 - The city pays for 85% of the dental insurance premiums for employees, which will be approximately \$106,671.
 - The Library will reimburse the City approximately \$2,625 for coverage for Library employees.
- Budgeted funds are sufficient to cover the City's anticipated cost for both health and dental insurance.

Legal Considerations:

- The City may enter into contracts for comprehensive or specific health insurance services for the benefit of its employees.

Policy Considerations:

- By continuing health insurance with PPK, the City is able to continue to provide good quality health insurance to employees with a reasonable increase in premiums for the City and employees who participate in the City's health incentives.

DISCUSSION:

Council Member Nun thinks we are right where we need to be with our wellness program and the city picking up part of that for the participants. A lot of companies are starting to go to that and looking at other ways to cut their costs with employee benefits. Health insurance went up 6.5%. When we had our budget talks, KPERS and the police and fire retirement plan also went up and from what he's heard those increases are probably going to be expected in the future. Unemployment compensation also went up. Do we ever take a comprehensive look at the employee benefit package to see what those real costs are and what they could be in the future as things keep going up?

Ms. Sexton explained that we certainly try to look at the various programs at various times throughout the year to determine if we re-up or change things. This past year we did bring on Hardman Benefit Plans to help us figure out some of these employee benefit issues. They helped us last year reduce a double digit increase by several percentage points. They will be helping us over the next couple of months as our HR manager looks at flex spending accounts and whether we can get a better deal for employees in that regard. Some of these recent increases that have been imposed on us do make us realize that there are some benefits we can do very little about their increase in costs like KPERS, KP&F and unemployment, but there are other benefits we do have more control over. We should probably look at some of those in the future.

Council Member Bannon commented that when the Vitality program started the DRC was not one of the approved gyms that employees could use. We were working on that but it hasn't been done yet, is that going to be available for 2011?

Ms. Sexton advised she did not think it will. Regarding approved gyms, people work out at the DRC and it's certainly the most popular place that our employees work out. All the work outs there can be logged into the Vitality system. What they were trying to achieve was a system whereby their workouts would be automatically uploaded into the Vitality software. As a company they have really started cutting back on how many health clubs they do. In the metropolitan area they had already hooked up with the YMCA and Genesis (if she remembers right) and they are not looking at adding any more. Employees have adapted very well, we provided the Polar watches so they can log all their information as they work out and record that themselves on their website. It works out pretty well.

Council Member Craig stated that if a family chooses the better plan it is roughly \$226.44 a month after the city pays, that's for the best plan. For a single person for the best plan it's \$72.03. As the city manager, how do you see us being able to sustain this as insurance rates change? This is an extreme bargain for health insurance. We are paying 80% and 85% and that seems high when you compare it to other businesses. It worries him that down the road it's going to grow.

Ms. Sexton agreed we should all be worried about health insurance costs; we are standing here happy that it's 6.5%. You all know that she has been participating for the past couple of years on the new Wichita Business Coalition on Health Care. Employers are realizing that for some years now we have all settled for health insurance rate increases at double or triple the cost of inflation. Inflation last year was zero and what was our percent of increase in health insurance last year? We had to get health benefit plan professionals to help us get it down from a double digit increase to a single digit increase. This year we are happy at 6.5% when inflation is 2%. There are still annual increases at double or triple the price of inflation. Certainly this is a concern for us and for many employers that provide insurance. We also know the statistics kept at the state level indicate that fewer employers every year in Kansas provide health insurance coverage to their employees. Every year employers can't afford it anymore. Derby has certainly seen fit to examine our options over the past several years, we have reduced benefits to some extent, not a lot. We've increased co-pay requirements, have gone with two plans instead of one, meaning that we have had a premium plan in Derby but it is getting unsustainable. Starting in 2010 and continuing into 2011 our plan is to offer and pay for a base plan and offer a premium plan at a higher cost to the employee. She predicts that to continue to be a pressure on us financially. The initiation of the wellness program and the efforts and resources we put into that are strategic in nature. It is very much a situation where if we can do everything possible to keep our employees and family members healthier they will cost us less. As long as we have a fully insured plan like this, we will not see the fruits of our labor with the wellness program immediately. It will take several years before an insurance company actually starts giving us better quotes for our premiums because they are assuming all the risks. That is one of the reasons we feel like our next step is to look seriously at a self-insured plan. What that means is we would have to keep a bigger pool of money in our books so that it would cover costs. We would also have some stop-loss insurance coverage so that if someone had a wreck or terrible disease that would not have to be something we would cover with cash, but would have insurance. In other words, if you start doing that, when your employees get healthier the city would benefit financially. Right now if our employees get healthier, our insurance company

benefits financially. Over the years as we really get into this wellness thing we will be able to see that financial benefit.

Council Member Craig agrees that you have to have a strong wellness program. It was really encouraging that 87% chose the premium plan over the standard plan. A lot of companies are going to being self insured but it takes a very large base to do that.

Council Member Staats asked if the family members covered under the policy have to participate in Vitality?

Ms. Sexton advised that we offer the program to the employees and their family members. If they are getting family insurance that is dependent upon active participation. If they don't want to participate that's okay, they just have to pay a higher portion of the cost.

Council Member Staats asked if the City was able to track the family member's participation.

Ms. Sexton advised they were.

Council Member Haynes stated that health care costs are skyrocketing. One thing we need to keep in mind is that employers are looking at health care as part of a benefit package to retain employees. The City of Derby has one of the best employee bases in the State of Kansas. The reason is the management staff we have in place, the people within the City of Derby and the people that want to come work for the City of Derby. Part of that is the benefit package and the incentives we have to hire and retain those employees. 80/20, 80/15 and 70/30 payment ratios are common. Where does it stop? We don't know but we have a very good management team that is planning for those things and we need to pay attention to it. Hinting that we can't do this any longer will put more burden on our employees, and he thinks there are other options out there.

MOTION: Haynes moved to authorize the City Manager to execute a contract with Preferred Plus of Kansas for Plan G and Plan K for a one-year agreement. Craig seconded.

Council Member Horyna stated that not too long ago Coventry purchased PPK, did that transaction impact the percent increase of the insurance?

Ms. Sexton stated that in January of 2010 the Insurance Commissioner accepted Coventry as purchasing Preferred Health System: PPK is a subsidiary of Preferred Health Systems. We have all been wondering for a while now if that would affect us. So far it has not, last year the 2010 plan was done too soon. Now Coventry is taking the attitude that they are keeping the PHS nomenclature, the PPK naming and the plans they had on the books. In the future they will probably make some more changes but we have not seen any major overhauls in our plan or services they provide. Since we were early in our bidding process this year they stuck with the PPK plan G and K just like they had before. She does think they will make some changes in the future but so many of the companies were so hung up these past few months on figuring out the new federal law, Coventry was wise in that they bought a company with a big book of business

in the Wichita area and they certainly did not want to change rapidly a quality product that people knew. We might see some changes in the future.

Council Member Horyna asked about self insurance, are municipalities our size looking into that as well or is it just in the private sector?

Ms. Sexton stated there are definitely public sector employers that are already self insured and others that are looking at it as well. The City of Wichita has been self insured a long time, on the flip side, Sedgwick County is not self insured. Most of the major aircraft companies are but a lot of the smaller businesses in Wichita are not. You might get a bank in Wichita that maybe has about 150 employees that may be an affiliate of a bigger bank out of town so they might get a deal that is based on a larger number of employees. A couple of years ago she and Mrs. Epperson took a look at whether we are big enough to self insure and at that time we really did not think that we were. We had an outside person to help us look at that and that was their recommendation, that we are not big enough yet. She doesn't know if we are yet or not but the Hardman Benefit Plans people are starting to help us look at that and they have someone on staff we met with a couple of weeks ago who actually helps employers walk through the process of moving from fully insured to self insured. We were advised that the process is something we should spend about 18 months or so doing, learning about all the different insurances you need to buy, the risks and the services you need to provide through your own HR department rather than relying on a 3rd party payer to answer employee questions and process claims. There is a lot to learn. She does not think we are ready to do it but we have learned this past year some of the benefits. The Wichita healthcare market is very unique nationwide. Many markets will have employers our size being self insured; it is uncommon around here. There are a lot of employers looking at it. We have had some seminars brought to town the last few months specifically targeted at employers who are in this very position. If costs keep increasing at this rate they have to do something different. We either don't provide insurance or we make employees pay so much of it that it's hard for them to do and you're not competitive on recruitment and retention, or, maybe we should just turn the whole apple cart over and do it under a different model and maybe we can make it work.

Council Member Horyna is in full support of a comprehensive review of the benefits package. As everything goes up, it's nice to keep a handle on benefits as they increase.

Ms. Sexton agrees that is a good idea. If you were going to pick any one benefit at your own place of employment that you thought was critical for yourself, your family or your employees she does not know that it would be anything other than health insurance. She certainly thinks its insurance for City of Derby Employees. You could provide different things and we do, we have a list of benefits, but the one thing most people spend the most time and attention on and are concerned the most about is the health insurance benefits. We will take a look at all the other benefits and see if there are savings to be had with other benefits rather than thinking that if this continues to go up we would only adjust our health insurance policy.

Council Member Haynes asked if we have thought about teaming with sister cities, Derby, Mulvane, Rose Hill and Andover, to increase our employee base to get better rates. Is that even possible?

Ms. Sexton advised that is a great idea. We checked into that this past year in terms of teaming with the Derby Public Schools; they are a big employer compared to the City of Derby. Often times when you have a bigger pool it can be a great help but essentially it depends on the pool. It depends on the type of work people do, the age of the workers, that kind of thing. It is something we would continue to look at; we do belong to a pool of cities when it comes to workers compensation insurance. The State of Kansas has a number of health insurance options for state employees and they do let cities cabbage on to that. She knows really small cities in remote parts of the state that do that. We looked at that and it really would not be beneficial to our employees but every year things change in that regard so we should be diligent and continue to look for partnerships.

Council Member Bannon stated that when she was employed by a large firm they received a statement with salary, what the medical benefit was to you, vacation days, sick days and they totaled up everything. What might be a \$40,000 a year salary, by the time you looked at it you realized you are being compensated for much more and should be more diligent at work. That is probably a lot of effort on staff's part but maybe those figures could be put together and make city staff and ourselves more aware of what a position is worth.

Ms. Sexton advised that was a recommendation from Hardman Benefit Plans. It is about people understanding all the benefits. Thanks to Jenny Thrush and payroll, the first benefit summary was provided to employees a couple of months ago. It was personalized to everybody because some benefits you don't automatically get. It depends if you sign up for family coverage, the DRC or YMCA, etc. It's hard not to be a little taken aback when you realize all the benefits.

Mayor Avello thanked Jenny Thrush for all she does. We have a health care bill coming soon, hopefully in November it will get stalled. Is this coming into play with self insuring?

Ms. Sexton advised Jenny is a very hard worker and with her young family she appreciates not being involved in council meetings anymore. She has been very much our lead contact person with Hardman Benefit Plans and getting information from them as well as through the Society for Human Resource Professionals. In fact, she served as their president last year and we host a number of their meetings in this room on Friday mornings. She is definitely keeping up on the health care bill that passed a few months ago and is the lead person at the City in terms of keeping up on what that does to us. There are tax benefit changes for companies that don't affect us as a government employer but something that does affect us is that previously our plan covered dependents up to age 24 but the new law says you have to cover people up to age 26. That is in our new plan now, included in that 6.5%. There will be several more changes effective in 2013 and 2014.

VOTE: Motion carried 8-0.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the consent agenda.

Telecommunication Franchise Agreement with Birch Communications, Inc.

Background:

- One of the City's primary responsibilities is to ensure residents are provided with access to utilities, including electric, gas water, sewer, cable and telephone service.
- In lieu of the City itself directly providing utilities, the City has the purview to grant non-exclusive, competitively neutral privileges to private companies to use public right-of-way to provide services to citizens.
 - These privileges are conveyed through franchise agreements which allow utility companies to locate their infrastructure in public right-of-way to provide service to Derby customers.
 - In exchange, utility companies provide the City with payment via franchise fees, which are typically passed along to their customers in the City.
- The Kansas Corporation Commission (KCC) is charged with maintaining a current list of local telecommunication service providers and the cities in which they operate.
 - The City is working to ensure that all telecommunication franchise agreements maintain a level playing field in terms of fees (\$2.50 per access line per month), term (3 years with 3 additional terms of three years) and a franchise application fee of \$300.
 - This franchise agreement from Birch Communications is the second of several from small carriers doing business in the City of Derby. Future agreements are in the works with Matrix, McLeodUSA/Paetec, and Nuvox, and those agreements will be presented for Council action in the coming months.
 - With respect to large carriers, the KCC recently added Cox Communications to its list of providers in Derby. Then the City initiated communication with Cox Communications in an effort to enter into the required franchise agreement. In addition, AT&T has signed a 1-year extension of its agreement (at \$2.00 per access line), which expires June 1, 2011.

Financial/Sustainability Considerations:

- Utility franchise fees are an important source of revenue for the City. Franchise fees total \$1.5 million in the 2009, which is 7.6% of the total general fund revenue.
- Specifically regarding revenue from Birch Communications, the City has received at total of \$1,906 since March 2009.
- Staff will monitor future revenue from Birch Communications to ensure the city is receiving the maximum revenue possible.

Legal Considerations:

- The City Council is empowered to enter into franchise agreements and franchise extensions for use of the public rights-of-way in conducting telecommunications business.
- State statute requires that franchise agreements be made by ordinance.
- On June 8, 2008, the City passed Ordinances 1941 pursuant to K.S.A. 12-2001 that required local exchange service providers to obtain a franchise to provide telecommunications services with the City.
- The City's Right-of-Way Ordinance 1871, adopted by the City Council on December 12, 2006, adequately addresses right-of-way maintenance issues with all utility

companies, including Birch Communications, that locate infrastructure in the public right-of-way.

- In the future, the City may increase the franchise fee payable by Birch Communications, but the following procedure prescribed in K.S.A. 12-2001(m) must be used:
 - Notice of the new fee must be given at a regular city council meeting;
 - Notice of the new fee must be published for two consecutive weeks; and
 - If, during a 60-day protest period, a valid petition requesting a popular vote signed by 20% of qualified voters is filed, the City must call for a vote at the next general election.

Recommend a Motion to:

- Adopt a franchise ordinance with Birch Communications, establishing payment of \$2.50 per access line per month.

ORDINANCE NO. 2032

AN ORDINANCE GRANTING TO BIRCH COMMUNICATIONS, A CONTRACT FRANCHISE TO OPERATE AS A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER OR TO OTHERWISE PROVIDE LOCAL EXCHANGE SERVICES WITHIN THE CITY OF DERBY, KANSAS, AND PRESCRIBING THE TERMS FOR SAID CONTRACT FRANCHISE.

Grant Application for 2010 HOME Grant

Background:

- The federal HOME Investment Partnerships Program supplies funding to the Kansas Housing Resources Corporation (KHRC) for the HOME Rehabilitation Program, which focuses on improvements to owner-occupied homes.
 - The City was awarded its first HOME grant in 2006 for the amount of \$225,000 and was given a second grant of \$200,000 in 2007. A total of 22 homes have been rehabilitated with funds from these grants.
 - The City applied, but did not receive, a grant award in 2009. A record number of communities competed for a limited amount of funding during the 2009 grant cycle, and KHRC did not award funds to Derby.
- If funding is awarded for a 2010 HOME grant, the City must contract with an independent administrator, chosen through an RFP process, to coordinate documentation and provide inspection services over a 24-month period beginning in 2011 and ending in 2013.
 - The City has selected the South Central Kansas Economic Development District (SCKEDD) to serve as grant administrator for the two previous grants.
- The City would accept homes within the same target area used in the 2006 and 2007 grants. There are currently about 15 homeowners on the waiting list, and new applications are being accepted though not actively advertised. If another grant was awarded, we would promote the program in order to obtain more applicants.
 - All homes must be located within a designated target area (see the attached map.) Homes must also be insured and property taxes must be current. Homes in the 100-year and 500-year floodplain are not eligible.

- When work is completed, a three-year forgivable lien on the property is filed with the Register of Deeds. If the house is sold before the end of the 3-year period, a pro-rated portion of the funds used for the repairs must be repaid.
- Common improvements include windows, doors, roofs, electrical systems, plumbing, heating and air conditioning systems, insulation and siding.
- With the maximum award of \$300,000, about 14 homes can be rehabilitated. This is based on actual costs from the 2006 and 2007 grant programs, which had average repair costs of \$20,852 per home.

Eligible homeowners must meet income guidelines for 2010 as follows: Household Size	Maximum Income
1	\$35,700
2	\$40,800
3	\$45,900
4	\$50,950
5	\$55,050
6	\$59,150
7	\$63,200
8	\$67,300

Financial/Sustainability Considerations:

- The City will pledge a 29% match for the 2010 grant, which amounts to \$78,000. As in past years, the cash portion will be \$46,050.
- The remaining part of the City’s match will come from other sources, including \$2,250 in waived building permit fees, \$11,700 in waived sales taxes on project materials (materials purchased through the program are automatically sales tax exempt), and \$27,000 in funding from the Kansas Weatherization Program.
- The City’s cash contribution will be paid over a two-year period.
- Funds have already been requested in the 2011 budget (Community Development Department, Code Enforcement Division) in anticipation of the program.
- Maximum administrative fees for the program will be \$18,000. The state automatically awards an additional 5% of the total grant amount for administration, and the grant administrator typically charges an additional fee. SCKEDD has previously charged \$3,000 per grant cycle.
- With a qualified waiting list of approximately 15 homeowners in the target area, there is a demonstrated demand for the program.
- Rehabilitation of aging homes can help preserve the city’s older neighborhoods and prevent signs of decline from proliferating.
- The program may provide remediation options to some code enforcement violators.
- Improvements could address concerns about declining property values in some neighborhoods.

Legal Considerations:

- The City is not obligated to accept the funds if the grant is awarded.

Recommend a Motion to:

- Authorize the Mayor to sign the application.

Public Display of Fireworks

Background:

- The City of Derby has rescheduled its Community Independence Day Celebration to August 28 in conjunction with the Community Coalition's annual SummerFest program.
- The July 4 celebration was cancelled due to inclement weather.
- The 2006 International Fire Code, Adopted by Chapter 8.16 of the Municipal Code, requires approval by the City Council for a fireworks display to be held in the city limits.

Financial/Sustainability Considerations:

- Funding for an annual community fireworks display is derived from fireworks stand permit fees from the previous year. The funding formula was established in 2008 with \$12,000 and provides for an annual increase of 5%.
- There is \$13,230 available for this year's celebration. Any remaining balance is returned to the general fund.

Legal Considerations:

- Stellar Fireworks has provided a certificate of liability insurance coverage and a copy of the state-issued pyrotechnic operator license.
- The required site plan has been reviewed and approved by the Fire & Rescue Department and the Public Works Department.

Recommend a Motion to:

- Approve a public display of fireworks to be held at High Park on August 28, 2010.

Assessment Ordinance for Nuisance Abatement

Background:

- The City of Derby has incurred costs in abating nuisances found to exist upon certain properties located within the City.
 - The costs are the charges the City incurred in contracting with vendors for mowing and trash removal service, plus a \$50 administrative fee.
 - Each owner of record, at the time the charges were incurred, was sent notification that Council will consider assessment by ordinance of the charges.
- This ordinance includes 10 properties, of which 5 are in foreclosure, 2 are vacant, 1 is a vacant lot, and 2 are occupied.

Financial/Sustainability Considerations:

- The costs incurred in connection with the parcels to be assessed total \$1,688.03.
- One assessment of \$668.78 is unusually large because of the nature of the nuisance due to the removal of debris from the back yard.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.

- City staff seeks to collect mowing and debris removal charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Policy Considerations:

- City ordinance has established the policy that requires bulky waste, construction debris and tree waste be removed from properties to protect the health and safety of citizens.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the city’s costs can occur from the owner of record at the time of assessment. Because affected lots are often in foreclosure or in process of being sold, timely assessment is important to an equitable recovery of city funds.

Recommend a Motion to:

- Adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.

Acceptance of Equipment Donated by the City of Wichita

Background:

- Up until last year, the Wichita Fire Department and Derby Fire & Rescue Department used the same brand and model of self contained breathing apparatus (“scba”).
- Last year, Wichita Fire Department chose to acquire a different brand of scba.
- They have purchased their new scba and pulled all of their old scba out of service.
- Because their old equipment is compatible with the scba the Derby Fire Department currently uses and still retains some of its serviceability, we asked for and the Wichita Fire Department agreed to provide the equipment as a donation.

Financial/Sustainability Considerations:

- The City of Wichita Fire Department valued the donation of the equipment at \$1,500.
- Acquiring this equipment allows Derby Fire & Rescue to extend the life of its current inventory of scba for several more years. Changes in national standards will require Derby Fire & Rescue to upgrade its scba in the future.

Legal Considerations:

- Unless another means has been authorized, Council action is required to accept a donation of property to the City.
- Wichita requires Derby to indemnify it for any liability resulting from use of the equipment after it is transferred, but Derby Fire & Rescue will thoroughly inspect the equipment to ensure it is in good working order before putting it into service.

Recommend a Motion to:

- Accept donation of self-contained breathing apparatus valued at \$1,500 from the City of Wichita and authorize execution of the release of liability and indemnification agreement.

MOTION: Craig moved to approve Consent Agenda as presented. Horyna seconded.
VOTE: Motion carried 8-0.

EXECUTIVE SESSION

MOTION: Nun moved to recess to executive session at 8:14 p.m. to consult with the city attorney on matters deemed to be of attorney/client privilege, specifically the city's legal options regarding Sedgwick County's decision to close 71st Street, for a period of 30 minutes, following a short break and to return at 8:50 p.m. Craig seconded.

VOTE: Motion carried 8-0.

Council members returned from executive session at 8:58 p.m.

MOTION: Nun moved to appeal the July 21, 2010 order of the Sedgwick County Board of Commissioners, vacating a portion of 71st Street South lying between 127th Street East and 143rd Street East, and to authorize the city attorney to initiate and prosecute the appeal. Horyna seconded.

VOTE: Motion carried 8-0.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 8:59 p.m. Horyna seconded.

VOTE: Motion carried 8-0.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk