

**APPROVED
REGULAR COUNCIL MEETING
February 24, 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, George Arnold

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Ben Ray, First Presbyterian Church.

**CONSIDERATION OF
MINUTES**

Minutes of the February 10, 2009, Regular Council Meeting.

MOTION: Warren moved to approve minutes of February 10, 2009 Regular Council Meeting. Arnold seconded.

DISCUSSION:

Council Member Nun advised a correction needed to be made to the motion about creating a stipend for the city council. On page 22 of the minutes, the vote was recorded as a tie and the mayor broke the tie, but the minutes are recorded as a 4-5 vote, which would indicate it was defeated. The vote should be 5-4 rather than 4-5.

Kathy Sexton, City Manager, explained that apparently an unedited version of the minutes went on the website. If anyone got their packet off of the website those minutes are wrong. Some of you got the paper version and those are correct. The vote on the motion says "Motion carried 5-4, Meidinger nay, Nun nay, Bannon nay, Craig nay, Mayor broke tie yea." The vote was 4-4 and the mayor broke the tie. The minutes can be approved as read, not the minutes on the website.

VOTE: Motion carried 8-0.

PUBLIC FORUM

Mayor Avello indicated those that were here to speak on the trash issue will be allowed to speak when they discuss that agenda item. If there are many people who want to speak he will limit the time to 3 minutes and will be very strict on that.

Kathy Sexton, City Manager introduced Nathan Law from Wichita State University. Nathan is a master of public administration student from Winfield. One of the things they do in one of their classes is watch area city council meetings and he is here to observe. She also addressed the construction at Meadowlark and Buckner. If you have driven through there in the last few days you have probably noticed that Kansas Gas Service is starting to do their utility relocate. When they are done Westar will begin moving their utilities from the overhead power poles underground. They will probably be working on that until mid April or early May, at which time Cornejo will come in to do the intersection job itself. As far as notification to the people who live there, of course they can see what's happening in the right-of-way, but in our contract with Cornejo, they are required to give 10 days written notice to all the property owners before they arrive on the job so people who live there will know what's happening. We will put out a notice to the public as far as how it affects traffic. We know that's a busy thoroughfare through there so we'll make sure we tell the vehicular traffic what's going on. Ms. Sexton introduced Robert Lee the new Derby Police Chief. Chief Lee comes to us as the Deputy Chief and Field Services Commander of the Wichita Police Department and brings 28 years of law enforcement experience with him.

Robert Lee advised he is honored to be named the new police chief of Derby and is very eager to get started. He introduced his wife Carol and his daughter Mollie.

Council Member Bannon mentioned the list of recommended trees to plant. Last year it went out in the water bills but this year it will not. It can be found on Channel 7, at www.derbyweb.com, at the Arbor Day Celebration or at City Hall.

Council Member Warren stated that we lost two citizens this week that deserve recognition. Dick Loosen, founder of Q Corporation passed away. Dick had been a council member, helped found the Derby Community Foundation and was one of the first to move into our industrial park. He was a great entrepreneur and a great man and will be missed by our community. We also lost Delbert Fowler, a former Derby police chief. He gave years of great service to our community and our town is better because of the service of these two men.

PRESENTATION ON THE "Wii GET HEALTHY TOGETHER" PROGRAM

Dee Williams, Senior Center Administrator presented the staff report.

Background:

- The City of Derby was awarded a grant from the United Methodist Health Ministry in January 2009.
- This presentation will provide a review of the program and its requirements.

Financial/Sustainability Considerations:

- As part of accepting this grant, the City's responsibilities were to develop and administer an exercise utilizing the Wii system and software.

- At the end of the program, all of the equipment and software remains with the City.

Legal Considerations:

- none

Policy Considerations:

- This program meets the community value to provide education and recreation for all ages.

Recommendation:

- Receive and file the report.

DISCUSSION:

Council Member Bannon congratulated the senior center staff on receiving the grant.

Mayor Avello asked if the Wii kept score.

Mrs. Williams advised it did everything. This afternoon they were doing ski jumps at the senior center. They are also playing with their grandkids.

**ORDINANCE
PROVIDING FOR
COLLECTION OF
RESIDENTIAL REFUSE
AND RECYCLABLES**

Kathy Sexton, City Manager presented the staff report.

Background:

- Collection, transportation and disposal of solid waste in Derby are currently performed by four private contractors.
- While a permit is required of these contractors, the City does not exercise significant control over services provided or fees charged to customers.
- In establishing its policy priorities, the Council directed staff to examine alternatives to the status quo.
- After reviewing practices throughout the country, the City solicited proposals for residential refuse and recyclables collection and transportation services.
- Several such proposals are expected by the early March submission deadline.
- The proposed ordinance would position the City to execute one or more contracts to authorize collection, transportation, and disposal of residential refuse and recyclables by private firms, with service to begin on or about July 1, 2009.

Financial/Sustainability Considerations:

- The proposed ordinance would not entail any direct costs to the City. Indirect costs include staff time associated with development of the Request for Proposals, staffing the Trash/Recycling Advisory Board, public communications about the transition to a new

system and the ongoing implementation of a curbside recycling program, and development and administration of the contract.

- Refuse collection, transportation and disposal would continue to be performed by one or more private firms, and the cost of the service would be paid by customers.
- The contractor(s) selected would pay a franchise fee, anticipated to be 5% of gross revenues, to the City. Such fee revenues would offset the cost to the City for developing and maintaining the program.
- Franchise fee revenue would be available for use as determined by the Council during the annual budget process.

Legal Considerations:

- State law (K.S.A. 12-2101 et seq.) authorizes the City to undertake solid waste collection, transportation and disposal, either directly or through a contractor.
- This ordinance amends Chapter 5.28 and repeals Chapter 8.12 of the City Code to eliminate inconsistencies with the proposed ordinance.
- If the Council adopts the proposed ordinance, either as presented or as amended, staff will continue the process of selecting a contractor and negotiating a contract for services. Such contract is expected to come before the Council in either late March or April for approval.
- Following that, additional updates to the City Code may be in order, depending on the terms agreed upon in the contract.

Policy Considerations:

- Most U.S. communities (54%) have franchised or contracted private trash collection, and many (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.
- Such concerns have led many communities nationwide to consider direct involvement in the industry to reduce wear and tear on infrastructure, standardize service, and offer new services such as recycling programs. Many communities nationwide are already addressing such problems by securing one or more franchised firms to perform solid waste collection and recycling services.
- In our area, Hutchinson is the largest such community. It has had a firm under contract for about 6 years and receives a 5% franchise fee.
- Municipal or franchised refuse and recyclables collection typically is designed to provide uniform services throughout the jurisdiction, usually at prices comparable with unregulated firms.

- Some neighborhoods in Derby that have organized Homeowners Associations 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.
 - Residents NOT living in a Homeowners Association have reported a range of quarterly prices including \$57, \$65, and \$82.
- Examples of local cities that recently franchised recycling and/or trash collection:
 - Park City contracted with Stutzman for curbside recycling (CSR). Stutzman offered residents a discounted rate on trash service. Customers that switched from Waste Connections to Stutzmans for trash service saw their trash bill drop from \$28/month to \$11.30/month.
 - Cheney contracted with Lies for trash and CSR collection beginning January 1, 2008. Residents are charged \$16.00/month for trash and CSR. Before the franchise, Lies was charging \$20.00/month for these services. The Cheney City Clerk reported that Waste Management was charging \$28/month for trash service without CSR.

DISCUSSION:

Council Member Warren asked if we adopt the ordinance and the proposals come in and the price is higher than we are comfortable with, are we obligated to go forward or can we stop at that point?

Ms. Sexton advised we can stop. She fully expects more changes to the city code and we will be back to you with another ordinance as well. If things don't pan out like we think we can always go back and repeal this ordinance. Anytime this council passes an ordinance you can always come back later and undo it.

Council Member Meidinger asked how grass clippings and similar types of materials were addressed. He read where a large majority of the landfills are being clogged with grass clippings. He would like to see us have mandatory recycling. If we are going to do it we should do it all the way.

Ms. Sexton advised she was appointed to the county's solid waste management committee last year so she knows a little bit about what they are up to. The board talked about grass clippings and leaves and that sort of thing and decided not to take action on that at this time. We have not, at the city level, taken any action on that or anything else that is allowed or not allowed in the waste stream. We could, if you want to do that but her advice is to not. Let the county do that, they are implementing some changes in a planned way and are getting advice from all the trash hauling companies as to what is a reasonable expectation. They decided to go step one; franchising and curb side recycling by 2011, later on they will address grass clippings. They might also address e-waste. They have made no commitments in that regard but their attitude is to take it step by step.

Council Member Meidinger stated the reason he is asking is because he drives down the street and sees someone with 10-12 bags of grass clippings and they are going to pay the same price as someone who is recycling. There seems to be some inequities at that point. How do we address that?

Ms. Sexton advised this program, volume-based pricing, or pay as you throw addresses that from the perspective of, you get a cart and pay for a big cart or small cart and that's your base price. We expect companies who respond to the RFP to tell us how they are going to handle the additional bags, tags, extra bags in the summer, etc. You can't do a volume based program where you give somebody a lesser rate to do a small cart and then put a whole bunch of bags around the cart, obviously that's not going to work.

Council Member Bannon asked about leaf bags. Do we need to have something in the ordinance regarding bags of leaves? Section 6, Item 4 talks about bulky refuse including tree limbs but doesn't really cover bags of leaves. She knows she is not the only one in town.

Ms. Sexton advised she does not know that we need it in the ordinance. She made a note to see if that is one of the things we will need to update. As far as the proposal process that ties in directly with Mr. Meidinger's question, do you care what's in the bags or do you just charge more for extra stuff outside the cart. This will be an issue that the advisory board will discuss and bring a recommendation back to the council. Some people would argue, as the volume based theory suggests, that if everyone gets a base price that's a really good price all year long and you have to pay extra for a few bags a couple times a year because you have leaves, isn't that still better than a high price?

Council Member Bannon asked about plastics. Most cities and companies allow plastics 1-7, is there a reason we have it so tied down?

Ms. Sexton explained the four items allowed in the recycling base level of service; 1 & 2 plastics, metal cans and mixed paper, there is a processing facility in Wichita that all of the haulers have access to. She has spoken to them and asked what they take, and that's what they take. Putting that in there was one way Derby can ensure that all the companies in this market could compete for this business. Those who want to do recycling would love to have 1-7 plastics, cardboard, chipboard, glass, etc., but if we wrote that as minimum base in our RFP we would be limiting competition and we would not get as many proposals because not all the companies can do that.

Council Member Bannon clarified that we would not only be looking at price but quality of service and what they can provide for our recyclables, correct?

Ms. Sexton advised that when you do a request for proposal you state the base level things you have to have to compete and the preferred or premium things. Until you get the proposals you don't really know who can do what. If one company can do all the things you want we might really like that but on the flip side their price might be too high. Then you have to weigh the value of the rate versus the recycling or other premium services. That is what we will be back here doing in a few months is weighing the value we place on some of those different options.

Council Member Bannon asked if there were any reason we need to pass this tonight since we know there are some changes that are going to need to be made or can we wait until the bids come in next month.

Phil Alexander, City Attorney stated there is no magic time, short of the time when we would want to implement the program. His thought in preparing it at this point was that it would be wise for the council to get a look at the gross outlines although it is quite a workable ordinance as it stands. It certainly helps staff to know whether this is the direction the council would like to proceed.

Council Member Horyna asked if we are still looking at going to composting once the new public works facility goes in.

Ms. Sexton indicated that we have no plans to have a community composting facility. There are ideas but there are no plans or budget to do that. What Mr. Horyna might be referring to is the recent purchase by the city of a piece of land that is big enough to relocate our public works facility from the current location on Market Street and relocate the chip site for branches from High Park to that site. There would still be additional land left over if at some future point the council wanted to create any other programs, one of which could be a composting type facility. The reason why the county decided to phase it in is because currently there is no market capacity to deal with all the grass clippings. They are going in the landfill because that's where they can go now. If somebody decides not to let them in their waste stream that would create a market for that type of thing. If Wichita or Sedgwick County passes that and there is enough of a volume there could be two or three different commercial composting facilities open up around the county. Will one be close enough that one of us wants to drive our pick up out there to drop off grass clippings, she doesn't know. There is a possibility for a public site for that type of thing but it is a long way away from being decided.

Council Member Horyna asked about roll off dumpsters at construction sites, will that be part of franchising?

Ms. Sexton explained it would not; it will only be trash carts that can be wheeled out to the curb.

Council Member Horyna asked about the fee that companies charge to get their cart taken back when service is discontinued, how are we going to address that?

Ms. Sexton advised that most of the companies, if not all of them currently doing business in Derby, have an account cancellation fee or a cart pick up fee. What it basically means is if you decide to stop using that company and pick somebody else they will come by and pick up your cart and put that one final fee on your bill that covers the cost of picking up the cart. It might be \$15; it might be \$25, different companies charge different amounts. In the request for proposal that we have issued, we have asked each of the responders to tell us how they propose to handle that fee. We have suggested to them that one way to do that might be for the winning contractor to pay that fee to the other three companies. There are four contractors doing business in Derby and if one of them wins this then they would pay that fee for everybody else. Our intent is that

individuals don't have to pay an unexpected fee out of their home budget just to switch carriers when maybe they didn't want to switch carriers to begin with. She does not have a firm answer on that, but that is a problem that has been anticipated and we await the proposals from the companies to figure out how that would work.

Council Member Staats stated that in his research he found a community where people bought a roll of stickers, you put a sticker on the bag and put it out with your trash. That way the trash company doesn't have to keep track of who is putting what out. He asked if there is anything limiting the size of the trash truck that comes down the street? In California the trash trucks have grown quite a bit and that is kind of defeating the save-the-streets angle we are putting on this. Are we going to limit the size of the truck? Obviously, if I'm trash hauler A and I win, it's going to be more cost effective for me to buy a bigger trash truck so I don't have to keep running it to the landfill.

Ms. Sexton advised there is not a size specified in the RFP. What we have asked each respondent to the RFP to do is tell us what kind of trucks they are proposing to use in Derby, show us a photo along with specifications. The advisory board, when they are looking at proposals, will be able to weigh those and determine if one is better than the other and that will be a matter of negotiation at that point. That will all come back to the council in a couple of months.

Council Member Craig stated that after reviewing the ordinance he considers it maybe a good starting point. We have over the past months passed some ordinances that were not in final form and he thinks there are a lot of details. In the ordinance, there are myriad references to decisions to be made by the city manager. That will be clarified when you have the proposals in about who makes decisions about certain aspects of the contract and who can share containers and who can't. He looks for that to be clarified. One section, Section 6, Item 2, indicates times carts can be at the curb; no later than 6:00 a.m. on collection day and has to be removed no later than 8:00 p.m. on collection day. He advised that if he wakes up and has forgotten to put the trash out and it's after 6:00 a.m. you can bet he is going to take it out, that is superfluous and needs to be removed. Many of us forget to put it out and aren't able to get it out before 6:00 a.m., and he is sure nobody is going to be watching that. As we go to the back we have a number of businesses in town that are lawn maintenance businesses. The way he reads this as far as permits go, it sounds like to him they will have to have a permit if they do his lawn to carry his grass clippings off. That needs to be clarified.

Ms. Sexton asked which section Mr. Craig was referring to.

Council Member Craig advised it was Section 12, permit required, exception. If he cuts the grass and puts it in a trailer he doesn't have to have a permit according to this but he is concerned about the person that does yards for a summer job. Also, if he cuts limbs that are larger than 6 feet does he have to have a permit to take them to the chip site? He doesn't understand after reading it who it applies to and who it doesn't. He thinks this is a good start for a draft. With the proposals coming in he would prefer to see some of the specifics of the contract that we are looking at be put in this ordinance to give it more specificity than it is now. It's pretty general and doesn't have a lot of things that are concrete about rates and price control.

One thing he has not read in here is addressing the basic price and type of price control that we would be looking at a company to guarantee us over a period of time. Even though we are going to review it every year we know that some have added fuel charges to their services throughout the metro area and after the fuel went down their surcharges did not go down. We need some consideration there and just a little bit more detail. He is not ready to make this a real ordinance until we get some more specifics in it.

Ms. Sexton addressed the question of why people need to put their carts out by 6:00 a.m. It doesn't mean that if you wake up late or you forgot you can't take it out. What it means is this is the kind of structure that any company is looking for that they know that people are told by ordinance that they need to have it out there. If they start their collection at 6:00 a.m. and your cart is not out there and you call them at 3:00 and say your trash wasn't picked up, records would show they went by the house and there was no cart there. We can't expect a company to come all the way back because yours wasn't out. Maybe in your experience they never come to your house until 8:00 a.m., you're fine because you just forgot and you take it out. It's not something that's superfluous; it's also not something the police are going to give you a ticket for. It's about making sure there is a structure there, and the company knows the level playing field under which it's going to give a proposal. The companies know how to set their rates and not build in things like coming back because people forget to put their carts out. That's the reason it's there. Regarding the lawn maintenance company issue, we might need to look at that again.

Mr. Alexander advised the provisions in the ordinance are almost identical to the current city code in Derby. We have trash haulers that have to have permits and the intent is that would still be true for those haulers that are not regulated by this ordinance or some iteration of it governed by a contract. In other words, the commercial haulers. They won't be regulated by this, but they will still need to have a permit. He doesn't know off hand whether anyone's ever thought about whether a lawn maintenance company needs to have a permit to haul clippings. Maybe that's something we don't do now and we don't intend to do in the future. This was not intended to change the code.

Ms. Sexton discussed the difference between an ordinance, a contract and a fee resolution. Another thing we will be back to the council with is a fee resolution and that would set the fees once we know what they are. There will be more specific documents coming back to the council. An ordinance is something that you want to endure over time. Say seven years from now you are dealing with new bids from new companies and a new contract with different terms. You don't necessarily want to open up an ordinance just to update a price. Ordinances are supposed to be general, especially when you know you're going to have a contract and fees set up in the form of a council resolution. All those things would be council decisions.

Mr. Alexander added that in talking with the City of Hutchinson regarding its trash franchise, the thing they receive the most complaints about is people's neighbors leaving their trash carts at the curb too long.

Council Member Nun asked about roll-out collection. In the ordinance it says a person age 75+ or a person who is disabled can get that service with approval of the city manager and they have

to agree to pay an additional fee. In the RFP it says that would be provided without charge, why is there a discrepancy?

Ms. Sexton explained if you look in the ordinance at a, b and c, there is an “or” after b. If you are 60 and want someone to do roll-out service for you, it is not free per the contract. You can pay an additional charge, and someone will go behind the garage and get the cart and bring it to the curb because you don’t want to do it. The “a” part is, if you are 75 years old or older and no other person in the household is able to take the cart out to the curb, that would be considered in the base level service for the fee that we are looking to contract for. That is an additional service besides curbside recycling that people will get. Item “b” covers disability when there is no one else in the household who can do it. Older than 75, disability or those who want to pay the fee are the three items.

Council Member Meidinger asked if we would have to pass this ordinance before we could even get a company to bid on our contract. He doesn’t even see how they could give us a proposal without knowing what we expect from them.

Ms. Sexton advised that is a very good point and that is why staff brought this to the council at this point in time. She doesn’t claim everything is perfect in the ordinance, just like everything isn’t perfect in the RFP, but the more eyes we get looking at it and the more things we find we have a little time to perfect it. If we had waited until the day we also bring you the contract then there’s not much time to find errors then. We didn’t want to put more staff time into this if the council wasn’t amenable to doing it. We do think it’s preferable to pass this sooner rather than later.

Council Member Meidinger asked how companies make a proposal without some kind of document of what we expect from them.

Ms. Sexton explained that pretty much everything that’s in this ordinance is in the RFP in some shape or form so they know what we want. It does state in there that we would have our codes updated so they would have the backing of our ordinance at the time they sign the contract.

Council Member Meidinger clarified that if we didn’t pass this, the proposal wouldn’t be worth the paper it’s written on basically.

Ms. Sexton advised we would not bring the council a contract to accept if we didn’t have an ordinance.

Council Member Meidinger stated that we really have to pass this, don’t we.

Ms. Sexton agreed.

Mayor Avello asked if the county could mandate franchising.

Ms. Sexton advised she did not think so. There are different legal opinions on that, they stopped short of mandating it in their five-year solid waste plan. They said they expect cities to do this

and they could certainly mandate it for unincorporated areas of the county, but whether they could mandate it for municipalities is unclear.

Council Member Bannon thanked everyone for the calls and emails. It is always helpful to talk to people and find out their ideas and opinions and to let them know why this is being done. This is going to be an item that requires education for everyone. Some of the mailers that were mailed out were talking about closing out the little guy; she wanted everyone to know that one of the companies that mailed that out is actually the 2nd largest trash hauler in the city of Wichita. All of the companies that have sent mailers to date intend to bid and have told the city that they are going to be bidding on this. This is a way we as a city need to go for all of the reasons Ms. Sexton has gone over. In this case she does not know necessarily that Derby is being a leader, we are playing catch up. We are the 100th worst city in the United States of large cities as far as our recycling programs, we need to do this. She does feel that she wants to get an ordinance that will help to endure time. There are a couple of issues that have been pointed out tonight in this ordinance that need clarification such as the lawn maintenance companies. She wants the public to know that we are listening to them and it's very important what they say and we do take that into consideration the same way we make very sure that our RFP to all these companies made it fair so that everyone would have the same chance to bid on the program. She would like to postpone the ordinance for one month until we get the information and clean up the ordinance a little better. She also knows that the council needs to give staff guidance that this is the way we want to go.

Ms. Sexton suggested having the public hearing first before making motions. She also has a letter to be read into the record that she will read after everyone has spoken.

PUBLIC FORUM:

Hillary Phipps, Derby 6th Grade Center Recycling Club presented two members of the club to speak.

Josh Tarabelini, Derby 6th Grade Center, thinks the City of Derby should recycle. The landfills are filling up with things that could be reused and/or recycled. If we had a recycling system in our city we could easily become one of the greenest cities in Kansas. We once did an experiment where we sorted out all of the recycling from the trash into a 20 gallon bag. We reduced 20 gallons to about five pieces of trash and recycled everything else. It may seem that some kids aren't excited about recycling, but most kids enjoy it. We have over thirty members in our recycling club at the Derby 6th Grade Center. His friend was actually disappointed when she found out that Derby doesn't have a recycling system. He really thinks recycling should be an important part of our lives. It would cut down on emissions from plastic factories, and our forests would remain standing for even longer if we would only recycle.

Rachel Wood, Derby 6th Grade Center, stated that if people don't recycle then animals or people can die. Our unrecycled items can cause pollution. Pollution means no fresh water, air or food. Because animals are also affected by pollution our food sources could be in danger. Please help protect our natural resources and the people and animals of our city.

Heather McCreight has been a resident of Derby for over 10 years and is presently serving on the trash advisory board. During her time on this board, including the application process, she has never kept it a secret that she is a proponent for franchised trash systems that promote curbside recycling. It will probably be a surprise to those of you who know her that she is not here this evening to extol the virtues of recycling in our community. She is here this evening to respond to a postcard mailing that she received in her home this past week. When she first received the mailing she was unnerved. Why now, in the 25th hour would a company spend the time and resources to start fighting a process that has been going on for over a year? It came to her in the infamous fable of the ant and the grasshopper. The ant works hard in the heat all summer long building his house and laying up supplies for the winter. The grasshopper thinks he's a fool and laughs, dances and plays the summer away. Come winter the ant is warm and well fed, the grasshopper has no food or shelter so he either dies out in the cold or begs and receives humiliating charity from the ant he has teased. The moral of this fable is to be prepared. What struck her was how unprepared the companies that sent out these postcards seemed. The meetings have been opened and reported on by our town newspaper. The city manager has put a great deal of effort in informing the public that a franchise was being sought for the City of Derby. She sat at two city council meetings just like the one here tonight where it was discussed at length and broadcast more than once on Channel 7. She received the City of Derby newsletter where the franchise plan was outlined. Her only response is why are they not prepared? She is not in the waste collection business but even so she has read and studied and heard reports regarding the movement toward franchising trash. The 21st Century is coming and trash haulers were being warned early on to prepare. Trash haulers would have seen articles in their trade magazines, heard the same news reports she did, attended industry conventions where this had to be a topic of more than one workshop. They have surely heard of advancements in their field with pay-as-you-throw programs, single-stream recycling and education programs promoted by the trash haulers to conserve energy and reduce waste. All these resources out there are saying the same thing, be prepared. This card indicated that we owe local businesses a living even if they want to keep the status quo and not prepare themselves for the future in their own industry. She in no way feels responsible for the businesses that spent their time and resources on cards promoting their agenda instead of time and resources preparing for the proposals they would be bidding on in a fair market practice. Shame on them for leaning on the citizens of Derby to feel responsible for their companies when those businesses have not prepared themselves for the next generation who are expecting and now demanding that greener business practices come about.

Jack Halldin, member of the trash and recycling committee, said it has been an educational experience to say the least. The questions that have been raised here tonight, multiply that by 20 and that's the number of questions and issues that came up. Some people came to this committee with a lot of passion around recycling. He came in because he was interested in what the city is doing and wanted to make sure he got involved in the community. The city manager and other people on the committee did a fantastic job. There are things that are part of the RFP that he would have done differently and thinks every single person in the community has a different feeling on the particular issue. He wanted the citizens of Derby to know that the committee considered almost everything that has been discussed here tonight, and there were some spirited discussions around it before we came to the final RFP that went out.

Jerry Lucas, Ward 1 Candidate, is against franchising. He is all in favor of recycling, we are 10 years behind at least on that. With franchising we lose our basic freedom of choice. If he doesn't like Derby Disposal, which happens to be his current carrier, he can fire them now. He can call them up, give them all sorts of heck and say he is not paying them anymore and go over to Lies trash service and they will be happy to take his business. When we franchise, who does he call to complain about the lousy trash service that he might be getting? Does he call the city or the company, and what recourse does he have? In franchising, we are forgetting our basic right to chose as Americans. Charge what you want within reason, I am willing to pay a little extra for my choice. As far as recycling, he is all for it although he is probably the worst offender of it. He is willing to learn to recycle and thinks that is the greatest thing to help save the world. Another problem he has with the current proposal for people who work second shift is how are they going to get their carts back away from the curb before 8:00 p.m. if their trash isn't picked up until late afternoon and they don't get off work until midnight? There are a lot of bugs in the current proposed ordinance that need to be worked out before it's approved. As far as the previous speakers, if you stood in front of Dillon's and took a poll as to how many Derby residents are aware of what's going on today as far as the current proposal, I don't think you'd get 50% that are aware of what's going on with this current proposal. He doesn't think we have done a good job of getting the word out to everybody. He thinks a lot of people are really in the dark, if you don't watch a lot of TV or subscribe to the local paper, and we've just recently lost one of the local papers because of low subscription rates. Apparently a lot of people aren't subscribing to the paper to know what's going on. He thinks the previous speaker may be wrong as far as the word getting out to everybody. He has a hard time watching Channel 7 for more than 15 minutes.

Steve Spaulding is kind of in agreement with the last gentleman but also agrees with some of the previous speakers. He would like to recycle but doesn't really have that option unless he wants to bag it up himself and take it somewhere. As far as franchising he has a lot of questions, he is a free enterprise man, he likes choice. He understands the city and the county situation with the streets and the number of trucks. Just on his street alone there are at least three trash haulers going down that street in one day. He does not know if the city has considered dividing the city instead of just having one trash hauler because he can see a lot of problems with just having one trash hauler, especially if they are private companies. Private companies have been known to go into bankruptcy or the company goes belly up because of a divorce or the IRS comes in and locks things up. What are our options as a city in that regard? Also, a seven-year contract is really going to tie us up. He understands a seven-year contract with getting loans and having a guarantee, but it also ties up the city and residents to that particular company, especially if there are a lot of problems. It would be cheaper in the beginning, but what are we talking about, \$12-\$15 a quarter, which is \$5 a month, that's a couple of cups of coffee, not very much money. What about down the line as time goes on and they want this increase, that increase and pretty soon we are paying \$80-\$90 a quarter, and then it's not cost-effective. He is in agreement to postpone this a little bit longer to get more information. He doesn't want it to be another stimulus bill rammed through just to get it through. Let's take another look at it and get some more information before we decide on it.

Ms. Sexton read a letter from James Hickman: "It has come to my attention that the Derby City Government is about to make a decision on franchising trash service in the Derby area. A

decision of this magnitude not only takes away my freedom to make the choice of which company I would prefer but will have a negative impact on the cost of having trash removed. I already have had the experience of dealing with one trash company that made an unethical attempt to charge me for a service that I specifically stated not to accomplish. Including the aforementioned company there are at least two companies operating in this area that I do not want to do business with. Should either of these companies become a franchised company operating in my area the impact on my personal rights will go beyond imagination. Franchising of trash service serves as nothing more than a deterrent to free enterprise. It has been implied that the trash trucks operating on the streets greatly reduce the life of the streets; I have to assume that the streets of Derby were designed using standards developed over years of experience that will withstand normal use. For several years trucks have been designed to distribute loads to the streets to prevent damage. If the trash companies are required to pick up storm debris at curb side at no additional cost that will result in a hidden expense which will be folded in on customers overall monthly bill. If the trash companies are required to furnish carts marked with their logo or unmarked and are required to leave them behind if they terminate their business, that is another hidden cost to be added in for the customer. From the outset there are just too many undesired effects that franchising will impose on the citizens of Derby.”

Brian Phipps, husband of Hillary Phipps from the 6th Grade Center, requested that when the council is looking at the proposals to put a lot of emphasis in what types of recycling they offer. He spends an unusual amount of time driving recyclables to Wichita. The 6th Grade Center recycles and does a fantastic job but that also means he spends a whole lot of time going back and forth to Wichita. While less cost looks great, more service is a good point too.

Mayor Avello closed the public forum.

Council Member Arnold advised he did not see anything regarding performance bonds. Obviously that should be part of our contract, is that correct?

Ms. Sexton explained there is a letter of credit required in the RFP which is similar to a bond and we have explained to the companies they can propose a performance bond if they prefer. There are definitely financial requirements that must be met to make sure we cover ourselves in terms of doing business with a company that is financially sound.

Council Member Craig advised he appreciates all the calls and messages he received. The majority that called were not in favor of this but he does not think they have all of the information that was presented tonight. He believes there is a need for more information as we go forth. There is a limited number of people that actually watch the city council meeting. He depends on the local newspaper to put out as much information as possible. He appreciates those that came forward tonight and it was just the opposite of what he got at home. We had people that came to support this, a few with questions and one that is opposed to it and that is just the opposite of what he got at home. He encourages the silent majority to make their wishes known. His phone calls and emails were weighted heavily against this. His position is that we have to do what is best for Derby. He has one gentleman that calls him every month and complains about a specific trash truck that comes in and dumps hydraulic fluid in his street and

we repair the softened asphalt. There are a lot of things that have to be looked at. He thinks we can do a better job on the ordinance as it stands now.

Council Member Warren also thanked those that have called to voice their opinion on this issue; many of them were very impassioned conversations. He did ask that in the future if you call and would like to register an opinion, you wait until he gets on the phone, as soon as his wife answered the phone they went off on their feelings and when she gave it to him she advised if they were for or against and it wasn't quite as impassioned. If you want to register an opinion wait until he gets on the phone and he will be glad to listen. For the last couple of weeks he has had arguments in his house, reduced rates, recycling, wear and tear on streets on one side and the other side wanting the right to choose, my company is already providing recycling. These are arguments he is having with himself and he is really torn on this. He is absolutely committed to having our city do a much better job when it comes to recycling, that is an absolute must that we have to do. If it was just his decision this would be a very easy decision. Everything that the committee has done has been well thought out and is the right thing to do. There is a part of him that is a free enterpriser that bristles at taking away the rights of individuals. He knows the city has the right to do that, he knows that's within our responsibilities but it is just something that is very difficult for him. At this point he does not know for sure, he is split 50/50 and sees both sides of this issue. His question is if we were not to go forward with franchising, would it be within the city's ability to require those companies that service the city to provide recycling as a part of their base rate and could we require them to post their rates some place everyone can see them. One of the problems he sees is we see rates from \$37.50 to \$85, we have this huge swing of rates and knowledge empowers the people. Would it be possible to let everybody know what the rates are so people can make the choice from that standpoint? Is there a way we can accomplish recycling? What we don't get with that is less wear and tear on our streets. What he is hearing from folks is that they will take a little more wear and tear on the streets in order to get the choice they want. If I have a company that I am upset with then I can fire that company and hire somebody else. That would cost a little more in taxes because we will have to pay for that from the street standpoint. If we could require they provide recycling as part of the base rate, if you don't want to do it we shouldn't make you do it but he does think we have the obligation to make it simple to do and make it so we don't pay extra for it to encourage people to recycle.

Council Member Staats thanked the members of the Trash Advisory Board for all their hard work. This is not something that was just thrown together over the last couple of weeks; they have been working a lot of hours to bring this proposal to the council and to the rest of the citizens of Derby. He also thanked all of the people that have emailed and called him, like Mr. Craig said, most of them were against it. There might have been a few converts after talking to them, they had one side of the story and he was able to step them through it like Ms. Sexton did for us tonight and they saw the other side of the coin. For the person that called last week and spoke with his 6-year-old, you are more than welcome to call back because he doesn't know who you are. When he first heard of franchising it was two years ago, his first gut reaction was no. Why would we eliminate free enterprise? He is on the board of directors of the Chamber of Commerce which is a business-oriented group and thought why would we want to do that? He is open minded and started looking at some of the different things out there. The Wichita Eagle has run several articles over the last few years with different rate studies from around the area including Omaha and Oklahoma City. When he read those he was astounded at how much more

we pay for trash service here. You would think the free enterprise system would drop the price, it doesn't, it's obvious that it does not. He slowly became a fan of franchising after looking at some of those things. He has been the worst person in the world for recycling, he has thrown everything away and filled his trash can up and put bags off to the side. He was also afraid of losing his choice because he likes his guy who picks up his trash. His guy will take anything, he is convinced, that he puts out there and not charge him. That's what we all want; we want to be able to get rid of our stuff, come home from work and have it be gone. That's what we want and he thinks that's what a lot of people are afraid they are going to lose when we go to trash franchising. Back to recycling, he started looking into it more and asked why he would want boxes of stuff in his garage, he already has enough crap in his garage, he's not going to have more. Then he has to run it to Dillon's or pay to have it hauled off when he can just throw it away, that was his mentality. He went to a recycling thing last fall that the county put on, he always knew it was the right thing to do, but why should he do it? Last month he signed up for single-stream recycling through his carrier. He has a 96-gallon trash bin that they dropped off for him; he doesn't have to sort the recycling and has become a recycling fanatic at his house. He pulls stuff out of the trash can and takes it out to the dumpster and drops it in. He keeps the dumpster in his garage; it has clean stuff in it. Last Friday on trash day he pulled the recycle dumpster out and it was full after two weeks. His normal trash can that was overflowing, plus a bag or two on the side was half full. Seeing is believing, he could not believe what he was throwing away that was going to the landfill. If you remember a few years ago there was a lot of debate on where to take our trash. Nobody wants our trash, we don't even want our trash here, it has to be shipped out to Harper County and Oklahoma. This morning he had to drive to Oklahoma on business and saw a flatbed truck at one of the rest stops down there and it had palette after palette of recyclable material headed south. He is convinced on recycling and he appreciates the kids from the 6th Grade Center that came and shared their stories and he thinks more people need to get on board, like himself. He doesn't want to jump into something that is going to take away somebody's rights and there has to be a good benefit for everybody. He understands there are going to be a lot of angry people but the numbers show most other cities have trash franchising or the city hauls the trash. That is the way he is leaning now and he has told that to everyone he has talked to.

Council Member Bannon advised that if you call her at home and don't leave a number she won't call you back because she doesn't have caller ID. Part of this got started because we have a number of homeowner's associations in the city where people can and do get cheaper rates. Common sense tells you if there is one trash truck going down that street their gas costs will be less, their overhead is less, it's going to be less money for them to pick up every street. She also wanted more availability of choices but in talking to the city manager and the information they received to make this viable it's pretty much got to be the entire city. We can't break it off into quadrants or half, we have already looked at that and it's not going to work. She hasn't heard anyone up here be against recycling, it's kind of like if we want skinnier children we need to be good role models. Recycling is the same way and she is very happy to see the young ones in the audience. Bottom line is money talks; we saw it happen with the water when water rates got higher people started using less and conserving. It's an item that is not unlimited, our earth is not unlimited, we can't just keep throwing trash away. A pay-as-you-throw system makes perfect sense. The only way we can accomplish all of these things we are looking at is by franchising. We have to do it. In two years it's going to be one of those remembrance things.

Right now if you move to a number of cities it's a utility just like anything else, you don't think about it. When you move to a city and you get electric in Mulvane you don't get mad at the electric company and get a different one. Mulvane is the electric company, if you want electric that's what you get. On the one hand we are taking away some rights but in order to give those same rights as far as lower fees that everyone has the right to pay, better streets, everything included we've got to go this way. However, she does think there are some items in the ordinance that need tightened up a little bit. She wants everyone on staff to know that she is totally in favor of this. She thinks we should table this for one month to provide further public information and to tighten up the ordinance.

MOTION: Bannon moved to table for one month. Nun seconded.

VOTE: Motion carried 6-2, Horyna nay, Warren nay.

CONSENT AGENDA

Interlocal Agreement with the City of Wichita for the Planning and Preventive Maintenance of the Public Transportation Program in the City of Derby

Background:

- In 2006, the City Council approved two (2) interlocal agreements with the City of Wichita for federal funding of public transportation within the City of Derby:
 1. A capital agreement providing \$50,000 for the acquisition of an ADA-compliant bus, and
 2. A planning and preventative maintenance agreement providing \$50,000 for the operation of the Derby Dash program.
- In 2007, the City Council approved one (1) interlocal agreement with the City of Wichita for federal funding for planning and preventative maintenance in the amount of \$75,000.
- In 2008, the City Council approved a third interlocal agreement for this same program in the amount of \$50,000.
- Now, in 2009, the City Council is requested to approve a fourth interlocal agreement with the City of Wichita for federal funding for planning and preventative maintenance in the amount of \$50,000.
- The Wichita City Council has approved this agreement.

Financial Considerations/Sustainability Considerations:

- This agreement is similar to the 2007 and 2008 agreements in that these federal funds cover 80% of the planning, administrative and maintenance costs for the Derby Dash program.
- Operating expenses for this program, as projected in the 2009 Adopted Budget total \$82,411, including the City's portion of \$51,911.

Legal Considerations:

- The City Council is empowered to apply for and accept grants to support public transportation costs.
- The City Attorney has reviewed the agreement and has approved as to form.

Recommendation:

- Approve the agreement and authorize the Mayor to sign.

2009 Tree List and Planting Guide

Background:

- The Parks and Urban Forestry Board is tasked by ordinance to create and recommend a Tree List to help the Citizens of Derby understand the benefits of properly using trees in their landscape.
- The provided list is not designed to be all-encompassing, but a general guideline of appropriate species.
- The Tree List brochure is designed to offer a common list of trees and planting guidance, while providing contact information for other agencies which can provide further assistance.
- The brochure will be available to the public for pick up at City Hall, the 2009 Wichita Garden Show, the 2009 Garden Tours and Arbor Day Celebration.
- The brochure is being provided to local businesses who offer plants and shrubs for public purchase as a buying guide for the organization and as a public handout.
- The document will be posted on www.derbyweb.com for public access and downloading.

Financial Considerations/Sustainability Considerations:

- Printing Costs: \$300

Legal Considerations:

- In recommending tree species for planting in public spaces, the board is acting pursuant to City ordinance.

Recommendation:

- Receive and file the recommended 2009 Tree List & Planting Guide.

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

ADJOURNMENT

MOTION: Craig moved to adjourn at 8:13 p.m. Arnold seconded.
VOTE: Motion carried 8-0.

ATTEST:

 Dion P. Avello, Mayor

 Jean Epperson, City Clerk