

**APPROVED MINUTES
DERBY CITY COUNCIL MEETING
July 27, 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
Heath Horyna, Vaughn Nun
Cheryl Bannon, Chuck Warren
Tom Haynes, Mark Staats

Flag salute was led by Council President Vaughn Nun. The invocation was led by Pastor Adam Barlow-Thompson, Woodlawn United Methodist Church.

CONSIDERATION OF MINUTES

Minutes of the July 13, 2010 Regular Council Meeting.

MOTION: Haynes moved to approve. Meidinger seconded.
VOTE: Motion carried 8-0.

PUBLIC FORUM:

Mr. Steve McDonald stated he represents the VFW. As of the ninth month of last year we had to build a smoking room on the back of the VFW and had the city approve it. Then the state passed a law and we got a letter from them stating that if we met A, B and C criteria that we would be exempt from the state. We met that criteria, sent it back to them and received a letter back from the state saying we were o.k. Then the city came in and said we weren't 30% on all four walls and shut us down. We don't know what's going on and we have asked to be exempt from this smoking ban.

Council Member Haynes stated thank you for coming down. I'm in full support of exempting the VFW. You are a Class A entity as I understand. Is that correct?

Mr. McDonald replied Yes.

Council Member Haynes stated liquor license for Class A and whatever that entails. I fully support this. I can't speak for the rest of the council but I can speak for myself in supporting that when or if that comes back around for us.

Mr. McDonald stated that even if we are totally exempt from the state, the city and everything we had made it a ruling, because we have a lot of people that come in that don't smoke, the main building was not to be smoked in. That's why we built that smoke room.

Mayor Avello asked Mrs. Sexton, this is probably going to be something that is never going away here. What do they have to do to bring it back before us for an action item in order to be exempt?

Ms. Sexton replied the VFW has just requested that the Council make a change in your city ordinance. Just to add to the background that Mr. McDonald provided you, the city sent two letters to the commander of the VFW at different times. I think one was in March and one was in May explaining what the situation was, that the state law is a base law and then the cities must do that as a minimum and can do more. In most ways the state law was not as strong as the city's ordinance that was passed almost two years ago. This council deliberated and talked about this in several public meetings over several months between when the Governor signed the bill and when it went into effect July 1 and basically decided to keep in force most all the provisions of the previous city ordinance. Most businesses and people had already been educated as to the ordinance and had already come into compliance. The one more lenient aspect of city and state law was that Class A clubs already in existence before a certain date were exempted. The VFW in Derby is the only Class A club in Derby that falls under that state exemption or would have had we not had a city ordinance that did not exempt them. So if Council wants staff to write up a new ordinance exempting the VFW, then we can do that. As you know, in terms of previous discussions, that period between March and May and when you approved the ordinance was part of the discussion and the deliberation was if anyone wanted to make any changes. So I think this council consciously made a decision that said no. We went through all this discussion a couple years ago, we want to keep the ordinance the way it is in that we can smoke on patios as long as they were open patios. The difference was, the state law said a patio has to meet this 30% requirement Mr. McDonald referenced. Just to explain what this is, if you put a roof on that patio, which a lot of them have roofs, most of them don't have walls but the VFW made walls as did some of the other businesses, and so if you have walls you have to make sure that 30% of the area of those four walls is open to the elements like an open window.

Mayor Avello asked for a total of 30%?

Ms. Sexton replied 30%. It's kind of an oddly written law if you think about it because most patios only have three added walls. They are hooked onto a real wall of the building, but by the time you calculate that in, that patio at the VFW does not meet that requirement. Now, they could tear out some of those walls and make it meet the 30%. I think what they are asking you here tonight is could you save them the trouble of having to tear out some of that to meet that 30% and just go ahead and exempt them.

Mayor Avello stated we don't make any decision in the public forum like this but we will take it under consideration.

Council Member Meidinger stated I would be in favor of bringing this back for a council review in the fact that the state has one set of laws, we have another, it gets kind of confusing. I would imagine that there are other communities that have similar conflicts when they started this, but Derby was one of the first communities in this area to enact the clean air ordinance and at that time the state was kind of neutral on the situation. They finally did something. But I think we ought to reconsider this and bring it back for a discussion item.

Council Member Bannon stated I would just like to clarify what I would like to review is just this particular business regarding the Class A license. I don't think we want to dredge up everything else that we have been through. I think this is the one area that we would look at and I would certainly support the exemption. I would like to see staff do that.

Ms. Sexton stated that's a really important distinction to make because there are one or two other clubs in town that have patios that have a lot of wall space that do not meet the 30% and have been sent a couple letters and have been told and police are now enforcing. The police are going out now giving warnings to help people as well as business owners understand that if you want smoking on your patio you need to make what the state law and city ordinance now considers a real patio with at least 30% of those walls open to the elements. You don't have an air ventilation system on a patio, you have wind that is supposed to be blowing by, so if you have walls up with no air moving at all, you could argue that is worse than inside the building that has an air ventilation system in it.

Council Member Haynes asked just to clarify, the VFW is the only Class A in the city limits. Correct?

Ms. Sexton responded that's right.

Council Member Haynes stated I would support bringing just that issue back for discussion to exempt the VFW.

Council Member Craig stated since the inception of our ordinance, the VFW is meeting the original intent of how we wrote ours, so I'm interpreting that this does not change that. What they have now is they are meeting the original intent of what we set down as a clean air ordinance. So, therefore, when this exemption doesn't change anything according to their willingness to comply, the smoking room will remain and therefore if there is no change, I can't see anything wrong with it, and it has to be specific to the VFW only.

Mayor Avello stated I think we are hearing that we would like to have that brought forth Ms. Sexton.

Ms. Lisa Nelson stated I'm glad to be here tonight with exciting news. Rock River Rapids is hosting its very first ever concert on August 6th at 4:00 p.m. The group that we will be hosting is We the Kings. They are a pop/rock band and they have a broad appeal to especially the population that frequents Rock River Rapids. One of the things we talked about when we originally created the park was that there would be the opportunity for a public concert. We are partnering with a local radio station, Channel 96.3, which also plays that same contemporary style of music. It's a four person band originally from Florida, and they have been playing together since middle school. You can check on line to hear some of their music. I also have today, just a little clip of one of their most recent songs. We know it's going to be hot so we are going to do everything we can to keep people hydrated and put some shelter. The best news about the whole thing, is that it is a free concert with your regular paid park admission.

Mayor Avello stated earlier I had asked you what the average daily attendance was. Did you get that information?

Ms. Nelson responded I do have that information with me. First of all, the caveat on that is any time we have really good weather park attendance goes up. Average attendance last year for this exact week was 979. Average attendance this year is up to 1050. So, we definitely have higher attendance this year. Something that is remarkable this year is our season pass sales last year at this point in the season were 1,460; this year we have sold 1,588.

Council Member Craig stated on Thursday and Friday for those that want to vote early, that will be at Woodlawn United Methodist Church. Thursday and Friday will be from 12:00 p.m. to 7:00 p.m. and on Saturday, I think it's from 10:00 a.m. to 4:00 p.m.

Council Member Bannon stated our library will be closed this Thursday for some maintenance on the generator.

Council Member Warren stated one of the items on our agenda tonight that falls under the consent agenda is the approval of our school resource officers or SRO's. Because of the cooperation that we have with the school district, I wanted people to know that we are going forward with that. I thought I would take this opportunity to let people know that we are working again with the school district and that there will be three SRO's, two in the high school and one in the middle school and that I think it's a great program.

ACCEPTANCE OF PETCO DONATION

Brad Smith, Derby Fire Chief, presented the staff report.

Background:

- In severe weather, the Storm Safe Room at Derby Fire Station #2 is opened for use.
- The Storm Safe Room has been used heavily over the last two years. Some persons who seek shelter at Station #2 bring their pets with them.
- There is a need to provide pet crates for the welfare of the animals as well as the safety of other occupants. Our options were to seek donations or purchase the pet crates from budgeted funds.
- Firefighters conducted research and found that PETCO has a foundation for enhancing the bond between animals and people.
- PETCO awarded the Fire Department a grant that was used to purchase 4 small crates and 3 large crates to be used by pet owners who use the storm shelter. These crates can also be used for other emergencies where pets and animals may be involved.

Financial/Sustainability Considerations:

- None

Legal Considerations:

- Unless another means has been authorized, Council action is required to accept a donation of property to the City.

Policy Considerations:

- Persons and firms making significant contributions to facilities maintained and services provided by the City should be publicly recognized.

DISCUSSION:

Council Member Meidinger asked Chief Smith to identify where station 2 is located.

Chief Smith replied Station 2 is located at 1401 N. Rock Road and there is a front door that you can go into that is automatically open during severe weather by dispatchers. If you are handicapped there is the ability to come around the backside down below with a place to park and a back door to get in to. There are no steps or anything like that. Bathrooms are down there and it's a nice place to be if you are in severe weather.

Council Member Horyna asked if there will be crates available for all sizes and is there a limit to how many are available?

Chief Smith replied right now we have eight crates and we have 4 large and 4 small. We normally have 2 or 3 pets show up each time with around a dozen people and at times we have some pretty good crowds down there.

Council Member Horyna asked it's a first come, first serve?

Chief Smith responded first come, first serve.

Council Member Warren asked other than mentioning their name here in the meeting like this, how do we go about saying thank you to groups and businesses when they do something of benefit for the city like this?

Chief Smith stated we like to recognize them with a certificate of appreciation and that's what I would like to do tonight once you accept this donation and get their names out that they have done this. We have also had people that don't want to be recognized and that's fine but we also want to get them a letter if it may be for a tax benefit. We really appreciate friends of the community that do this.

MOTION: Craig moved to accept the donation of pet crates and present a certificate of appreciation to Mr. Robert Trujillo, Manager of the Derby PETCO store. Bannon seconded.

VOTE: Motion carried 8-0.

Mr. Trujillo stated thank you, I'm very grateful to be part of the Derby business community and when the opportunity arose for me to open the store in Derby I was all over it because I had heard wonderful things about the Derby community and they have all come to fruition and I'm really ecstatic to be a part of the community here. The support that we receive through the fundraisers that we do numerous times throughout the year is what really makes all this possible. I can't thank the Derby community enough for making things like this possible

PARTICIPATION IN THE WICHITA FLIGHT FESTIVAL

Cynthia Wentworth, Community Marketing Director, presented the staff report.

Background:

- The Wichita Flight Festival is an annual celebration honoring our region's rich aviation heritage and the Air Force presence in the area. The festival is planned for September 25-26, 2010 at McConnell Air Force Base with events for both families and aviation enthusiasts to enjoy.
 - The festival is produced jointly by the City of Wichita and the 22nd Refueling Wing and volunteers from Team McConnell.
 - Festival activities include a world-class air show, military and civilian aircraft static displays and fly-bys, a twilight air show and concert, educational demonstrations, and aviation-related activities for kids.
 - Last year, an estimated 25,000 people attended the festival.
- This year, the City of Derby was asked to help sponsor the event financially and participate in some activities. This opportunity fits in well with the Community Marketing Plan which recommended more involvement with MAFB families, including recognition events and direct marketing.
- Other community partners participating in the event include the Derby Chamber of Commerce and Derby Public Schools.
- Several ideas are being pursued to ensure the City's participation will have lasting value as a community marketing tool, including memorable t-shirts and signage.

Financial/Sustainability Considerations:

- Sponsorship at the \$2,500 level is recommended, and funding is available in the approved 2010 budget for Community Marketing.
- Sponsorship benefits include various forms of advertising (website, event program, poster, etc.), as well as a tent for Derby to use for viewing the shows in the shade, and limited access to a hospitality tent.

Legal Considerations: None.

DISCUSSION:

Council Member Haynes asked how big will the tent be?

Ms. Wentworth replied we are working out the details. One of the things that we know is that we want to have the same size as the other communities. Right now we are looking at approximately a 20x30 tent.

Council Member Meidinger asked is this a free event for the community?

Ms. Wentworth replied yes.

Council Member Meidinger asked what are we going to do with a lot of VIP passes and drink passes and other passes.

Ms. Wentworth replied we actually have several opportunities and I will say this is the very first year that McConnell Air Force Base has ever hosted the Wichita Flight Festival. Because of that there are some new things that everyone is working through and so one of those was an opportunity for kind of a VIP type environment. As we continue to research it we look at the idea of more of a community atmosphere that might be one that meets our needs and while the commitment remains the same, it simply would have more of a community focus and less on the VIP that we had discussed earlier, which is a little bit more limiting. In the scenario that we are discussing with the community tent, it is a free event, and it would allow anyone from the Derby community in.

Council Member Meidinger stated that's fine, I guess what I'm concerned about is if someone would look at this marketing program that was presented originally by Wichita and they would see these VIP programs. I don't want anybody to think that this is strictly for Derby City Council members or staff, so it's open to the public and basically this hospitality part is null and void. Is that correct?

Ms. Wentworth replied what I would say is that we continue to make sure we are making the right choices. What we had before us originally allowed us to have passes but on a more limited basis. As we work together as partners with McConnell and with Wichita to further develop it, it looks like there are more opportunities than we were originally aware of and that has opened it up for less VIP and much more of an open community tent, which is definitely our preference. In that case, then yes, we would not have to worry about tickets and VIP.

Council Member Meidinger asked what was the original intent of the passes?

Ms. Sexton stated I think I can clear this up pretty quickly. The first thing that we were given was a corporate sponsorship solicitation. So it was made to go out to companies and then what happened was the Mayor of Wichita said hey, invite all the cities around to help sponsor this. So they didn't make up a special deal for cities they just sent us the same one and we looked at it the same way you did and said it really doesn't do us any good to have 10 drink passes or VIP passes. If we are going to do it, we are going to do a community type event, family type event, and so that's why Cynthia has been negotiating with them and at the point of figuring out if they are willing to do some things differently for Andover and Derby and different cities and communities that don't want to have a corporate VIP tent pass. We don't have a contract yet but that's what we need to know is if you all are interested in doing an event. We will then go negotiate a contract that will not be like the form you were given before.

Council Member Meidinger asked wouldn't it be better to have a contract first?

Ms. Sexton replied absolutely it would be better. The problem is as Cynthia mentioned it is a new event and it's fair to say the people putting the event together for the first time with the city staff and the McConnell Air Force Base combining two past events, the McConnell open house and the Wichita Flight Festival at a new venue. The Wichita Flight Festival used to be at Jabara Airport. It's all new and we just don't have that level of detail at this point. It's pretty important for planning purposes that we know whether you all are on board for doing something.

Council Member Meidinger asked when would you get a contract?

Ms. Sexton replied we are working on it as fast as we can. If you want to give a nod to go ahead and work on it then we can bring this back for your approval of a contract with details at a future council meeting. I think the idea is we need to be able to know if we are going to rent a tent and if we are going to get food and invitations and things like that.

Council Member Meidinger replied let me understand this correctly. We are going to pay \$2,500 to participate in this and then do we have other expenses in addition to that like tent rental all these other things?

Ms. Sexton replied no, we envision that \$2,500 is the budget for the event. We would be partnering with the Chamber and the school district and we envision that some others might have some expenses but the city's exposure would be about \$2,500.

Council Member Craig asked the dates 25-26 of September, is this in conjunction with the official open house that McConnell is having?

Ms. Wentworth replied yes.

Council Member Craig replied that wasn't explained. The open house at McConnell is a big attractor. When you say 25,000 at the flight festival last year, you're talking about a bucket load of people that will be there. The Thunderbirds are going to be there, it's a big event so this is a major step forward so if you're going to have an event, the event is to showcase what Derby is about. Is that correct?

Ms. Wentworth replied absolutely.

Council Member Craig replied this is the biggest event that Wichita has other than the River Festival.

Ms. Wentworth replied it is a very large event and what we have discussed are ways that we can show a community presence. We have discussed things such as the banners that would be made available, t-shirts of those who participate so that we can not only go and enjoy the event but that McConnell would be able to see as a community Derby supports them too, which is extremely important.

MOTION: Haynes moved to authorize staff to commit the City of Derby as a sponsor of the 2010 Wichita Flight Festival and proceed with planning for the event. Warren seconded.

VOTE: Motion carried 8-0.

SAFETY BELT & TEXTING AMENDMENTS TO THE 2009 STANDARD TRAFFIC ORDINANCE

Robert Lee, Police Chief, presented the staff report.

Background:

- The City of Derby routinely adopts the Standard Traffic Ordinance (STO) published by the League of Kansas Municipalities (LKM), with amendments to meet local needs.
- The STO contains traffic ordinances based upon Kansas law and is widely used by municipalities in Kansas.
- During the 2010 session, the Kansas Legislature made changes to statutes regarding the use of safety belts and enacted new regulations on the use of wireless communication devices while driving.
- Previously, law enforcement could not stop a driver for failure to wear a safety belt absent an additional violation being committed.
- The proposed amendments to the STO will:
 - Make not wearing safety belts a primary violation in most situations;
 - Provide for citing an adult driver for allowing a minor (14 to 18 yrs.) to be transported while not wearing a safety belt; and
 - Make it a violation to use wireless communication devices to write, send or read a written communication while driving.
- The proposed ordinance will amend the STO to be consistent with newly enacted state law.
- The amendments were reviewed by the Ordinance Review Advisory Board (ORAB), which recommended their adoption by City Council.

Financial/Sustainability Considerations:

- State law reduces the fine for adults not wearing safety belts from \$30 to \$5 until July 11, 2011. After that date, the fine increases to \$10.
- The proposed ordinance prescribes a \$30 fine, inclusive of court costs, for adult safety belt violations.
 - This penalty, which is higher than prescribed by state law, is consistent with current City ordinance as well as amendments recently enacted by the City of Wichita.
 - Fines provide an important source of revenue to fund court and policing expenses, and since no court costs are added for this violation, the fine should be set to cover expenses as well as serve as punishment and as a deterrent.
- The penalty for violations involving minors 14 to 18 years of age would remain at \$60, inclusive of court costs. This penalty is consistent with state statute.
- The proposed ordinance includes a new provision that would impose a fine of \$60, inclusive of court costs, on drivers who allow passengers ages 14-18 to be transported without safety belts.
- Because the prohibition on texting while driving does not have a specific fine, it is covered by the STO's general provision imposing a fine up to \$500.
 - The municipal judge has the authority to establish a specific fine for such violations.
 - For texting violations, Judge Wilson is considering a graduated scale with fines increasing for second and subsequent offenders.

Legal Considerations:

- The proposed amendments to the STO were drafted by the City Attorney in consultation with the Police Department to tailor specific sections to local needs.
- The City Council may adopt ordinances that are more restrictive than state statute.
- The current edition of the STO was passed by the Derby City Council December 22, 2009, and will remain in force until the 2010 Edition is adopted later this year.
- The Police Department is responsible for enforcing the STO and other traffic regulations.

Policy Considerations:

- Adoption of these amendments would allow local enforcement of safety belt and wireless communication regulations similar to recently enacted state laws.
- It is important to make the proposed changes to the STO now because of their anticipated effect on traffic safety.
 - Vehicle occupants wearing safety belts are less likely to be seriously injured than occupants not wearing safety belts.
 - Drivers using wireless communication devices to send or receive texts are much more likely to be involved in a traffic accident.
- The recommended provision making it an infraction for an adult driver to allow a minor (14 to 18) years of age to be transported while not wearing a safety belt has been proposed because:
 - These violations can be more effectively enforced in municipal court than in district court, and
 - Drivers need to be held responsible for the safety of their minor passengers.
- Additional changes to the STO will be brought to the City Council later this year once the League of Kansas Municipalities has revised its annual publication.

ORDINANCE NO. 2028

AN ORDINANCE AMENDING SECTION 182.1 OF THE STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES AS ADOPTED BY REFERENCE BY §10.04.010 OF THE DERBY MUNICIPAL CODE; RESTRICTING THE USE OF WIRELESS COMMUNICATION DEVICES TO SEND OR RECEIVE WRITTEN COMMUNICATIONS WHILE OPERATING A MOTOR VEHICLE; AND REPEALING ORIGINAL §182.1 OF SAID STANDARD TRAFFIC ORDINANCE.

DISCUSSION:

Council Member Bannon asked does the \$30 cover the court costs?

Chief Lee replied that it is inclusive of court costs.

Council Member Bannon stated I understand that it is inclusive. Does it actually cover what it costs for court?

Chief Lee replied the answer is probably yes that it does because frequently with these type of offenses there is a corresponding traffic violation also cited with them.

Council Member Bannon replied that an ordinance such as this doesn't have any teeth in it if you don't put a financial back to it, and I think we are making the right decision.

MOTION: Bannon moved to adopt the proposed amendments to the 2009 STO relating to safety belt use and texting while driving. Horyna seconded.

Council Member Horyna asked how will our officers determine whether a person is texting or whether they are attempting to read, select or enter a telephone number?

Chief Lee replied that is a very good question and one that we have talked about quite a lot as of this afternoon even. Some of the things that we will look for is if the person is punching in numerous buttons or numbers much more than what would be associated with a phone number. Then if they don't talk into the phone we are going to assume they are texting. That would be reasonable for us to stop them. We can ask them if they are willing to tell us if they are texting or not, maybe their admission would tend to prove it. But I think if we see a driver going down the street using the cell phone and entering multiple characters and not talking it is reasonable to assume that they are texting.

Council Member Warren stated one of the things that I quite often take issue with when we as a city pass more ordinances is that we are doing something different than what the state is doing. When you have people that are travelling through our community, they are not going to know what our rules and regulations are and so I would really like to be careful when we do that that we are doing something that really is important. I agree with Mrs. Bannon that a fine that is \$5 is almost worthless so that's going to bring me to the question. Tell me again what the City of Wichita is doing. I've got less of a problem if our rules and regulations are going to line up with a city that's next to us.

Chief Lee replied they also went with the \$30 court costs.

Council Member Warren asked so what we would be passing would be in line with what the City of Wichita has done?

Chief Lee replied that is correct.

Council Member Warren stated to me that's going to be somewhat of a saving grace and I will support it from that standpoint. I really don't like the idea of every city doing their own thing. When it comes to traffic laws people need to have some kind of conformity when they drive through and aren't being picked on.

Council Member Craig asked evidentially you can't do anything about the person in the back seat unless you stopped them for something that occurred for the driver?

Chief Lee replied if they are younger than 18 that is a primary violation even if they are in the back seat. If they are 18 or older it is not a primary violation.

Council Member Craig replied technically if you drive up next to them they won't even know you're there and that will be the way you find a lot of them. The other thing is, Ms. Sexton did you find an answer to my word criteria?

Ms. Sexton replied before the meeting you asked if the use of the term “child” in the proposed ordinance was appropriate referring to the 14-18 year olds. And while it would be fine, the city attorney has determined that the word “person” might be a better term. No change in the meaning of the ordinance but a little bit of language clean up we can easily do.

Council Member Craig replied in our two or three way conversation with the Chief there are specific ordinances for children to infants of a certain age and then on up so we want to make sure they are in the right categories. That’s why I asked for it, it wasn’t to be nitpicky it was just that it didn’t sound right when referring to a child of 14-18.

Mayor Avello stated I have one thought on this texting, which I think is extremely dangerous, I’m concerned that the judge hasn’t come in with a scale at this point where it says graduated. And I’m like Mrs. Bannon here, let’s put some teeth in this right off the bat instead of having a clouded issue. I don’t know if we can get with the judge and see what he is thinking.

Council Member Haynes stated he would like to see the scale the judge is coming up with. I don’t think it’s appropriate for a first time offender. But it does need some teeth, we’ve all seen accidents like someone getting rear ended. I just had a classic vehicle destroyed because someone was texting and they just ran over it. We do want some teeth in it but I don’t want to see a \$500 fine for the first offense.

Council Member Staats asked Chief Lee is the texting violation a misdemeanor with a court appearance required?

Chief Lee replied it is an infraction.

Council Member Staats replied if it is an infraction how are we going to track the fine? If it’s an infraction you don’t have to appear in court.

Chief Lee replied that is one of the issues we will be looking at. If it is repeated violations within the city of Derby, that should not present us a problem in the field to determine right then if that is a 1st, 2nd or 3rd violation. I’m thinking that is what the judge will have in the fine schedule. It’s “x” number of violations within the City of Derby.

Council Member Staats replied then there would be no way to track it if you got a texting ticket the day before in Mulvane and one three days before in Haysville. We would have a graduated fine, but it is an infraction so you don’t have to go to court on it, so the judge will technically never see you, he will just set the graduated fine.

Chief Lee replied the judge would establish the fine schedule which we would adhere to and they would have the option of not actually appearing in court.

Council Member Staats replied then every officer would have to check their traffic history?

Chief Lee replied we should be able to do that through a call to records or to dispatch after hours to get that information if they have other violations and adjudication on those violations.

Council Member Staats replied if you get it two days in a row you have adjudicated the first ticket. I think there are some details that have to be worked out as far as if you get two of them in a week's time you don't know. Most people don't pay their tickets as soon as they get them, they wait until they are due. If you get two or three in a week, we hope not, but it can happen and at that point in time they would get the minimum fine all three times?

Chief Lee replied right.

Council Member Haynes stated with that scenario it will catch up with them even if they get three in one week and they only pay the minimum fine three times. Once they get another offense they are already at four so it will catch up with them eventually.

Chief Lee stated in most violations of law, it's based on actual convictions not mere arrests or citations.

VOTE: Motion carried 8-0.

PARTICIPATION IN *HEALTHY WICHITA: LEADERSHIP BY EXAMPLE* INITIATIVE

Kathy Sexton, City Manager, presented the staff report.

Background:

- *Healthy Wichita: Leadership by Example* is an employer-led health initiative sponsored by the Wichita Business Coalition on Health Care in partnership with the Sedgwick County Health Department and the Health & Wellness Coalition of Wichita.
 - *Healthy Wichita* is about employers making a commitment to demonstrate how an organization can support its employees and the community by increasing healthy behavior.
 - A commitment to participate in *Healthy Wichita* means the City of Derby recognizes the importance of a healthy workforce and has made a public commitment to support healthy behaviors.
 - A benefit of participation is that the Sedgwick County Health Department would administer an assessment of our corporate policies, programs, and practices related to worksite health promotion to determine how we could advance in becoming a healthier place to work.
- The City of Derby is an active member of the Wichita Business Coalition on Health Care, and the Derby City Manager is currently the Board Chairman.
 - Coalition members include 25 area employers and 23 area providers of various health care services.
 - The Coalition's vision is to achieve substantive and sustainable improvement in the value received for the health care dollars spent by employers and their families.

Financial/Sustainability Considerations:

- Participation requires no fee because the program is underwritten by a grant from the National Business Coalition on Health to support health and health awareness through business leadership.

Policy Considerations:

- The City recognizes the cost to taxpayers of providing health insurance for City employees, the cost in productivity losses related to personal and family health problems, and the indirect cost of absenteeism and presenteeism. It is in the best interest of the City to promote wellness and encourage healthy behaviors among employees and the community.

Legal Considerations: None.

DISCUSSION:

Council Member Craig asked in our regular city employee program, are we making progress as far as our wellness program for the city?

Ms. Sexton replied we absolutely are, we have various programs throughout the year that we have high participation rates by employees. I think the programs are structured pretty well in terms of giving incentives for participation and for including your spouse in an activity or competitiveness between coworkers sometimes bring people out and quality programs with good teachers and good information sessions. Maybe over lunch there is information about various health related topics, whether it be nutrition or exercise and weight loss related.

MOTION: Craig moved to authorize staff to commit the City of Derby in the *Healthy Wichita: Leadership by Example* initiative. Haynes seconded.

VOTE: Motion carried 8-0.

**FIRST READING – AMENDMENTS TO MUNICIPAL CODE, CHAPTER 15.04
(TRADE LICENSES & CERTIFICATES)**

Phil Alexander, City Attorney, 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 comprised of 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.

Financial/Sustainability Considerations:

- Revising license categories and the renewal period will require minor modifications to the computer software used by the Building Trades Division, estimated to cost less than \$500.
- Though violations are typically dealt with administratively and only rarely prosecuted, upgrading violations to Class B misdemeanors has the potential to increase fines.

Legal Considerations:

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

Policy Considerations:

- In accordance with Council policy, Council action would be appropriate following second reading of the proposed ordinance, planned for August 10, 2010.
- 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.

DISCUSSION:

Council Member Bannon asked regarding the new licensing on, let’s just pick one, the concrete flat worker, is there going to be a charge? I’m wondering if there are no requirements, which I don’t think there are any state standards for concrete as far as who can pour it and do it.

Dale Wasinger replied we require an inspection for approaches so we want those people to be licensed. We have a record of who they are and they do call for inspections and there is a \$25 fee for the concrete licensing. You are right, there is no requirement. Wichita does have a license requirement for concrete people and we just look at theirs. But if someone were to come, and Phil has asked me this many times, I would give a concrete guy a license but we do not look at anything typically other than the approaches and sidewalks.

Council Member Bannon replied ok and the footings?

Dale Wasinger replied that falls under the building contractor.

Council Member Bannon asked are pretty much all the licensing other than like your typical general contractors, most of these are going to fall in the \$25 fee, the ones with no requirements?

Dale Wasinger replied that's correct.

Council Member Bannon asked in section 15.04.100, subsection b, what is a limited building? Would that be for a shed, accessory structure or would that be a house? I guess what I'm getting at is we have "limited" building, I would like a definition of that, a definition of a natural person, and then depending on what the limited building is, because they must actually reside in a structure located thereon, so if I came in and got a permit to build a house of my own, how can I live in the house when I haven't built it yet.

Phil Alexander replied you are a natural person as opposed to a corporate entity or a partnership, and I would suggest that we need to read a bit further in terms of as we drafted this ordinance, I'll let Dale speak to the subject of what is "limited" but it's not so much as a limited building as it's a "limited" building or trade project. Now with that in mind, I'll let Dale speak.

Dale Wasinger stated I do not know what that is. We also had other staff involved and I would like to recognize them as well. Stephanie Cox who is in Community Development as well helped us a lot writing this and she asked me where to go, and I said let's see what Wichita wrote and what Sedgwick County wrote.

Council Member Bannon replied that's cool but that doesn't make it right.

Dale Wasinger replied you are right and at this point I'm going to defer to our legal counsel.

Phil Alexander stated I will add just one comment, as I recall this provision started out its life as a provision that was designed to allow a person who actually resides in the structure to do some of their own work, I don't know if it was intended and I'm confident that it wasn't intended as a provision to allow them to build their own house. I think that's where the limited reference comes in.

Council Member Bannon replied ok, then let's start this the easy way. Can a person come in and obtain a building permit to build their own house?

Dale Wasinger replied yes they can.

Council Member Bannon asked if we need to restructure this paragraph a little bit to make it more clear on what we are and aren't allowing. Because someone can come in and pull their own building permit but yet they wouldn't be residing in the structure yet because the structure is not there. And then we might also want to look at putting in a "limited" building definition and maybe that "natural person" definition. That's just some ideas and just because it's in

Wichita and Sedgwick County doesn't mean it's any clearer than mud there either, but we don't need to repeat it.

Ms. Sexton stated I think you pointed out an area that's a little blurry and we will update that before it comes back for the second reading at the next meeting.

Council Member Haynes stated just to clarify what Mr. Alexander said and what Mrs. Bannon and you guys were talking about, for me as a home owner, if I want to come down and build a shed in my back yard, I can get a permit and I can do that myself?

Dale Wasinger replied that's correct.

Council Member Haynes asked this is in no way limiting me for that?

Dale Wasinger replied no.

Council Member Haynes asked if I want to sheet rock my basement, do I need to get a permit to sheet rock my basement?

Dale Wasinger replied yes if it has more than 400 sq. ft.

Council Member Haynes asked so I would have no problems getting a permit to do that?

Dale Wasinger replied none whatsoever. To make it easier on everybody, a homeowner can do everything but two things. They cannot run the electric meter can or the wire from the can to the utility nor can they run the gas line from the meter to the utility line. Other than that they can do everything else.

Council Member Craig asked Phil, when you were reading that you said the min and maximum punishment for violation is \$500 fine and 30 days to a maximum of \$1,000 and 6 months.

Phil Alexander replied I misspoke, the 6 months was from an earlier draft.

Council Member Craig asked is there some reason that since we are doubling the fine that we didn't look at the days in jail?

Phil Alexander replied well actually as I said an earlier draft did have that higher or extended jail time. In looking at it again, we concluded that as a practical matter the jail time doesn't really matter, that's not going to be imposed or if it is it will be some really weird set of circumstances.

Council Member Horyna asked, regarding the lawn sprinkler contractor, does that apply to homeowners that have a private well?

Dale Wasinger replied no it does not.

Council Member Horyna asked does that need to be spelled out or identified here or is it covered somewhere else?

Dale Wasinger replied no it really isn't, that's been a bone of contention, wells vs. city water and we really haven't decided which way to go on that, so if we could have some direction that would be great.

Ms. Sexton stated I think what Dale is trying to say is that the ordinance that we have on the books, and have had for backflow testing, is for people who have sprinkler systems connected to the city water system. And that well water systems are not required to have backflow. And I think what you are saying is that if the council wants that for wells then they would have to take action to do that.

Dale Wasinger replied that's correct.

Council Member Horyna replied they would still have to pull a permit correct?

Dale Wasinger replied if they have a well, what I require currently is they get an electrical permit to run the wires to the well pump.

Council Member Horyna asked if we are requiring well permits.

Dale Wasinger replied yes.

Council member Warren stated the requirements show a passing grade on the ICC test and then you have different classes of general contractors and another one for roofing contractor. Are the tests specific to their job or classification? In other words a roofer doesn't have to pass the same test as a Class C general contractor do they?

Dale Wasinger replied no they do not.

Council Member Warren replied so the test is specific to their area of expertise.

Council Member Haynes asked why would we need the same requirements for a backflow valve or the same testing if the backflow valve is hooked up to city water vs. a well? Have I missed something?

Dale Wasinger replied the reason for the backflow check valve is to prevent the water that's in the sprinkler lines from ever getting back in the potable water supply. Whereas in a well, we are not drinking that so that's been my thinking, why require that? Because it's not a safety factor.

MOTION: Bannon moved to authorize second reading of proposed amendments to Chapter 15.04 of the Derby Municipal Code at the August 10, 2010 City Council Meeting. Craig seconded.

VOTE: Motion carried 8-0.

RESOLUTION AUTHORIZING THE SALE OF TEMPORARY NOTE SERIES 2010-1

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

Background:

- The City Council has previously taken action which authorized via resolution a number of internal improvement projects following petitions submitted by developers and property owners.
- The purpose of the Series 2010-1 temporary note sale is to provide \$3.495 million of interim financing during the construction of the authorized projects.
 - This amount represents only 85% of the total \$3.983 million listed in the resolution, which is in accordance with the City's past practice. Typically, bids come in lower than the full amount allowed by resolution, so we don't borrow more than we need.
- The permanent financing (general obligation bonds), along with the special assessment process, is expected to take place during the summer of 2012 toward a September 1, 2012 general obligation issue.
- The improvement projects to be financed are listed below:
 - Stone Creek 4th and 5th Additions – Sanitary Sewer, Water Line, Storm Water Sewer and Streets
 - Stone Creek Commercial 4th Addition – Streets and Storm Sewer
 - Derby Medical Campus – Sidewalk
 - Spring Ridge Addition – James Street extension

Financial/Sustainability Considerations:

- Bids will be solicited for the notes and presented at the August 24th City Council meeting.
- There are costs to the city-at-large for the streets and sanitary sewer in the Stone Creek Commercial and James Street projects in accordance with the city's development policy. Total cost to the city-at-large of all resolutions is \$349,770 which will be financed over 15 years.
- The Stone Creek Commercial, Derby Medical Campus sidewalk and James Street extension were originally financed in Temporary Note Series 2009-1 and make up most of the \$1,680,000 of notes that will be redeemed. Some of the projects are not complete so the costs are being rolled into this series of temporary notes which mature in 2012.

Legal Considerations:

- The notes are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Kansas. Local resolutions, ordinances and policies have been adhered to.
- The resolution provides for approval of the Preliminary Official Statement in substantially the form presented, which outlines the details of the offering to prospective buyers of the notes.

Policy Considerations:

- City of Derby policy requirements regarding special assessments of cash or credit commitment have been met.

RESOLUTION NO. 37-2010

RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2010-1, OF THE CITY OF DERBY, KANSAS.

- MOTION: Craig moved to approve a resolution authorizing the sale of Temporary Notes Series 2010-1 of the City of Derby. Haynes seconded.
- VOTE: Motion carried 8-0.

RESOLUTION AMENDING AUTHORIZATION FOR IMPROVEMENTS TO TRAFFICWAYS

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

Background:

- In March 2009, Resolution #19-2009 was adopted to authorize reconstruction and widening of Buckner Street from Highway K-15 to Harral Street.
- Permanent financing of this project was included in the G.O. Build America Bonds (BAB) Series 2009-A in the amount of \$2.1 million, along with \$4.0 million for a public works facility and \$4.03 million for the southeast sewer interceptor.
- A unique requirement of Build America Bonds is that all of the proceeds must be spent on the project, whereas a typical tax-exempt bond would require the unspent proceeds to be used to pay debt service.
- The proposed amendments to Resolution #19-2009 would expand the scope of improvements authorized to be paid from bond proceeds.

Financial/Sustainability Considerations:

- The Buckner project will be completed at a cost (\$1,674,000) substantially less than the \$2,100,000 financed, leaving \$426,000 of unspent proceeds that must be spent on either the other projects already financed or a new project authorized by the City Council.
 - The cost of the public works facility will be within the budgeted project cost, but the exact amount is not known at this time because bids have not been received for the fuel station nor is the project complete.
 - The final cost of the southeast sewer interceptor is unknown as bids will not be received until this fall.
- In the event the public works facility and sewer interceptor projects come in below budget, it is recommended that the remaining bond proceeds be spent on two main trafficway projects in the 2010 Capital Improvements Plan.
 - Reconstruction of Buckner Street from Kay Street to the south city limit is estimated to cost \$647,000.
 - Madison Street west of Highway K-15 is estimated to cost \$1,313,000, including \$413,000 funding from KDOT. The Madison Street project is shown in the CIP at a lower cost, but recent indications from KDOT are that the railroad crossing will likely cost more than originally anticipated in 2007. Authorization of the project at the higher estimate will reduce the likelihood that an additional amending resolution will be required. True costs will not be known until the project is bid.
- The proposed resolution allows project expenditures occurring now to be paid from bond proceeds. It is unknown at this time whether the BAB proceeds will be sufficient to fund both projects, but if not, funding will be requested in a future bond issue.

Legal Considerations:

- The amending resolution was drafted by the City's bond counsel, Joe L. Norton of Gilmore & Bell.
- The City Council is authorized to adopt appropriate resolutions designating and providing for the improvement of main trafficways within the City.

RESOLUTION NO. 38-2010

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 19-2009, AUTHORIZING THE IMPROVEMENT OR REIMPROVEMENT OF MAIN TRAFFICWAYS, WITHIN THE CITY OF DERBY, KANSAS; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

DISCUSSION:

Council Member Craig asked if the balance of \$426,000, is real money.

Mrs. Epperson replied absolutely.

Council Member Craig asked what is the projection for the other two projects that are going to be underway? Do we forecast a savings in those estimates also?

Ms. Epperson replied that we borrowed \$4 million for the public works facility and there is another project to come back, the fuel station, but if you recall, that project came in substantially under estimate. Once you get the bids in for the fuel station, this project likely will still be under budget.

Council Member Craig asked how the \$426,000 would be used.

Ms. Epperson replied most likely South Buckner is the project that's ready to go and then the other project that is already financed is the interceptor sewer. That's the one that we will not bid until this fall.

Council Member Craig the projected cost on South Buckner is \$647,000. If that comes in any lower we are almost going to get that one done for the amount that was saved from the other one?

Ms. Epperson replied yes.

Council Member Meidinger asked are these 15 or 20 year bonds?

Ms. Epperson replied these are 20 year bonds.

Council Member Meidinger stated that in most resolutions they are 15 year bonds. Why did we go to 20?

Ms. Epperson replied we went to 20 because of the nature of the projects, major interceptor and public works facility and then the Buckner project which was a reconstruction of a major street.

Assessment projects which are not necessarily arterials and are residential streets are spread over 15 years.

Council Member Meidinger asked just roughly, how much difference was there in the interest cost between the 15 and 20 year bond?

Ms. Epperson replied I don't have that with me tonight but I know we looked at it.

Council Member Nun asked didn't that 20 years have something to do with the "Build America" bonds. Are those normally longer term bonds than normal bonds that we do?

Ms. Epperson replied I don't remember that but I would trust your word on that one.

Council Member Craig stated I thought it was basically that the 20 years gave us an advantage not so much that it saved us money because on our others that are done for developments they are structured on the 15 year and this coincided better with the plan we had over a longer period of time. Even though it didn't save us that much money, I thought it was a better fit as far as the debt that we incurred over a period of time.

Ms. Epperson advised we looked at the fit with the rate structure of the sewer rate system. But the other thing that you look at is the life of the asset that you are financing, and that's where I was headed with the major street or building, they are certainly expected to last 20 years.

Mayor Avello asked with the stimulus money not quite being half spent and an election year coming up, would the interceptor qualify as a shovel-ready project that we might get in on federal funding if that happens?

Ms. Sexton responded not the sewer interceptor but you are right we are watching the federal government. If they do decide to pass in Congress another new bill for a stimulus, we anticipate what that might be used for. We have some information and have put into the CIP another resurfacing project for some arterial streets that otherwise we won't do for a while. But if we could get the federal grant we would probably move that up and do that as soon as that grant money would become available. But this sewer project, no.

MOTION: Craig moved to approve a resolution amending and supplementing Resolution #19-2009 authorizing improvement of main trafficways. Staats seconded.

VOTE: Motion carried 8-0.

CONSENT AGENDA

2010-2011 School Resource Officer Agreement

Background:

- On May 28, 1999, the City of Derby entered into a four-year agreement with the school district to provide school resource officers at the high school and middle school.
 - One-year contracts were entered into with USD #260 for each subsequent year.
 - This year’s agreement remains the same as the previous year, with adjustments in the financial commitment by each party based on salary and benefit costs for each of the three SROs.
- A total of three school resource officers will be deployed during the 2010-2011 school year: two officers to Derby High School and one to Derby Middle School.
- School resource officers play a vital role in conflict resolution, monitoring of student behavior, education, and overall safety and orderly conduct within the schools.

Financial/Sustainability Considerations:

- The 2010 Approved Budget and the 2011 Recommended Budget include funding for three school resource officers.
- The city and school district will share 50% of the cost for the officers’ salary and benefits while they are assigned to the schools.
- In this agreement, USD #260 agrees to pay \$57,200 to the city for the services of the officers.

Legal Considerations:

- The city is empowered to contract with the school district to provide law enforcement officers to act as school resource officers.
- The school board has authorized the superintendent to execute this agreement on behalf of USD #260.

Recommend a Motion to:

- Approve the agreement and authorize the necessary signatures.

Purchase of Fire Hose

Background:

- In 2009, Derby Fire Department submitted a grant request to FEMA for the purpose of purchasing new fire hose and was successful with that grant request.
- The grant requires a 10% match from the City of Derby.
- Bid requests were sent to 7 vendors for the 3 different sizes of fire hose. 5 vendors returned a bid for each size of hose.
- Vendors were asked to bid each size of hose individually and as a whole. The City retained the right to award bids per hose or corporately.
- Vendors were also asked to return bids on fire hose based on a minimum 10-year warranty.
- Any vendors not providing a certificate of warranty for 10 years were considered not meeting specifications.

	<i>MES</i>	<i>Heiman*</i>	<i>Weis</i>	<i>Conrad</i>	<i>Darley*</i>	<i>Hays</i>	<i>Danko</i>
Price listed is per section							

5" X 100'	\$557.00	\$637.95	\$547.78	\$537.00	\$560.60	No Bid	No Bid
5" Warranty Period	10 Years	None Supplied*	5 Years	5 Years	None Supplied*	No Bid	No Bid
3" X 50'	\$191.50	\$199.95	\$194.44	\$191.00	\$194.00	No Bid	No Bid
3" Warranty Period	10 Years	None Supplied*	10 Years	10 Years	None Supplied*	No Bid	No Bid
1.75"X50' (Colored)	\$219.25	\$105.92	\$106.11	\$104.00	\$103.40	No Bid	No Bid
1.75" X 50' (White)	\$219.25	\$96.95	\$92.78	\$91.00	\$72.60	No Bid	No Bid
1.75 Warranty Period	10 Years	None Supplied*	10 Years	10 Years	None Supplied*	No Bid	No Bid
<u>Sub Total</u>							
5" (18 ea.)	\$10,026.00	\$11,483.10	\$9,860.04	\$9,666.00	\$10,090.80	No Bid	No Bid
3" (24 ea.)	\$4,596.00	\$4,798.80	\$4,666.56	\$4,584.00	\$4,656.00	No Bid	No Bid
1.75" Color (31 ea.)	\$6,796.75	\$3,284.85	\$3,289.41	\$3,224.00	\$1,034.00	No Bid	No Bid
1.75" White(8ea.)	\$1,754.00	\$775.60	\$742.24	\$728.00	\$580.80	No Bid	No Bid
Total	\$10,026.00	\$0.00	\$0.00	\$8,536.00	\$0.00	No Bid	No Bid
* Documentation of testing and warranty period not supplied with bid							
Black/Bold- Recommend Purchase						Total	\$18,562.00

Financial/Sustainability Considerations:

- Bids were evaluated on price and warranty period. The following bids were recommended by the bid board for acceptance:
 - MES - \$10,026 for 5-inch hose. (Not low bid but provided necessary warranty.)
 - Conrad - \$4,584 for 3-inch hose. (Low bid and provided necessary warranty.)
 - Conrad - \$3,224 for 1¾-inch colored hose. (Not low bid but provided necessary warranty.)
 - Conrad - \$728 for 1¾-inch white hose. (Not low bid but provided necessary warranty.)
- The City's 10% grant match totals \$1,856.20, which is available in the approved 2010 budget.

Legal Considerations:

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for purchase of equipment.

Policy Considerations:

- Derby Fire routinely has need to purchase new fire hose to replace existing fire hose that is no longer reliable.

Recommend a Motion to:

- Accept the bid from MES for five-inch fire hose for \$10,026 and the bids from Conrad for three other sizes of hose for a total of \$8,536.

Construct Sanitary Sewer & Storm Water Sewer Improvements to Serve Stone Creek 4th & Stone Creek 5th Additions

Background:

- Bids for construction of Sanitary Sewer and Storm Water Sewer Improvements to serve Stone Creek 4th and Stone Creek 5th Additions were opened Tuesday, July 20, 2010.
- The bid includes 4 projects to provide services to Stone Creek 4th and Stone Creek 5th Additions:
 - Sanitary Sewer Improvements – Stone Creek 4th (Resolution 04-2010)
 - Sanitary Sewer Improvements – Stone Creek 5th (Resolution 17-2010)
 - Storm Water Sewer Improvement – Stone Creek 4th (Resolution 07-2010)
 - Storm Water Sewer Improvements – Stone Creek 4th & 5th (Resolution 20-2010)
- The award is based on the lowest total bid for the combined projects.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

Alan’s Excavating	\$1,027,672.00
Dondlinger & Sons	851,751.00
Duling Construction	762,795.00
Utility Contractors	752,064.00
Mies Construction	638,874.00
Nowak Construction	593,975.50

Engineer’s Estimate* \$806,410.00

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

Financial/Sustainability Considerations:

- Costs for the improvements will be paid 100% by the benefit district.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for planning and financing such projects.

Recommend a Motion to:

- Accept the bid of Nowak Construction in the total amount of \$593,975.50 and authorize execution of a contract for construction of Sanitary Sewer and Storm Water Sewer Improvements to serve Stone Creek 4th and Stone Creek 5th Additions.

Telecommunication Franchise Agreement with Sage Telecom, 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 Sage Telecom is the first of several from small carriers doing business in the City of Derby. Future agreements are in the works with Matrix, McLeodUSA/Paetec, Nuvox, and Birch/Ionex, 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 Sage Telecom, the City has not previously collected revenue from this company.
- Staff will monitor future revenue from Sage Telecom 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 Sage Telecom, that locate infrastructure in the public right-of-way.

- In the future, the City may increase the franchise fee payable by Sage Telecom, 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 Sage Telecom, Inc. establishing payment of \$2.50 per access line per month.

ORDINANCE NO. 2029

AN ORDINANCE GRANTING TO SAGE TELECOM, INC., 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.

MOTION: Haynes moved to approve consent agenda as presented. Nun seconded.

VOTE: Motion carried 8-0.

Mayor recessed meeting to El Paso Water Company Meeting at 7:56 p.m. Meeting reconvened at 8:00 p.m.

EXECUTIVE SESSION

MOTION: Nun moved to recess to executive session to consult with our attorney on matters deemed to be of attorney-client privilege, specifically (1) the negotiation of a contract and (2) the city's legal options regarding Sedgwick County's decision to close 71st Street for a period of 20 minutes, following a 10 minute break, to return not before 8:30 p.m. Meidinger seconded.

VOTE: Motion carried 8-0.

Council returned at 8:39 p.m. and Council Member Nun advised no binding action had been taken.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 8:40 p.m. Meidinger seconded.

VOTE: Motion carried 8-0.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk