

**APPROVED
REGULAR COUNCIL MEETING
July 8, 2008
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Vaughn Nun, Chuck Warren
Charlie Schwarz, Cheryl Bannon
George Arnold

COUNCIL MEMBER ABSENT:

WARD IV

Mark Staats

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Paul Wilke, Woodlawn United Methodist Church.

**CONSIDERATION OF
MINUTES**

Minutes of the June 24, 2008, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of June 24, 2008 Regular Council Meeting. Arnold seconded.

VOTE: Craig abstain, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 5 yea, 0 nay, 2 absent, 1 abstain, motion carried.

PUBLIC FORUM

Becky Robinson, Derby Community Coalition Promoting Healthy Choices, in 2007 the City of Derby was named a top 10 town for families by Family Circle Magazine. This has been something she has been proud of as a citizen of Derby and she knows the city council and city staff show the same feelings of pride for our community. It is interesting to her and very telling to find that 8 of the 10 towns selected for this distinction have a clean indoor air ordinance of some kind and a 9th city does not allow smoking in parks except in designated areas. To her this represents family friendly values and a concern for public health that should be evident in a town that puts people first. The residents of Derby should also be very proud of the wonderful miles of hike and bike trails in our city. According to an article appearing in today's USA Today newspaper those trails

are considered a source of health promotion. In the article they have an interview with Joy Gerberding, Director of the Centers for Disease Control and Prevention who states that Americans don't really talk much about health promotion and points out that our views of prevention are skewed, she then read a paragraph from the article. This last week was family week for the Derby Twins and she has been in attendance at several of the games and have heard some interesting comments from families visiting the players here this week. Comments ranging from being surprised that we didn't offer recycling receptacles at the park and they couldn't believe we allowed smoking in restaurants and public places. Currently over 53% of the US population live in areas with smoke free laws that include restaurants and bars. Smoke free laws are being passed all across the country to protect all workers and the public from the serious health risks created by exposure to second hand smoke. She urged the council, as leaders of this wonderful city to follow this momentum and implement a comprehensive clean indoor air ordinance to protect the health and well being of everyone.

Diane Tinker, Development Director of the American Lung Association, advised they have numerous volunteers in the Derby area and she is proud to speak on their behalf tonight. Derby has been given a once in a lifetime opportunity, the opportunity to take a pre existing ordinance and make it as strong as it can be and one of the strongest in the entire State of Kansas. Derby can be a progressive leader in Kansas and show leadership by putting the health of all who live, work and play in Derby, regardless of age or where they work first. She is sure she is not the only one here who applauds the mayor and city council for taking this first step in protecting the health of everyone. However, we also strongly urge the council to consider the potential ramifications of making changes to the preexisting ordinance that would weaken it considerably, as happened in Wichita. It is no secret that the American Lung Association, as well as many other health organizations and concerned citizens were not pleased with the ordinance that was passed by the Wichita city council that will go into effect on September 1st. It is also no secret that this ordinance is confusing, difficult to follow and opens the door to numerous potential legal challenges by business owners and employees alike. It will be challenging to enforce and even more challenging for vendors, customers and patrons of those businesses throughout Wichita as they try to determine where they can go without fear of putting their own health in jeopardy. Not only that, but the dangers of exposure to second hand smoke are not suddenly eliminated or reduced when someone turns 18. It has been scientifically proven that there is no risk free level of exposure to second hand smoke. It is a known carcinogen, causes lung cancer, sudden infant death syndrome and other health consequences regardless of age. Someone who is 17 ½ has the same danger of serious health consequences as someone who is 45 when exposed to second hand smoke. The harmful effects of second hand smoke do not discriminate. It also doesn't discriminate based on where someone works. Someone who is exposed to second hand smoke in a bar or an establishment with a cereal malt beverage license has just the same risk as someone who works in an office. Therefore, they strongly encourage the city council to make Derby's ordinance comprehensive and prohibit smoking in all public places and places of employment. Exemptions allowing some places of employment to allow smoking will create unfair competition. Family oriented venues will be forced to decide between allowing smoking or maintaining their customer base. Smoke free work place policies are the only way to eliminate exposure to second hand smoke. Separating smokers from non-smokers, cleaning the air, ventilating buildings, that can't eliminate exposure. Speaking specifically to restaurant employees, they are far less likely

than other workers to be protected by smoke free workplace policies, more likely than other workers to have these polices violated where they do exist and are more likely to be exposed to high levels of second hand smoke on the job. The 2005 American Society of Heating, Refrigerating and Air Conditioning engineers report finds that there is no safe level of exposure to second hand smoke. The ventilation and other air filtration technologies cannot eliminate all health risks caused by second hand smoke exposure and that tobacco smoke does not belong in indoor areas. Regarding the possible exemption for businesses with a CMB or liquor license and outdoor patio seating; she would like to give a mother's perspective on the smoking ordinance in Derby or anywhere; Ms. Tinker read a letter from the mother of a 9 year old with severe asthma. On behalf of the 25,000 adults and 11,000 children in Sedgwick County who have asthma, on behalf of the 1,000's of others who have emphysema, lung cancer, COPD and other health challenges, the ALA strongly encourages you to do the right thing. Put the health of your residents first.

Council Member Warren arrived at 6:45 p.m.

Spencer Stelljes, Government relations chairman, Chamber of Commerce, based on their position statement given to the council in August, 2006 and e-mailed recently to all of the council, we feel that creating a smoke free business should be market driven. In addition, they also stated that they wanted a level playing field and he thanked the council for the support given this far with the previous ordinance that was passed. He advised there are two compromises the Chamber would support; the Chamber recommends the council continue to operate under the Derby Clean Indoor Air Ordinance 1885, which was recommended also by the Ordinance Review Advisory Board as a compromise to an all out ban. The secondary recommendation is that if any amendments to our current ordinance are made, Wichita's ordinance should be followed to create a level playing field for all businesses in the Wichita metro area. With exceptions considered when it creates a hardship for Derby businesses, specifically restaurant patios such as Madrocks, the 10 ft. versus 20 ft. from entrance. Based off of that he feels it's important to clarify in public that they had sent an erroneous letter that has since been made clear to the entire council what they actually are saying. He pointed out they support the current clean indoor air ordinance and more specifically what was passed by the Ordinance Review Advisory Board.

Bob Hinshaw, Sedgwick County Undersheriff and candidate for Sedgwick County Sheriff, introduced himself to the council and pointed out that over the last 29 years he has seen three chiefs in Derby, and the Derby police department and Sheriff's department have sort of grown together. He believes the police department and sheriff's department enjoy an excellent working relationship and have formed several partnerships on items of mutual concern. He looks forward, if elected, to be able to continue that relationship.

Sara Skelton, is running for Sedgwick County Clerk. She has been on the Wichita School Board for four years and has a passion for serving the public.

Council Member Meidinger asked about the trash franchise plan. He knows there was a committee appointed and he hopes this doesn't get delayed like the open space and parks plan did and he hopes we stay on task and get that done. He is tired of seeing four trucks come down his

cul-de-sac every week tearing up the road and it's not safe. He hopes that we have some type of a deadline, some type of a tracking system so this thing doesn't go on and on forever. He asked if there was a plan.

Kathy Sexton, City Manager advised the first meeting has been scheduled that will be held on July 22nd. There will be a speaker coming in for that meeting and we will be making a public announcement regarding time and location of that meeting later on this week. The public is invited to attend the meeting.

Council Member Warren reminded Mr. Meidinger that the city has an excellent phone system and anytime he has a question like that rather than bringing it out and making someone look like we are not doing something, you can just call the city manager, the mayor or himself.

Council Member Meidinger left the meeting.

Mayor Avello stated that 2 years ago when we started the smoking discussion he advised that part of the job for the mayor is to look down the road and see what the trends are and whether or not it will affect Derby. About 3 years ago he had a meeting with then mayor Mayans and Ben Sciortino when he was the county commissioner for this area. They discussed property tax relief and he proposed a plan and got a lukewarm reception. The Wichita Eagle had an article on Monday that featured part of his plan, so what he thought fell on deaf ears, did not. He also spoke with some area mayors at a Sedgwick County meeting of cities and told them what he was thinking about and they wanted to pursue it. Later he spoke with mayors at the REAP organization and one mayor in particular from Newton pursued that venture. Today, Newton has put in place a property reduction tax plan for that community and it is working well. What they did was reduced their mill levy by 10.5 mills, offset the property tax and went in with a 1% sales tax. When asked Monday at REAP how that was working, he was told that they are ahead 3.5 to 1 on dollars and the plan is working very well. When Mr. Arnold went back to Indiana several months ago he called from there and said a tax package similar what the mayor had proposed here is being put in place by the State of Indiana. There is a way to reduce property tax and not hurt the way we raise money for our cities. As a matter of fact he went to the county today after he spoke with Ms. Sexton this morning and spoke to a commissioner who has talked with the City of Newton and they are looking at doing something up there. He would like to start a discussion in this community about where we sit with our revenues and if we could do something like that. It is too late to do it on this budget but we can set it up for next year and have some conversations just like we did with the smoking ordinance.

Council Member Arnold stated he recalls the comment a year and a half ago about the tax thing. One thing the mayor failed to mention is that when the State of Indiana enacted that law it also affected all businesses as well. It's not just the individual but also all of the businesses in that state and it is going along very well according to his daughter who lives in Indiana.

Council Member Schwarz advised he was consulting with some companies in Tonkawa, Oklahoma and he knows they have a fairly high local sales tax and it seems to be working real

well with them. He thinks we use not just Newton, but what other states are doing as far as property tax relief. Once we get into this venue of property tax relief through additional sales taxes then it puts the onus on community leaders and communities like Derby and Wichita to really promote economic development and tourism. He sees a real problem in the City of Wichita with tourism right now. He doesn't know if everybody was witness to the square dancing thing they had last week but his daughter is working at a hotel in Park City and to show the critical shortage of hotels in this town, they were referring people all the way to Salina to stay overnight. If this is going to happen, if it's going to work and this community and this region really promotes tourism there's obviously some other things that we need to consider to get that out there.

Mayor Avello stated that in his conversations with the county this morning they were appreciative of the fact he had gone to them to tell them what he was going to say tonight because he didn't want to step on their toes. It encompasses a lot of things and it's not something we can do in a manner of 2-3 months, we really have to think it out and look at everything that it will affect. He asked Ms. Sexton to put it on the agenda after the budget is concluded so we can have an open discussion on this with the people of the city and the council.

RECONSIDERATION OF CLEAN INDOOR AIR ORDINANCE

Kathy Sexton, City Manager presented the staff report.

Background:

- On April 10, 2007 the Derby City Council passed an ordinance effective January 1, 2009 to prohibit indoor smoking in businesses and public buildings, except for establishments with cereal malt beverage or liquor licenses.
 - The ordinance included a prohibition on smoking within 20 feet of building entrances, exits, and air intake ventilation systems.
 - Derby's ordinance stipulates that the exemption for establishments with beer or liquor licenses would change if Wichita passes a similar regulation.
 - The issue was addressed by the Council in response to a request by the Derby Community Coalition Promoting Healthy Choices.
- On June 6, 2008, the Wichita City Council passed an ordinance to regulate smoking in certain places of business, effective September 4, 2008. In so doing, Wichita became the 28th city in Kansas to pass an ordinance addressing indoor smoking.
 - The new law prohibits indoor smoking in all businesses where young people under age 18 are allowed and within 10 feet of any building entrance. Employees under age 18 already employed at the business when the ordinance goes into effect are exempt.
 - Other businesses, including bars, may allow smoking if they get a permit (\$250), put up a warning sign, prohibit people under age 18, and require employees to sign an acknowledgement that they've been advised of the health hazards of environmental tobacco smoke.
 - Exemptions include charitable fundraising events, designated smoking rooms (with impermeable walls, negative air pressure, a separate air ventilation system, and a city permit), and occasional smoke-free events held at smoker-friendly businesses if smoking is discontinued 12 hours prior to the event.

Financial Considerations:

- Under the current Derby ordinance, no permit fees or other revenue source are established.
 - Fines on individuals who violate the ordinance are capped at \$50. Fines for business establishments that violate the ordinance range from \$100 for a first violation to \$500 for a third or subsequent violation within one year after the first violation.
- Under the Wichita ordinance, a business that elects to operate as a smoker-friendly facility, to maintain a smoking room, or to host a charitable fundraising event at which indoor smoking is permitted must obtain an annual permit of \$250 and undergo an inspection of the premises.
 - Fines for businesses and individuals who violate the ordinance range from \$100 for the first violation to \$500 for the third or subsequent violation within one year after the first violation.

Legal Considerations:

- Using home rule authority, the City of Derby is empowered to enact and enforce ordinances for protection of public peace, order, health, morals, and safety.
- Indoor air quality and the effects of secondhand smoke have been determined to be public health and safety interests sufficient to warrant legislative action. Ordinances intended to protect or promote public health and safety must be rationally related to those legitimate governmental interests.
- Courts have generally ruled that protection of the public from the negative effects of secondhand smoke is a legitimate government interest.
- The Nebraska Supreme Court recently invalidated certain exemptions to Omaha’s ordinance, regulating clean indoor air [*Hug v. City of Omaha*, 275 Neb. 820 (2008)]. This case, cited locally by clean air advocates, was decided based on a provision of the Nebraska Constitution that has no counterpart in the Kansas Constitution and thus no application to clean air legislation (state or local) in Kansas.

Policy Considerations:

- Cities, states, and even national governments in many countries around the world have chosen to regulate indoor smoking in recent years in an attempt to improve public health. Scientific evidence exists that proves that secondhand smoke is harmful to human health and because breathing it is often not a conscious choice, warrants regulation in a manner different from regulation of smoking itself.
- In June 2006, the U.S. Surgeon General released a report noting the health effects (heart disease, lung cancer, etc.) and concluding that designating smoking areas, cleaning the air, and ventilating buildings will not eliminate the health effects of second-hand smoke. The only protection for nonsmokers is to completely eliminate smoking in indoor spaces.
- More than half of the U.S. population lives in a community or state that has prohibited indoor smoking, making such policy the norm for the majority of Americans already.
- An online survey of Derby residents conducted in December 2006 through January 2007 concluded that 82% of local respondents supported an ordinance regulating indoor smoking.
- The economic impact of a clean indoor air ordinance on affected businesses is often short-lived, specifically a few months, after which customers grow accustomed to regulations affecting the entire marketplace. Varying regulations among closely neighboring jurisdictions in which customers are highly mobile increase the likelihood of customers voting with their feet.
- The equilibrium of a “level playing field” for competing businesses can easily be disrupted. On the other hand, environmental and business regulations of various types differ among cities with different goals and priorities. It is the prerogative of municipal corporations to determine the type of city they wish to be and to set regulations to achieve their goals.

- In August 2006, the Derby Chamber of Commerce issued a position statement indicating that it favors promotion of fair competition and stimulation of investment in an atmosphere of regulatory predictability. A ban on smoking in Derby restaurants while competitors elsewhere permit smoking could place the Derby businesses at a competitive disadvantage. The Chamber supports a metro-wide ban on smoking in restaurants.

Options:

1. Continue to operate under the terms of the current ordinance on the books, effective January 1, 2009. Businesses with cereal malt beverage or liquor licenses would be exempt from requirements regarding clean indoor air. All other businesses and public places would be required to prohibit smoking indoors and within 20 feet of exterior entrances and exits.
2. Adopt an ordinance similar to Wichita's, which essentially lets businesses decide if they want to allow indoor smoking or allow people under age 18.
3. Eliminate the exemption for businesses with cereal malt beverage or liquor licenses, thus deciding that clean indoor air requirements should apply equally to all businesses.
4. Delay action until after the Wichita ordinance goes into effect and sufficient time has passed to gain a clear picture of the ordinance's effects (intended and unintended).
5. The above four options were presented to the City's Ordinance Review Advisory Board at its meeting on June 17. Following much discussion, ORAB unanimously decided to recommend to the Council the following amendments to Derby's current ordinance:
 - Instead of exempting businesses with cereal malt beverage (CMB) or liquor licenses as the current ordinance does, these businesses should be allowed to choose between allowing smoking and allowing people under the age of 18 into their businesses.
 - This provision would be very similar to the Wichita ordinance but would only apply to those establishments with CMB or liquor licenses.
 - The only places where smoking would be allowed indoors would be licensed premises where no one under 18 is allowed.
 - The current requirement for no smoking within 20 feet of entrances, exits, and air intake systems should remain, although an exception is needed for businesses with CMB or liquor licenses for outdoor patio seating.
 - ORAB concluded that if a business is trying to provide clean indoor air by banning smoking indoors and allowing it on the patio, then the City should support that effort.
 - All other provisions of the Derby ordinance should be maintained.

DISCUSSION:

Council Member Bannon asked if our ordinance would go into effect when Wichita's did or would it wait until January.

Ms. Sexton advised we had talked about having some sort of automatic implementation but we did not put that in the ordinance. It was questioned how we would do that since we didn't know what they were going to pass and what they passed certainly was not a comprehensive ordinance, it was very complicated and would add pages to our ordinance. All it says is basically that if Wichita passes something then we would reconsider and decide what we want to do.

Council Member Bannon commented that this is an issue that has been before us numerous times and she for one would like to put it to bed, we have a lot of other issues to deal with. We have five options before us and she only sees two of them as viable. One was #2; adopt an ordinance similar to Wichita's. That's going to be a little hard to enforce because you don't want to have to card those 17 ½ year olds in an establishment to eat with their folks or in a hair salon

or anything of that nature. After looking at ORAB's recommendation, that's what she really feels hits the balance. As far as second hand smoke for those 18 and over, she's a mom and her children will never be adults probably but the nationally recognized adult age to make decisions is 18. We have to have a cut off point. She believes the ORAB ordinance protects children, it allows adults to make their own decision. One thing she thinks should be added to the ORAB ordinance would be to require appropriate signage on smoking facilities.

MOTION: Bannon moved to approve option #5 based on the Ordinance Review Advisory Board's recommendations, adding the verbiage "those businesses allowing smoking shall have proper signage" and adding an exception for outdoor seating. Warren seconded.

Council Member Craig stated that we previously had an intense discussion about this and he can see that's going to happen again tonight. "Level playing field" is overused. He understands level playing field for the competition of dollars and customers but from his experience he does not want a level playing field when it comes to the results that other people have experienced, which is cancer. Those two don't go together, you have to make a decision whether you want healthy or you want business and he knows that is a difficult decision. He would like to see it totally banned based on personal experience but he knows that is not the way this council is going to go. He stated that once we make a decision which way we are going to go there is no reason to wait until January 1st. We can give it the proper amount of time and then we take action and we implement the ordinance. Regarding the patio situation, he is not sure that is a good exemption; however there is a way to work that. He believes that should be on an exception basis and not blanket for everybody to go out and build a patio just so they can have an outside smoking area. He believes that there is some consideration that should be given, obviously we are talking about Madrocks, they have a patio there, it's a non-smoking facility and with that they have made a decision, but they made a decision to build that patio when they knew what our guidelines were going to be for January 1, 2009. He doesn't take that into consideration; he thinks we should have an approval situation that allows us to approve that rather than just a blanket. He asked Mr. Frazier (Derby Bowl) what his plan is.

Derek Frazier stated he can't come up with a plan until the city does.

Council Member Craig advised he had heard different stories that Mr. Frazier has a plan he would like to know what the plan is. Last time we hung everything we did here based basically upon Mr. Frazier's business.

Derek Frazier thanked the council for their consideration and keeping things on a level playing field and he hopes we continue on with the level playing field given the close proximity to Wichita. His plan is to go non-smoking but he has not set a date yet. It has become more of a question after hearing what he is hearing tonight, depending on which way the council goes. The bowling centers in Wichita will start their season out non-smoking, most in August and some waiting until September 2nd. His agreement was to go with them and he was looking at starting the fall season non-smoking. He does have an interest in the patio situation and would like to see a 10-foot restriction for entrances. He will try to accommodate a patio at his location in Wichita

and is trying to get someone out to his Derby location to find out what he can do there to accommodate an outdoor patio here too. People across the country in the bowling business who have accommodated an outdoor patio are doing better than the ones who have not. He has been a proprietor of Derby Bowl for 33 years and for 32 years they have had the largest youth program in the State of Kansas, there is no way he is going to say kids can't come in there. He has the most kids of any bowling center in the state; he will be smoke free, probably in the middle of August. He can't make a decision until he knows what the council is going to do.

Council Member Craig thanked Mr. Frazier for his input. He asked Mr. Frazier if there were a problem with asking businesses to present their case for a patio instead of allowing anyone to build a patio. He thinks that will be key to which way he goes and he is not for giving a level playing field to cancer but he wants Mr. Frazier to continue to being successful business wise and there is a critical balance there.

Council Member Schwarz stated that most know how he feels about this issue, having a father that died of lung cancer and a mom that died from COPD; he has sucked down enough second hand smoke in his life to fill a room full of cigarettes. He was a smoker and he quit for two reasons, one he had a preemie baby that they couldn't smoke around, and two, he would go outside in the garage and smoke and it was cold in that garage, which is one reason he quit. Anything less than a comprehensive ordinance is a disservice; he agrees with Mr. Craig that there is no compromise with the health of people. The people that don't smoke are at an unfair disadvantage in their employment situation. He realizes there are unfair situations with businesses, but the individuals that are employed there that depend on tips are also at an unfair disadvantage. He too is a pragmatist and he thinks he knows where the council is leaning on that and he would support some sort of an ordinance being passed sooner than later but he thinks the enforcement issues are huge with the registration of employees and them signing off. We had an adult entertainment ordinance put into place and he hasn't heard how we are enforcing those ordinances and he would like some sort of review on that to make sure we are enforcing the ordinances we put into place. That is one of his hesitations, is it is fine and dandy to put these things into place but unless we enforce them there is abuse everywhere. He has seen it in the business community and in individuals, unless we enforce those ordinances they are not worth the paper we put them on. He would probably support the ordinance tonight to at least get something on the books but he does not think this council has the where with all to put a comprehensive ordinance into place, although he thinks that's the direction they need go and he will support what the council decides.

Council Member Warren indicated he remembered the meeting when they passed the ordinance and Mr. Craig specifically asked, if Wichita passes something will we come back and look at it and he said absolutely. He does not believe that the aspect of a level playing field is over used. There are very few health and safety issues that get dealt with at the local level. Helmet laws for example, are at the state level, food safety matters are all state regulated so that there is a level playing field across the line and that is essentially what he is looking for here. He knows the Wichita city council has taken a lot of heat for their ordinance and he thought there was a lot of wisdom in the ordinance. Smoking is allowed for those over the age of 18 and they are protecting those from that standpoint and the thought there was some wisdom in that. He knows that there

are a number of small businesses in the City of Derby that have got situations where customers under 18 are not allowed anyway and why shouldn't that business owner be allowed to make that decision of whether or not those workers who are going to smoke anyway to do so. There is a business in Derby who has two offices, one building for administration and one for manufacturing and he was asking to let the manufacturing part of his business alone. He has welders who during the course of the day will lift up their mask, light up a cigarette, look at their job and think about their next step and go back to work. They are probably taking in more fumes from the welding than the smoking. If we pass an ordinance where they have to go outside, they have to shut down equipment, take off equipment, go outside, smoke their cigarette, come back inside, restart their equipment and put their gear back on. That will cost the business 20-25 minutes of production per day on a conservative basis and the business owner asked to be able to make that decision. He thinks there is wisdom in Wichita's decision. Probably where we are going is a true compromise for the City of Derby. Mr. Craig would like to see a more comprehensive ban and he would like to see something that would give a little more economy to the local businesses but he doesn't think we are going to go there so he will support the motion as presented.

Council Member Arnold pointed out we have several other pressing things the city should be addressing and he is so tired of talking about this he can hardly stand it. The police department does not need one more item to check on, their basket is full already. As far as he is concerned a complete ban is the way he wants to go.

Council Member Craig stated that obviously we have to come to some sort of compromise and Mrs. Bannon has put together what she feels is a reasonable compromise. He suggested we run it up the flag pole and see if it's going to pass unless someone else will speak up in support of Mr. Arnold. Option #3 is eliminating exemptions for businesses; he asked if that was what Mr. Arnold was supporting.

Council Member Arnold clarified he wants a complete ban.

Council Member Schwarz indicated he would support Mr. Arnold.

Council Member Nun stated that the last time the council reviewed this and passed the ordinance he was not on the council and he was kind of glad because it's a tough issue. He thanked the people that spoke tonight and the people that spoke last week at the public forum and those that have emailed the council. He is a supporter of business and thinks the businesses should be able to make their own decisions. Government can only go so far in regulating stupidity, if a person wants to go into a place that smokes that's their issue; it's not the business owners issue. For that reason he would support Mrs. Bannon's motion.

Council Member Craig asked for a reread of the motion.

Ms. Sexton indicated the motion was to direct staff to draft an ordinance to the effect of ORAB's recommendation of option #5 as written in the staff report to adopt the Wichita part except for businesses that are currently exempted by the Derby ordinance for those businesses that have a

beer or liquor license, including a requirement for signage indicating that you allow smoking or prohibit minors and an exception included in the ordinance for patios for restaurants and bars.

Council Member Craig clarified that the exception only includes those businesses with CMB or liquor licenses.

Ms. Sexton advised that was correct. That is the one distinction that ORAB made, only for those businesses that hold a beer or liquor license, not for all businesses. Option #5 is stronger than the Wichita ordinance.

Council Member Craig asked Mrs. Bannon to find some wording for the patios that is not a blanket exemption so anyone can build a patio.

Council Member Bannon advised she would be happy to amend it if someone would come up with the appropriate wording, as long as it restricts it to a distance of at least 20 feet of a public entrance, she thinks that is a very important stipulation to keep.

Ms. Sexton suggested that the idea of some sort of approval for a patio might be something we could think about. We obviously have a lot of word smithing to do and she can see we will have to spend some time doing that. Criteria for a patio could have something to do with the way the doors open and the way the wind flows but what ORAB was trying to get at is that it be 20 ft. from any exit or entrance to the building, except that if you are a bar or restaurant the 20 ft. would not apply. You would not have to have people out there measuring 20 ft. because obviously if you have a waitress going through a door the seats are right there.

Council Member Bannon agreed, but the idea would be that you would not have that patio of, for example, Madrocks main entrance so people going into the facility would not have to walk through the smoke created by the patio, that would be a main criteria.

Council Member Craig added that that was one of the issues that we have looked at. There are main entrances to businesses and the patios are on the side. He has seen some in his travels where the patios are enclosed areas that you can't access from the outside, you have to go into the business and then use it, it's part of their business.

Ms. Sexton advised we could write it so that you can get in and out of the business without having to go through the outdoor smoking area.

Council Member Bannon amended the motion to add that you would need to be 20 feet away from the entrance.

Amended Motion: Bannon moved to approve option #5 based on the Ordinance Review Advisory Board's recommendations, adding the verbiage "those businesses allowing smoking shall have proper signage" adding an exception for outdoor seating with a requirement that it be at least 20 feet from business entrance. Warren seconded.

Council Member Arnold advised that people go out on a patio to smoke; they also go out there to eat. Who is going to take the food out to them and how are we going to regulate this. It all goes right back to what we were doing before; you don't want anybody to smoke, you need 10 feet from the door, you can or can't have a patio, where are we going with this?

Council Member Warren clarified that the aspect of patios would be open to all businesses, not just restaurants?

Council Member Bannon stated it would be just bars and bowling alleys.

Council Member Warren asked if the welder wants to go outside to smoke he has to go more than 20 feet away from the building he is working at to smoke a cigarette?

Council Member Bannon asked Mr. Warren to work with her.

Council Member Warren advised he would like to work with her for the aspect of getting this thing through but it's like we are closing our eyes to the reality. What we are saying is that you can't smoke indoors and now we are saying you can't smoke outdoors within 20 feet of any kind of an entrance. Where are we going with this? He brought up last time we talked about this the story from Sweden where one neighbor was suing the other neighbor for smoking in his backyard and the smoke was going into his yard. That is where the aspect of this legislation of controlling people's lives ultimately goes to.

Council Member Bannon stated she understood that. If we pass a complete ban we are setting the United States of America back 250 years but the common sense part of her also knows that we must protect children. In that statement she is talking specifically to children. Every time she tries to craft an ordinance that is somewhere in the middle between both ends of this council she has to amend it 14 dozen different ways. All she wants to do is get an ordinance passed so we can move on. Mr. Craig wants one that goes one way and Mr. Warren wants one that goes another way. She understands that is what we are up here for but there has to be a better way for this. If you tell her how you want it before the meeting she can make this a lot shorter.

Mayor Avello indicated he had been sitting here quietly listening to this fight...

Council Member Bannon stated it was not a fight; they are trying to work things out.

Mayor Avello advised it was becoming a fight. It is a very emotional issue and Mr. Schwarz just asked him which way he would go and he indicated he would go comprehensive, total. He told that to Ms. Sexton this morning. However, Mr. Nun makes a very good argument about people's rights in this country, and he said before when we first did this, why doesn't the federal government just ban it? They are not going to do that because of the money that it raises. He went to the state and spoke in favor of a comprehensive ban at the state level and he really believes, as does Mayor Brewer, that this should be decided at the state level instead of pitting one city against another. He does not think we are going to come to a conclusion tonight again.

We have a motion on the floor but he suggested to the council that we should sit behind closed doors, or at an open meeting somewhere and iron this thing out.

Ms. Sexton indicated that is what is being done tonight. What you are showing, with two absent is that you are at a deadlock. We can table it and give everybody time to think about it.

Mayor Avello added that we can define the language and give staff time to receive more input. He thinks that is what he is getting at and that is what he suggests the council does.

Council Member Craig stated he appreciates Mr. Warren's position; however thousands of businesses and companies have made the decision, just like Wal-Mart will make the decision where they want their employees to take their smoke breaks. That's just part of life.

Council Member Warren stated that is their decision, not ours.

Council Member Craig disagreed. There are certain things that are not allowed and a company has a right to make that decision. Boeing eliminated it years ago and we are moving in a direction that says that is going to happen and to try and stave it off, you might be able to do it for a little while but eventually it will happen. There is just no getting around it, every company that is wise about wellness has gone to that. If you want to smoke you are going to get at least 20 ft. away from the entrance, it has become a way of life. He thinks that as long as we stay with what we were talking about and work the patio deal he is willing to go midway to get this moving. Later on if you want to make it comprehensive, fine. He would go comprehensive in a heartbeat but he does not think this council is ready to take that step yet.

Council Member Schwarz advised he disagrees from the comprehensive standpoint. He thinks enforcement will be a nightmare. The City of Wichita knows it's a nightmare. Here again that has been very well documented in the Eagle. Other communities have implemented a comprehensive ban, it's clean and simple and easy to enforce. You don't have registration by employees; you don't have the documentation from the city standpoint. He, like Mr. Arnold thinks we need to pass a comprehensive indoor smoking ordinance tonight.

Ms. Sexton stated we have one motion on the floor that has since been clarified, is that right?

Council Member Bannon advised the clarification is that if a business has a CMB or liquor license they can have a patio.

VOTE: Craig nay, Meidinger absent, Nun yea, Warren nay, Schwarz nay, Bannon yea, Staats absent, Arnold nay, 2 yea, 4 nay, 2 absent, motion failed.

Council Member Schwarz asked if he could put another motion forth.

Mayor Avello indicated he could.

MOTION: Schwarz moved to adopt a comprehensive total indoor smoking ordinance ban in the City of Derby, with no exemptions. Arnold seconded.

VOTE: Craig yea, Meidinger absent, Nun nay, Warren nay, Schwarz yea, Bannon nay, Staats absent, Arnold yea, Avello yea, 4 yea, 3 nay, 2 absent, motion carried.

Mayor Avello advised he voted the way he did because he agrees with Mr. Schwarz, Mr. Craig and Mr. Arnold. It is coming down the pike anyway and the more we fool with this and the more pressure we put on our law enforcement to do things, it's just going to be a mess. The only thing that he is not clear on is when it will go into effect.

Ms. Sexton clarified that even though the motion is written like we passed this ordinance, there is not an ordinance before you. The city attorney advises that we don't have enough to vote on an ordinance if we had one written. As you know the idea was to give staff direction and we certainly have that direction now, we will write that ordinance and then the council can take an official vote. She asked the city attorney for clarification in terms of number of council members to vote on an ordinance.

Phil Alexander, City attorney indicated that adoption of an ordinance requires five affirmative votes. The mayor can break a tie but if there is a 3-3 tie, breaking that doesn't help because it doesn't amount to five.

Ms. Sexton explained that essentially we need one or both of the council members here who are not here right now. With the direction given tonight we can draft the ordinance and present it at a future meeting. Not necessarily the next meeting but we will let you know when we can have it ready.

Council Member Bannon clarified that when that ordinance is brought back, the council can either vote in the affirmative or it could also be voted against.

Ms. Sexton advised anyone is free to vote how they want to on any given night, on any given item.

The council recessed at 7:45 p.m. and returned at 7:55 p.m.

**PRESENTATION OF
ECONOMIC
DEVELOPMENT PLAN**

Allison Moeding, Director of Economic Development presented the staff report. She also introduced members of the Economic Development Board.

Background:

- The Economic Development Board voted at its June 16, 2008 meeting to recommend this Economic Development Plan for approval by the City Council. The board spent several months discussing the contents of the Plan and ensuring that the contents reflect the city's new mission and vision as it relates to economic development.
- The Plan focuses on four primary areas of economic development viewed by board members to be uniquely valuable to Derby:
 - Business Attraction – recruiting a variety of new businesses into the community, including manufacturing, service, and retail.
 - Business Retention & Expansion – ensuring that existing businesses are able and willing to remain in our community, especially small businesses.
 - Housing – working to ensure a variety of housing options across many price ranges to meet the needs of our present and future residents.
 - Marketing – promoting the attributes of our community in general but also focusing on economic development opportunities that will continue our growth.
 - The document is intended to communicate what the Board believes should be community priorities for economic development and also to act as a guide for the economic development efforts of staff and other community agencies throughout the year. The plan is not inclusive of all economic development tasks but instead highlights items considered by the Economic Development Board to be key elements of the community's efforts in meeting the city's mission "to nurture a strong business community."
- There are several changes to note:
 - One category has been eliminated. "Small business & entrepreneurship" was moved into the business retention and expansion section. This change is logical since existing businesses will be reached through the Retention & Expansion programs.
 - The Plan now follows a three-year time frame and a format that is similar to what is used to present the Capital Improvement Program, establishing activities to be accomplished in each year going forward.
 - The Plan advocates that we begin planning how we will handle the activities and functions of a future convention and visitor's bureau.
 - The Plan suggests website enhancement related to economic development services that will assist businesses considering Derby.

Financial Considerations:

- None at this time, although some of the individual projects and activities within the document will require additional financial resources.
- Any project or activity requiring additional financial resources can be discussed at a later date, either as part of the budget process or by redirecting existing funds.

Policy Considerations:

- One of the responsibilities given to the Economic Development Board is the development and maintenance of the city's Economic Development Plan.

DISCUSSION:

Council Member Bannon advised she was not sure there was really a big need for item #2, to pre-draw a plan, much less pre-build a building. Most businesses she has found would either want an empty shell of a building to finish out the way they want or to design it specific to their business. She is not sure that the city needs to get into that arena. If we pass this tonight we are not necessarily signing off on that particular item. She also would like to let the council know that the committee spent 4 hours this afternoon on the marketing plan and thinks everyone will be very impressed with some things coming down the pike for the City of Derby. There will be a lot of work and effort not only with the city but the Chamber, DRC and school, we have some good plans.

Council Member Warren stated he did not know where the recommendation is going in terms of the convention and visitors bureau. Sometimes if we don't say anything at this point, all of a sudden proposals are coming back to us and we had no idea we were going that direction. He thinks we are probably way too early in the game for a city of our size to be looking at much in the way of staffing and he hopes he does not see in the next 12-24 months a CVB staff position being talked about. Not that we can't put some money into that and there may be some other ways of doing something like that but in that area we need to take baby steps. He assumes as we talk with marketing companies there is going to be some image/heart tug ideas going forth. He has sold real estate in Derby for almost 30 years and has told folks that he sells Derby and throws the house in for free. This is a great community with great people and there are a lot of intangibles from an image standpoint, lets not get so wrapped up in the technical side of what we are doing that we lose sight. He is hopeful that the marketing company that we are looking at, that is what they do anyway. He would really like to find a nice power tug at the heart.

Mrs. Moeding stated regarding the convention and visitors bureau, one of the things we will be required to do once we begin collecting that transient guest tax, even though it's already been earmarked for the hotel, we are still required at some point to appoint a board to oversee the funds that are coming in.

Council Member Arnold advised that we talked to three different companies today and the one we hopefully will be working with is very good at what they do and understands Derby as well as we do. They threw some facts and figures out about Derby that even he wasn't aware of and he feels like we are off to a really good start. At one point he had to be convinced that the choice he made initially was maybe not the right one. Listening to the other side of the coin he agreed to move with the choice they made and he is looking for some great things to come out from this marketing company.

Council Member Warren advised he just got back in town from vacation today and had received an email about a baseball snafu. One of the comments was that he had heard bad things about Derby. Every community has an image and we can either assume that everybody loves us and everybody wants to come here but the reality is that once images start going on the outside they can grow. It is up to us to make sure that if we put together a marketing plan that we set the tone. We love this town, it's a great place for families, schools, we have great parks, and we have a lot of stuff going on here that we love. Everybody should love it just like we do and somehow we have to get that message across.

Council Member Craig stated that recently he has run into a lot of folks that left Derby and moved back. It's really interesting to understand some of the reasons why. What they experienced when they lived here before they are trying to recapture so they move back. It's not just one or two families; there are a lot of them. They are older folks and don't have kids to put in school but they have decided Derby is the place to come back to and spend their retirement years. That speaks well for us that that is the kind of reputation that carries on.

MOTION: Arnold moved to adopt the Economic Development Plan as recommended by the Economic Development Board. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

2009 MANAGER'S RECOMMENDED BUDGET AND SUPPORTING PLANS

Kathy Sexton, City Manager presented the staff report.

Background:

- Each year the City Manager recommends and the Derby City Council approves a budget for providing essential services to residents. This budget document is a plan; it is the framework for how the City will allocate its resources to assure continuing excellence in the community's quality of life.
 - The proposed budget for fiscal year 2009 has been developed by city staff with input from the governing body as informed by the public. It includes departmental operating budget and supporting plans. The supporting plans consist of the updated five-year Capital Improvement Plan, the five-year Vehicle Replacement Plan and a ten-year Pavement Management Plan, which is new this year.
 - The budget also provides for staffing, tools, and other resources that continue to enhance quality of life for Derby residents through the quality of services offered by the City. The City is doing so by reducing the mill levy by ¼ of a mill. This year of 2009 would be the third year in a row that the mill levy has experienced small reductions, although only this year is a reduction included in the recommended budget.
- The Council heard about departmental budget, Vehicle Replacement Plan and CIP requests at a workshop on June 3.
- On July 17, the Planning Commission will hear a review of the CIP and be invited to ask any questions or make comments. State law provides that the Planning Commission is to review annually the CIP to determine its consistency with the Comprehensive Plan.
- On July 22, the Council will be asked to authorize publication of the budget in anticipation of budget adoption on August 12.
- Opportunities for public comment include the Council meetings on July 22 and August 12.

Financial Considerations:

- The proposed 2009 budget totals \$33,049,771 which is an increase of \$1,425,398 (4.51%) from the revised 2008 expenditures of \$31,624,374. The increase is primarily attributed to fluctuations in the capital improvements plan and personnel.

- The City's mill levy is projected to drop from 48.155 to 47.905.

Legal Considerations:

- It is the City Manager's responsibility to present an annual budget that not only meets the needs of the city but also complies with state laws governing municipal budgeting.

Policy Considerations:

- The budget and supporting plans comprise the primary policy document of the city. Each document is updated annually to meet the current needs of the community.

DISCUSSION:

Council Member Schwarz commented that this has been the 5th time he has been through this process and he thinks we get a little better at it every year. He really likes the fact that we are going through the vehicle replacement mechanism and street maintenance; if we get too far behind the curve on those it really puts our future in jeopardy. Granted we are in a much better situation than we were say five years ago and there are a lot of things going for Derby. He liked the comments about how everyone sees what's going on along Rock Road, but we really won't see revenue from that until 2009 and specifically in 2010. Citizens may see an increase in their property taxes but he has to hand it to city staff for presenting a budget that shows a reduction in the mill levy, even if it's not much. That's huge for this city; there are a lot of communities around this state and especially this country that would kill for this kind of budget. He really appreciates staff's efforts for what they have done.

Council Member Craig stated that putting into place rehabilitation for the streets in this city is becoming really paramount. That is one of the things he knows Mr. Mendoza has been striving toward for a couple of years and he is glad we have finally recognized that is key. It's going to cost a lot of money and there is no way to get around that to keep our streets up. He also thanked staff for their work.

Council Member Warren advised this is his 9th time going through this and he thinks he is finally beginning to understand it. He attributes 10% to an increase in his knowledge and 90% to staff's ability to put it together in a way that makes it easy to understand. He also thanked the staff for their work.

MOTION: Warren moved to receive and file. Bannon seconded.

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**AD VALOREM TAX
SUPPORT FOR
OPERATION OF DERBY
PUBLIC LIBRARY**

Kathy Sexton, City Manager presented the staff report.

Background:

- Prior to 1999, a state “tax lid” law limited *ad valorem* tax revenue funding for the Derby Public Library.
- Via charter ordinances no. 5 (1970) and 29 (1988), Derby increased funding available for the Library, first to 3 mills and later to 4 mills.
- In 2001, the Library Board requested an increase in the available mill levy; the City Council did not grant this request but did authorize an additional “stipend” of \$35,000 for certain purposes (Resolution No. 116-2001).
- Also in 2001, the City Council adopted charter ordinance no. 37, repealing charter ordinance no. 29.
- The net result of the 2001 Council actions was removal of the prohibition against levying more than 4 mills for the Library and addition of \$35,000 annually to the Library’s available resources without actually increasing the mill levy itself.
- In an effort to improve financial transparency and simplicity, the proposed resolution would terminate the \$35,000 annual stipend to support certain library operations.
- The proposed ordinance would reestablish a maximum mill levy for the Library, but fix the maximum at 4.22, an increase of 0.22 mills, thus offsetting elimination of the annual stipend.

Financial Considerations:

- Based on estimated valuations, the proposed mill levy maximum of 4.22 mills would produce about \$665,000 for Library operations in the coming year.
- Substituting an increased mill levy for the fixed stipend implemented for the past seven years will allow the Library’s available revenue to increase as the City’s taxable valuation increases, thus at least partially offsetting anticipated increases in operating expenses.

Legal Considerations:

- The Library is a semi-autonomous agency governed by a Library Board appointed by the City.
- Although the Library is an agency of the City, K.S.A. 12-1220 provides that the City’s Governing Body will levy a tax to support Library operations “in such sum as the library board shall determine within the limitations fixed by law. . . .”
- Adoption of the proposed ordinance will establish the maximum mill levy “fixed by law” but the amount generated within that maximum would increase annually because of the City’s regularly increasing taxable valuation.
- Adoption of the proposed resolution eliminates temporary, fixed funding for the Library in favor of consolidating all Library tax support under a single authority.

Policy Considerations:

- Although it performs a vital function, the Library Board is not an elected body and does not itself have authority to levy taxes.
- The City Council, as the sole elected legislative body in the City, has final authority over funding levels for all City operations and activities, including the Library.

ORDINANCE NO. 1945

AN ORDINANCE ESTABLISHING A MAXIMUM MILL LEVY FOR SUPPORT AND OPERATION OF THE DERBY PUBLIC LIBRARY.

RESOLUTION NO. 40-2008

A RESOLUTION REPEALING RESOLUTION NO. 116-2001 OF THE CITY OF DERBY, KANSAS PERTAINING TO FUNDING OF OPERATIONS OF THE DERBY PUBLIC LIBRARY.

DISCUSSION:

Council Member Bannon advised she thinks this is a good improvement and it's probably one of the first of many changes that because of the new library and new structures and accounts we are going to be finding things that need to be cleaned up and clarified. There will be a lot of decisions and it will be a growing process both for the library, the library board and council.

MOTION: Bannon moved to adopt an ordinance establishing a maximum mill levy for support of the Derby Public Library and a resolution repealing Resolution No. 116-2001. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

BOARD APPOINTMENTS

Mayor Avello presented his appointments.

Background:

- Ken Dodson, Senior Services Advisory Board member, recently passed away after receiving extensive injuries in a car accident. The Mayor's recommended appointment to fill this vacancy is Eleanor Underwood, who has been an active participant in senior activities.
- Frank Fanning recently resigned from the Library Board. The Mayor's recommended appointment to fill this vacancy is Shawn Bauman. Mr. Bauman applied for this position last year, but more applications were received than positions available.

MOTION: Craig moved to approve the Mayor's appointments to the Senior Services Advisory Board and the Library Board. Nun seconded.

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

CONSENT AGENDA

Kathy Sexton, City Manager presented the consent agenda.

HOME Rehabilitation Grant Bids – Round 3

Background:

- In late 2006, the City of Derby received a \$225,000 grant award from the Kansas Housing Resources Corporation for a HOME Rehabilitation Program. The HOME Program provides funding for improvements to houses in a specified target area whose owners and their households earn no more than 80 percent of the Sedgwick County median gross annual income.
- After accepting applications for assistance in early 2007, SCKEDD reviewed and ranked all 40 applications to determine a priority list. This priority list determines the order in which the homeowners will receive assistance, as long as funds are available.
- Each house is bid as a single project. A list of all improvements to be made to each home is provided by the project inspector/administrator to the contractors on SCKEDD's list of registered contractors.
- A bid opening was held at Derby City Hall on Thursday, June 19 at 1:00 p.m. The following bids were received:

<u>Contractor</u>	<u>House #1</u>	<u>House #2</u>	<u>House #3</u>	<u>House #4</u>
Stringer Remodeling	\$27,280	<u>\$16,230</u>	<u>\$36,165</u>	<u>\$14,950</u>
New Windows for America	<u>\$26,330</u>	\$16,930	no bid	\$19,875

- The lowest bid for each project/house, shown in bold type and underlined, has been recommended for approval by the City's Bid Board. Staff has confirmed with Stringer Remodeling that they will be able to complete three homes this round.
- This is the third phase of homes to be completed. The projects will be bid and funds committed for a few houses at a time to ensure that the exact grant amount is spent. Staff estimates we will be able to complete 12 homes with the grant.

Financial Considerations:

- The HOME Grant funds will cover two-thirds of the total project expenses. A matching contribution by the City will pay for the remaining one-third of the project. Funds from two other state programs, K-WAP (Kansas Weatherization Assistance Program and KAMP (Kansas Accessibility Modification Program), will also be leveraged.
- The City will pay the contractors directly after the work is completed and approved by the SCKEDD project inspector and the City building inspector. The City will request reimbursement from the State of Kansas, thus drawing down funds from the grant award.

Legal Considerations:

- As the grant administrator, SCKEDD oversees the project to ensure that all HOME Program requirements are followed, including federal procurement (competitive bidding) practices.
- All contractors are or will be licensed by the City of Derby prior to beginning work. All contractors meet the requirements set forth by the State of Kansas for participation as a contractor for the HOME program.

Policy Considerations:

- Upon approval of the bids, SCKEDD will prepare the contracts for the city manager's signature.
- SCKEDD personnel will coordinate the scheduling of work and record the progress on each property.

Recommendation:

- Approve the bid of New Windows for America in the amount of \$26,330 for improvements at 1334 N. Westview; the bid of Stringer Remodeling in the amount of \$16,230 for improvements at 501 S. Georgie; the bid of Stringer Remodeling in the amount of \$36,165 for improvements at 715 S. Woodlawn; and the bid of Stringer Remodeling in the amount of \$14,950 for improvements at 439 S. Westview.

Motorola Service Agreement

Background:

- Each year, the City of Derby enters into a service agreement with Motorola for service and maintenance of radio equipment and infrastructure within the Communications Section (Dispatch).
- Staff has received and reviewed the annual service agreement renewal for the period from July 1, 2008 to June 30, 2009.
- The service agreement provides radio and infrastructure repair and support service on a priority basis.
 - Continuous (2-hour) response for major system failures.
 - Standard business day (4-hour) response for moderate, non-critical features.
 - Standard business day (24-hour) response for intermittent or minor issues that do not preclude use of the system.

Financial Considerations:

- The amount of this year’s agreement is \$12,850, which represents an increase of \$674 over last year’s agreement.
- Funding is included in the 2008 Operating Budget.

Legal Considerations:

- This agreement has been reviewed by the Legal Department.

Policy Considerations:

- All requirements of the City of Derby Purchasing Policy have been met.

Recommendation:

- Authorize the City Manager to execute a Motorola Service Agreement for service and maintenance of radio equipment and infrastructure for the period beginning July 1, 2008 through June 30, 2009.

Contract for Sanitary Sewer and Water Line Improvements to serve The Oaks Addition, Phases 11A and 11C

Background:

- A bid opening for the construction of sanitary sewer and water line improvements to serve The Oaks Addition, Phases 11A and 11C was conducted on Tuesday, July 1, 2008 at 2:00 p.m. The sanitary sewer and water line improvements will provide services to the new hotel to be constructed at the intersection of Newberry and Cambridge.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:
-

Duling Construction	\$153,105
Nowak Construction	132,457
Mies Construction	120,000
Engineer’s Estimate*	\$139,446

*Engineer's estimate prepared by Baughman Company, P.A.

Financial Considerations:

- Funds for the construction work were included in the 2008-1 temporary note issue.
- Costs for the improvements will be paid 100% by the benefit district and none by the City-at-large. Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

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

Policy Considerations:

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

Recommendation:

- Accept the bid of \$120,000 and authorize execution of a contract with Mies Construction for construction of sanitary sewer and water line improvements to serve The Oaks Addition, Phases 11A and 11C

Contract for Detention Pond Improvements to serve Hamilton Estates

Background:

- A bid opening for the construction of detention pond improvements to serve Hamilton Estates was conducted on Tuesday, July 1, 2008 at 2:00 p.m.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

Nowak Construction Co.	\$482,243
Bergkamp Construction Co.	412,670
Pearson Excavating	331,313
Mies Construction, Inc.	218,170
Engineer's Estimate*	\$216,301

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

Financial Considerations:

- Funds for the construction work were included in the 2008-1 temporary note issue.
- Although the low bid exceeds the engineers estimate, the project costs remain within the resolution budget.
- Costs for the improvements will be paid 100% by the benefit district and none by the City-at-large. Special assessments will be spread against the benefit district properties over a 15-year period.
-

Legal Considerations:

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

Policy Considerations:

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

Recommendation:

- Accept the bid of \$218,170 and authorize execution of a contract with Mies Construction, Inc. for construction of detention pond improvements to serve Hamilton Estates.

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

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

Council Member Bannon thanked Ms. Sexton. At the last meeting she requested that we list the items on the consent agenda to make it easier for the council and the public.

GENERAL DISCUSSION:

Mayor Avello advised he had witnessed the Patriot Guard going down Chet Smith and it gave him chills. To him, that is America. The older he gets the more sentimental he is.

Ms. Sexton thanked the VFW for the Fourth of July parade they put on. They did a great job. She also thanked Stephanie Knebel and the Fourth of July committee who spent several months planning the event. It was a fabulous event with an estimated 5,000 people in attendance.

ADJOURNMENT

MOTION: Bannon moved to adjourn at 9:12 p.m. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk