

**APPROVED MINUTES
REGULAR COUNCIL MEETING
March 23, 2010
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:
WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:
Jim Meidinger
Vaughn Nun, Heath Horyna
Chuck Warren, Cheryl Bannon
Tom Haynes, Mark Staats

WARD I

COUNCIL MEMBERS ABSENT:
Jim Craig

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

CONSIDERATION OF MINUTES

Minutes of the March 9, 2010 Regular Council Meeting.

MOTION: Warren moved to approve. Haynes seconded.
VOTE: Motion carried 6-1, Craig absent, Meidinger abstain.

PROCLAMATIONS:

Mayor Avello declared the month of April as “Fair Housing Month” in the City of Derby.

Stephanie Knebel, Assistant City Manager, accepted the proclamation.

Mayor Avello declared April 22, 2010 as “Arbor Day” in the City of Derby.

Jennifer Brown, Chairperson, Parks and Urban Forestry Board accepted the proclamation and stated that the Arbor Day Celebration will be held Thursday, April 22nd, 6:00 p.m. at the High Park enclosed shelter. The back-up date will be April 29th in the event of inclement weather. There will be a presentation on healthy yards given by Dr. Jason Griffen. There will also be flower packets given away and the annual planting of the tree, free hot dogs, hay bale rides from the parking area to the event as well as games, prizes and treats for the kids. Sprig the mascot will be there as well.

2009 MAYOR’S AWARD OF EXCELLENCE

Background:

- In 2002, the Mayor started a tradition in Derby of honoring a person(s) who contributed significantly to the City by awarding them the “Mayor’s Award of Excellence.” The recipient for 2009 is Darrell Butterfield.

- The Butterfield family has lived in Derby since 1911 and served on the Derby City Council for four generations: Justin, Philo, Darrell, and Mark. Both Justin and Mark served as Mayor, and Philo served as City Clerk for many years.
- Two generations of the family served on the Derby Volunteer Fire Department, Darrell and Mark. Darrell's father-in-law, Chet Smith, also served. Darrell was one of the first 12 volunteers on the Fire Department.
- Darrell served as Board President for the Derby Historical Museum and is still actively involved.
- Justin, Philo and Darrell were in the business of banking and insurance.
- Previous recipients of the Mayor's Award of Excellence include Larry and Wanda Gould (2002), Ray and Virginia Warren (2003), Charles and Rebah Hubbard (2004), Jack and Dayle Pulley (2005), Peggy Unkel (2006), the Derby Community Foundation (2007), and Glen Goering and Ross Hearn (2008).

Mayor Avello announced that Darrell Butterfield will receive the Award of Excellence for 2009.

Bill Smith congratulated Mr. Butterfield for receiving the Mayor's Award of Excellence. He has known Darrell for about 60 years. Every community has good volunteers and Derby is no exception to that at all. Many of the volunteers are very visible in the community and several, like Darrell, work behind the scenes and do so without fanfare. Most of you have read many of the things that have been written and said about Darrell in the last few weeks and there is little reason to repeat those accolades other than to say thank you Darrell for your tireless efforts through the years for the benefit of the City of Derby. He has been very fortunate to work with Darrell on many boards and committees throughout the years but one of his greatest efforts has been his work with the Derby Historical Society. He has a very strong belief in the history of our community and that it should be properly preserved. He thanked Mayor Avello for recognizing Darrell Butterfield.

Mayor Avello stated that Darrell started his service in the 4-H Club in high school, served in the U.S. Navy for 2 years and was the 7th person called to active duty during the Korean conflict. He served as vice-president and member of the Board of Directors of the Kansas Pest Control Association and is on the board of the National Pest Control Association. He was one of the original men to form Derby's volunteer fire department. He is a charter member of the Derby Chamber and served as president for a year. He also served on the city council, planning commission, served as treasurer of the Derby Lions Club and today serves on the El Paso Cemetery Board. Above all he is a historian to this city. He first met Darrell in the "old mans coffee shop." He sat and drank coffee with Darrell and has come to know him as a kind and gentle man who loves this city. Above all, what he does for this community in his tireless work with the historical museum, he wants the people who come after us to understand what Derby was, how it started and what made it a great city.

Mr. Butterfield agreed that he and Dion met in the coffee shop. He has requested a lot of things from him; unfortunately he hasn't seen fit to go through with them. When he called about this he was kind of concerned about it, but he does appreciate it. It's a great thing and he hopes he can continue to serve the city in some manner for a few more years to come. It has been his pleasure. A lot of times he has been gone and his wife took care of things while he was gone.

Mayor Avello suggested that those at home buy last week's Derby Informer and see the rest of the things that Darrell has done, he just picked out a few.

PUBLIC HEARING ON REQUEST TO VACATE PORTIONS OF EASEMENTS IN DERBY INDUSTRIAL PARK 2ND ADDITION

Bud Newberry, City Planner, presented the staff report.

Background:

- The subject site is located in the Derby Industrial Park 2nd Addition, on the east side of River Street north of Madison Avenue. The common name for the area is the Derby Business Park.
 - This property, and all surrounding property, is zoned M-1 Industrial.
 - The plat for Derby Industrial Park 2nd Addition was approved by the City Council on May 4, 1999.
- Currently, BRG owns and occupies the building located on Lots 7 & 8. As a part of its plan to expand its current facility, BRG is adding almost 33,000 square feet of warehouse space and 2,000 square feet of office and restroom area to the existing facility. This added space will be constructed on Lot 6, directly north of the present facility.
- The office and restroom area will be constructed over a portion of the easements located adjacent to the lot line separating Lot 6 from Lots 7 & 8. The applicant requests these easements be vacated to allow the planned construction.
- The only improvements currently located in these easements are a public storm sewer line and an area inlet near the intersection of Lots 6, 7 and 8 to provide drainage for Lot 6.
 - These were constructed at the same time as the detention pond in Reserve A and were built in conformance with the drainage plan for the Industrial Park.
 - If this request is approved, the existing drainage structure will remain in place and be utilized to collect drainage from between the current facility and the new warehouse.
- At the time of platting, it was assumed that Lots 6, 7 and 8 would be developed independently. Now that BRG owns all of these lots, the drainage system can be converted to private ownership.
- The public hearing was advertised in the City's official newspaper on March 10 and March 17, 2010.

Financial/Sustainability Considerations:

- None have been identified.

Legal Considerations:

- A petition for vacation of an easement within the City is processed pursuant to section 1003(B) of the City's subdivision regulations.
- The requested vacation must be granted if the Council finds –
 - a. Notice has been given as required by law;
 - b. No private rights will be injured or endangered;
 - c. The public will suffer no loss or inconvenience; and
 - d. Justice required that the petition be granted.

- In view of the unanimous recommendation of the Planning Commission and staff's favorable recommendation, a conditional building permit has been issued to allow construction to commence pending Council action on the vacation request.

Policy Considerations:

- Similar requests in the past have been approved by the City Council.
- The only utility improvements located in this easement serve the applicant's property.
- The Planning Commission conducted a public hearing on February 18, 2010, and unanimously recommended approval of the vacation request without conditions.

Mayor Avello opened the public hearing. With no one present to speak he closed the public hearing.

MOTION: Staats moved to approve an order vacating a portion of the 20' Utility Easement and a portion of the 30' Utility and Storm Sewer Easement located along the south line of Lot 6, Block B and along the north line of Lots 7 and 8, Block B as platted in Derby Industrial Park 2nd Addition and authorize staff to certify the vacation order with the Sedgwick County Register of Deeds. Bannon seconded.

VOTE: Motion carried 7-0, Craig absent.

ROCK RIVER RAPIDS POOL PAINTING

Robert Mendoza, Director of Public Works, presented the staff report.

Background:

- This scheduled maintenance for 2010 is to repaint the pools, surface striping, and play structure at Rock River Rapids. Painting of the pools occurs every three years with the last painting accomplished in 2007.
 - This is a necessary maintenance item to protect the equipment and to provide a safe and functional system.
- Four paint contractors were contacted, of which two companies provided a bid. These include Wildcat Painting, Inc. with a bid of \$55,700 and Hurricane Maintenance and Painting with a bid of \$89,950.
 - The Bid Board reviewed all pertinent documents and approved the lowest and best bid from Wildcat Painting on March 15, 2010.
 - Wildcat Painting Inc. has been awarded this contract in the past and has a good working relationship with the City of Derby.

Financial/Sustainability Considerations:

- The estimated cost of the project was \$60,000 to \$65,000 which is above the lowest bid of \$55,700.
- The painting of the pools was planned for this year but was inadvertently left out of the 2010 budget. Funds are available in the Operations Account of the Sales Tax Revenue Fund.
- Due to the timing of the budget process, it is recommended that the project be awarded now and then the expenditure incorporated into the 2010 Revised Budget.

Legal Considerations:

- The City’s purchasing procedure was followed in soliciting proposals for this work.

DISCUSSION:

Council Member Bannon asked if we are doing a wood grain or are we sealing the wood?

Mr. Mendoza explained that the play structure is all steel and painted to look like wood.

Council Member Haynes asked if we’re comfortable with Wildcat’s bid.

Mr. Mendoza advised he is comfortable with it. It is just a little bit above the bid from three years ago. The disparity between the bids has been that much each time we go out to bid. When we started this process it was even greater than that. We have a local contractor on-site so that is why the pricing is so different.

MOTION: Warren moved to authorize the City Manager to execute a contract with Wildcat Painting, Inc. for \$55,700 to paint the pools and play structure at Rock River Rapids. Horyna seconded.

VOTE: Motion carried 7-0, Craig absent

NOTIFICATION OF FUTURE SPECIAL ASSESSMENTS

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

Background:

- The City Council considered approval of public infrastructure resolutions for Renberger Addition (located at 87th and Webb) on October 27, 2009.
- At that meeting, Council members questioned whether future prospective owners of lots in the subdivision would receive adequate notice of outstanding petitions for improvements to be financed through special assessments.
- The Council tabled the resolutions and requested staff to investigate the possibility of utilizing deed restrictions or other methods to notify of future special assessments.

Financial/Sustainability Considerations:

- None

Legal Considerations:

- The City has not historically regulated the conveyance of land.
- The format or content of recordable instruments of conveyance is governed by state law.
- Locally mandated content of such instruments would:
 - Be impossible to enforce, since the City has no role in their recording.
 - Be impractical because:
 - The City cannot prevent recording of a deed lacking mandated provisions pertaining to special assessments; and
 - Deeds may be prepared in other localities by persons not aware of Derby requirements.

- Omission of mandated provisions would introduce doubt as to the validity of instruments of conveyance, thus impairing the alienability of property.
- Adoption of required provisions for deeds or other instruments would require amendment of the City's subdivision regulations.
- State law already requires sellers to disclose to buyers if property is subject to special assessments. If the amount is unknown, sellers are required to make a good faith estimation of the amount (KSA 12-6a).

Policy Considerations:

- A Certificate of Petitions, required with all new plats, is recorded with the Register of Deeds to advise prospective buyers of potential special assessments at or before closing.
- City Subdivision Regulations require posting of signs at entries to each development, advising prospective buyers that lots are subject to existing and future special assessments (approved by the City Council on Feb. 10, 2009).
- Another policy change is being developed for presentation at the upcoming April 27 City Council meeting to address the situation of property owners who are caught unaware of future special assessments.
 - One of the situations that routinely causes stress among property owners is when a sidewalk, bike path, or accel/decel lane is constructed many years after a housing development is begun. Our current policy is that we don't assess the specials until the improvement is built.
 - Staff is exploring several options to avoid such delayed special assessments in the future. At the time of platting when the City is getting petitions from the developer and passing resolutions for future improvements, the City could estimate the cost of constructing certain improvements expected to be built some years later, such as bike paths or deceleration lanes on arterial streets. Then, one of the following options could occur:
 - Charge the developer the estimated cost up front.
 - Divide the estimated cost among all the lots and add the charge to the building permit fee.
 - Divide the estimated cost among all the lots and assess the cost to each lot in the form of special assessments when specials for other improvements being built up front are also assessed.
 - This proposal is still under development. The purpose of mentioning it here is just to inform the Council that staff is exploring other options to enhance communications with residents and to avoid "surprising" them with future assessments. It appears that such a policy change would achieve more than further pursuing deed restrictions or other unenforceable gestures.

DISCUSSION:

Council Member Warren thanked Mr. Brown and the staff for the work done so far in researching this and he looks forward to the report coming later in April. He thinks overall Derby does a pretty good job of notifying people about special assessments. The fact that we are doing a good job doesn't mean we can't do better or look for ways to improve on that. He agrees

that a deed restriction would create more problems than it would solve, and it's really not the right vehicle to do it.

MOTION: Warren moved to receive and file report. Meidinger seconded.

Council Member Horyna also thanked staff. He asked if it would be possible to take all the information for special assessments and have it in some sort of internet link to put on the website.

Mr. Brown stated that is possible. A lot of the developers may do that already. If you go to the developers' websites they may have those links already in place.

Council Member Bannon advised that on the developers' websites, when they do list specials, they only go with what has been assessed or spread. Anything such as accel/decel lanes or sidewalks won't show up there. The option she would be most interested in seeing more on would be the estimated cost divided by the lots. She doesn't think we will make a lot of headway. All the developer is going to do is pass that on in their lot sale prices. She would hate to see the building permit fee go up because then everyone's perceived idea of Derby's building fees in conjunction with Andover, Haysville or other areas, will be higher, and it's for a different reason than what one would assume.

Mr. Brown added that on April 29th we will also be providing updated comparisons to other cities.

VOTE: Motion carried 7-0, Craig absent.

RESOLUTIONS FOR IMPROVEMENT – RENBERGER'S ADDITION

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

Background:

- Renberger's Addition is located approximately one mile east of Rock Road on 87th Street South.
- The Final Plat for this addition was approved by the City Council on September 8, 2009, by a vote of 8-0. Petitions were required as a part of the platting process and were prepared and distributed for signature to all four property owners in the benefit district. All four property owners have signed the petitions for these improvements.
- The corresponding resolutions for Council consideration were prepared by the City's bond counsel, Gilmore & Bell, and presented to the City Council on October 27, 2009.
- The City of Derby is not likely to extend sewer and water services into this area for several years, so these nine lots will be required to be served by individual sewage disposal systems as approved by the County Code Enforcement Department and Rural Water District #3, or private wells until city services are available. The resolutions will be held until larger overall projects are conducted in the area in the future.

- Because the city projects are not likely to be constructed for a considerable number of years, the City Council expressed concern at the October 27th meeting about notification to future landowners. Consequently, this agenda item was tabled so that staff could research the possibility of utilizing deed restrictions for notification to buyers.
- An additional council agenda item is scheduled for March 23 to discuss the deed restriction proposal.

Financial/Sustainability Considerations:

- As required by the Derby Subdivision Regulations, the developer has submitted petitions as guarantees for construction of required future sanitary sewer, water mains and street improvements. The estimated cost of these improvements is \$185,000. The entire amount will be paid by the benefit district with no obligation by the city-at-large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The resolutions were prepared in accordance with Article 12-6a of the Kansas Statutes.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 14-2010

SANITARY SEWER IMPROVEMENTS/RENBERGER'S ADDITION/UNPLATTED TRACT.

RESOLUTION NO. 15-2010

WATER IMPROVEMENTS/RENBERGER'S ADDITION.

RESOLUTION 16-2010

STREET IMPROVEMENTS/RENBERGER'S ADDITION.

MOTION: Warren moved to approve the resolutions for Sanitary Sewer, Water Distribution and Paving Improvements to serve Renberger's Addition. Haynes seconded.

Council Member Bannon asked whose responsibility is it to maintain and is that in our ordinance.

Mr. Brown advised he believes that is in the subdivision regulations.

Mayor Avello stated there was a sign in Park Hill on Chet Smith. He thinks that worked very well. The sign may solve the problem.

Mr. Brown advised we had not received any complaints or comments about those. We have not had a bond issue with those types of assessments since then either. The next bond sale and assessment, if we have some of those type projects, will be the factor there, once we go through with a new assessment that has been on the books for awhile but hasn't been built.

VOTE: Motion carried 7-0, Craig absent.

CHARTER ORDINANCE – REVISION OF WARD BOUNDARIES

Phil Alexander, City Attorney, presented the staff report.

Background:

- Charter ordinance no. 6 provides for revision of ward boundaries whenever the number of registered voters in a ward exceeds the number in any other ward by 20%.
- At the January 20, 2009 City Council Retreat, discussion occurred about how and when ward boundaries should be updated.
 - The consensus at the time was that no changes in the number of wards or the number of council members were warranted, only that ward boundaries should be based on population rather than registered voters.
 - On January 27, 2009, the Council added the project to the list of City Council Priorities for staff to accomplish as time allowed.
- Under the proposed charter ordinance:
 - Current ward boundaries would remain in effect until completion of the 2010 U.S. census.
 - Boundaries would be revised following receipt of 2010 U.S. census data.
 - Thereafter, boundaries would be revised every ten years, when official census data become available.
- The current practice of adding newly annexed territory to the ward to which it is contiguous will continue.
- No boundary revision would be effective within 30 days before an election or a filing deadline for candidates, whichever comes first.

Financial/Sustainability Considerations:

- The cost of revising ward boundaries is dependent primarily on the staff time required.
- Tying boundary revisions to the U.S. census will enable better planning and budgeting of the cost since redistricting occurs at regular 10-year intervals.

Legal Considerations:

- This charter ordinance would become effective 61 days after publication unless a petition is filed requesting that it be put to a popular vote.

Policy Considerations:

- Basing ward boundaries on population is the “gold standard” in terms of ensuring that Council members represent approximately equal segments of the community.
 - Boundaries based on registered voters may result in over- or under-representation of specific areas within the community.
 - The City Council should, insofar as possible, represent all segments of the community equally.
- Wards based on population rather than voting patterns are more likely to result in equitable representation on the City Council

DISCUSSION:

Council Member Bannon asked if they had passed at one time that they would discuss charter ordinances at one meeting and vote on them at the next meeting, or have we not done that?

Kathy Sexton, City Manager advised that is not something that has been on the priority list. If one person mentioned it, she does not recall.

Council Member Bannon asked when next year we would get the results of this and if they come in after the election, what happens if after the redistricting she now lives in a different ward.

Ms. Sexton advised we won't have the results for a couple of months; it's usually the following year. With the census in 2010, she does not think we would get information until 2011.

Mr. Alexander stated it would make sense to him to time the redistricting to prevent that. In other words, to do it close enough to an election but not so close to mess things up.

Council Member Bannon pointed out that is what we are looking at doing next year. We get the results in January or February, people have already filed, you have your election, then you will be living in an area that you are no longer representing.

Mr. Alexander suggested that the redistricting be put off until closer to the next election so you don't have that problem.

Council Member Bannon asked if there should be verbiage in the ordinance so that we can tackle that.

Mr. Alexander advised they can work on that.

Council Member Haynes stated there are too many unanswered questions here. We need to spend some time on this and have some firm direction on how we want to proceed. The time, money and effort to run a campaign can run into some expense. You win the election and six months from now realize you have been redistricted out of the ward you won or three years from now you can't run as the incumbent because you have been redistricted out of the ward that you won previously.

Mr. Alexander indicated that is not an issue that he had given any thought to. The same result could occur under the current ordinance. There will always be a timing problem with redrawing district boundaries since we have staggered elections within wards.

Ms. Sexton added that it might not be something that we've thought out but this is a common thing. Because half of the council is up for reelection every other year it's going to hit somebody at an odd time, that's the way it is. She doesn't know when we are going to get the data and doesn't know who it's going to affect first, but that's kind of the beauty of the system, it's fair to everybody. It may affect one elected office holder adversely in the sense of making

what they thought was a four-year term become a two-year term, that is possible. Until we get the data we don't really know. If you want to table this we could try to find out from the election commissioner or others how this has been handled by others. She thinks what we will learn is that it's handled differently in various cities. She doesn't know that it needs to be part of the charter ordinance, but it is a change thing that is always a big deal for every elected body, whether it be a legislature, congress, whomever, there is always a transition plan so to speak. She doesn't think we can articulate it well tonight exactly what that transition plan would be, but it would be up to this council to set that plan.

Council Member Warren stated that the main method of determining boundaries will be population and he thinks we are in agreement in that we are going to maintain four wards. There are a number of unanswered questions, but he is not sure they would necessarily need to be a part of the ordinance but definitely would need to be a part of some kind of policy or procedure on how we do this. For example, in times past we have tried to not only keep the divisions of the wards fairly equal in size but also to make sure that each one of the wards had some population boundaries to make sure we had in each ward some of the older and newer parts of town, high priced and lower priced homes, to try and catch that cross section as much as we could and still stay geographically true to what was going on. There is nothing in this that deals with that, yet when we go to making new boundaries those are going to be questions that are going to have to be answered. He is not sure those issues have to be a part of the charter ordinance but he does think there are some things there that are going to have to be dealt with. Are we going to continue to try and ensure that every council member has a certain number of certain types of neighborhoods? He doesn't have a problem with passing this ordinance because of the broad scope of it as long as we don't leave it at that point. We have some policy issues that probably don't have to be a part of the charter ordinance but need to be dealt with in some other way.

Council Member Meidinger stated if Cheryl chooses to run again next time and is elected and is in a certain ward but the population moves her to another, grandfather her in. If she wants to run the next time, she runs under the new ward. We are not a ward-generated operation at all. What is good for Ward I is good for Ward II. He wouldn't get real hung up on the wards. He thinks a big deal is being made out of nothing because we represent Derby. We certainly don't represent a certain ward because that ward is going to get more money. That's the only reason you have congressional districts is a fight over money basically. He wouldn't make a big deal over it. You might want to set a policy where every ten years we redraw the guidelines. It might turn out you would have three representatives in one ward, big deal. We are making a mountain out of a molehill and creating problems you can't change because as Ms. Sexton said, we have people running every two years. He doesn't think we should tackle that, grandfather that person in and go on down the road. You might make it a policy attached to this charter ordinance.

Ms. Sexton advised it's a good point that Mr. Meidinger said, she thinks that's the way it's handled in a good many places but it would be an ordinance at that time. Once we get the census data and redraw the maps and share that information, then we ask the council to pass an ordinance setting the new ward boundaries. One clause in that ordinance, if it's an issue for any current office holders, then you make that call of grandfathering them in. That's one way of doing it.

Council Member Bannon stated that to her charter ordinances have always been a foundation. She always like to see them as flushed out as possible and if we are going to make a charter ordinance we need to cover some of these items that have been brought up this evening in that charter ordinance. If we get down the road, we get the ward districting, the maps, the population and we see how it's going to change, it's not cherry picking at that point but could be perceived that we are trying to make it one way or another, however we need it to be. This is not just an ordinance that we are making just for us sitting up here now or for next year. This is a charter ordinance that councils in the future are going to go by and use as a jump off point. As Ms. Sexton said, the results aren't going to be in until next year probably, so we don't have to have this passed this week. She would like to see some of the questions that have been brought up this evening answered and solutions put forth. Mr. Meidinger is probably right, you can't always expect for the next 4, 5 or 6 years to be in that same ward. Those changes will come. Previously they have always grandfathered and that is something that will have to be looked at. When they grandfathered before they kind of drew around whoever lived "here" and that's what they did. By going by population that's probably not something that is easily done, so then you are in a situation that depending on timing you could be representing a ward for 3 ½ years that you don't actually live in. Mr. Meidinger is correct; she gets calls from people all over the city, not just in her ward. She would prefer to see this item tabled and let staff flush out the full charter ordinance so we can pass one and know where we are going.

Council Member Staats stated that Mr. Meidinger's statements are right on target. He would lean towards the way he wants to do it and just grandfather somebody in and see how it goes from there. We do represent the entire City of Derby, not just one ward.

MOTION: Staats moved to table until the next meeting. Bannon seconded.

Council Member Staats asked if they wanted to discuss this at the upcoming workshop.

Ms. Sexton indicated she did not know how many other voices want to be heard but what she understands is the council wants staff to rewrite it so a current elected office holder would be grandfathered in. If that's all you want we can get that done pretty quickly. If you want us to start doing surveys of a bunch of cities to find out what everybody is doing that will take some time. It's better for short-term to grandfather rather than "gerrymander" districts to route them around elected office holders. It really is better to draw them based on main streets, rivers, railroad tracks, major ways of dividing cities. Unless council were to give us something different we would stick with, when the GIS people redraw that, we would stick with the current policy of the city of the way they are currently drawn. In other words, we wouldn't have one ward be in an all new part of town and one in the old part of town. It would be generally the way it is now, making sure everybody's ward included some of the east/west, new/old, if that makes sense. If that is the general direction we can do it relatively soon. We do have some other timely, pressing items on a couple of agendas coming up, but we could probably do it on the next agenda.

VOTE: Motion carried 7-0, Craig absent.

CEREAL MALT BEVERAGE LICENSING AMENDMENTS

Phil Alexander, City Attorney, presented the staff report.

Background:

- The City Code provides for licensure of cereal malt beverage (“CMB”) retailers as well as suspension and revocation of licenses.
- In 2009, the Legislature amended state law with respect to disqualification for licensure and suspension and revocation of licenses.
- The proposed ordinance:
 - Differentiates circumstances requiring denial of a license from those under which denial is permissive (5.16.420).
 - Provides that suspensions and revocations must be by action of the City Council (5.16.450). Currently, the chief of police may suspend a license under limited circumstances.
 - Includes technical amendments to section 5.16.400, required only to complement amendments to the other sections.

Financial/Sustainability Considerations:

- Adoption of the proposed ordinance will not affect either the fee structure for CMB licenses or the City’s workload for processing of applications.

Legal Considerations:

- The proposed ordinance brings the City Code into conformity with state law.

Policy Considerations:

- SB 53 and the proposed ordinance reflect the Legislature’s most recent effort to enact uniform regulations for CMB licensure.
- Uniformity promotes consistent licensure decisions throughout the state.

ORDINANCE NO. 2012

AN ORDINANCE AMENDING SECTIONS 5.16.400, 5.16.420 AND 5.16.450 OF THE DERBY MUNICIPAL CODE, PERTAINING TO LICENSURE OF ESTABLISHMENTS FOR SALE OF CEREAL MALT BEVERAGE; AND REPEALING ORIGINAL SECTIONS 5.16.400, 5.16.420 AND 5.16.450 OF SAID CODE.

MOTION: Staats moved to adopt an ordinance amending sections 5.16.400, 5.16.420 and 5.16.450 of the City Code. Haynes seconded.

VOTE: Motion carried 7-0, Craig absent.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the consent agenda.

Radio Read Transmitter Purchase

Background:

- In 2009, the Water Company purchased Radio Read equipment to augment the meter reading process.
- The next step in the implementation process is to purchase and install a signal transmitter at the meter.
- This is an approved sole source purchase through our Sensus vendor, HD Supply Waterworks LTD.
- The request is to purchase 110 transmitters for a total cost of \$14,919.96.

Financial/Sustainability Considerations:

- The 2010 CIP includes \$15,000 for purchase of these transmitters.
- Total cost of the purchase is \$14,313.96 to be paid by water revenues.

Legal Considerations:

- The City’s purchasing procedure was followed in soliciting a proposal for this equipment.

Recommend a Motion to:

- Approve the purchase of the radio read transmitters from HD Supply Waterworks LTD for \$14,919.96.

Easements and Right of Way for SE Sanitary Sewer Interceptor

Background:

- The adopted 2009 Capital Improvement Plan includes construction of a 36-inch sanitary sewer interceptor located near 83rd Street South and Rock Road traveling northeast to 79th Street South (Madison Avenue) and Webb Road for approximately 1.5 miles. This interceptor is one of several interceptor projects that will eventually be needed to provide sanitary service to approximately 8,150 acres within the Spring Creek Drainage Basin north to 55th Street North.
- The final alignment of the interceptor was based on a number of factors including expected depth of the line, environmental impact, depth of ground water, topography and flood plain.
- Construction of the interceptor will eliminate the pump station located on the south end of High Park as well as provide relief of any surcharging flows by connecting to the Rock Road Interceptor near Valley Stream Drive.
- The City engaged Land Acquisitions, Inc. to assist in acquisition of needed easements and right-of-ways.

Financial/Sustainability Considerations:

- Easements presented for the Council’s consideration total \$109,200 and include the following:
 1. Margarita and Harley Raney: \$36,000 for .206 acres of permanent easement and .409 acres of temporary easement.
 2. First Christian Church of Derby: \$15,000 for .624 acres of permanent easement and 2.121 acres of temporary easement.
 3. Mary and Raymond Holt and Ranine Bedwell: \$9,200 for .281 acres of permanent easement and 1.293 acres of temporary easement.
 4. Virginia and James Guthrie Revocable Living Trust: \$7,000 for .129 acres of permanent easement and .465 acres of temporary easement.

- 5. Nelda and Jean Branstetter: \$42,000 for .798 acres of permanent easement, 2.372 acres of temporary easement, and .865 acres of right of way.
- Additional easements and right of way are in process of being acquired and will be presented at a future Council meeting.
- The total project estimate is \$5,000,000, of which \$970,000 is from a federal grant. This estimate includes engineering, land acquisition (easements), and construction.

Legal Considerations:

- The City Council is authorized to accept easements in support of these improvements and determine an appropriate level of compensation.

Recommend a Motion to:

- Accept the temporary and permanent easements and the deed for right of way, authorize payments as noted above, and authorize one residential sanitary sewer hook-up to the city’s system for each of the referenced properties.

Request for Use of Street Rights-of-way

Background:

- The American Legion and the Veterans of Foreign Wars request use of city streets rights-of-way to conduct the annual Independence Day Parade on Saturday, July 3 starting at 10 a.m.
 - Parade participants will line up in the Panther Stadium parking lot, leaving through the north entrance to proceed west on Madison to Georgie, south on Georgie to Market, east on Market to Woodlawn, then north on Woodlawn and return to Panther Stadium.
 - This year’s theme is “Honoring our Fallen Heroes.”
- Derby Days, Inc. requests use of city street rights-of-way to conduct the annual Derby Days Parade on Friday, June 4 at 6:30 p.m.
 - Parade participants will line up in the Panther Stadium parking lot, leaving through the south entrance to proceed west on Market to Georgie, north on Georgie to Madison and then east on Madison ending at Mulberry.
 - The parade route is identical to the route used in 2009.
 - This year’s theme is “Hanging Ten in 2010.”

Financial/Sustainability Considerations:

- The City will supply police patrol, barricades and traffic cones.

Legal Considerations:

- The Council is within its legal purview to allow usage of streets and public rights-of-way for such uses.

Recommend a Motion to:

- Approve the request of the American Legion and the Veterans of Foreign Wars to hold the annual Independence Day Parade on Saturday, July 3, and the request of Derby Days, Inc. to hold the annual Derby Days Parade on Friday, June 4.

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

VOTE: Motion carried 7-0, Craig absent.

ADJOURNMENT:

MOTION: Horyna moved to adjourn at 7:30 p.m. Haynes seconded.
VOTE: Motion carried 7-0, Craig absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk