

**APPROVED
REGULAR COUNCIL MEETING
March 24, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Meidinger, Jim Craig
Vaughn Nun, Heath Horyna
Chuck Warren, Cheryl Bannon
Mark Staats, George Arnold

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Don Mayberry, Pleasantview Baptist Church.

**CONSIDERATION OF
MINUTES**

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

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

VOTE: Motion carried 7-1, Horyna abstained.

PUBLIC FORUM

Jerry Lucas stated that in a previous city council meeting City Manager Kathy Sexton stated that the police would not be out looking for violations of the proposed recycling and trash franchising ordinance in relation to putting out the carts too early or bringing them back in too late. He questions the veracity of this statement after the implementation of the new non smoking ordinance. The police were in establishments checking for violations of that new ordinance, if they have done it before, why will they not do it again? The original and revised ordinance appears to be taken directly out of a homeowner's association rule book. Many of the residents of Derby don't live in a HOA and don't want to. We don't want to be micromanaged in our own homes. We just don't want the city in our business. Smaller government is better government, period. Article 2, paragraph A2 does not sufficiently address people on shift work; also it does not address what happens to these carts or proposed penalties for people on vacation. If he has trash to pick up on Wednesday, for example, but he is going to Hawaii on Monday, when is he supposed to leave his cart out? There are a lot of issues that still haven't been addressed. As he has stated previously he is against the franchising provisions of the proposed ordinance, it has the potential to put currently owned local businesses out of business to the advantage of large corporations from out of state. The ordinance does nothing to address customer service complaints, only what the residents have to do and what the franchisee has to do. The only true beneficiary he sees of this proposed ordinance is city hall with increased

franchising fees. It is stated there will be less wear and tear on the roads because of fewer trucks, were the roads not built with the thought of trucks being on the roads? In the name of saving wear and tear on the roads will you soon be franchising delivery services so that we will only have one delivery service in town instead of UPS, Fed Ex, etc? Then, will you be looking at franchising towing services, etc? Where do we stop this is his question. The proposed ordinance does little to encourage recycling. Recycling is not mandatory in the proposal, if the real intention of the proposal is to reduce the amount in our landfills, recycling should be better addressed. It is his opinion that the real goal of the proposed ordinance is to put more money in the city coffers and place home owner association restrictions on all of the residents of Derby. He feels this is very un-American and eliminates freedom of choice. As a veteran it's something he believes highly in. Ms. Sexton was a recipient of an email, as was everyone on the council and she replied to the email and indicated that the issue of people being on vacation or out of town still has not been addressed. She agrees that the ordinance does not make recycling mandatory. He does not know why we are being so nitpicky about times when we can and cannot put our carts out. The issue of residents on vacation or out of town still has not been addressed. It seems that somebody's nose was bent out of shape because their neighbor did not get their cart off the curb in due time.

Steve Spaulding stated that even though this may seem like a small issue it's not. Any time our choices and freedom are taken from us bit by bit it is a big thing for him. He is very thankful to be an American, a Kansas and a citizen of this fine city and he owes that thanks to God our creator and our founding fathers who in their wisdom and foresight developed a constitution that allows for this kind of forum. He is concerned that the issue is being bantered around about details and not the true issues that our choices are being taken from us. He has looked at this, done his homework and made some calls to the trash haulers that were listed, as well as several other calls. Everyone has been very helpful and all have a lot of information to provide, more than he can handle. His concern is that what's on the table is not right as it stands, a single hauler or trash franchising, when there are other options out there. There are a couple of city's north of Wichita that have trash franchising but they allow for other choices for their residents if they so decide. The city chose a franchisee, but if you don't want to select that trash franchisee then you can choose your own hauler or keep the hauler that you have. That is an option that is not being considered at this time. He is against this proposal as it stands now. He also learned in his investigation is something he has not heard in the news is that this proposal also offers the city the choice of providing a city run trash service which he would also be against. There were three things that were proposed by the city, the wear and tear on the city streets which he understands completely, reducing residents' trash bills, which he is not really for because he doesn't need the city telling him how much money he needs to spend, should spend or want to help him in that. The other one was to cut down on the amount of trash sent to the landfills, which he is in agreement with. He is not a recycler but he is trying and can see how that will really affect the transfer stations and landfills and he is all for it. He doesn't know if it's been presented to the people that the city has the option, when this proposal is accepted, the city can chose either a franchisee or the city can take over that trash responsibility. As it stands right now he is against that. He is all for reworking this and looking it over, there are a lot of options. Regarding the wear and tear on the streets, maybe the city could ask for a one time fee or monthly fee from the trash hauler based on the number of trucks to provide for the city streets. There could also be a 2-3 year plan to promote recycling and have some way to measure the effectiveness of that plan over the 2-3 year period to see if it's working. Those are options that really haven't been considered and as it stands he is against the proposal.

Council Member Meidinger stated he went by Tanglewood School on his way to the meeting and it reminded him that we need to slow down when we go through school zones. Spring is in the air and the kids are out running around. Remember the school zones are in operation, kids are out playing, be safe and have a good spring.

PROCLAMATION

Mayor declared April 2009 as Fair Housing Month in the City of Derby.

Allison Moeding, Director of Community Development accepted the proclamation.

2008 MAYOR'S AWARD OF EXCELLENCE

Kathy Sexton, City Manager presented the staff report.

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 recipients for 2008 are Glen Goering and Ross Hearn.
- Glen Goering led the Derby High School Marching Band for more than 30 years, serving as the Director of Bands.
 - His pursuit of excellence resulted in a number of awards and honors for the DHS band, including an appearance in the nationally televised Rose Bowl Parade.
 - Thousands of Derby students have been positively affected by Mr. Goering, as he taught not only music, but integrity, self-discipline, and teamwork.
- Ross Hearn served as the vocal music teacher at Derby High School for 35 years. During that time, he created a tradition of excellence for choral music that continues today.
 - He, along with his choirs, were the recipients of numerous awards and honors, including invitations to musical festivals in Europe.
 - Mr. Hearn continues to share his passion for music with the Derby community by organizing and conducting the Derby Community Choir, which performs twice a year.
- 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), and the Derby Community Foundation (2007).

Kent Hearn, 1976 graduate of Derby High School can remember when he was in 5th grade riding his bicycle to Mr. and Mrs. Goering's house for his trumpet lessons. The first time he went he was scared to death, those fears were quickly subsided. Mr. Goering had a very kind heart and a very soft way of teaching kids about music. By the time he got to 7th grade he switched to the French horn and played that all through junior high and high school, at which time he had the privilege and honor to not only have Mr. Goering but also Mr. Burrow as his orchestra teacher. Derby has been very blessed to have Mr. Goering, Mr. Burrow and his dad, Mr. Hearn on their music faculty at the high school. Derby High School has developed a reputation of excellence and a fine tradition, as anyone who has gone to school there knows. He didn't realize it at the time but Mr. Goering was laying the foundation for what would become a very important part of his life, and that's music. Back in the day they had 6:00 a.m. practice for marching band where we not only learned the chop step and how to do it properly but we did it until everyone did it the same. We had a great time in band practice and we were pretty good. We used to go to a lot of marching contests and he can remember watching other bands and

when it became Derby High School's turn you could count on a crowd being there to watch us. That was an honor. He never did take choir in high school because it wasn't cool to take your dad's class. He did take choir his senior year and continued on with band and orchestra. One of the highlights of his senior year was receiving that John Phillips Souza band award for the Derby High School Panther band. After he got out of high school he was working at a gas station making minimum wage and one day his dad said to him that he had three options; you can go to school, get a real job or you can move out. He did two of the three, attending Wichita State on a French horn scholarship and began his working career at Beech Aircraft. As he began to develop his studies in French horn it became apparent that wasn't going to be a career path for him. When you catch a baseball in the mouth and have extensive dental surgery, the amachure required for the trumpet is much different than the one required for the French horn. He was a very frustrated musician his first year at WSU. He as in the marching band and he thinks he had about at three note range while trying to make the switch from trumpet to French horn. He became frustrated and quit music. As he was developing as an adult trying to discover who he was he got back involved in music, not instrumentally because he couldn't play anymore, but as a singer. He owes Mr. Goering for teaching him how to read music and playing in tune and having good intonation. It has paid off in his adult life, he has been a performing member of the Wichita Chamber Chorale for the last 15 years, he has been a bass soloist at College Hill United Methodist Church under his dad's direction for 12-13 years. He met his wife in the choir loft at that church, it has paid big dividends in his lifetime and it all started with Mr. Goering. Sometimes he was a pretty rotten kid but it never seemed to phase how Mr. Goering treated him and dealt with him as young person and he wanted to say thank you.

Amy Shiflett had the privilege of having Mr. Goering and Mr. Hearn in high school. Her father also had Mr. Hearn. Mr. Goering was her band director from 1989 to 1993. She started taking flute lessons in the third grade in Augusta, KS and thought she knew all about band class. Boy was she in for a surprise. She was new to the Derby school district her freshman year so when band started in July she knew they would be learning the music but she had no idea about the marching. The first time she heard Mr. Goering yell over his portable loud speaker it made her jump. She looked at her friend and said "this is band, right?". Marching season was a blast once you knew what to expect. She really didn't get to know Mr. Goering as more than the teacher with the loud speaker until her junior year when she made drum major. Mr. Goering taught her about leadership that still carries over to her job today. He said she had to lead by example, if she couldn't march a piece or play a certain piece of music, how could she expect her fellow band members to do the same? He also said to always be on time because if she wasn't how could she ask everyone else to be? The most important thing was to be prepared, whether for a marching competition, band concert or jazz ensemble performance, she of all people as a drum major better have everything needed and that included the extra ponytail holders to pull your hair up into the hat when you had to perform if it broke or if you lost it. Mr. Goering encouraged her to try new and different things, to step out of her comfort zone of being a pick along flute player. He needed a bass guitarist for jazz band and somehow he found out her aunt was a teacher at Friends University. She took lessons from her aunt and tried to play the guitar but she couldn't pick up the bass cleft. It had been six years since she had taken piano lessons and she didn't practice. Since that idea didn't work out so well Mr. Goering had her try the tenor sax. It had the same fingering as the flute except for a couple of notes and it was in treble cleft. About Mr. Goering's encouragement to try something new, she wouldn't have become a decent saxophone

player then or gone from the medical field to the banking industry later in life. Just because you try it doesn't always mean you'll be good at it. The one thing she remembers about Mr. Goering and now preaches to her 15 year old, trumpet playing is practice, practice, practice. Mr. Goering would tell her that if she wanted to stay first chair until graduation that she better practice, just because you take private lessons at WSU, you still have to practice. Now she tells her kids the same thing, her son is a football player and trumpet player, he has to practice to get better. Her seven year old daughter loves to read and write and wants to write everything so when she points out a misspelled word her daughter gets frustrated and she tells her she still has to practice. Mr. Goering, thank you for teaching me and guiding me to be a leader, encouraging me to try new things outside my comfort zone and for telling me almost everyday during symphonic band, to practice. It has helped me in my career and as a mother and she is grateful.

Mayor Avello advised his son was in the marching band. Today he plays trumpet, saxophone and guitar. When he went to Florida for some bowl game and had all their uniforms shipped down. They were going to be on TV, when he turned the TV on there were three kids walking with the band with no uniform on. Guess whose son was leading them?

Mr. Goering explained those uniforms were shipped by UPS and for some reason one box was mislabeled and it never made it to Florida. That was rather embarrassing but luckily they got to march anyway. He advised he came to Derby in 1968 and has never found a reason to leave. He had 32 good years at Derby High School, with good students, good administration and a good city to work in. Since retirement he is still in the community. He thanked the Mayor and the nice comments made this evening.

Gary Riley was a student at Derby High School from 1978 to 1981. Before that time he played trombone, starting in junior high. Mr. Goering would come over and work with us and he was very excited to sign up for the Derby High School marching band and symphonic band because that was a big deal when you were going from the 9th grade to the three year high school. Back in those days when you were a sophomore getting ready to enroll you had to go to the commons building in the older high school. All the teachers were in a circle of tables by department and you had to get your card signed by the teacher to give you permission to take that class. The music table was all together which was Mr. Burrow, Mr. Goering and Mr. Hearn. We were fearful of them because they were such Gods of music and going over there as a meager sophomore, what was I going to do or say? He went to get his card signed by Mr. Goering and Mr. Hearn was right next to him. He knew Mr. Hearn because everyone in Derby because he had just gone to Vienna. That was a whole City of Derby effort where they raised \$70,000 to \$80,000 and that was a legacy he had in Derby at that time. He said "you're Gary Riley aren't you; I want you to sign up for philharmonic choir". He had taken general music in junior high but wasn't planning on taking any vocal music. His mom was always pushing him to sing but he wanted to play in the band. Then here is Mr. Hearn wanting him to sing in this choir, how does he even know and want to spend that time on him when he doesn't know anything about him? He signed up for the class, he was taking marching band and philharmonic choir his sophomore year, it was probably the greatest addition to his class schedule of his life. What he taught in that class, music but also discipline and perfectionism, along with his demeanor and passion was overwhelming. His senior year he didn't know and Mr. Hearn's connections with the colleges, WSU and Friends University and bringing people in for us to talk to, it was Mr. Hearn's

impression on him as a mentor that made him decide to continue on in music education at Friends University. He started teaching in Wichita Public Schools after graduation and stayed in that for 20 years. Mr. Hearn made him what he is, the way he teaches in the classroom with the kids and demanding perfection and striving for the very best you always want out of your students. When he looks back over and over again he is who he is today because of what Mr. Hearn did in that class over those three years.

Melissa Grady Watkins stated she was here to mostly speak about Mr. Hearn but pointed out to Mr. Goering that she was also at one time in the band. She played in 5th and 6th grade; she was always last chair and was not so good at practicing. She met Mr. Hearn when she was 14 years old and an 8th grader at Derby Middle School when he came over to do auditions for choir. She found him absolutely terrifying and was very scared of him. Over the next four years having him in high school she learned he wasn't so terrifying. Like he said often, his bark is much worse than his bite; even though he seems a little intimidating he is kind of a softy at heart. She loved singing since she was young and the high school and Mr. Hearn really gave her the opportunity to have lots of awesome musical experiences and she got to sing in the best choirs in the state. She took solos to contests and we did wonderful at contests, she sang at KEMA and was in musicals. She was offered so many awesome opportunities that it really showed her even more of her passion for choir and for teaching. She owes all of that love to Mr. Hearn pushing her to do more and more. It was really an awesome experience to get to sing with him. He taught her so much in his teaching that she uses today in her teaching. Number one would be disciplined, Mr. Hearn disciplined his choirs and that involved a lot of yelling and stomping most of the time but we did what he said. She always remembers being intimidated by Mr. Hearn and she has recently had some students tell her the same and that means she must be on her way to doing a good job. Secondly, great literature and great music is where it's all at. There are a lot of teachers out there that think high school kids need fluffy fun music to love it and she'll tell you right now, high school kids love to work hard and they love great literature. Mr. Hearn taught her some great literature and she has passed it on to her students and they love it more than anything. It's also important to have high expectations, expectations of students and of yourself. Mr. Hearn always came in every class and expected us to be great and do everything he said but we also expected that from him and he came in every day and gave us 110% and we all worked for him as much as he worked for us. After high school she went to college and knew she wanted to be a music teacher. College was a great experience; she learned a lot and started teaching for a few years. Then, Mr. Hearn had an opening in his church choir so she got to sing for him again, seven years ago and has been singing for him ever since and it's been great to be singing for him again. She still gets in trouble for the same things. It has been great working with him again not only as a singer but as a peer. She remembers the day he told her he was retiring from Derby, she cried a lot. He asked her to be one of the people that tried for his job and that was one of the biggest honors of her life to even try for it. This man that she thought so well of thought she would be good enough. She got the job, that was pretty cool and it's been the biggest honor to take over and try to fill some big shoes. She is doing her best to fill those shoes and on occasion she yells out "balderdash" in class and stomp her foot in class.

Mr. Hearn followed up on a comment made by his son about participating in choir his senior year. That just happened to be the year that they received the invitation to participate in the International Youth and Music Festival in Vienna, Austria. They spent 10 glorious days in that

city singing with three other choirs as a combined festival choir with the St. Louis Youth Symphony. They did some of the great master works of choral music and it was a great experience. He expressed his deep and sincere appreciation to the mayor and city council for presenting him with this award. One of his primary goals as a teacher was to make music a life long activity for his students. He felt he would be a success if that happens, if students continue to sing at the college level, when they get out into the community to continue sing. He mentioned that the city has a brand new community choir that is in their 2nd year and meet Thursday nights at Woodlawn United Methodist Church at 7:00 p.m. and would love to have anyone join them. They will be giving a concert on April 26th at 3:00 p.m. at the church. He feels fortunate to have touched so many lives and crossed paths with so many people from Valley Center High School and coming to Derby in 1967 where he spent 16 years in his first tenure. He and his first wife moved to Iowa where he taught in a very small 400 student high school in Knoxville, Iowa, which is southeast of Des Moines. He had madrigals at 7:00 a.m. because of all the sports because boys and girls were all in athletics of some form. He would get up at 5:00 a.m. and drive 50 miles in a carpool. After 2 years there they both decided they were traveling too much and came back to Wichita. The Derby job was taken so he taught at North High School for two years at which time Mrs. McNabb who was the vocal teacher at the time retired from teaching temporarily and the Derby job became open and he returned for another 16 year stint. It has been a great journey and is something he has so much passion for and is so fortunate to do something he loves so much.

Council Member Staats thanked Mr. Goering and Mr. Hearn from the mayor and the council. He was a student of Mr. Goering who took the marching band to the Fiesta Bowl in 1980. They had to take a bus and it was quite an experience taking a bus halfway across the country and staying in Phoenix for a week but those are memories that he will never forget. Sometimes you get a bunch of kids together and they don't always cooperate, a football coach or baseball coach can make you run laps, these guys don't have that option so they just yell a little bit or a lot depending on the day and get their point across. He told Mr. Goering that there is a Derby High School Marching Band Facebook page and that says a lot about his 30 year legacy at Derby High.

Mayor Avello thanked both Mr. Goering and Mr. Hearn for shaping students for the future. He and Ms. Sexton couldn't think of better people for this award.

**ORDINANCE
ADJUSTING SANITARY
SEWER RATES**

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

Kathy Sexton, City Manager acknowledged this is a big rate increase and is a difficult thing to do, even though it has been 10 years and we certainly need this change. She has been thinking about whether or not there is a way to have less impact and still keep the operation financially healthy. You should all be aware that we have applied for two federal grants and all informal indications are that we are going to be approved for one of those but she doesn't have anything formal. That is the thing with grants, you really don't count on the money per se until you get the paperwork and you know when the money is coming and what strings are attached. What we

did is provide a packet that runs the scenario as if we were to get a federal grant of \$1 million, how would that be worked in. We gave that to CDM and they worked it in to the rate study and they said instead of a 31% increase in rates, you could go with a 28% increase in the rates effective October 1st. The more she thought about that the more she thought even though we are not sure, that information should be presented to the council because you might feel better about approving that rate increase tonight and in a couple of months she would assume we would know by then, maybe sooner about the grants. You would be able to raise them again if you needed to is what she is saying, but 28% would get us through the initial need. She would certainly advocate for that as opposed to tabling the item until we know about that. We need to proceed with all the bond documents and the work that we need to get lined up to get these CIP projects going as opposed to delaying them and being in a time when we get higher bids. That is her recommendation tonight in the amended document. Essentially it is a 28% increase in the base and consumption base. The residential base would be \$15.10 a month, whereas the staff report and ordinance in the agenda packet is \$15.46. It did decrease that by a few percentage points and the consumption rate is \$1.55 per 1,000 gallons whereas in the original ordinance it was \$1.59. Charlie also mentioned the average residential increase that we had in the agenda packet was \$6.28 but with this revised version it would go from \$20.27 to \$25.95. \$5.68 would be the average residential increase. That's certainly a little bit less than a \$6.28 increase.

Background:

- The City's Wastewater Division presently operates and maintains the City's treatment facility on South K-15 and the City's sanitary sewer collection system consisting of more than 118 miles of piping ranging from 8" to 36" in diameter.
- This division's expenditures include normal operation and maintenance (O&M), debt service for previous treatment plant and interceptor sewer projects, capital improvements, and equipment replacement.
- Revenues generated by monthly sewer rates cover the majority of expenses, but over the last few years, additional funds from the Bond & Interest Fund have been required.
- It is desired that this division be self-sufficient, with sufficient revenues to cover existing expenses and new debt service for two significant wastewater projects: Phase 3 of the Southeast Interceptor and Bio-Solids Handling Improvements at the treatment plant, both of which are scheduled for 2009 construction.
- Additionally, the Phase 3 Southeast Interceptor project is planned to be financed through the Kansas Department of Health and Environment (KDHE) State Revolving Loan program. As a part of the application for this loan, KDHE requires evidence that the City's revenues will be sufficient to cover the wastewater expenses, including the annual loan payment.
- The City hired Camp Dresser and McKee (CDM) to prepare the sewer rate analysis. The last sewer rate increase was 10 years ago in 1999.
- CDM prepared a draft report that included several options including subsidies, equity fees, and adjustments to connection fees and monthly base fees and consumption fees.
- These alternatives were presented to the City Council at a workshop on February 17, 2009. After the workshop, members of the Governing Body communicated their individuals preferences to the City Manager, and the Manager directed us to proceed to the final report with the following assumptions:

1. General fund subsidy to the Wastewater operation to be phased out over a 3-year period.
 2. No equity fee revenue to be included in the rate structure. The subject of a new equity will be addressed by the Council at a future time and, if approved, any revenues would be devoted to capital projects rather than be used for routine operating expenses.
 3. Connection fees to remain unchanged, along with the distribution of these funds into the Wastewater Fund (30%) and the Wastewater Capital Improvement (a/k/a Depreciation) Fund (70%).
 4. Both the base rate and consumption rates to be increased.
 5. Plan for one rate increase in October 2009 with an automatic escalation clause of 1% per year thereafter.
 6. Single-family and multi-family residential rates would be equal, rather than the currently higher rate for multi-family residences.
 7. Other minor adjustments to the draft report.
- CDM has completed the study based on these directions and the Final Report is attached.
 - In addition, two other changes would be made.
 - One line on the monthly utility bill reading “Sewer Service Charge” would replace the two lines currently used. The purpose of this change is to enhance public understanding that funds derived from the fixed base rate and the consumption-based user charge are comingled to pay all costs of the wastewater operation, including operations and debt service on all bonded projects.
 - The Wastewater Depreciation Fund would be renamed the Wastewater Capital Improvement Fund to more accurately reflect its purpose.

Financial/Sustainability Considerations:

- Based on the financial analysis, an increase of 31% is required on October 1, 2009.
 - Residential base rates will increase from \$11.80 to \$15.46.
 - Commercial customers will experience the same percentage increase in their base rates.
 - Consumption rates will increase from \$1.21 per 1,000 gallons of water used to \$1.59 for all customers.
- Based on this rate increase, an average residential customer (7,000 gallons per month AWC) will experience a \$6.28 monthly increase.
 - A commercial customer also using 7,000 gallons would experience a \$13.56 monthly increase.
 - A commercial customer using 40,000 gallons would experience a \$38.44 monthly increase.
 - A commercial customer using 90,000 gallons would experience a \$72.82 monthly increase.
- Over the 5-year study period, these rates would generate surplus revenues “which is a good strategy for the City in light of the current economic recession and the accompanying real estate downturn, severely fluctuating energy prices, and significant capital investments not currently included in the current CIP,” according to the CDM Technical Memorandum.

- While a 31% increase is a substantial amount, it should be balanced against the past 10 years of no increases. For example, the 31% increase is equivalent to an annual 2.5% increase compounded annually over 10 years. Going forward, the recommended ordinance includes an annual escalator of 1%, which creates a more sustainable system to deal with inflationary cost increases and reduce the likelihood of periodic large increases.

Legal Considerations:

- The wastewater fund is an enterprise fund and is expected to be self-sufficient.
- History suggests that increasingly stringent treatment and discharge standards will require the City to have adequate funds available to upgrade the treatment facility and processes from time to time in the foreseeable future.
- Sewer rates should be structured in recognition of these factors.

Policy Considerations:

- Staff has investigated sewer rates of 18 other cities in the area and cities of similar size in the state. At the present time, the rates of these cities range from \$9.85 to \$59.27 per month, with Derby ranking 14th at \$20.27. With the recommended October rate increase, Derby would rise in rank to 12th at \$26.55.
- The proposed rates incorporate the consensus directions given by the Council concerning subsidies, equity fees, etc.
- The proposed rates would result in the Wastewater Division being self-sufficient.

ORDINANCE NO. 1978

AN ORDINANCE AMENDING §13.16.050 OF THE DERBY MUNICIPAL CODE, ESTABLISHING CHARGES AND RATES FOR COLLECTION AND TREATMENT OF WASTEWATER BY THE CITY; AND REPEALING ORIGINAL §13.16.050 OF SAID CODE.

Discussion:

Council Member Horyna asked if it is a common practice for a wastewater division to be self sufficient throughout the area and nationwide.

Mr. Brown advised in most cases they are self sufficient and in many cases they may be revenue generators rather than taking money from the general fund. In some cities it's just the opposite, they generate more money to provide to other funds but in most cases they are a self sufficient, self operating division.

Council Member Craig advised in the past the rates didn't increase because we were subsidizing this. Now that we have found out the error of our ways by not having an increase for 10 years we are between a rock and a hard place to be able to continue on for growth. He thanked Ms. Sexton, Charlie and whoever else put together a third option because when he first read it he swallowed pretty hard when he saw what the increase was and he is sure most council members did to. We do not like to make large increases if at all possible not to do that. As we look to the future down the road knowing this is sizeable and we have a built in 1% following

that would be effective in October if we pass this, does it look like we are on solid ground to not have to subsidize it again? Over a five year period you are going to generate about a million and a quarter dollars in surplus.

Ms. Sexton advised maybe that is what the difference is in terms of reading, looking at the chart on page 2 in the agenda packet. The surplus number in the middle of that chart goes along with the October rate increase so if you implement the increase on October 1, 2009, by the end of 2010 there would be \$788 extra that you don't need to spend for operations and debt service. The next year that would actually be \$413,000, those are not cumulative numbers. It's like an ending balance each year, so each year that ending balance goes into the next year.

Council Member Craig asked if that still gives us the amount of room we want as we project down the road, will we be able to avoid subsidizing again according to this plan. We did the water rate that way that we would not have to significantly raise rates.

Ms. Sexton advised we would. When you do a rate study like this and we've looked out five years, we have accounted for two major CIP projects being done this year and one a few years out. There might be and likely will be other CIP projects. You make assumptions about how much you'll grow, you make assumptions about what EPA regulations may or may not be so certainly we could come back to the council in the future with a more modest rate increase if needed, but the 1% each year is intended to be something that would help keep up with inflationary costs. You may think 1% doesn't sound like enough for inflation but remember in this fund, and it's self sufficient, about ½ the cost roughly speaking is debt service and you know what those numbers are, they're not going to inflate, they are set. The other ½ of it is about a \$3 million dollar operation so if you reduce your base on your calculation by ½ and then you figure that's your staffing, electricity; which is big for a wastewater treatment plant and other operations and maintenance costs, the 1% better cover that. It's not guaranteed but inflation has been 2% to 2.5% for the past few years and this year it's expected to be 0 or negative. She does not guarantee it will be the exact amount but certainly we could bring that to a future council at such time it is needed, probably in a few years when we have a big CIP project is when you can expect us to sit down and do a rate study. Things could change, population shifts could be more or less than we have assumed, lots of things could change. This is a solid plan and certainly there is no obligation or reason to think we would ever need to go back and tap property tax dollars to pay for this.

Council Member Craig indicated that was going to be his next question. That's what we want to avoid, we want to keep it in the realm of the utility itself, we don't want to go external to it.

Council Member Meidinger indicated it was mentioned the equity fees would be discussed at a later point, assuming we are going to have some big CIP programs coming down the road and equity buy in would be very appropriate at this time. How soon are we going to discuss this?

Ms. Sexton advised it is on the priority list. You might recall from the workshop last month we had done some research on that but had a lot of questions come up and we felt like we needed to do a little more research. We thought we would bring that to the council in the next three months and we would bring that at the same time we bring in the discussion of the water equity

fee. It is a very similar conversation because it is the same people typically paying it and you have to determine those amounts based on not only our cost of providing water and sewer service but also the bigger picture of what all the fees are that people who are building new properties have to pay all at once.

Council Member Bannon pointed out on page 2, table 1 it shows in the year 2014 we would have a \$487,000 surplus. If you look at the amendment handed out this evening, table 2 which shows the surplus based on a lower rate, its \$506,000, how can you make a 28% increase instead of 31% and end up with a bigger surplus?

Ms. Sexton explained that it is because the \$1 million grant is assumed to be received in 2009 and would be an immediate reduction in the amount of debt service. Instead of a \$3.2 million amount of debt service it would only be \$2.2 million. Later on we wouldn't be paying as much interest. This plan helps you more in the out years than it does in the first year.

Council Member Bannon stated she has never liked paying back loading interest. Staff has been really good on this particular issue. This is a huge jump and nobody up here wants to be up here doing this. A lot of research and work went into this; we sat and discussed this for over 3 hours. An escalator clause has been built into this so that hopefully another council won't have to ever be placed in this position of doing what we are going to have to do this evening. A utility should stand on its own and be self sufficient and we decide to go ahead and instead of making this an even higher increase by taking away the subsidies now we are going to phase that out over three years. This is nothing that anyone is really big on but it's one of those things that has to be done.

MOTION: Bannon moved to approve an ordinance modifying the monthly wastewater fees per the updated 28% CDM report dated March 24th, 2009, with said fees to be implemented starting October 1, 2009. Horyna seconded.

Council Member Craig asked, if for some reason the \$1 million grant doesn't materialize, what can we look forward to at that point as far as making up the difference or do we just continue on the path that we select tonight?

Ms. Sexton advised that we would run the numbers again but her guess is we'd be back to the council to be sure we get the right amount of money. We would probably need to have a rate change in the 28%. Conversely, it could be more than \$1 million too. The pros and cons are that it could be a grant but a different amount, more or less than \$1 million, or it could be nothing at all.

Mr. Brown added that in that time frame we should have our bids in on our bio-solids project which will then give us harder numbers on at least one of these bigger projects and help us refine the numbers. Hopefully they will be to our benefit, construction prices are very good for us right now so that project hopefully will be under budget and that will help us as well.

Council Member Warren advised that when you are dealing with smaller numbers percentages can sound bad but the difference may not be as bad as you think. His math may be wrong on this but at the 31% increase on the base rate in 2010 it would go from \$11.80 to \$15.46, with the 28% it would go to \$15.10. We are looking a difference of \$.36 a month and he wonders if we might be better off just to be safe and bite the \$.36 bullet. He is not going to vote against it if this is what the council wants to do, 28% sounds better but we are looking at .36 for a base rate and he is not sure we wouldn't be better off going ahead and paying it now and reducing if we got the grant rather than going back in and raising it later.

Council Member Craig advised he had the same question. He would like to start out lower and if we have a compounding 1% we end up at 5 years a lot better off than if we go with a higher rate to start. He can support it either way but some of us asked for a more conservative approach to it and if we can work the \$1 million dollars in there and come out ahead he thinks that's the best thing we can do for our customers.

Council Member Bannon stated that she and Ms. Sexton have discussed this and none of these rates go into effect until October so we have time to not only find out about both grants but also the bio-solids so we may be changing this no matter what. We just need to get something passed this evening so we can get the bonding to move forward. We are more precise than throwing the dart but we don't have to get it right down to the gnat's hiney.

Council Member Warren asked how changing the rate affects the bonding. Is the bonding amount going to be the same whether we have 28% or 31%?

Ms. Sexton advised that was correct.

Council Member Craig advised this particular project is core to the future of Derby as we move to the east and northeast as far as development goes. It's not something that we haven't looked at three years ago because we knew it was coming. He is sure most of us on the council did not know how much it was going to affect us at this time but now we know and we are ready to pass it.

Mayor Avello clarified that growth will not take care of this correct?

Ms. Sexton advised the growth helps in terms of spreading fixed costs among more people, households and businesses but leaving a rate at a decade old rate will not be fixed by growth.

VOTE: Motion carried 8-0.

**AMEND ZONING
ORDINANCE TO
CREATE B-2A BUCKNER
BUSINESS DISTRICT**

Bud Newberry, City Planner presented the staff report.

Background:

- Buckner Avenue, from K-15 north to Meadowlark Boulevard, is generally the dividing line between B-3 commercial uses on the west and R-1 residential uses on the east.
- Traffic on Buckner from K-15 to Meadowlark has increased considerably in recent years. This increase is mainly due to Buckner having been connected with Oliver Street in the northern part of Derby, allowing it to be used by Boeing employees as an alternate route to and from work.
- This increase in traffic on Buckner has resulted in access problems for the residents of homes in this area, and in turn, may have reduced property values. The traffic has also caused excessive wear and tear on the street's surface.
- Needing to address the problems of high traffic volumes and deteriorating asphalt conditions along this stretch of Buckner, the city selected the consulting firm of Ruggles and Bohm to study the corridor. This firm was asked to provide recommendations on widening the street and also the re-zoning of existing residential properties from Meadowlark to K-15 to a light-impact commercial district.
- Following several meetings between staff, the consultant, an advisory committee appointed to assist the city with this process, and an "open house" meeting at City Hall attended by property owners and tenants from this area and concerned citizens living in the immediate vicinity of the project area, it was determined that a new district should be created to address the unique challenges of changing this area from residential to commercial.
- The new zoning district designated B-2A "Buckner Business District" was presented to the Planning Commission on March 6, 2009. A public hearing was conducted in compliance with the requirements of Article 11 of the Zoning Regulations followed by the commission approving the new district by a vote of 7-2.
- The Notice of Public Hearing was published in the official City newspaper on February 11, 2009.
- In an effort to address concerns relating to the inclusion of Buckner Street property owners and residents in the process, it was decided to conduct another "open house" meeting at City Hall on March 19, 2009. Any pertinent information received during this meeting will be passed on to the City Council prior to the next Council Meeting.
- The following is a partial list of some of the uses that will be permitted in the B-2A District along with a brief explanation of the changes or additions made to Sections 304, 500, 501, 602 and 706.

Permitted Uses

- Barber, Beauty, Tanning, Massage Therapy, Nail Care Shops and Spas.
- Business, Professional, and Public Offices. (Attorney, CPA, Insurance, etc.)
- Child and Adult Day Care
- Interior Design/Decorating Studios
- Medical and Dental Offices and Other Health Care Services. (small, one Dr. type office, Chiropractor, no clinics)
- Single Family Detached Dwelling (single family residence)
- Other general limited retail, office and service uses.

Miscellaneous Changes

Section 304. Screening and Landscaping – Properties converting from residential use to commercial are required to place a six-foot-high shadow-box style cedar fence along the side and rear lot lines.

Section 500. Required off-street parking will be allowed to extend five feet into the street right-of-way.

Section 501. Non-residential uses in this district will be required to provide three off-street parking spaces. Developments with two or more lots/parcels will have to provide parking spaces in accordance with Section 501 C. of the Zoning Ordinance.

Section 602. Residential uses in the new B-2A District will be allowed to conduct Home Occupations.

Section 706. The only signs allowed in B-2A will be a monument or wall signs. A monument sign will be limited to ten feet in length and six feet in height. A wall sign must not exceed 30% of the square footage of the wall it is attached to or 100 square feet, whichever is the smaller size.

Financial/Sustainability Considerations:

- Re-development of this area from residential uses to business uses will create some opportunities for additional small business to locate in Derby that will generate additional tax revenues for the city.
- Re-zoning sets the groundwork for providing additional opportunities for owners wishing to sell their property. Owners and realtors have indicated the difficulty of selling these properties in recent years for residential uses due to traffic issues. That same traffic would be a benefit to using these properties for commercial purposes.

Legal Considerations:

- This proposed amendment to the City’s zoning regulations is a permissible exercise of the Governing Body’s authority.
- The Governing Body has the same options available to it as with any other zoning amendment.

Policy Considerations:

- In addition to drafting the new district, it was also necessary to amend the Parking, Screening and Landscaping, Home Occupations, and Sign regulations as well as the Table of Contents.
- The action being considered with this request is to create a new zoning District to be included in our Zoning Ordinance. Approval of this case will not yet change the zoning currently in place on the homes along Buckner Street.
- If action is taken to approve this new district, a re-zoning case will be presented to the Planning Commission recommending the re-zoning of the residential properties along both sides of Buckner Street from Meadowlark to K-15 from R-1 “Single Family Residential” to the new B-2A “Buckner Business District.”
- Public Notification required by Article 11 of the Zoning Regulations will be conducted prior to the Public Hearing at the Planning Commission meeting tentatively scheduled for May 7, 2009.

ORDINANCE NO. 1979

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF DERBY, KANSAS, BY ADDITION THERETO OF A NEW SECTION 410A, CREATING A NEW BUSINESS DISTRICT DESIGNATED "B-2A-410A-BUCKNER BUSINESS DISTRICT"; AMENDING SECTIONS 304, 500, 501, 602 AND 706 OF SUCH ZONING ORDINANCE; AND REPEALING SUCH PORTIONS OF ORIGINAL SECTIONS 304, 500, 501, 602 AND 706 OF SAID ZONING ORDINANCE AS ARE AMENDED HEREBY.

DISCUSSION:

Council Member Meidinger asked for an explanation of the proposed parking issue on Buckner.

Mr. Newberry advised the parking on the east side of the street will remain on street parking.

Council Member Meidinger clarified this is with two lanes of traffic, two lanes going north and two lanes going south.

Mr. Newberry stated he thinks there is one lane going north, one going south and a center left turn lane all the way through.

Council Member Meidinger asked if the street is going to be three lanes.

Mr. Newberry explained there will be two traffic lanes and one turn lane.

Ms. Sexton further explained there will be one lane of traffic going each way, one chicken lane in the middle for left turns and one parallel parking lane on the east side.

Council Member Meidinger asked if this zoning applied just to the east side of Buckner.

Mr. Newberry advised it applies to all of those on the east side and 6 or 7 lots on the north end on the west side that it applies to also.

Council Member Horyna asked if there was any indication from research or studies that businesses are wanting to come to Buckner Street, or any street in small town America in situations like this.

Mr. Newberry stated he has not had anyone specifically ask to locate in an area like that but he can say that he has worked with some people who were looking for a location for a small business that they currently run out of a rented building. They looked at several options in other parts of town and by the time they purchased a piece of property and got a building built they were looking at an investment they didn't think they could justify. We feel like that this will

offer that type of person an opportunity to get into an existing structure so they don't have to look at the cost of building something new. Probably some remodel costs but could probably get into something over there for a considerable amount less than some of the new areas.

Council Member Horyna asked if we had any kind of forecasted idea of when this whole area could be redeveloped to just business, to the zoning that is being proposed today, or is that the idea?

Mr. Newberry advised we haven't really done any of that type of research. He knows that the consultant we hired to give us a recommendation felt like it would be a lengthy process before all of those properties along there might be converted to commercial, perhaps years. We don't expect it to happen overnight. Some of the folks we visited with last week had the opinion that once the conversion got started it could go quicker than we anticipated.

Ms. Sexton agreed that it will take years. There are some current property owners who have expressed to us at city hall who are eager to sell or redevelop and some are eager to stay in their home and live there until they don't want to live there anymore. When we say years we are talking decades, in terms of it being 100% business. It will be 20-30 years. People can stay in the homes they have and keep living there in a residential usage. If you are a property owner and rent out your house for residential, you can keep doing that. She thinks some of them will look at renting for commercial. Bud gave a great example of one business but there are certainly more than one who look for space and can't afford to pay the rent for the new areas of town and don't want to build. There is a market for this type of thing and it's not because they are looking to be in a residential area, it's because it is on a main traffic way and in partial commercial/partial residential area that has a lot of traffic. Houses don't like a lot of traffic on their street but businesses do.

Council Member Warren stated he thinks this is the right way to go. It could take years; the best example would be to look at parts of Wichita that have done this around Lincoln and Hillside. This was originally a residential area but as the city grew and the street widened, residential homes have been converted to doctor's offices, dentist's offices, insurance offices, etc. The reason he has been in favor of this is that it gives the residents and owners in that area an opportunity they wouldn't have without going to this zoning. They would be regulated to residential property on a very busy street and in all likelihood would see values drop. He can't guarantee that values will go up but at least it's an opportunity that they might be able to get more money selling it in a business situation like this than they would get otherwise. The traffic is already there and we have to widen the street. If we can give them an option it is something we need to afford to them.

MOTION: Warren moved to approve an ordinance to amend the Derby Zoning Ordinance by adding new Section 410A and amending Sections 304, 500, 501, 602, and 706, as submitted. Staats seconded.

Council Member Craig stated he thinks the title is misleading. The only thing we are doing is amending zoning ordinance to add B-2A. It may be appropriate to do that later on but that doesn't exist right now.

Mr. Newberry advised they really struggled over a name for this district. We ended up with this one because it seemed the most appropriate.

Council Member Craig advised it is actually a new zoning designation, B-2A, that's what we are approving tonight.

Ms. Sexton explained it is called the Buckner Business District in the ordinance. Every zoning district we have has a number and a name.

Council Member Craig indicated we still have numerous steps to go to make that happen. As Mr. Warren said, there are other things to happen.

VOTE: Motion carried 8-0.

**BIDS FOR SANITARY
SEWER
IMPROVEMENTS TO
SERVE STONE CREEK
COMMERCIAL 4TH
ADDITION & DERBY
CORPORATE PARK
ADDITION**

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

Background:

- A bid letting for the construction of Sanitary Sewer Improvements for Stone Creek Commercial 4th Addition and Derby Corporate Park Addition was conducted on Tuesday, March 10, 2009 at 2:00 P.M. An invitation for bids was disseminated to qualified contractors. The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
Dondlinger Construction	\$203,486.50
Duling Construction	174,518.00
Nowak Construction	171,168.00
Mies Construction	147,144.00
McCullough Excavation	145,750.00
Utility Contractors	138,881.00
Engineer's Estimate*	\$220,230.00

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

Financial/Sustainability Considerations:

- The contract costs will be split between the two project resolutions shown below.
- Stone Creek Commercial 4th Addition – Resolution 48-2008:
 - Costs for the improvements will be paid 77.67% (\$28,321.59) by the benefit district and 22.33% (\$8,142.41) by the City-at-large.
 - Special assessments will be spread against the benefit district properties over a 15-year period.
 - Funds for this project will be included in the 2009-1 temporary note issue.

- Derby Corporate Park Addition – Resolution 58-2008:
 - Costs for the improvements (\$102,417.00) will be paid by the City in cash from the CIP Reserve Fund.
 - The approved CIP contains \$609,000 for the water and sewer mains to serve the Derby Corporate Park. \$235,000 of that amount was budgeted for the sewer portion, so this is substantially below the approved budget.

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:

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

MOTION: Arnold moved to accept the bid of \$138,881 and authorize execution of a contract with Utility Contractors for construction of Sanitary Sewer Improvements to serve Stone Creek Commercial 4th Addition and Derby Corporation Park Addition. Bannon seconded.

VOTE: Motion carried 8-0.

**PETITION AND
RESOLUTION FOR
JAMES STREET
IMPROVEMENTS**

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

Background:

- A petition and resolution for constructing James Street between Beau Jardin Street and High Park Road were approved by the City Council in 2001 in conjunction with the plat approval of Spring Ridge Addition.
- At that time, Bel Arbor Addition was also contemplated to be platted adjacent to James Street and was included in the benefit district.
- The original developers of Bel Arbor Addition sold off that portion of their property adjacent to James Street to another developer which was developed as Timberleaf 2nd Addition (a/k/a Ashborough). The only remaining portion of Bel Arbor is located just north of Madison and is now not considered to benefit from the James Street project.
- Accordingly, a new petition is required and has been prepared with updated costs and the appropriate benefit district. As an adjacent land owner, the City of Derby (High Park) is required to sign the subject petition.

Financial Considerations:

- The total project cost is estimated at \$762,000. The City's share due to oversizing the collector street and due to being one of the adjacent property owners is estimated to be \$278,519.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The petition is valid and has been submitted in accordance with article 12-6a of the Kansas Statutes Annotated.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.
- This project will provide a key access to High Park from Rock Road and is in accordance with the Major Thoroughfare Plan in the City's Comprehensive Plan.

RESOLUTION NO. 17-2009

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF A CERTAIN INTERNAL IMPROVEMENT IN THE CITY OF DERBY, KANSAS, AND SETTING FORTH THE GENERAL NATURE OF THE IMPROVEMENT, THE ESTIMATED OR PROBABLE COSTS THEREOF, THE EXTENT OF THE IMPROVEMENT DISTRICT TO BE ASSESSED FOR THE COSTS THEREOF, THE METHOD OF ASSESSMENT, AND THE APPORTIONMENT OF THE COSTS BETWEEN THE IMPROVEMENT DISTRICT AND THE CITY AT LARGE; AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENT IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY (STREET AND DRAINAGE IMPROVEMENTS, PHASE 3/SPRING RIDGE ADDITION); AND REPEALING RESOLUTION NO. 81-2000.

DISCUSSION:

Council Member Meidinger stated it looks like there is a house right in the path of this street.

Mr. Brown advised that at the end of James Street today, at the intersection of Beau Jardin, immediately past that intersection it will curve slightly to the north, through the hedgerow to the school property. When the city exchanged the property at High Park with the school district years ago the northern 125 feet of that property is dedicated for streets. At that point the street will swing back into the school property and on eastward to hook into the roundabout.

Council Member Meidinger clarified we are going to make a big curve and go north through the hedgerow and swing back. His point is if the city is going to pay nearly \$300,000 for this, we should be able to get a straight street, for public safety. He can see fire trucks or other vehicles going out there and maneuvering through this area. He is disappointed in the planning of that major street going to High Park that there are so many curves in it.

Mr. Brown explained that the street as we build it will be in right of way that has already been dedicated years ago so that is the route that it will have to go. There are two philosophies on that, straight shot on a very busy street tends to increase speed and there are a lot of studies and research done that curves actually do well in slowing traffic down. It's not based on the old rectangle grid that city's were platted in years ago. The curves will be fairly gentle so there won't be an obstruction to any of the emergency vehicles.

MOTION: Bannon moved to approve the petition and resolution for constructing James Street between Beau Jardin Street and High Park Drive and authorize the Mayor to sign said petition as a property owner within the prescribed benefit district. Nun seconded.

VOTE: Motion carried 8-0.

The council recessed at 8:14 and returned at 8:25 p.m.

ORDINANCE REGULATING COLLECTION AND TRANSPORTATION OF SOLID WASTE

Kathy Sexton, City Manager presented the staff report. She indicated there is a revised version that was provided this evening.

Background:

- Collection and transportation of solid waste in Derby are currently performed by four private contractors.
 - While a permit is required of these contractors, the City does not exercise significant control over services provided or fees charged to customers.
- In establishing its policy priorities, the Council directed staff to examine alternatives to the status quo.
 - After reviewing practices throughout the country, the City solicited proposals for residential refuse and recyclables collection and transportation services.
 - Four proposals were received by the March 17 submission deadline. Proposals are under review by staff and the Recycling/Trash Advisory Board.
- The proposed ordinance would position the City to execute one or more contracts to authorize collection and transportation of solid waste by private firms.
 - The ordinance would be effective July 1, 2009, to coincide with anticipated commencement of contractual service by one or more firms thereafter.
- Concerns expressed by Council members at the February 24 meeting were addressed in this revised version of the proposed ordinance as follows:
 - In section 5.28.020, subsection B – Clarification was added to ensure that the ordinance does not apply to lawn maintenance or landscaping service providers that are collecting, transporting, or disposing of grass cuttings, leaves, or other lawn waste.
 - In section 5.28.090, subsection A.2.a. – Carts shall be put out to the curb no earlier than 2:00 p.m. on the day preceding the collection day (was 5:00 p.m.) and shall

be removed no later than 9:00 a.m. on the day following collection day (was 8:00 p.m. on collection day) to accommodate the needs of shift workers.

- Many provisions of Article I and III of the proposed ordinance are already in the City Code but have been reorganized for clarity and ease of use. Article II contains mostly new language.
- Other issues raised by Council members, including leaf bags, extra bags, and price controls/rates will be addressed in the contract and in future resolutions to be presented to the Council for consideration.

Financial/Sustainability Considerations:

- The proposed ordinance would not entail any direct costs to the City. Indirect costs include staff time associated with development of the Request for Proposals, staffing the Advisory Board, public communications about the transition to a new system and the ongoing implementation of a curbside recycling program, and development and administration of the contract.
- Residential refuse collection and transportation would continue to be performed by one or more private firms—albeit under contract with the City—with the cost of the service paid by customers.
- The contractor(s) selected would pay a franchise fee, anticipated to be 5% of gross revenues, to the City, although the fee has yet to be set by the Council.
 - Such fee revenues would offset the cost to the City for developing and maintaining the program.
 - Franchise fee revenue would be available for use as determined by the Council during the annual budget process.
- Commercial and industrial refuse collection and transportation would continue to be performed by private firms under existing regulations.

Legal Considerations:

- State law (K.S.A. 12-2101 et seq.) authorizes the City to undertake solid waste collection and transportation, either directly or through a contractor.
- This ordinance amends Chapter 5.28 and repeals Chapter 8.12 of the City Code to eliminate inconsistencies with the proposed ordinance. Several sections of Chapter 8.08 of the City Code would be relocated to Chapter 5.28.
- If the Council adopts the proposed ordinance, either as presented or as amended, staff will continue the process of selecting a contractor and negotiating a contract for services. Such contract is expected to come before the Council probably in May for approval.
- Following that, additional updates to the City Code may be in order, depending on the terms agreed upon in the contract.

Policy Considerations:

- Most U.S. communities (54%) have franchised or contracted private trash collection, and many (46%) have public collection (city-owned trucks & city staff).
- Private collection and transportation of solid waste has been the general rule in Kansas for many years. The dearth of local regulation has some unwelcome consequences:
 - Wide variation in fees charged for waste collection service.

- Excessive wear and tear on residential streets used by collection trucks representing multiple contractors.
- Absence of a uniform or widely used recycling program.
- Inability of local government to address complaints about quality of service.
- Such concerns have led many communities nationwide to consider direct involvement in the industry to reduce wear and tear on infrastructure, standardize service, and offer new services such as recycling programs. Many communities nationwide are already addressing such problems by securing one or more franchised firms to perform solid waste collection and recycling services.
- In our area, Hutchinson is the largest such community. It has had a firm under contract for about 6 years and receives a 5% franchise fee.
- Municipal or franchised refuse and recyclables collection typically is designed to provide uniform services throughout the jurisdiction, usually at prices comparable with unregulated firms.
- Some neighborhoods in Derby that have organized Homeowners Associations negotiate with local haulers for mini-franchises, which require a certain percentage of households to use one hauler.
 - A survey of Derby Homeowners Associations in August 2008 revealed the following quarterly prices in various neighborhoods: \$36.30, \$37.50, \$40.84, \$45.67, \$45.92, and \$57.98.
 - Residents NOT living in a Homeowners Association have reported a range of quarterly prices including \$57, \$65, and \$82.
- Examples of local cities that recently franchised recycling and/or trash collection:
 - Park City contracted with Stutzman for curbside recycling (CSR). Stutzman offered residents a discounted rate on trash service. Customers that switched from Waste Connections to Stutzman for trash service saw their trash bill drop from \$28/month to \$11.30/month.
 - Cheney contracted with Lies for trash and CSR collection beginning January 1, 2008. Residents are charged \$16.00/month for trash and CSR. Before the franchise, Lies was charging \$20.00/month for these services. The Cheney City Clerk reported that Waste Management was charging \$28/month for trash service without CSR.

ORDINANCE NO. 1980

AN ORDINANCE AMENDING CHAPTER 5.28 OF THE DERBY MUNICIPAL CODE, REGULATING COLLECTION AND TRANSPORTATION OF SOLID WASTE; PROHIBITING COMMERCIAL COLLECTION OR TRANSPORTATION OF RESIDENTIAL REFUSE AND RECYCLABLES EXCEPT PURSUANT TO A CONTRACT WITH THE CITY OR WHEN OTHERWISE PERMITTED HEREUNDER; ESTABLISHING PENALTIES FOR VIOLATION OF SUCH CHAPTER; AMENDING SECTION 8.04.010 OF THE DERBY MUNICIPAL CODE; AND REPEALING ORIGINAL CHAPTERS 5.28 AND 8.12 AND ORIGINAL SECTIONS 8.08.010, 8.08.020, 8.08.060, AND 8.08.200 OF THE DERBY MUNICIPAL CODE.

DISCUSSION:

Council Member Horyna thanked the trash advisory board and city staff for their hard work. This is a very trivial issue for some people and it's a very good issue. He has spoken with a lot of people and for the most part the consensus he is getting is over 30 people saying no and just a handful saying yes they want it. He is assuming those that do want this probably aren't calling because we are still just looking into this and are in favor of that so there is no need to call. He is not completely sold on the issue all together. We definitely need to do something, as history has shown us, especially here in Sedgwick County, we don't have much room for trash and solid waste. We have already had to close a landfill and we were sending trash to Topeka then Oklahoma for awhile and now we are sending it to Plum Thicket. If we don't start doing something with our solid waste, implementing some sort of recycling program we are going to have to send it somewhere else and it will just get more costly. If franchising the trash service is going to help that it is definitely a direction we need to look at. He wants to let everyone know he is not firmly sold on this until he sees the proposals and if they meet our expectations. He wants to see more literature and more data that will help support this cause.

Council Member Warren is still committed to the aspect of recycling, for many of the reasons that Mr. Horyna just stated. Our landfills are filling up and we have to do a better job from that standpoint. At the last meeting he floated the balloon of multiple franchising and didn't hear much out of that so he assumes that balloon has fallen to the ground and is probably going to be a reason for him to take a hard look at this before he makes his final decision. On page 7, Section 5.28.110 says "each contractor" and on the next page at the top it says "the collector", at the top of page 10 is says "any collector". In some places we have wording that would indicate may be there is more than one and other places wording is that we are restricting ourselves to one. One question he has is does this specifically state that we are restricting ourselves to one or do we still have the option that we can go with multiple?

Ms. Sexton advised we can go with multiple. That decision has not been made. The intent of the ordinance is to allow multiple.

Council Member Warren clarified that the requirements would apply to everybody and we would have the right to go with multiple franchises and people would have the right to choose who they want.

Ms. Sexton indicated that was not necessarily the case.

Council Member Warren understands that's not the case but at least that door is still open at this point.

Ms. Sexton advised that was correct.

Council Member Bannon advised the time has come to do this. If we weren't serious about it we shouldn't have gotten down to the RFP. There were a lot of meetings that took place, a lot of discussion before that. Passing this tonight does not lock us in to any particular agreement yet. We need a lot of information, she wants to see the spreadsheet, the advisory board has a lot of work to do in looking at the different responses that they got to decide the finality of how it's

going to be done. It's time to do this; we went over all of the reasons before. As far as the city running the utility, we currently have two utilities that are not profitable and she doesn't think anyone up here is under the understanding that we are ever going to have another one. She can understand why the verbiage would need to be in here in case we ever had to do something on the city level. This needs to be passed this evening. She is not here to say it will be the most fair for everybody; we are going to do our best as we do in whatever we do up here. It's not always one of those easy decisions but that is not why we paid our ten bucks to have a throw in a seat up here.

MOTION: Bannon moved to adopt an ordinance regulating collection and transportation of solid waste. Meidinger seconded.

Council Member Staats asked about page 4, Section 5.28.050, Sections A & B, it doesn't mention anywhere that you can move your own recyclables. Some people still might want to take recyclables to a charity. On page 5, Section 5.28.090, Section A3, he thinks we need some verbiage to allow placement behind a fence. If we tie ourselves in too tight on some of these things we will have people complaining that their neighbor's trash can is sitting out. On page 6, it addresses roll-out service, are we going to have try outs in city hall to see if someone can or can't receive roll-out service? It seems kind of subjective.

Ms. Sexton explained it won't be as subjective as it seems right now. This is kind of placeholder language because what we've seen in other communities is they actually have a form and if the person wants the service for free they fill it out. We don't have that form written yet but basically it would be a part of the contract with providers that it would be clear who has the form, where you go to get it and how do you sign it. It will say something to the affect of; I'm over 75 and unable to do this and there is no one else in the household to do it for me. She does not anticipate people needing to prove a lot of things but she can see what Mr. Staats means, it sounds more subjective than it probably is.

Council Member Staats pointed out the cart location requirement for the roll-out service. Every house is not set up the same and wants some clarification so we don't have to keep coming back to this and changing it.

Council Member Craig pointed out the RFP front page indicates the city intends to select a single hauler, but the bottom states the city reserves the right to contract with multiple respondents to serve defined areas of the city. That establishes the basis so that the people that are putting proposals in know that we have one item in mind but we may seek other options if that is the best interest of the city.

Ms. Sexton agreed. When we put out the RFP it is very important for each business to understand and interpret the intent the same. You get yourself in trouble if you ask for one thing and then after you read the proposals you change your mind. You can do that but there has to be a process in making sure you are still comparing apples to apples, that each vendor has had the opportunity to say yes, that's still my price or no, if you've changed the rules here's my different price.

Council Member Craig wants the constituents and the folks here tonight to know an incredible amount of work has gone into this. Not only the RFP but an addendum to the RFP is quite extensive. He had one constituent express a concern because there are certain days of the month that he is never here and would need his trash picked up on days he is here. Some of those unique situations are going to occur and he is sure we will be able to handle those. As Mr. Horyna has said there is a lot of data that we need and he has asked the city manager that as the

advisory board reviews the proposals that he get a copy of those proposals and a spread sheet as Mrs. Bannon talked about. Although there has been a large percentage of folks that don't want this there comes a time in the council that they have to do what's best for the City of Derby as a whole, not individual people. There are some people that will disagree with the decisions made but he thinks we should go forward and explore where this is going to take us. We do not want the advisory board to feel that they don't have our support, you have everyone's support up here for the amount of work you have done. He called for the vote.

MOTION: Craig moved to call for the question. Meidinger seconded.

VOTE ON CALL FOR QUESTION: Motion carried 8-0.

VOTE ON MOTION: Motion carried 8-0.

CONSENT AGENDA

Community Oriented Policing Services Hiring Recovery Program Grant Application

Background:

- On February 17, staff was notified that grant funding will be available for newly-hired, full-time sworn officer positions under the Community Oriented Policing Services Hiring Recovery Program (CHRP).
- CHRP is a competitive grant program that provides funding directly to law enforcement agencies to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts.
- CHRP grants will provide 100% funding for approved entry-level salaries and benefits for 3 years (36 months) for newly-hired, full-time sworn officer positions.
- Together with the new police patrol officer position authorized in the 2009 Budget, these three positions will allow expansion of patrol shifts to reduce the population and geographic area assigned to each officer (by moving from three to four beats).
- Adding officers to the Patrol Division will expand the capacity for community policing and crime prevention.

Financial/Sustainability Considerations:

- At the conclusion of the three-year grant period, grantees must retain all sworn officer positions awarded under the CHRP grant.
- Increases in salaries and benefits will be the responsibility of the grantee during the grant period, as the grant covers only entry-level salaries and benefits.

Legal Considerations:

- The City of Derby is qualified to apply for, and accept federal grant money under the COPS program.

Recommendation:

- Authorize staff to submit application for CHRP grant funding of three (3) new, full-time police officer positions to enhance crime prevention and community policing capacity.

Request for Use of Street Rights-of-way

Background:

- The American Legion and the Veterans of Foreign Wars are requesting use of city street rights-of-way to conduct the annual Independence Day Parade on Saturday, July 4 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 "Land of the Free Because of the Brave".
- Derby Days, Inc. is requesting use of city street rights-of-way to conduct the annual Derby Days Parade on Friday, May 29 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 2008. This year's theme is "Viva Derby Days".

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.

Recommendation:

- Approve request of the American Legion and the Veterans of Foreign Wars to hold the annual Independence Day Parade on Saturday, July 4, and request of Derby Days, Inc. to hold the annual Derby Days Parade on Friday, May 29.

Resolution of Support – Application for Transportation Enhancement Funds (Phase 9 – Pedestrian & Bicycle Path)

Background:

- Kansas Department of Transportation is accepting applications for projects to be constructed with funding established by the American Recovery and Reinvestment Act (ARRA) of 2009.
- One provision of the ARRA provides for funding of bicycle and pedestrian improvements.
- A 10-foot bicycle and pedestrian path along the north side of James Street from the east boundary of Glen Hills Addition east to the north entrance of High Park would be heavily utilized by Derby High School students and others attending events at High Park.
- The Phase 9 Bicycle and Pedestrian Path is included in the City's approved CIP for construction in 2011.

Financial/Sustainability Considerations:

- Staff has estimated the construction cost for the project to be \$160,000. If the project is selected for ARRA funding, 100% of the construction cost will be reimbursed to the City.

- The City will be responsible for engineering costs to design the project. It is anticipated that the sidewalk will be designed and constructed in conjunction with the adjacent street resulting in minimal design costs.
- It is anticipated that KDOT will announce the Transportation Enhancement projects awarded as part of the American Recovery and Reinvestment Act in the spring of 2009.

Legal Considerations:

- The City is authorized to apply for, receive and administer federal and state aid for local improvements pursuant to Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-1662 *et seq.*

Policy Considerations:

- If the City is awarded funding for the project, separate Council action will be required.
- The City has a long history of partnering with KDOT and other state agencies to finance design and construct bicycle and pedestrian facilities.

Recommendation:

- Approve the Resolution of Support for a pedestrian/bicycle path along the north side of James Street extending the existing path from the east boundary of Glen Hills Addition east to the north entrance of High Park.

Financial Instruments for Buckner Avenue Improvements

Background:

- The adopted 2009 Budget and Capital Improvement Plan call for reconstruction and widening of Buckner Avenue from K-15 to Meadowlark Boulevard. The project has been designed by Ruggles & Bohm and will be bid in the very near future.
- The General Obligation Bond financing process requires adoption of an ordinance designating the street as a major trafficway, and a resolution providing for the improvement or re-improvement of that designated trafficway and providing the funding to accomplish the improvements.

Financial/Sustainability Considerations:

- The source of financing for this project will be General Obligation Bond Series 2009A, which is scheduled for issuance in August 2009.
- The cost to be borne by the City shall not exceed \$2,100,000 as provided in the resolution.

Legal Considerations:

- The City Council is authorized to adopt appropriate ordinances and resolutions designating and providing for the improvement of main trafficways within the City.

Recommendation:

- Approve an ordinance designating Buckner Avenue within the City of Derby as a main trafficway.
- Adopt a resolution authorizing the improvement of Buckner Avenue and providing for payment of the costs thereof.

Council Member Meidinger indicated he would like to discuss the manpower request for the police department.

MOTION: Meidinger moved to remove the Community Oriented Policing Services Hiring Recovery Program Grant Application from the consent agenda. Horyna seconded.

VOTE: Motion carried 8-0.

MOTION: Craig moved to approve the consent agenda as amended. Nun seconded

VOTE: Motion carried 8-0

DISCUSSION:

Council Member Meidinger advised that before we hire these police officers, he understands it's a grant and not all grants are free. Once the police officers are on the force there is a tendency to keep them on the force. What he would like to see is a manpower study of what we are going to do with these new officers and secondly, and probably more important, if we were to get the grant and the police officers he thinks there should be a three year contract. The officers would sign this with the full understanding that this is a 3-year job with no guarantee at the end. The reason he says this is because of the union. He doesn't want to get into a hassle with the union about letting police officers go at the end of three years.

Ms. Sexton clarified that Mr. Meidinger wanted to let the officers go after three years when they were no longer funded by the grant.

Council Member Meidinger advised that was correct.

Ms. Sexton explained that the feds won't give us the money unless we commit that this is an ongoing commitment. You have to commit that these are ongoing positions. We are not grant chasing to get officers for just a few years. This was presented with the understanding that as this city grows we do need to add patrol officers. With the tough budget expected in 2010 certainly the city isn't going to be able to add three officers all at once but when the feds come in and say they will pay for them for three years that's kind of a gift for three years and we could get them in here sooner than we otherwise would be able to do that.

Council Member Arnold stated that this position would not turn into a permanent circumstance; from a human resource point of view you would have no applicants. No one is going to accept a job for three years and start looking all over again, it would be a negative, it wouldn't work as far as getting quality prospects.

Council Member Staats agreed that we would have nobody apply for that position. In the law enforcement world it takes a year to 18 months to really train somebody to where they are up to speed. You would spend half of the time getting them trained and then kick them loose. A lot of these grants, they might be for a certain position but you might take a more experienced officer to fill, say a school resource officer position and the new hire takes their spot on the street.

MOTION: Staats moved to authorize staff to submit the application for the CHRP grant funding of three new full time police officer positions to enhance crime prevention and community policing capacity. Arnold seconded.

VOTE: Motion carried 8-0.

Mayor Avello announced that this will be George Arnolds last council meeting. He thanked Mr. Arnold for his years of service and for being a friend.

Council Member Arnold advised it has been an honor and a privilege for him to be on the council. It has been very eye opening and a learning experience and wouldn't have traded it for anything. He paid accolades to the finest city staff and manager that any councilman could work with. He also thanked the council.

ADJOURNMENT

MOTION: Craig moved to adjourn at 8:56 p.m. Nun seconded.

VOTE: Motion carried 8-0.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk