

**APPROVED
REGULAR COUNCIL MEETING
March 9, 2010
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig
Vaughn Nun, Heath Horyna
Chuck Warren, Cheryl Bannon
Tom Haynes, Mark Staats

COUNCIL MEMBERS ABSENT:

WARD I

Jim Meidinger

Flag salute was led by Council Member Staats. The invocation was led by Pastor Ben Ray, First Presbyterian Church.

CONSIDERATION OF MINUTES

Minutes of the February 23, 2010 Regular Council Meeting.

MOTION: Haynes moved to approve. Horyna seconded.

VOTE: Motion carried 7-0, Meidinger absent.

PUBLIC FORUM:

Becky Robinson, Derby Community Coalition Promoting Healthy Choices, gave an update for the high school After Prom. After Prom has become a tradition for the Derby High School youth, and the DCCPHC is proud to be sponsoring the event again this year. The event is being held at All Star Adventures on Webb Road in Wichita on Saturday, April 17th from 11:45 p.m. to 4:00 a.m. Attendance in previous years has ranged from around 330 up to around 470 students. The goal is to raise enough community support to offer a student price for a ticket of \$5.00. It is fun as an adult chaperone to watch these youth, who are almost adults themselves, have such a good time being a kid. For most of them this is one of the last times they will have this opportunity. Even though After Prom is a one night event, statistics show that the hours following Prom have a high incidence of teen participation in risk-related activities. Our goal is to provide a high quality event that the teens are excited to attend and to offer parents and guardians peace of mind for the students' safety. As you can tell by the 2nd page of the flier handed out, there are some pictures there with statistics from last year's event. It takes a lot to put this event on. Help us get the word out to the community. Thank you, Kristy, for putting the information on Channel 7. To help, pass the information along to local businesses and organizations, make a cash or prize donation yourself, help provide snacks for the youth attending, they eat a lot of snacks that night, help chaperone the event. We are in the process of gathering donations from area businesses, organizations and individuals. If you are interested in helping with the event please complete the donation form and mail it or fax it back to the Coalition. We appreciate any support or involvement you can offer.

Jerry Lucas, Chairman of Derby Independence Day Parade Committee, sponsored by the American Legion and the Veterans of Foreign Wars post. This year the 4th of July falls on Sunday. Because the parade route would interfere with churches in that neighborhood we are holding the parade on Saturday, July 3rd at 10:00 a.m. We will be assembling at 9:00 a.m. in the parking lot by the high school football field. This year our revenues are down. Normally the City donates \$500 towards the July 4th parade, he is asking this year for \$600. Costs have gone up; we use that money to purchase water to distribute along the parade route. Usually it's quite warm that time of year, even by 10:00 a.m. He has given to Ms. Sexton a package to forward to the Police Chief for his review and then review by the mayor and city council. It is the same parade route as last year. He would like to coordinate more with the City this year to get the parade participation application on the City website so people that want to participate can get the application there. He announced that the parade committee is open to anybody that wants to participate; it's not limited to American Legion and VFW members. If you want to be a part of a great day he will take all the help he can get.

Council Member Bannon asked what the council needs to do to approve that expenditure.

Council Member Haynes agrees, considering what these organizations provide for the community, it's not a large step in asking for an additional \$100 to support our parade. He encouraged the citizens to get involved in the parade.

Council Member Horyna advised that spring is upon us. Any do-it-yourselfers, who have projects on their list that may or may not require permits from the City, do yourself a favor and call. Find out if a permit is required. That way you know you are square with the City and you know your project is done right. Every major project he has done at his house he has pulled a permit on and had it inspected and he has learned a lot of things through the process. Make sure you call the City if you are doing a major project.

Council Member Craig stated he received a letter in the mail but it did not have a name on it. He requested that person please call so he can respond to the suggestion.

Kathy Sexton, City Manager, advised she provided a memo to the council with a marked-up clean indoor air ordinance that was passed a couple of years ago. It was marked up by Mr. Alexander as compared to the bill that the legislature passed a week ago that has the clean indoor air law for the whole state. He compared it to the ordinance we have on the books here in Derby. This is our first draft indicating the things we think we have to change plus a little clean-up language so things make sense. There are a couple of areas where we are a little stricter than the state law so we have not altered those. That would be a policy decision if you want to make it since we are opening up the issue. At this point we have just made the changes that we are required to by state law. The biggest one is essentially that as a business owner you could name your main entrances and you could not have smoking within 20 feet of any main entrance. Most businesses pick one main entrance and that is the door that most people come in. Most businesses only have one but some places have more than one door that people come in. A lot of businesses have an employee entrance and some of our restaurants, clubs and bars have a patio with one or more patio doors. With our ordinance, because of the difficulties of that, we said as long as you are smoking 20 feet away from the main entrance, people can come and go in the

main entrance without having to walk through smoke. If you have a smoking patio area you have to have it so far away from the door or there is no smoking on the patio. We allowed smoking on the patios, even one foot from the door but the new state law provides for no smoking 10 feet from any doorway. That draft includes that but does keep the main entrance at 20 feet. We have staff going out to all the bars and restaurants with patios and measuring with a tape measure to help them understand what the new law says and figuring out if that's going to work for them or if they are going to change the patio around or if they are just going to make it no smoking. We will learn a little bit about this the next week or so from our businesses. The version you see come back to you at the next council meeting may be a little different. If we learn something from business owners that might help them we are open to that. There are things in the bill that don't really affect us, in terms of exemption for 20% of hotel rooms. You hashed through that 2 years ago, deciding that anyone who builds hotels these days generally doesn't make smoking rooms anyway. A lot of places that used to have smoking rooms have gone away from that because if you have non-smokers they hate staying in the smoking rooms. If you let a room be smoking it gets absorbed in the drapes and bedding and you can't get it out of the room. If you see anything in there that needs to be changed or debated we appreciate a heads up, otherwise we are just waiting for the Governor to sign it. We certainly don't want to bring it to the council until the Governor actually signs the bill and it will be effective July 1st. We will bring it to you sooner rather than later so we can change our brochure, website and forms and communicate as much as we can to meet the intent of the state law. As announced Monday, March 15th there will be an Inter-Governmental meeting with the council, school board and DRC board. There will be an Oaklawn Activity Center update at that meeting as well as some discussion about cooperation efforts between the three units of government. The school district will talk about the process for success and they have requested also to talk about the historical museum. They will take the lead on that, it's one for us to listen to and see what they have in their heads. They own the building that the volunteer, nonprofit based museum is in and they just want to have some conversation about that. There will also be a community marketing update; since that is a joint effort it's probably going to be a standing agenda item at all the Inter-Governmental meetings. As we speak, our friends at Rural Water District #3 Board are having their meeting in Mulvane. We've worked with them a little bit lately to try and start conversations about some of the growth of the City of Derby and there are a lot folks who are in the City now who are still on rural water and how you have pipes crossing over pipes. It creates some inefficiencies and is something that public utilities need to resolve. This evening that board will see a first draft of a map where our staff, Charlie Brown and Dan Payne worked with Frank Parker from the Rural Water District to make a map that shows Derby pipes, Rural Water District pipes and meters, trying to get a sense of where they overlap. Setting the stage for future conversations about making sure our provision of the water utility is not inefficient, it is the best it can be for the rate payers and not duplicating or overlapping services. We will probably address it for the first time at the council retreat coming up in April. That board doesn't meet as often as we do here so we wanted to give them a first stab at that.

Council Member Craig indicated that on that subject, this effort deconflicts a lot of things as far as services go, especially the water service. It was over a year ago that we attended a meeting that had to do with city water and rural water districts coming together to reach a conjoined agreement and sometimes that becomes very difficult. He thanked staff for the smoking ordinance information. When that came out in the paper he received more questions

than he had in the last month or so. This will clarify those questions. As this changes could you send us updates through email? People are asking about this specifically. Our ordinance is pretty much in sync with the state ruling, which is going to become law. We did the right thing.

Ms. Sexton stated she received a call from a mayor from a city in southeast Kansas a couple of weeks ago. It's not an isolated case, there are a number of cities that are using and looking at our ordinance. We started with the City of Lawrence's ordinance but we made some modifications to that. You learn some things over time; we talked to a lot of different cities. Derby is considered one of the best ordinances in the state being used because of some of the language being cleaned up and starting with a good model of Lawrence. There are concessions made in different cities based on different things but the implementation has gone very well. We have had very few conflicts or issues. Now we will just have to go through a few more changes. Mostly the changes will affect our eating and dining establishments with patios.

PUBLIC HEARING & ORDINANCE LEVYING SPECIAL ASSESSMENTS

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

Background:

- At the February 9th Council meeting, the assessment roll was approved, calling for specific special assessment amounts to be spread against properties in several subdivisions in the City.
 - The Public Hearing presents the opportunity for affected property owners to appear before the Council to clarify any uncertainties regarding the assessments.
 - All affected property owners have been notified by mail as to the nature and amounts of the assessments, as per state law.
- The project costs to be assessed consist of infrastructure improvements in the Derby Medical Campus Addition, Hamilton Estates, The Oaks Addition, Stone Creek Commercial 4th Addition and Derby Corporate Park.
- The property owners will have until noon on April 12th to pay the assessment in full with no interest and eliminate the need for the specials to go on the tax roll. If property owners choose not to pay the assessment prior to the pay-in deadline, the special assessments will appear on the tax statements mailed to property owners by the County in November 2010 and will be due in tax year 2010 (½ due on or before December 20, 2010; ½ due on or before May 10, 2011).
- The source of permanent financing for these projects, General Obligation Bond Issue 2010 A, is scheduled to close June 1, 2010.

Financial/Sustainability Considerations:

- Total project costs to be assessed in the 2010-A Bond issue are \$3,020,000.
- In addition to the special assessment projects, this bond issue will include financing for the library which was financed with two series of temporary notes.
 - The library is now complete, and the notes will be retired with the proceeds of these bonds.
 - The original repayment schedule of the library bonds was projected over eight years.

Legal Considerations:

- The legal work for this process is being performed by the City’s bond counsel, Joe L. Norton of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which, ultimately, governs the special assessment process.
- The job of calculating the final costs, notifying and mailing notices to property owners and spreading of specials is a combined effort of City staff and the City’s Financial Advisor, Greg Vahrenberg of Piper Jaffrey Company and Charley Young of the Public Finance Group.

Policy Considerations:

- The various steps taken to complete the process of permanent financing of these projects are in compliance with existing city policy and state statutes.

ORDINANCE NO. 2010

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF DERBY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NOS. 13-2008, 14-2008, 15-2008, 16-2008, 17-2008, 68-2008, 69-2008, 70-2008, 71-2007, 46-2008, 48-2008, 49-2008, 39-2008, AND 60-2008; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.

Council Member Craig asked what the special assessment amount will change to when we roll in the library.

Ms. Epperson advised the library is about \$7 million. The temp notes are already out there and when we did our calculations in the past of our debt capacity they are already in there.

Council Member Craig advised it would be somewhere around \$10 million.

Mrs. Epperson agreed.

Mayor Avello opened the public hearing at 6:59 p.m. With no one present to speak he closed the public hearing.

MOTION: Haynes moved to approve an Ordinance levying special assessments on certain property to pay the costs of internal improvements as authorized by the resolutions noted in the ordinance and providing for collection of such special assessments. Horyna seconded.

VOTE: Motion carried 7-0, Meidinger absent.

FUND RESERVE POLICY

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

Background:

- Fund reserve policies provide structure and financial flexibility while reducing financial risk to an organization.
- The proposed policy was developed to ensure that adequate reserves exist to fund operations by providing sufficient working capital and to achieve financial flexibility in the event of unforeseen shortfalls from revenue sources.
- The policy was developed from reviews of policies of other Kansas cities comparable in population and larger, along with Sedgwick County. In addition, input was sought from the city's financial advisor Greg Vahrenberg of Piper Jaffray & Co. and bond counsel Joe L. Norton of Gilmore and Bell.
- The Government Finance Officer's Association (GFOA) recommends cities maintain a fund balance of no less than 5 percent to 15 percent of revenues, or one to two months of operating expenditures. Credit rating agencies also favor policies that designate one to two months of operating expenditures for reserve, which is the basis for the recommended policy.
- The proposed policy sets targets for the carry-forward reserve amount for each major budgeted fund. Each is as follows with some explanation of how the policy compares to our current financial situation:
 - General Fund – minimum reserve of 15%. Year end 2009 fund balance of \$5.7 million was 40% of actual expenditures. This level is high due to approximately \$1.2 million of approved CIP projects that were scheduled for 2009 and have been moved to 2010. If those projects had been paid for in 2009, the fund balance at year end would have been 29% of actual expenditures, which is a healthy balance.
 - Bond & Interest Fund – minimum reserve of 10% of actual expenditures. Year end 2009 fund balance was 9% of expenditures, so the levy for this fund will need to be increased in the 2011 budget to comply with the 10% target.
 - Special assessment revenue in the 2010 budget is the largest revenue source for the fund. The reserve target is equal to 20% of the special assessment revenue, which provides a conservative reserve.
 - The second largest revenue source for this fund is ad valorem taxes, which are relatively stable compared to the diverse revenue streams of the general fund. So, the overall reserve requirement is lower than the general fund requirement of 15%.
 - Wastewater debt service for which an inter-fund transfer occurs is not included in the expenditure calculation since it will be reflected in the Wastewater fund expenditures calculation.
 - Wastewater Fund – minimum reserve of 15%. Fund balance at year end 2009 was 46% of actual expenditures. This level is high due to anticipated debt service payments in 2010.
 - Water Fund – minimum reserve of 15% in the surplus account. The surplus account cash carryover at year end 2009 was \$1.4 million, and only \$4,000 was expended for the year, so the percentage is distorted but greatly exceeds 15%. The need for a minimum reserve of 15% is to cover payroll costs that will occur prior to reimbursement from El Paso Water.
 - Library Fund – minimum reserve of 5% of budgeted wages. Fund balance at year end 2009 was 5% of expenditures for wages. The percentage is based on one

payroll that will be paid prior to the receipt of ad valorem tax revenue in the following year.

- Library Employee Benefits Fund – minimum reserve of 5%. Fund balance at year end 2009 was 7% of total fund expenditures.
- Library Sales Tax Revenue Fund – minimum reserve of 15% of operational expenditures. There were no operational expenditures or revenues in this fund in 2009, so a comparison to the recommended ratio cannot be made.
- Aquatic Park Sales Tax Revenue Fund – minimum reserve equivalent to amount to be paid to the contract manager for the next year. The reserve contained \$1.5 million at year end 2009, and the management fee for 2010 is \$92,889, so it is substantially covered.

Financial/Sustainability Considerations:

- The policy will have no immediate financial effect, and over the long term may favorably affect ratings and improve the fiscal health of the City, which ultimately results in savings to the taxpayers of Derby.

Legal Considerations:

- The Council is empowered to set such policy through a resolution.

Policy Considerations:

- The objective of the policy is to establish responsible reserve limits on City funds to maintain the strong financial standing of the City.

RESOLUTION NO. 03-2010

A RESOLUTION ESTABLISHING A POLICY FOR FUND RESERVES CITY OF DERBY, KANSAS.

DISCUSSION:

Council Member Warren stated that even though we have not had a policy in the past on reserves we have always known we have to have reserves. From a practical standpoint how will adopting this policy change the way we do things going into the future.

Mrs. Epperson advised in practice it won't change anything. In the general fund, at least in the last ten years she has been here, we have set aside funds when we put together the budget for the following year's carryover. In 2001 there was a recommendation from rating agencies to raise that carryover up to 15%, and we did that. In fact, we received an upgrade in our rating a year or so ago. The way things stand right now there would be no negative impact, if anything it would be a positive impact because this is something that the rating agencies like to see. Is she going to say we will get an upgrade? No. It will make Ms. Sexton's job a lot easier when we talk to the rating agencies.

Council Member Warren stated we have been carrying reserves so it won't make a big change in terms of what we are doing; we just delineated in our policy what we have been doing in the past. We put it into a written policy so it's easy to understand and probably take some of the flexibility away that we may have had in the past even though we haven't used it. Is that a pretty fair assessment of what is going on here?

Mrs. Epperson agreed.

Ms. Sexton added that a policy like this is good for volunteer council members, that you understand what assumptions are being used by staff when they put a budget together. You understand that when Eddie and Jean are looking at each and every fund during the budget process, how do you know from one staff person to the next, the person before Eddie and the person after Eddie and the person after Jean. How do you know if they are handling things consistently? It's good for you as representatives of the tax payers to know there is a policy in place and if ever, on any of these items we deviate that we come to the council to get approval to deviate from the policy as opposed to us deviating now and you wouldn't know it.

Council Member Bannon asked about "other funds." There is no mandatory reserve requirement on the CIP, do we not think we should go ahead and put one in? What was the rationale behind not putting one in?

Mrs. Epperson explained the rationale is that's not really an operating fund. It's a reserve fund.

Council Member Bannon asked if Rock River Rapids should have the \$50,000 start-up money added to the minimum reserve as well. She wouldn't necessarily want to change this policy tonight but in order to run a season you have to have the start up money and the money for the contract.

Mrs. Epperson advised, actually we could interpret it that way. The amount due the contract manager in the contract does talk about the \$50,000. In her mind she focused on the \$92,000.

Council Member Bannon asked about Item B under Section 10, part of this is targeted to where the reserves do not build and that during the budget process you notify the manager when it appears excess funds may be accumulated. She worries a little about that because she doesn't know that it's a bad time to accumulate a few excess funds. She doesn't believe that any city should spend down to the bare minimum because then you don't have those reserves to fall back on. Just because we have 15% set as our minimum, if we get 20% she won't be real anxious to go spend it just because we have it. That statement bothers her somewhat.

Mrs. Epperson explained the policy is to notify the city manager and she would deal with that information in her communication with the council.

Ms. Sexton advised this section of that policy is not stating a minimum or a mandatory; it is stating the role of the finance director is to make sure if this is happening that it's being reported and communicated. One of the things tax payers worry about is being overtaxed and the money being put in the bank. You don't really need the money because you aren't spending it, so how much are you going to carry over in reserve? Part of a reserve policy like this is both ways, make sure you have enough reserve, but also make sure you are not accumulating so much that you are overtaxing people. This does not set a policy mandate; it simply says to call it to the attention of the city manager. If the minimum is 15% and it's creeping up on 30% then we probably should have a discussion about if that is what we want or should we lower the mill levy rate for that fund.

MOTION: Bannon moved to adopt a resolution establishing a policy for fund reserves, as presented. Haynes seconded.

Council Member Craig asked when the reserves exceed the target, does that improve our position as far as our ratings go?

Ms. Sexton explained that the rating agencies look for certain things and sometimes that changes from one year to the next in terms of economic climate and in terms of other things they are seeing. Just because you have more reserves doesn't necessarily mean you are going to get a better rating. It probably won't hurt but they always ask us if we have a big number why we have that much. Sometimes if you tell them a plan and stick to the plan you get fewer questions as opposed to being better than the plan, or obviously worse than the plan. Sometimes being better than the plan causes some questions too.

Council Member Craig stated as the funds start to accrue that is a trigger that tells someone we need to make some type of adjustment because it's gaining too much. It's an additional plus and sometimes we don't need that additional plus we need that somewhere else.

Mrs. Epperson stated that you will see some cities that, as their dependence on sales tax grows, especially in the Kansas City area, they will let their reserves build in anticipation of the next fall because there are cycles where they actually spend down their reserves and they know they are going to do it. It has to do with the mixture of their revenue streams and the crystal ball as to what's going to happen in the economy.

Council Member Craig advised in ours we have some very large contributors to our stream that are pretty solid in their businesses. The risk is there but is not as high as it is in other places where you have thousands of small businesses that are vulnerable to an economic swing.

VOTE: Motion carried 7-0, Meidinger absent.

ANNUAL REPORT ON OPERATIONS OF DERBY MUNICIPAL COURT

Jim Wilson, Municipal Court Judge, presented the staff report.

Background:

- Derby Municipal Court continues to remain busy, although not as busy as in 2008. The number of cases filed and disposed of decreased from 2008 to 2009.

CASES FILED this PERIOD				CASES DISPOSED this PERIOD			
2008	2009	Change	%	2008	2009	Change	%
4,473	3,722	(751)	(16.79)	4,141	3,256	(885)	(21.37)

- Specific offense comparisons reflect this trend:

OFFENSES	2008	2009	Change	%
Reckless Driving	3	4	1	33
Driving Under the Influence	56	33	(23)	(41)
Fleeing a Police Office	2	0	(2)	(100)
Other Traffic Violations (excluding parking violations)	2,161	1,814	(347)	(16)

Crimes Against Persons (assault, battery, etc.)	126	127	1	(.80)
Crimes Against Property (theft, vandalism, etc.)	77	85	8	10
Cigarette and Tobacco Infractions issued to Minors	49	48	(1)	(2)
Other Crimes (public safety, public morals, etc.)	1,334	1,017	(317)	(2.5)
Failure to Appear/Bench Warrants	665	648	(17)	(2.5)

- A majority of cases resulted in guilty pleas in 2009.

	2008	2009	Change	%
Guilty Plea	2,998	2,353	(645)	(21.5)
Dismissals	1,031	733	(298)	(28.9)
Trials	7	7	0	0
Diversion	105	131	26	25

Community Service

- 2009 was the first full year the Community Service Program was in place. The purpose of the program is to offer an alternative to monetary payments for fines. Participants normally perform community services at the Police Department or for the Public Works Department.

Approved for community service	37
Completed hours	7
Continuing to work on hours	7
Dropped out	12
Paid	11

Financial/Sustainability Considerations:

- The 12% reduction in revenue is a result of a decrease in the number of citations and cases being filed in municipal court.

ANNUAL REVENUE	
2008	2009
\$665,538	\$587,902

Legal Considerations:

- The current contract with James Wilson was approved 3/10/09. Pursuant to Charter Ordinance 45, the municipal judge serves for an indefinite term, contingent upon competent and faithful service.

Policy Considerations:

- Changes in revenue are used as indicators of workload and effectiveness in processing cases. Raising revenue is not a primary objective of the court.

DISCUSSION:

Council Member Craig is an advocate of the community service program; it does well, especially when you hire people out of it. He asked who monitors that.

Judge Wilson advised Sgt. Alumbaugh from the Police Department monitors the program. If the program grows we will have to reevaluate it but right now its working. If it gets to the point that he says he can't handle it or it's bogging down and we can't have supervision we will just address the issue.

Council Member Craig indicated he was glad the transportation issue was discussed, he can understand that.

Judge Wilson explained that the bus system does not come to Derby. They can get to about 47th Street South and then they have to walk.

Council Member Craig thanked Mr. Wilson for his service. He has heard feedback about the court that it's well run and people are treated with respect.

Mayor Avello agreed. It has been a pleasure having Mr. Wilson on the bench and it's a pleasure watching what is going on.

Council Member Warren asked about the trends, one reason could be people are committing fewer crimes.

Judge Wilson added that the Police Department is getting more efficient and being visible, therefore that has a tendency to deter crime if they are more visible in the area. That may be part of it. Part of it could be that we have run off some of our perpetual people. We have had a few people that should have been "run off" before. They have skated too long and he had to "pull the trigger" on them and he thinks they left town.

Council Member Craig pointed out that even though the numbers are reduced, the break-out is about the same as far as percentages go.

Council Member Horyna pointed out that the number of those fleeing police officers was reduced from two to none. Why anyone would want to flee a police officer is beyond him.

MOTION: Horyna moved to receive and file the annual report. Craig seconded.
VOTE: Motion carried 7-0, Meidinger absent.

Ms. Sexton recognized our court administrator, Shelli Adams who does a great job in running the day-to-day business of the court. Many of you know court is in session with the judge one day a week, but Shelli and her staff are there every day and deal with a lot of the people, payments and questions and inquiries about things. They run a fine operation.

ORDINANCE ESTABLISHING EMERGENCY WRECKER SERVICE AND FEES

Doug Chambers, Deputy Police Chief presented the staff report.

Background:

- The Derby Police Department has been working to develop a better process to deal with impounded cars. Currently:
 - The Police Department manages its own impound facility located at the Wastewater Treatment Plant.
 - When a vehicle needs to be impounded, a tow service is called based on a rotation list. The Police Department is responsible to pay the initial tow fee. The tow fee and a one-time administrative fee of \$25 plus a \$5 per day storage fee are charged to the owner before the vehicle is released.

- For unclaimed vehicles, the police department is responsible for verification, notification, legal publication, and sale of these vehicles at a public auction. This disposal process is detailed in state statutes. Funds recovered from the public auction of impounded vehicles are used to reimburse the tow fees, and any remaining funds are used for street maintenance in accordance with Kansas law.
- The impound area is secured by fencing, but because of its remote location, vehicles are often vandalized. Personal property theft also occurs.
- Prior to the enactment of House Bill 2152 in 2009, the Police Department started revising its procedures to require tow companies to handle the storage, release and administrative tasks associated with impounds.
- When House Bill 2152 became effective, the Derby Police Department incorporated the bill's new requirements into the department's planning process:
 - The key elements of HB 2152 included in this proposed ordinance:
 - 1) Establish maximum wrecker fees.
 - 2) Require the vehicle owner to have access to personal property for 48 hours after the vehicle is towed pursuant to city ordinance.
 - 3) Require the wrecker service to allow medications and medical supplies to be released to the owner thereof at any time.
 - 4) Require the wrecker company to report the location of a towed vehicle to local law enforcement within two hours of towing.
- This proposed ordinance includes procedures for creating and maintaining a rotation list of towing businesses to be called and transfers responsibility for storage of impounded vehicles from the current City impound lot to lots operated by private towing companies.

Financial/Sustainability Considerations:

- Costs associated with towing and storage are the responsibility of the owner of the impounded vehicle.
- Approximately 84 transactions per year (\$11,340) are currently processed by the Police Department, most of which are later reimbursed. These transactions would no longer occur. An estimated \$2,100 - \$3,000 in revenue from impound and storage fees would no longer be collected.
- The City would no longer be responsible for collection or payment of tow fees, or the public auction process, which enables staff time to be used on other important police matters.

Legal Considerations:

- This ordinance complies with changes in Kansas law as required by House Bill 2152.
- Current city liability for storage and disposal of impounded vehicles is transferred to private companies.

Policy Considerations:

- Adoption of this ordinance will bring Derby city ordinance into compliance with applicable Kansas statutes and reduce city liability and risk involved with maintaining an impound storage area.

ORDINANCE NO. 2011

AN ORDINANCE ESTABLISHING EMERGENCY WRECKER SERVICE
QUALIFICATIONS, OPERATING REQUIREMENTS AND FEES FOR EMERGENCY
WRECKER SERVICES WHEN SUMMONED BY AN AUTHORIZED PUBLIC AGENCY.

DISCUSSION:

Council Member Haynes asked how long a vehicle has to be moved if tagged by a state trooper, and does that carry over to the City of Derby. If a Derby police officer tags a car on the side of the road or they try to get a hold of the owner, what is the time frame for the owner to remove the vehicle before the vehicle is towed?

Mr. Chambers stated that as long as it's not interfering with traffic or creating a hazard it would be 48 hours.

Council Member Haynes asked if that was standard for the state.

Mr. Chambers stated he does not know what the Highway Patrol policy would be. Typically they would go through their own dispatcher for a wrecker service.

Council Member Haynes read the definition of "wrecked" in the ordinance. He recommended that mechanical breakdown should not be defined as wrecked, that is a whole different category. He doesn't know that we would want to have an all encompassing definition like that. Wrecked does not mean mechanical breakdown. Right now the fees are pretty much standard, whatever the tow company charges.

Mr. Chambers advised they looked at what the practice has been in this area and used Wichita's ordinance very heavily because Wichita work comprises the majority of these tow companies' business. We didn't deviate very much from their list, and when we met with the tow companies they felt comfortable with that for the most part. There were two things we did address a little differently. The Wichita ordinance has a fuel surcharge in it that allows that charge to go up or down based on the cost of fuel. We elected not to include that in the ordinance just because it seemed like it would be a nightmare to manage that fairly. What we did do was increase the daily storage fee from \$20 to \$25 to compensate for that and make sure it was fair to the tow companies.

Council Member Haynes asked about mileage, \$3.50 per mile. If you tow a vehicle outside the City of Derby, you are going to be charged \$3.50 per mile on top of an \$85 charge for a standard vehicle, and we haven't even gotten to the lot fees yet. That's how it's written?

Mr. Chambers indicated that was consistent with Wichita and other cities in northeast Kansas. Some charged mileage, some didn't; but it is something that is consistent and is exactly what is in the Wichita ordinance.

Council Member Haynes asked if we have tow services or storage places within the city limits of Derby.

Mr. Chambers advised we did not.

Council Member Haynes indicated that seemed excessive to him. It seems like the individual's already going to be out money because his vehicle is either wrecked or broke down; to him \$3.50 a mile is a little excessive. That may be a standard charge but to him it seems excessive and the price goes up with the size of the vehicle. Mileage can turn in to more than the tow service to begin with. Regarding Section 10, Item F, \$15.00 lot fee: So you have a \$15 fee on top of the \$85 charge, on top of \$3.50 charge per mile. Item G, a one-time fee of \$12 may be charged for tarping a vehicle. If you have broken windows it is common courtesy or if the owner requests it then yes, but it seems like we are getting awful excessive with our towing rates. He is a working guy and if for some reason he has his vehicle towed he can run into \$300 - \$400 real quick. If it happens to be an off payday week, money's tight this month as it is with everybody and he can't get his vehicle and has to leave it there 4-5 more days until payday, that's 4-5 more days of charges. He has a hard time with all the additional costs. He understands business and the wrecker companies are in business to make money, but to put additional burden on someone who is already struggling he has to look at it from that point of view. He sees a lot of excess here. Are these standard costs and how do we justify them? He would like to see them lowered.

Mr. Chambers advised they are standard costs; they haven't put anything in there that is more expensive than what's being charged in the area. The other thing he would add is keep in mind these aren't for all tows, these only cover police impound for someone who has been notified to move a vehicle and 48 hours later it hasn't been moved or there is a situation where someone has been arrested and there is nothing else we can do with a vehicle other than tow it. That is where this would come in to play.

Haynes clarified that if a vehicle breaks down and you can't get to it for a few hours it won't be towed and you won't be out \$200 or \$300.

Mr. Chambers advised that would be a private arrangement between you and the tow company in that case.

Council Member Staats likes this policy; it's a long time coming. This is only for people who have committed a crime and he doesn't have a whole lot of sympathy for somebody whose car gets towed after they have committed a crime. Broken down on the side of the road, that happens, but the police don't pull up and tow it. There are 48 hours for you to get your car moved and that's ample time for anybody to get their car moved. It's going to take a lot of burden off of our records people, our dispatchers and our officers. Right now they have to go down and release the car and it's up to the police department to get clear titles on cars that aren't picked up and find a way to auction them off.

MOTION: Staats moved to approve an ordinance establishing emergency wrecker service qualifications, operating requirements, and fees for emergency wrecker services when summoned by an authorized public agency.
Haynes seconded.

Council Member Horyna asked about the vehicles currently in our impound, if there is a major storm event or they are vandalized, who is liable for those cars?

Mr. Chambers advised that we are.

Mayor Avello asked what the time frame is that we can legally take possession of a vehicle.

Mr. Chambers described the process that we go through, and this occurs on vehicles with very low value or vehicles that we have impounded as abandoned. After 45 days we can start the process of verifying title, notifying the owner, advertising the vehicle for auction and at some point during that year we will have an auction of those vehicles that have not been claimed. We hire an auctioneer, we pay overtime for people to go out there and run the auction and we may get \$2,000 to \$3,000 off the sale of those, which are mostly salvaged vehicles and that is about the extent of the revenue off of that.

Council Member Warren advised it's easy when we say its people that have broken the law. We still have the principle that they are innocent until proven guilty. He asked how it happens now if somebody were to have their car impounded and wanted to redeem it. What would be the process today, and how would that be different under this new ordinance. Will it be difficult for them to find out where the car is? Are some of these impounds going to be at the far north end of Wichita? All of a sudden we are creating a pretty big distance gap by impounding them a long ways away from where they are now. Right now we are still somewhat of a small community and take care of our issues internally and now we are passing that off. It may be easier for the city and police department, but it could be a big burden for the citizens, even when they make legal mistakes.

Mr. Chambers stated that the distance would be the big difference. At this point what happens is the tow service bills us the day the impound occurs, we pay that as part of our normal process of operating costs. When the owner of the vehicle comes in to claim it the dispatcher will collect those tow fees from the person claiming the vehicle and an officer will go with them to the impound lot to release the vehicle.

Council Member Warren asked how long that whole process would take, normally.

Mr. Chambers advised with a normal car an owner will come in within 24-48 hours and the process of releasing it would actually take 20-25 minutes.

Mr. Chambers advised if this were to be passed those transactions would have to take place directly with the tow company that was involved. If it were the case of an arrest, the person would be given notice of where the vehicle was going at that point in time.

Council Member Warren asked how they would be notified.

Mr. Chambers advised it would be in writing. We would fill out an impound sheet that has all of the information about the vehicle and which tow service is handling the tow. The dispatcher would be aware of that information and would be able to provide it when they called looking for

the vehicle. They would be directed to go to that tow service and handle the release directly with them.

Council Member Warren asked what the average cost would be under our current system versus what it would cost with these new fees.

Mr. Chambers stated that the bills that he has seen have been in the neighborhood of about \$110 for the tow service itself. We add in a \$25 administrative fee for processing the vehicle in and out and \$5 a day storage. On a normal vehicle where an owner wants it back and redeems it fairly quickly they would probably have the \$110 tow bill, plus another \$30 to \$35 to the city for the impound service.

Council Member Warren clarified that currently we run somewhere in the neighborhood of \$150 to \$160.

Mr. Chambers agreed.

Council Member Haynes indicated he came up with around \$130 to \$150 for the city the way we currently operate depending on the tow charge. It seems to him that we had a lot of extra charges in there and he imagines we are looking at around \$200 depending on how quickly the vehicle is picked up. We did clarify that we are not talking about a vehicle that has broken down compared to an abandoned vehicle or if someone is arrested. As long as he has that clarification he is okay with proceeding forward.

Council Member Warren indicated his preference would be to go with companies that have their storage facilities in the southern part of the city. He would like to limit how far we would allow a company to go so we could limit those fees. He would like to come up with two or three companies that operate in the southern part of Sedgwick County to eliminate some of those fees. There is a big difference from picking up a car at 47th and Broadway versus Valley Center.

Ms. Sexton indicated that if she understands it correctly most of the tow companies are on South Broadway.

Mr. Chambers agreed that there are one or two that are up further north. There was one he spoke with that agreed to not charge mileage beyond one of the southern companies so maybe that is something we could work out.

Ms. Sexton stated that if she understands the ordinance correctly, the Chief of Police shall establish a wrecker rotation list. It doesn't say it has to be everyone in Wichita, it doesn't say he can't eliminate one because he thinks they are bad business people or because they are too far away. She thinks this is set up in a format that allows some flexibility for management to make changes in who is on the list over time.

Council Member Warren advised that is the thing that would garner his support, if there are enough companies in the southern part of the county that are operating and we could limit the

cost by saying we are only going to go with companies in this region or at this cost then we eliminate somebody being the lucky draw and picking up the extra cost because of mileage.

Council Member Staats agreed with the mileage cost, maybe they could start that at K-15 and McArthur. If somebody has to drive to north Wichita to pick up their car because they were on the wrecker rotation, so be it. To the point about people having to drive into Wichita, if you were to look at arrest statistics you would see that a good majority of people that are actually arrested are from Wichita so it's going to be sort of a moot point. It needs to be clear that for every person arrested out of a car, their car is not immediately impounded and towed. When he was on the street, a lot of effort was made so their vehicle was not towed, whether it was legally parked at the time of arrest, having someone available to pick up the car, there were a lot of issues worked out. Not every vehicle was towed. Sometimes there is not a lot of choice and you have to tow it, you have to tow it for legal reasons sometimes. It doesn't happen on every single arrest.

MOTION: Staats called for the question. Nun seconded.

VOTE: Motion carried 7-0, Meidinger absent.

VOTE ON MAIN MOTION: Motion carried 7-0, Meidinger absent.

FINAL PLAT OF STONE CREEK 5TH ADDITION

Bud Newberry, City Planner presented the staff report.

Background:

- This property is 3.14 acres in size and is located ½ mile west of Rock Road and north of Patriot Avenue.
- This parcel is the north 414.19' of an un-platted piece of property which contains one residence. The south 329.4' of this property and the home will remain as a separate residential property and will not be a part of Stone Creek 5th Addition.
- This property is being developed in conjunction with Stone Creek 4th Addition, the final plat of which was approved by the council on January 26, 2010.
- The Final Plat for this addition was approved by the Planning Commission on August 20, 2009, by a vote of 8-0.

Financial/Sustainability Considerations:

- Development of this property over the next few years should provide a positive impact on the City's tax base.
- As part of the platting process, and as required by the Subdivision Regulations, the developer has submitted the typical petitions as guarantees for the construction of required infrastructure improvements (sanitary sewer, water, storm water sewer, streets, drainage, and sidewalks) totaling \$369,000 with 100% of the cost being paid by the Benefit District.

Legal Considerations:

- By approving the proposed plat, the Planning Commission has determined that it conforms to Kansas law and Derby's subdivision regulations.

Policy Considerations:

- This plat does not contain any common areas. Therefore, newly created language giving the city certain rights to conduct maintenance and repairs in reserves, and to collect payment for expenses incurred in the performance of these repairs or maintenance work by assessing special taxes, is not included in these documents or on the plat.
- Two Storm Sewer Easements will be filed with this plat to accommodate the storm sewer system designed to receive the runoff from a portion of Stone Creek 4th Addition and all of Stone Creek 5th Addition. This system will connect with the existing storm sewer system located on Patriot Street.
- The Developer complied with all requirements of the Subdivision Regulations including execution of a Developer's Agreement.
- Upon Council's approval of the petitions, staff will submit them to Gilmore & Bell to prepare the corresponding resolutions for Council consideration in the near future.
- This property was annexed into the city on August 26, 2008.

DISCUSSION:

Council Member Craig asked if the \$369,000 is spread over the entire division or just these ten lots.

Mr. Newberry explained that would be a lot of special assessments for ten lots. The petition that covers the storm water sewer part of this is a large petition. Its \$190,000, and \$135,000 of that is to cover the storm drainage to go to the little parcel to the west and also covers part of the lots in Stone Creek 4th. The actual amount that will be assessed directly to these lots is \$237,000, which would be a special assessment of about \$24,000 per lot. That is kind of the average of lots these days. With the amount that will go back into Stone Creek 4th, those lots will have about the same amount of assessments also.

MOTION: Haynes moved to approve the Final Plat of Stone Creek 5th Addition and authorize the Mayor to sign the Plat and Developer's Agreement; approve the petitions submitted to guarantee construction of required improvements; and instruct staff to record the Developer's Agreement, Certificate of Petitions, two Storm Sewer Easements and the Final Plat.
Warren seconded.

VOTE: Motion carried 7-0, Meidinger absent.

RESOLUTIONS FOR PUBLIC IMPROVEMENTS TO SERVE STONE CREEK 4TH ADDITION

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

Background:

- Stone Creek 4th Addition is located approximately ½ mile west of Rock Road and ½ mile north of Patriot Avenue.
- The Final Plat of this addition was approved by the City Council on January 26, 2010.

- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewer, water lines, streets, drainage and sidewalks.
- The plat has now been recorded and Gilmore & Bell, the City's bond counsel, has prepared the corresponding resolutions for Council consideration.

Financial/Sustainability Considerations:

- The benefit district defined in the resolutions includes only those lots within Stone Creek 4th Addition.
- The resolutions for infrastructure improvements (sanitary sewer, water lines, streets, drainage and sidewalks) total \$2,446,000. All of this cost will be paid by the Benefit District.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

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

Policy Considerations:

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

- RESOLUTION NO. 04-2010
SANITARY SEWER IMPROVEMENTS/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 05-2010
WATER LINE IMPROVEMENTS, PHASE 1/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 06-2010
STREET IMPROVEMENTS, PHASE 1/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 07-2010
STORM WATER SEWER IMPROVEMENTS/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 08-2010
STORM WATER DRAIN IMPROVEMENTS/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 09-2010
SIDEWALK IMPROVEMENTS, PHASE 1/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 10-2010
WATER LINE IMPROVEMENTS, PHASE 2/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 11-2010
STREET IMPROVEMENTS, PHASE 2/STONE CREEK 4TH ADDITION.
- RESOLUTION NO. 12-2010
SIDEWALK IMPROVEMENTS, PHASE 2/STONE CREEK 4TH ADDITION.

MOTION: Craig moved to approve resolutions for public improvements to serve Stone Creek 4th Addition. Staats seconded.

VOTE: Motion carried 7-0, Meidinger absent.

MODIFICATIONS TO PUBLIC IMPROVEMENT FINANCE POLICY

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

Background:

- The City’s Public Improvement Finance Policy is presented in Resolution No. 37-2009 and covers the infrastructure projects that are eligible for city financing, along with developer financial guarantee requirements and methods for reducing and releasing the developer guarantees.
- The modifications proposed are related to city-at-large financing of collector streets and sidewalks.
- The existing policy calls for collector streets to be paid jointly by the improvement district and the city-at-large. The improvement district pays for the equivalent of a local street, and the city-at-large pays for the extra width and pavement thickness.
- Since collector streets primarily serve the neighborhood in which they are located, staff recommends the improvement district be responsible for the entire cost.
 - City of Wichita policy calls for the entire collector street to be paid by the improvement district.
- Recent discussion and review of the Sidewalk Master Plan resulted in a change of policy for those sidewalks located near schools and which will be included in the Capital Improvement Plan as “Priority Sidewalks.”
 - Under existing policy, these sidewalks would be paid 100% by the improvement district.
 - Under the proposed modification, the cost of the priority sidewalks would be paid 50% by the improvement district and 50% by the city-at-large, assuming receipt of a valid petition by the improvement district owners.

Financial/Sustainability Considerations:

- Requiring the improvement district to pay 100% for collector streets will result in increased special assessments for the land owners, but will save the city a considerable amount.
- In the past 6 years, only 3 bond issues included projects for collector streets serving Glen Hills Addition, Stone Creek Addition, The Oaks 2nd, Southcrest 2nd, Spring Ridge Addition, and Tall Tree Addition. City-at-large payments for those collector streets were as follows:

<u>Issue</u>	<u>City-at-Large Payment for Collector Streets</u>
2003-C	\$44,626
2004-C	\$280,656
2008-B	\$54,087

- Because the construction of “Priority Sidewalks” is anticipated to occur over a 7-year period, the impact to the City budget will be minor. The overall cost (2010 dollars) of the entire “Priority Sidewalk” system is \$262,000. With the city-at-large paying 50%, the overall city commitment is \$131,000 or an average of about \$18,714 per year over the 7-year period.

Legal Considerations:

- The City Council possesses wide latitude in establishing policies for finance of public improvements.
- Policies for financing of public improvements promote predictability for developers, property owners, and city staff but must be flexible enough to accommodate unusual circumstances.

Policy Considerations:

- Modification to the collector street portion of this policy will result in the City's policy being consistent with the City of Wichita's policy.

DISCUSSION:

Council Member Warren stated that this will be a major change in our policy and the way we have done things in the past. We have had what he considers a common sense approach to how we spread specials in that those that benefit pay. You have to look at the issue of who is getting the benefit of the improvement. Most of our collector streets benefit the city at large more than they do the residents of a particular area. James Street is the one that comes to mind. The people that live along James don't really benefit from the fact that that street is a lot wider. The fact is that we have people from all over the City of Derby that are traveling through subdivisions and using James Street; therefore it makes sense for the city at large to pay for that. If we are going to make such a major change in our policy and the way we are doing things he would like to see us table this tonight to take a look at the overall cost, because this is not going to cost the developers that much more. You are going to add to the individual homeowners, you are going to add to the person that is putting in the single family home. He thinks it deserves more than a quick change. He would like to look at the overall cost factors. In every city, whether we compare to Wichita or Andover, there are a host of fees that go into establishing the overall specials and cost going into a subdivision. He thinks if we pull this out in one little piece we aren't looking at the whole picture and we need to take a look at the overall picture.

MOTION: Warren moved to table the streets portion to a later meeting. Haynes seconded.

VOTE: Craig nay, Horyna yea, Warren yea, Staats yea, Nun nay, Bannon nay, Haynes yea. Motion carried 4-3, Meidinger absent.

Mr. Brown continued with the staff report regarding sidewalks.

DISCUSSION:

Council Member Bannon asked about Section 5, how many priority sidewalks are planned that would be in excess of the 5 feet.

Mr. Brown advised he does not think there were any but thinks this is language Mr. Alexander added in case something comes up that anything over 5 feet would be on the benefit district.

Council Member Bannon stated that last time we talked a lot about the sidewalks. The citizens need to be aware that in order to get this deal you need to get your neighborhood together and submit a petition. You can call city hall and find out how to do that.

RESOLUTION NO. 13-2010

A RESOLUTION ESTABLISHING POLICIES FOR MUNICIPAL FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEVYING OF SPECIAL ASSESSMENTS WITHIN THE CITY OF DERBY, KANSAS; AND REPEALING RESOLUTION NO. 37-2009 OF THE CITY.

MOTION: Bannon moved to approve the resolution to modify the city's public improvement finance policy. Craig seconded.

VOTE: Motion carried 7-0, Meidinger absent.

CONSENT AGENDA

Issuance of Cereal Malt Beverage License

Background:

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- An application for a cereal malt beverage license has been received from Maa Durga, LLC to sell cereal malt beverages from the Easy Trip at 104 N. Baltimore. The applicant has been found to be qualified and the premises meet required inspections.

Financial/Sustainability Considerations:

- The license fee of \$100 has been received in accordance with City of Derby resolution No. 40-2009 for limited retail. A limited retailer is permitted to sell only at retail cereal malt beverages in original and unopened containers and not for consumption on the premises.

Legal Considerations:

- City ordinances establish qualifications for cereal malt beverage licensees.
- A license may not be issued until the applicant meets all qualifications.

Recommend a Motion to:

- Authorize the issuance of a cereal malt beverage license for the year 2010 to Maa Durga, LLC for the location at 104 N. Baltimore.

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

VOTE: Motion carried 7-0, Meidinger absent.

Mayor Avello mentioned that the City of Derby is hosting the Sedgwick County Association of Cities meeting at the City of Derby Library in the community room. The meeting will start at 8:30 a.m. with a social gathering, the actual meeting starts at 9:00 a.m. The public is invited to attend.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 8:10 p.m. Staats seconded.

VOTE: Motion carried 7-0, Meidinger absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk