

**APPROVED MINUTES
DERBY CITY COUNCIL MEETING
November 29, 2011
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:
WARD I
WARD II
WARD III
WARD IV

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

Flag salute was led by Council President Nun. The invocation was led by Pastor Don Mayberry, Pleasantview Baptist Church

CONSIDERATION OF MINUTES: Regular meeting November 8, 2011.

MOTION: Bannon moved to approve. Horyna seconded.

VOTE: Motion carried 6-0. Nun and Staats abstained.

PUBLIC FORUM:

Council Member Craig thanked Cliff Helms for organizing the Christmas parade as well as everyone who participated.

Council Member Bannon stated that the city Christmas tree is lit, we have had the Christmas parade, the water tower has green lights, and hopefully all of this reminds everyone to shop locally. The fun continues this weekend with two craft shows on Saturday; the Toy Train club starts this Thursday at the library. Two huge toy train tracks will be set up in the community room, and you can bring your own trains in and run them on the tracks. On Sunday we will have the first annual Santa's Village from 1:00 to 4:00 p.m. There will be a toy shop, a bake shop, the toy trains as well as elves. You can also have your picture taken in front of the largest indoor tree in Derby. Santa will be there from 1:30 to 3:30 p.m., and there will be story time with the elves.

OFF-AGENDA ITEM:

MOTION: Nun moved to consider an off-agenda item on the Consent Agenda regarding cancellation of the Dec. 27th Council meeting. Warren seconded.

VOTE: Motion carried 8-0.

ANNEXATION AND FINAL PLAT OF FIRST CHRISTIAN CHURCH ADDITION

Bud Newberry, City Planner, presented the staff report.

Background:

- This subject property is 43.68 acres, is located east of Rock Road and north of 87th Street South (Chet Smith Avenue) and is currently zoned I-1 “Institutional.”
 - Residential properties lie to the east and west.
 - Another parcel owned by the applicant, neither platted nor zoned, located north of this site is expected to be developed for residential uses in the future.
 - The property located south across 87th is the site of a new Wal-Mart Neighborhood Market; it has been platted and re-zoned to the B-3 “General Business District.”
- The final plat of the property was approved by the Planning Commission on November 3, 2011, by a vote of 8-0.

Financial/Sustainability Considerations:

- As required by the Subdivision Regulations, the developer has submitted petitions totaling \$525,000 to guarantee construction of required improvements (storm water drainage, streets, left turn lanes and sidewalks).
- In accordance with the City’s policy for payment of required improvements, \$506,250 of the cost will be paid by the Benefit District and \$18,750 by the city-at-large for over-sizing the arterial sidewalk along Chet Smith Avenue.

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:

- The applicant has complied with all requirements of the Subdivision Regulations, including provision of a Developer’s Agreement and a Restrictive Covenant for use of platted Reserves.
- Upon Council approval and recording of the plat, staff will forward the petitions to Gilmore & Bell for preparation of corresponding resolutions for Council consideration in the near future.
- The applicant has submitted a request for consent annexation associated with this plat; upon adoption, staff will publish the annexation ordinance.

ORDINANCE NO. 2095

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS.

DISCUSSION:

Council Member Craig asked where the city limit boundaries will be when this annexation takes place.

Mr. Newberry advised the boundaries will be moved to 87th Street and over to the east edge of the plat.

Council Member Craig asked if that includes the north parcel that is not platted.

Mr. Newberry advised that was correct. You can annex property that is not platted. They wanted to annex the entire piece of property now.

Council Member Craig clarified that the applicant requested the entire area be annexed.

Mr. Newberry advised that is correct. The request the applicant submitted had a legal description that covered that entire piece of property.

Ms. Sexton pointed out there are two homesteads north of the property, so those two pieces would create a donut hole. Everything the First Christian Church owns is requested to be annexed. We have plans to deal with the two homesteads.

Council Member Bannon asked about the back piece of property that they are not platting right now, do they plan on that just being a single access off Rock Road? Otherwise what we are platting doesn't show any roads that provide access from 87th to the back.

Mr. Newberry advised the reason for the shape of the north boundary line of this plat is because it follows the line that Kay Street will follow.

Council Member Bannon clarified that they are expecting that to just have access from Rock Road.

Mr. Newberry advised that was correct.

Council Member Bannon asked about the widening of the sidewalk on 87th Street. Just to the east of this we have a subdivision that is platted and will build out at some point, correct? What are the expectations of what they are going to do with these lots the church is platting?

Mr. Newberry advised that Lot 1 will be the location of the new church and their other facilities. Lot 2 will probably be sold and the other lot contains their recreational facilities.

Council Member Bannon asked if Reserve A is a drainage reserve or just a reserve.

Mr. Newberry advised it is a low spot where water stands.

Council Member Bannon asked if the back corner of the plat is in the flood zone.

Mr. Newberry advised there is nothing in this plat that is in the flood zone. There may be a piece farther to the north that is.

Mayor Avello asked if the water will go to the west or the east after it drains to the north.

Mr. Newberry advised it will go to the west. It goes into the creek that runs through there and he believes it crosses Rock Road.

Council Member Craig asked if there will be a problem with selling Lot 2, is it not zoned institutional now?

Mr. Newberry advised it is.

Council Member Craig asked if it will continue to be zoned institutional.

Mr. Newberry advised it will.

Council Member Craig asked what impact that will have on that lot; can it turn into something else? Will institutional be the final designation of zoning?

Mr. Newberry explained it could be anything that is a permitted use in the institutional district. The property further north will probably eventually become residential. The rest of their property will not be for church use.

Council Member Craig asked if Lot 2 can become residential in the future if someone were to petition it.

Mr. Newberry advised someone could request a zone change, but he does not know if it would be approved.

MOTION: Staats moved to approve the final plat of First Christian Church Addition and adopt an ordinance annexing the property to the City; authorize the Mayor to sign the plat and the Developer's Agreement; approve petitions submitted to guarantee construction of all required improvements; instruct staff to record the Developer's Agreement, Restrictive Covenant, Drainage and Sanitary Sewer Easements, Certificate of Petitions and final plat; and instruct staff to publish the Annexation Ordinance. Haynes seconded.

VOTE: Motion carried 8-0.

LED COMMUNITY MARKETING SIGN

Ted Austin, Director of Operations, presented the staff report.

Background:

- A committee was established to plan the first LED community marketing sign to be constructed on Derby High School property. Members include Ted Austin (Derby Dir. of Ops.), Kris Johnson (DHS Senior Sponsor), Dr. Kris Sherwood (DHS Principal, replaced by Tim Hamlin), Tom Snodgrass (USD 260 Dir. of Ops.), and Cynthia Wentworth (Community Marketing).
- Brent Thomas of Ruggles and Bohm Architects provided concept sketches up through detailed drawings of the proposed sign, based on input from the committee.

- As we prepared to bid the project, we discovered our planned location encroached on a gas line easement running along Rock Road. After considering many options, the committee decided the sign should be located south of the Rock Road entrance, east of the drainage way (which includes the easement).
- Four area sign companies were invited to bid along with a web posting in accordance with our bid process. Four companies returned bids—two local and two out of state. The lowest bid did not include all aspects of the project and was rejected.
- Identity Management (Grapevine, Texas) submitted the low bid meeting specifications at \$49,199 (see attached bids). They will work with Midwest Sign Company (Overland Park) for installation and warranty work.

Financial/Sustainability Considerations:

- This project is included in the 2011 CIP previously approved by the Council for a total of \$75,000, which is a combination of money from the City’s general fund and from several DHS graduating classes that earmarked \$32,249.56 for the sign project.
 - In addition to the sign, this project includes costs of the architecture and engineering fees and wireless communications fees to create the sign’s messages.

Legal Considerations:

- All applicable policies and procedures were followed in completing this bid process, including bid board approval.

Policy Considerations:

- This jointly funded sign will be located on USD #260 property with messages maintained by Community Marketing staff.

DISCUSSION:

Council Member Bannon stated this appears to be about 100 ft. off of Rock Road, is that correct?

Mr. Austin advised it is about 80 ft.

Council Member Bannon commented that is so far off of Rock Road and with all the trees, how well are people going to be able to see this other than those driving into the high school? It’s really meant for more than that.

Mr. Austin advised they believe it will be visible. If necessary, we will relocate trees. As you drive the street we looked at those places where you have visibility to the sign, then we adjusted the height of the sign and put it at the correct height for the signs. Once we get the sign in place, if we have some visual impairment problems we will deal with those.

Council Member Bannon stated she heard there was a second location in the future for a second sign that might be more visible for everybody at Woodlawn and Madison.

Mr. Austin advised that is a location that had been discussed for a potential future sign.

Council Member Bannon asked if that location would not have been better, or do you think we are going to get plenty of visibility.

Mr. Austin advised they are confident you will be able to see the sign well. The school's desire to use the senior project money prompted putting it towards this first project.

Council Member Warren stated that coming from the north going to the south there is a fairly open area and it shouldn't be too difficult from that side to see the sign. He is concerned that with all the trees along the east side of Rock Road it will be difficult for traffic coming from the south to see the sign.

Mr. Austin advised he would not be surprised if they have to relocate a tree or two to give us a good view. There are areas of unobstructed viewing now, but it's not absolutely unobstructed.

Council Member White asked how big the sign is, not counting the masonry work.

Mr. Austin advised it is roughly 4' x 8'.

Council Member White asked if it will face the street.

Mr. Austin advised it is double sided, you will see it from the north and south.

Council Member White asked if anyone put up a temporary sign to check visibility.

Mr. Austin stated that we did that with the first location and as we moved to the second location they did it by standing in the location and looking at the sight lines. We took some pictures going down the road to determine what we could and couldn't see to make sure it wasn't completely obscured.

MOTION: White moved to authorize the City Manager to enter into a contract with Identity Management for \$49,199 to provide an LED sign per specifications. Staats seconded.

Council Member Craig advised he does not like the location of the sign. Peripheral vision is something that has to be dealt with as far as traffic going up and down Rock Road at 40 mph. Eighty feet is a long way; is there any possibility to move it closer to the road?

Mr. Austin advised there was not.

Council Member Craig stated the sign is a good size, but he advised going out there and putting the panel up and have people drive by to see what you can see as you flash by that. He is not sure he can endorse this; it seems like a stretch. People are always

looking at this big sign and people will be turning their heads an extreme degree away from the road to see it. He is for the sign but doesn't like the location.

Council Member Warren commented that he assumes the committee has thought about all of these issues and will trust that they have done their due diligence in that area. If the decision is made to remove or move trees, who gets to make that decision? We have a lot of trees downtown that if a business were to decide that the trees we put in when we did the reconstruction of K-15 and trees have gone in and obstructed the view of the signs down there, if somebody wanted to have trees removed what kind of process would they go through? Would the city have to go through the same process to remove trees here?

Ms. Sexton advised it depends on who owns the trees. If the trees are on your private residential or business property, it's your call. If they are on the city's property, it's our call. In this case all the trees out there are either in the city right-of-way or on the school property. That is probably the beauty of the project is that it's a cooperative venture. There were a lot of conversations on the committee in terms of if there is a better place for the sign, a different side of the school. It's difficult because you lose a lot of the traffic count when you move to a different entrance to the school. The idea is to get it up, and then some trees will need to be moved. To some extent we need to wait until the sign is installed in February or March and we will wait until the trees get in full bloom. Some obstacles can be removed by removing the canopy, the way you trim the trees and some will have to be moved. That is a pretty thick stand of trees out there and as she recalls past conversations with Tom Snodgrass at the school district, to some extent they have been a little concerned about too many trees in that particular location as they have grown. It's not a bad place to thin them out anyway for the benefit of the school and people looking for the school, and not knowing where it's at.

Council Member Warren asked if there is a process for an owner who wants to have a tree removed and the tree belongs to the city.

Ms. Sexton stated last year there was a gentleman who had a concern about a tree. He called the city; the tree was not on our property but on the school property. We contacted Tom Snodgrass and they moved the tree. It's just a matter of getting a hold of the city if it's on city property, and if there is an issue we will see what we can do. We put the wayfinding signs in, and there was a tree obstructing the view and we moved the tree.

Council Member Staats agrees with Mr. Warren. We have some very smart people on this committee who put a lot of thought into this. He asked how far signs such as the Arby's sign are off the road, are they 80-90 ft. off the road?

Mr. Austin advised they are not that far off the road, the easement gets narrower as it gets down towards the south end. Throughout the high school property it is a consistent straight line.

Council Member Staats advised the LED sign will be bright and will be seen very well at night and the daytime. Do we know how far away you can see the sign? He can see

where Mr. Craig is coming from with the peripheral vision, but that is if you are right on the sign. If you are coming up to it and driving straight ahead you will be able to see the sign. He thinks we will see it from a block or two away, maybe 100 yards from the south and north, peripherals are really not in effect at that time.

Mr. Austin stated it depends on the size of your text or display. They give different angles and distances but they are not intended to be looked at directly from the sides, they are intended to be looked at as you approach them from both ways. They don't give any specific distance, but the view you saw on the third page shows you some ideas of the sizing of how you would see that. They have a chart with recommended distances, but it depends on what you put on the sign, whether you are going to be able to clearly see it from 100 or 200 yards.

Council Member Staats advised he is comfortable with the decision the committee came up with. If the sign company decides it's not going to work, he is confident it will come back to the council or be tweaked as needed.

Council Member Bannon stated she thinks it's too far off the road. She appreciates the senior classes raising money for this, but the city has more money in this than the senior classes do. She thinks this will be a great sign for the school, we need the signage for the city. It's unfortunate the utility easement is there, but there is nothing we can do about that. She won't vote against it, trees can be cut; but she hates to see them go since we are a "tree city". She hopes the next location is much closer.

Council Member Craig asked if this will be more static text-type messages or will there be text running across the sign.

Cynthia Wentworth, Director of Community Marketing, advised they have had extensive discussions about the different types of information, not just what it looks like but also who the information will come from. As a community sign it will have different types of events, primarily the one at that location will be school information. We have talked to graphic designers and there is training through the sign company, as well as for the graphics that will be used. We can put wording on it as well as graphics, very similar to what you see on the Wendy's sign where there is movement and different graphics as well as wording. We want to be very careful that we have short messages so they can be seen in a quick amount of time.

Council Member Craig advised the location is what bothers him. There is nothing you can do about that if you decide for some reason during the process. If someone has second thoughts, he hopes someone will say something. He will support it. The sign is well worth it, but he is concerned if you have something that is a running text that people get engrossed, and he is concerned with the 40 mph traffic on Rock Road.

Mayor Avello asked if the sign representative has already looked at the site and said it would be okay?

Mr. Austin advised the sign people looked at the aerial photography of the whole area. This company did not come to Derby; they worked off the aerial photography and the drawings and locations that we provided.

Ms. Sexton added that Brent Thomas, who is a landscape architect did the whole design, and gave the specs to the sign company.

VOTE: Motion carried 8-0.

ORDINANCE INITIATING EMINENT DOMAIN PROCEEDINGS FOR CONSTRUCTION OF MADISON AVENUE.

Phil Alexander, City Attorney, presented the staff report.

Background:

- The City plans to construct a new section of Madison Avenue from Water Street to Buckner Street, across the BNSF railroad track.
- The project requires acquisition of street right-of-way over property owned by Confederated Builders, Inc.
- City staff plans to negotiate acquisition of the necessary right-of-way if possible, but the project timetable necessitates commencement of eminent domain proceedings.
- Pursuant to Resolution No. 44-2011, adopted by the City Council on November 8, the city engineer filed a survey and description of the right-of-way necessary for the project.
- The next step is adoption of an ordinance approving the survey and description and directing commencement of appropriate proceedings in eminent domain.

Financial/Sustainability Considerations:

- The City will pay just compensation for the right-of-way acquired and any applicable relocation benefits to the property owner.
- The City will pay the costs of the action, including court costs and fees awarded to court-appointed appraisers.

Legal Considerations:

- The City may exercise the power of eminent domain for the purpose of constructing a street.
- Following a hearing on the City's petition to exercise the power of eminent domain, the District Court will appoint three appraisers to conduct a hearing and determine the value of the right-of-way being acquired.
- After the appraisers' report is filed with the Court, the City may acquire the right-of-way by paying the amount of the appraisal into the Court.
- Either party may appeal the appraisal.
- The amount ultimately awarded may vary from the appraisal, but the right-of-way acquired passes to the City upon payment of the appraisal amount to the Court.
- Eminent domain proceedings typically require 90-180 days to complete.

Ordinance No. 2096

AN ORDINANCE APPROVING THE SURVEY AND DESCRIPTION OF CERTAIN INTERESTS IN REAL PROPERTY, ACQUISITION OF WHICH IS NECESSARY FOR EXTENSION OF MADISON AVENUE WITHIN THE CITY OF DERBY, KANSAS, FROM WATER STREET TO BUCKNER STREET, TOGETHER WITH APPROACHES, STORMWATER SEWERS, DITCHES AND OTHER DRAINAGE IMPROVEMENTS, TRAFFIC CONTROL DEVICES, AND OTHER IMPROVEMENTS APPURTENANT THERETO; DECLARING IT TO BE A PUBLIC NECESSITY TO ACQUIRE SAID INTERESTS BY PROCEEDINGS IN EMINENT DOMAIN FOR SUCH PURPOSES; AND DIRECTING THE CITY'S ATTORNEY TO MAKE PROPER APPLICATION TO THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR APPOINTMENT OF APPRAISERS TO APPRAISE SAID INTERESTS AND TO CONDUCT PROCEEDINGS IN EMINENT DOMAIN RELATIVE THERETO, ALL AS HEREINAFTER DESCRIBED.

MOTION: Bannon moved to adopt an ordinance declaring it necessary for the City to acquire certain lands or interests therein by eminent domain and authorizing the city attorney to initiate appropriate proceedings in eminent domain. Horyna seconded.

VOTE: Motion carried 8-0.

PROPOSED CHANGES IN WARD BOUNDARIES

Stephanie Knebel, Assistant City Manager, presented the staff report.

Background:

- At its April 13, 2010 meeting, the City Council adopted a charter ordinance prescribing how and when ward boundaries would be updated.
 - No changes to the number of wards (4) or the number of council members (8) were included in the charter ordinance, but ward boundaries are now based on population rather than the number of registered voters.
 - Ward boundaries will be revised every ten years when official U.S. Census data become available.
 - Newly annexed territory will continue to be added to the ward to which it is contiguous.
- In drafting new boundaries, the following best practices were followed:
 - Census tract boundaries were used wherever possible.
 - Boundaries generally follow natural and man-made permanent, visible features such as arterial streets, roads, highways, rivers, and railroads.
 - Both sides of a residential street are in the same ward.
- At its November 8, 2011 meeting, the City Council approved placing the ordinance on the November 29, 2011 action agenda.
- Following approval by City Council, the ordinance and new ward map will be sent to the Sedgwick County Election Commissioner so that precincts can be adjusted.

Financial/Sustainability Considerations:

- The cost of revising ward boundaries is primarily a function of the staff time required and publication in the official newspaper.

Legal Considerations:

- Charter ordinance No. 49 requires that ward boundaries be revised after each federal census, to divide the city into four wards as nearly equal in population as practicable.
- Current ward boundaries are required to be revised based on final 2010 federal decennial census data, subject only to such additions as may be necessitated by annexation of unincorporated territory.
- If alteration of a ward boundary has the effect of excluding the residence of an incumbent Council member from the ward he or she was elected to represent, such Council member will serve out his or her entire term.
- No ward boundary may be revised or reestablished within thirty (30) days prior to the date fixed for an election of any kind within the City or the last day for filing as a candidate for any elective City office.

Policy Considerations:

- Wards based on population are more likely to result in equitable representation.
- The City Council should, insofar as possible, represent all segments of the community equally.
- The Ordinance Review Advisory Board reviewed several draft maps in recent meetings and at its October 18, 2011 meeting unanimously recommended the proposed ward boundaries.

Ordinance No. 2097

AN ORDINANCE DIVIDING THE CITY OF DERBY, KANSAS, INTO FOUR WARDS FOR ELECTION PURPOSES; DESCRIBING EACH WARD; AND REPEALING ORDINANCE NO. 1774 OF THE CITY.

DISCUSSION:

Council Member Craig asked if there is a time frame for the election office to get this done and notify everyone.

Ms. Knebel advised the only requirement in the state statute deals with when the legislature is to have their legislative updates to them. We will receive updated precincts in time for our next municipal elections.

Council Member Craig asked about the national election.

Ms. Knebel advised she is sure it would be done by then.

MOTION: Craig moved to approve the ordinance and authorize the Mayor to sign. Haynes seconded.

VOTE: Motion carried 8-0.

CONSENT AGENDA:

Kathy Sexton, City Manager, presented the consent agenda.

Initiation of Codification process:

Background:

- State law authorizes publication of ordinances of general application as a municipal code.
- Derby updates its City code periodically, and the last codification was November 2010.
- It is necessary to update the City Code to include ordinances passed since that time.
- Staff proposes to use the services of Municipal Code Corporation, the City’s current code publisher.

Financial/Sustainability Considerations:

- Recodification costs, which are based on the number of pages to be added or amended, are estimated to be approximately \$2,000.
- Improved utility of the new code results in time saved for both City staff and the public.

Legal Considerations:

- The City’s code should be kept current to provide easy access to all ordinances.
- Adoption of an updated City Code must comply with K.S.A. 12-3014 and 3015.
- Upon completion of the supplement, the Council will re-adopt the entire City Code, as supplemented.

Policy Considerations:

- The new city code will be easier to use for both staff and the public.

Recommend a Motion to:

- Adopt an ordinance authorizing and directing the supplementation and recodification of the Derby Municipal Code.

Ordinance No. 2098

AN ORDINANCE AUTHORIZING AND DIRECTING THE SUPPLEMENTATION AND RECODIFICATION OF THE DERBY MUNICIPAL CODE.

Assessment Ordinance for Nuisance Abatement:

Background:

- The City of Derby has incurred costs in abating nuisances found to exist upon certain properties located within the City.
 - The costs are the charges the City incurred in contracting with vendors for mowing and trash removal service, plus a \$50 administrative fee.
 - Each owner of record at the time the charges were incurred was sent notification that the City Council will consider assessment by ordinance of the charges.
- This ordinance includes 13 properties, of which 6 are occupied, 4 are vacant residences, and 3 are presumed in foreclosure.
- City ordinance has established the policy that requires bulky waste, construction debris and tree waste be removed from properties to protect the health and safety of citizens.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the city’s costs can occur from the owner of record at the time of assessment.

Because affected lots are often in foreclosure or in process of being sold, timely assessment is important to an equitable recovery of City funds.

Financial/Sustainability Considerations:

- The costs incurred in connection with the parcels to be assessed total \$1,886.25.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.
- City staff seeks to collect mowing and debris removal charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Recommend a Motion to:

- Adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.

ORDINANCE NO. 2099

AN ORDINANCE LEVYING AS SPECIAL ASSESSMENTS UPON CERTAIN REAL PROPERTY, HERINAFTER DESCRIBED, DIRECT AND INDIRECT COSTS INCURRED BY THE CITY IN MOWING GRASS, CUTTING WEEDS, REMOVING DEBRIS OR OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

Cereal Malt Beverage Licenses:

Background:

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- Fifteen applications for cereal malt beverage licenses have been received for calendar year 2012. The names of the businesses and managers are listed in Attachment A to this report.
- All of the applicants and applications have been reviewed by the Police Chief and Fire Chief, and comply with city ordinances.
- If a business does not receive a new license on or before January 1, 2012, that business must cease sales of beer on December 31.
- The Council has established the practice of authorizing issuance of cereal malt beverage licenses based upon applications submitted but not yet fully reviewed, and issuance is conditioned upon staff's determination that all requirements have been met.

Legal Considerations:

- City ordinances establish qualifications for cereal malt beverage licenses.
- A license may not be issued until all qualifications have been met.
- When a cereal malt beverage license applicant meets all qualifications established by ordinance, the City is obligated to issue the license.

Recommendation:

- Authorize issuance of cereal malt beverage licenses for the year 2012 to the applicants listed in Attachment A.

Amendment to Ordinance No. 2069 for Oxford Derby Memory Care:

Background:

- On May 26, 2011, the City Council approved Ordinance No. 2069 authorizing the issuance of Industrial Revenue Bonds to Oxford Derby Memory Care, LLC for Glen Carr House, Oxford Memory Care Residences.
- After adoption of the ordinance, Bank of Kansas declined to finance the project. Subsequently, Oxford Derby Memory Care has selected Andover State Bank as the substitute project lender.

Financial/Sustainability Considerations:

- While the total amount of Industrial Revenue Bonds remains the same at \$3,050,000, Series A decreased from \$2,500,000 to \$2,425,000, and Series B increased from \$550,000 to \$625,000. This shifting of \$75,000 has no material effect of concern to the City.
- Except for substituting Andover State Bank for Bank of Kansas as purchaser of the Series A, 2011 Bonds and UMB Bank, n.a. as fiscal and paying agent for the Series B, 2011 Bonds, the remainder of Ordinance No. 2069 is unchanged.

Legal Considerations:

- Gilmore & Bell has prepared the proposed ordinance to make this change.
- The proposed ordinance must be published before it becomes effective.

Recommendation:

- Adopt and authorize the mayor to sign an ordinance amending Ordinance No. 2069.
ORDINANCE NO. 2100

AN ORDINANCE AMENDING AND SUPPLEMENTING ORDINANCE NO. 2069 OF THE CITY OF DERBY, KANSAS REGARDING ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2011 AND SERIES B, 2011 (OXFORD DERBY MEMORY CARE PROJECT).

Interlocal Agreement for Public Transportation Program:

Background:

- Over the last four years, the following interlocal agreements have been approved with the City of Wichita for federal funding of the public transportation program (the Derby Dash) within the City of Derby:

2006	◆ \$50,000 for the acquisition of an ADA-compliant bus; ◆ \$50,000 for planning and preventative maintenance
2007	\$75,000 for planning and preventative maintenance
2008	\$50,000 for planning and preventative maintenance
2009	\$50,000 for planning and preventative maintenance
2010	Agreement not needed due to amount of unspent allocation
2011	\$50,000 for planning and preventative maintenance

- Now, in preparation for 2012, the City Council is requested to approve a sixth agreement in the amount of \$50,000; the federal portion is \$40,000 and the City of Derby’s portion is \$10,000 (required 20% local match).
- Approval by the Wichita City Council will be scheduled after the Derby City Council approves this agreement.

Financial/Sustainability Considerations:

- The 2012 operating budget for the Derby Dash program totals \$77,179. Of that, all eligible expenses will be requested to be paid from this federal grant, and the same is planned for future years.

Legal Considerations:

- The City Council is empowered to apply for and accept grants to support public transportation programs.
- The City Attorney has reviewed the agreement and approved as to form.

Recommendation:

- Approve the agreement and authorize the Mayor to sign.

Cancel the December 27, 2011 Council Meeting:

Background:

- The second regular meeting of the Derby City Council in December is currently scheduled for December 27, which is the day after the Christmas holiday (since Christmas falls on a Sunday this year, City Hall is closed on Monday).
- Staff recommends canceling this meeting to allow staff and Council members to enjoy the holiday week. No pressing business will be compromised.
- Historically, the second meeting in December often has been canceled when it fell on or very close to the Christmas holiday, although this meeting has been held the past two years.
- Consistent scheduling of governing body meetings enhances operating efficiencies and alleviates confusion among staff and the public.

Financial/Sustainability Considerations:

- None.

Legal Considerations:

- The Council has the authority to set its meeting schedule.
- Staff will communicate to the public the altered calendar of Council meetings.

Recommendation:

- Cancel the December 27, 2011 Council meeting.

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

VOTE: Motion carried 8-0.

The City Council meeting was recessed at 7:17 p.m. to conduct the meeting of the Board of Directors of the El Paso Water Company.

The council returned at 7:20 p.m. and resumed the meeting of the city council.

EXECUTIVE SESSION

MOTION: Nun moved to take a short break and then recess to executive session to discuss acquisition of real estate, specifically for future city projects, a matter of attorney-client privilege and personnel matters of non-elected personnel, specifically the annual performance evaluation of the city

manager, and to reconvene the open meeting here in the Council Room no sooner than 8:20 p.m. Bannon seconded.

VOTE: Motion carried 8-0.

The council returned at 8:38 p.m., and Council Member Nun advised no binding action was taken.

ADJOURNMENT

MOTION: Craig moved to adjourn at 8:39 p.m. Horyna seconded.

VOTE: Motion carried 8-0.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk