

**APPROVED MINUTES  
DERBY CITY COUNCIL MEETING  
November 9, 2010  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:  
WARD I  
WARD II  
WARD III  
WARD IV

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

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

**CONSIDERATION OF MINUTES:** October 26, 2010

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

**PUBLIC FORUM**

**Shelli Adams**, Court Administrator, presented the council with a brochure to be used to inform the public of financial implications of receiving a DUI. We try to do things that might divert people and get them to make a better decision.

**Council Member Bannon** asked where this information will be located.

**Mrs. Adams** stated it will be located at the police department and at city hall as well. We can also get the information put on the website.

**Council Member Meidinger** suggested we put this in our water bills, that way it goes to people directly. A lot of people won't look at the website.

**Robert Lee**, Police Chief, introduced the new Deputy Police Chief, Dan Hammon. He has known Mr. Hammon for many years and worked with him for a considerable amount of time. Mr. Hammon is a retired captain with the Wichita Police Department and had a decorated career in Wichita and most recently was an instructor at Webster University at Ft. Leavenworth instructing military commanders in security management. He shares the same passion for customer service, community policing and commitment to community that we want and expect.

**Dan Hammon**, Deputy Police Chief, thanked the chief and city manager for having the confidence in him to hire him for the position of Deputy Chief and to replace such a fine gentleman as Deputy Chief Chambers. He will be missed by the community. He also thanked the city employees who have welcomed him and been so friendly. He looks forward to serving the citizens of Derby.

**Phil Alexander**, City Attorney, updated the council on litigation involving the expansion of Cook Airfield. Earlier this year, the operators of the airfield filed three requests with the county. One for vacation of a portion of 71<sup>st</sup> Street adjacent to the existing airfield, a second one for a conditional use on property to the south of that road to allow extension of the runway by about 1,200 feet, and the third was a request for rezoning of the property south of 71<sup>st</sup> to permit intense residential development in the rural residential zoning they currently have. The City became aware of that and participated when the matter came before the County Commission on July 21. At that time the County Commission approved all three requests. Subsequent to that, the city along with several adjacent land owners filed an action in district court to challenge specifically the vacation, but our concern was with all three items. The vacation and conditional use really being a pair, neither one is valuable without the other. Subsequent to the commencement of that litigation, the county determined that it had not correctly notified some of the folks that were required to be notified. The county essentially withdrew those and started back from scratch and as you know, those two items were re-heard by the MAPC this past week. At that time, the MAPC voted to recommend the rezoning from rural residential to SF-20, a slightly more intensive use, which covers 33 acres south of 71<sup>st</sup> Street and west of 143<sup>rd</sup> Street. They also voted to recommend against approval of the conditional use permit that would allow extension of the runway. The vacation matter was not on the agenda. As far as the county is concerned at this point, that matter has been resolved subject to the outcome of the pending litigation. That matter was originally scheduled for trial on November 1 but has been rescheduled to December. There is currently a motion pending by the County to dismiss the City as a party. The County's view is that the City lacks standing, in essence that we don't have a dog in the fight. Our view is different of course and I will file a response to that tomorrow emphasizing the future well-being of the city as it grows to the east as well as our interest in being able to utilize 71<sup>st</sup> Street for emergency response based on our mutual assistance agreements with Sedgwick County Fire District #1 and Butler County Fire District #3, which among other areas includes Rose Hill. As you may know our departments and other departments in this area have a practice of responding automatically, even without a request when there is a situation that appears likely to overtax the resources of the department that has primary responsibility. That motion will be heard on Friday and I will be able to report more the next time we get together.

**Kathy Sexton**, City Manager, advised public works is about half-way moved into the new facility. We have scheduled an open house on Friday, December 3<sup>rd</sup> from 1:00 to 4:00. We will get more information out to the public in the near future. Regarding 911 dispatch, the resolution passed by the council asking the County to serve the City of Derby like they are serving most other cities went to the Board of County Commissioners today, and they were very supportive in moving ahead with that and staff will be crafting a resolution. They are trying to talk with the Haysville people to see what they have decided so that they will only pass the one resolution to apply to both cities. The director of 911 recently resigned, so they are looking for another director and are hoping to have that person named and on board in December, after which is when they would do one of the other things the resolution will include, which is appoint a transition director/project manager to lead the transition team. The team would have Derby people as well as County and Haysville people. They intend to get that going after they get a new director.

**Council Member Bannon** advised there is new art at City Hall done by local high school students, and the library has a new exhibition of quilts done by local talent. Next Thursday night will be the City Tree lighting at the north high school parking lot. After that, from 7:00 p.m. to 8:00 p.m. will be the reception for the quilt show as well as the largest indoor holiday tree in Derby in the library.

**Mayor Avello** asked about a yield sign that is between the Family Med Center and Wendy's. It is up about 12 feet in the air, is there a reason for that?

**Ms. Sexton** indicated she noticed that the other day. She is pretty sure that is a private street so it's not a city sign. She will check on it and see if the city engineer can advise them as to whether it could be done better.

**Derek Smith and Becky Robinson**, Derby Community Coalition Promoting Healthy Choices, gave an update on Summerfest, which received an ACE Grant award from the City. It is estimated that 6,000 people attended the event, which is substantially larger than the year before. Becky thanked the city for all the help they provided that evening for the fireworks. There were 54 returning booth participants from the past and 19 new, many from Wichita. There were over 100 volunteers from the high school; without their support we could not have gotten everything moved and set up. Becky explained how the event was advertised. She advised they have several upcoming events, including Battle of the Bands and After Prom.

**Mayor Avello** asked if the park is going to be big enough to handle the growing event.

**Mrs. Robinson** advised that next year they will do some additional planning with Mr. Mendoza to be able to accommodate it. We really think a lot of the additional traffic was due to the fireworks being held that same night. If it doesn't rain on the 4<sup>th</sup> of July we probably won't have that happen next year.

**Ms. Sexton** thanked Derek, Becky and everyone involved. This was a fabulous event. There were a lot of comments from different people and organizations who were amazed they had this opportunity to come and talk to kids and of course the kids had fun too. We did draw a big crowd this year and it got some people talking and thinking outside of the box about whether the community fireworks celebration is best done on July 4<sup>th</sup> when everybody else is doing their fireworks or if it's best done at an event like this where you are trying to draw people. Some people didn't miss the city's fireworks celebration on July 4<sup>th</sup>. Some thought we had it because so many private people and groups shoot off such big fireworks that you look east and assume it's the city's, but it's other people's. Money well spent might be to move that event to an event like this to help draw more people. That idea is being kicked around.

**Mayor Avello** pointed out that Derek and Becky are only two of many who provide their time and effort free to make this city what it is. When people ask him what Derby is about and why is it growing, it is because of things like this, the people getting together to do these things.

**ROCK RIVER RAPIDS WEBSITE**

**COUNCIL MINUTES**

**-3-**

**11/09/10**

**Allison Moeding**, Director of Economic Development, presented the staff report.

**Background:**

- In 2004, the original Rock River Rapids (RRR) website [www.rockriverrapids.com](http://www.rockriverrapids.com) was designed by a DRC staff member shortly before the opening of the new aquatic park. For the past six years, it has remained essentially unchanged. The site primarily contained static information and images that are updated occasionally on an as-needed basis.
- At a joint City/DRC meeting of staff associated with the water park in October 2009, several participants suggested it was time for a new RRR website. A new website would serve as a marketing tool while simplifying many routine tasks, thus eventually reducing the staff time required for routine transactions.
- In March 2010, the City issued a Request for Proposals, and five companies responded. After interviewing two firms, a committee of City and DRC staff selected HG Design based on the company's proposal to integrate the park mascot "Ollie" into the requested website elements. On April 27, the City Council approved a contract with HG Design, which in 2004 was the firm that designed the Rock River Rapids logo and developed an initial marketing plan for the aquatic park.
- HG Design has worked with City and DRC staff for several months to redesign the website incorporate e-commerce features and ensure compatibility with existing accounting and point-of-sale systems.
- The new site provides:
  - Online purchase of daily tickets, group packages, and season passes
  - Viewing of available times and dates on the Event Calendar for birthday parties and facility rentals
  - A showcase of park amenities using video and fresh photographs
  - Marketing of special promotions using banner ads
  - Snack bar menus and prices
  - An interactive park map
  - Compatibility with smart phones for mobile access to information
  - An online request form for ticket donations
- In addition, through the process of working through this project, we discovered a way to offer gift cards to park patrons instead of the paper gift certificates previously in use. The new plastic gift cards will be administered by the DRC and can be used at Rock River Rapids and the Derby Recreation Center. The gift cards will sport a customized graphic depicting the aquatic park and DRC. They can be loaded with varying amounts of money and are rechargeable. Gift cards can be purchased on-line or at the DRC.

**Financial/Sustainability Considerations:**

- The new website cost \$21,750, including creative design, programming, software for content management and e-commerce, and site production.
- Additional costs to be incurred for site hosting, e-commerce and other related requirements include:
  - \$372 annual license fee for e-commerce software
  - \$100 one-time setup fee and \$119 annual PCI compliance fee for credit card transactions

- Applicable interchange fees plus 0.23% on MasterCard and Visa transactions
- \$360 annual gift card program fee, plus \$325 for every 500 customized cards. Since both the DRC and RRR will use these gift cards, the RRR share will be 1/3 of the upfront cost. Future costs for additional cards will be determined by actual card sales generated by each entity.
- Rock River Rapids credit card transactions will be processed by a third-party processing firm, First National Merchant Services (FNMS). FNMS is already under contract with the DRC for credit card transactions through the DRC website, [www.derbyrec.com](http://www.derbyrec.com).

**Legal Considerations:**

- None.

**Policy Considerations:**

- The on-line capabilities provided in this new website are a basic requirement of a modern marketing program. Investment in this new website with e-commerce features will reach a huge segment of our target market better than any amount of billboards or paper advertising could ever do. The website will serve us well for some years, and routine site maintenance is easily performed by DRC or City staff.
- The gift card program is a service to customers wary of sending their kids to the park with cash and in the wet environment of an aquatic park is a far better solution than paper gift certificates. We are working toward a future when park patrons will be able to use their gift cards at the snack bar, which would be a convenience that would also yield enhanced revenues to the park.
- Rock River Rapids opens on Memorial Day 2011. Discounted season passes and gift cards are available at the DRC for holiday gifts.

DISCUSSION:

**Council Member Horyna** asked if we can manipulate the content management software or does it have to go through the designer?

**Ms. Moeding** advised the content management is all part of the software program that we have purchased and that will be done by DRC staff in consultation with city staff. We will make those changes as that becomes necessary. When we set it up originally we wanted it to be as easy as possible for us to maintain.

**Council Member Bannon** asked when the site goes live.

**Ms. Moeding** stated they are hoping for Friday, we have a few little things to clear up.

**Council Member Bannon** asked if the mobile site is built on Flash.

**Ms. Moeding** explained it was all built on HTML, so we don't have any issues with different platforms.

MOTION: Bannon moved to receive and file the report. Nun seconded.

**Council Member Warren** asked Allison to send him a link to the site once it goes live. He has a number of people he would like to forward that information on to.

**Council Member Craig** asked what the interchange fee is.

**Ms. Moeding** advised in her research she discovered it is very complicated based on your bank. Essentially they are the fees charged by the third party processor that you are paying to take the payment through to the bank that issued the credit card and back again. Ultimately this is the very same deal that the DRC has with its existing credit card processor. The cost varies based upon the credit card you are using; we use specifically MasterCard, Visa and Discover. The First National Merchant Services Group is the one that would set those interchange fees. She does not have a specific number of how much that will be or what those interchange fees will be because they vary.

**Council Member Craig** clarified that we pay that.

**Ms. Moeding** advised that was correct, that will be part of our fees. As we find out how much people are going to use this system and we see what kind of fees we are actually charging, we will look at that each year and see what it is costing us to do this type of transaction.

**Council Member Craig** asked if this is the same fee as we charge for paying utility bills by credit card.

**Ms. Sexton** advised this is the DRC's bank vendor that does its Visa and MasterCard charges. Because we hired them to run this operation, we felt it best to stick with the DRC vendor. They have a pretty good deal; and we can do the joint gift card. To go back to the beginning part of the question, we listed the fees in the staff report so the council would understand how it's going to affect our budget. These are not fees that the individuals buying things online have to pay. It's our cost of doing business and will be a budgeted item.

VOTE: Motion carried 8-0.

## **ORDINANCE AMENDING MUNICIPAL CODE CONCERNING DOGS, CATS, AND OTHER ANIMALS**

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

### **Background:**

- A review of the animal ordinance has been on the list of council priorities since September 2008. The first reading of this proposed ordinance was considered by the City Council on October 29, 2010.
- This past summer, local veterinarians were asked if the current animal ordinance was working and what changes, if any, they would recommend.
  - Veterinarians were complimentary on how the vicious animal ordinance was structured. They remain in full support of focusing on the behavior of dogs rather than incorporating specific breeds.
  - Veterinarians asked us to include the word "dogs" in the definition of an animal as used in this Chapter, as well as to provide clarification on the frequency of rabies shots. These requests have been incorporated into the proposed ordinance.

- Input from the Police Department, which enforces the ordinance, was solicited, which resulted in the following proposed new policies:
  - Prohibit the selling, bartering, exchanging or giving away of animals by people required to be licensed under state law who don't have such license.
    - This section was rewritten since the first reading at the Council meeting on October 26 (see green italics language on third page of ordinance).
    - A second review of State law revealed that it allows people to sell up to 3 litters or 30 animals without being licensed. This means the state law was actually written so as not to cover families just trying to get rid of a few extra animals. It was written to cover those breeding animals for sale purposes. So, the concern brought up at the last Council meeting about local families has been addressed in this revised version of the ordinance.
  - Prohibit the possession of dog fighting paraphernalia. Simply having items in possession would not constitute a violation; the police department would also have to prove there was an intention to use the paraphernalia. The penalty for unlawful possession is a fine of up to \$1,000 and/or up to six months in jail.
- Input from the Park Board was also solicited. This advisory board continues to be supportive about its desire to expand the city park system to include a dog park when the appropriate location is available.
  - Dog parks are seen as beneficial because they allow dogs to exercise and socialize safely and promote responsible dog ownership. In the Annual Citizen Survey conducted in September, 35.2% of those who responded indicated they would drive up to 30 minutes to use a dog park. On the other hand, 62% of respondents indicated they would not use a dog park.
  - The proposed ordinance includes the following provisions:
    - The City Council would designate the location of dog parks.
    - The basic responsibilities of people using a dog park are to follow the posted rules, leave the park when requested, and leash or restrain their dogs when needed to prevent injury or other harm.
    - Penalties for violation include suspending or revoking access to the dog park, a fine of up to \$500, and/or up to one month in jail.
- Following the first reading and a suggestion from a Council member that definitions be reviewed, staff re-read Title 6 to find the instances and applications of the phrases "substantial enclosure" and "fenced enclosure." Because these definitions pertain to dangerous or vicious animals, staff recommends that changes to this section of the code include additional review from local veterinarians and the municipal court judge before being presented to the City Council for action at a future meeting.

**Financial/Sustainability Considerations:**

- None.

**Legal Considerations:**

- The City is empowered to enact animal ordinances that do not conflict with state law.

**Policy Considerations:**

- Adoption of the recommended changes to the animal ordinance supports the City’s values of Safety and Stability as noted in the strategic plan: *“Good planning ensures stability in codes and community standards...”*

**ORDINANCE NO. 2043**

AN ORDINANCE REGULATING KEEPING, MAINTENANCE AND CONVEYANCE OF ANIMALS WITHIN THE CITY OF DERBY, KANSAS; PROHIBITING CERTAIN ACTS IN CONNECTION WITH CONVEYANCE OR TRANSFER OF OWNERSHIP OF ANIMALS; PROVIDING FOR ESTABLISHMENT, REGULATION AND USE OF DOG PARKS WITHIN THE CITY; AMENDING SECTIONS 6.04.010 AND 6.04.140 OF THE DERBY MUNICIPAL CODE; AND REPEALING ORIGINAL SECTIONS 6.04.010 AND 6.04.140 OF SAID CODE.

**DISCUSSION:**

**Council Member Bannon** thanked staff for looking into her concerns from the last meeting.

**MOTION:** Nun moved to approve the proposed amendments to Chapter 6.04 of the Derby Municipal Code. Horyna seconded.

**VOTE:** Motion carried 8-0.

**Ms. Knebel** advised the next step will be to send a letter to the veterinarians advising them of the changes being made and the date the changes will go into effect.

**Council Member Craig** asked when the fence item will be back to the council.

**Ms. Knebel** indicated it would be after the first of the year due to the upcoming holidays.

**ADOPTION OF THE 2010 EDITION OF THE STANDARD TRAFFIC ORDINANCE**

**Robert Lee**, Police Chief, presented the staff report.

**Background:**

- The City of Derby annually adopts revisions to the Standard Traffic Ordinance (STO) which is published by the League of Kansas Municipalities.
- The STO establishes ordinances based upon Kansas State Statutes and ordinances commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are drafted by the City of Derby Legal Department to tailor specific sections to local needs.
  - The proposed ordinance includes no new local amendments, rather only addresses issues determined by previous councils to be necessary (maximum speed limits, construction zones, parking disabled vehicles, trucks blocking traffic, motorized scooters, ATVs, micro-utility trucks, golf carts, worksite vehicles, and seatbelts).

**Financial/Sustainability Considerations:** None.

**Legal Considerations:**

- Adoption of the 2010 Edition of the STO (with amendments) would bring Derby city code in compliance with applicable Kansas statutes.
- The Police Department is responsible for enforcing the STO.
- The City Council passed the 2009 edition of the STO on December 22, 2009.

**Policy Considerations:**

- The 2010 Edition of the Standard Traffic Ordinance (with amendments) was reviewed and recommended for adoption by the Ordinance Review Advisory Board.
- Significant changes that have been incorporated in the 2010 STO include:
  - License plates may not be covered with any clear or opaque material that affects the visibility or reflectivity of the plates.
  - Persons under 18 years of age are required to wear helmets and eye protection while riding as a passenger on a motorcycle.
- Changes in the 2010 STO already approved by the City Council earlier this year include:
  - Drivers may not operate a motor vehicle on a public roadway while using a wireless communications device to write, send or read a written communication (with exceptions).
  - Failure to wear a passenger restraint is now a primary law for front seat passengers and all passengers under 18; seat belts remain a secondary law for adult passengers in a rear seat.

**ORDINANCE NO. 2044**

AN ORDINANCE AMENDING §10.04.010 AND 10.04.020 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2010 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL §10.04.010 AND 10.04.020 OF SAID CODE.

MOTION: Warren moved to adopt the 2010 Edition of the Standard Traffic Ordinance, as amended. Meidinger seconded.

VOTE: Motion carried 8-0.

**FINAL PLAT OF COX COMMUNICATIONS 3<sup>RD</sup> ADDITION**

**Bud Newberry**, City Planner, presented the staff report.

**Background:**

- Cox Communications 2<sup>nd</sup> Addition, the site being re-platted, was a single lot plat 0.64 acres in size and was filed with Sedgwick County on January 19, 2006.
- The subject plat, now the Cox Communications 3<sup>rd</sup> Addition, consists of two lots and is approximately 1.11 acres in size.
- All of the subject property is zoned M-1 Industrial.
- All of the properties surrounding this site are also zoned M-1; however, with the exception of one business to the west, all are being used as legal non-conforming residential uses.
- To the east is the BNSF railroad.

- The subject plat is the result of combining Cox Communications 2<sup>nd</sup> Addition and several smaller lots to both the north and south ends of that addition.
- The north lot (Lot 1) is currently the site of Cox’s telecommunications equipment used in their cable television and internet businesses. The southern parcel (New Lot 2) is vacant.
- Final Plat for this addition was approved by the Planning Commission on September 16, 2010, by a vote of 8-0.

**Financial/Sustainability Considerations:**

- Development of this property over the next few years could provide a positive impact on the City’s tax base as Lot 1 provides space for Cox Communications equipment and as Lot 2 provides space for future commercial construction.
- Since the construction of new infrastructure improvements is not required, there are no petitions for council’s approval.

**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 complied with all requirements of the Subdivision Regulations including the provision of a Developer’s Agreement.

DISCUSSION:

**Council Member Warren** advised his brother and sister-in-law own this property so he will be abstaining from any discussion on this item.

MOTION: Craig moved to approve the Final Plat of Cox Communications 3<sup>rd</sup> Addition and authorize the Mayor to sign the plat and instruct staff to record the Developer’s Agreement and the Final Plat. Horyna seconded.

VOTE: Motion carried 7-1, Warren abstain.

**AMENDMENT TO ARTICLE 10 OF THE DERBY SUBDIVISION REGULATIONS**

**Bud Newberry**, City Planner, presented the staff report.

**Background:**

- Derby’s original Subdivision Regulations were adopted in 1974, substantially amended in 1994, and have been subsequently amended.
  - Kansas law vests the Planning Commission with authority to administer the Subdivision Regulations, which were established to conform with and execute state law.
  - From time to time state law is amended, requiring cities to amend local regulations accordingly.
- State law with respect to vacation proceedings allows cities to conduct one rather than two hearings on vacation cases, which is now proposed for incorporation into Article 10 of the Subdivision Regulations.
  - Pursuant to Article 12 of the Subdivision Regulations, a public hearing is required prior to recommending amendments of the Regulations.

- The required public hearing was conducted by the Planning Commission on October 7, pursuant to a notice published in the Derby Informer on September 15.

**Financial/Sustainability Considerations:**

- None.

**Legal Considerations:**

- Amendment of the City’s Subdivision Regulations is a permissible exercise of the City’s police power.
- All conditions precedent to consideration and approval of these proposed amendments to the Subdivision Regulations by the Council have been satisfied.
- The Governing Body has the same options available to it as with any other zoning amendment.

**Policy Considerations:**

- The proposed ordinance would remove the requirement for a second public hearing before the City Council prior to acting on a proposed vacation, providing instead that all public hearings on vacation requests will be conducted by the Planning Commission.
- Several other minor changes to the text of the article are proposed, but the vacation process would remain substantially similar in all other respects.

ORDINANCE NO. 2045

AN ORDINANCE AMENDING ARTICLE 10 OF THE SUBDIVISION REGULATIONS OF THE CITY OF DERBY, KANSAS, PERTAINING TO VACATION AND CORRECTION OF PLATS AND ELEMENTS THEREOF; AND REPEALING ORIGINAL ARTICLE 10 OF SAID SUBDIVISION REGULATIONS.

DISCUSSION:

**Council Member Warren** asked what process the city goes through to notify people who have a need to be made aware of changes that are coming up. If we go from two public hearings to one public hearing he wants to be sure we don’t short change people the opportunity to be heard.

**Mr. Newberry** explained that before the initial hearing takes place at the planning commission meeting, we notify affected property owners. We also put a notice in the newspaper 20 days prior to the meeting letting the general public know we are going to conduct that hearing. There is no notification prior to the hearing at city council. We are not going to be eliminating any of the notification procedures with this.

**Council Member Warren** asked if notification differs from case to case as to how far out we have to notify people.

**Mr. Newberry** advised there are some minor changes in vacations. The distance requirements are normally for rezoning; in the city it is 200 feet, in the county it is 1,000 feet. For vacations it normally is just those folks with adjoining property or in some cases across the street or across the alley.

**Council Member Craig** asked if we are going by the process of reading the first time and bringing it back, did we agree to that?

**Ms. Sexton** advised the council's protocol for ordinances of general applicability that affect a lot of people or big policy changes is that we do a first reading and a second reading. That doesn't mean you do them for every single ordinance.

**Council Member Craig** asked which category this one is in.

**Ms. Sexton** advised she didn't even think about it on this one. To her this ordinance is technical -- do you want to have one hearing or two? It's a pretty simple decision, as opposed to changing rules for dog tags that affects a lot of people across the city. We always put "first reading" across the top if that is what the intent is.

MOTION: Haynes moved to approve an ordinance amending Article 10 of the Derby Subdivision Regulations, as presented. Bannon seconded.

VOTE: Motion carried 8-0.

## **REVIEW OF EMPLOYEE BENEFITS & UPDATED PERSONNEL POLICY MANUAL**

**Kathy Sexton**, City Manager, presented the staff report.

### **Background:**

- At the August 10 City Council meeting, several Council members indicated a desire for a review of employee benefits.
  - At that same meeting, the Council approved a 2011 city budget that included increases in the KPERS rate from 7.14% to 7.74%, the KP&F rate from 12.86% to 14.57%, and unemployment compensation from 0.1% to 0.85%. In addition, the cost to provide employee health insurance increased 6.5% over the 2010 premium. During this difficult economic time, these cost increases clearly were cause for concern about the City's future ability to keep up with routine expenses.
  - The purpose of the review of benefits was to assess the likelihood of future cost increases in the various benefits and determine whether it may be feasible to curb those costs while having as minimal effect on employees as possible.
- The review included some benchmarking with similar area employers as well as negotiations with some benefits providers.
- As a part of the review, employees were surveyed to assess their preferences in regard to certain benefits. As expected, employees place the highest value on their health insurance followed closely by dental insurance and then the optional 457b retirement matching program.
- Although employees would prefer not to lose any benefits, survey results indicate that 71% of employees agree or strongly agree that losing Injury Leave would have little effect on them. Only 10% of employees agree or strongly agree that Injury Leave is important to them.
  - Injury leave provides up to 40 hours of leave due to a work-related injury. Employees injured on the job use injury leave if the doctor will not allow them to return to work right away, because worker's compensation does not kick in until the employee is off work for at least one week.

- Injury leave is not commonly provided by other employers.
- It's customary that only a couple employees use this type of leave each year. In 2010, usage equated to \$1,457.
- If injury leave were eliminated, sick leave would be used for absences related to a work-related injury. The City provides a generous sick leave program.
- A review of 25 cities and counties in Kansas indicated that they provide an average of 10.3 holidays. Survey results indicate that Derby employees tend to value the 12 holidays provided in three levels, as follows:
  - Most Valued: Christmas, day before/after Christmas, Thanksgiving, & day after Thanksgiving
  - Next Valued: Memorial Day, Labor Day, New Year's Day, & Independence Day
  - Least Valued: Veteran's Day, President's Day, Martin Luther King Day, & Employee Birthday
  - Staff recommends reducing Derby's benefit from 12 to 11 holidays by eliminating the Employee Birthday, effective January 1, 2011. This reduction of one holiday would result in annual savings of approximately \$29,000.
- Currently, 68 employees receive some amount of the City's match in the optional 457b Deferred Compensation Retirement Program. The City matches up to \$3,750 or 10% of the employee's base compensation for eligible employees. Participants in the Kansas Police and Fire Retirement System (KP&F) are not eligible for the match.
  - In March 2007, a survey of 25 other cities and counties in Kansas (see attached) showed that while many offer an optional retirement program in addition to KPERs and KP&F, only nine offer some type of match, and some of those provide the match only for selected positions.
  - Staff recommends reducing the match from \$3,750 to \$1,872 (\$72 per pay period), which would result in savings of \$52,187 based on current participation levels. This amount of reduction is recommended as a way to affect lower paid employees less than the higher paid employees. Since the program currently costs the City approximately \$154,000 per year, this policy change would save approximately one-third of its current cost.
- A list of recent history (2007-2011) of various changes made in the benefits package offered to City employees is attached for reference. Staff will continue to look for ways to offset the rising costs of health insurance and other valued benefits.

**Financial/Sustainability Considerations:**

- Together, the three recommended changes in employee benefits (eliminating Injury Leave, eliminating one holiday, and reducing the deferred compensation match) total an approximate annual savings to the City of \$82,700 beginning in 2011.
- The additional recommendation to limit vacation leave payout effective January 1, 2012 would yield an additional approximate \$5,000 in annual savings.

**Legal Considerations:**

- The ordinance was drafted and a review of the proposed changes was conducted by the City Attorney.

- Routine updates to the personnel manual ensure that the City adjusts its policies as needs are determined.

**Policy Considerations:**

- The following summarizes the items proposed for revision in the Personnel Policy Manual:
  - Cover Page, Date of revision (will be changed)
  - Page 2-5, Update of Table of Contents
  - Page 22, Changes nepotism policy to prevent immediate family members of an employee from being employed within the same division as the employee, rather than within the same department. This change is important to the larger departments such as Police and Public Works since employees working in different divisions have very little interaction with each other.
  - Page 26, Clarifies that texting while driving is prohibited and provides that emergency vehicles are not subject to the stated requirements for securing City vehicles.
  - Page 53, Removes “Employee Birthday” as a designated holiday. Changes language to state that holiday leave in excess of forty (40) hours will be paid out to employees on the payroll check the holiday occurred, rather than the next check (which aligns the policy with current practice).
  - Page 55, Cleans up language.
  - Page 56, Changes the payout of vacation leave to limit the payout to the maximum carryover amount, effective January 1, 2012. This effective date is recommended to give employees time to bring their balances down prior to any planned retirement or other separation. This change is expected to save the City approximately \$5,000 per year in payroll costs.
  - Page 59, Deletes injury leave.
  - Page 88, Edits list of job families to include the addition of the Assistant Public Works Director.
  - Page 108-110, Edits index to reflect changes.

ORDINANCE NO. 2049

AN ORDINANCE AMENDING SECTION 1.12.120 OF THE DERBY MUNICIPAL CODE, PRESCRIBING LIMITS ON MATCHING CONTRIBUTIONS TO THE CITY’S DEFERRED COMPENSATION PROGRAM; AND REPEALING ORIGINAL SECTION 2.12.120 OF SAID CODE.

DISCUSSION:

**Council Member Meidinger** advised he knows it is difficult to change employee policy and benefits. It’s not a pleasant situation, but it’s the market right now. He asked what Derby’s matching portion is for the deferred compensation.

**Ms. Sexton** advised our policy says we would match \$3,750 per year, per employee if they contribute that amount. It’s dollar for dollar up to \$3,750. If someone wants to contribute \$1,000 then that’s what we will match, \$3,750 is the maximum. We are recommending that be cut in half.

**Council Member Meidinger** asked what other entities match.

**Ms. Sexton** pointed out the match in the matrix. Hutchinson is a 4% match, Lansing is 2% for some employees and more for other employees, Leewood is 2.5%. A lot of them match more for higher paid employees. Some of these maybe don't talk about exactly how much. Olathe has \$100 for directors and above and \$30 for other employees per month.

**Council Member Meidinger** advised in the current marketplace a dollar for dollar match isn't good public policy. In the private sector a 50 cent match was tremendous. What you are essentially doing is making it very good for the employees to get a good match on their investments. He thinks that dollar for dollar is excessive. He doesn't know of very many programs right now that would have anything close to this. He thinks it should be more market driven. He doesn't see very many other cities matching the amount that we are matching. He thinks the deferred compensation is a great program, some private companies would match 50 cents on the dollar and it did encourage a lot of employees to match and over the years that's a tremendous amount of money. He would like to see us do everything except the deferred program. He thinks we should take a look at that and get a closer handle on what other communities match and even private companies. Our employees are also available for private companies. As he left the house this evening he noticed on Fox News, for every one person that has a job, there are five people that would like to have it. It's not like we are trying to keep people from job hopping. At one time that's probably what this was all about, we wanted to keep our good employees here and this was the way to do it.

**MOTION:** Meidinger moved to table the benefit program to get more information on the deferred compensation package.

**Ms. Sexton** asked if Mr. Meidinger wanted to pass everything else but table the deferred compensation.

**Mr. Meidinger** indicated that is what he meant.

Motion died for lack of a second.

**Council Member Bannon** advised that Derby has made good gains over the last few years and some hard decisions with employees, and we have good employees. In this economy it's not always easy. This is probably one of the fairest ways to do it by cutting how much we match. She agrees with Mr. Meidinger that 100% is well and above what most do, however given all the changes that we are currently doing, along with other economic stressors on everyone she thinks that's a good step this year. Other things can be looked at as time progresses. We are tightening this up every year, it's not necessarily just tightening their budgets but we as a city have a responsibility to look at ways to reduce overhead. We are on that track and our staff is luckily understanding in sticking with that.

**MOTION:** Bannon moved to adopt an ordinance reducing the City's matching contributions to the deferred compensation program, and adopt the revised personnel manual as presented. Warren seconded.

**Council Member Haynes** agreed with Mrs. Bannon. These steps are hard, especially with the economic times. We went from 10% to 5% from a matching contribution. Speaking from someone that gets 2% on 4%, these are good numbers. To cut so deep so quick is where we really can run afoul sometimes. This is a good step for where we are now and maybe review it again at a later time.

**Council Member Craig** stated that most entities would have said to keep the \$3,750 and reduce the matching to 50%, which would impact the employee a lot greater than what we are doing this evening. For a lot of folks, it is probably a struggle just to make a contribution. He thinks we are taking the right step. Dollar for dollar it is quite generous compared to the rest of the community. If you notice on the spreadsheet, these are all government cities that require no vesting so you don't have to wait around. Once it's in there it's basically yours. He understands Mr. Meidinger's concern but he thinks this preserves the dollar for dollar which is a generous option our employees have.

**Council Member Meidinger** asked if we no longer require an employee to stay 5 years to take that out. They can take it out immediately?

**Ms. Sexton** advised she didn't think we ever did.

**Mrs. Epperson** advised there was a 10-year vesting requirement and that was removed a couple of years ago.

**Council Member Meidinger** stated that if an employee saved their money and it was matched by the city, say, December 31<sup>st</sup>, could the employee take that out on January 1<sup>st</sup>?

**Ms. Sexton** advised, not if they still work here. It's a retirement program. If you separate from service with the City of Derby then you can get it out. Otherwise there are a couple of clauses for emergency situations but it's a retirement savings. She stated that this policy affects most all of the employees with two exceptions; one is the members covered by the police union that have a multi-year contract. Some of these changes like the injury leave and holiday would not affect them but is something we might look at negotiating in the next contract, but they are not eligible for the deferred compensation match in their contract, so that doesn't affect them anyway. The other group not covered by this action today would be her because she has a contract as city manager. She fully intends to recommend that her compensation for the deferred compensation program be reduced by the same amount and she wanted that to be clear because she didn't want anyone thinking, employees included, that she was recommending something that she wasn't recommending for herself.

**Mayor Avello** stated that we are going to have inflation sooner or later. What kind of effect is it going to have on this program?

**Jenny Thrush**, Human Resources Manager, indicated she could not answer that.

**Mayor Avello** advised we may be looking at this year to year is what he is afraid of, but that's for another time.

**Council Member Nun** asked how we get the word out to all the employees when we make these changes.

**Ms. Sexton** advised that every time we make changes to the manual, usually it's once a year, but this is the second time we have made changes this year, we always do emails and we also have a summary page stating that each employee received the summary of changes. We are doing this now, which is also open enrollment time as well. All employees are encouraged to come to one

of the meetings to discuss all the changes to the benefits and hear from representatives from Preferred Health Systems and Delta Dental.

**Council Member Craig** requested a summary that describes this in simple words, a lot of this can get really garbled as time goes by.

**Ms. Sexton** advised there is a booklet that explains all the benefits that new employees receive and it is updated every year and provided to them at open enrollment as well.

VOTE: Motion carried 7-1, Meidinger nay.

## **ROCK RIVER RAPIDS 2011-2012 MANAGEMENT AGREEMENT**

**Kathy Sexton**, City Manager, presented the staff report.

### **Background:**

- The City of Derby has contracted with the DRC to provide management services for Rock River Rapids since it opened in the summer of 2004.
- The most recent RRR Management Agreement ends December 31, 2010. Since quite a few clarifications and procedural changes were made in this agreement, negotiations for the 2011-2012 agreement were not extensive.
- The proposed agreement includes the following changes from the previous year:
  - In section 1.p., reference to the City's Economic Development Director reviewing the marketing plan is eliminated. The plan will continue to be reviewed by the City Manager.
  - A new section 2.l. is added to establish a compensation system in addition to the annual management fee of \$92,889 provided in section 2.k.
    - This new section l. provides for the City and DRC to split evenly the net profit from three special events held each year during regular operating hours. This provision recognizes the expenses incurred by both the City and the DRC in hosting such events and shares the revenue in a manner that encourages sponsorship of special events.
    - If an opportunity arises to host more than three special events, additional events may be approved by the City's contract manager, who is in a position to assess the cost/benefit of such events.
    - This new section includes a provision for payment of half the net profit from one event held in 2010 as a way to transition from the former routine of paying a guaranteed annual increase in the management fee. This provision would equate to \$3,477, based on the "We the Kings" concert held August 6, 2010.
    - This new section also specifies that events held outside of regular operating hours would be treated the same as private party rentals, meaning that after payment of the required rental fee to the RRR account, event proceeds would be retained by the DRC. This provision is intended to limit risk and encourage events after hours.

- In section 5, the Swim Season is amended to note that the facility closes at 5:00 p.m. on July 4. This has been the practice for years, but just hasn't been noted in the agreement.
- The term of the agreement would commence upon execution and conclude on Dec. 31, 2012. A two-year agreement is preferred by both parties.
- Exhibit 1 includes the fee schedule approved by the Council on Oct. 12, 2010. Exhibit 2 includes the same guidelines for daily pass giveaways as in the previous agreement. Other noted edits are merely formatting in nature.
- The DRC Board is scheduled to review/approve the agreement at its Nov. 9 meeting also.

**Financial/Sustainability Considerations:**

- The 2010 management fee was \$92,889, which was a 4% increase over 2009. This same fee is contemplated in this agreement for both 2011 and 2012.
- In addition to the fixed management fee, this new agreement would share revenues collected from special events, the amounts of which in 2011 and 2012 would vary depending on the number and types of events as well as the weather.
  - The agreement provides for payment to the DRC for one special event held in 2010, which is \$3,477.
  - Limited experience in 2010 with two afternoon concert events indicates that special events can be a good source of dependable revenue for the DRC and the City.
  - An incentive-based provision was discussed during last year's contract negotiations but not agreed upon.
- The source of funding for this management fee is the net revenue from the operation of the aquatic park. If net revenue is not sufficient to cover the cost of this contract, funding is available in the Operations-Sales Tax Sub-Account. Annual net revenue for the history of the park is as follows:

2004	2005	2006	2007	2008	2009	2010 est.*
\$20,696	\$154,433	(\$8,001)	\$2,781	\$4,883	(\$52,281)	\$37,954

*\* Beginning in 2010, several large maintenance expenses occurred, some of which in prior years were paid out of the operations account and affected the net revenue numbers shown directly above. Expenditures of \$340,003 will be paid out of the Reserve Account for website design (\$21,750), pool painting (\$55,700), and boiler replacement (\$262,533). In addition, special assessments of \$51,052 will be paid out of a sales tax funded escrow account that is not included in the 2010 net revenue calculation above. The final payout of the current assessments will be in 2016.*

**Legal Considerations:**

- Both the City and the DRC have legal capacity to enter into the proposed contract.

**Policy Considerations:**

- On January 12, 2010 when the City Council approved the 2010 management agreement, concerns were expressed about continuing to guarantee annual increases in the fee paid to the DRC and how the "correct" percentage increase would be determined each year without getting too deeply into DRC operational expenses or relying on a national indicator such as Consumer Price Index.
- Since then, discussions were held about how to structure an appropriate incentive-based system of increases with a continuation of the guaranteed base fee.

- Both the City and the DRC are willing to try this proposed method of sharing revenue for the two-year period and then re-evaluate based on its level of success achieved.

**DISCUSSION:**

**Council Member Haynes** thanked city staff and DRC staff for their hard work put into this. It has been a long drawn out process.

**MOTION:** Haynes moved to authorize the Mayor to execute the agreement in substantially the form presented. Warren seconded.

**VOTE:** Motion carried 8-0.

**Ms. Sexton** thanked Chris Sexton of the Derby Recreation Commission board. He has been great to work with and has really been helpful in trying to figure out this new system.

**CONSENT AGENDA**

**Kathy Sexton**, City Manager, presented the consent agenda.

**Purchase of Public Works Vehicles**

**Background:**

- As part of the approved 2010 Vehicle Replacement Plan, bids were recently requested for a 3/4-ton pickup for Wastewater and a 2-ton dump truck with a snow plow attachment for Streets. Bid invitations were sent to 30 potential vendors. We received 10 bids:

<b>2-ton Dump Truck/Plow</b>	<b>Vehicle</b>	<b>Plow</b>
• Rusty Eck	\$40,720.80	\$5,376
• Mel Hambelton	\$41,108.90	\$5,376
• Shawnee Mission	\$41,490	No bid
• Marshall Motors (Salina)	\$44,403	No bid
• Marshall Motors (Salina)	\$46,545	No bid
<b>¾-ton Pick Up Truck</b>		
• Rusty Eck	\$20,388	
• Shawnee Mission	\$20,722	
• Mel Hambelton	\$20,950.10	
• Davis-Moore	\$22,649	
• Marshall Motors	\$22,999	
• Don Hatton Chevy	\$23,425	
• Davis-Moore Chevy	\$23,679	
• Scholfield GMC	\$28,000	

- All vehicles are 2011 models. The vehicles being replaced will be sold at auction to yield a better return to the City than trade-in would have (based on our recent experience using Purple Wave auction services).
- The bid board reviewed and recommended acceptance of the low bids from Rusty Eck.

**Financial/Sustainability Considerations:**

- The 2010 vehicle replacement plan provides \$69,500 for all three pieces of equipment, which is sufficient to cover the \$66,484.80 purchase price.

**Legal Considerations:**

- The City followed all applicable statutory and procurement procedures in soliciting and reviewing bids for the vehicles to be purchased.

**Recommend a motion to:**

- Approve the purchase of a ¾-ton pickup truck and a 2-ton dump truck with snow plow attachment from Rusty Eck Ford.

**Memorandum of Understanding Regarding Critical Area of Interest Adjacent to McConnell Air Force Base**

**Background:**

- In 2010, the Kansas Legislature passed House Bill No. 2445 to promote communication, cooperation, and collaboration between municipalities and adjacent military installations.
- HB 2445 requires:
  - Designation of certain property surrounding a military installation as a “critical area of interest” and requires municipalities to notify the military installation of plans, zoning changes, and development proposals that affect a critical area of interest;
  - Consideration of certain factors which might negatively affect the operation of the military installation when reviewing plans, zoning changes, and development proposals within the critical area of interest; and
  - Written notice of the presence and potential effects of the military installation to individuals seeking building permits within the critical area of interest.
- HB 2445 provides that critical areas of interest be designated cooperatively by a municipality and an adjacent military installation.
- Staff from McConnell Air Force Base, Sedgwick County, and the cities of Derby and Wichita met several times to:
  - Discuss implementation of HB 2445; and
  - Review the Joint Land Use Study for McConnell Air Force Base and existing zoning regulations for the area surrounding McConnell.
- The proposed Memorandum of Understanding (MOU) is the product of these collaborative efforts.
- The MOU:
  - Defines the critical area of interest surrounding McConnell to include the land governed by the two zoning overlay districts – the Airport Overlay District and the Air Force Base Protection Overlay District – that currently surround McConnell.
  - Includes a map depicting the critical area of interest.
  - Spells out each party’s obligations:
    - Each party:
      - Designates an organizational representative.
      - Meets with other parties at least annually to review the boundaries of the critical area of interest.
    - Sedgwick County, Derby and Wichita:

- Give 30 days written notice to McConnell of proposed plan amendments or zoning regulation changes in the critical area of interest.
- Give written notice within the statutorily-required time period to McConnell of any development proposal in the critical area of interest.
- Consider the effect of the factors outlined in House Bill 2445 that could negatively affect operation of the military installation when considering plans, zoning changes, and development proposals within the critical area of interest.
- Review and coordinate changes to the comprehensive plan and zoning regulations in the critical area of interest with the Joint Land Use Study and Air Installation Compatible Use Zone for McConnell.
- Provide written notice of the presence and potential impacts of the military installation to individuals seeking construction permits within the critical area of interest.
- McConnell AFB:
  - Coordinates with municipal representatives regarding alterations to the Joint Land Use Study, Air Installation Compatible Use Zone, and Environmental Noise Management Plan for McConnell.
  - Reviews and comments on impact to McConnell of any proposed zoning regulation, comprehensive plan document, or development proposal within the critical area of interest.
- Derby and Wichita are currently considering the MOU. Sedgwick County will consider the MOU on November 10. The commander at McConnell AFB plans to sign the MOU following approval by the three municipalities.
- The MOU provides a structure and consistency to the notification and communications process, which should promote economic vitality and affordable living by ensuring development standards that balance future operations at McConnell with the growth needs of the City.

**Financial/Sustainability Considerations:**

- The MOU is not expected to increase the cost of development within the critical area of interest.

**Legal Considerations:**

- The obligations of the City under the MOU fulfill the requirements of HB 2445.
- The MOU has been reviewed and approved by the legal staff of each party.

**Recommend a Motion to:**

- Authorize execution of the Memorandum of Understanding on behalf of the City.

**Street Improvements to serve Stone Creek 4<sup>th</sup> and 5<sup>th</sup> Additions**

**Background:**

- Bids for construction of Street Improvements to serve Stone Creek 4<sup>th</sup> and 5<sup>th</sup> Additions were opened Tuesday, November 2, 2010.

- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

APAC-Kansas	\$531,832.00
LaFarge North America	\$511,273.01
Cornejo & Sons	\$474,533.00
Kansas Paving	\$468,037.25
<b>Engineer’s Estimate*</b>	<b>\$501,756.25</b>

*\*Engineers estimate prepared by Baughman Co., P.A.*

**Financial/Sustainability Considerations:**

- Costs for the improvements will be paid 100% by the benefit district.
- Special assessments will be spread against the benefit district properties over a 15-year period.
- Funding for construction of the improvements is included in Temporary Note Series 2010-1.

**Legal Considerations:**

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for planning and financing such projects.

**Recommend a Motion to:**

- Authorize the City Manager to execute a contract with Kansas Paving for \$468,037.25 to construct Street Improvements to serve Stone Creek 4<sup>th</sup> and 5<sup>th</sup> Additions.

**Sanitary Sewer Improvements to serve Kingdom Hall Addition**

**Background:**

- Bids for construction of Sanitary Sewer Improvements to serve Kingdom Hall Addition were opened Tuesday, November 2, 2010.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

Mies Construction	\$40,720.00
Dondlinger & Sons	\$37,540.00
Duling Construction	\$36,843.00
Utilities Plus	\$31,645.00
McCullough Excavation	\$29,050.00
Nowak Construction	\$26,718.00
<b>Engineer’s Estimate*</b>	<b>\$45,390.00</b>

*\*Engineers estimate prepared by Young & Associates*

**Financial/Sustainability Considerations:**

- Costs for the improvements will be paid 100% by the benefit district.
- Special assessments will be spread against the benefit district properties over a 15-year period.

**Legal Considerations:**

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for planning and financing such projects.

**Recommend a Motion to:**

- Authorize the City Manager to execute a contract with Nowak Construction for \$26,718.00 to construct Sanitary Sewer Improvements to serve Kingdom Hall Addition.

**Uniform Public Offense Code, 2010 Edition**

**Background:**

- The City of Derby regularly adopts revisions to the Uniform Public Offense Code (UPOC) published by the League of Kansas Municipalities.
- The UPOC establishes ordinances based upon Kansas State Statutes and ordinances commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are sometimes drafted by the City of Derby Legal Department to tailor specific sections to local needs. This year, no policy changes are recommended. The ordinance only continues policy previously set by the Council regarding littering and discharge of firearms and other weapons.
- The 2010 Edition of the Uniform Public Offense Code (with amendments) has been reviewed and recommended for adoption by the Ordinance Review Advisory Board.
  - Included in the UPOC amendments is deletion of Sections 10.24 through 10.26 which contain restrictions on smoking that are already addressed in Chapter 8.48 of the Derby Municipal Code. The City chose to make these changes several months ago since they were effective July 1, rather than waiting for publication of the UPOC.

**Financial/Sustainability Considerations:**

- None.

**Legal Considerations:**

- The Police Department is responsible for enforcing the UPOC.
- The 2009 Edition of the UPOC was passed by the Derby City Council on December 22, 2009.
- The 2010 Edition of the UPOC includes revisions of specific sections to remain current with Kansas State Statutes.
- The proposed local amendments are substantially identical to the amendments adopted by the Council in the 2009 Edition of the UPOC.

**Recommend a Motion to:**

- Adopt the 2010 Edition of the Uniform Public Offense Code, as amended.

ORDINANCE NO. 2046

AN ORDINANCE AMENDING CHAPTER 9.01 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2010 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL CHAPTER 9.01 OF SAID CODE.

**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 2009.
- 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 \$3,000.
- 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. 2047

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

**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 license to sell cereal malt beverages has been received from The Pantry Inc. at 230 S. Baltimore. This is currently the site of the Presto convenience store.
- The application is still under review, but is submitted for City Council approval since the November 23<sup>rd</sup> meeting has been cancelled.

**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.

- The Council may authorize issuance of cereal malt beverage licenses based upon applications submitted but not yet fully reviewed, but condition issuance upon staff's determination that all requirements have been met.

**Recommend a Motion to:**

- Authorize the issuance of a cereal malt beverage license for the year 2010 to The Pantry Inc. for the location at 230 S. Baltimore, contingent upon the licensee meeting all of the requirements of state statute and city ordinance.

**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 Council will consider assessment by ordinance of the charges.
- This ordinance includes 5 properties, of which 1 is occupied, 2 are in foreclosure, and 2 are vacant lots without structures.

**Financial/Sustainability Considerations:**

- The costs incurred in connection with the parcels to be assessed total \$1,075.25.

**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.

**Policy Considerations:**

- 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.

**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. 2048

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

## **Lease Agreement with Big Daddy Fireworks, L.L.C.**

### **Background:**

- The City has leased the property adjacent to the water meter station to Big Daddy Fireworks the past four years during the fireworks selling season for the purpose of retail sale of fireworks.
- Last year, Big Daddy Fireworks was chosen to lease the property after a competitive process to secure the highest lease payment while taking into consideration the intrinsic value to the community. Two proposals were received last spring:
  - Big Daddy Fireworks - \$10,500
  - Wholesale Fireworks - \$7,800
- Due to the difference in the proposals and an indication last year from the representative of Wholesale Fireworks that they would not match the \$10,500 proposal, staff recommends entering into another lease agreement.
- The term of the lease will be from June 24, 2011 until midnight, July 6, 2011. This allows access several days before and the day after the selling period for fireworks. The sale of fireworks is allowed only during the time that the use is permitted by city ordinance.
- The proposed lease requires that the property be restored to its original condition. Installation of the utility service and removal of the utility pole is at the expense of Big Daddy Fireworks, L.L.C.

### **Financial/Sustainability Considerations:**

- In addition to the \$10,500 in rental revenue each year, the City will receive the fireworks stand permit fee of \$7,500 as required by city ordinance.
- The lessee will furnish a Certificate of Insurance coverage naming the City as an additional insured.

### **Legal Considerations:**

- The City holds fee simple title to the property to be leased. The City Attorney has determined the proposed lease to be satisfactory in the form presented.

### **Policy Considerations:**

- Fireworks stands are a major fundraiser for various non-profit groups in the community. The First Christian Church of Derby will operate the stand that along with Dr. Robert Sweet, representative of Big Daddy Fireworks, have a history of compliance with the requirements of the lease.

### **Recommend a Motion to:**

- Authorize the City Manager to execute a property lease agreement for the land at 407 W. Patriot in the City of Derby in substantially the form presented.

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

VOTE: Motion carried 8-0.

### **EXECUTIVE SESSION:**

MOTION: Nun moved to recess to executive session at 8:03 p.m. following a 10 minute break to discuss personnel matters of non elected personnel,

specifically relating to the annual performance review of the city manager for a period of 30 minutes and resume the meeting no sooner than 8:45 p.m. Bannon seconded

VOTE: Motion carried 8-0.

The council returned at 8:50 p.m. and Nun advised no binding action was taken.

**ADJOURNMENT:**

MOTION: Nun moved to adjourn at 8:50 p.m. Haynes seconded.

VOTE: Motion carried 8-0.

\_\_\_\_\_  
Dion P. Avello, Mayor

ATTEST:

\_\_\_\_\_  
Jean Epperson, City Clerk