

**APPROVED  
REGULAR COUNCIL MEETING  
October 27, 2009  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President Mark Staats. The invocation was led by Pastor Joplin Emberson, Cross Way Church.

**CONSIDERATION OF  
MINUTES**

Minutes of the October 13, 2009, Regular Council Meeting.

MOTION: Staats moved to approve minutes of October 13, 2009 Regular Council Meeting. Craig seconded.

VOTE: Motion carried 8-0.

**PUBLIC FORUM**

**Kelly Hanrahan** owns property at 525 Tall Tree. The City of Derby mowed it and issued him a bill for it. He called Jean Epperson and protested the bill that was \$250. It has never taken him more than 30 minutes to mow that lawn in the 9 years he has owned the property. They went back to the people that did the mowing, and they adjusted the bill to \$127, saying it took 2.8 hours. He is not objecting to paying, he knows the lot needed mowed; but he objects to the amount. There is no way it took 2.8 hours to do that. He rototilled that with a garden rototiller and it took him less than three hours, there is no way it took 2.8 hours to mow it.

**Council Member Haynes** advised the Derby VFW is having an open house on Veterans' Day, November 11<sup>th</sup> from 9:00 a.m. to 10:00 a.m. He encouraged everyone to come out and support our veterans at the VFW.

**Council Member Bannon** advised that someone called her house, and her husband erased the message. They don't have caller I.D., so if you called, please call back. The library is coming along, if you have books or audio DVD's there is a drive thru, but there is a separate slot for DVD's and CD's than there is for books. November 14<sup>th</sup> will be the grand opening with doors opening at 9:00 a.m. and a ribbon cutting at 10:00 a.m.

**Mayor Avello** indicated that later on in the council meeting there will be an executive session and water board meeting. They will recess the council meeting to go into the water meeting, convene again and go into executive session.

**Kathy Sexton**, City Manager gave a slide show presentation of the Visioneering Wichita trip she and Council Members Horyna and Staats made to Chattanooga, Tennessee. They went with about 60 others from the area. Every year this group makes a trip to another community, last year they toured Oklahoma City and Ft. Worth and previous to that Richmond. The purpose is for people in the Wichita area to get ideas about other cities. We learned some lessons and wanted to bring that back and share with the council. She pointed out examples of green spaces, public gathering spaces and public art.

**Council Member Horyna** commented on one the photographs presented, there is a blue building in the corner, inside that building is a carousel that they “stole” from Atlanta. Chattanooga went around to other communities, as we did and took other people’s ideas. Mr. Horyna thanked the council for allowing them the opportunity to join the leaders of our region on this trip. It was an eye opening experience and we basically had a front row seat on the SS Chattanooga for 40 plus years in the making. It was a wonderful experience to see this community develop and stay together as they did to achieve this goal. One of the first speakers they had was a gentleman by the name of Jack Mariah, former president of the Lindhurst Foundation. One of his opening speeches was that he went up to his boss when he first started, he was tasked with helping rebuild this city, and said that he was an ex-teacher, now he’s an entrepreneuring philanthropist, how do you expect him to aid in this great development? His boss’s response was “I don’t know, but you or your predecessor better figure it out.” They were bent on getting this thing pushed through. Another quote that really hit home was by Mayor Claude Ramsey who said “it’s amazing what you can accomplish when you don’t care who gets the credit.” They didn’t care whose name was on the wall or a statute, all they wanted to do was make sure the community had a wonderful place to go to, live and thrive. Some big ideas they really promoted was to plan for the distant future, not the immediate future. He relayed a story that was told by two men about their father who was stricken with terminal cancer and instead of giving up he went out and bought trees and planted them wherever he felt like a tree should be. He wasn’t planning on seeing these trees in five years, but he was planting them for the future. These two men don’t live in town but they do own an ice cream store there. It’s a wonderful store, and they are really wonders for their community. Plan for the future, not the immediate future but the long haul, our kids’ kids. It was important that Derby represented our region in planning for downtown development. Whatever happens in Wichita will greatly affect Derby. A lot of us commute back and forth to Wichita. Our presence at this event strengthened our relationships with our local elected officials and business leaders. We need to maintain that good working relationship, knowing we are the second largest city in Sedgwick County.

**Council Member Staats** stated that some people have asked why Derby would go on a Visioneering Wichita trip to Chattanooga. Mr. Horyna touched on it a little bit; the economic health of our region in the Wichita area affects us greatly. If Wichita starts to flounder so does Derby. He would venture that most people in this room and in Derby will probably in the next two weeks find themselves in the city of Wichita, that’s how our make up is. It brought a lot of good information and ideas for that whole group to develop the downtown area around the water

front and Intrust Arena. There are a lot of people that are not real happy with the way things are going, but there are a lot of volunteers out there working on things and hopefully some things will get done. We also brought back some very positive ideas we thought we could use right here in Derby, which was sort of a bonus, we really weren't expecting that. He and Ms. Sexton would be walking and you'd almost see the light bulb come on over both our heads and we'd look at each other and have the same idea. One of our county commissioners pointed out to him that Derby's a river town; most people in this town don't realize that Derby is a river town. The Arkansas River runs right to the west of us and we don't really utilize it. Within the next year or so we are going to be relocating our city maintenance facility up north and the city owns property right on the river. This is our prime opportunity to take the ball and run and create some nice green spaces there and throughout the city. Kathy hit it on the head when she talked about the green spaces; if you build a house on a golf course the house goes up in value, also by parks, mountains, streams and trees. As long as he is on the council he is going to push for more parks and green spaces in this town. They are used in this town. Our hike and bike trails, our parks, every day. It took Chattanooga 40 years to figure it out, and they've figured it out quite well. We need to keep on the track we are going and enhance what we have.

**Mayor Avello** asked if Chattanooga is similar to Derby, a residential town growing like we are.

**Ms. Sexton** advised they are not. It's very unique as a city with 170,000 population, about half the size of Wichita when it comes to population. It's an old city because of being on the river. Chattanooga is the trail head for the Trail of Tears, where the Cherokee nation was forced to move all the way to Oklahoma Territory. We saw some of that history referenced in the public art and brick work in the renovated area. It's an old community, but it's odd in that it's not a big city, it's less than two hours drive from Atlanta and within 100 miles of Knoxville and another big city, so it's destined to be about that size. In the 1960s, Walter Cronkite said Chattanooga was the dirtiest city in America, and it got them motivated. Forty years may seem like a long time but it's amazing what they've done, although it's not perfect. Some people might ask why you would go there and try to be like them, they have empty store fronts and expensive condos that nobody will buy and they need retail downtown, all those challenges. She thinks the history is why we went there, to see how much they have accomplished in so little time.

**Mayor Avello** asked if there were any more trips planned.

**Ms. Sexton** indicated they take a trip about once a year but has no idea where they might be thinking about going next year.

## **PROCLAMATIONS**

Mayor Avello declared November 7-14, 2009 as Hope for Heroes Week. Representatives of the Epsilon Sigma Alpha Sorority accepted the proclamation.

Mayor Avello declared October 23-31, 2009 as Red Ribbon Week. Student Council representatives from several elementary schools in the Derby school district were present to accept the proclamation.

**EMPLOYEE AND CITY  
COUNCIL SERVICE AWARDS**

**Kathy Sexton**, City Manager presented the staff report, and Mayor Avello presented the awards.

**Background:**

- Since 1992 the City of Derby has participated in the League of Kansas Municipalities Employee City Service Awards program, which recognizes employees for years of service to any City in Kansas.
- This year the City is once again participating in the program. Awards will be provided in five year increments, beginning with five years of service.
- In 2007, we began recognizing only years of service to the City of Derby, rather than all municipal service within the state of Kansas. In 2007, we also began recognizing Council members for their years of service as elected members. Their recognition begins at eight years of service, and thereafter is recognized in accordance with the employee schedule (e.g., 10-year and then 5-year increments).
- This year we have 22 employees and 2 council members to recognize:

**Employees**

<b>5-Year Awards</b>	<b>10-Year Awards</b>	<b>15-Year Awards</b>	<b>20-Year Awards</b>	<b>30-Year Award</b>
Trisha Lichti	Lynda Bliss	Stuart Agnew	Allen Frost	Marty Condon
Robert Mendoza	Jake Dreiling	Phil Alexander	Ginny Hall	
Brian Norris	Cindy Gayer	Marsha Devan	Dan Payne	
Robin Ramsey	Brent Lichti	Matt Liston		
Matt Stamm	Terry Meek	Carolyn Morrison		
Dale Wasinger	David VanSickle			
Marissa Wood				

**Council Members**

<b>10 Year Awards</b>	<b>15 Year Awards</b>
Chuck Warren	Dion Avello

**Financial Considerations:**

- Service award recipients with fewer than 20 years of service receive a polo shirt and mug. Employees recognized for 20 or more years of service receive a polo shirt and either a jacket or sweatshirt. Sufficient funds are budgeted to support the cost of these items.

**Legal Considerations:**

- Because of their salutary effect on morale, purchase of employee service awards is an appropriate expenditure of City funds.

**Policy Considerations:**

- The League of Kansas Municipalities recommends recognition of employees and Council Members for their years of service.

## **ADOPTION OF A NOISE CONTROL ORDINANCE**

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

### **Background:**

- The Derby Police Department routinely responds to noise complaints, primarily in residential areas.
- Sources related to these complaints include loud parties or gatherings at homes, operation of power tools, and public events that incorporate public address systems, amplified music, and fireworks displays.
- Police officers investigate noise complaints and attempt to resolve the matter between the parties involved.
- If the matter cannot be resolved, it is up to the person being offended to sign a complaint. Citizens are reluctant to sign a complaint against a neighbor, in which case the issue often goes unresolved.
- The proposed ordinance sets specific, quantifiable noise limits that police officers can use to resolve complaints through enforcement or voluntary compliance.

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

- Minor impact on the Police Operating Budget to purchase handheld sound meters.

### **Legal Considerations:**

- The Governing Body has the authority to pass ordinances to maintain the public peace.

### **Policy Considerations:**

- The proposed ordinance contains exemptions for publicly authorized or sponsored events such as parades and sporting events, due to the public nature of the event and the restrictions that are in place to limit the time, place, nature and duration of such events.
- Staff members from USD 260 and the Derby Recreation Center were consulted during development of the proposed ordinance.

### ORDINANCE NO. 1996

AN ORDINANCE PROHIBITING NOISE POLLUTION WITHIN THE CITY OF DERBY, KANSAS.

### DISCUSSION:

**Council Member Meidinger** commented the basic reason we have this ordinance is because of the noise at High Park, is that correct?

**Chief Lee** advised that noise complaints in general are the reason we have the ordinance. The reason we have it is because it kind of fits under the disorderly conduct provision but there was not a specific decibel level there. This allows us to have that particular level so we can measure it, enforce it and present it in court.

**Council Member Meidinger** asked if the noise meter would be at James Street when measuring noise at High Park.

**Chief Lee** advised the noise meter, as stated in the ordinance, is on the property line from the source of the noise.

**Council Member Meidinger** stated that generally the wind will be from the south and will blow it to the north. He asked if there were any complaints this year with Foghat.

**Chief Lee** advised they received one he believes.

**Council Member Haynes** asked if the night time hours from 10:00 p.m. to 7:00 a.m. were standard night time hours, because he is used to seeing 6:00 a.m.

**Chief Lee** stated that is fairly frequently what they found in researching this ordinance, particularly the 10:00 p.m. The 7:00 a.m. could be modified if the council would like.

**Council Member Haynes** indicated he is okay with it, he just wanted to be sure it was standard across the board.

MOTION: Horyna moved to adopt a noise ordinance as presented. Warren seconded.

**Council Member Bannon** asked if the Foghat concert fell within range of the decibels.

**Chief Lee** advised the first half did and the second half slightly exceeded the limit. We did not have obviously this ordinance in place at the time and the band was very willing to adjust their volume to meet our decibel level should we have had such an ordinance in place.

**Council Member Bannon** asked about regular fireworks, it exempts city produced fireworks but what about me shooting fireworks in my front yard. During the week of the 4<sup>th</sup> of July that could happen after 10:00 p.m., sometime between 10:00 p.m. and midnight if she remembers right.

**Chief Lee** explained that the private display of fireworks after 10:00 p.m. if it violated a 50 decibel noise limit would be a violation of this proposed ordinance.

**Council Member Bannon** asked if we really mean to do that at the 4<sup>th</sup> of July or not. She stated that she doesn't know how loud personal display fireworks can get.

**Chief Lee** advised it depends on the firework and how close it is to the property line.

**Council Member Bannon** asked about commercial construction noise, she assumes this refers to a contractor building a house but when she sees commercial construction she thinks of "commercial construction."

**Chief Lee** indicated that can be clarified.

**Council Member Bannon** clarified that it was supposed to refer to all construction noise, not just commercial.

**Ms. Sexton** advised it means by contractors, someone getting paid to do it.

**Council Member Bannon** suggested clarifying it a little bit in the definitions as far as what commercial construction is.

**Council Member Warren** asked Mrs. Bannon exactly what her concern is on fireworks.

**Council Member Bannon** explained that during fireworks week we are allowing people to buy fireworks and we have not put any bans or decibel levels on what can be sold in town so if they buy it in town they should be able to shoot it off in town. According to this ordinance after 10:00 at night if it happens to be over 50 they can't because there are only 1-2 nights you can go to midnight.

**Ms. Sexton** indicated the intent is because you have the whole other ordinance on fireworks that does specify what times they can do it, that would trump this. That week of July 4<sup>th</sup> where we have an ordinance specifically written for that week governs that week. If you remember we started putting out those flyers when everybody buys the fireworks with all the rules. This really won't come into play.

**Council Member Craig** asked about Section 5, Item G, it indicates that is covered by 9.40 of the municipal code, can you tell us what that is?

**Chief Lee** explained there is a reason for that. Vehicles are mobile and the way that law reads is that if you can hear that clearly within 50 feet of the vehicle. The reason it's exempted here is because it's clearly addressed elsewhere.

**Council Member Meidinger** asked about Foghat, for example and them exceeding the sound limit, who is responsible for that action? Is Foghat or the organization that would sponsor them?

**Chief Lee** advised they had discussions with them prior to that concert occurring. In fact, they are very eager to meet the decibel level of whatever city they are performing in. Since we didn't have an ordinance with a specific decibel level it wasn't that we told them a specific limit. In the future, if this is passed we would give them the limit and they have the ability to monitor the volume of that music to hopefully not exceed those decibel levels.

**Council Member Meidinger** clarified that if it is exceeded, they are responsible.

**Chief Lee** explained that if it is exceeded, they would tell the sound man to turn it down.

**Council Member Haynes** asked if we would get ourselves in a bind with one ordinance trumping another for a brief period of time. Is there some way we can clarify that a little bit better?

**Mr. Alexander** advised we could insert an exception in this ordinance for fireworks. The discussion he and Kathy had was essentially that this is an example of a fairly frequent occurrence where we call upon staff to harmonize ordinances that arguably conflict or are inconsistent. We are generally able to do that by looking to the intent of the council in adopting the ordinance. In this case he would suggest from a legal perspective the fireworks ordinance is a more specific ordinance and the specific ordinance controls over the general ordinance.

**Council Member Haynes** wants to be sure that during that week period of time, the police will probably get inundated with calls and he wants to be sure the citizens understand.

**Council Member Warren** stated he is not so sure we would want to give an exception for fireworks. If the fireworks ordinance is more specific we may actually want to go back to that ordinance and put a limit of 10:00 p.m.

**Ms. Sexton** pointed out that the fireworks ordinance already has times and you are supposed to stop at 10:00 p.m. every night except on the 4<sup>th</sup> and its midnight that night.

**Council Member Warren** clarified that if someone shoots off after 10:00 p.m. on the 3<sup>rd</sup> then we have them on both the fireworks ordinance and the noise ordinance. We have one night a year where we give them a two-hour extension. The other issue he has is, what if somebody has a special need that is not listed in our exemptions, is there a mechanism that somebody could petition city staff or city council and ask for a noise exemption. He asked the council if anyone else was concerned; no one was so he dropped it.

AMENDED MOTION:           Bannon moved to amend Item J to remove the word commercial. Warren seconded.

**Council Member Staats** addressed Mr. Meidinger's concern about concerts at High Park, he advised it is addressed under Section 5, Subsection D and would be a moot point because it's something the city is putting on.

**Ms. Sexton** advised that anything that is municipally sanctioned, sanctioned by the city could be an exemption but that does not mean that just because the city endorses the DRC having a concert that we wouldn't enforce this. This started because every concert promoter, concert band or DJ that has come in here looks at us like we are about half nuts when we say we don't have a noise ordinance or decibel meter. They want to know what the rules are because they want to play by the rules. She really doesn't anticipate any problems enforcing this. They all expect it and are willing to work with it.

**Council Member Staats** advised he was at last year's concert and it was quite loud, and this year was more enjoyable because it wasn't so loud.

VOTE ON AMENDMENT: Motion carried 8-0.

VOTE ON ORDINANCE AS AMENDED: Motion carried 8-0.

**VEHICLE PURCHASES:**

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

**Background:**

- As part of the 2009 Vehicle Replacement Plan, bids were requested for four trucks, including a ½-ton pickup (wastewater), a ¾-ton pickup (parks), a 1½-ton dump body truck (parks), and a 2-ton dump truck with snow plow (streets).
- Rusty Eck provided the low bid of \$119,064 for all four trucks.
- See the attached bid tabulation sheet for price comparison.

**Financial/Sustainability Considerations:**

- The budget for all four vehicles is \$136,500 and is sufficient to cover the \$119,064 price. In addition, we will receive the auction price of the trucks being replaced because Rusty Eck does not want the trade-in, and their bid prices were still lower than the other vendors' bids, which were net of the trade-ins.

**Legal Considerations:**

- All applicable procurement procedures for solicitation and analysis of bids were observed.

**Policy Considerations:**

- All bid and purchase guidelines as required by the City of Derby Purchasing Policy and Vehicle Replacement Plan have been followed.

DISCUSSION:

**Council Member Bannon** stated she was very happy to see bids from lots of people even though Rusty Eck still wins almost every time.

MOTION: Bannon moved to approve the bid from Rusty Eck Ford in the amount of \$119,064 and authorize auction process. Horyna seconded.

VOTE: Motion carried 8-0.

**RESOLUTIONS FOR IMPROVEMENT –  
RENBERGER'S ADDITION**

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

**Background:**

- Renberger's Addition is located approximately one mile east of Rock Road on 87<sup>th</sup> Street South.
- Final Plat for this addition was approved by the City Council on September 8, 2009, by a vote of 8-0. Petitions were required as a part of the platting process and were prepared and distributed for signature to all four property owners in the benefit district. All four property owners have signed the petitions for these improvements.

- The corresponding resolutions for Council consideration have now been prepared by the City's bond counsel, Gilmore & Bell.
- The City of Derby is not likely to extend sewer and water services into this area for several years, so these nine lots will be required to be served by individual sewage disposal systems as approved by the County Code Enforcement Department and the Rural Water District, or private wells until city services are available. The resolutions will be held until larger overall projects are conducted in the area in the future.

**Financial/Sustainability Considerations:**

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

**Legal Considerations:**

- The resolution was prepared in accordance with Section 12 6a of the Kansas Statutes.

**Policy Considerations:**

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

RESOLUTION NO. 38-2009

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

RESOLUTION NO. 39-2009

WATER IMPROVEMENTS/RENBERGER'S ADDITION.

RESOLUTION NO. 40-2009

STREET IMPROVEMENTS/RENBERGER'S ADDITION.

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

**Council Member Bannon** advised that she can see long term notification issues down the road. We get to the 2<sup>nd</sup> or 3<sup>rd</sup> owner in 15 years and all of a sudden these petitions get activated and they don't know about them. She asked about putting some type of notification on the deed and letting it run with the land.

**Mr. Alexander** indicated we don't currently have any subdivision regulations that include such a requirement. He would be happy, along with the community development folks to take a look at that as to the feasibility of it.

**Council Member Bannon** indicated that is one of the only things on something like this that could turn into decades before we get out there and the homeowners are going to change over. If you put something on one of those deeds it pops up each and every time and they will know it in advance. She asked if this is something we would want to postpone. She asked Mr. Brown if there is a hurry on this.

**Mr. Brown** advised there is not. We don't anticipate improvements for decades so a few weeks delay on approving the resolutions is probably not a big deal.

**Mr. Alexander** asked if this would affect the filing of the plat.

**Mr. Brown** advised it would not, the plat is already filed.

**Council Member Staats** withdrew his motion.

**Council Member Craig** withdrew his second.

**Council Member Warren** suggested we look at methods for notifying future homeowners. Putting it on the deed might be the way to go, but he is not sure necessarily it would be. He doesn't disagree with trying to come up with something that would keep a future homeowner from being blindsided. He would be in favor of coming up with something as long as it is not overly cumbersome or overly expensive on the developer or the city.

MOTION: Bannon moved to table this item so that staff can research options for future notification. Craig seconded.

VOTE: Motion carried 8-0.

**Ms. Sexton** indicated staff has looked at this previously and came up with the signage but if council is wanting something more and different then we will go back to the same research and pick out a few more things.

**Mayor Avello** indicated he didn't want it put so far out there that we forget about it.

**Ms. Sexton** indicated that we would try not to but we have a lot on our plates as you all know.

**Council Member Craig** indicated we have looked at this several times and he is not sure we have given it a lot of good effort. He thinks one more time probably won't hurt. He can see Mrs. Bannon's point because we do have some citizens who have been caught unaware down the road when specials roll in.

#### **INTERIM REPORT ON SIDEWALK PLAN DEVELOPMENT**

**Charlie Brown**, Director of Community Development presented the staff report. He commented during his presentation that he does not know of any funding source out there for regular sidewalks unless it would be through CDBG money.

**Ms. Sexton** indicated we did that research last year when people by Swaney Elementary wanted a sidewalk. We did find two different grant sources but they are very hard to get, there is not a lot of grant money out there. One is Safe Routes to School, which would only apply to the list around the schools, but there are a lot of requirements for that. Even that one that was by Swaney didn't qualify. The CDBG is federal money and is based on income levels so the vast majority of the City of Derby does not qualify for that money. If there were some needed in very specific neighborhoods we would look at that but very few would qualify. We will see if there is anything else but it's generally true, just a regular sidewalk you're not going to get a grant for it.

**Mr. Brown** continued with the staff report.

**Background:**

- In August 2008, the Council approved a Capital Improvement Plan that included a Sidewalk Infill Study in 2009. Staff has reviewed previous sidewalk studies and performed field investigations to develop an updated Sidewalk Plan. The purpose of this agenda item is to provide an interim report on the progress of the sidewalk planning study.
  - Staff performed a similar study in 1995. Many, but not all, of the 1995 recommendations have been completed. Locations not yet completed have been incorporated into the updated plan.
  - While the 1995 plan showed sidewalks on both sides of specific streets, the updated plan only shows a sidewalk on one side due to cost considerations.
- The draft sidewalk plan does not include repairs and ramp upgrades needed to meet ADA requirements. These maintenance items were identified in an ADA study last year and are programmed separately by the Public Works Department.
- The draft plan shows both existing and programmed bike paths and sidewalks along with a list of additional sidewalks that may be needed. This list includes sidewalks near schools and parks, within new subdivisions, bike paths and sidewalks along arterial roadways, and sidewalks at various other locations.
- The draft plan indicates several gaps in sidewalks within newer subdivisions. These gaps will be filled in as new homes are constructed. Homebuilders are responsible for the sidewalk construction.
- The numbers assigned to locations in the draft plan are not indicative of their priority or recommended sequencing at this time.

**Financial/Sustainability Considerations:**

- The draft plan separately lists both existing and previously programmed bike paths and sidewalks (under construction; in design; or otherwise included in the existing Capital Improvement Plan). Some have funding already in place, and others are subject to future budgeting decisions.

- Section C entitled “Subdivision Reserves and Misc. Gaps” (items 18 through 30) identifies a list of existing sidewalk gaps in specific subdivisions. These gaps are typically located adjacent to reserves or other platted open spaces where homebuilders are not responsible for sidewalk construction. In most of these subdivisions, petitions are on file that could be used to construct those sidewalks at the expense of the benefit districts.
- Section F entitled “On Arterials (w/petitions)” identifies sidewalks or bike paths along new commercial development areas. These locations have petitions on file and also would require a city-at-large contribution due to over-sizing needs.
- The remaining Sections A, B, D, & E identify lists of gaps that have no funding source identified at this time.
- Staff is in process of developing draft cost estimates for all projects listed on the map that don’t already have cost estimates. The next report to the Council is anticipated in January and will include cost estimates.
- Besides the cost to design and construct, sidewalk projects in existing neighborhoods are known to be labor-intensive for City staff to coordinate and manage. Depending on how aggressive the Council wants to be with enhancing the sidewalk system, additional staff could be required. Any resource decisions would be fully vetted during the budget process next year.

**Legal Considerations:**

- The Governing Body is authorized to establish or revise policies and practices pertaining to the location of and specifications for sidewalks as well as the funding mechanisms to be used.

**Policy Considerations:**

- Current City policy is described in Section 5 of Resolution No. 37-2009, “Apportionment of Public Improvement Costs,” which provides in part:

*“...subject to discretion of the City, costs of public improvements will generally be apportioned between an improvement district and the city-at-large in accordance with the following policies...*

*b. Sidewalks. Sidewalk improvements, including handicapped-accessible ramps built at intersections, shall be constructed and the cost thereof apportioned in accordance with K.S.A. 12-1801 et seq. and applicable ordinances of the City, as the same may from time to time be amended. The cost of all sidewalk improvements shall be paid by the improvement district; provided that with respect to sidewalk improvements located along arterial streets and initiated by resolution of the Governing Body without petition, the cost of a standard sidewalk five (5) feet in width shall be charged against the improvement district and the remainder against the city-at-large.”*

- Using the above policy, the City occasionally is approached by residents who want sidewalks in their neighborhoods. Staff explains to them the funding policy and the petition process, which requires that 51% of the properties affected agree to the assessment.

### Options:

- If the Council desires a more aggressive implementation of the current policy, some ideas might include:
  1. Notification to specific neighborhoods where gaps in the sidewalk system exist to advocate for property owners to discuss their needs and determine their willingness to pay for sidewalks. Then circulate petitions to determine if 51% of property owners are willing to pay. (addresses Sections A-E)
  2. Focus on identified gaps in the sidewalk system that have petitions on file. Realizing that executing those petitions will likely generate negative comments from residents who are required to pay for the sidewalks. (addresses Section C)
  3. Review all the identified gaps against all known grant programs to determine if any projects would be eligible for partial grant funding and make application for said grants. Property owners would continue to be responsible for the remainder not covered by grants. Given what we know about sidewalk grant programs currently available, very few on the map would be eligible.
  
- If the Council desires a more aggressive policy (instead of just more aggressive implementation of the current policy), some ideas might include:
  4. Designate priority projects (for example, Section A “near schools” or Section E “on Arterials”) and amend the policy to provide for a different funding split requiring greater City contribution (i.e., 50% City, 50% property owners or any other funding split the Council deems appropriate). Then circulate petitions to determine willingness to pay.
  5. Designate priority projects and amend the policy to provide for 100% city-at-large funding, realizing that some residents will voice negative concerns about trees, landscaping, driveways, etc. regardless of funding. No petitions would be circulated.
  6. Review all the identified gaps against all known grant programs to determine if any projects would be eligible for partial grant funding and make application for said grants. Amend the policy requiring property owners to be responsible for the remainder not covered by grants to provide for some or all City funding for that portion not covered by the grant. Given what we know about sidewalk grant programs currently available, very few on the map would be eligible.

### DISCUSSION:

**Council Member Horyna** asked if any of these sidewalks are a concern for public safety that we really need a sidewalk for public safety concerns.

**Mr. Brown** stated that from an engineering point of view his feeling is that sidewalks are needed on almost every street. From a safety point of view and getting pedestrians off the street some probably are more critical than others; this list is not a priority list by any means. There

probably are some that have higher traffic and some vision issues with shrubs, landscaping and that sort of thing. He is sure there probably are some that are more critical than others.

**Council Member Bannon** asked what prompted this.

**Mr. Brown** advised it was in our CIP a year ago, it was a discussion about projects we had in the CIP at that time and trying to identify those that are community based versus neighborhood things and making sure we had a policy and a program that all blended together.

**Council Member Bannon** indicated the map is great, it shows areas where we have done some great things and some areas that show hindsight is 20/20. It is still stuff that we did according to ordinance and this is what we are left with. We budget every year “x” dollars to mill and overlay everything, it might be good to budget “x” dollars to help fill in one part of the overall sidewalk plan. One of the priorities she would want to move up is those near schools. There is one on here that has another sidewalk around the school but when you have kids, houses you really almost need both sides of the street because we have houses on both sides. She would like to see that made a priority and very possibly the city may have to step up a little bit on that. After that she would think the pink gaps, as far as policy on that, we have a policy on the pink gapped ones, those petitions are on file, they just need to be activated. Is this the proper economy and timing to do that, I don’t know.

**Ms. Sexton** stated that she doesn’t think anybody should think that we are going to start assessing immediately. By the time we actually have staff time to do this, these are very labor intensive, and the recession will be over.

**Council Member Bannon** asked staff to check if a grant is available, if it is that’s a no brainer. Let’s start building it into our budget with CIP dollars every year to help take care of the sidewalk issue. Move those near schools to a priority and start planning for the pink gaps. There is a very large one in Timberleaf that runs along the large pond that the whole neighborhood up there enjoys and uses. It has been on file since it was built that it would be done, it needs to be done.

**Mr. Brown** advised he ran figures on the Timberleaf project; it’s about 500 feet long and costs about \$7,200. By the time you divide it out by all the lots in that neighborhood at 5% and 15 years, special assessments would be .43 cents a month. Its \$54.00 total assessment so in all likelihood many people will just pay those off rather than assess them.

**Ms. Sexton** clarified that it is per month but when it’s assessed you pay it with your property taxes so you can pay it in two payments a year, you can’t pay it monthly. She doesn’t want anyone thinking we are actually going to bill people for .43 cents every month.

**Mr. Brown** added that most people have a mortgage company where it’s through escrow so it does show up as an increase on your mortgage payment in that amount.

**Council Member Warren** stated that if the neighborhoods aren’t interested in putting the sidewalks in he is not in favor of going in and doing a lot to encourage it if they are not

concerned about it. He does agree with Mrs. Bannon that around the schools on the main roads, as he looks at the one by Swaney there is a yellow sidewalk that shows up along Riverview but Riverview doesn't carry a lot of traffic. If the neighbors didn't want it and the neighbors weren't concerned that would be one he would question why that is an issue. On the flip side, English Street catches a lot of traffic and that would be a street he would be concerned both for a person that lived in the area but as a citizen overall, would be one that would be a concern to him. Then right along and close to the school where there are lots of cars, traffic and kids, you put that combination together and you have a recipe for some danger. He thinks there are a few areas where we may want to be aggressive, but beyond that he's pretty much for leaving our policy alone. If we have mechanisms in place if neighborhoods want to have streets we have a way to do it. He wouldn't be in favor of becoming any more aggressive on most of our neighborhoods; it's up to them, if they want to do it we have the vehicle to do it for them, if they don't want to do it, that's their choice.

**Council Member Meidinger** advised the intent of the 1995 study and plan was to get safe sidewalks to the schools. What really concerns him is that we did this study in 1995, taxed the people in 1995, 1996 and 1997 probably, and these sidewalks didn't get put in. If we approve and set a policy then somebody had better keep their feet to the fire on this issue. We talked about James Street, north Woodlawn and probably even down to Tanglewood School and those sidewalks were never put in. It's nice to have a policy and a plan but it's even nicer if they are implemented.

**Council Member Craig** commended Mr. Brown. The CIP has had a route to do streets and sidewalks but this brings a visual focus on where we need to start. The safety issue and kids traffic to school is probably the most important. That is what will get us in trouble if anything ever happens. He has been an advocate for one particular sidewalk and has come up with different variations to solve that. It is on the plan and he appreciates it still being there, but as Mr. Meidinger has said it has been 14 years since we have had a visual focus on where it's at and what we really need to do. He supports the situation of starting with reemphasizing the safety issue to the schools. He agrees with Mr. Warren, if a neighborhood doesn't want it we shouldn't badger them to do it. He pointed out that the project he was talking about, when it was first laid out ten years ago was a \$40,000 project, now it's a \$200,000 project. When things get lost and we don't get around to it they get more expensive as time goes by. If we can start to narrow it down with a priority of the safety issues first and move ahead from that point it will save ourselves a lot of time and money.

**Ms. Sexton** clarified that under current policy that sidewalk would only happen if the neighborhood wants it. We would issue the petition and it would go around the neighborhood and if over 50% don't sign it then it's not going to happen. There is no city policy for city money to be used on that Woodlawn sidewalk from Meadowlark to Tall Tree.

**Council Member Craig** agreed, there are certain families there that have watched their kids grow up and it's not important to them anymore because it was 10 years ago and their kids are driving down that street now and other people are worried about their kids. Time moves us forward; he thinks there may be an alternative solution to those things. You can query them and if there is no support for the most part then we need to move on.

**Council Member Warren** stated that from a safety standpoint on schools, if we wanted to become a little more aggressive and put a sidewalk on English street because it does carry a lot of traffic and a lot of kids, would the city be involved in any portion of that or would we only do that if the neighborhood did that completely?

**Ms. Sexton** advised that if we send a petition around and more than 50% want to do it that means they want to pay 100% of a 5 foot sidewalk, then we do it. If they don't want to pay for it current policy says we're not doing it. This originated because people have been bringing sidewalk requests to either staff directly or to the council and they have been told no over the past couple of years. One person went through her neighborhood last year and she couldn't get the 50%. We respect and admire that she worked on that but she couldn't get it. That's why recommendations on the 2<sup>nd</sup> half of the options page, if you want to change city policy, it could be as many of you are saying that the routes to school are a priority you could make a policy to partially pay for that with city funds. What several have said is that if the neighborhood doesn't want to help pay for it then we won't do it, in other words you don't want to give it away, everybody wants it if you give it away. She is not saying it's not useful but since you have all been through the budget process recently you know there are a lot of other needs besides sidewalks. It will take a change in policy for the city to pay for any sidewalks.

**Council Member Warren** indicated that an area he personally would be willing to see the city pay a portion of the sidewalk as it relates to schools would be on those roads that we clear first with snow plows, such as English Street. That would be the type of road he would be willing to become a participant on a portion of that. We need a discussion either now or in the future as to what that percentage would be, if we would pay 25% or some other number. That's the only area where he would see increasing our option, on arterial streets near schools.

**Council Member Meidinger** thanked Mr. Brown for the good visual aid. The whole issue of the 1995 plan really focused on public safety for the school kids, that was the issue. Whether we like it or not the city at large is probably going to have to pay for those sidewalks. Some of those residents will get a free sidewalk. You weigh public safety against the luck of the draw for some people. If you don't care about the students going to school, as Mr. Craig mentioned, when your kids are no longer in elementary school and they are driving you don't particularly care if there is a sidewalk out there. It's going to take a good strong public policy on safety and if that's not an issue then we probably don't need sidewalks.

**Council Member Bannon** agrees that the city is going to have to pony up for the kid's safety. There are some of these that are around schools that are not heavily used and whether we go by this being an emergency route that gets cleared or whether we call it a heavy traffic street, whatever criteria we want to make he would like to see some type of overlay so that we know we really need that on that particular street, not just because it goes by a school. Another thing she brought up that no one else has commented on is pulling the trigger on petitions that are lying out there and are not very costly. If you look at the map they are not very long, most of them are in larger subdivisions where the cost is not going to be that great and it would help fill in some of the gaps around town that would not cost the city any money.

**Council Member Craig** stated he would be looking at not only the ones you are going to identify that way--percentages are one thing--but we could start to look at how much it's going to cost us as a good piece of data that we should have available to us. If we are going to pony up 50% then we need to know what that 50% is. There is a lot of work to be done and it won't get done overnight. This is a real good starting point because it really identifies the areas that have been left behind or not attended to the first time around. He agrees with Mrs. Bannon, if there are some areas that we could call "low hanging fruit" that can be picked real quick and won't hurt anybody that bad to get those gaps filled in, that would be a good thing to do.

**Ms. Sexton** stated that we are calculating costs on all the projects and we will come back to the council in January. We have three meetings between now and then and that will give staff time to figure that out and you will see the cost for the whole thing. We will then be back again during budget/CIP time to layout if this is a five-year or ten-year plan and the cost broken out by year. This is not unusual, most cities do it like this, in terms of having the property owners pay for the sidewalks. There will be a substantial investment of city staff time to do all these. It's very labor intensive to talk to each and every property owner, explain to them how it works and from a design stand point, figuring out all the driveways, the slopes, the trees and bushes and the favorite flowers that have to be moved.

**Council Member Craig** added that in the past we have done very well in putting things in the CIP program, this is a broad expanse and shows an over arching view of what this whole project really is. It's not this year; this is like 10 years of work. If we don't do it now we're going to expand and get more complex as time goes by.

**Council Member Haynes** stated the map is great and we have received some good information tonight. It seems all we need to do at this point is receive and file the report. We need to put some emphasis on safety around schools and look at those areas and whether the city will have to get involved in paying for some sidewalks or not. He would like to see some priority put on that as the city staff moves forward with what we are trying to accomplish.

**Council Member Horyna** advised he would like to see where the biggest areas of safety concerns are, whether the police department has had some safety concerns with pedestrians in high traffic areas, the school areas are the most important. When you get a plan you need to stick with that plan, these petitions are there and don't seem to be breaking the bank. If somebody has lived there many years and their kids have moved out, what if they move out and a young family moves in and they would like a sidewalk there. He would like to see those petitions move forward, it doesn't look like a big issue.

**Council Member Staats** stated that one thing he hasn't heard is, the people in this town use the sidewalks. We concentrate on the hike and bike trail and see people utilizing that a lot in this town which is a great thing. You drive around this town and the weather is nice and you see people of all ages on the hike and bike trail. There are a lot people that don't necessarily want to take a long walk to get to the hike and bike trail so it's important that we get a little bit more buy-in on some of these sidewalks. These are quality of life issues, people are out exercising and doing things. Safety is important but there are also quality of life issues that keep the value

of our homes high and keep everybody safe, not just kids but adults as well. It's important that the city start to look at these things and get a little bit more buy in.

MOTION: Staats moved to receive and file the report. Horyna seconded.

**Mayor Avello** commented, as one who has walked the streets to get a sidewalk in it's a very volatile and emotional subject. A lot has been said about people moving in and people moving out and if you are going to do this, which he is in favor of, he hopes you knock on those doors again and ask because it's volatile. The question he gets a lot is who repairs the sidewalk? He asked if the schools have any responsibility in setting sidewalks for safety.

**Ms. Sexton** explained that under the current city ordinance all property owners who build a building have to put in sidewalks on their property. If the school district were to build a new school they have that responsibility. Just like homes and businesses, everyone that has built previously under old ordinances, they don't have any obligation to do that unless the city changes its policy and tells them they have to.

**Mayor Avello** stated that would be spurred by the community.

**Ms. Sexton** indicated it's a policy decision.

VOTE: Motion carried 8-0.

The council recessed for a 10 minute break at 8:20 p.m. and returned at 8:30 p.m.

**ORDINANCE AMENDING CITY  
CODE CHAPTER 5.28 – COLLECTION  
OF REFUSE, RECYCLABLES AND  
SOLID WASTE**

**Phil Alexander**, City Attorney presented the staff report.

**Background:**

- In March 2009, the Governing Body adopted ordinance #1980, substantially amending Chapter 5.28 of the Derby Municipal Code to prepare for collection of residential solid waste and recyclables by a City contractor.
  - Subsequent to adoption of ordinance #1980, the City received and the Governing Body considered proposals by several prospective contractors. In July, a contract with Waste Connections of Kansas, Inc. (WCI) was approved and executed.
  - During the City's negotiations with WCI, details of collection operations emerged which make it advisable to further amend Chapter 5.28 of the Code before WCI begins performance under the contract on December 1, 2009.

- The central features of Chapter 5.28 will not change. Residential refuse and recyclables may be collected only by the City’s contractor, and nonresidential solid waste may be collected by any licensed contractor.
- Significant proposed changes to Chapter 5.28 are –
  - “Unusual or heavy waste” and “hazardous waste” are separately defined and the latter will be consistent with applicable federal regulations (§5.28.010.G and S).
  - The definition of “solid waste” is revised to make clear that it includes grease accumulated and hauled away from restaurants and commercial food processors (§5.28.010.P).
  - The definition of “yard waste” is broadened to include tree trimming waste (§5.28.010.T).
  - “Prohibited acts” and “penalties” sections (§§5.28.070 and 5.28.080) are amended to:
    - Define inherently criminal acts (subsections A.1-A.5) as class “C” violations punishable by both a fine (up to \$500) and jail (up to 30 days).
    - Establish other violations as “fine only” offenses (up to \$100).
  - Procedures for collection of residential solid waste and recyclables (§5.28.090) are amended to:
    - Make clear that residents may decline to participate in the recycling program (subsection A.1.a).
    - Allow for “sharing” of carts with City approval under certain circumstances (subsection A.1.b).
    - Make clear that recyclables will be collected biweekly (subsection A.4).
    - Clarify requirements for storage of carts – behind the front face of the principal structure – between collections (subsection D).
  - A new provision (§5.28.140) is added to define the term “Collector” as one licensed for collection of nonresidential solid waste.
  - For haulers licensed to collect and transport nonresidential solid waste, the City Clerk is authorized to suspend or revoke licenses for failure to comply with City code and to transfer vehicle permits.
  - Penalties are defined for violations by nonresidential haulers operating without appropriate permits or license or in violation of other provisions of the code.

**Financial/Sustainability Considerations:**

- Customer rates for collection of residential refuse and recyclables have been established by agreement with WCI. The proposed ordinance will not impact rates, either residential or nonresidential.
- Proposed changes to Ordinance #1980 have no anticipated financial effect.
  - Pursuant to Resolution #26-2009 and its contract, WCI will pay a franchise fee equal to 5% of gross revenues to the City.
  - Franchise fee revenue will be available for use as determined by the Council during the annual budget process.

**Legal Considerations:**

- State law (K.S.A. 12-2101 *et seq.*) authorizes the City to collect, transport and dispose of solid waste directly or through a contractor. Ordinance #1980 was adopted as an exercise of that authority.
- The proposed ordinance addresses aspects of Chapter 5.28, the application of which could not be precisely foreseen when ordinance #1980 was adopted in March.
- In September, a petition was filed – ostensibly pursuant to K.S.A. 12-3013 – requesting repeal of ordinance #1980. The City declined to do so, and a legal challenge followed.
- Although this legal challenge has not been finally resolved, the District Court declined to enter a preliminary injunction. This decision means it is extremely unlikely that plaintiffs will prevail on the merits of the case.

**Policy Considerations:**

- By adopting ordinance #1980 in March and subsequently contracting with WCI for collection and disposal of residential refuse and recyclables, the Governing Body has already resolved the important policy questions concerning management of solid waste generated within the City.
- The proposed ordinance does not implicate those policy decisions but only fine-tunes the regulatory scheme already established in order to address legitimate concerns identified since adoption of ordinance #1980.

ORDINANCE NO. 1997

AN ORDINANCE AMENDING CHAPTER 5.28 OF THE DERBY MUNICIPAL CODE, REGULATING ACCUMULATION, STORAGE, COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLES, AND ESTABLISHING PENALTIES FOR VIOLATION THEREOF; AND REPEALING ORIGINAL CHAPTER 5.28 OF SAID CODE AS AMENDED BY ORDINANCE NO. 1980 OF THE CITY.

DISCUSSION:

**Council Member Bannon** clarified that a throw-away container means a plastic bag. It starts out that it is a plastic bag, then it can't be a plastic bag.

**Mr. Alexander** explained that it can be a plastic bag as long as it doesn't weigh more than 30 lbs.

**Council Member Bannon** clarified that if it's something other than a plastic bag it can weigh 40 lbs. or more.

**Mr. Alexander** advised that was correct. If you ask him why that distinction is important, he knows that the folks from Waste Connections have told him but he has forgotten.

**Inaudible response from the audience.**

**Council Member Horyna** asked about 5.28.090, subsections 3 & 4, indicating that we want the trash receptacles placed in a specific location and a specific time. A lot of concerns that he has been getting from his neighbors and other residents is that if we are going to be required to have

our receptacles at a certain place and time, is Waste Connections going to be required to place this container back at that same location at a certain time? He can't remember when we went through our contract and communications with Waste Connections whether that was an issue.

**Mr. Alexander** stated he did not recall that being an issue during discussion. The hours as you may recall, particularly the hours when you have to put the cart out and put it back were subject to extensive discussion from several different perspectives. They are included in there in essence to allow the contractor to have some flexibility in terms of shifting routes; they need the flexibility to be able to collect throughout the day depending on weather conditions and other factors. The focus was on getting it out there to where it can be collected early enough that the truck won't miss you. On the other end, the time to take it back is really generated not so much by any waste collection issue as it is by concerns about folks leaving their carts out for 2-3 days.

**Council Member Horyna** indicated that the main concern he has been hearing is that carts may be left out in the street if the trash hauler isn't prudent enough to make sure he places it back.

**Mr. Alexander** advised he hasn't really had any discussion with that or heard that concern expressed but he's not out amongst the folks like you are.

**Ms. Sexton** stated she would look at that in the contract, she can't remember if there is a section that addresses that or not. There are customer service expectations in there for the drivers.

MOTION: Warren moved to adopt an ordinance amending Chapter 5.28 of the Derby Municipal Code, regulating the accumulation, collection, transportation and disposal of solid waste within the City, and repealing original chapter 5.28 as amended by ordinance #1980. Craig seconded.

**Mayor Avello** advised he has received a lot of concerns about inflation and gas prices and things like that. Are they going to get notification? Gas went up this week to \$2.55, that's what they are concerned about, will they get hit that month or the following month.

**Ms. Sexton** stated the new system will be much better than the old system in regards to fuel surcharges and fuel price fluctuations. We have built into the contract a provision for once a year changes for fuel prices. It's based on a regional index of diesel prices so if it fluctuates a little bit here or there each month it doesn't matter. They will be notified of the change in the price when it happens, no more than once a year.

**Mayor Avello** pointed out that it is fast approaching December 1, like anything that's new there are going to be some problems. He asked people to be patient. We have a good city and great people, we are going to have some problems, call and we will get them worked out. He is sure this system is going to run pretty good once we get some of the problems ironed out.

VOTE: Motion carried 8-0

**CONSENT AGENDA**

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

### **Mulch Grinding**

#### **Background:**

- The City of Derby provides a green waste recycling location for its residents at the Chip Site at High Park. Residents may dispose of tree limbs up to 10” diameter. Bulk waste material is ground into useable rough chipped mulch. This mulch is available free of charge to all residents.
- The City of Derby also uses the bulk material to support its forestry maintenance and landscaping needs.
  - The rough grind product created by City-owned equipment is not a suitable finished product, but is used extensively as base fill, and is covered with a finished product.
  - The Parks division uses approximately 5,000 cubic yards of fine ground mulch each season. If we were to purchase the fine ground mulch from a commercial provider, we would spend approximately \$165,000 per year.
- The City contracts with a grinding vendor to provide chipping operations, which re-grinds our in-house product to a size required to meet our needs.
- An agreement with Quality Timber Products has been negotiated to provide 23 hours of grinding. This will provide us with the necessary volume of material for the 2010 season.
- The Bid Board has reviewed and approved the bid from Quality Timber Products Inc. for \$15,000.

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

- The approved 2009 budget includes \$15,000 for mulching and grinding.
- This is a single source provider, because commercial grinders are rare due to equipment costs. Quality Timber Products works extensively in Kansas and Texas.

#### **Legal Considerations:**

- City staff complied with applicable purchasing procedures in soliciting and evaluating quotes for this service.

#### **Recommendation:**

- Authorize the City Manager to enter into a contract with Quality Timber Products for \$15,000 for mulch grinding services.

### **Assessment Ordinance for Mowing & Trash Removal**

#### **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, has been sent notification that Council will consider assessment by ordinance of the charges.

#### **Financial Considerations:**

- The costs incurred in connection with the parcels to be assessed total \$2,004.26.

#### **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 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 maintenance of grass and weeds not to exceed the height of ten inches 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.

**Recommendation:**

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

ORDINANCE NO. 1998

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT UPON CERTAIN REAL PROPERTY HEREINAFTER DESCRIBED AS THE COSTS INCURRED BY THE CITY IN CUTTING WEEDS, REMOVING DEBRIS AND OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

**Fire Station No. 2 – Parking Improvement Bids**

**Background:**

- A bid letting for the construction of the Parking Improvement Bids for Fire Station No. 2 was conducted on October 20, 2009 at 2:00 P.M. An invitation to bid was previously submitted to contractors.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
Lafarge North America	\$30,877.00
Bryant & Bryant Construction	19,488.00
Barkley Construction	13,000.00
Engineer’s Estimate*	\$12,781.00

\*Engineer’s estimate prepared by City of Derby, City Engineer

**Financial/Sustainability Considerations:**

- The approved budget includes \$20,000 for parking improvements at Fire Station #2 and the Water Metering Facility.
- Award of this project will leave \$7,000 available for construction of parking improvements at the Water Metering Facility.

**Legal Considerations:**

- The City has followed all statutory procedures in securing financing, and in planning the project.
- The contractor has submitted all appropriate bonds and certifications for this project.

**Recommendation:**

- Approve the bid of Barkley Construction in the amount of \$13,000.00 for the construction of parking improvements at Fire Station No. 2.

MOTION: Craig moved to approve Consent Agenda as presented. Horyna seconded.  
VOTE: 8-0, motion carried.

**The council meeting was recessed to the El Paso Water Company meeting at 8:52 p.m. and returned at 9:04 p.m.**

**EXECUTIVE SESSION**

MOTION: Staats moved to adjourn to executive session at 9:04 p.m. for 30 minutes to discuss personnel issues. Warren seconded.

VOTE: 8-0, motion carried.

MOTION: Staats moved to extend executive session for an additional 20 minutes, to return at 9:56 p.m. Haynes seconded.

VOTE: 8-0, motion carried.

The council returned at 9:56 p.m. and Council Member Staats advised no binding action was taken.

**ADJOURNMENT:**

MOTION: Horyna moved to adjourn at 9:56 p.m. Meidinger seconded.

VOTE: Vote 8-0, motion carried.

ATTEST:

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

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