

**APPROVED MINUTES
DERBY CITY COUNCIL MEETING
September 28, 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 Council Member Jim Craig.

CONSIDERATION OF MINUTES

Minutes of the September 14, 2010 Regular Council Meeting.

MOTION: Warren moved to approve. Horyna seconded.
VOTE: Motion carried 8-0.

PUBLIC FORUM:

Kristy Bansemer, Public Information Officer and member of the Employee Wellness Committee. Earlier this year the City of Derby received a Working Well Award from the Health and Wellness Coalition of Wichita. The award recognizes employers who demonstrate supportive and rewarding environments so employees can make positive changes in their lifestyle. On behalf of the city employees and the wellness committee she thanked the city council for their support and for giving us the resources to receive an award like this.

Darrell Phipps owns Liberty Tax Service and owns another one in Newton. He went to grade school in Derby before moving to Newton and came back here thinking he could establish a business. When we opened the office here he went to city hall and talked to the code enforcement officers about what they could do to advertise their business. Their business is very seasonal and we have a short period of time to make money so we can pay our lease for the whole year and so we do a lot of aggressive marketing. He knows some people don't like that but it is what works for us. He met with the code enforcement officers for two hours and never really got a resolution. He tried to fly some flags, he tried to fly an American flag and put some flags on his building and he was told he couldn't do that and they would take them down, which they did. He was allowed one flag for patriotism and the rest were considered decoration. He was told he could not park his car a certain way, if you've seen his car it is loud and is for attention but he was told if he left it parked in a certain place for so long that would be against the rules too. He has read the code book and the way he interprets it he can't do anything without permission. He has tried things, like the flags. He knows flags exist in town at K-15 Auto, Hambelton Lagreca, Trader Motors and Michelle's Beachouse, but he was told he couldn't have

them. He doesn't understand why there is an inconsistency there. He approached Mr. Newberry last week to put a little sign on Buckner. He has had two sign companies get a hold of him and he was promised an answer by noon last Friday and he still does not have an answer. He is not getting any cooperation. All he wanted was a little sign like Verus Bank, Taco Bell and McDonalds have. The code enforcement officers have harassed his employees. It's one thing for them to harass him but it's another to harass his employees. Mr. Newberry said there are new rules this year, he has seen them and what he was allowed to do last year they won't be allowed to do this next year and it's a whole new set of rules. He has no idea where they stand. He asked what they are allowed to do; he wants to be treated fairly like the car dealers. The attitude of the city should be "what can I do to help you grow your business". That's not been the approach he has received, he has gotten an anti-business attitude, anti-American attitude. He received a letter from the City indicting they were going to confiscate his Statue of Liberty. It was on their property and the police department looked at it like it would be confiscating personal property. He has worked with them trying to get some kind of answer. He and his wife decided they are tired of playing games with them and they will probably leave town. He already has approval from corporate to make a move.

Rhonda Cott, Derby Chamber of Commerce, advised they would be hosting a candidate forum next Tuesday, October 5 at City Hall. The Sedgwick County Commission District 5 candidates will be at 6:30 p.m. and then they will host the 82nd District State representatives at 7:30 p.m. The questions have been submitted over the past few weeks by our community members and the government relations committee will be refining those for a moderator to read for the candidates that evening. There will be time before and after the forums for the public to meet with the candidates in the lobby. We are still soliciting questions so if anyone has one please contact the Chamber of Commerce.

Council Member Bannon asked if the forum will be televised.

Ms. Cott advised the forum will be televised live on Channel 7 and rebroadcast periodically until the general election. That rebroadcast schedule is on our website.

Brad Smith, Derby Fire Chief, advised that Fire Prevention Week is coming up the week of October 3-9. President Woodrow Wilson enacted Fire Prevention Week in the 1920's to recognize the great Chicago fire that took place in 1871, on October 8-9. During Fire Prevention Week the Derby firefighters will attend the Derby schools and interact with kindergarten through 2nd graders. We see about 1,200 kids every year. We also have other schools outside the community that come to our station and we teach classes for them. The fire department is always doing fire prevention activities, not just in the month of October. We give tours of the fire stations, present safety talks and teach fire safety to area organizations, including fire extinguisher training. He reminded everyone that this is a good time to check the batteries in your smoke detectors, since they moved daylight savings time to November. We still have smoke detectors available, if you don't have a smoke detector in your home, we would love for you to have one on every level. The only thing we require is that the firefighters install them for you, we want to be sure they are up and working and being put to good use. Every year about 3,000 fatalities are caused by fires. The important thing about smoke detectors is that if you have a fire in your home you have a 50% higher chance of getting out safely. Those most

affected by fire are the elderly and children, we encourage everyone, if you don't have a smoke detector to call us at 788-5819 or you can find us at www.derbyweb.com or on Facebook.

Council Member Meidinger asked if there were a charge for the smoke detectors.

Chief Smith advised they are free.

OFF-AGENDA ITEM

MOTION: Nun moved to accept an off-agenda item prior to the Consent Agenda.
Craig seconded.

VOTE: Motion carried 8-0.

Council Member Staats thanked everyone that stopped by the Derby booth at McConnell over the weekend. He also thanked Cynthia Wentworth and Jeff and Rhonda Cott for setting up and taking down the booth.

Council Member Bannon agreed with Chief Smith, now is the time to change the batteries on your smoke detectors. Even if they are hard wired they have a battery backup and those need to be changed. Saturday is the motorcycle run for Christmas in a Box for our soldiers overseas. You will line up along K-15 at 2:00 p.m., and there is a donation list available here at City Hall and at the VFW. There is an item on the consent agenda tonight and she would like to thank Dillons and Mrs. Alumbaugh, who works there for donating teddy bears for our police department to have in their cars for children.

Kathy Sexton, City Manager, introduced Becky Eby, a public administration student at WSU. You might have seen her at the REAP meetings each month. She is in a class where one of the assignments is to shadow a manager and she has come this evening to watch the council meeting. She will be a shadow on Thursday and will also do a case study on a project that we have done in Derby and present it to her class.

WINTER WONDERLAND UPDATE & DONATION ACCEPTANCE

Kathy Sexton, City Manager, presented the staff report.

Background:

- Earlier this year, after receiving numerous requests from Derby residents to enhance the city's outdoor lighted displays during the winter months, a Winter Wonderland of displays was proposed primarily to be located on K-15 and Rock Road. The community was asked to participate.
- Such a public/private partnership enhances community pride and ensures the program advances at a pace acceptable to and in keeping with the values of the community.
- On May 11, the City Council approved the use of a portion of the fee revenue obtained from fireworks stands for community enhancements, such as matching donations made to the Winter Wonderland program.

- The Swan Fitness Morning Crew took the City up on our request for donations. This group of committed volunteers has conducted a number of fund-raising efforts over the past five months. Their goal was to raise \$2,500 to be matched by the City for purchase of a display for Ward Clements Park on K-15. They've exceeded their goal and will be at the Council meeting to present the City with several checks.

Financial/Sustainability Considerations:

- Donations to the City for community enhancement are much appreciated. Per City policy, donations are recognized at a City Council meeting unless the donor wishes to remain anonymous.
- Using permit fee revenue for lighted outdoor winter displays fulfills an identified community need with a non-tax source.
 - The City's commitment to the other programs funded by the fees is unaffected by this support of the Winter Wonderland program.
 - As per City policy, purchases over \$10,000 come before the Council for approval.

Legal Considerations:

- City ordinance #2020 specifies that any permit fee revenue in excess of that designated for public safety education, ACE grants, distribution of information about fireworks regulations, and an annual public fireworks display may be used for community enhancement.

Theresa Hearn, Derby Community Foundation and a member of the Swan Fitness Morning Crew, introduced her partners, Sharon Price, Darlene Clark, Sue Nun, Emma Lou Atherly and Nola Guillams. Theresa gave a history of how this project started. Theresa presented a check for \$400 from a Derby Community Foundation Grant and a check for \$2,947.68 from fundraisers, which is enough to buy gingerbread children jumping rope and four snowflakes. Two of those snowflakes were purchased by individuals in memory of loved ones. Darlene Clark purchased one in memory of her husband Bob, and Theresa and her sister purchased one in memory of their sister Patty. Maybe next year we will get more people to think about purchasing lights in memory of a loved one.

Mayor Avello asked where donations should be sent.

Mrs. Hearn advised they should be sent to the Derby Community Foundation, P.O. Box 372, and write "lights" in the memo.

REPORT ON DISPATCH COLSOLIDATION FEASIBILITY STUDY

Kathy Sexton, City Manager, presented the staff report. She introduced Mark Olson with Management Consultants who made a presentation on the findings of the study to the council.

Background:

- On February 23, the Cities of Derby and Haysville engaged Management Partners, Inc. to assess the feasibility of consolidating emergency dispatch services with Sedgwick County.
 - Management Partners is a professional management consulting firm with expertise in helping local governments meet service demands while improving cost-effectiveness and streamlining operations.
- The idea of the study arose because it came to our attention that most area cities provide emergency dispatching services differently from us.
 - Of the 20 cities in Sedgwick County, 16 are served by Sedgwick County Emergency Communications (911). These cities have no dispatching function in their city budgets or located on site at city hall or the police department.
 - The remaining four cities—Derby, Mulvane, Haysville, and Valley Center—each staff a dispatching unit and work cooperatively with Sedgwick County Emergency Communications in various ways. Initial research indicates that these different approaches are mostly a matter of history.
 - The City’s intent in pursuing this study was to ascertain whether there would be efficiencies or service enhancements to be gained from enhanced coordination and possibly consolidation of dispatching functions with Sedgwick County. The intent is that the level and quality of public safety services (including non-emergency duties such as records checks and reception of walk-in visitors that city dispatchers often perform) in Derby would be maintained at or above current levels, should any decision be made to change the manner in which emergency dispatching is provided.
 - Emergency dispatching is a high-tech, high-touch operation requiring constant and consistent human interaction with computer (CAD), telephone, and radio systems.
- The study is now complete, and findings will be reviewed at this Council meeting.
 - Derby, Haysville, and Sedgwick County staff provided information and cooperated fully throughout the study.
 - A future decision by the County to extend County services already provided to 16 cities likely would be based on the research and recommendations of the study.
 - The study includes eight recommendations, which can be summarized as follows:
 1. The County should evaluate an additional Sheriff dispatch channel.
 - 2-4. Derby and Haysville should transfer responsibility for call taking and dispatch to the County.
 5. The County should expand the membership of its Advisory Board for Emergency Communications to include representatives from Derby and Haysville for a five-year transition period followed by rotating representation of various municipalities on an on-going basis.
 - 6-7. Identify measures to track performance and service levels and service agreements between the County and the cities of Derby and Haysville.
 8. Select a project manager to lead a transition team that would guide the implementation process.

Financial/Sustainability Considerations:

- This research is timely because our budgets have begun to feel the pinch of the economic recession and the possibility of more reductions in state aid. As the City of Derby grows, the need for resources to be committed to emergency dispatching as well as to police

patrol and fire services grows as well. Now is the time to assess whether we are allocating such resources most effectively.

- Potential effects on the budget, staffing, or operations of either city and of Sedgwick County would be dependent on a future County decision to incorporate changes into its operations and budget in 2012 or thereafter.
 - The cities would have to request the County service.
 - The county's decision likely would be made in August 2011 (when the Board of County Commissioners approves its 2012 budget).
 - Budgetary decisions by affected city councils also would occur in August 2011.
- The study cost \$29,950, which was split between Haysville and Derby (\$14,975 each).

Legal Considerations:

- The City Council is authorized to make decisions about the manner in which public services are provided and to ask Sedgwick County to provide a service to Derby taxpayers in a manner similar to the service it provides to taxpayers of Wichita, Bel Aire, and other cities.

Policy Considerations:

- The City of Derby's goal with this study was to gather information by which to determine the best balance of services and taxation and to provide those services without unnecessarily duplicating services.
- The City of Derby contracted for this study with the intent of continuing to deliver the same or better quality services to our community.

DISCUSSION:

Council Member Meidinger asked how long we have been sending our 911 calls to Sedgwick County. When you make a 911 call, when did Derby make this transition from Derby to Sedgwick County?

Ms. Sexton introduced Diane Gage and Randy Bargdill, they run the Sedgwick County Communication Center. Diane has been with the operation since 1979.

Ms. Gage advised it was February 1, 1980 when Derby made the transition.

Council Member Meidinger stated it wouldn't be a big transition for the citizens of Derby. With a typical call that might come into the Derby police department with someone complaining about speeders on James Street, how would that be handled?

Ms. Gage stated it would be handled just like speeders in the City of Wichita and Sedgwick County. We put in a response to law enforcement for a "violation of road and driving laws" and assign an officer to it.

Council Member Meidinger clarified that that dispatch would come from Sedgwick County to a Derby police officer.

Ms. Gage advised that was correct, if they were doing the dispatching. She explained that right now if a citizen called 911 to complain about a speeder in Derby they would enter the call into the CAD system and the information comes up in front of a dispatcher physically located in Derby to assign the officer.

Council Member Meidinger asked if we were to go to a part-time dispatch service and there was a speeder on James, how would we handle that.

Ms. Sexton explained that under this recommendation, the county dispatcher who answers the call would enter that information into the computer, it would be answered and dispatched by Sedgwick County. The officers have computers in their cars and those calls would come up on their screens.

Council Member Meidinger asked about option #2, will we still have to maintain the communication equipment?

Ms. Sexton advised we would not. We could sell some of that equipment once we get moved away from that.

Council Member Meidinger indicated it doesn't really make much difference where the dispatch comes from. The only other concern he has since Derby and Haysville have all been small communities and the officers know the dispatchers. Will that familiarity still be available? All of a sudden our officers are talking to someone they may not know.

Ms. Gage advised that we have always offered the opportunity for those that we provide service for to come down and spend some time with us. The dispatchers go out in the field as part of their training, typically it's been at a busier agency because we like for them to get a lot of radio traffic when they are out there. We have been providing that opportunity to communities significantly smaller than Derby such as Clearwater, Colwich and Maize, although it has grown significantly recently.

Ms. Sexton stated she thinks that's a concern from some of the officers and firefighters. You get used to certain people if they have been around for a long time and we have fabulous dispatchers in that regard. Officers in other communities served by Sedgwick County get used to those dispatchers as well. They have some people that stay there a long time and typically work the same shifts, so as an officer working the same shift each night you will often have that same dispatcher on the other end. It comes with experience that you get to know each other well.

Council Member Warren asked about the savings on recommendation #2, if we were to take option #2 it shows a savings of \$244,000. On #4, who is receiving the savings of \$68,000 and who is receiving the cost? Is the City of Derby looking at a savings of \$244,000 or are we looking at a savings of \$68,000?

Mr. Olson explained that the City of Derby would be looking at the savings of \$244,000 with the elimination of 4.5 full-time equivalent positions. The column at the far right was simply an attempt to show what the impact is to the community as a whole, that there is a net benefit to

doing this. There is certainly a much higher benefit directly to Derby to go forward with this. You free up approximately \$250,000 to repurpose in some other way.

Council Member Bannon asked about the ASTRA system, Sedgwick County uses the SPIDER system instead which doesn't run warrants like Derby does. Is that something we would maintain and continue to do here?

Mr. Olson indicated that is one of the issues that remain. There may be a more elegant and long term solution for SPIDER service provision, but that wasn't part of this project. And since it involves the City of Wichita, even though we identified that this was an issue we couldn't really address it. The remaining staff would continue to provide the function of supporting officers in the field. At some point you may want to revisit that. It would also mitigate any equipment savings because you will need to maintain radios and the capability to access NCIC.

Council Member Bannon asked if we keep the ASTRA system do we still have to keep the CAD system, or are they totally separate systems?

Ms. Gage advised it is a separate system, she does not believe Derby is running all of its warrants and warrants through the CAD system.

Council Member Bannon indicated we need to take some time to think about this, there are some people in town that this would be seamless to, those that are new to town that use 911 will never notice the difference. You speak to some people that have been here a long time and they know that other number by heart and that's the one they are going to call no matter what. For them too it would still be seamless, they wouldn't know it. We have some staff that this would be a huge change for. When you go back to the tax matters and it's something that Derby citizens, like all the other Sedgwick County taxpayers, currently have been paying for. There are more ways than just these two options to try and integrate this, but it's definitely something we need to look at and this gives us a good solid start.

Council Member Craig asked what the average number of people on duty is at Sedgwick County during a high volume hour?

Ms. Gage advised that during high volume times we have about 15-16 on duty depending on the day of the week. Some of those are dispatchers, some of those are call takers and there is supervisory staff.

Council Member Craig asked who the Director of Public Safety is for Sedgwick County.

Ms. Gage advised it is Bob Lamkey.

Council Member Craig asked who the Technical Services Commander is for Derby.

Robert Lee, Police Chief, advised it is Lt. Brant.

Council Member Craig asked how the presentation went in Haysville and did they have any comment on what their actions were.

Mr. Olson indicated they asked similar questions to what are being asked tonight. If he were to show you their presentation it looks like a clone of this with their logo on it. The only difference is the dollar amounts are significantly different because of the size of the organization.

Council Member Craig indicated it is interesting that their financials are quite different than ours, it's obviously smaller because they are a small community, but they have been driving down the cost for their services over the past five years. He clarified that Sedgwick County would be able to absorb Haysville's requirements without adding any additional staff.

Ms. Gage indicated it is primarily just the difference in size.

Council Member Craig asked how the county looks upon adding Haysville & Derby.

Ms. Gage advised it has been looked upon very positively. It will be a challenge to add the extra staffing to cover it but we have been offering this service to the City of Wichita since 1994. Prior to that we were a city/county entity and they have been taking advantage of that cost savings since then so it made sense to us and we are surprised it hasn't happened sooner.

Council Member Craig asked what the estimate is to add Haysville and Derby.

Ms. Gage indicated it was lower than what Derby and Haysville are paying for a duplication of services.

Council Member Craig asked who was going to pay for that.

Mr. Olson explained it would be a county tax burden. Some of it is paid for from the voice over internet protocol fees, the cell phone fee...

Ms. Gage advised that the personnel are totally paid for out of the general fund. Right now your citizens are paying for your staff here in Derby and they also pay their portion of Sedgwick County taxes which are paying for everybody else's dispatching services.

Council Member Craig clarified that we are paying for that service anyway even though we are not getting it. The cost should not go up and only be a net savings for Derby because we are already paying for the service that is executed at 911.

Ms. Gage advised that was correct.

Ms. Sexton added that this is a matter of equity in terms of taxes for the taxpayers. Sedgwick County recognizes that, based on the feedback we have received so far from management and budget staff. Diane and her staff are willing to serve any community they can, but certainly the County Commission will be the entity that has to make the decision to add these 4.5 people to their budget.

Council Member Staats asked if the sheriff board would be split in two.

Ms. Gage advised that was the plan.

Council Member Staats asked if it would be divided by US54 Highway or would the Sheriff get its own channel and put all the small towns on one channel? County currently dispatches for all of the sheriff's department and 12 other towns, correct?

Ms. Gage indicated that what she has approached the Sheriff with, and we have not come to any kind of conclusion on this, to her it makes more sense to do it geographically. You have the southeastern quadrant of the county that would be a call volume in itself, then you have the rest of the county. We really need to sit down and look at call volume to see where you could split it equitably so you would have a fairly shared call volume between the two. She anticipates that the operational procedures that would be put in place to operate those channels would vary from what we do currently with sheriff and PD where the only calls that are put out on all channels are things like robberies, homicides, etc. She is envisioning something where disturbances and other priority calls would be simulcast on both because you have people that really need to hear what's going on in both parts of that. To Derby's benefit, if we have to send any help to Derby officers or Haysville, they are already hearing what's going on and they know what is going on. You have a ready resource of back-up and you don't have to explain something to somebody else.

Council Member Staats advised his biggest concern is loss of jobs for those here in Derby. If we go with option #2 we are losing 4 people that either the city will have to absorb into other roles in the city or if they were ready and willing, go to 911. Some of these people got a job here in Derby because it is close to their kids. They might live in town and they might not have any big desire to drive to downtown Wichita, especially not at 11:00 p.m. if they are on 3rd shift. If this does happen he hopes Sedgwick County would give our employees a real serious look.

Council Member Craig asked if our employees have qualified for Derby with background checks and everything else they go through, would that satisfy the requirements for Sedgwick County?

Ms. Gage indicated she did not know what all the requirements are for Derby. A lot of it is duplicated, like the background check. We do put them through a Wonderlic to check their trainability and a keyboarding test.

Council Member Craig stated it would be similar; it's not something that would be way above what they are doing now. He feels our people are well qualified, and we definitely have to take them into consideration.

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

Mayor Avello asked how often the CAD system needs to be upgraded; does it need to be upgraded?

Ms. Sexton indicated it does not need to be upgraded right now; as she understands it, it is in pretty good shape.

Mayor Avello clarified that it is upgraded over the years.

Ms. Sexton advised we spent quite a bit of money just a few years ago. What Mark and his company put together here are numbers on paper that are facts. The other part we could talk about is the increasing cost. You will remember in your budget sessions and workshops the last couple of years the police chief has requested more dispatchers each year and that makes sense to a large extent with the city's growth trend, we also know that every few years we have to invest in capital equipment. We also know this is a high stress job and we get a fair amount of turnover in these jobs. It's relatively difficult sometimes to get these jobs filled. On the flip side, some of our people have been with us a long time and are fabulous but there are costs to the taxpayers of running a system like this. Fortunately we are in a county that has invested heavily in this area and recently provided a new building for their dispatch unit with room to grow, so to speak.

Mayor Avello stated that if the council chooses to go that way, that would be more money for both departments to hire people we need and keep the budget at a...

Ms. Sexton advised that the council has been approached the last couple of years with hundreds of thousands of dollars requested by police and fire for radio system replacements, for software replacements, for fire engines, for new fire stations, new police officers; all those things are indications of a good, positive growing community and that's great, but it's also very difficult to do as property values are dampening and we have a lot of other needs. Any savings in the dispatch area could certainly be repurposed to other valued services for the community.

Council Member Craig pointed out that we have been very cautious with our upgrades and ensuring compatibility with other agencies so we don't have to redo anything. We are fully compatible with Sedgwick County and that is an aspect that we have taken advantage of and used a considerable amount of dollars to be able to stay with Sedgwick County as they upgrade.

VOTE: Motion carried 8-0.

The council took a break at 8:00 p.m. and returned at 8:10 p.m.

Council Member Staats left at 8:10 p.m.

REQUEST TO RE-ZONE LOT 2, BLOCK A, BAYLESS INDUSTRIAL PARK ADDITION FROM R-1 TO B-5

Council Member Horyna stated that he would abstain from this item as he works for the Kansas Department of Health & Environment (KDHE) who permits this area.

Bud Newberry, City Planner presented the staff report.

Background:

- Bayless Industrial Park Addition is located along the east side of Nelson Drive, just north of the Wal-Mart Supercenter.
- The lot is approximately 3.17 acres in size, with the plat being recorded as a county plat on April 13, 1978.

- This property was unilaterally annexed in May of 1997, and came into the city as “R-1” Single Family Residential as prescribed in the city’s Zoning Ordinance. Consequently, the previous use of the application area (Bombshell’s Adult Club) was classified as a legal nonconforming use.
- When this use was abandoned for a period of 12 months, the non-conforming use rights expired and the owner of the property was not allowed to reopen the business as an adult club.
- After losing its legal nonconforming use status, the only use legally allowed on the property is now residential.
- The applicant has requested a zone change from the residential zoning district to a zoning classification that will allow the property to be utilized for a commercial use.
- Prior to annexation, the property was zoned “Limited Industrial” by the county and was also subject to an overlay district designated A-O III-S because of its location in relation to McConnell Air Force Base.
- The B-5 zoning district requested by the applicant is comparable to the County zoning and was created by the City of Derby to be used in the McConnell Air Force Base Accident Potential Zone (“APZ”).
- Notice of the public hearing conducted by the Planning Commission on September 2, 2010, was published in the City newspaper and sent to nearby property owners.
- The Planning Commission recommended approval of the proposed rezoning by a vote of 8-0.
- No verbal or written comments have been received by City Staff concerning this case.

Financial/Sustainability Considerations:

- Approval of the requested zone change will not result in any expenditures by the City.

Legal Considerations:

- All conditions precedent to consideration and approval of this proposed zone change by the Council have been satisfied.

Policy Considerations:

- This property is located within the McConnell Air Force Base APZ and should be zoned B-5 to be compatible with the Comprehensive Plan.
- No protest petition was filed within the prescribed 14-day protest period.

ORDINANCE NO. 2038

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS, FROM R-1 “SINGLE FAMILY RESIDENTIAL DISTRICT” TO B-5 “RESTRICTED COMMERCIAL, WAREHOUSING AND LIMITED MANUFACTURING DISTRICT;” AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

MOTION: Craig moved to approve an ordinance rezoning Lot 2, Block A, Bayless Industrial Park Addition, from R-1 “Single Family Residential District” to B-5 “Restricted Commercial, Warehousing and Limited Manufacturing District: based on the Findings of Fact as recommended by the Planning Commission. Haynes seconded.

VOTE: Motion carried 6-1, Staats absent, Horyna abstain.

AMENDMENT OF PUBLIC IMPROVEMENT FINANCE POLICY

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

Background:

- Resolution 34-2010 establishes the City's policy for construction and financing of public improvements, financial guaranty requirements for developers, and methods for releasing or reducing developer guarantees.
 - The most recent update was approved by the Council on May 11, 2010 to include a provision requiring developers to pay for arterial sidewalks and accel/decel lanes at the time of platting new subdivisions in lieu of the normal special assessment process.
 - Resolution no. 34-2010 represented an attempt to eliminate citizen complaints about special assessments levied long after the development was initiated and the first new homes were occupied.
- Since May, developers voiced concerns about the new policy. Staff met with these developers and representatives of the Wichita Area Builders Association (WABA) on July 20, 2010. The following major concerns were expressed:
 - The timing of this new policy couldn't be worse. Westar and Kansas Gas Service have recently imposed new deposit fees on developers, which added to up-front costs. Current economic conditions make it difficult for developers to borrow money. With Derby increasing the up-front costs further, developers may choose to develop in other cities where up-front costs are lower.
 - Up-front costs are typically rolled into the price of a lot. Increasing the cost of lots could result in buyers choosing a site in another city where costs are lower. Increasing lot prices could make it more difficult for buyers to qualify for loans.
 - Up-front costs would be different for each subdivision, leading to unequal costs which could distort the Derby market.
- Additional discussions with the developers regarding special assessment notification options generated the following proposal for Council consideration:
 - Amend Resolution no. 34-2010 to eliminate the recently incorporated requirements for up-front developer contributions.
 - Amend City Subdivision Regulations to require developers to submit and record a covenant with the plat, outlining all projects that are subject to special assessments and their estimated costs. This requirement would be in addition to the existing requirement for submission of a "Certificate of Petitions" listing the project types, but without estimated costs.
 - Develop an internal procedure to give copies of the covenant to all water customers when water service is initiated or transferred.
 - Investigate the possibility of including notification of future special assessments on County tax statements.

Financial/Sustainability Considerations:

- City-at-Large contributions for public improvements would remain unchanged.

Legal Considerations:

- The City Council possesses wide latitude in establishing policies for financing public improvements. Such policies promote predictability for developers, property owners, and city staff.

Policy Considerations:

- Returning to the previous Public Improvement Finance Policy will eliminate undue risk in the Derby housing market and will improve Derby's competitive position compared to other cities.
- Adding the requirement for an additional covenant plus developing the internal procedure for advising water customers of future special assessment should reduce the number of complaints from citizens at the time of the special assessment public hearing.

RESOLUTION NO. 42-2010

A RESOLUTION ESTABLISHING POLICIES FOR MUNICIPAL FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEVYING OF SPECIAL ASSESSMENTS WITHIN THE CITY OF DERBY, KANSAS; AND REPEALING RESOLUTION NO. 34-2010.

DISCUSSION:

Council Member Meidinger asked if steps 2-4 have been presented to developers to see if they agree with them.

Mr. Brown advised they talked to developers and they were discussed and verbally agreed to by those present.

Council Member Meidinger questioned if the developers are making the rules for us or are we making the rules for the developers? We did a lot of study on the original document, why are we changing the original document when we thought it was a good idea at the time. He advised he would like to see the original document and see why it was done. He can't really remember why we did it.

Ms. Sexton indicated the reason why the council asked staff to work on this policy a while back was the consternation we all get when people from the public come in and are concerned and vocal about having recently bought a house and not realizing there might be an arterial sidewalk being built next year or various other infrastructure. It's just the lack of knowledge in terms of understanding some of the financial implications of buying a new house. In terms of trying to mitigate that we thought there is an opportunity for some of these things to be paid for up front. We failed to really think about the fact that banks are much more stringent in their loan requirements these days and that the upfront costs for some developments would be pretty big. We think this is prudent at this time to make sure that we do not do anything in our policies that will unnecessarily slow down the growth in Derby.

Council Member Craig thinks we have now met some unintended consequences about action that was taken prior. Steps 2-4, what we are really asking for is some mechanism to make people aware of costs that may be in the out years. We went to Resolution 34-2010 to take care of that. The folks that are going to speak against this are the ones who are going to have to put up the money. It's always going to be that way. He endorses the idea of trying to get

information to the prospective homeowner, whether it's new or a previously owned home. If we had done that prior to our action maybe we would have avoided this. He is drawn to the fact we took a bold step forward and some of us have even campaigned on the fact that we would try to ensure that expansion and development would pay for itself. He hates to see us go backwards. He understands the competitive aspect of this and the money involved, but when we made this decision we were still in the economic situation that we are right now. It has not been that long ago. He is not sure the reasoning is quite strong enough for him right now.

Ms. Sexton agrees that we should have seen this coming, she takes responsibility for that. Sometimes to make progress you do it at a measured pace and she is afraid what we did on this move is maybe jump two steps ahead instead of sometimes trying several other things. The way she has described this is that we will try this for a while and if it doesn't work then we will go ahead and take our extra step. As you all know, sometimes in public policy that is the way it's best done to help people understand that we will try your suggestions but we still have the option to do this again later, whether that's in better economic times or whether that's after deciding the other steps do or don't work. What we found essentially was one developer in the room taking these additional steps and having been taking them for a few years and showing the other developers in the room what he is doing. We had the big developers not just from Wichita but surrounding areas and we discussed the idea of maybe we set the model here and it could be done in other cities around and in Wichita. When we were trying to solve this problem we consulted some of the other cities and they all said "if you come up with something, let us know" because they had not yet, including Wichita, had not come up with a solution. One developer, Jay Russell, explained how he does it and the others seemed to be listening yet will need us to direct them to do that. If we so direct and feel like it works it could be a real good model for the rest of the region.

Council Member Craig asked if we had an example of someone else that is doing this at all or are we the avant garde?

Ms. Sexton indicated we are it. We are one of the few growing communities in this state. Most cities don't grow at anywhere near the pace we do.

Council Member Craig stated the age-old argument that they will pick someplace else has been used since he lived here. The proof is in the progress that Derby has made. They didn't pick someplace else, they keep coming to Derby. He likes steps 2-4, if we can move in that direction to get the information to them prevents a lot of angst that arrives here in this chamber against that council that was done in years past.

Council Member Warren advised that developers have come to Derby in the past because we have been competitive. We have seen situations in other communities where their fees have gotten out of whack and we have seen a drop in activity by developers in those areas when the fees get too high, or the price range of the homes that go into that area end up being really high-end homes because you can't afford to put in the moderate priced homes because of the fees that are involved. That's one of the reasons why we have grown. The plan that we have come up with will take care of the problem that we have had. We have had citizens come in unaware of special assessments that were going to be put onto their property that were blindsided by that and

it really upsets them, and rightfully so. It probably shouldn't necessarily be the city's responsibility to do that but we are the one that they come to complain to, so we need to take care of it. The problem with the policy that we had is that by requiring the upfront fees, you have the additional interest expense that is being compounded because you put that money up so many years in advance before you can actually sell. This could be a very detrimental aspect to development, making us uncompetitive with those around us. All we need to do is be fair and competitive and he thinks this is a step that took us out from under that.

MOTION: Warren moved to adopt a resolution to amend the City's Public Improvement Finance Policy to eliminate the requirement for developers to pay up front for certain public improvements as a condition of plat approval. Horyna seconded.

Council Member Bannon does not see this as going backwards. Once you sit down at the end of the day the consumer is the one that is going to pay for it. It doesn't matter whether the developer pays for it up front or pays for it at the end. It really doesn't matter, the final homeowner is the one who is going to pay for it. Her concern has been notification to the homeowner, not just the first homeowner but the 2nd, 3rd, etc. She drove through the golf course the other day and there are brand new houses, only a few months old that are already being sold to the 2nd homeowner and there are specials on those. She does consider this to be somewhat cutting edge. We tried it one way, it wasn't great. What does work for her is active solutions to the problem, that's what she sees that we are doing here. She would like to take it a step farther and get WABA to sign on to help the city educate builders, developers, realtors and homeowner associations.

Council Member Meidinger stated that Kansas and Iowa are the only places that have these specials. The reason we are battling this around so much is that there is no clear solution. We are trying to create a good solution. The McConnell people come in and have never heard of specials and they get blindsided. We are trying to make a good solution out of a bad one.

Mayor Avello asked who was paying for the streets and sidewalks.

Ms. Sexton explained that the city carries the debt load for 15 years. The payments get made by the people who own the land. The developer owns the lots until they sell the lots to a builder or individual.

Mayor Avello asked if the city is making the payments on the interest.

Ms. Sexton advised the developer is making the payments.

Mayor Avello stated he has always said there are two industries in this country that we should never change interest rates on, building houses and the car industry; they fuel everything.

VOTE: Motion carried 7-1, Staats absent.

INCREASE AT&T FRANCHISE FEE

Stephanie Knebel, Assistant City Manager presented the staff report.

Background:

- One of the City’s primary responsibilities is to ensure residents are provided with access to utilities, including electric, gas, water, sewer, cable and telephone service.
- In lieu of the City itself directly providing utilities, the City has the purview to grant non-exclusive, competitively neutral privileges to private companies to use public right-of-way to provide services to citizens.
 - These privileges are conveyed through franchise agreements which allow utility companies to locate their infrastructure in the public right-of-way to provide service to Derby customers.
 - In exchange, utility companies provide the City with payment via franchise fees, which are typically passed along to their customers in the City.
- The City’s current franchise agreement with AT&T Kansas (Ordinance 1891) was granted May 22, 2007. On May 25, 2010, a one-year extension through June 1, 2011 was agreed upon by both parties.
- Based on the mutual desire to create a level playing field for all local telecommunication services providers, city staff recommends a \$.50 increase to the AT&T franchise fee effective June 2, 2011.
 - Increasing the franchise fee to \$2.50 would likely cost an AT&T customer approximately 50 cents per month.
- This increase would bring AT&T into uniformity with the franchise fees already in place with other local telecommunication providers. Franchise agreements with Matrix and Nuvox are in progress.

Financial/Sustainability Considerations:

- Utility franchise fees are an important source of revenue for the City. Franchise fees totaled \$1.5 million in 2009, which was 7.5% of total general fund revenue.
- Specifically regarding revenue from AT&T Kansas, at the current rate of \$2.00 per access line (per month), the City is estimated to collect \$87,253 in franchise fees in 2010. Historically, the City has collected the following telephone franchise fees from AT&T:

<i>Year</i>	<i>Revenue</i>	<i>Difference</i>
2004	\$93,329 (\$1.50 franchise fee)	-----
2005	\$112,414	\$19,085
2006	\$117,684	\$5,270
2007	\$127,220 (\$2.00 franchise fee)	\$9,536
2008	\$128,478	\$1,258
2009	\$106,253	(\$21,607)
2010 (est.)	\$87,262	(\$19,618)
2011 (est.)	\$79,101 (\$2.50 franchise fee beginning June 2)	(\$8,152)
2012 (est.)	\$67,590	(\$11,511)

- As the following table shows, revenue to the City is decreasing due to the decreasing number of access lines.

<i>Year</i>	<i>Avg. Number/Access Lines</i>	<i>Decrease</i>
2006	9,429	-----
2007	7,493	(1,936)
2008	5,353	(2,140)

2009	4,452	(901)
2010 (est.)	3,635	(817)
2011 (est.)	2,949	(686)
2012 (est.)	2,253	(696)

- In preparing for the future, the City should expect the number of access lines to continue to decrease due to increasing cellular phone usage and the use of Voice over Internet Protocol (VoIP) technology, neither of which relies on traditional telephone access lines.

Legal Considerations:

- The City Council is empowered to enter into franchise agreements and franchise extensions for use of the public rights-of-way in conducting telecommunications businesses.
- K.S.A 12-2001(m) prescribes the procedure the City must follow to increase the franchise fee payable by local exchange service providers:
 - Notice of the new fee must be given at a regular city council meeting;
 - Notice of the new fee must be published for two consecutive weeks; and
 - If, during a 60-day protest period (ending November 28), a valid petition requesting a popular vote is signed by 20% of qualified voters is filed, the City must call for a vote at the next general election.
- The City’s franchise agreement with AT&T requires the City to notify AT&T prior to ninety days (90) before the end of the calendar year of its intent to increase the access line fee for the following calendar year.

Policy Considerations:

- Franchise fees spread the public finance burden more broadly than property tax, since all customers, including those operating from tax-exempt property, pay the fee.
 - K.S.A. 12-2001(j) grants cities the ability to charge access fees up to a maximum of \$2.25 per access line (per month) beginning in 2006; a maximum of \$2.50 in 2009 and a maximum of \$2.75 in 2012 and thereafter.
 - Derby’s franchise fee on AT&T access lines has been \$2.00 since 2007. In 2004, Derby increased its fee from \$1.04 to \$1.50. In 2007, it increased to \$2.00.
 - In 2010, the City approved a \$2.50 franchise fee for Birch, Sage and McLeodUSA and is currently collecting that fee.
 - On June 15, 2010, City staff informed Cox Communications that it was listed as a local telecommunications service provider on the Kansas Corporation Commission web site and that City ordinance requires all local telecommunications service providers to enter into franchise contracts.
 - On July 6, Cox declined to enter into a franchise agreement.
 - Currently, the KCC is researching the assertion by Cox that its VoIP telephone service is not subject to a franchise fee. The City awaits direction from the KCC about how to proceed with Cox.
 - According to K.S.A. 12-2001 (l), cities cannot raise access line fees more than once every 36 months. Based on this requirement and the dates that previous franchise fees were approved, and assuming that franchise fees would increase

in 2011, Derby could not consider increasing the fee to the amount allowed by law (\$2.75) until January 1, 2014.

RESOLUTION NO. 43-2010

A RESOLUTION DECLARING THE INTENT OF THE CITY OF DERBY, KANSAS, TO INCREASE THE LOCAL EXCHANGE TELECOMMUNICATIONS ACCESS LINE FEE PAYABLE BY SOUTHWESTERN BELL TELEPHONE COMPANY f/k/a SOUTHWESTERN BELL TELEPHONE L.P., d/b/a AT&T KANSAS TO THE CITY PURSUANT TO ORDINANCE NO. 1891 OF THE CITY.

DISCUSSION:

Council Member Meidinger advised we just about talked lowering fees for developers because we wanted to be competitive and they wanted their fees lowered and wanted to be on a level playing field. The concern he has with this program, are all the telephone companies in Derby going to have the same fees?

Ms. Knebel advised they would.

Council Member Meidinger asked if it would be all of them?

Ms. Knebel advised that was the goal.

Council Member Meidinger stated he knows what the goal is. Are all telephone companies going to pay the same as AT&T?

Ms. Knebel advised they would.

Council Member Meidinger asked if that included Cox.

Ms. Knebel explained that we are working with the KCC right now in understanding the hesitancy that Cox is having in paying and remitting their telephone franchise fee. We want Cox to pay \$2.50 per access line per month also.

Council Member Meidinger asked if they were going to do that. We just got through talking about competitive situations with the real estate people. Wouldn't we be consistent and wait on AT&T in raising the fee because at that point they won't be competitive. In fact, the other companies won't be competitive either if a major player isn't paying the same fees.

Ms. Sexton explained that is our goal, we have requested that Cox pay but they have said they don't want to pay. We are pursuing that just like we are pursuing a couple more companies who are not yet paying. Remember that this does not go into effect until June of 2011. We would hope we would have things settled with Cox by then. That is exactly what we are headed for is a level playing field.

Council Member Meidinger advised he knows the intent is there, just like our intent earlier was to notify homeowners if they buy the house they might have specials. That was our intent but it didn't work out very well and we had to revise it. Why don't we do the same thing for this? Why don't we wait until we have all the players involved on the same field and then increase or decrease the fees as necessary? He doesn't think this is fair to the other telephone companies, charging fees here but not charging the other ones. Why would we be charging these that are under our control even if Cox is not.

Ms. Sexton indicated it is the decision of the council, does the chicken come first or does the egg. We are trying to get it to where everybody pays \$2.50 and because AT&T has this agreement with us and it falls under this law we have to provide 9 months of notification. It doesn't go into effect until June of 2011. We are trying to work towards a level playing field. If council doesn't want to do that and wants to get a deal settled with Cox before you implement this, just realize there is a big lead time because of this notification.

Council Member Bannon stated the bigger question is what anyone is going to do about Skype and Whistle and all the other technologies out there. She can call anywhere pretty much for free and she knows she's not the only one who knows how to do that. With what we are passing this evening it gives us lead time to do that. We have made agreements with Birch and numerous other telecommunication companies and we are not at the legal state limit of \$2.75 yet and Cox is just going to have to get it together and figure out where they are with the state. It's not our decision, it's up to KCC as she understands it at this time, and they are having the argument with Cox.

Ms. Knebel advised that the KCC is doing research into the type of service that Cox is providing in this area.

MOTION: Bannon moved to approve a resolution declaring the intent of the City of Derby to increase the franchise fee paid by AT&T to \$2.50 per access line per month to be effective June 2, 2011. Horyna seconded.

Council Member Haynes asked, if we didn't approve this and didn't approve the increase, how would that affect the previous agreements with Birch, Sage and the others. How would that reciprocate?

Ms. Sexton advised it would not. You've recently approved agreements with these three and we have two more in process. They are all at \$2.50 and they still would be because they are brand new agreements you can just approve them on a consent agenda like you have been doing. AT&T has had an agreement with us for years so they fall under this notification requirement. Your action tonight has no effect on the others. If you choose not to approve this tonight those customers are still paying \$2.50 and AT&T is still paying \$2.00. It would be perpetuating an uneven playing field.

Council Member Warren asked what role the City of Derby is playing in communicating with Cox or are we at the will of the State.

Ms. Sexton advised we have called it to the State's attention, we've requested assistance and advice, we've called to their attention some of the business practices that are being done that they were previously unaware of. We have taken our direct communications with Cox and we

probably have some decisions to make in the future about where we go with this next. At this point in time we are giving the KCC a little more time to give us some more advice and see how strong of an action they want to take with Cox.

Council Member Warren asked if at a later date between now and June 2011, we determine it was not a level playing field, could we delay implementation of that fee?

Phil Alexander, City Attorney, advised we could delay it at any point between now and the time it becomes effective.

Mayor Avello asked if all the franchise fees come up at the same time.

Ms. Sexton explained that we have different contracts with each company and they are all done at different times.

Mayor Avello clarified that we have notified each of them of this \$2.50.

Ms. Sexton advised that today is just AT&T. We have done several others recently on recent agendas and we have a couple more. They have been notified; we just don't have the signed contracts.

VOTE: Motion carried 6-1, Meidinger nay, Staats absent.

OFF-AGENDA ITEM - PURCHASE FURNITURE FOR THE NEW PUBLIC WORKS FACILITY (Correction)

Kathy Sexton, City Manager, presented the staff report.

Background:

- At the Sept. 14th City Council meeting, the purchase of various furniture items was approved for \$35,292.75 from Galaxie Business Equipment. When the contract was sent to Galaxie, a spreadsheet error was discovered, and the vendor could no longer honor its bid.
- The correct calculation totaled \$48,287.37, rendering Galaxie the continued low bidder as noted in the following tabulation:

▪ Galaxie Business Equipment	\$48,287.37
▪ Office Plus	\$48,815.00
▪ Scott Rice	\$49,820.00
▪ Bottom Dollar	\$52,691.65
- Galaxie apologized for its error and offered the City a reduced price of \$41,684.27, which represents a discount of \$6,603.10 as a good-will gesture and to make up for the City's trouble and the delay in ordering and delivery of the items.
- A total of 186 items were included in the bid package, including 75 stackable chairs for the training room, 24 work chairs for shop offices, 12 lateral files and bookcases, 3 closed shelf units, 7 desks and chairs, 6 credenzas and round tables, a conference table with chairs and presentation board, and 24 guest chairs for the lobby and offices.
- As this report was written, a staff error was discovered in the agenda item from last meeting (see minutes on page 15 of today's agenda packet). In listing the bids, an error was made in listing original bids instead of apples-to-apples bids. Apples-to-

apples bids represent bids that were checked over thoroughly by staff to ensure each vendor included the same number of furniture items in their bids. Since both the Office Plus and Bottom Dollar bids included discrepancies as submitted, those errors were reflected in the staff report at the last council meeting. The above tabulation represents a fair apples-to-apples comparison of the bids submitted.

Financial/Sustainability Considerations:

- G.O. bond Series 2009-A included \$4.0 million for this project, which sum is sufficient to cover all identified project costs.

Legal Considerations:

- The City followed all applicable statutory and procurement procedures in financing and planning the project, and in soliciting and reviewing bids for required furniture.

MOTION: Warren moved to authorize the City Manager to execute a contract with Galaxie Business Equipment in the amount of \$41,684.27 to furnish specified Public Works furniture. Nun seconded.

VOTE: Motion carried 7-0, Staats absent.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the consent agenda.

Appointment to Library Board

Background:

- The Mayor would like to appoint John McIntosh to the Library Board. John would fill the remainder of Karen Nichols' term (until April 2013) who resigned recently due to other commitments.

Legal Considerations:

- All appointments are made by the Mayor with the consent of the Council pursuant to the following ordinance:
 - Library Board – K.S.A. 12-1222

Recommendation:

- Approve the Mayor's appointment to the Library Board.

Homecoming Parade on October 7

Background:

- The Derby High School Student Council requests use of street right-of-way to conduct its annual Homecoming Parade on Thursday, October 7, 2010 at 6:30 p.m.
- This would be the second year to have the parade in the evening in an effort to have it be more of a community-wide event.
- The parade would start at the corner of Market and Westview and go down Market Street to Georgie, turning right up to Madison, then down into the stadium parking lot. They will have a pep rally at the stadium at the conclusion of the parade to build excitement and school spirit for the Homecoming football game the following night.

Financial/Sustainability Considerations:

- As with any parade, the City will supply police patrol, barricades and traffic cones.

Legal Considerations:

- The Council is within its legal purview to allow usage of streets and public right-of-way for such uses.

Recommendation:

- Approve the request of Derby High School Student Council to use city street right-of-way to conduct the annual Homecoming Parade on Thursday, October 7, 2010 at 6:30 p.m.

Furniture for the Big Room in the Remodel Area

Background:

- As part of the remodel of the old Library space, we are providing a large room for meetings, training, exercise, etc.
- To accommodate these uses the room is designed to hold 299 people in chairs only, or 180 people seated at tables.
- Because this space will often be used by Senior Citizens, we utilize Mity-Lite furniture due to its light weight but durable construction.
- A few additional pieces of furniture will be needed for the front lobby and some offices but will not come from this vendor and will not require Council approval.

Financial/Sustainability Considerations:

- Forty thousand dollars was budgeted for equipment and furnishings. This includes audio-visual equipment for \$13,000. The quote for this furniture is \$34,133.64.
- Table prices and carts for storage came in higher than expected.
- The additional funds will come from the Operations Building Improvement line or from reserve funds

Legal Considerations:

- This is a sole source vendor that has served us well for years. In this case, the sole source is used due to the unique requirements of the items being purchased, as provided for in our purchasing policy.

Recommend a Motion to:

- Approve the purchase of Mity-Lite furniture for use in the remodel area for \$34,133.64.

Acceptance of Dillon's Donation

Background:

- In the course of their police duties, officers occasionally encounter young children who are emotionally upset. Incidents may involve them or a family member as a victim of a crime, a traffic accident or another stressful situation.
- These types of situations can be very upsetting to young children. Over many years, police agencies across the country have found that providing young children with a "buddy" such as a stuffed animal has a calming effect, helping to reduce the stress the children are experiencing and restoring a sense of well being.
- Members of the Derby Police Department routinely carry stuffed animals in the trunks of their patrol cars for such situations.

- In August 2010, Derby Dillons Marketplace donated an additional 79 bears to the Derby Police Department to be given to children in need. This donation will ensure that our supply of “buddy bears” remains adequate and that the children of our community are well served.
- The donation was spearheaded by Ms. Mary Alumbaugh, Floral Manager at the Derby Dillons Marketplace, but she was unable to attend the City Council meeting.

Financial/Sustainability Considerations:

- None

Legal Considerations:

- The City is authorized to accept donations of personal property for public use.

Policy Considerations:

- Persons and firms making significant contributions to facilities maintained and services provided by the City should be publicly recognized.

Recommend a Motion to:

- Accept the donation of bears and present a certificate of appreciation to Ms. Mary Alumbaugh, Floral Manager of the Derby Dillons Marketplace.

MOTION: Warren moved to approve Consent Agenda as presented. Bannon seconded.

VOTE: Motion carried 7-0, Staats absent.

EXECUTIVE SESSION

MOTION: Nun moved to recess to executive session at 8:58 p.m. to discuss personnel matters of non-elected personnel, specifically the annual performance review of the City Manager, and to consult with our attorney on matters deemed to be of attorney-client privilege, specifically pending litigation and acquisition of real estate, for a period of 30 minutes and resume the meeting here no sooner than 9:30 p.m. Warren seconded.

VOTE: Motion carried 7-0, Staats absent.

The council meeting was recessed from 8:55 p.m. to 8:58 p.m. to conduct the meeting of the El Paso Water Department.

Council returned at 9:30 p.m., Council Member Nun advised no binding action was taken.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 9:30 p.m. Bannon seconded.

VOTE: Motion carried 7-0, Staats absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk