

**APPROVED  
REGULAR COUNCIL MEETING  
January 9, 2007  
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger  
Loren Johnson, Chuck Warren  
Charlie Schwarz, Cheryl Bannon  
Ken Mulanax, Lori Payne

Flag salute was led by Council President Cheryl Bannon.

The invocation was led by Pastor Mark Britton, New Heights Christian Church.

**CONSIDERATION OF  
MINUTES**

Minutes of the December 12, 2006, Regular Council Meeting.

MOTION: Bannon moved to approve minutes of December 12, 2006 Regular Council Meeting. Mulanax seconded.

VOTE: Craig yea, Meidinger yea, Johnson abstain, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 7 yea, 0 nay, 1 abstain, motion carried.

**PUBLIC FORUM**

**C. D. Studyvin**, 308 E. Tall Tree advised he would like to see 63<sup>rd</sup> Street renamed Patriot Guard Parkway. The Patriot Guard travels all over the country to protect funerals from the group in Topeka. They also send prepaid phone cards to veterans oversees through donations and their own money, and have rebuilt a home in Andover. He believes it would be appropriate to honor the Patriot Guard and name that street after them.

**PROCLAMATION**

Mayor Avello declared Monday, January 15, 2007 as Martin Luther King, Jr. Day in the City of Derby.

**Mandy Wagner**, Assistant to the City Manager accepted the proclamation.

**Council Member Payne** reminded everyone that this is an election year with the general election for city council positions being held April 3<sup>rd</sup>. There is one seat up for election in each ward as well as the mayor position. Candidates wishing to file can pick up a packet with the city clerk at city hall or download it from the website. The deadline is January 23<sup>rd</sup> and if a primary election is required it will be held on February 27<sup>th</sup>.

**Council Member Mulanax** asked how many people have heard that you need to change the hoses on your washing machine every few years, if you were not aware of that he suggests that you replace your hoses if necessary, as he learned that lesson the hard way after waking up to running water.

**Kathy Sexton**, City Manager announced that we have a nice tradition in Derby to have the Citizens Police Academy. It is time for citizens to sign up if they are interested for the 12 week program that meets one night a week. This program is for citizens that live, work, or own a business in Derby to learn about the city, their government and specifically about police services, criminal law and police procedure. The new session runs from February 13<sup>th</sup> to May 1<sup>st</sup> on Tuesday evenings. If you are interested in this program contact the Derby Police Department.

**Mayor Avello** informed the council there will be a 10-minute executive session to discuss non-elected personnel at the end of the meeting.

**ZONE CHANGE  
REQUEST FOR LOT 1,  
CALVARY BAPTIST  
CHURCH SECOND  
ADDITION**

**Don Losew**, Derby City Planner presented the staff report.

**Background:**

- This property was recently annexed to the City of Derby. As typical of Derby's annexation process the property was placed into the "R-1" zoning district. The site has developed with and expects to continue to develop with a church and church related uses. "I-1" institutional zoning will allow the church to continue developing in a manner similar to what was allowed under the site's previous County zoning (Planned Unit Development).
- The site is platted and although it was platted as a County Addition, the site being within Derby's area of Subdivision Regulation, the plat had to be approved by Derby. During that platting process, guarantees were obtained for this site's future use of municipal sanitary sewer, water and other future (street) improvements.
- During the public hearing, no citizen opposition was expressed toward the zone change. It should be noted, however, that the applicant is also the owner of the properties surrounding the site.

**Financial Considerations:**

- This site is already platted and no requirement to (re)plat is needed. Guarantees for future municipal services were obtained as a requirement during the site’s platting and based on future development plans such improvements will be required at the time of that site development.

**Legal Considerations:**

On November 16, 2006 the required Public Hearing before the Planning Commission was held. The Commission approved the zone change by a vote of 10 to 0. Following are the findings of fact adopted by the Commission for the requested zone change.

**1. THE ZONING, USES AND CHARACTER OF THE NEIGHBORHOOD:**

The site’s present ”R-1”, single-family zoning is due to the site having been annexed by the City and per the Zoning Ordinance such property is required to be so classified. When platted and developed as a County site, the site was properly zoned for the resulting development. The request for “I-1” zoning is the zoning classification under Derby’s Zoning Ordinance that matches the actual development now on the site. Given the commercial zoning that surrounds most of the site, a church and its related uses can provide an acceptable and desirable buffer for the residential areas west of the site.

**2. THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:**

This site’s present development occurred while under County zoning. Approval of that zoning itself reflects the determination that the intended uses were suitable at this location. Given that the site is already developed with a church, has several other related uses and is expected to continue to develop for the same type of uses, the site already meets the type(s) of development allowed under the requested “I-1” zoning classification.

**3. EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:**

Although other, non-church uses are allowed under the “I-1” zoning classification, the site is already developed for church uses, and since any future developments are expected to continue to be those associated with the church, there would be no difference in impacts on nearby property under the requested zoning or what could occur if the site were still in the County. As noted above, the “R-1” zoning classification is simply applied

to any property annexed to the City and in many cases does not reflect the actual use of the property being annexed.

**4. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:**

Being an already developed site this factor is irrelevant.

**5. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE AS COMPARED TO THE LOSS IN VALUE OR THE HARDSHIP IMPOSED UPON THE APPLICANT:**

Again, given that the site is already developed with church related uses and the requested zone change simply provides a zoning classification compatible to those uses, the zone change is in essence neutral as to any impacts on the public. For the applicant, restricting the property to the “R-1” classification would be an unnecessary hardship in contradiction of the site’s present development and expected future development.

**6. CONFORMANCE OF THE REQUESTED CHANGE TO THE ADOPTED OR RECOGNIZED COMPREHENSIVE PLAN:**

Considering institutional uses to be the same as public and semi-public uses, the primary recommendation in the Comprehensive Plan (1995 Plan), is that such uses be located with convenient access to an arterial. As is the case for this site, it has access to 63<sup>rd</sup> Street South, an arterial that has just recently undergone major improvements.

**7. IMPACT OF THE PROPOSED DEVELOPMENT ON COMMUNITY FACILITIES:**

As noted above, this site has direct access to an arterial street that has just recently undergone major improvements. Those improvements are well capable of handling any traffic generated by this site’s development. Presently, the site is not on municipal sewer or water. However, when the site was platted, guarantees were obtained that can be used for extending municipal services to the site. That is, this site’s development has been expected to use municipal facilities and has provided guarantees for such improvements.

**8. OPPOSITION OR SUPPORT OF NEIGHBORHOOD RESIDENTS:**

This case has been published as a public hearing and notices mailed to adjoining properties as required. As of the writing of this staff report, no comments for or against the zone change have been received. Such

opposition and the filing of protest petitions may, however, still occur during or after the public hearing.

**9. RECOMMENDATION OF PROFESSIONAL STAFF:**

Given that the requested zone change is intended to provide a zoning classification that is in agreement with the already existing use of the site, and that staff considers the request appropriate for the this site, staff recommends approval of the requested zone change.

**Policy Considerations:**

- Given that “I-1” zoning is the first district that allows churches outright, modifying the zoning to a classification more restrictive than the one requested is not applicable in this case.(i.e. a residential classification instead of “I-1”)) and / or for that matter, to a smaller area than encompassed by the original request. If, however, any changes are different than as recommended by the Planning Commission, **the Council must do so by a majority vote of at least 6 and base such decision(s) on an appropriate finding of facts review.**

ORDINANCE NO. 1875

AN ORDINANCE CHANGING THE ZONING DISTRICT CLASSIFICATION OF CERTAIN LANDS LOCATED IN THE CITY OF DERBY, KANSAS, AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE CITY.

MOTION: Warren moved to approve the zone change from “R-1” to “I-1” for Lot 1, Calvary Baptist Church Second Addition to Sedgwick County, Kansas, as recommended by the Planning Commission. Payne seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**ZONE CHANGE  
REQUEST FOR A TRACT  
OF LAND LOCATED  
EAST OF THE  
RECENTLY PLATTED  
DERBY MARKET PLACE  
ADDITION**

Don Losew, Derby City Planner presented the staff report.

**Background:**

- This site was annexed to the City of Derby along with property recently platted as the Derby Market Place Addition. The annexed area east of the Derby Market Place Addition

involves an area of approximately 40 acres. This zone change involves approximately 11.88 acres of that 40 acre tract. The remaining portion of the 40 acre site is intended for single-family development under the existing "R-1" Zoning.

- This site will need to be platted and a sketch plat has been submitted for that purpose. Based on that sketch plat, the applicant is intending to construct approximately 128 dwelling units in the area of "R-3" zoning. That compares to a potential of 171 units for an area of 11.8 acres.
- As part of this site's platting and as is also being provided by the plat of the Derby Market Place Addition, a street, Tall Tree, is to be extended from Rock Road into this site at the site's northwest corner. While a second point of access is to be provided through a street connection in the Amber Ridge Addition (located to the south), the access by means of Tall Tree is a necessity, especially in terms of reasonable access in case of an emergency.
- During the public hearing, no citizen opposition was expressed toward the zone change. It should be noted, however, that the applicant is also the owner of the properties surrounding the site.

#### **Financial Considerations:**

- This site will be required to plat, at which time guarantees will be required for all needed municipal improvements. It would also be expected that improvements, the construction of Tall Tree to/from Rock Road would be initiated, if not already installed for the Derby Market Place development, at the time development of the apartments is initiated.

#### **Legal Considerations:**

On November 16, 2006 the required Public Hearing before the Planning Commission was held. The Commission approved the zone change by a vote of 9 to 0. Following are the findings of fact adopted by the Commission for the requested zone change.

#### **1. THE ZONING, USES AND CHARACTER OF THE NEIGHBORHOOD:**

Based on a sketch plat submitted by the applicant for both the zone change request area and the area immediately surrounding the proposed apartments, the site will be bordered by "R-1" development on its north, south and east sides. To the west is an expected, commercial, shopping center development. Presently, however, most of the surrounding area is undeveloped or developed with rural type residential uses to the north, northeast, northwest and east. Urban residential uses, in a moderately dense PUD is located immediately to the south. A Church, under "I-1" institutional zoning, has been constructed to the southeast and plans to continue to add church related uses in that area. In general, the apartments will be buffered from the existing and potential residential uses by the site's overall development plans noted above. An apartment use is also considered to be a good

use to transition from a commercial development, as is expected to the west and along Rock Road, to the other uses existing or potentially developing at other sites that surround this zone change application area.

**2. THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:**

As typical of annexed properties, this site was placed under the “R-1”, single-family zoning classification. Given the site’s interior location and the surrounding physical conditions (ponds, streets, tree rows, etc.), residential development is a more suitable use than most or any possible non-residential use. “R-3” or multi-family development would be no less desirable a residential use, albeit a higher density form of residential use, than single-family uses.

**3. EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:**

Given that this site is in a generally undeveloped area, surrounded on three sides with vacant land or large tracts with a single residential dwelling, minimal, if any, appreciable impacts would occur on those areas. The area to the west is being developed or planned for a major retail center and consequently involves a use more intensive than what is involved with this proposed apartment development. The apartments would in essence provide a reasonable form of transitional zoning for the other areas adjacent to the site.

The area most likely to be impacted by the proposed apartments is the Amber Ridge Addition to the south. The applicant’s development plans as depicted on a proposed sketch plat is buffering the apartments from the single-family uses in Amber Ridge by itself providing a section of single-family development between the apartments and the Amber Ridge area. A similar buffering is also to be provided to the east and north. Traffic would be increased through the street connection provided in the Amber Ridge Addition. That street (connection) was, however, required to be developed as a collector street and was planned to be extended into areas to the north of Amber Ridge. That street therefore would be capable of handling higher levels of traffic. The construction of Tall Tree will also provide a more logical entrance to the apartment site and most likely carry most of the traffic generated by the apartments.

**4. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:**

This factor is not germane to the case in that any urban scale development of this site was dependent upon other development occurring that would bring municipal services within reasonable reach of the site. That is, the area has been vacant not due to inappropriate zoning, but due to an inability to adequately provide needed public services.

**5. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE AS COMPARED TO THE LOSS IN VALUE OR THE HARDSHIP IMPOSED UPON THE APPLICANT:**

The primary gain would be to the public, in that a form of housing (conventional apartments) would be added to the area which is “believed” to still be under served in regard to such housing. No specific hardship would occur to the applicant in that all of the site can be developed for single-family uses if the zone change were denied. The loss to the applicant is only relative in that multi-family development would or could be more profitable.

**6. CONFORMANCE OF THE REQUESTED CHANGE TO THE ADOPTED OR RECOGNIZED COMPREHENSIVE PLAN:**

The 1995 and pending 2005 Comprehensive Plans provide recommendations both in terms of the amount of such development that may be needed or expected and also various criteria as to where such uses should be located. The 1995 Plan placed the need for apartments at 250 units by the year 2010. The pending plan instead of a specific number of units, used acres needed for such a use. That acreage value, however, in the pending Plan includes a “multiplier” component intended to adjust for gross needs, that is, land not actually used for the use, such as apartments, but that a developer may be holding for future development, land that cannot actually be developed such as in a floodway or floodplain, etc. Looking at a more or less net acreage, or land actually needed for apartments, over 100 acres was expected to be needed. Reducing that by the acreage involved with the Oaks apartments, would still leave a need for a substantial amount of apartment development.

Location wise, the Comprehensive Plans call for a better mix of housing in various areas, that is, they encourage mixed housing and not just areas dominated by conventional single-family homes. Apartment development is also expected to be served by at least collector streets and is a desirable means for buffering single-family or low density residential areas from more intensive, non-residential uses. This site would basically meet these criteria. Also, in both Plans this site is within the expected growth areas for Derby.

**7. IMPACT OF THE PROPOSED DEVELOPMENT ON COMMUNITY FACILITIES:**

Municipal sanitary sewer and water are available to this site through improvements in the Amber Ridge Addition. Street access is also available from that subdivision. However, this site is in an area planned for both non-residential and residential uses that will involve the extension of services and the construction of a street that will also be available to service this site. While sanitary sewer capacity in regard to the Rock Road interceptor had been a

concern, City Engineering has recently determined that that line has sufficient capacity for the expected developments along Rock Road intending to have access to that interceptor line.

**8. OPPOSITION OR SUPPORT OF NEIGHBORHOOD RESIDENTS:**

This case has been published as a public hearing and notices mailed to adjoining properties as required. As of the writing of this staff report, no comments for or against the zone change have been received. Such opposition and the filing of protest petitions may, however, still occur during or after the public hearing.

**9. RECOMMENDATION OF PROFESSIONAL STAFF:**

As indicated above and supported by Staff’s findings of fact, Staff is recommending approval of the zone change request subject to the site being platted within one year of the City Council’s approval of the plat and its recording and also that the site be required to have access available (street constructed) through both Tall Tree and Amber Ridge (Street).

**Policy Considerations:**

- The City Council may modify the zoning to a classification more restrictive than the one requested (R-2 instead of a request for R-3) and/or for a smaller area than encompassed by the original request. If, however, any such changes are different than as recommended by the Planning Commission, **the Council must do so by a majority vote of at least 6 and base such decision(s) on an appropriate finding of facts review.**

ORDINANCE NO. 1876

AN ORDINANCE CHANGING THE ZONING DISTRICT CLASSIFICATION OF CERTAIN LANDS LOCATED IN THE CITY OF DERBY, KANSAS, AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE CITY.

DISCUSSION:

**Council Member Craig** asked what the ingress of Tall Tree into that area would look like.

**Mr. Losew** explained the Planning Commission has already seen a sketch plat at their last meeting. Tall Tree would come in and curve south and continue as a loop street around the perimeter of the apartment development. There is also an existing street connection in the Amber Ridge Addition which is already in place and would be the second means of access into this development. Staff comments indicate that both street connections will need to be provided for this development to occur because we want to have those two points of access into the site.

**Council Member Craig** asked if there was just one street from Amber Ridge available or are there two.

**Mr. Losew** explained there is just one connection at this time. The second connection would be from Tall Tree.

**Council Member Meidinger** asked if the intersection of Tall Tree and Rock Road is planned for signalization.

**Mr. Losew** advised it was.

**Council Member Bannon** asked what will go in between the commercial area and the apartments.

**Mr. Losew** stated that there is a detention pond planned to serve the Derby Marketplace as well as an additional detention pond planned at a separate location.

**Council Member Bannon** asked about fencing and landscaping.

**Mr. Losew** explained he has been encouraging the agent to look at the possibility of doing some integration of landscaping rather than just the usual cement wall between the two uses.

**Council Member Bannon** suggested that if sketch plats are provided to the Planning Commission for items such as this that they be provided to the council as well.

**Mr. Losew** stated it is unusual that the sketch plat came in as early as it did, typically it would go through zoning first.

**Council Member Craig** asked if there were any significance to the square in the lower left corner.

**Mr. Losew** explained that is probably the previous owners of these properties. At this time it is all under the ownership of the applicant.

MOTION: Warren moved to approve the zone change from “R-1” to “R-3” for the indicated tract, located east of Rock Road and north of Meadowlark. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**PUBLIC HEARING –  
UNSAFE STRUCTURE  
AT 109 SOUTH DERBY  
STREET**

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

**Background:**

- On September 7, 2006, the residential structure at 109 So. Derby received substantial damage from an explosion and fire.
- The City's Building Official, Dale Wasinger, subsequently inspected the damaged structure and determined that it is unsafe or dangerous.
- On November 14, 2006, the Derby City Council passed Resolution No. 23-2006, which established the time, date and place for a public hearing on the possible condemnation of the structure (7:30 p.m., Tuesday, January 9, 2007 at City Council Chambers).
- Notices have been sent to all required parties as prescribed by state law.
- The purpose of the public hearing is to allow those parties to comment on the condition of the structure, proposed remedies, schedules, if any, and for the Council to ultimately determine if the structure should be condemned and ordered to be repaired, razed and removed or rehabilitated.
- At the time of preparation of this staff report, the owner has been granted a building permit to repair the subject structure and the actual repair work is underway. It is apparent that the owner intends to rehabilitate the structure rather than demolish it.
- It is recommended that the public hearing process continue as advertised for January 9. This will allow the City to continue the condemnation process, if the builder/owner would happen to back out of the intended rehabilitation.

**Financial Considerations:**

- Per Ordinance No. 1839, the insurance company has issued a check to the City of Derby in the amount of \$12,565 to assure cleanup or repair is completed. In this case, these funds will be released to the owner upon completion of the remodel work and the certificate of occupancy is issued.

**Legal Considerations:**

- The notification and hearing process has been conducted in accordance with K.S.A. 12-1752.

**Policy Considerations:**

- State law authorizes the City to take appropriate action to protect the public when a structure has become unsafe or dangerous.
- Although a permit has already been issued for renovation of the subject structure, City staff should not assume such renovation will be completed as planned.
- The proposed resolution allows sufficient time for renovation of the structure, assuming normal progress of the work.
- Should the work not proceed as planned, the City would be positioned to act expeditiously to eliminate any danger to the public by razing and removing the structure.

RESOLUTION NO. 01-2007

A RESOLUTION FINDING AND DETERMINING THAT A STRUCTURE LOCATED AT 109 SOUTH DERBY, DERBY, KANSAS, IS UNSAFE OR DANGEROUS; ORDERING THAT SUCH STRUCTURE BE REPAIRED AND MADE SAFE OR RAZED AND REMOVED PURSUANT TO K.S.A. 12-1750 *ET SEQ.*

DISCUSSION:

**Council Member Warren** asked if there are any fees associated with passing the resolution that would be assessed to the property owner.

**Mr. Brown** advised none that he was aware of.

**Council Member Warren** asked if we could do the public hearing and then table the issue to be picked up at a later date if need be, or would we be forced into a start over position at that point.

**Phil Alexander**, City Attorney explained it would depend on how long it was tabled. Since there is a notice and hearing requirement for the public hearing, if we put it off too long, for example 90 days, he believes we would be required to start the process over again.

**Council Member Warren** clarified that we could table the item for 60 days and pick it up at that point and continue the process and still be in compliance with notifications.

**Mr. Alexander** advised he believes that would be permissible, the only problem would be if the property were to change hands in the meantime, at which point we would have to restart, but as far as he knows that is not expected.

**Council Member Warren** asked what cost the city has invested to this point in preparing documents and notifications.

**Mr. Alexander** explained the only cost we have had to this point other than the staff time involved is the publication and mailing costs, which is probably less than \$100.00.

**Council Member Johnson** asked if we had an ordinance that allows us to do this.

**Mr. Alexander** stated that this is being done pursuant to state statute.

**Council Member Johnson** asked if we had a local ordinance.

**Mr. Alexander** advised we do not have one that would authorize a condemnation of this nature.

**Council Member Johnson** asked if we had an ordinance that allows us to keep 25% of the insurance proceeds on any property that is presumed to be a total loss, and therefore in danger of abandonment.

**Mr. Alexander** explained that is done by local ordinance.

**Council Member Johnson** asked if there is any point in our ordinance that says we can give the money after 50% completion of the remodeling.

**Mr. Alexander** advised there is no standard, it is really just a matter of at what point the city is confident that it will not need to use that money to demolish the property. In this case it would depend upon the progress of the rebuild.

**Council Member Johnson** asked if the ordinance says we could possibly do something like he is talking about.

**Mr. Alexander** stated that the ordinance does not address that specifically. It authorizes us to keep the funds against the possibility of a demolition. At the point where we no longer consider that to be a realistic possibility then we could surrender those funds. He also commented that we do pay the property owner interest on those monies while we have them.

**Council Member Johnson** pointed out that basically it is our judgment.

**Mr. Alexander** agreed.

**Council Member Johnson** suggested it would be prudent of us to keep that until we see reasonable progress made. One good reason for abandonment would be that the owner would get all of the proceeds, although he is not saying this property owner would do that, but that is what the ordinance is all about.

**Mr. Brown** commented that staff agrees with that and we feel the city should retain those funds until more progress is made and we are confident that the owner and builder are going to follow through with their intent.

**Council Member Craig** agreed we should retain the money but questioned who would determine the point where the funds can be released.

**Mr. Brown** stated it would be his department with advice from the city attorney.

**Council Member Bannon** advised she understood the homeowners request, however given the fact it is uninhabitable at this point, we are a long way away from this being substantially complete in any fashion. It is only prudent that we continue the course of action we have.

**Public Hearing opened at 7:37 p.m**

**With no one present to speak the public hearing was closed.**

MOTION: Bannon moved to approve resolution to condemn structure at 109 South Derby and require owner to raze or rehabilitate said structure by June 21, 2007. Craig seconded.

FURTHER DISCUSSION:

**Council Member Warren** asked for an explanation of the process at this point, will it just die out on its own after the work is done on the residence.

**Mr. Alexander** explained that typically what we would do is notify the property owner by letter that we consider the property to have been rehabilitated and that ends the matter.

**Council Member Warren** asked if that requires action from the council.

**Mr. Alexander** advised it did not; it can be handled by staff.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

## **CLEAN INDOOR AIR ORDINANCE**

**Mandy Wagner**, Assistant to the City Manager presented the staff report.

### **Background:**

- In August 2006, the City Council requested information on 1) the recently released Surgeon General's report, 2) clean indoor air ordinances in Kansas, and 3) the economic impact of clean indoor air ordinances on local economies. Staff made an informational presentation at the August 22, 2006 City Council meeting.
- Following the presentation, Mayor Avello requested that town hall meetings be held on the issue. The Derby Community Coalition Promoting Healthy Choices hosted two town hall meetings during September and October 2006 and presented a report to the governing body at the November 28, 2006 City Council meeting.
- The Derby City Council subsequently requested that staff draft a clean indoor air ordinance for discussion. The ordinance is attached for your consideration.

### **Discussion:**

#### ***Updates since August 2006***

- Since August of 2006, four additional cities have adopted clean indoor air ordinances: Olathe, Parsons, Overland Park, and Leawood.
- Olathe, Overland Park, and Leawood passed comprehensive ("Lawrence model") ordinances. The ordinances ban smoking in all public places and places of employment.
- In October of 2006, the City of Parsons passed a smoking ban. The ordinance included a *time of day* exemption for drinking establishments from 8:00 p.m. to 5:00 a.m.
  - The Parsons ordinance is the first in Kansas to include a time of day exemption since Salina passed the first smoking ban in Kansas in May 2002. Since then, *no* other city has included such an exemption.

#### ***Purpose of Clean Indoor Air Ordinances***

- In Kansas and elsewhere, the evolution of public policy has definitively been towards *comprehensive* ordinances.

- Comprehensive ordinances are based on the premise of protecting public health. Cities are able to pass clean indoor air ordinances under their police powers to “protect the public health, safety, and welfare.”
- As a protection of public health, comprehensive ordinances are uniformly applied across all types of establishments and times of day. They prohibit smoking in public places and places of employment.
- Only by being uniform in their regulation, comprehensive ordinances demonstrate a legally defensible justification for protecting all public health (including the health of employees) regardless of the time of day or type of establishment.
- When an ordinance includes exemptions to accommodate economic concerns, it weakens the city’s ability to justify that the ordinance was passed for reasons of public health. If challenged, it leaves the door open for a court to find the ordinance invalid.
- From a business perspective, equal regulation is critical in keeping a level playing field among all types of businesses including those existing and those to come.

***Derby Draft Clean Indoor Air Ordinance***

- The draft ordinance is a comprehensive ordinance based on protection of public health. As such, it prohibits smoking in all public places and places of employment.
- The draft ordinance bans smoking in:
  - Public places (including restaurants and bars);
  - Places of employment;
  - Within twenty (20) feet of any public entrance, exit, or air intake system to prevent smoke from inadvertently entering the establishment.
- The draft ordinance does not regulate:
  - Private places (i.e. private residences, vehicles) unless they are used for childcare, adult daycare, or as a health care facility;
  - Up to 25% of hotel/motel rooms if they are on an independent ventilation system;
  - Stand-alone tobacco retail shops;
  - Outdoor places of employment including patio and courtyard areas
- The effective date of the ordinance is sixty (60) days after its adoption and publication in the local newspaper.

***Derby Public Input***

- At its November 28, 2006 meeting, the Derby City Council requested that staff invite public input on a clean indoor air ordinance via the City’s website. Hard copies were also provided at the Derby Senior Center to accommodate access to/use of the internet.
- The City received 108 responses. Eighty-four (or 77.7%) responded “in favor of” an ordinance; 24 (or 22.2%) responded “not in favor of” an ordinance.
- Six of the 24 (or 25%) of respondents “not in favor of” the ordinance were non-local (from outside of the Wichita MSA).
- All of the respondents “in favor of” the ordinance appear to be local residents (within the Wichita MSA).
- **Among local respondents 82% responded “in favor of” an ordinance; 17.6% responded “not in favor” of an ordinance.**

- Generally, those who were in favor of the ordinance indicated that they would patronize (or more frequently patronize) Derby businesses that are not currently smoke-free but would be smoke-free under a new ordinance.
- Generally, those who responded *not* in favor of the ordinance indicated that they would patronize (or more frequently patronize) businesses outside of Derby if a smoking ban were effected.

**Financial Considerations:**

- There are no direct financial consequences associated with adoption of this ordinance.

**Legal Considerations:**

- The City is empowered to protect the public health, safety, and welfare of its citizens.
- A comprehensive ordinance where regulation among businesses is uniform is more defensible from legal challenges because it demonstrates uniform concern for public health.
- When challenged, clean indoor air ordinances have been universally upheld by the courts in Kansas and have an overwhelmingly strong record of prevailing elsewhere.

**Policy Considerations:**

- The validity of a clean indoor air ordinance is based on uniform protection of public health. Therefore, a comprehensive ordinance which prohibits smoking in public places and places of employment is less likely to be found invalid, if challenged.
- The Ordinance Review Advisory Board (ORAB) discussed the ordinance at its December 19, 2006 meeting and endorsed it as proposed.
- As an alternative policy option, ORAB would support an *extended effective date*.

**Alternative Options**

1. **Extending the effective date:** *Traditionally, ordinances are effective on the day of publication, typically a week following adoption. Extending the effective date would prolong the window of implementation.*

**Pro**

- Encourages Wichita and other neighbors to join Derby in protecting public health.
- Addresses concerns of the local business community about economic impact.
- **“January 2, 2008”** is the magic number for the KC metro. Overland Park and Leawood ordinances have an effective date of January 2, 2008. Lenexa, Shawnee, KCMO, and others considering it as well.
  - Derby could show solidarity and bring the challenge to south-central Kansas if it adopted January 2, 2008 as its effective date.

**Con**

- Other cities may not pass similar ordinances.
- The city has been advised to not allow more than 90 days from adoption of the ordinance to the effective date.

- It is believed by “issue experts” that if the ordinance is to be challenged, limiting the effective date to 90 days will prevent challenges – if there are any – from being filed before the ordinance goes into effect.
- An ordinance that has been in effect, it is believed, has greater chances of being upheld in court.

2. **Contingency clause:** *A contingency clause exempts establishments until a neighboring community (or communities) passes similar regulations at which time the ordinance takes full effect.*

**Pro**

- Encourages Wichita and other neighbors to join Derby in protecting public health.
- Thought to prevent an unequal playing field for local businesses.
- Addresses concerns of the business community about economic impact.
- On January 4, 2007, Derby Chamber of Commerce members were presented information on the draft ordinance and alternative policy options. In an informal poll of Chamber members, the majority supported this option.

**Con**

- Setting an *Extended Effective Date* (Option 1) may be more effective in getting neighboring cities to join in because a delayed effective date like January 2, 2008 gives a “firm promise.”
- The only cities to have a contingency clause are Prairie Village and KCMO. Just one year after going into effect, both are moving to amend the ordinances and remove the clause.
- At its meeting on December 19, 2006, ORAB discussed Options 1 and 2 in depth. ORAB supports Option 1 as an alternative but *does not* support Option 2, stating that protection of public health is the prevailing issue and the appropriate role for Derby should be as a progressive leader for the south-central Kansas region.

3. **Exempting types of businesses:** *An exemption would target certain business genres such as bars, restaurants, or bowling alleys.*

**Pro**

- May satisfy local business concerns about economic impact.

**Con**

- Creates inequity among businesses.
- More clearly fails to demonstrate uniform concern for protection of public health. As such, it is less legally defensible, if challenged.
- No city in Kansas has included such exemptions since Abilene passed an ordinance in June of 2005. Since then, Lawrence and 11 of the 12 subsequent cities to pass ordinances have passed comprehensive ordinances.

4. **Grandfathering in current businesses:** *Grandfathering in current businesses would exempt existing businesses and impose regulations on future businesses.*

**Pro**

- May satisfy local business concerns about economic impact.

**Con**

- Creates inequity among businesses.
- Gives the impression that Derby is okay with treating businesses unequally which may, in turn, hurt economic development efforts.
- More clearly fails to demonstrate uniform concern for protection of public health. As such, is less legally defensible, if challenged.
- There is *no* precedent for this in Kansas.

5. **Time of day exemption:** *A time of day exemption exempts establishments during a specific time period (i.e. 8:00 p.m. to 5:00 a.m.).*

**Pro**

- May satisfy local business concerns about economic impact.

**Con**

- With the exception of Parsons, *no* city in Kansas has adopted a time of day exemption since Salina adopted the first smoking ban in Kansas. As such, this exemption would not advance Derby as a “progressive” community.
- More clearly fails to demonstrate uniform concern for protection of public health. As such, is less legally defensible, if challenged.

6. **All or none clause:** *An all or none clause would require all businesses to declare their establishments entirely smoke-free or entirely smoking-permitted. Smoking sections and non-smoking sections would no longer be allowed. A sign at the door would tell patrons whether they are entering a smoking or a non-smoking establishment.*

**Pro**

- Preserves some business choice/personal choice.
- May satisfy local business concerns about economic impact.

**Con**

- More clearly fails to demonstrate uniform concern for protection of public health. As such, is less legally defensible, if challenged.
- Various business owners, including restaurateurs, have expressed a preference for a uniform ordinance - even a comprehensive ordinance - in order to keep a level playing field and be able to adapt marketing strategies accordingly.
- There is *no* precedent for this in Kansas.

7. **Stand-Alone Facility for Employees:** *A stand-alone facility clause for employees would allow employers to provide indoor smoking facilities for employees as long as it is physically independent of all other indoor facilities including ventilation systems and at least 20 feet from entrances, common areas and other prohibited areas.*

**Pro**

- Preserves the employer’s option to provide an indoor smoking amenity while protecting public health.
- Preserves some personal choice.

**Con**

- Many businesses would not be able to meet this standard logistically. As such, the exemption may not be meaningful.
- Among comprehensive ordinances in Kansas, Bel Aire is the *only* city to include a comparable exemption.

DISCUSSION:

**Council Member Schwarz** advised that most of the comments he has received against an ordinance would be the affect on business and we have all heard numerous concerns. He asked if Ms. Wagner has talked to other communities or if she had personal experience concerning other communities and their impact on business.

**Ms. Wagner** stated the best example of this would be Lawrence. They were the first to adopt a comprehensive ordinance that affected all public places and places of employment. She personally experienced that in Lawrence and recently spoke with a gentleman who is the co-owner of a local bowling alley. This establishment has the longest experience of a local ordinance of this nature so he was a great person to talk to. He advised the ordinance scared him to death, when it was in front of the city commission he opposed it, but it has been a blessing in disguise. He was surprised about the amount of family business he gained and how it impacted his bottom line. In comparing Lawrence and Derby he stated that his competition was 25-30 minutes away and when compared to Derby it is about the same distance to the nearest competition.

**Council Member Craig** asked about the 20-foot smoke free zone to business entrances and asked if that were the standard or if it was just picked at random as a number.

**Ms. Wagner** explained there is precedent for distances up to 50-feet. Garden City is the one that has the 50-foot requirement. There are a number of other cities that have 10, 15 and 20-foot requirements. The 20-foot zone was the number recommended by the Ordinance Review Advisory Board.

**Council Member Craig** clarified that there really is no standard that has been established by other ordinances.

**Ms. Wagner** responded that as far as consistency in Kansas, 10-feet is the most prevalent, but it does not beat out the others by much. The national standard ordinance is a 50-foot requirement.

**Council Member Johnson** pointed out that a lot of the presentation emphasized progressive, pointing out “progressive cities” that have clean air acts, and asked if Derby would be seen as an unprogressive dud of a hillbilly redneck place if we did not do this.

**Ms. Wagner** stated that would be up to wiser minds than hers. She explained it was more meant for passing a Salina style, very limited smoking ban. A comprehensive ordinance is what public policy is upheld to be a more preferable standard.

**Mayor Avello** opened the public hearing portion, requesting speakers limit their time to 3 minutes.

**Linda DeCoursey**, American Heart Association, stated that the American Heart Association’s mission is to reduce death and disability from heart disease and stroke wherever possible. A lot

of people tend to forget that smoking and second hand smoke does promote heart disease and she thanked the council for looking at the clean indoor air ordinance. It is considered to be a public health issue and according to the Surgeon General there are no safe levels of cigarette smoke and she asked the council to consider an ordinance that would be comprehensive in nature. She explained that cigarette smoke not only harms the smokers, but those they smoke around. No one is asking people to give up their right to smoke, what they are asking is that they be careful who they smoke around because it does harm other people. Employees in establishments that allow smoking double their risk of heart attacks and their risk of lung cancer triples. Children who have problems with asthma are also affected in areas where they encounter second hand smoke. In Kansas we say this is a public issue but it is also an economic issue.

**Diane Tinker**, 6401 E. Beachy, Development Director for the American Lung Association serving this area. The American Lung Association is the oldest voluntary health organization in the United States. Their mission is to prevent lung disease and promote lung health. They accomplish that by advocating for clean air and smoke free kids. On behalf of the American Lung Association, she commended Mayor Avello, the city council, Derby city staff and the members of the Derby Community Coalition Promoting Healthy Choices on the efforts to become a smoke free community. The American Lung Association strongly believes that every citizen has the right to breathe air that is not harmful to his or her health. If you adopt a 100% smoke free policy you will be a progressive leader in south central Kansas by protecting the health of everyone who lives in, works in and visits Derby and you will join thousands of other communities that have put the health of their residents first. The recent release of the Surgeon General's report on second hand smoke and the nation's restaurant news editorial supporting the need to protect the lung health of everyone shows the importance of this issue. The Surgeon General's report states that scientific evidence indicates there is no risk free level of exposure to second hand smoke. Second hand smoke causes premature death and disease in children and adults that do not smoke. Eliminating smoking in indoor spaces fully protects non-smokers from exposures to second hand smoke. Separating smokers from non-smokers, cleaning the air and ventilating buildings can not eliminate exposure of non-smokers to second hand smoke. Children exposed to second hand smoke are at an increased risk for SIDS, acute respiratory infections, ear problems and more severe asthma. Smoking by parents causes respiratory problems and slows lung growth in their children. Exposure of adults to second hand smoke has immediate adverse affects on the cardiovascular system and causes coronary heart disease and lung cancer. Lung cancer is the number one cancer killer in the United States. She strongly encouraged Mayor Avello and the Derby City Council to protect their constituents through adopting the proposed ordinance so that the simple act of taking a breath does not become a matter of life and death.

**Lisa Benlon**, 818 N. Emporia, Government Relations Director for the American Cancer Society. She commended the council for considering the issue of making Derby smoke free. Derby is not treading uncharted waters in supporting a simple, strong and fair ordinance; several cities in Kansas are taking this step. She has traveled the state visiting cities as they discuss this issue and she believes Derby has been the most thorough in presenting the pros and cons of possible amendments, the staff has done a superb job. Being from a health organization she could present statistics on death and disease due to smoking and second hand smoke but she will simply say that all workers and patrons should be afforded the ability to breathe clean air free from the

4,000 chemicals and more than 60 carcinogens in second hand smoke. Second hand smoke is a proven cause of lung cancer, heart disease and other serious illnesses. An argument sometimes used by the opposition is that people can choose where to work and that is not always the case. High school and college students often work in the hospitality industry while they are working on their degree and they don't have the luxury of choosing a smoke free environment in which to work. No one should have to endure such health risks in order to earn a paycheck. Some will say government should not be regulating business on this issue, but as citizens we expect government to protect us from health related dangers. Government regulates food establishments, toxins such as lead and second hand smoke is no less dangerous to individuals. She advised that the Kansas Restaurant and Hospitality Association had been in opposition of a smoke free ordinance initially, but she has a copy of an agreement that was signed by the KRHA and Clean Air Kansas City Group that came about due to various exemptions being proposed in the cities. The organization realized that exempting any industry creates an unlevel playing field and agreed to sign on to the proposal. She advised that an industry that feels like it would be crippled by an ordinance is the Bowling Proprietors, but she has a three page handout from their industry that shows their fears are unfounded. On behalf of the American Cancer Society she encouraged the council to make the decision that the health of the Derby community is vitally important to the continued success of the city and she urged the passing of the ordinance with no exemptions. She also pointed out; regarding Council Member Schwarz's comments that since Lawrence passed their ordinance they have received 16 new requests for liquor licenses.

**Becky Robinson**, 401 N. Derby, speaking on behalf of the Derby Community Coalition Promoting Healthy Choices. She thanked the mayor, council and staff for being willing to consider this issue and allowing the Coalition to be a voice in the community. The Coalition is here tonight to urge the council to support a comprehensive clean indoor air ordinance with as few exemptions as possible for the City of Derby. The Coalition became involved with this issue after the Surgeon General's report was released during the summer. That report showed that second hand smoke is extremely harmful and that there are no safe levels of exposure. Now that we have this information we need to do something about it. Derby has the wonderful opportunity of showing ourselves as a progressive community. We know that other communities are watching us and waiting to see what the leaders of Derby will decide. Our city has many wonderful amenities for the community and visitors to this community such as the water park, recreational facilities, family entertainment, a multitude of wonderful restaurants, possibly a new library and a skate park, to name a few. Let's make a name for ourselves and take a stand on this issue. When conducting the two town hall meetings for the community we had a wealth of knowledgeable and respected panelists speaking and we feel the information presented was valid and important to the community. In speaking with community members attending those town hall meetings, as well as most they have spoken with that have attended the city council meetings that we have presented at, the consensus has been that Derby needs a clean indoor air ordinance. At one of the city council meetings the mayor issued a "Great American Smoke Out" proclamation and she pointed out that more than 100 high school students took the challenge and signed that. The information posted on the Derby web site indicates that the vast majority of residents responding to the online survey are in favor of Derby passing an ordinance. As for the city council, the decision to support the proposed ordinance would speak volumes. The coalition urges the council to follow the wishes of Derby citizens and pass a clean indoor air ordinance. The coalition feels that this is not just a matter of whether a person is a smoker or not, but

instead is a matter of public health and endangerment. Second hand smoke is a serious health issue and the residents of Derby and visitors to this great city need to be protected from the dangers. The coalition will continue to be a vital presence in the Derby community, especially for the teens and adolescents living here. She wants the Derby leaders and business and restaurant owners to look at the citizens, employees and customers and say we care about your health and well being. A vote for clean indoor air is a vote for good health. She also encouraged the council to consider possible options to help the businesses who could possibly be affected during the implementation and transition time.

**Joe Dinino**, 1807 Countryview, works for the VFW and they provide a service for the veterans of the community. He is not opposed to a smoking ban, but he is concerned how it affects those that gave all of us the right to do what we are doing tonight. From a purely business standpoint, most of the veterans who come to the VFW smoke, those that don't smoke come in and play cards, watch TV and visit with each other. One of the questions on the survey asked if they would go somewhere else if they were not able to smoke. He advised they would, they could go to Haysville or Mulvane. From a purely business standpoint they would not have to open their door and that is real life. He pointed out that most of the speakers did not live in Derby and do not visit the VFW or any other establishments here and he encouraged people to visit and see what they do, they provide a service for the vets. If you take that away from them those that don't smoke won't come in either because all of their buddies are somewhere else.

**Tom Wilhite**, 200 W. Washington, advised the clean air act does not specify what kind of air. At his shop they start an engine every so often and he breathes a lot of exhaust fumes and he questioned if that was going to be regulated as well. He also pointed out those at the welding shop don't have clean air either due to welding fumes. He suggested this ordinance needs to be specified as a smoking ban, or not call it a clean air act because we are talking about two different things. It is his feeling that if a business owner decides that he wants to allow smoking at his business by employees or customers, that is his call, he bought the property and has put up the money to make his business work and he should have that right to make it smoking or non smoking. He suggested it be all or none, either you smoke at your business or you don't and it could be posted on the front door, or we leave it alone, like it is now. Another option could be that when Wichita goes non-smoking we follow suit, otherwise we are going to run off a lot of business to Wichita and he feels we should try and keep our business people alive. They provide a large share of taxes in town and if you run them off then you will have to find a lot more housing to pay that bill. He advised he has breathed in a lot of things in his life from asbestos from brake drums to engine fumes and he is still kicking at 60.

**John Nicholas**, 865 English Ct, Administrator at Westview of Derby. He has lived here since 1983 with his family and they support the clean air ordinance in public buildings. He understands there is an exemption for residences and that is what he is here to talk about. He comes here tonight in his capacity as an administrator. The residents placed in his care are also citizens in this city; they are registered voters in Ward 3. In many cases they worked here and retired here and in some cases they chose to move here after a family member moved here to Derby. They chose to be residents in our community. Due to their health they were unable to come tonight and his obligation to them is to speak for them. He advised his request tonight is that Westview be exempted as a skilled nursing facility from the clean air ordinance. The

problems with the ordinance applying to a skilled nursing facility are that it is outright discrimination against the elderly based only on residence. It could expose the city to lawsuits and other legal liabilities that haven't been addressed. Current city and federal regulations are already in place that are in conflict with this proposal. Following the city ordinance will create additional cost, and he questioned if the city was ready to budget expense to cover that cost. Since it will be a change in following different regulations, he asked if the city will provide staff or funding for staff to assist in explaining and obtaining compliance with this ordinance, or will this become a city required mandate of enforcement left unfunded. He thanked city staff members for their information and cooperation as they have looked at this and he believes they have a good grasp on the issue. Staff indicated to him that they would not recommend an exemption tonight for Westview and said that is a policy decision. He agreed that policy decisions belong to the mayor and the council. He did however point out that ignoring the individual rights of the elderly to make the choice in the place where they live and concentrate only on the health issues is in itself a public policy decision. This ordinance would not apply to an individual in a private residence. A citizen in the community could be 83 years old with multiple chronic health conditions and chose to smoke and the ordinance would not affect them. If they chose to have the medical conditions taken care of at Westview and the city says you have to stop smoking because you don't live here, you are in a public place, he advised they are called residents for a reason. The same citizen could choose to stay a resident of the City of Derby and not move in to Westview if they could afford to pay for the services individually that Westview provides as a group. It is not just discrimination against the elderly, it is discrimination against poor elderly, those that require Medicaid and Medicare to finance them and he finds that abhorrent. Several years ago he had the opportunity to listen to one of his residents about his decision to smoke. Jay was about 20 years old, it was a summer day and he was finally getting a chance to sit down and eat his lunch in the middle of the afternoon. In his lunch box were some cigarettes, and he said his day wasn't the best one he'd had in his short life so he lit up and he had been smoking every since. He advised he did not think Jay was having a good day either, it was June 6, 1944 and he had landed with the 101<sup>st</sup> Airborne behind enemy lines at Normandy. His lunch box was issued by Uncle Sam. The proposed clean air ordinance would force some elderly or their families to choose a skilled nursing facility outside of Derby. He has watched the council since he moved to Derby in 1983 and they have always been pleasant, encouraging to people and resident friendly. Now you are going to be forcing at least three cases into moving their family member. They are not going to make them quit smoking, they are going to move them if you pass this ordinance and they will have to travel more. He asked the city attorney if he could address the legal implications of the discriminatory denial of rights based on residence. He pointed that 100% of his residents are covered by the ADA or Section 504 of the Rehabilitation Act of 1973 and other various anti-discrimination statutes. Residents of Westview have routinely filed the Homestead Tax exemption over the years, if you deny this based on residence does that mean they can no longer file that, and if so is the city willing to budget the expense to cover those lost exemptions. Voting rights are based residence; we register to vote based on where we live. If this is based on residence, can his residents no longer live at Westview since they can no longer smoke in a private place? The provisions of the proposed clean air act that apply in public places that are not residential in nature that have no governmental or other agencies regulating or routinely reviewing smoking in these areas are necessary and he supports the provisions. Facilities licensed by the Kansas Department of Aging under Kansas Administrative Regulations Chapter 28, numbers 39, in sequence, and certified by

Titles 18 & 19 of the Social Security Act, which are Medicare and Medicaid have smoking regulated by state and federal governments. An exemption from this ordinance would not mean no regulation; it would mean no conflicting regulations. It would mean no costly requirements to Westview, or possibly even the city in staff time to enforce the compliance. If Westview is expected to fund this mandate, the estimated cost is \$75,000 annually. He pointed out that none of his staff is allowed to smoke in the building; they are talking about a limited number of residents and smoking visitors. We are talking about 1 room of 160 sq. feet that is separately ventilated according to state and federal laws.

**Don Saylor**, Kansas Restaurant Hospitality Association advised their position as a trade association is that they believe in business owner rights. They feel that the business owners should be able to make the decision for their establishment and how smoking may or may not affect it. He clarified a statement made earlier in that KHRA did not agree to support the ban in Kansas City, KHRA simply agreed not to oppose the ban. What happened is that the committee examining things in Overland Park indicated there were enough votes to pass the smoking ban with no exceptions. KHRA agreed in conjunction with Clean Air Kansas City to provide exemptions for outdoor dining that is the basis of the agreement. They did not support the ban and they still believe in business owner rights. He also pointed out the draft of the ordinance starts off by reference to “public places” however when you go through the ordinance it incorporates private establishments and Class A and Class B clubs. They feel this is wrong, if you are going to oppose it for public places, how are you crossing over to private industry. A person makes a decision to join a private club and the decision to go into that establishment. This is a legal activity according to the State of Kansas and free enterprise keeps getting squashed on this and we are strongly opposed to it.

**Cindy Claycomb**, 151 N. Rock Island, advised she used to live in Derby and has an interest in what happens in the city. She used to think that smoking was just a nuisance issue and that it was just annoying, but after reading the Surgeon General’s report she realizes that this is only a health issue. No one is being told that they can’t smoke; they are being told where they can and can not smoke. From the Surgeon General’s report there is no evidence that there are negative economic consequences in communities. She encouraged the council to adopt a comprehensive clean indoor air ordinance

**Spencer Stelljes**, 1360 Broadmoor, Governmental Relations Chairman of the Derby Chamber of Commerce. He stated they cannot stress enough that they acknowledge and agree with well documented research that tobacco smoking and second hand smoke create negative health effects. They understand and appreciate the council’s concern for public health, however they ask that the council remain open minded to options that will help businesses survive within the Derby city limits because we owe it to them to help them through this transition. In addition it is important to remember that business is market driven, in other words, those that do choose to smoke will go elsewhere with their business. He also added that while they agree with the Surgeon General’s report, it is not his prerogative to decide whether or not there is an economic impact or not. If the City of Derby were to implement the ban as currently proposed before the largest city in the region does, that being Wichita, current and future business would be harmed due to our close proximity. Derby business, namely our restaurants and bowling alley would be put at a competitive disadvantage, especially when their competition’s within 5-15 miles permit

smoking. Many Derby businesses already struggle with competition from Wichita and they hope the council would see how this proposal would add to that struggle. They also agree that Derby businesses can and should respond to marketplace demands, including the health of their patrons. He reminded the council that most of the restaurants in Derby are completely smoke free and the bowling alley has certain times that are completely smoke free. They hoped that before any decision is made, each of the council members would consider the negative impacts the implementing the current proposal before Wichita does would make on the local business climate and economy and would be willing to listen to their concerns to help ensure that our current prosperity continues well into the future. He knows that many have owned or currently own a business. Imagine that 30% of your clientele all of a sudden leave and how that would affect your livelihood, the local economy, your mortgage or notes owed to the bank. While many would argue that business over time would eventually return, the short term loss regarding your business would still negatively impact you for years to come, while other businesses could inevitably not even survive this transition. We also realize that many other cities in Kansas have adopted a similar smoking ban in cities such as Lawrence and Salina, however keep in mind they are the largest cities in their region. In order for smokers within their cities to find an establishment that allows smoking, they would have to drive a minimum of 40 minutes to find such a place. Derby citizens, or those who live in the area but frequent Derby businesses, would merely have to drive a minimum of 5 minutes to do the same. Some were unable to attend a breakfast last Thursday when this topic was addressed, as those that attended know, they came to an overwhelming decision to support the best of all the alternative options, the contingency clause. As you know this would exempt establishments in Derby from going 100% smoke free until Wichita passes similar regulations, at which time the ordinance takes full effect here in Derby. Similar ordinances have been passed in the Kansas City metro area out of respect for local business concerns, much like our own mentioned earlier. He hopes the council will show the same respect to our community businesses as well. The Chamber did send the council a copy of their position statement in August and he again provided that this evening. With the extended date option of January 2<sup>nd</sup>, 2008, keep in mind that those ordinances were passed in 2003 and 2004, so they have had at least 4 years to consider that ban before it came into fruition. If you put that same extended option into effect for us, we would only have less than 1 year to implement the same ban. Their challenge was not to implement until 85% were on board for a ban, that is 85% of the Kansas City metropolitan area. That is why we say the contingency clause is the best of all of the alternative options. He commented about a statement made by Ms. Wagner regarding the bowling alley in Lawrence. Although Lawrence is the largest city in the region and it is close to Kansas City, you would still have to drive a minimum of 40 minutes to get there. The co-owner of the same bowling alley mentioned earlier did make mention to him that it would have been devastating had they been closer to the Kansas City metro area.

**Derek Frazier**, 6831 Mark Twain, owner of Derby Bowl. He reiterated that the KHRA did not give their support of the smoking ban in Kansas City. He advised Lawrence did have room for growth with their bowling center, as it was not doing very well. He advised he also owns Seneca Bowl in Wichita and the two businesses are 9.2 miles apart from driveway to driveway, it does not take 25 minutes to get there, it takes him 16 minutes and it is a shorter drive than that to T-Bird bowl. He pointed out that a 20% to 40% hit on his business will be significant to him. If they have to try and overcome that it will probably be the largest impact on his business that he has ever had in the 33 years he has been there. He stressed that Overland Park and Olathe are

the largest cities in Johnson County, they went first and other cities in the area have followed because 65% of the region is smoke free already. He advised they want a smoke free facility at the bowling alley, but they don't want it before Wichita gets it. There is a way to get there; the question is how do we get there in everybody's best interest, where it is a win/win situation for everybody. We are smart enough to know that 80% of the people out there don't smoke and we will be okay, we just want to be on a level playing field with Wichita. We can all get there if we put our minds to it, the contingency to wait on Wichita in his mind is the best way to go and he hopes they can get that consideration.

**Mayor Avello** advised it is the job of the mayor to bring hot items to the forefront and see if they want to do them. Never did he think we would be so emotional and steadfast about this topic. As you all know he does own a business and he is caught in the middle. He has stated publicly that he would vote for this only as a health issue. He has three employees that smoke and they have a designated area. He has a 12,000 sq. ft. facility and there is no smoking allowed in the front office. He is caught in the middle on this, he has talked to many of the council members and they know his position on this item.

The council recessed for a 10-minute break at 8:40 p.m. and returned at 8:50 p.m.

**Mayor Avello** commented that members of the Derby Clean Air Coalition were present tonight and did not speak; he wanted the audience to know that there was more than one resident from Derby present tonight; they were not all from Wichita or somewhere else.

**Council Member Warren** advised he has been on the council for almost 8 years; this issue has received the most input from the community on any issue that has come before the council. The only other item that has come close was the water rates. He thanked the Coalition and those on both sides of the fence that have given their input on this issue. He advised his personal belief is that we are going down a slippery road when you start taking away the rights of individuals and individual businesses to make their own decisions and he does not know where the line is going to be drawn on how much intrusion government is going to take into individual rights. The reality is that smoking bans are coming; we are going to be pretty much smoke free across the nation within the next 3-5 years, 10 years at the most. He has been hearing numbers upwards of 80% in favor of the ban, but what he has been seeing is probably more in the neighborhood of 65% to 70%. One of the things that we as public officials need to watch out for is that not everything is going to be "majority rule". Sometimes you have to watch out for the rights of the minority. He advised he will vote in favor of a ban because that is where the community is going and that is what people want, but his biggest concern is that we create a level playing field. The overall impact, the information we get says that the economic impact is minor to non-existent and he believes the overall aspect of that is true, but in the midst of the overall impact you do have losers. You have small businesses that get hurt in that situation. At this point he will follow the recommendation received from the Chamber, which is for a contingency, and he will be encouraging the City of Wichita to move towards an ordinance. There is no doubt that could happen in the next 12-18 months if it is addressed as it has been in Derby. He has heard that we need to be progressive and take a gamble; it is easy to gamble with someone else's money. It is not so easy to be progressive when it is your own money. The businesses that currently allow smoking are the ones that we are going to hear from. From a private citizen

standpoint he encouraged the pursuit of getting restaurants to go smoke free voluntarily. Until we have a level playing field you create winners and losers when you go into this kind of situation. If the State of Kansas, like many other states were to pass a statewide ban then this would become a mute point, everyone would have the same level playing field. He asked Mr. Alexander if we can declare a residential room in Westview Manor a residence, therefore giving the same rights he has in his personal home with this ordinance.

**Mr. Alexander** responded that is a subject that is going to require some additional research. There is an issue there of preemption, either state or federal and he is not prepared tonight to discuss that issue.

**Council Member Schwarz** agreed with Mr. Warren that we are on a slippery slope, but that is the case when we don't protect our own citizens. He advised he has received the study from the Bowling Proprietors Association and has gone through it with a fine toothed comb and he understands some of the hesitation from Derby Bowl. Mr. Schwarz paraphrased information from the report, including the fact that fewer bowlers smoke than believed, and the rate at which they would leave would be lower than the general perception. Their survey indicated that if a full ban was proposed 14% say that they would quit bowling all together, and if 25% of bowlers smoke that would indicate a 4.5% decline in business. He also cited the 1997 bowling benchmark strategy study that indicated the smoke environment was among the top reasons people chose not to bowl. He showed a chart that indicated that non-smokers outspent smokers in every category listed in the survey. Of those people that smoke, 45% say having the ability to smoke during a league is not a factor when selecting a league. 20% say having the ability to smoke during league play plays a small role when selecting a league, and 17% say having the ability to smoke during a league is a secondary factor when selecting a league. If he was facing those types of odds, he would embrace the situation to expand his business. There are very few times that a business faces those types of overwhelming abilities to expand their business, and yet are so resistant. One of the things he thought was interesting about the study is that where they found failure in the bowling industry when smoking ordinances were in place was the failure to embrace that ordinance and to run with it and expand that business. Almost universally they found that when proprietors did not embrace the facts of the ban, that is when failure was most imminent. We have heard from a lot of people, and he is also concerned about Derby implementing something before Wichita does. He believes the Wichita City Council really lacks some political will to do this and he challenged them to be a leader, not a follower. He also challenged Andover, Goddard, Maize and Park City to follow our lead. He supports this ordinance without the contingency clause. If we hang our hat on a contingency clause the whole thing will never be implemented. With an election year he hopes the voters in Wichita place their faith in a clean air ordinance for the City of Wichita.

**Council Member Meidinger** stated he feels this is a very interesting situation they have gotten themselves into. If you think about the big picture, we have the government that subsidizes tobacco farmers and on the other hand the Surgeon General says this is bad for us. He thinks it is kind of ironic that we get into a situation like this. On the personal side of it he has never smoked and what is concerning to him is that the insurance rates that are imposed on him are higher because other people smoke and all these heart diseases, lung diseases, etc. so from a personal standpoint why should he have to pay for their habit. On the other side, now we just

recently watch the small towns around Wichita do a land office/business sale of liquor when Wichita decided not to open their liquor stores for Sunday sales. That tells him that if a person wants a product they will drive to those small communities. If the Wichita people who want to bowl think the smoke free environment is worth the trip to Derby he thinks they will come down here. He agrees with Council Member Schwarz that Derby could be a leader in this area, but the part that troubles him with this ordinance is that he feels a private club should be exempt. If a person joins a private club such as the VFW or American Legion, that is a private club and he does not think government should regulate what they do.

**Council Member Bannon** stated that smoking is bad for your health and she does not believe there is a person in this room that would argue that. She showed a map indicating businesses that allow smoking and those that don't and the majority of those that allow smoking are on K-15. Within the last two years we remodeled K-15, we hurt these businesses and asked them to hang tight, and now we are going to hurt them again. We are not doing anybody any favors here. We have some real issues that we need to look at, but by doing a full smoking ban, what we are doing is trading non-smokers rights for business owner's rights. Two wrongs do not make a right. It comes down to two sides of every issue. Number 1, she owns her own house, she pays her taxes and does not want to be told what to eat, what to drink, how to raise her kids or treat her husband, yet you want the council to tell a business owner who spends their money and livelihood, how to run their business. She does not see an equity there. Men and women that have gone overseas and fought for our rights. She questioned who on this council is going to walk in the VFW and tell those men and women that they have to go to another post to smoke, that they can't smoke in their own home post. This is a democracy and majority typically rules in a democracy but in a democracy you also have free enterprise. We are very close to Wichita, that is a fact and Lawrence is pretty much stand alone but you can find numbers and figures for both sides. Personally she likes option 6, either smoking or not, let the business owners decide and let the people decide which businesses they want to go to. This ordinance, the way it is written has a lot of issues. If we really want no smoking we should not allow the hotel to have any smoking rooms, if citizens in town can't go out and have a drink and smoke, people from out of town shouldn't either. The smoke shop, it is legal to sell cigarettes there, you can smoke there, but they can't smoke anyplace else in the city, that seems a little strange. She thinks we are on the right track and we are all smart enough to know it is in everyone's best interest, and she urged staff, the council and the citizens to come to a middle ground. This is not the perfect ordinance yet, it is not really even close. We need to go over some more issues, listen to our businesses. This ordinance is not an across the board, fair and equitable arrangement and she thinks that is what we all want, is as fair and equitable as we can make it. Let's keep in mind not just the citizens that live here, but the people that work here and the business owners.

**Council Member Johnson** advised he has been in business in this town and thinks it is appalling that they can make a law that affects a business and tells a business owner how to run his business. We have no right whatsoever doing that and he does not care what the other issues are. He advised we are not really a democracy we are a constitutional republic, which means that the majority makes the rules. There are laws against taking things away from the minority, that is the republic side of the constitution. We have this situation right now with an 80/20 split and obviously the 80% is going to win but he is not going to give up the rights thing. He finds it unbelievable that the Surgeon General can come out with these research items constantly,

finding this and that and everything that is wrong with tobacco smoke. He is sure that tobacco is not good for you; on the other hand, if the research was really correct the government is ignoring their responsibility to this whole nation not to ban tobacco. If it is really that bad they should ban tobacco period, not mess around with letting these people beat each other up on councils and cities about this issue. It is almost like the rich against the poor war that is going on now on a national basis. All this stuff gets us nowhere, we still have to maintain our individual rights and that is where he is on this issue 100%.

**Council Member Payne** stated that businesses in Derby are at the heart of our community and if our chamber members and our businesses owners are asking for a level playing field we should give them that much. She supports the contingency plan and she asked Wichita and all other surrounding communities to join us.

**Council Member Mulanax** thanked everyone for being here this evening and everyone who has sent emails, both pro and con. What he truly loves about this community is that we can have a contentious issue like this and everybody that stood up here and made their comments did it in a civil manner and you don't know what that does for a bunch of volunteers like ourselves to not be yelled at over something we are trying to wrestle with. He advised he has talked to several business owners, and he grew up in the restaurant business so he empathizes with restaurants and bars and what they are going through. He has talked to a lot of individuals, both and pro and con and talked to other council members. He spoke with Mr. Schwarz last night who had him going one way, then he spoke with Mr. Warren today and he had him going another way, so it is up to him to make up his own mind. He believes, as a former smoker, that second hand smoke is not good for anybody. Young people do not have quite as many opportunities for employment as some folks might think they do and restaurants and bars are really good places for them to make quite a bit of money. He would like to see a smoking ban of some sort come into the City of Derby, but as a business owner himself he does not want to harm the businesses that are here in this community at this time. They have spent a lot of money, a lot of time and made a lot of investments in this community and they are supporters of the community. He supports the contingency clause, but he is not sure he will live long enough to see Wichita have the guts to do it but he hopes he does. There is an election coming up in April just like there is here and he encourages the citizens of Wichita and Derby to get things as stirred up as they are in Derby about this. We need a level playing field, he does not want to harm any businesses in this community and he would like to see us go for the contingency clause. It is coming and it is something we need to do, while he understands everyone's opinion he will support the contingency clause.

**Council Member Craig** agreed with Mr. Mulanax in that he does not believe Wichita will ever pass a smoking ban. There is too much money and too much influence; they will be the last to do it. A contingency based upon Wichita is folly on our part even though many on the council endorse that. He advised he does not have that much confidence in Wichita based upon their past and their present track record. They have a long way to go, and with elections coming up and he is sure a lot of that will change, but it will also take a considerable amount of time for that to turn around. He pointed out that Mr. Frazier commented that the smoking ban is inevitable, that it will come to pass; we are the ones that have to make it so. He advised he is for people's rights, however he was elected and he is somewhat bound by the people in Ward I to represent

them. Even though the ratio is 4-1, it is credible although very small because it only represents about 1% percent of the adult population of Derby. If we called an all town, all meeting and everyone met at the football field and we asked the people that want this clean air ordinance to leave, you would probably have about 80% of the people leave. He is driven by facts and data and scientific evidence points that direction and the people, if we look at what we are supposed to represent, and do their will, he would support a comprehensive clean air ordinance that is based upon an extended date of implementation to give people a chance to posture themselves. For us to wait on someone that he does not have that much confidence in doing the right thing so we can follow them to do the right thing, he is not in favor of that. Mr. Craig commented to Mr. Nichol that while visiting his facility about a month ago he was appalled at the fact there was even a smoking room in the facility. It is a health care facility and it had an oppositional effect on him. The fact is he wants to protect the future, and the future is the young people and they are the ones that need to be protected; he believes it is our duty to do that. You wouldn't let them ride in a car without the proper restraint, the government got involved in that when no one wanted it and now you have an airbag in front of you mandated by government to try and save your life. This is a mandate for people to take action to save lives. In summary he would prefer a comprehensive ordinance with an implementation date of January 1, 2008 to give people the time to posture themselves, change their attitude and get ahead of it.

**Mayor Avello** stated he is honored to sit in the middle of this council; we have some very intelligent people up here, people that do their homework. He is an eternal optimist and he believes that Wichita will go, but it is going to be pressured, pressure from the surrounding communities, who he is meeting with on Saturday to discuss this matter. What he thinks he is hearing tonight is that we have differences of opinion that we want to go ahead with a clean air act of some kind but we really don't know what we want. Do we want an extended period to do this; do we want to go right away? He would like to direct staff to put the suggestions we have heard tonight down and bring it back before the council in 30 days to take a look and vote on what we want to do. It is not an easy issue, it is complex and emotional and we all understand the ramifications of the issue.

**Council Member Craig** commented that as he looked over this, everyone is concerned about this, even those that smoke. It bears a lot of profound consideration and we have to do the right thing. If someone makes a motion he would hate to see us go off in the wrong direction, he would rather have a balanced approach to this. There are two flavors to this; one being that we wait until Wichita does it, and the other one is that we make it acceptable to some of the business people, as well as the extended implementation time. If staff is going to be directed to bring those primary views back to us in an ordinance, he would support that. Any other action he does not think he would support at this time.

**Council Member Warren** advised he came prepared tonight to make a decision because when you have things that just hang over you they have a tendency to fester. Personally he would like to see us get something put together; however as a result of some of the comments tonight he does have some areas of question. He has some concerns about the rights of individuals in Westview Manor. That is something he had not really thought about and he does not know what our options are from that standpoint. He is reluctant to look at too many exemptions, once you start down the road of exemptions then they have the tendency to snowball. But he, like Mrs.

Bannon does not want to be the one to walk into the VFW and tell those guys that have put their lives on the line for his rights that they can't do that. That is an issue that he will have to think through. Regarding Wichita, the people bring the pressure. This is not something we had on our radar 6 months ago, yet we have had multiple times when this room has been filled up with people that have talked to them. There is no doubt in his mind that if the same situation happens in Wichita, council members are going to have to deal with it. They don't stand up to business too much there, just look at the problem they are having getting a Wal-Mart passed, residents have a huge amount of impact in Wichita.

MOTION: Warren moved to table for 30 days to look at the issues of private clubs, residency in retirement facilities and any other issues council wants staff to specifically look at and bring back to council for consideration in 30 days. Bannon seconded.

**Council Member Payne** wondered what the feasibility would be to form a task force that would include representatives from surrounding communities in trying to work towards surrounding the City of Wichita with clean air ordinances.

**Ms. Sexton** clarified that Mrs. Payne was suggesting the City of Derby lead that group.

**Mrs. Payne** responded, potentially.

**Ms. Sexton** explained that she thinks it's fair to say that the Tobacco Free Wichita Coalition now is not just Wichita, but is regional. Her thought is that it would probably be better to get their input and see if they are already doing that sort of thing. The mayor indicated a desire to talk to the city mayors this Saturday.

**Mrs. Payne** challenged those that are in favor of this and have worked so hard to now start spreading your wings and working with these other communities in trying to convince Wichita to get on board, sooner than later.

**Council Member Schwarz** commented he thought that was a great idea; however he is very resonant about leaving an open ended resolution for the City of Wichita in an ordinance we might try to enact. He questioned if there were anybody from the Wichita Smoke Free Coalition that would like to speak to that issue.

**Pat McDonald**, led the coalition in Bel Aire which was the first community in Sedgwick County to go smoke free. She advised that in spite of the name, the so called Tobacco Free Wichita Coalition is very much composed of all of the activists from all around Wichita; whoever feels like traveling in for a lunch meeting is really what it amounts to. It is very much a county wide group and she advised looking into a task force would be a wonderful idea. She thinks the existing members would support that and welcome it. She suggested that Mayor Avello speak on Saturday to the mayors from the surrounding cities and get them to support this and identify some staff that would come to meetings on a regular basis, while on the clock, they could develop some type of uniform, across the board ordinance that everyone could live with.

**Council Member Schwarz** advised he is in favor of an ordinance. The different issues that have been mentioned tonight still need to be addressed. He is willing to negotiate on the time frame of January of 2008 or January of 2009, but he does not want an open ended situation with the City of Wichita. He believes we can pull business away from Wichita and as we expand our retail base it is a gold mine for our businesses to take those resources away from Wichita. We can prove this situation; we have proven it before with what we have done in this community in the past.

**Council Member Bannon** stated she would like to see staff address the issue of 25% of motel rooms being allowed to smoke, as well as the tobacco store issue. Maybe we could alert new businesses coming to town because we are experiencing large growth, that we are going to be smoke free. She believes tabling tonight, until we get some sort of ordinance that we are all comfortable in voting, one way or the other. Whether it be a contingency or an extended date, there is still a need for some fine tuning.

**Council Member Craig** agreed with Mrs. Bannon. He pointed out that on a contingency plan, there is no leverage or influence for Wichita to do anything, you are not forcing them into anything by waiting for them to do something. If the surrounding communities get together and do something then you have leverage, you have something that Wichita will take notice of.

**Ms. Sexton** clarified that the council wants two ordinances prepared for the February 13<sup>th</sup> council meeting. One would be contingent on Wichita, one would be with a firm date, including more information about how much notice we provide. We will also research more regarding skilled nursing facilities and private club exemptions, as well as hotels and retail tobacco stores. She asked for more information regarding the question on tobacco stores.

**Council Member Bannon** explained she finds it odd that there is no place else in town except the one place they sell cigarettes. She also pointed cigarettes are sold at convenience stores, but you are not able to smoke there.

**Council Member Warren** stated he is not in favor of building this up with a ton of exemptions, but when looking at businesses such as Mr. Avello's or small automotive shops with large open warehouse space, are those situations we need to take a look at as to allowing that proprietor the right to make some choices. He does not know if there is anything out there in other city ordinances to look at regarding that but he would be curious to see if there is something to address the small employer situation.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**Council recessed at 9:35 p.m. and returned at 9:43 p.m.**

**SELF CONTAINED  
BREATHING  
APPARATUS**

**Brad Smith**, Derby Fire Chief presented the staff report.

**Background:**

- Self Contained Breathing Apparatus is very important to the safety of firefighters. It allows firefighters to be more aggressive in fighting fires.
- There are several brands of SCBA, but they do not interchange, so the Department has to stay with the current brand we have. This brand is also used by Wichita Fire Department and Sedgwick County Fire Dist. #1. This allows for interchangeability if working together at a fire scene.
- The brand of SCBA we use is available through one company for our area. We have always received fair treatment from this vendor.
- We have been notified of a price increase of 8% in 2007 if we wait to order. Essentially this would take \$2,000 out of our purchasing power.
- The Department also wants to have this equipment ready for when the new engine comes on line in July 2007.

**Financial Considerations:**

- The 2007 Budget includes \$27,000 for this equipment.
- The bid price of \$27,469 was received from the vendor.

**Policy Considerations:**

- City policy requires purchases of this size to:
  1. Have verbal consent from City Manager to seek a quote for cost.
  2. Present to bid board for approval.
  3. Present to Council for approval.

DISCUSSION:

**Council Member Meidinger** questioned if we could get together with Wichita and Sedgwick County to consider a group purchase of this equipment to save money.

**Mr. Smith** explained that they have never worked with Wichita or Sedgwick County to look at these apparatus. They get different things every year, as do we and we don't always run on the same page, which we should be obviously since we are in the same area.

MOTION: Payne moved to approve purchase of self contained breathing apparatus from Roberson Fire & Safety for the price of \$27,469. Schwarz seconded.

FURTHER DISCUSSION:

**Council Member Bannon** asked what the life expectancy is on these units.

**Mr. Smith** advised they have a 20-year life expectancy, or more. The only thing that would change is if Homeland Security of NFDA comes out and says we need to meet different requirements. The bottles run out after 15 years.

**Council Member Bannon** questioned when these were bought last.

**Mr. Smith** stated we bought a round in 2000 and we are now dealing with some of the older units that will have bottles going bad. Right now, when we get the new truck we don't have the apparatus to put into that new truck.

**Council Member Bannon** clarified that instead of pulling equipment from another truck to equip the new truck, we want to equip this vehicle so they don't have that lag time.

**Mr. Smith** advised that was correct.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

#### **AMENDMENT TO SECTION 419 OF THE ZONING ORDINANCE**

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

#### **Background:**

- The City of Derby has been a participant in the National Flood Insurance Program (NFIP) since 1981. As a participant, the City was required to adopt a Floodplain Management Ordinance and is required to be a repository for up-to-date maps as published by the Federal Emergency Management Agency (FEMA). At the present time, this floodplain management criteria is incorporated in the Zoning Ordinance as Section 419 "F-P Floodplain District".
- The original maps were updated in 1986 and again in 1996. New county-wide FEMA maps are slated to go into effect on February 2, 2007. Prior to the effective date of the new maps, the city's zoning ordinance is required to be amended to reference the updated maps.
- Attached to this staff report is a copy of the delineated changes to Section 419. Basically, the changes include a complete rewrite of Paragraph C on page 4-8 and reference to the February 2, 2007 maps.
- As a proposed amendment to the Zoning Ordinance, a public hearing is required. The public hearing was advertised in the city's official newspaper on December 13, 2006 and will be conducted at the Planning Commission meeting on January 4<sup>th</sup>. Unapproved minutes of the January 4<sup>th</sup> meeting will be provided to the Council prior to the City Council meeting.

**Financial Considerations:**

- There are no financial impacts associated with the proposed zoning amendment.

**Legal Considerations:**

- Eligibility for various federally funded programs may be conditioned upon adoption and use of current floodplain maps.
- Current floodplain maps provide elevation data necessary for review of building permit applications and issuance of permits.

**Policy Considerations:**

- Maintaining our participation in the NFIP is an integral part of the City's overall stormwater management program.

ORDINANCE NO. 1878

AN ORDINANCE AMENDING SECTION 419 F-P FLOOD PLAIN DISTRICT OF THE ZONING ORDINANCE OF THE CITY OF DERBY, KANSAS AND REPEALING ORIGINAL SECTIONS 419, AS THE SAME HAS BEEN FROM TIME TO TIME AMENDED.

MOTION: Warren moved to approve amendments to Section 419 of the Zoning Ordinance as presented. Craig seconded.

DISCUSSION:

**Council Member Johnson** asked if the red lines and lettering indicated the changes.

**Mr. Brown** advised they did.

**Council Member Craig** asked if there is any substantial change in the mapping for the flood plain.

**Mr. Brown** stated there was not.

**Council Member Craig** pointed out that in that case it remains the same as it was in 1996.

**Mr. Brown** explained there are very minor changes. He pointed out two locations where there are actually reductions in the flood plain. One area is on the tributary to Spring Creek, which means people in that area are no longer required to buy flood insurance. The other area is the

tributary just south of Madison on the concrete channel just east of city hall going down to Kensington. The main channel of Spring Creek, Dry Creek and Trail Creek remain unchanged.

**Council Member Craig** asked if we have any mechanism to notify the homeowners in those areas that they no longer require flood insurance.

**Mr. Brown** advised that we have a list of property owners that abut the flood plains and once these become official we will send out some letters notifying them of the change. We have also sent out some press releases for the newspapers advertising that there are some new maps.

**Council Member Craig** asked if there were any areas that changed that would include property that was not already in the flood plain.

**Mr. Brown** stated he was not aware of any.

**Council Member Mulanax** asked if peoples flood insurance is negated if you don't do this.

**Mr. Brown** explained that flood insurance may be cancelled. The bigger issue for the city is that if you are not a part of this program you become susceptible to elimination of all other kinds of federal programming, including KDOT money, federal highway money, etc.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

### **RESOLUTIONS FOR STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION**

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

#### **Background:**

- Stone Creek Commercial 3<sup>rd</sup> Addition is located don the north side of 63<sup>rd</sup> Street, west of Buckner.
- The original Stone Creek Addition was approved by the Council in February of 1999.
- Stone Creek Commercial 3<sup>rd</sup> Addition was approved by the Council in November of 2006 and is a replat of a portion of the original Stone Creek plat.
- During the original platting process, the developer submitted the required petitions for the various infrastructure (sanitary sewer, water, streets, drainage, etc.) improvements and the City Council approved the corresponding resolutions for those projects.
- Due to the new plat layout (3<sup>rd</sup> Addition), new petitions were prepared to incorporate the new lots into the benefit district. Those petitions were approved by the Council on new lots into the benefit district. Those petitions were approved by the Council on November 28, 2006 along with the final plat and other plat documents.
- The City's bond counsel, Gilmore and Bell, has now prepared the appropriate 21 resolutions for Council approval. Due to the volume of pages, the resolutions are not

provided on-line but are available at city hall for review. They are standard legal documents providing the following: sanitary sewer, water lines, sidewalks, streets, traffic signalization, storm water drainage, right turn lanes, and accel/decel lanes.

**Financial Considerations:**

- The 21 resolutions to be considered by the Council total \$2,890,000 in infrastructure projects.
- Of that total, \$181,469 is to be paid City-at-Large (oversizing Buckner water line plus a portion of future traffic signals at Commerce Drive).

**Legal Considerations:**

- These are valid petitions 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. 02-2007

SANITARY SEWER IMPROVEMENTS-PHASE 1/STONE CREEK COMMERCIAL THIRD ADDITION.

RESOLUTION NO. 03-2007

WATERLINE IMPROVEMENTS-PHASE 1/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 04-2007

SIDEWALK IMPROVEMENTS-PHASE 1/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 05-2007

STREET IMPROVEMENTS-PHASE 1/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 06-2007

SANITARY SEWER IMPROVEMENTS-PHASE 2/STONE CREEK COMMERCIAL THIRD ADDITION.

RESOLUTION NO. 07-2007

WATERLINE IMPROVEMENTS-PHASE 2/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 08-2007

SIDEWALK IMPROVEMENTS-PHASE 2/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 09-2007

STREET IMPROVEMENTS-PHASE 2/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 10-2007

SANITARY SEWER IMPROVEMENTS-PHASE 3/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 11-2007

WATERLINE IMPROVEMENTS-PHASE 3/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 12-2007

SANITARY SEWER IMPROVEMENTS-PHASE 4/STONE CREEK COMMERCIAL AND STONE CREEK COMMERCIAL 2<sup>ND</sup> ADDITIONS.

RESOLUTION NO. 13-2007

STREET IMPROVEMENTS-RESERVE A/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 14-2007

STREET IMPROVEMENTS-RESERVE B/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 15-2007

STREET IMPROVEMENTS-RESERVE C/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 16-2007

TRAFFIC SIGNALIZATION AT 63<sup>RD</sup> STREET SOUTH AND COMMERCE DRIVE/STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 17-2007

STORM WATER DRAIN IMPROVEMENTS/STONE CREEK COMMERCIAL, STONE CREEK COMMERCIAL 2<sup>ND</sup> AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITIONS.

RESOLUTION NO. 18-2007

STORM WATER SEWER IMPROVEMENTS/STONE CREEK COMMERCIAL AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITIONS.

RESOLUTION NO. 19-2007

RIGHT TURN LANE AND ACCEL/DECEL LANE-63<sup>RD</sup> ST. AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITION.

RESOLUTION NO. 20-2007

SIDEWALK IMPROVEMENTS-63<sup>RD</sup> STREET SOUTH/STONE CREEK COMMERCIAL AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITIONS.

RESOLUTION NO. 21-2007

CONTINUOUS ACCEL/DECEL LANE ON BUCKNER/STONE CREEK COMMERCIAL AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITIONS.

RESOLUTION NO. 22-2007

SIDEWALK IMPROVEMENTS-BUCKNER/STONE CREEK COMMERCIAL AND STONE CREEK COMMERCIAL 3<sup>RD</sup> ADDITIONS.

DISCUSSION:

**Council Member Meidinger** stated that regarding the city at large, you could make an argument for the over sizing of the Buckner water lines because of fire protection, etc., but it looks to him like that when the traffic signals come in it is because there is a business there. It appears to him that if the business has created a need for the signal light then they should pay for it and not the city at large. It is probably too late on this one but he believes this is something that should be addressed in the future and when he says future he does not mean 2080. He thinks the council should make a statement and let development pay for itself. What is going to happen along 63<sup>rd</sup> Street and Rock Road is that there will be a lot of amenities that the retailers want to control traffic for their benefit, it is their benefit and it's not for the benefit of people in other areas of

Derby. He wishes we would do something with that rather than continuing to say we will do it next time.

**Council Member Mulanax** agrees with Mr. Meidinger, although he does not know if it can be 100% since it does benefit people traveling along those roads as well, but 20% seems a bit low. He advised he would like to see something brought back to the council as a policy.

**Mr. Brown** stated in the case of the entrance to the Derby Marketplace Addition we have an 80/20, 80% from city at large, 20% from the Oaks. At the next meeting you will see resolutions from Derby Marketplace Addition and in that particular issue we have proposed a 60% city at large, 20% Oaks, 20% Marketplace. He stated Mr. Mulanax is correct that we do not have anything in our financial policy for the city that outlines how different infrastructure projects are financed and he does not believe traffic signals are included in that. We are operating off of previous approvals of the city.

**Council Member Mulanax** pointed out that we went through this with the Oaks on 63<sup>rd</sup> street.

**Mr. Brown** explained that was installed with the 63<sup>rd</sup> Street project, at 20% or 25% The Oaks and 20% Stone Creek. We have been fairly consistent with this policy through the years but it is just kind of an unwritten policy and it needs to be in writing.

**Council Member Craig** asked if the city set the percentages.

**Mr. Brown** advised we did.

**Council Member Craig** advised he believes we should investigate updating that to take some of the burden off of the city. He asked for a break down of the \$181,469.

**Mr. Brown** explained he does not have the numbers in front of him, but taking an educated guess, the traffic signal project is probably a \$150,000 project with 80% of that being \$120,000, leaving approximately \$60,000 for the water line.

**Council Member Craig** advised that as the numbers continue to grow, we have in the past tried to come up with some reasonable way to make development pay for itself and he believes we need to move in that direction and try to increase those percentages that would be the responsibility of the developer. He knows that is not a popular thing to do, but he believes it is wise to lessen the burden on the city at large.

**Council Member Warren** advised that from the very beginning he has been consistent in the belief that business and development need to pay its' fair share so he does not have a problem with the review of the situation. The caution that he has is that whatever formula we come up with tries to apply a real application of what amount of traffic is being generated by the businesses and the development that is going into that area and what percentage is really being used by the city at large so that a fair assessment can be put in place. What a lot of cities do is say that they don't want "city at large" so they are going to put it on the backs of the development when really the cause and the need is from the city at large. As long as a fairness

test is put in he has no problem with charging new development and new growth their fair share of what they create.

**Council Member Johnson** asked what the method now is of figuring the percentages.

**Mr. Brown** explained it is based on previous projects. Our logic, when we first did this, is that even though that development may be generating the need for the traffic signal that everybody traveling on that roadway will benefit from that signal, not just people going into that development.

**Council Member Johnson** advised he is not talking about the signal, right off the top he would be opposed to the signal deal unless we are going to let those businesses also be in charge of traffic and give traffic tickets so they can recoup some of their costs for their signal. He is talking about the \$181,000 on the water line; he thought that was the conversation they were in.

**Mr. Brown** explained it is roughly \$120,000 for the signal and \$60,000 for the water line. The \$60,000 for the water line is written in a financial management policy that is in an ordinance for the city and we are following the ordinance. The signal is something based on previous projects.

**Council Member Johnson** asked if we are taking the \$60,000 out of the water company.

**Jean Epperson**, Director of Finance explained that typically when it is city at large it is financed with the rest of the special assessments and paid back over 15 years out of the bond and interest fund which is a tax levy.

**Council Member Johnson** stated that is what he thought, but he is opposed to taking money out of our water company reserve fund to pay for things like the interceptor line going across the tracks.

**Council Member Craig** agrees with Mr. Warren that it has to be equitable. Obviously \$181,000 being part of \$2.9 million dollars is a pretty small amount. If we have not reviewed that he thinks we need to look at it. Mr. Brown is fully aware of the redo of Rock Road between 63<sup>rd</sup> and James, and the stoplight going in at Tall Tree will benefit us all from running into the back of other people.

**Council Member Meidinger** pointed out that if those developments were not retail stores then there would be no need for a traffic signal. Right now we can drive up and down 63<sup>rd</sup> Street without any impediment, but if you put 5 or 6 retail stores there then you may need a traffic light.

**Mr. Brown** responded that you also have traffic signals at residential areas at Woodlawn and at Triple Creek. Those signals are in place because of the residences there, not because of the commercial.

**Council Member Meidinger** advised that east of Lowe's currently there are no developments there, therefore there are not traffic lights. When you put retail shops in there then there will be the need for traffic lights.

**Mr. Brown** advised that residential properties also generate a lot of traffic as well. If you get enough of them you are still going to generate a need for a traffic signal even with residential, which is the case he was pointing out at Triple Creek and Woodlawn, which are both residential areas in need of that signal because of the residential development. We also have another petition on south Rock Road at Kay Street that in the future as development goes east, probably residential, for another signal at that point if needed.

**Council Member Meidinger** pointed out that it does not make a difference if it is residential or commercial, if those areas create the need for the signal light, they should pay for it.

**Mr. Brown** agrees, it is just a matter of the percentage you want to use.

MOTION: Warren moved to approve resolutions for infrastructure improvements to serve Stone Creek Commercial 3<sup>rd</sup> Addition. Craig seconded.

**Council Member Bannon** advised that if you look at the amount of taxes that commercial development has provided, it would pay for that stoplight pretty quick and that is a factor that needs to be put in there. She does believe that development should pay for itself, but we need to look at these retail businesses that we want to come to town and how much sales tax revenue we get off that to help fund other things.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**DERBY DOWNS  
ADDITION –  
AMENDMENT OF  
DEVELOPER’S  
AGREEMENT**

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

**Background:**

- Derby Downs Addition is located on the northeast corner of Meadowlark and Rock Road.
- City Council approved the plat in September of 1996 and also approved the various platting documents, including the Developer’s Agreement, at that time.
- In 1996, the Derby Downs area was very remote from city infrastructure, especially sanitary sewer. During the platting process, the developer agreed to extend sanitary sewer from near Madison and Valley Stream Drive northward to the plat, a distance of approximately 5,500 feet.
- Due to the extensive cost involved with this sanitary sewer extension, being unsure of the possibilities of actual development, and being unfamiliar with the developer’s financial condition, the City Council felt there was an extraordinarily high risk the developer may not be able to keep current with the special assessment obligations. Consequently, the Council required all Letters of Credit to be 75% rather than the standard 35%.

- The subject sewer eventually was constructed through special assessments, being paid by other developments, namely Timberleaf, Glen Hills and Amber Ridge developments.
- The original developer has now sold his interest in the Derby Downs property to MRV, Inc. who is also developing the Derby Marketplace Addition just north of Derby Downs.
- With the sewer now in place, the City’s risk is now reduced to a “normal level”. The developer has requested and staff agrees that the LOC requirement be reduced from 75% down to the standard 35% requirement.

**Financial Considerations:**

- Approval of the proposed amendment to the Developer’s Agreement does not alter the City’s commitment to finance the improvements.

**Legal Considerations:**

- Developer’s agreements are a tool used by the City to assure compliance with its subdivision regulations.
- The letter of credit requirement is also designed to assure the developer’s stake in a project is sufficient to warrant extension of credit by the City in the form of installation of infrastructure improvements.
- The City’s financial risk has been substantially reduced since execution of the original developer’s agreement for the Derby Downs development, warranting but not requiring reduction of the letter of credit requirement.

**Policy Considerations:**

- Reducing the required LOC to 35% brings the developers guarantee into compliance with the City’s Financial Management Policy (Resolution No. 106-2003).

MOTION: Bannon moved to amend Article IX of the “Developer’s Agreement to Conditions” for Derby Downs Addition to require 35% Letter of Credit in lieu of the 75% requirement stated in said agreement. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**BIDS FOR STORM  
WATER SEWER  
IMPROVEMENTS TO  
SERVE SPRINGCREEK  
PLAZA ADDITION**

**Dan Squires**, City Engineer presented the staff report.

**Background:**

- A bid opening for the construction of Storm Water Sewer Improvements to serve Springcreek Plaza Addition was conducted on Thursday, December 28, 2006 at 2:00 p.m.
- Requests for quotations were submitted to contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
Dondlinger & Sons	\$165,587.00
Nowak Construction	\$164,888.00
Mies Construction	\$154,012.00
<b>Engineer's Estimate</b>	<b>\$146,219.00</b>

- The Springcreek Plaza Addition Storm Water Sewer Resolution (Resolution No. 2-2005) was approved January 11, 2005. An increase of 1% per month from the original approved Resolution amount of \$180,000.00 is allowed. With this increase of 23% a project cost up to \$221,400.00 is permissible.

**Financial Considerations:**

- Funds for the construction work were included in the 2006-1 temporary note issue.
- Costs for the Storm Water Sewer Improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

**Legal Considerations:**

- The City has followed all statutory procedures in securing financing and in planning the project.

**Policy Considerations:**

- Mies Construction has completed several projects in Derby and has submitted all required bonds and financial sureties for the project.
- Upon approval of the bid, staff will prepare the required contract documents for the Mayor's and City Clerk's signatures.

MOTION: Johnson moved to approve the bid of Mies Construction in the total amount of \$154,012.00 for the construction of Storm Water Sewer Improvements to serve Springcreek Plaza Addition. Mulanax seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

## STREET SOUTH

**Kathy Sexton**, City Manger presented the staff report. She also introduced Deanna Caruthers, a student at Wichita State in the Masters of Public Government Program and she is observing local government in action tonight. She also thanked those that served on the committee for giving their time over the holidays, as well as Darrell Butterfield who helped out with a lot of historical information regarding street names.

### Background:

- Derby has a tradition of renaming east/west arterial streets when they are annexed into the City. Nominations were solicited in November to rename 63rd Street South.
- 42 members of the public nominated a total of 48 unique names.
- In December, an ad hoc task force sorted thru the 48 ideas (without knowing who nominated which names) and came to a consensus recommendation.
- Laura Branstetter, Justin Smith, Karen Cunningham, and Kathy Sexton comprised the task force. Special thanks to Darrell Butterfield who provided the task force with historical information about some of the nominated names and about street naming in Derby in years past.
- As the City's Address Coordinator, Karen Cunningham provided the task force with guidance about current protocols for street naming from *Addressing Within a Regional Context*, published by Sedgwick County in 2004 and used by most all cities within the county to avoid conflicts and confusion among cities. Some of the guidelines included:
  - Avoid names that are difficult to pronounce or spell.
  - Avoid names with more than 12 characters, including spaces but not including the extension (Avenue, Parkway, Street, etc.).
  - Boulevards generally run in a diagonal direction and often have medians.
  - Parkways typically are major thoroughfares with a median in the center.
  - Avoid names that are already used in Derby or heavily used in many other cities.
- As the task force sorted through the nominations, we determined some additional guiding principles:
  - Avoid names already used in Derby to name schools, monuments, businesses, or parks.
  - Avoid proper names of persons not yet deceased.
  - Avoid names that might imply that the street leads to a destination that it does not.
  - "Avenue" should be used for the extension to be consistent with similar streets including Madison Avenue and Chet Smith Avenue.
  - A street the size of 63<sup>rd</sup> should have a name representing a broad concept rather than a person's formal name (e.g., Meadowlark Boulevard represents the official state bird).
- The task force also asked that some of the nominated names be held by the City on a short list, so to speak, for consideration in future naming opportunities of streets, parks, or other public facilities. The historical information shared by Darrell Butterfield also provided some names for consideration in future naming opportunities.

### Financial Considerations:

- No financial impact to the City.

- Renaming 63rd will cause the few existing businesses some expense in changing signs, business forms, checks, etc., but waiting longer will mean more businesses will start up on this street, and then more will incur costs later when the changes require them to change signs, etc.

**Legal Considerations:**

- The City Council is empowered to name and rename streets located within the City.

**Policy Considerations:**

- Choosing NOT to rename 63rd would create an inconsistency in Derby's addressing system, and consistency is a good thing especially for emergency responders. The inconsistency exists because the numbering system falls in line with the city's, but the name is a county name. (If a dispatcher hears 500 W 63rd ST S, they're not sure if the emergency is in Derby or Wichita.)
- The Derby address range along 63<sup>rd</sup> St. S. (between K-15 and Rock Road) is from the 300 block West to the 1700 block East. Some examples of existing addresses in Wichita include:
  - 214 E 63<sup>rd</sup> St. S.
  - 1101 E 63<sup>rd</sup> St. S.

These addresses are 3.5 miles west of their possible counterparts in Derby. It is possible for Derby to have the exact same addresses. If Derby works to ensure we do not use the exact same addresses, we would still have a problem—our addresses would be in the same range as those existing addresses in Wichita, which is confusing to people trying to find certain locations. It is a matter of public policy because we do not want to set up systems that encourage confusion, which is especially a concern for public safety.

Example 1: Somebody could call in an accident in the 1100 block of E. 63<sup>rd</sup> St. S., and emergency responders could possibly be sent to an area that is 3.5 miles from the actual accident, wasting valuable time in a life-threatening situation.

Example 2: Derby already has an address of 212 W. 63<sup>rd</sup> St. S., and a similar address in Wichita exists at 211 W. 63<sup>rd</sup> St. S. These two properties are miles apart, yet the addressing indicates they are across the street from each other.

Example 3: Addresses in the City of Derby (e.g., 1401 E 63<sup>rd</sup> St. S.) can be confusing when compared to addresses outside the City of Derby but also in the 67037 zip code (e.g., 14016 E 63<sup>rd</sup> St. S.). The address in the City is based on the City's address ranges, while the address in the County is based on the County's address ranges. The distance between these two example properties is about 4 miles. If they were both in the City, the addressing indicates they would be about 12 miles apart.

DISCUSSION:

**Council Member Craig** stated the committee did an excellent job. The word Patriot means a lot to him and means different things to different people. He pointed out that McConnell Air Force Base is not the only service that is adjacent to us. We have an Army and Navy reserve headquarters up the street. It is pretty well consistent with cross service organizations that exist

around McConnell Air Force Base also. He encouraged the council to either accept this as recommended or reject it.

**Council Member Meidinger** advised that he was on the committee from the Patriot Guard. He thanked the committee for working on this program, quite honestly they worked without any real guidelines and he believes that needs to be addressed so the next time we rename a public entity so there are some guidelines. It is difficult to ask a committee to select a name with no guidelines that is quite a big task. He is a member of the Patriot Guard and he thanked the committee for getting it half right. He truly wanted Patriot Guard Parkway or Avenue. Calling it Patriot is a pretty safe name without much chance for controversy. He reminded the council that he has been to two meetings in Topeka in which Fred Phelps showed up. Fred Phelps is the whole reason the Patriot Guard was formed and he will wrap himself in the American flag and he will tell you he is a patriot and is defending the first amendment right of freedom of speech when he went to the funerals of our service men who were killed in the war against terror. He was hoping the committee would recognize the fact that the Patriot Guard founders were from Derby. The Patriot Guard was formed to stand up for our veterans and their families. They did this when no one else would. The Patriot Guard now has over 3,000 members in Kansas alone, and probably 60,000 nationwide. The interesting part about the Patriot Guard is that you don't have to be a veteran; you don't have to ride a motorcycle. You can be a non-veteran and participate because it is the right thing to do. He reminded the council that the Patriot Guard has been recognized by the armed services, the Fort Riley group recognized them recently. They have received state and national recognition and just recently the Topeka Daily Capital selected the Patriot Guard as the Kansan of the year. He commented that as he drove the Kansas Turnpike and exited in Oklahoma, Interstate 35 when you enter Oklahoma is dedicated to the World War II veterans, not just veterans, but specifically World War II veterans, so he was thinking it would not be too far out of line to name this street after the Patriot Guard. You only get one chance to do it right, and this is our chance to do it.

**Council Member Warren** thanked the members of the committee. You would not think that something as simple as naming a street would cause an uproar, not that this is an uproar, but if you pick the wrong one you really could have an uproar.

MOTION: Warren moved to approve renaming 63<sup>rd</sup> Street South in the City of Derby to Patriot Avenue, as recommended by the advisory task force. Payne seconded.

FURTHER DISCUSSION:

**Council Member Schwarz** agrees that Patriot Avenue is a safe way to go and is probably easier for people to remember but he agrees with Mr. Meidinger. The Patriot Guard has done quite a few exemplary things in the State of Kansas and brought a lot of recognition to the State of Kansas as well as Derby and Mulvane. It is fitting that the Patriot Guard is recognized for their efforts.

**Ms. Sexton** thanked the council for the confidence they put in the committee. It is fair to say the committee really did feel they were honoring the Patriot Guard with this name, as well as veterans and other patriots.

**Council Member Meidinger** restated he feels it would be a good idea if we had some guidelines. There are going to be other public entities that are going to be named at some point and rather than just doing it haphazardly there should be some guidelines from the city council

**Ms. Sexton** asked if he meant guidelines for people that make nominations so they understand the guidelines.

**Council Member Meidinger** advised what the committee did was fine, but he thinks it needs to be a policy from the council to say this is the way we did it. As was mentioned, nobody really knows how these other names got put into place, they just happened. If we are going to start naming public entities, there needs to be a policy from the council that the council votes on.

**Ms. Sexton** added that there are certain street names where it is unclear what kind of process was used. We have looked up council minutes, for example, on Chet Smith Avenue. The minutes indicate the motion and vote, but they did not do detailed minutes to indicate if there were other nominations, was there a citizen committee, where did the name come from, etc., so there really is not that kind of history. We do have the historical document from Darryl Butterfield that gives us some guidance on some of the naming, but we need to put together some more history on some of those things so we understand for posterity sake. The city is going to be around for a couple 100 more years so it is good to write this stuff down and make sure you know. We did this one with a citizens committee because she asked the “old timers” at city hall how we used to do it and they indicated it had been a long time since we named a street but they did recall there being citizen committees in the past. This committee agreed with Mr. Meidinger in saying that these guidelines from the 2004 address guidelines document should be told to the public sending in the nominations about the guidelines so it will cut down on the number of nominations and make them more conforming to the guidelines.

**Council Member Craig** commented that he has been here for about 23 years and there have been some names attached to different parks and it is a good thing, but you do make hard feelings with other folks that thought they were well deserving. He appreciates Mr. Meidinger and his efforts and the people in the Patriot Guard, but he mentioned that we have to be more inclusive because there are a lot of people out there. He personally has a pretty strong merit badge that moves him in the direction of patriotism and military service. With that he thinks it is good that we discuss this and the guidelines that Mr. Meidinger suggested are definitely warranted so that we can avoid those things where if we come to organization specific names, we are going to make somebody unhappy obviously because he has some favorite ones himself. We don't want to be offensive to some of those folks who have done just as much to serve. He is satisfied with the name and it makes sense that we need some good guidelines.

**Council Member Mulanax** advised that typically when a new residential development comes in the developer designates the street names. In Ward IV, in being somewhat involved in public safety as well, in Tiara Pines there is a court, a place, etc., and if someone is in a hurry or from

out of town that witnesses and accident, that has got to get very confusing. He questioned if we have a stated policy on that type of issue, or do we just work with the developer.

**Ms. Sexton** explained we work with the developer, but we follow the Sedgwick County guidelines book that was published in 2004, as do most all the cities in the county. It provides a list of overused words and guidelines. That did not used to be the case in Derby or any other city which is why people got together and figured out they have some real addressing problems. It was actually public safety professionals who came to the county clerks and the GIS department and said something had to be done about how we are naming things because the consistency is not happening, and all of our cities over time are running together. Many of our cities are very close now and you just can't tell the difference and the more developments you have, the more residential streets, the more overused you get certain words. It is difficult sometimes for developers to find unique names.

VOTE: Craig yea, Meidinger abstain, Johnson yea, Warren yea, Schwarz nay, Bannon yea, Mulanax yea, Payne yea, 6 yea, 1 nay, 1 abstain, 0 absent, motion carried.

## **CONSENT AGENDA**

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

### **Issuance of cereal malt beverage license**

#### **Background:**

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- An application for a cereal malt beverage license has been received from D & M Stores, Inc. to operate at 104 N. Baltimore.
- The licensee has met all of the requirements of city ordinances regulating the sale of cereal malt beverages.

#### **Financial Considerations:**

- The license fee of \$100 has been received in accordance with City of Derby resolution No. 55-1999 as a limited retailer, selling cereal malt beverages only in original and unopened containers and not for consumption on the premises.

#### **Legal Considerations:**

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

#### **Policy Considerations:**

- When a cereal malt beverage license applicant meets all qualifications established by ordinance, the City is obligated to issue the license.

### **Resolution on City Classification**

#### **Background:**

- At its meeting on December 12, 2006, the City Council received an informational presentation from staff regarding city classification and the implications of the City of Derby changing from a City of the Second Class to a City of the First Class.
- The City Council concluded that at this time it is more advantageous to remain as a City of the Second Class.
- The attached ordinance complies with KSA 13-101.

#### **Financial Considerations:**

- There are no financial consequences associated with adoption of this resolution.

#### **Legal Considerations:**

- KSA 13-101 requires Cities of the Second Class with populations of more than fifteen thousand (15,000) and less than twenty-five thousand (25,000) who find it more advantageous to remain as a City of the Second Class to pass a resolution stating this determination.

#### **Policy Considerations:**

- There are no policy considerations associated with adoption of this resolution.

#### RESOLUTION NO. 23-2007

A RESOLUTION DETERMINING IT ADVISABLE FOR THE CITY OF DERBY, KANSAS, TO REMAIN A CITY OF THE SECOND CLASS RATHER THAN BECOME A CITY OF THE FIRST CLASS.

### **Selection of Administrator & Inspector for HOME Rehabilitation Grant**

#### **Background:**

- The City Council approved allocation of funds for a HOME Rehabilitation Program Grant during the 2007 budget process. The City applied for the grant funds in August 2006.
- In November 2006, the City was notified of an award in the amount of \$225,000 plus \$11,250 for administrative costs. Official acceptance of the award will occur in late January or early February, after staff and the grant administrator attend a mandatory grant workshop in January.

- As part of the HOME Rehabilitation Grant, the City must hire a certified housing grant administrator and a certified risk assessor/inspector to assist with the program.
  - Grant administrator duties include determination of eligible households; environmental review; financial management; procurement of materials and bidding of projects; complying with lead-based paint hazard reduction activities; ensuring that equal opportunity/civil rights are protected; citizen participation; and close-out of all projects.
  - Risk assessor/inspector services include initial inspection of proposed homes to be rehabilitated; lead-based paint risk assessments; written scope of work and cost estimates for each proposed project; bid tours of all proposed homes with potential contractors; assistance with bid process and award of construction contracts; inspection of work in progress; process any change orders; conduct final inspection; and perform clearance testing after work is complete.
- The City must solicit competitive proposals for the grant administrator and risk assessor/inspector services. This has been completed.
  - The Kansas Department of Commerce maintains a list of certified housing grant administrators, from which the grant administrator hired by the City must be taken. Six certified administrators are located within 100 miles of Derby, and all received the City's Request for Proposals (RFP). One agency submitted a proposal – the South Central Kansas Economic Development District (SCKEDD).
  - The Kansas Department of Health and Environment maintains a list of certified risk assessors, from which the risk assessor/inspector must be selected. Ten certified inspectors are located within 100 miles of Derby. All 10 received the City's RFP. One agency submitted a proposal – the South Central Kansas Economic Development District (SCKEDD).
- Despite being the only agency to respond to the RFP, SCKEDD is highly qualified to serve as both grant administrator and risk assessor/inspector. SCKEDD currently provides HOME Grant administration and inspection services to Sedgwick County, the City of Park City, the City of Lyons, the City of El Dorado and others. SCKEDD also provided free assistance to the City of Derby as we applied to the Kansas Housing Resources Corporation for the HOME funds.

**Financial Considerations:**

- Grant Administrator: In addition to the administrative costs (5% of the total grant amount, \$11,250) included in the grant amount, SCKEDD will require payment of an additional \$3,000. This cost was included in the budget submitted during the 2007 budget process.
- Risk Assessor/Inspector: Charges for these services are on a per-project basis and will be included in the cost to rehabilitate each home. There will be no additional cost to the City.
  - \$800 for each Housing Quality Standards (HQS) Inspection
  - \$1200 for each Lead-Based Paint Risk Assessment

**Legal Considerations:**

- The City Attorney has reviewed and approved a standard contract for these services provided by SCKEDD.

**Policy Considerations:**

- A committee of city staff has reviewed the applications to ensure the applicants meet the required criteria.

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

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

**EXECUTIVE SESSION**

MOTION: Bannon moved to adjourn to Executive Session at 10:45 p.m. for a period of 10 minutes to discuss non elected personnel. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Payne yea, 8 yea, 0 nay, 0 absent, motion carried.

The council returned from Executive Session at 10:55 p.m. with no binding action taken.

**ADJOURNMENT**

Meeting adjourned at 10:55 p.m.

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

ATTEST:

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

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