

CITY OF DERBY

**ORDINANCE REVIEW ADVISORY BOARD
REGULAR MEETING
October 18, 2011
6:00 P.M.**

APPROVED MINUTES

ROLL CALL

Betty Wilken
Thane Rockhill (arrived at 6:24 p.m.)
Bob Bean
Paul Shaver

ABSENT

Al Davy

Also Present: Stephanie Knebel, Assistant City Manager
Janae' Prunier-Billman, Secretary

Agenda Item #1 – Approve Minutes of August 16, 2011

Motion: Betty moved to approve the minutes of the August 16th meeting as presented.
Paul seconded.
Vote: 3 yea, 0 nay, motion carried.

Agenda Item #2 – Public Forum

No one present to speak, public forum was closed.

Agenda Item #3 – City code 6.04.105 Animals Running at Large (continue discussion):

Stephanie Knebel, reminded the board there was a citizen who expressed a concern that the current animal ordinance needs to be more in line with other communities concerning animals running at large. The letter and ordinance was reviewed with the city attorney and Deputy Chief Dan Hammon. They both recommend leaving the ordinance as it is.

Deputy Chief Hammon stated this letter is the only complaint he knows of that the police department has received about the cat issue. He thinks the ordinance as it is written is working fine.

Chief Lee advised he had a recent conversation with our retired animal control officer who advised he was never bitten by a dog but was bitten nine times by cats.

Motion: Betty moved to leave the ordinance as written. Paul seconded.

Vote: Motion was carried.

Agenda Item #4-Uniform Public Offense Code:

Background/Discussion:

- The City of Derby regularly adopts revisions to the Uniform Public Offense Code (UPOC) published by the League of Kansas Municipalities (LKM).
- The UPOC contains ordinances based upon Kansas State Statutes as well as those commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are drafted by the city attorney in cooperation with Police Department representatives to tailor specific sections to local needs.
- The UPOC is presented to the Ordinance Review Advisory Board for consideration and formulation of a recommendation to the City Council.

Financial Considerations:

- None.

Legal Considerations:

- The Police Department is responsible for enforcing the UPOC.
- The 2010 edition of the UPOC was adopted by Derby City Council on November 9, 2010, with a number of local amendments.
- The League of Kansas Municipalities has published the 2011 Edition of the UPOC, which includes revisions of specific sections to remain current with Kansas State Statutes.
- Local amendments proposed are intended to adapt certain sections of the UPOC to local policy.

Policy Considerations:

- Significant changes that have been incorporated in the 2011 UPOC include:
 - The requirement that conduct be intentional has been removed from many sections. Conduct will now be criminal if done “knowingly.” Offenses of “stalking” (section 3.13), “endangering a child” (section 5.4) and “cruelty to animals” (section 11.11) are examples. The practical effect is to reduce the prosecution’s burden of proof.
 - “Criminal defamation” (section 3.9) and “criminal hunting” (section 6.22) are amended to broaden the scope of prohibited conduct.
 - Provisions related to carrying, discharge and disposal of weapons (section 10.1, 10.3 and 10.3.2) have been substantially reorganized based on changes to state law but substantive changes are minor.
 - Changes in the 2011 UPOC but already approved by the City Council earlier this year include Battery (section 3.1) and Domestic Battery (section 3.1.1), which were amended to substitute “knowingly” for “intentionally” so as to make these

frequently prosecuted offenses consistent with changes made by the 2011 Legislature.

- Adoption of the 2011 Edition of the Uniform Public Offense Code (with amendments) would keep Derby city ordinances consistent with applicable Kansas statutes.

Other Considerations:

- Specific proposed changes to the 2011 UPOC are enumerated in the attachment to this document.

Recommended Action:

- Motion to recommend adoption of the 2011 Uniform Public Offense Code, with amendments, to the City Council.

DISCUSSION:

Chief Lee went over the changes to the UPOC that are being proposed. Most of the changes clean up language that slightly lessens the burden of proof for prosecution.

Stephanie added that one of the reasons we adopt the UPOC and put them on our municipal code books is so that the police department can write tickets and prosecute in municipal court.

Chief Lee agreed; once we adopt this ordinance, we can charge these cases through Derby municipal court and do not have to charge misdemeanor cases in district court, which is a good thing for us and the citizens of Derby as well. It is much more convenient to go to court here than it is to go to downtown Wichita.

Bob noted a couple of spelling errors. He asked why we are not consistent with federal law in some of the wording in the document.

Stephanie explained that changes are passed by state legislature; not passed by judges or attorneys. This is written, adopted and approved by elected officials just like our city council and whatever words they agree upon when it is passed through the legislature. They are under no obligation to make sure that it conforms.

Chief Lee advised there is a process for that. If someone is charged and they feel the language is incorrect, if they are found guilty they would have the right to appeal, challenging the language in that law.

Motion: Betty moved to recommend adoption of the 2011 Uniform Public Offense Code, with amendments, to the City Council. Seconded by Paul.

Vote: 4 yea, 0 nay, motion carried.

Agenda Item #5-Adopt Standard Traffic Ordinance:

Background/Discussion:

- The City of Derby regularly adopts revisions to the Standard Traffic Ordinance (STO) published by the League of Kansas Municipalities (LKM).
- The STO contains traffic regulations based upon Kansas State Statutes as well as those commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are drafted by the city attorney in cooperation with Police Department Re to tailor specific sections to local needs.
- The STO is presented to the Derby City Council for adoption.

Financial Considerations:

- None.

Legal Considerations:

- The Police Department is responsible for enforcing the STO.
- The 2010 edition of the STO was adopted by Derby City Council on November 9, 2010, with a number of local amendments.
- The League of Kansas Municipalities has published the 2011 Edition of the Standard Traffic Ordinance which includes revisions of specific section to remain current with state statutes regulating traffic.
- Local amendments proposed are intended to adapt certain section of the STO to local policy and conditions.

Policy Considerations:

- Significant changes that have been incorporated in the 2011 STO include:
 - The driver of a motorcycle or person riding a bicycle facing a steady red signal which fails to change to a green light within a reasonable period of time due to malfunction or detecting arrival due to weight of motorcycle or bicycle may proceed safely after yielding right of way to other vehicles and pedestrians.
 - Duty to give information and render aid involving death, injury or damage. New penalties requiring driver or any person 18 or older to report accident.
 - Operating a vehicle without a Interlock devices when driving privileges have been restricted to driving a motor vehicle equipped with such device.
- Changes in the 2011 STO but already approved by the City Council earlier this year include:
 - Testing alcohol concentration in the person's blood or breath changed from 2 hours to 3 hours.
 - Seatbelt fine for adults reduced from \$30 to \$10.
- Adoption of the 2011 Edition of the Standard Traffic Ordinance (with amendments) would keep Derby city ordinances consistent with applicable Kansas traffic regulations.

Other Considerations:

- Specific changes proposed to the 2011 STO are enumerated in the attachment to this document.

Recommended Action:

- Motion to recommend adoption of the 2011 Edition of the Standard Traffic Ordinance, with amendments, to the City Council.

DISCUSSION:

Chief Lee went over the changes being proposed with the board.

Motion: Thane moved to recommend adoption of the 2011 STO, with amendments, to the City Council. Seconded by Betty.

Vote: 4 yea, 0 nay, motion carried

Agenda Item #6 – Update Ward Boundaries:

Background:

- At its April 13, 2010 meeting, the City Council adopted a charter ordinance pertaining to how and when ward boundaries should be updated.
 - No changes to the number of wards or the number of council members will be made, but ward boundaries will be based on population rather than registered voters.
 - Ward boundaries are required to be revised every ten years when official census data become available.
 - The current practice of adding newly annexed territory to the ward to which it is contiguous will continue.
- In drafting new boundaries, the following best practices were followed:
 - Census tracts were maintained as much as possible.
 - Boundaries generally follow natural and man-made permanent, visible features such as arterial streets, roads, highways, rivers, and railroads.
 - Both sides of a residential street should be in the same ward.

Financial/Sustainability Considerations:

- The cost of revising ward boundaries is primarily a function of the staff time required.

Legal Considerations:

- After each census, the City council is required by charter ordinance to divide the city into four (4) wards, as nearly equal in population as practicable, and to establish ward boundaries.
- Current ward boundaries remain in effect until such time as final 2010 United States decennial census data is reasonably available, subject only to such additions as may be necessitated by annexation of unincorporated territory; and

- Should reestablishment of a ward boundary have the effect of excluding the residence of an incumbent Council member from the ward he or she was elected to represent, such Council member shall serve out his or her entire term.
- No ward boundary shall be revised or reestablished within thirty (30) days prior to the date fixed for an election of any kind within the City or the last day for filing as a candidate for any elective City office, whichever comes first.

Policy Considerations:

- Wards based on population are more likely to result in equitable representation.
- The City Council should, insofar as possible, represent all segments of the community equally.

Stephanie provided the board with a map of the proposed ward boundaries and reviewed it.

Motion: Paul moved to recommend ward boundary changes for adoption by the council.
Thane seconded.

Vote: 4 yea, 0 nay, motion carried

Agenda Item #7 – Other business:

No other business to discuss.

ADJOURNMENT:

Motion: Betty moved to adjourn at 6:59 p.m. Bob seconded.

Vote: 4 yea, 0 nay, motion carried.