

**APPROVED
REGULAR COUNCIL MEETING
April 10, 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, George Arnold

Flag salute was led by Council President Cheryl Bannon.

The invocation was led by Pastor Nick Pannone, First Christian Church.

**CONSIDERATION OF
MINUTES**

Minutes of the March 27, 2007, Regular Council Meeting.

Council Member Johnson pointed out corrections on page 4, comments that should be attributed to someone other than Mr. Johnson, as well as page 5 and page 8.

MOTION: Bannon moved to approve the minutes of the March 27th, 2007 Regular Council Meeting with changes as indicated by Mr. Johnson. Craig seconded.

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

PUBLIC FORUM

Bill Wilson, 325 N. Buckner, explained he has been working with Mr. Brown regarding ideas for the area he lives in. He indicated there are areas that he does not believe anyone has ever seen and presented pictures to the council. The pictures augment what Mr. Brown has in his report and believes Mr. Brown and Ms. Sexton have been working with this as well. He thanked Mr. Brown for taking the opportunity to meet with him and for looking at the area and he is very pleased with the progress being made. He asked if there is a possibility, since we are coming into budget time, to take some of the capital improvement funds and earmark a few dollars to clean out a ditch or two. In Mr. Brown's report there are some different culverts referred to that

might help to ease some of the flow going from east to west. Mr. Brown has some great ideas, although he is not entirely sure where the money is going to come from. He is not here to beg or brow beat, just to show some things that most people don't necessarily see. He indicated that Mr. Brown goes to a certain point in his report but he feels we need to go farther north to Cherry Street and his pictures indicate that. It is not just about drainage or the lack thereof, there are more issues. He advised the pictures go along with the report prepared by Mr. Brown and he feels the pictures show some shocking things, things that people don't know are between the police department and Cherry Street. The only one that typically sees these things are himself because he walks it and has been trying to clean the area up.

Derek Frazier, 6831 Mark Twain, Proprietor of Derby Bowl for the last 33 years. He pointed out a misstatement at the January council meeting regarding the BPAA study on the impact of smoking legislation on bowling centers. He advised that at that council meeting a statistic of 8.4% was brought up by a council member. However when you look above that number that was pointed out it indicates that 9.9% of bowlers look for a new league immediately and 20.1% of bowlers finish their commitment to that league and then look for a new league the next season. Those numbers add up to 48% and that is significant. He asked the council to keep this issue on a level playing field with Wichita; we have a lot to lose in the way of losing business to Wichita. He explained he has started a non-smoking "Derby Community Coalition Bowling League". He has dedicated an entire evening on Monday nights during the summer for a non-smoking league of 24 teams. After spending a couple of thousand dollars on advertising and offering the coalition \$1,500 cash to support healthy choices, he only has 9 people signed up. Hopefully that will grow as he needs 120 people on that evening and if we can't support one night he does not know what he will do the other six nights. It would be a significant impact to his business and he has stated before that he wants to be non-smoking, he just doesn't want to get there before Wichita; we don't have to be doing this just to do it, as you can see the urgency is not there yet. We can all get there; we just need to do it right and keep a healthy Derby business community. The best analogy he has heard of this so far is that it is like standing over somebody at the black jack table and telling them how to play their money; if you are not using your own money it is easier to say what you think should be done, but right now we are playing with his money.

Spencer Stelljes, 1360 Broadmoor and Derby Chamber of Commerce Governmental Relations Chairman. He understands that as it stands right now most people, to a certain degree, have already made up their minds one way or another. We have made our points about the impact that we see on our local businesses within this community and many on the council have spoken about that fact that they are supporters of businesses within this community. Derby wants to be a leader and we want to be progressive, but we also must support our businesses within this community and we must do it in a way that allows those businesses to thrive and be done in a way that the community can thrive because they are commingled. If this community survives, our businesses survive and if our businesses survive our community survives. Back at the January or February meeting, the council decided they would support a legislative initiative for the State of Kansas and the council supported a state wide smoking ban. If you remember back to what actually was in the verbiage, the council supported the verbiage that states that the reason why you support a state wide smoking ban is because the council wants to create a level playing field for all businesses. He asked, how is that any different between the parity between Wichita and Derby, how is that any different than the level playing field that could and should be

created within Sedgwick County. We have proposed a compromise and that compromise is different than the stance they actually took at the very beginning. Their stance in the beginning is based off of a business model, it is based off of supporting, and that is not to have any smoking ban whatsoever. They were willing, and have been willing, up until this point to support a compromise; and that compromise, to make sure we are all on the same page is this: a 1-1-09 start date for a ban within the community of Derby and exempting all of the bars within the community. To him, that has less of an impact amongst the community at large in terms of health issues. Most people that utilize those bars, during the day in some cases already have no smoking allowed. Most of our restaurants within this community already do not allow smoking. We are looking at protecting certain business owners within this community that will take a hit. He has said before, we can talk about semantics, we can talk with each other about the impact or benefit, but he can tell you right now that because of the close proximity with Wichita there is going to be an impact; whether it is short term or long term. He advised this is coming from the community and as a political science student he knows how polling data works and you can skew results one way or another. He mentioned to the council that when this becomes effective this evening that he would strongly look at and consider any polling data that might be put on the website because that skews the results greatly. If we look at 80% of the population actually supporting the smoking ban, he has strong questions about where you are actually getting that data and from whom you are getting that data. He hopes that we can make an intelligent and thoughtful decision that encompasses compromise and that is what they have been striving for and looking for as well.

Robert Mendoza, Director of Public Works and Parks spoke about the 2007 “Our Community, A More Beautiful Place” program through the K-State extension office. They are offering a planting grant, so to speak, or a gifting of flowers or plants to communities who are looking to provide ways to beautify their public spaces. In January they were made aware of the grant and applied and were soon notified the city will be gifted the flowers. This is not a matching type of grant; it is a granting of flowers to us. The plants are called Prairie Star Annuals and are plants that have gone through the K-State research extension office and are supposed to give the “wow” factor when you drive down the street. They have talked with the Parks and Urban Forestry Board and they really like the idea and tried to find a way they could use this. Mr. Mendoza presented the council with a map indicating eight locations along the hike and bike path that have benches. These are bench locations that have some landscaping around them; trees and grass but not a whole lot of color. The plan is to put some planters out there, install the plants (we are receiving 75 total) so that will be more than enough to make quite an impact. It is part of the Park and Urban Forestry Board’s goal to bring people out into the community, to the hike and bike and out into the parks and public spaces to get them out and about. It is not always about a park, it is about throughways and byways and places to stop, talk and rest. Those plants will be planted very soon and they will decide on the planting date at the April 12th Parks and Urban Forestry Board meeting. That information will be put out to the public for volunteers. Right now we have the master gardeners, members of the Koi Club and members of the Parks and Urban Forestry Board to help plant these. We will offer that for a public volunteer opportunity and will put more information out as we get it.

PROCLAMATION

Mayor declared the week of April 15-21, 2007 as National Library Week in the City of Derby.

Judy Bennett, Director of the Derby Library accepted the proclamation recognizing April 15th thru the 21st as National Library Week. There are a lot of things going on that week and it's an opportunity for everyone to come in and see the library. The week is started off with a community food drive and they are asking for donations of canned goods that will go to the Derby Community Family Services. They will be offering some sessions to teach people how to use their electronic catalogs, how to access their databases and explain what kinds of information is available not just from the library, but from a home site, business or school. On Friday the 20th from 9-11 a.m. they will be having a community coffee.

REAPPOINTMENT OF COUNCIL MEMBERS

Phil Alexander, City Attorney presented the staff report.

Background:

- Under K.S.A. 14-204, city council vacancies are filled by appointment for the balance of the unexpired term.
- Charter ordinance no. 2 of the City, enacted in 1961, provides that Council vacancies are filled by appointment "until the date of the next April City election".
- Notwithstanding charter ordinance no. 2, the practice in Derby has generally been to appoint for the unexpired term.
- Pursuant to charter ordinance no. 2, the terms of Messrs. Meidinger, Johnson and Arnold expired on Tuesday, April 3.
- Reappointment of Messrs. Meidinger, Johnson and Arnold is necessary to fill the resulting vacancies.

Financial Considerations:

- None.

Legal Considerations:

- The provisions of charter ordinance no. 2 create a problem when, as in the case of Ms. Payne's resignation, the vacancy occurs too late for candidates to file for election, and by requiring an election to fill a seat out of the normal election cycle.
- A charter ordinance will be separately proposed to eliminate the requirement for an off-cycle election to fill a vacancy created by a resignation during the first two years of a regular term.

Policy Considerations:

- It is advisable to fill Council vacancies promptly so as to assure that all wards are adequately represented.

DISCUSSION:

Council Member Warren clarified that they are technically unfilled terms as of the last election that was held last Tuesday, so any action that was taken before that date is not affected.

Mr. Alexander advised that was correct.

MOTION: Craig moved to reappoint Jim Meidinger, Loren Johnson and George Arnold as representatives of Wards I, II and IV respectively, to serve out the balance of the unexpired terms for which they were originally appointed. Schwarz seconded.

VOTE: Craig yea, Meidinger abstain, Johnson abstain, Warren yea, Schwarz yea, Bannon yea, Mulanax yea, Arnold abstain, 5 yea, 0 nay, 3 abstain, motion carried.

**SWEAR IN
REAPPOINTED
COUNCIL MEMBERS**

Jean Epperson, City Clerk swore in council members Meidinger, Johnson and Arnold.

**CHARTER ORDINANCE
PROVIDING FOR
FILLING OF COUNCIL
VACANCIES AND
REPEALING CHARTER
ORDINANCE NO. 2**

Phil Alexander, City Attorney presented the staff report.

Background:

- Under K.S.A. 14-204, city council vacancies are filled by appointment for the balance of the unexpired term.
- Charter ordinance no. 2 of the City, enacted in 1961, provides that Council vacancies are filled by appointment “until the date of the next April City election”.
- Council minutes dating from adoption of charter ordinance no. 2 do not disclose the motive for departing from state law with respect to filling council vacancies.
- Notwithstanding charter ordinance no. 2, the practice in Derby has generally been to appoint for the unexpired term.
- Adoption of the proposed charter ordinance would conform City ordinance to the generally established practice of filling council vacancies for the unexpired term of the office.

Financial Considerations:

- None.

Legal Considerations:

- The City’s practices should be consistent with its organizational documents.
- Filling vacancies for the unexpired term of office is consistent with state law, the practice in other cities and past practice in Derby.

Policy Considerations:

- Repeal of charter ordinance no. 2 eliminates the need to conduct an off-cycle election to fill a vacancy on the City Council.

DISCUSSION:

Council Member Warren advised he believes there was some wisdom behind what our city fathers did in 1961. It creates a situation, where by virtue of appointment and the decisions of a few, council can be skewed or lean in a certain direction by a very few number of people that oversee the city. There is some wisdom that will go just to the next general election and then have an election for that unexpired seat, even though it would be a two year election, he believes that is really something that needs to be considered. There is wisdom behind letting the voters of the city decide who sits on the bench rather than letting a small number of people that sit up here make that decision.

Council Member Johnson indicated he had a problem with the last sentence “vacancies in the future to be filled by council members” he questioned if that used to be by appointment of the mayor.

Mr. Alexander advised that portion of the charter ordinance has not changed, it is a carryover from the existing ordinance. It has been the practice of the council to let the mayor make a nomination and the council in effect makes the appointment by confirming that nomination, so it is a matter of procedure. This proposal does not vary the existing law in that regard.

Council Member Johnson clarified that an appointment is not made until the person officially receives the office and his nomination for that position is what the council approves when they vote on approval of his appointment. He believes that is an appointment and they approve his appointment.

Mr. Alexander responded that he has had this discussion before and technically speaking, today for example if there were a vacancy on the council, any member of the council could make a nomination to fill that vacancy and if it got a second it could be voted on. Traditionally, this council has deferred to the mayor to make a nomination which has been treated as an appointment and dealt with it procedurally the same way.

Council Member Johnson advised he put a lot of importance in the office of “mayor ship” in this town. He is elected by the city at large and we count on a mayor to provide leadership and direction and he has a considerable amount of responsibility. He believes he should have the

prerogative of appointment and he has assumed that was the way it was. He does not have a problem with the council approving any appointments; he just thinks the mayor should have the prerogative to appoint.

Council Member Craig pointed out this once again illustrates the situation where the process does not equal the written word. He believes that it's not a war of words but it has to do with a nomination turning into an appointment; that is then approved by the council that makes the person voted in to fill that seat. That is what we have evolved to over the years, the candidates make application and the mayor reviews those and makes his nomination to the council, the council then either votes for it or against it. It is in our best interest that we take the process and marry it with the way that it should read. He stated there is a difference in opinion on that because if we say the mayor can appoint, does that mean without a vote, and he does not think that is in the best interest of the council. Whether the mayor makes a nomination or appointment he thinks it should be fairly well defined as a nomination to be approved by the council, by vote.

Council Member Warren stated that he has a great amount of respect for the office of mayor and he feels like the ability to make appointments and nominations and one of the key things that the mayor brings with him, is the judgment from that. He also thinks there is a great balance of power that provides for the council to vote on that so that if something does get out of whack the council can at least have some say from that standpoint. He likes the term "nomination" rather than appointment with the approval of the council. He likes the idea that the mayor at least has that input into the process because the mayor doesn't get to vote very often, the mayor's position in many ways is ceremonial. It does have some aspects of leadership and vision and guiding, but in terms of being able to really steer the ship he imagines sometimes that is pretty frustrating for Mr. Avello to sit there and not be able to give input like he used to do when he was a council member. He would like to give him as much power as we can as long as we don't let control get completely away from them.

Council Member Bannon commented that it does not appear we have been doing what is in our charter ordinance for a great number of years and it is time to clean that up. She does not believe tonight necessarily does it in a fashion that they are all comfortable with.

MOTION: Bannon moved to table this item to be brought back to the council with further options. Johnson seconded.

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

CLEAN INDOOR AIR

COUNCIL MINUTES

-7-

04/10/07

ORDINANCE

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

Background:

- At its meeting on February 13, 2007, the Derby City Council deliberated on a Clean Indoor Air Ordinance. After much discussion, the Council agreed to table further discussion and action until a future date, noting that more time to reflect on this issue would be beneficial.
- The City Council has since indicated its desire to revisit the issue at its April 10, 2007 meeting. The Council has also indicated its interest in continuing deliberation on the ordinance with an extended effective date.
- The attached ordinance is the same as considered previously. The ordinance:
 - Prohibits smoking in all public places, places of employment, and within 20 feet of all entrances, exits, and air intake ventilation systems of these locations;
 - Does not regulate private places (i.e. home, car) unless used for childcare, healthcare, or adult day care; and
 - Has an effective date of August 1, 2008.

Financial Considerations:

- None

Legal Considerations:

- The City is empowered to protect the public health, safety, and welfare of its citizens.
- When challenged, clean indoor air ordinances in Kansas have been upheld by the courts.
- An equally applied ordinance is more defensible from legal challenges.

Policy Considerations:

- The Ordinance Review Advisory Board has endorsed the ordinance as it is presented without further amendments.

DISCUSSION:

Council Member Warren indicated the council has discussed, listened, talked amongst themselves, taken phone calls, emails in what has probably the most thoroughly discussed, studied and scrutinized item in the history of the City of Derby. For the most part the council has made up their minds on which way they are going to vote,

MOTION: Warren moved to pass an ordinance banning smoking in Derby with an effective date of January 1, 2009 providing for exemption to all bars. Bannon seconded.

Council Member Johnson indicated that according to Roberts Rules of Order he believes there needs to be a motion to reconsider.

Ms. Sexton stated that one way of interpreting this is to say if you table an item you just delay to a future agenda time. If you table it to a specific date then obviously it has to come at that date. If you table it at the time when there is a motion on the table, as opposed to an item on your agenda, then you have to make a motion to remove it from the table. In other words, there was not an outstanding motion on this on February 13th when it was tabled. If you were to table it right now with a motion on the table, indeed what could come back at the next meeting would be that item on the table.

Council Member Johnson advised he did not care, but as long as we are trying to do everything right, let's take a shot at this.

Council Member Craig advised he would support January 1, 2009, however in the best interests of the people he has talked to, at this time, if this particular motion fails he will make another motion with the same date, but he cannot support the exemption of bars.

Council Member Schwarz concurred with Council Member Craig. In the staff report one of the items mentioned was that an equally applied ordinance is more defensible in the case of lawsuits that may occur. For that reason he can't in good conscience put exemptions in there in any way, shape or form.

Council Member Meidinger agrees with Council Members Craig and Schwarz. He pointed out that he was reading an article in USA Today that gives an indication of the way that this smoking issue has spread across not only the state of Kansas, but worldwide, and he provided an excerpt from the article indicating that the tourism trade had not slowed down due to a smoking ban, in fact Scotland increased their tourism. Visitations to Ireland were also up after they restricted smoking in 2004. He agrees that 2009 is a fine date, but it should be across the board and he would not support exempting bars.

Council Member Warren agreed with Council Member Meidinger that this is a trend that is coming and he believes it will cover the nation within the next five years and most of the nation within the next 2-3 years. He indicated he read an article regarding Sweden, who has a smoking ban, where one neighbor was suing another neighbor for smoking in his backyard because the smoke was crossing over the yard. His fear is how far does government go in protecting us from each other. Because he believes that Wichita and the State of Kansas will be taking up the smoking ban he intended to, as a part of his motion, to make the exemption for bars in Derby to be contingent upon Wichita passing so that at such a time that Wichita were to pass a ban, that we would follow suit so that we would be on the level playing field that our businesses are asking for. He questioned if he needed to amend his motion to indicate the exemption of the bars is contingent upon Wichita passing an ordinance that would include those establishments.

RESTATED MOTION:

Warren moved to pass an ordinance banning smoking in Derby with an effective date of January 1, 2009, providing for exemption to all bars contingent upon Wichita passing an ordinance that

would include those establishments. Bannon seconded.

Mayor Avello asked if the phrase should be “clean air” rather than smoking.

Ms. Sexton stated that she believes what Council Member Warren means is that he wants to pass this clean indoor air ordinance, as opposed to the words “ban smoking in Derby” which is not what she thinks he meant.

Council Member Warren indicated to replace any reference to the word “ban” with “clean air” and apply it across the board.

Council Member Bannon stated that people will eat no matter what, a couple of times a day. However, a lot of the people that sent emails indicated that they would frequent restaurants more if they went “clean air”. The people that are not bowlers or drinkers, she doubts will become bowlers or drinkers. They will not frequent those establishments; if they don’t now they are probably not going to in the future. We had one business already today put a “going out of business sign” up. It is tough making it in business, be it in Derby or any other town. By passing this when Wichita and Sedgwick County have not done it we are putting our businesses on an uneven playing field. She agrees it is coming but the figures that Council Member Meidinger read off and Council Member Warren mentioned are statewide and country wide, they are not one small city who is a suburb of a very large city. We do not always make our decisions, nor should we, on whether they will be challenged in court or not, we have not made a practice of running from that before and we shouldn’t now. We teach our children right from wrong and hopefully how to make the right choice and we hope they listen. By passing this tonight and wrapping it in a cloak of “for the health of people who are not willing to take responsibility for their own health” that is not necessarily a good message to send our children. She is not for this at all, but the best compromise we can come to on this council, and she hopes they get enough support for is the 1-1-09. Giving businesses a chance to make plans and to exempt those facilities that the non-bowlers and non-drinkers are not going to frequent anyway and leave our businesses an even playing field.

Council Member Meidinger stated that it has been alluded to that we have too much government protection, and on a personal issue today, his 21 year old granddaughter was in a serious car accident today. The impact of the crash was so terrific that it dislodged the engine. Because the government said we need seatbelts and airbags she was not seriously injured. He guarantees the same argument was held 5-10 years ago with the automobile industry saying we don’t need this, but this issue saved a live. He stated that second hand smoke is dangerous and that is what we are addressing.

Council Member Arnold advised this city depends on its citizens for a lot of things; the taxes they get from the houses, the sales tax from the businesses, etc. He would like to think that Derby, as progressive as we are, is also a city of compassion and he is having difficulty figuring out why we can’t have a compromise here and go the 1-1-09 with an exemption. He advised that if half of the people in this room had a business that was going to be affected by it, they would be screaming about it. He is a business owner and he went smokeless in his business in 1996,

but he did not shove it down anyone's throat. He gave them plenty of time to think about it, he gave all the employees a year to come around, and those who didn't want to go with the policy of the company left. He had 65 employees and only 2 left. The truth of the matter is these business generate sales revenue for the city and within probably the next month or two we will have some work done on Rock Road that will take a year, year and ½ which will have another impact on our businesses. That in itself could impact the budget of this city, so anything we can do to try to maintain a level playing field and at the same time protect the revenue of this city so we can continue to move forward, we are helping ourselves and a little compassion sometimes goes a long way. He is not saying he is in favor of one side or the other but he sees himself as a person that is trying to let everyone look at the situation from outside and say "why not meet them halfway". We have been talking about this too long and it's time for us to put it to bed and make a decision tonight that everyone can live with.

Council Member Craig pointed out the council discussed this in 2006 and it has been visible in front of the council for the past four months. January 1, 2009 makes it in excess of 2 years to prepare for the inevitable. This is a health and environmental issue in his mind, and the consequences and results of second hand smoke does not deserve a level playing field because it ends in death. We are all going to die, but the fact is we don't have to accelerate it. What we are doing is saying it's okay and we will wait until somebody else does it. He received an email from Mr. Frazier and he appreciates his position and is sympathetic to making things work for this community. Mr. Frazier indicated he would like to see 85% of things happen in Wichita before we do anything, he challenges himself to say that Derby needs to be part of the 85% to make everybody else do it and accelerate it that way. He cannot support this, the only thing he can support is January 1, 2009, no exemptions.

Council Member Mulanax stated that no matter what this council does tonight, some people on one side or the other are not going to be happy with it. He has spoken with a lot of council members one on one and business owners, it is not his intent whatsoever to hurt businesses because he is in business himself. He advised with the new leadership in Wichita, from what he has read, they are going to bring this issue before them and hopefully within the next year will take some positive steps. The concern he has is that if the council did make exemptions and the City of Wichita went comprehensive, then would we have to come back and revisit this issue all over again, or keep it that way. He knows people on both sides of the issue are going to be unhappy, but he supports the no exemptions.

Mayor Avello advised it is no secret that the council speaks one on one and today, since 11:00 his phone has been ringing off the hook and he has been making phone calls to Ms. Wagner asking a lot of questions and reviewing a lot of out of town ordinances. He spoke with Council Member Warren on his way home from work and indicated he was leaning towards his side but would probably change his mind again. Council Member Warren is correct in that this has been the most talked about item on the council since he has been a member, it is an important item and he can see both sides of it. It is a health issue, which he has said before. He has smokers in his business and trying to get them to quit is a hard thing to do. He runs his business segregated in the fact they cannot smoke beyond a certain point and everything else is smoke free. He agrees with Council Member Warren that even though we are in government, how far does government go? He believes that being the 2nd largest city in Sedgwick County, and a leader of

this county and we have to make this decision. He believes that whatever we do, Wichita will follow. He knows Mayor Brewer and hopefully they will have a conversation in the next 10 days about this item. He has spoken to most of the council members while in Reno and they know they have to address this issue and he believes whatever we do in Derby, Wichita will follow. Being a business owner he has a lot of compassion for businesses and he thinks that is the overriding factor for him tonight. The only thing he does not like is the contingency on Wichita and he told Council Member Warren that earlier. He would like to see this come in with a little compassion like Mr. Arnold says about businesses and give this to January, 2009 to come into effect and give the businesses maybe six more months to come into compliance and then shut it down and be all clean air. If he goes that way they will be deadlocked and he does not want to do that, he wants this thing to come to an end, but he is still undecided what to do at this point.

MOTION: Craig called for the question. Meidinger seconded.

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

Ms. Sexton requested the city attorney read the motion for clarification.

Mr. Alexander restated the motion “to adopt a clean indoor air ordinance with an effective date of January 1, 2009, exempting premises licensed for consumption of alcohol or cereal malt beverages on the premises provided that such exemptions shall be void upon adoption of an ordinance by the City of Wichita, Kansas, banning smoking on such premises.”

Council Member Craig pointed out there was an amended motion that was seconded and needs to be dealt with first, and then you can deal with the motion.

Council Member Johnson stated that when there is a motion, it is the main motion and it is seconded you can have discussion, then if somebody, or even the same person wants to amend that motion they may do so, which requires a second. You then vote on the amendment and then you can vote back on the main motion. That is the procedure that we have ignored in the past and we should ignore it on this particular one also because he does not think that was the intent, to make a separate amendment.

Ms. Sexton clarified that she believes the way staff interpreted it was that the original person making the motion was trying to clarify his motion and the person that seconded it said yes, I agree with that. So that is a clarification of the original motion as opposed to being handled with what Mr. Craig indicated would be an actual amendment, which would typically be made by someone other than the person making the original motion.

Council Member Johnson indicated that a person can amend their own motion or offer a substitute motion and he believes that substitute motions are not allowed here.

Ms. Sexton agreed, that is against the council's policy here. She requested the city attorney read the motion once again to ensure that is what the original persons who made the motion and seconded the motion intended by the motion. It was staff's understanding that is what Council Member Warren was trying to do, to clarify the motion made, so that way the council is voting on the whole thing right now.

Mr. Alexander once again read the motion, "to adopt a clean indoor air ordinance with an effective date of January 1, 2009, exempting premises licensed for consumption of alcohol or cereal malt beverages on the premises provided that such exemptions shall be void upon adoption of an ordinance by the City of Wichita, Kansas, banning smoking on such premises."

Council Member Warren indicated that was the intent of his motion.

Council Member Bannon indicated she did second that motion.

Council Member Craig clarified that the motion indicates that if Wichita does it before, then we will align ourselves with Wichita.

Council Member Warren advised "absolutely".

Council Member Craig stated that "if they do it next week, we are on".

Council Member Warren responded that he was on board with that, it puts us on a level playing field.

Council Member Craig pointed out that that would invalidate the date of January 1, 2009.

Council Member Warren advised that was correct.

Mayor Avello asked if that could be.

Mr. Alexander stated that he does not believe that is staff's understanding and what they drafted does not reflect that as expressed by Council Member Warren. The ordinance would not become effective until January 1, 2009, regardless of what may happen between now and then, that is the earliest it could become effective.

Mayor Avello pointed out we could come back and change it, just because we make an ordinance does not mean we can't change it.

Mr. Alexander agreed.

Council Member Warren stated that if the City of Wichita passes something, which he does believe they will in the near future, they will have to give their businesses time, so it is not going to happen in a one week or six month period, it would be maybe a year, but he can live with it either way. His compromise point here is to get our businesses on a level playing field where the

rest of the world is, and our world is about a 30 mile radius from a business standpoint and that is the world he is interested in. As long as we get on that level playing field, he can live with it.

CITY ATTORNEY'S
RESTATED MOTION:

to adopt a clean indoor air ordinance with an effective date of January 1, 2009, exempting premises licensed for consumption of alcohol or cereal malt beverages on the premises provided that such exemptions shall be void upon adoption of an ordinance by the City of Wichita, banning smoking on such premises.”

VOTE:

Schwarz nay, Bannon yea, Mulanax nay, Arnold yea, Craig nay, Meidinger nay, Johnson yea, Warren yea, Avello yea. 5 yea, 4 nay, 0 absent, motion passes.

Mayor Avello made a pledge to the council that he will meet with Wichita Mayor Carl Brewer and have this put as quickly as he can on his agenda. He knows he has addressed it and their council has addressed it. He thanked the people of this community for the communication the council has had with all of you. You are very civil and very educated and he is proud to say he is the mayor and representing this community when it comes to actions like this. We thoroughly discussed it and that was his point when he brought it up so we could discuss it and do what we want to do before anybody else says we have to do it a certain way.

**THANK YOU
TO COUNCIL
MEMBER MULANAX**

Council Member Bannon thanked Ken, even for all the times he turned her microphone and light off and tried to keep her quiet. He was very A welcoming presence when she came to the council and didn't know what she was doing. She is going to miss his calming presence and never knowing when he will come out with that one thing that makes the light bulb go off over your head.

Council Member Warren stated Ken has been a great friend and he has enjoyed serving on the council with him. Although we think alike on a lot of issues, we have differed on some things as well, like this last issue. He has appreciated Ken's honesty, integrity and his willingness to discuss, listen and compromise. He thanked Mr. Mulanax for his wisdom and for pulling him back from the edge a few times when he wanted to get angry and he appreciates that. He hopes he finds areas within the city to become involved in and not fade into the woodwork so we can continue to benefit from his wisdom and experience. He is proud to call Mr. Mulanax his friend.

Council Member Arnold stated he has not known Mr. Mulanax as long as some on the council have, but he has enjoyed his spirit and willingness to listen. He has set a good example for all of the council. He is not really worried about him retiring and going off into the sunset because he knows where he is going, and at the same time while he is up there, he can cut his grass too.

Mayor Avello thanked Mr. Mulanax for being a good friend.

Council Member Mulanax stated it has been an honor and privilege to serve on the Derby City Council for the past 8 years; it has been a great ride. The council as a whole has accomplished a great deal for this community and we also set in motion a lot of things that he believes will benefit this community for years to come. He thanked not only the citizens of Ward IV, but for people throughout the community that have supported and encouraged him over the past years, it has meant a lot to him. He also thanked the council for their support and encouragement. Even though they have disagreed from time to time, they have always been civil and that is the great thing about this community. He thanked city staff and stated they were the best and he could not imagine having a better group to work with. He congratulated Mr. Staats on his new position, and finally he thanked his wife.

The council recessed at 8:30 p.m. and returned at 8:45 p.m.

SWEAR IN NEW COUNCIL MEMBERS

Jean Epperson, City Clerk swore in Mayor Dion Avello and Council Members Meidinger, Warren, Bannon and new member Mark Staats.

Mayor Avello stated they have accomplished a lot of things in the last 4 years and there is a lot more to do. This is a great city and sometimes the council makes decisions that they don't all agree on, but they leave here in a friendly fashion and what is done up here stays up here. Tonight the council did a crucial thing and he is sure they will be hearing about it tomorrow one way or the other. That is one of the many tough decisions they are going to have to make in the next four years. He likes hearing from the public and he will still have his office hours the day after the council meetings from 10:00 to 12:00, no appointment needed.

PRESENTATION ABOUT GANGS

Brian Norris, Derby Police Department and School Resource Officer at Derby High School made a presentation about gang awareness to the council.

DISCUSSION:

Council Member Bannon thanked Officer Norris for the great presentation. She pointed out that parents will get over the guilt of searching their child's room and encouraged that parent's do that. She questioned if uniforms would do anything to help the situation at the high school because it seems like so many things are related to their dress and style of dress.

Officer Norris advised it would be hard for him to say yes or no. A lot of schools that have gone to uniforms have seen a change for the better in those areas, but a lot of times they don't because the kids don't wear the uniform correctly when they come to school. When a kid comes to school and their pants are sagging, before they get in the door he guarantees two administrators and a police officer will make them pull their pants up, cinch their belt and if they

don't have a belt they have athletic tape, it's just not going to be allowed. Since he has been there in 2001 he has told more kids to pull up their pants than he ever thought he would have to in a lifetime.

Council Member Bannon asked what a "sharp skin head" was.

Officer Norris explained they are more violent types of skin heads, not only against a certain race, but if for example, as a Caucasian male has African American friends, they will not like him because he would be considered a "race traitor", they would bring violence against him for having an African American friend.

Council Member Warren thanked Officer Norris for his presentation and all that he does. He advised if there is anything the council can do to help, just let them know.

Council Member Craig thanked Officer Norris as well. He stated people should see these gentlemen in action in 5th grade because that is where they cut it off at; they establish a foundation that is pretty remarkable. The younger you start establishing the right foundation between right and wrong the better.

ROCK RIVER RAPIDS POOL PAINT BIDS

Robert Mendoza, Director of Public Works and Parks presented the staff report.

Background:

- This is an approved 2007 budget request to repaint the pools and surface striping at Rock River Rapids.
- This is necessary maintenance to provide a safe and functional system.
- Painting of the pool is expected to occur every three years.
- Four vendors were contacted and each provided a bid. These include Wildcat Painting Inc. with a bid of \$48,650, United Painting Contractors with a bid of \$95,220, Hurricane Maintenance and Painting with a bid of \$115,500 and Pro-Kleen with a bid of \$134,987.
- The Bid Board reviewed all pertinent documents and approved the lowest bid from Wildcat Painting on April 3, 2007.
- Wildcat Painting Inc. has previously been contracted with to provide painting and wood sealing services for RRR and has a good working relationship with the City of Derby.

Financial Considerations:

- The City estimated the cost of the project to be \$50,000.
- Approved bid of \$48,650.
- Total savings of \$1,350.

Legal Considerations:

- Competitive bidding is not required for procurement of this work.

- The City's purchasing procedure was followed in soliciting proposals for this work.
- The contract is under review and will be available at the Council meeting.

Policy Considerations:

- The Department followed all bid and purchase guidelines as required by the City of Derby Purchasing Policy.

DISCUSSION:

Council Member Warren advised he was amazed at the disparity of the bids. Usually whether we are doing sewer lines or streets they are relatively close and with this one there is a huge difference. he questioned why there was that much difference.

Mr. Mendoza explained there is no doubt that the minute they saw the bids they were shocked themselves. They took the time to meet, talk to and walk them through Rock River Rapids. After meeting with them they received the same numbers. They then called them again and asked if they were sure they could accomplish the work for that price and they advised they could. The reason Wildcat says they are so low is because they believe they have been there before and they know exactly what it will take and how long it will take, and with their experience he tends to believe them. The proof will be in the pudding at the end of the season to see how well they make it through his inspection process.

Council Member Craig pointed out that this estimate came in \$1,350 under the city estimate. He questioned if Mr. Mendoza asked the ones that were so high why they were so high.

Mr. Mendoza advised they talked to them about their pricing without telling them they were high or low and advised them they were concerned about their pricing and asked them if there was anything they had questions or concerns about. They were provided with the documentation for materials and the scope of work we wanted. The high bid has been high on everything we have bid.

Council Member Craig asked if the high bidders surveyed the work to be done as well as the low bidder.

Mr. Mendoza advised they met with each vendor on site.

Council Member Arnold asked if the low bidder guarantees their work in writing should it fail or not live up to our expectation.

Mr. Mendoza responded that we have the inspection process during the installation to make sure it meets the application standards of the product itself. It is a catalyst epoxy paint that requires a certain process to be installed. The rest of the work comes with its own warranty which is what is installed at the pool now that lasted three years. The rest of it will be site preparation; the cleaning, crack cleaning and caulking that they will inspect on site. They won't move to the next step or the next pool until they meet our requirements for each one. We are

going to work on one pool at a time and based on the weather conditions this time of year, it is not prudent to start all three simultaneously. We want to make sure we can start and finish each pool and be ready to open.

Council Member Johnson questioned why competitive bidding is not required for procurement of this work as stated under “legal considerations” in the staff report and asked what the requirements are for bidding, how big does it have to be.

Mr. Alexander stated that technically speaking that is a misstatement. When this was drafted that was overlooked and this project, as Mr. Mendoza indicated, was bid. There is a provision in the city’s procurement policy that allows the city manager to make a determination if competitive bidding is not appropriate for a particular acquisition, but that was not the case in this project.

MOTION: Warren moved to approve the bid from Wildcat Painting Inc. in the amount of \$48,650 for repainting of RRR pools and surface striping, and authorize the City Manager to execute the contract in substantially the form presented. Johnson seconded.

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

**PURCHASE PICKUP
TRUCKS FOR PUBLIC
WORKS & PARKS**

Robert Mendoza, Director of Public Works and Parks presented the staff report.

Background:

- This is an approved 2007 budget request to replace 3 light-duty pickup trucks.
- Two vehicles will be assigned to the Parks Division and one to the Street Maintenance Division.
- Existing vehicles will be used as trade-ins.
- Eleven vendors were contacted, of which three responded. These include Pfaff Chevrolet with a bid of \$75,769, Lubbers Ford with a bid of \$62,955 and Rusty Eck Ford with a bid of \$62,014.
- Bids were received and opened on March 13, 2007.
- The Bid Board reviewed all pertinent documents and approved the lowest bid from Rusty Eck Ford on March 26, 2007 for three ¾ ton, 2-wheel drive, regular cab pickup trucks.

Financial Considerations:

- The City estimated the cost of each vehicle to be \$22,900.
- Actual lowest bid received from Rusty Eck Ford is \$20,671 per vehicle.
- Vehicles are \$2,229 below budget, per vehicle.

Legal Considerations:

- All legal requirements governing solicitation and acceptance of bids have been satisfied.

Policy Considerations:

- The Department followed all bid and purchase guidelines as required by the City of Derby Purchasing Policy.

MOTION: Warren moved to approve the purchase of three ¾ ton pickup trucks from Rusty Eck Ford for \$62,014. Arnold seconded.

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

**TRUCK-MOUNTED
PRESSURE CLEANER
PURCHASE**

Dan Squires, City Engineer presented the staff report.

Background:

- The City currently utilizes a Truck Mounted Pressure Cleaner (Jet Rodder) purchased in 1995 to clean city sewer mains and clear blockages.
- This equipment is utilized by wastewater staff daily and is relied upon to clear blockages in emergency situations.
- The existing equipment is outdated, has a corroded tank, and requires significant ongoing maintenance. The pump has been rebuilt 4 times in recent years (at a cost of approximately \$4,000/each).
- In late 2006, the City solicited proposals from suppliers of this type of equipment.
- Pricing on the 3 pieces of equipment is as follows, all prices assume trade-in of the existing equipment:

Vactor Ram Jet	Key Equipment	\$134,870
Camel Jet*	Utility Maintenance	\$116,829
VacCon Hot Shot	Sellers Equipment	\$141,500

*The Camel Jet did not fully comply with equipment specifications, but was evaluated due to the favorable pricing.

- In February of 2007, wastewater staff participated in demonstrations and utilized a decision matrix to evaluate the Vactor Ram Jet and the Camel Jet units. Seller’s Equipment was provided the opportunity to demonstrate the VacCon Hot Shot but elected not to do so.
- The Vactor Ram Jet from Key Equipment was selected as the best overall value to the City. The primary reasons for selection of the Vactor unit over the Camel unit were:
 - The Vactor Ram Jet utilizes a single stainless steel tank. The Camel unit utilizes a 3-section polyethylene tank connected by hoses. The polyethylene

tank is subject to puncture, and it is likely the hoses and connectors would require frequent maintenance.

- The single piston pump on the Vactor Ram Jet can run dry for more than 30 minutes without damage, is more durable, and is easier to maintain. The triplex pump utilized by the Camel unit cannot be run dry without damaging the pump. The use of this equipment often precludes the operator from being able to watch the water level in the tank.
- The Vactor Ram Jet is shorter and more maneuverable.

Financial Considerations:

- While the purchase price of Vactor Ram Jet is more than the Camel unit, staff believes that the Vactor unit offers the best overall value to the City when reliability and future maintenance costs are considered.
- The 2006 budget included \$120,000 for purchase of this equipment, and the money was carried forward to 2007 in the Wastewater fund balance.
- If the purchase of this item is approved, the 2007 Wastewater Fund budget will require amendment for budget authority. The amendment process involves publication of the notice of budget hearing and a public hearing concerning the proposed fund expenditures.
- It is recommended that the amendment be undertaken later in the year in concert with the 2008 budget process.
- The total cost (with trade) of this equipment is \$134,870. The additional \$14,870 is available from the WW Fund.

Legal Considerations:

- The City's purchasing procedure was followed in soliciting proposals for this equipment.
- The terms for purchase have been reviewed and found to be satisfactory.

DISCUSSION:

Mr. Banset, Camel Jet, stated that in November of 2006 when proposals were requested they presented a bid. He indicated that due to the time this has taken, International and Sterling have had increases on their trucks, with International increasing about \$2,000 and Sterling increasing about \$800 over what they bid in November, but that still puts them under the \$120,000 budget. He advised these are both good products and feels the Camel product is excellent and the city would be giving about \$18,000 that would be unnecessary to have an excellent product.

Council Member Craig stated it appears the life cycle for this type of equipment is approximately 10-12 years, or is it actually shorter than that.

Mr. Squires explained they feel the newer equipment is probably good for 15-20 years.

Council Member Craig asked what brand the previous equipment is.

Mr. Squires advised it is Sewer Equipment Company and the tank was not stainless steel and it has corroded.

Council Member Craig asked how much we get as far as trade in.

Mr. Squires advised Utility Maintenance is offering about \$35,000 for a trade in, and the Vactor Ram Jet offered about \$10,000. He does not know where their difference in opinion is, but the units were similarly priced.

Council Member Warren stated that by looking at this obviously the Camel Jet did not fully comply and you looked at it anyway because of the price. What was the deciding factor from staff to go with the recommendation that was made?

Mr. Squires stated there were several items, primarily the tank configuration and material. The Vactor unit has one stainless steel tank in it and the Camel unit has three polyurethane tanks that are connected by hoses and they are square instead of round. There are also different pump mechanisms, with the Camel unit having one similar to what we have now that we have had to rebuild several times. It is not capable of running dry without damaging the pump and a lot of times when we use this equipment we are in the back yard with the truck in the front yard and you can't watch the water tank. We have rebuilt the pump on our current equipment several times costing about \$4,000 each time.

Council Member Craig asked what the projected upkeep of the equipment is. Obviously the current one cost a lot of money at the end of its life cycle to keep going. He asked if there is any type of warranty furnished by the manufacturer.

Mr. Squires advised he believes they both come with a 12-month warranty and after that the upkeep and maintenance will be ours.

Council Member Craig asked what the projected upkeep is for the next 15 years.

Mr. Squires They did some rough numbers on what might happen with the Camel unit because of concerns about the pump and estimated some man hours and what it costs to rebuild a pump. Estimating rebuilding a pump every 5 years, it would be about an extra \$19,000 for the tanks, maintenance and pumps, but it is anybody's guess on that really.

MOTION: Craig moved to approve the purchase of a Vactor Ram Jet from Key Equipment in the amount of \$134,870 and authorize the City Manager to execute the necessary documents. Bannon seconded.

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

**RESOLUTIONS FOR
SEWER, DECEL LANE
AND SIDEWALK**

**IMPROVEMENTS TO
SERVE RIDGE POINT
4TH ADDITION**

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

Background:

- Ridge Point 4th Addition is located at the southeast corner of Buckner and Patriot Avenue.
- A lot split for Lot 1, Block 1, Ridge Point 4th was presented to the Planning Commission and approved on December 7, 2006.
- One of the conditions for the approval of the lot split was the guarantee of sanitary sewer, decel lane and sidewalk improvements.
- The developer has submitted those required petitions and Gilmore & Bell has prepared the corresponding resolutions for Council consideration.

Financial Considerations:

- Funds for the construction work will be included in the 2007-1 Temporary Note issue.
- Costs for all of the 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:

- This is a valid petition 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. 36-2007

SANITARY SEWER IMPROVEMENTS/RIDGE POINT 4TH ADDITION.

RESOLUTION NO. 37-2007

SIDEWALK IMPROVEMENTS/RIDGE POINT 4TH ADDITION.

RESOLUTION NO. 38-2007

STREET IMPROVEMENTS/RIDGE POINT 4TH ADDITION

DISCUSSION:

Council Member Craig asked if this was a necessity since it is in question as to whether that business will be there.

Mr. Brown explained they have received reports that the Taco Bueno Corporation has pulled back on some of their construction plans in the Wichita market. According to the developer, they have talked to Taco Bueno corporate office and they are not as happy as they thought they would be with the Wichita market, their sales are simply just not as strong as they thought they would be. That project may or may not happen, Taco Bueno still owns the land and they may in fact come back a few years from now with a project for their restaurant or they may try to sell it. In the meantime that lot split that was approved by the Planning Commission still is a valid lot split and creates that new building site. That building site, whether it gets built on or not will require these improvements.

Council Member Craig clarified that the petitioner is Lusk.

Mr. Brown advised that was correct.

Council Member Arnold asked if the owner will still pay for the improvements that they made.

Mr. Brown explained that the only improvement that will go in immediately is the sewer and Lusk is planning to pay for that without specials, even though we have a resolution that guarantees it. That is the one and only improvement that we will see immediately and the sidewalk will probably be done someday with a building on that site, whether it is a Taco Bueno or another business. If the council wishes to pursue that sidewalk prior to a building going in, then we have a mechanism here to do that. The decel lane will be delayed for a number of years, probably.

MOTION: Arnold moved to approve the resolutions for sanitary sewer, decel lane and sidewalk improvements to serve Ridge Point 4th Addition. Warren seconded.

FURTHER DISCUSSION:

Council Member Bannon asked why the property owner is not one of the listed petitioners.

Mr. Brown stated that at the time the petition was signed it was before they closed on the land.

Council Member Bannon advised that when we are looking at putting a resolution on long term that may happen now or down the road, she would like the owners of the property to be listed as part of the petition, whether it be a side note or added note. Right now we have a developer way in the beginning who has now sold the property saying they want to do this and the owner is not involved in that process.

Mr. Brown advised he understands. You have to assume that when the land purchase was done there was some talk about specials. In this particular case we are still dealing with Lusk on the petitions.

Council Member Bannon advised she thinks this plays into issues they have had on not only a residential basis, but now brings it into the commercial arena and bigger dollars and larger projects.

Council Member Craig advised that it does not show who is directly responsible for it now. He asked if the decel lane is positioned for this one parcel or is it for the entire development.

Mr. Brown advised the decel lane is for the full project, 9 acres, which Lusk still owns 8.5 acres of that and he would still be responsible whether he retains ownership or sells parcels in the future. The properties are responsible for that cost.

Council Member Craig asked what their obligation is for this one piece that is carved out.

Mr. Brown advised that sanitary sewer is being paid 100% by Lusk out of his pocket, even though the resolution is a “belt and suspenders” kind of thing to cover our risk. They are agreeable, in fact bound by contract, to Taco Bueno to do that sanitary sewer.

Council Member Craig asked if that is the case even though Taco Bueno, at this time, is not going to develop.

Mr. Brown advised that was correct.

Council Member Craig clarified that the city has no part in this other than authorizing that it be done.

Mr. Brown advised that was correct, it gives us the right to do it if the developer does not fulfill those obligations.

Council Member Warren advised he understands where Council Member Bannon is coming from on this but he would probably be more concerned if we were dealing with a residential area because homeowners are not experienced in this type of thing. Every commercial deal that he has been involved with has attorney’s asking what their responsibilities are. The bottom line is, what we have in place here protects the city and the ultimate protection is, if they don’t pay for it we get the land, we just take it, our risk is extremely small. He feels comfortable that the city is protected.

Council Member Bannon stated when she looks at the division of the cost on the resolution and the numbers; if he bought just over an acre on a nine acre tract he should be paying just over 1/9th.

Mr. Brown advised that in some cases this was split on a frontage basis and not necessarily on acreage, so that may be the difference in the fraction.

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

ADJOURNMENT

MOTION: Warren moved to adjourn at 9:50 p.m. Johnson seconded.

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

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

[Return to agenda](#)