

**APPROVED  
REGULAR COUNCIL MEETING  
August 28, 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  
Chuck Warren  
Charlie Schwarz, Cheryl Bannon  
Mark Staats, George Arnold

COUNCIL MEMBERS ABSENT:

WARD II

Loren Johnson

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Pastor Paul Wilke, Woodlawn United Methodist Church.

**CONSIDERATION OF  
MINUTES**

Minutes of the August 14, 2007, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of August 14, 2007 Regular Council Meeting. Arnold seconded.

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

**PUBLIC FORUM**

**Connie Nunnally**, 1401 Pinion commented about the hotel proposal. The purposes of tax abatements are for cities with slow growth and she does not believe that characterizes Derby. Blighted commercial areas is another consideration, looking at the number of new commercial areas coming in we don't really fit that picture. High unemployment, every fast food chain in town has help wanted signs out and the Spirit Company is offering \$5,000-\$15,000 to anyone bringing in a qualified worker so our unemployment rate is pretty steady. Then there is the idea of competition; you set some standards at meetings and now you are going to go beyond those standards. Once you move outside of the standards that you have set and you exempt someone from those you start some ill feelings and bidding wars. Pretty soon rumors start about why somebody got special treatment and someone else didn't, as well as rumors about political

patronage and things like that. Once you set these standards you should stay with them. She understands the council did quite a bit of searching and came up with those standards and now you are going to move away from them. The fact that there were three bidders presenting plans for hotels indicates that there is real interest there. It was also said that the city was going over their estimated future debt ratios and in the past council has tried to keep it at 20% and now you are going over that. If you read the papers in the last two weeks you know that almost every financial analyst says that we are going into either a slow growth drop or we are going into a deep recession. We can probably decide that tax revenues will drop. If you give someone a 10-year exemption you are saying you can see that far into the future and you know there won't be any extenuating circumstances and we don't need that tax. You don't know what is going to happen to the economy, you don't know if there are going to be violent storms in Derby and have tremendous clean-up. Going out 10-years she thinks is too far. She read a portion of an article from the Kansas City Star. She concluded that if the city does not need the tax dollars, can she please apply for an exemption.

**Council Member Bannon** commented on Summerfest, it was a great success. There was a great turnout with over 500 people in attendance and there were a lot of activities for the kids. She gave a "hats off" to the Community Coalition and the kids that organized this, raised funds and put it on. She hopes this is the first of many to come. The library was there with voter registration and early ballots and she believes those may be at city hall as well for the upcoming October 16<sup>th</sup> election. The Derby Dash was also there and their ridership is up, you can schedule a ride by calling the Senior Center.

**Council Member Staats** discussed the Derby Horizon. It has come to his attention that a handful of people did not receive one in the mail, he was one of them. If you did not get one, please let City Hall know that you did not receive one. Citizens should have also received a survey card in the mail today and he encouraged everyone to take a look at it and get online and take the survey. If you don't have a computer you can call and have one mailed out.

**Kathy Sexton**, City Manager explained that everyone did not receive those surveys today. Some people got them a few days ago and they will probably be spread out. We did think that everyone would have received their newsletter by now. When we heard today that a couple of people haven't we would love to get those calls at 788-1519 and let us know if you did not receive your Derby Horizon.

**Council Member Craig** announced that he and Mr. Meidinger are dressed appropriately for the meeting this evening and will not displace each other.

**Mayor Avello** asked how we are doing on sales tax now that Rock River Rapids has closed and it may not have been as bad a year as we thought.

**Ms. Epperson** explained the half-cent city wide sales tax is right on track with our forecast in the revised budget this year. We have forecast \$1.6 million and we are at \$1,089,000 which is 67% for the year. It is about 3.5% higher than this same period last year. We are in good shape.

**Mayor Avello** commented that next year may be even better with the opening of Target and Kohl's.

**Mrs. Epperson** agreed, once Kohl's opens sales tax will be better.

**Council Member Meidinger** stated that while they were at the school board meeting last night the school resource officers were present. He was very proud of those police officers; they made an excellent presentation to the school board. The police officers were very appreciative of the fact that the school board sent them to a conference where Derby was awarded the Model School Resource Officer award. If a school wants to get a school resource officer program going, they would use Derby as a model. He was very proud of our officers for that achievement as well as the way they presented themselves at the school board. He can see why the three officers were so well accepted at the school level. They are real gentlemen and real nice guys and the people of Derby should be very proud of the officers that we have sent to the school. He wants the citizens of Derby to know we have some very fine police officers.

## **PROCLAMATION**

Mayor declared September as Derby Senior Center Month in the City of Derby.

**Dee Williams**, Senior Center Director accepted the proclamation. She also informed the public that September is National Senior Center month and explained the planned activities.

Derby Senior Center Advisory Board members were also present.

## **GRANT APPLICATION FOR 2007 HOME GRANT**

**Allison Moeding**, Director of Economic Development presented the staff report.

### **Background:**

- The federal HOME Investment Partnerships Program supplies funding to the Kansas Housing Resources Corporation (KHRC) for the HOME Rehabilitation Program, which focuses on improvements to owner-occupied homes.
- The City was awarded its first HOME grant in 2006, with projects being done in 2007 and 2008. Renovations using those grant funds are currently underway, with one home complete, two homes under contract and five additional homes being inspected in August. So far, the recipients have been pleased with the services provided by the program and the results have been positive.
- If funding is awarded for a 2007 HOME grant, the City will contract with an independent administrator to coordinate the program and provide inspection services over a 24-month period beginning in 2008 and ending in 2009. The administrator for the 2006 grant is the South Central Kansas Economic Development District (SCKEDD). SCKEDD was selected through a required RFP process, which would be repeated for this grant.
- The City would use the same target area for eligible homes used in the 2006 grant and would again solicit applications from homeowners in the area. The 20 applicants on the waiting list for the 2006 grant would be assisted first, but the waiting list would be opened to new applicants.

- To be approved, all homes must be insured and property taxes must be current. Homes in the 100-year and 500-year floodplain are not eligible.
- When work is completed, a three-year forgivable lien on the property is filed with the Register of Deeds. If the house is sold before the 3-year period is over, a pro-rated portion of the funds used for the repairs must be repaid. If the house is sold before the 3-year period is over, a pro-rated portion of the funds used for the repairs must be repaid.
- Common improvements include windows, doors, roofs, electrical systems, plumbing, structural damage, heating and air conditioning systems and siding.
- Approximately 12 homes are expected to be rehabilitated through this program.
- Eligible homeowners must meet the following income guidelines, which are unchanged from the 2006 grant and will be verified at the time of application by the grant administrator.

Household Size	Maximum Income
1	\$34,250
2	\$39,150
3	\$44,050
4	\$48,950
5	\$52,850
6	\$56,800
7	\$60,700
8	\$64,600

**Financial Considerations:**

- The City’s 25% match amount for the \$300,000 grant is \$75,000. The cash portion of this match would be \$33,500, plus a separate administrative fee of \$3,000. The remaining \$41,500 of the City’s match will be taken from other sources, including the value of waived building permit fees, the value of waived sales taxes on project materials (materials purchased through the program are automatically sales tax exempt), and may include funding from other programs such as the Kansas Weatherization Assistance Program, available to qualified homeowners. The City’s cash portion plus the administrative fee would be spread over two years, budgeting \$18,250 in 2008 and again in 2009.
- Funding in the 2008 budget will be part of the Engineering – Code Enforcement budget.
- Administrative fees for the program are expected to be \$18,000. Of that amount, \$15,000 will come from the grant proceeds, plus the separate \$3,000 payment from the City.

**Legal Considerations:**

- The City is not obligated to accept the funds if the grant is awarded.

**Policy Considerations:**

- With a qualified waiting list of approximately 20 homeowners in the target area, there is a demonstrated demand for the program.
- Rehabilitation of aging homes can help preserve the city’s older neighborhoods and prevent signs of decline from proliferating.
- The program would provide remediation options to some code enforcement violators.
- Improvements could address concerns about declining property values in some neighborhoods.

DISCUSSION:

**Council Member Bannon** asked if SCKEDD were the only ones that applied for the RFP.

**Mrs. Moeding** explained last year they were the only ones that responded to our request for proposals. We will go through the same process again, the state provides us with a mailing list of all the people who are qualified to administer these grants so we will send out an invitation to all of those to bid and pick the best one. It very well may be SCKEDD again, or there might be someone new this year.

MOTION: Bannon moved to approve the grant application in the amount of \$300,000. Schwarz seconded

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

**SETTLEMENT  
AGREEMENT – *BEACH  
HOUSE, ET AL., V. CITY  
OF DERBY***

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

**Background:**

- In early 2007, the City Council adopted new adult entertainment regulations.
- At that time, Michelle's Beach House was the only business offering adult entertainment, although a second such business has since opened.
- Beach House owner Michelle Borin challenged the new regulations, filing *Beach House, Inc., v. City of Derby*, case no. 07-1098-JTM (the "Case") in the Sedgwick County District Court and obtaining an order restraining enforcement of the new regulations.
- The case was later removed to federal court at the request of the City.
- A hearing on plaintiffs' request for a temporary injunction was held June 18; the court has not yet issued a ruling in the Case.
- At the direction of the Court, the parties undertook to resolve the Case by negotiation and have now reached tentative agreement.

**Financial Considerations:**

- Settlement will resolve the Case with no additional legal expense to the City.
- Taking the Case through trial and possible appeal would entail substantial legal expense to the City.

**Legal Considerations:**

- The proposed settlement resolves all outstanding legal disputes between the City, Beach House, Inc., and Michelle Borin.
- Pursuant to the terms of the proposed settlement:
  - Plaintiff's acknowledge the "limited validity" of their claims and dismiss the Case with prejudice (meaning it cannot be reinstated) and release all claims relating to ordinance no. 1881.
  - Each party pays its own legal fees and costs.

- The neon palm trees will be removed permanently.
- The City's recently enacted adult entertainment ordinance applicable to adult cabarets will be amended in certain particulars, with the amendments applicable to plaintiffs through December 31, 2021. Amendments include:
  - Definitional changes to the terms "nude" and "semi-nude" permit wear of opaque pasties and T-back swim suit bottoms.
  - Elimination of misdemeanor marijuana convictions from definition of "morals charge."
  - Elimination of the 4-foot separation requirement between performers and customers, with a prohibition on physical contact retained.
  - Tipping will be allowed hand-to-hand only.
  - Posting of performance-related restrictions in adult cabarets will be required.

**Policy Considerations:**

- The terms of the proposed settlement preserve the essence of the adult entertainment ordinance while not unduly restricting plaintiffs' business practices.

DISCUSSION:

**Council Member Bannon** advised at one point there was discussion about if this property was ever sold that this exemption would possibly go away, she assumes legal staff has looked into that and it's not feasible, is that correct?

**David Rapp**, Hinkle Elkouri explained it is safe to say that was going to be a deal breaker. The way to resolve it he believes was to just set a date in the future. That will also give the current owners an opportunity to sell the property subject to the same limitations.

**Council Member Bannon** asked if this can only be an adult cabaret, or can it be an adult bookstore?

**Mr. Alexander** advised that currently this location would be available for any business use, including any adult entertainment use that is permitted by our current zoning regulations. As you know staff has been directed to prepare revisions to our zoning regulations to address that issue.

**Council Member Craig** addressed paragraph 3, he asked if this specifically addresses only the property located at 239 W. Greenway.

**Mr. Alexander** advised that is specific to that location only.

**Council Member Craig** asked if it had any bearing on down the road for the other location at all.

**Mr. Alexander** explained the ordinance they expect to present to the council later this evening will apply to both this location and the Sheena's location, as well as any other adult entertainment establishment that might open in Derby in the future.

MOTION: Warren moved to approve and authorize the Mayor to execute the proposed settlement agreement and to authorize the City's counsel to approve the order of dismissal. Staats seconded.

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

## **AMENDMENTS TO ADULT CABARET REGULATIONS**

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

### **Background:**

- Ordinance no. 1881 effective March 7, 2007, imposed new and additional regulations on certain adult entertainment businesses, including adult cabarets.
- Beach House owner Michelle Borin sued to challenge the new regulations (*Beach House, Inc., v. City of Derby*, case no. 07-1098-JTM, the “Case”).
- The parties have agreed upon a mutually satisfactory resolution of the Case, pursuant to which the City would amend applicable adult entertainment regulations in certain particulars.
- The proposed ordinance would satisfy the City’s obligation under the settlement agreement.

### **Financial Considerations:**

- Other than relieving the City of possible future litigation costs, adoption of the proposed ordinance will have no direct financial consequences to the City.

### **Legal Considerations:**

- The proposed ordinance amends the City’s adult entertainment regulations pertaining to adult cabarets:
  - Definitional changes to the terms “nude” and “semi-nude” permit wearing of opaque pasties and T-back swim suit bottoms.
  - Elimination of prior misdemeanor marijuana convictions from definition of “morals charge.”
  - Elimination of the 4-foot separation requirement between performers and customers, with a prohibition on physical contact retained.
  - Tipping will be allowed hand-to-hand only.
  - Posting of performance-related restrictions will be required.
  - Amendments applicable to plaintiffs through December 31, 2021

### **Policy Considerations**

- The current adult cabaret regulations were adopted for the purpose of substantially strengthening the City’s regulation of adult entertainment businesses.
- The proposed ordinance, while altering those regulations in several respects, keeps the City’s regulations as strong as or stronger than those applicable in neighboring jurisdictions.
- The proposed ordinance will expire as of December 31, 2021.
- Staff will separately recommend zoning restrictions on the location of adult businesses at an upcoming meeting of the Planning Commission.

## **ORDINANCE NO. 1900**

AN ORDINANCE AMENDING SECTIONS 5.32.020, 5.32.100 AND 5.32.150 OF THE CODE OF THE CITY OF DERBY, KANSAS RELATING TO REGULATING PUBLIC

NUDITY AND ADULT ENTERTAINMENT AND REPEALING SUCH ORIGINAL SECTIONS.

MOTION: Schwarz moved to approve adoption of an ordinance amending City regulations pertaining to adult cabaret businesses in certain particulars. Warren seconded.

DISCUSSION:

**Council Member Craig** pointed out for the audience at home that inside the ordinance is a penalty, that if enacted can be very severe. It can be as much as \$2,500 and six months confinement. This is not something that has been looked upon with a weak eye; it is a very strong ordinance as it sits now. He knows that those involved in this business understand the severity of the penalties if the ordinance is violated. He thanked everyone for those involved in this matter.

**Mr. Alexander** added that in addition to the penalties in the ordinance, there are also administrative remedies with respect to licensure either in establishment or entertainer licenses should they violate the ordinance. That is intended also to be used as an additional tool for enforcement.

**Council Member Schwarz** asked if he needed to amend his motion regarding the reference to Ordinance 1881.

**Kathy Sexton**, City Manager advised she didn't think so. Ordinance 1881 was the one passed back in February; this one hasn't been given a number yet. If the recommended motion was read, it is fine.

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

**LEGISLATIVE WRAP-UP**

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

**Background:**

- Maintaining communications with legislators and tracking legislative issues are important administrative functions to ensure that the City stays aware of and involved in state and federal legislation affecting the organization and the community.
- On February 13, 2007, the City Council adopted its Legislative Agenda for the 2007 State legislative session. The proposed legislative agenda presented Derby's core legislative principles and its legislative priorities. Derby's proposed legislative priorities for 2007 were 1) restoration of the Local Ad Valorem Tax Reduction (LAVTR) Program and 2) a statewide smoking ban. The agenda also supported Derby's partnerships with the League, Visioneering Wichita, and REAP, and provides their legislative agendas. A copy of the 2007 Legislative Agenda is available at [www.derbyweb.com](http://www.derbyweb.com).
- The Legislative Agenda is complemented by a Legislative Wrap-up that follows the conclusion of the session.

- The enclosed Legislative Wrap-Up summarizes the key issues of the 2007 legislative session and discusses measures adopted by the State that directly affect the City organization and Derby community.
- Complete discussions of the issues are provided in the proposed legislative agenda. Due to the document's graphics, its file size is too large to make available on the website with the agenda packet. However, a full-color copy of the legislative agenda is posted on the City website under the Legislative Relations webpage so that the public and members of the media can access it. Also, each member of the governing body will be provided with a full-color copy; copies will also be available at the meeting for public viewing and available at City Hall from Thursday, August 23 through Tuesday, August 28.

**Financial Considerations:**

- There are no direct financial considerations associated with this item.

**Legal Considerations:**

- There are no direct legal considerations associated with this presentation and discussion.

**Policy Considerations:**

- Various pieces of legislation passed by the legislature require further exploration or action by the City. Such items are duly noted under "Action Required." These items will be addressed separately in the appropriate time frame by the appropriate personnel.

DISCUSSION:

**Council Member Warren** asked, if a citizen had an issue they wanted to bring forth, is it something as simple as a phone call or do we have a place on our website they can go to to find out what the city's position is on a particular issue. There are a number of issues that have been identified by staff and council, but if an issue comes up at the state legislature that we haven't looked at and they want to know the city's position on that, how do they find out what it is?

**Ms. Wagner** explained that we tend to stick to our legislative agenda throughout the session because that is a very clear vehicle to guide her in what she does and how she communicates. Now is the time of year that it's important for citizen's to speak up if they feel like there is an issue that would be appropriate for a city to weigh in on, please contact her, as the city's legislative relations liaison. We also have a webpage at [www.derbyweb.com](http://www.derbyweb.com), visit the legislative relations page to gets tons of material, including our previous legislative agenda and this legislative wrap-up. Hopefully this will give citizens a flavor of the issues that we try and target.

**Ms. Sexton** added that during the legislative session things happen really fast and sometimes issues come up that we don't have time to come back before the next council meeting to take formal votes and that kind of thing. Sometimes we fall in line behind the League of Kansas Municipalities and what their attorneys have looked at and try to see what the League says, and that probably fits us too. Occasionally, there will be a difference of opinion there but we are a pretty unique city for Kansas, the League represents some really tiny cities with different forms of government. Occasionally we just have to make a call, she or Mandy will get a call asking how we feel about this and you have to respond pretty quickly. We would never do that on anything of any major substance but there are times when something would come up and you would say that we haven't talked about that yet, but we would bring it to you at the earliest possible moment.

**Mayor Avello** advised there will be a meeting in late October or early November for cities involved in REAP to pick out legislative agenda items bigger than what we might think of here in Derby. What is happening up there is the fact that REAP is getting cohesive and becoming a

strength in numbers and has turned the corner in Topeka with Johnson County, which is big. They are suddenly realizing that we have a lot to offer down here and the fights may get more contentious but we have a unified five county region here that is awfully powerful. He thinks we are going to see some major changes here. As time goes on he will report back to this group on what they are doing up there and he really thinks this coming year there are going to be some big changes for South Central Kansas coming from the state.

MOTION: Warren moved to receive and file the report. Schwarz seconded

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

## **STREET STRIPING**

**Robert Mendoza**, Director of Public Works and Parks presented the staff report. He also introduced Tami Snow, the new Public Works and Parks Coordinator

### **Background:**

- Street striping has been historically provided by city staff in small increments. Due to the extent of striping needs on primary arterial streets, this work exceeds our in-house capabilities.
- A striping program was approved and funded in the 2007 budget.
- The streets to be striped are Madison from Rock Road to K-15 and K-15 from Buckner to Kay.
- Staff contacted three vendors, Cillessen and Sons, Highway Technologies, and Inland Corporation. The City received one bid from Highway Technologies in the amount of \$24,994 which includes a \$5,000 municipal discount.
- The Derby Bid Board met on June 7, 2007, to review the quote and bid process. The Bid Board approved the bid from Highway Technologies. The City Manager reviewed and approved the bid board documents on June 7, 2007.
- Work will begin based on a mutually accepted schedule.

### **Financial Considerations:**

- The Council has approved \$25,000 for this application in the 2007 budget.
- Actual Cost \$24,994.
- Application will re-stripe 6.47 lane miles.

### **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: Schwarz moved to approve the contract with Highway Technologies, Inc., in the amount of \$24,994 for striping 6.47 miles of city streets in substantially the form presented and authorize the City Manager to execute the contract. Bannon seconded.

## DISCUSSION:

**Council Member Warren** asked if that bid is cheaper than we would do it ourselves.

**Mr. Mendoza** explained that the reality of doing it ourselves is the equipment, training and time. We don't have the equipment that we know how to run, we don't have the training of the individuals that can accomplish it, nor do we have the time to do this. It is not just striping, it is traffic control and everything involved with it. It is cheaper than what we can do ourselves. We can accomplish more, which is really what we are going to have to go with. Currently with our budgeting process and the amount of work we are doing we have to rely on contracts such as this to maintain and be able to get this type of work accomplished on an annual basis. This is really our first step to step out above and beyond, otherwise it would not get done, or it would get done in small increments over time.

**Council Member Craig** asked if they will be burning or painting the stripes.

**Mr. Mendoza** stated there is a difference between lane striping, which is what this is. We are going to be using painting. We are using a specialized paint that deals with the oils in the street, so it will have some lasting effect. We are focusing on our high traffic areas. K-15 was originally thermal taped after the reconstruction and when it gets cold it chips and peels up. We are replacing it with paint, paint is cheaper and it can be done sooner. Madison is all paint, although Madison will be completely redone in 3-years we have to do the striping to keep the lanes accessible and visible so we don't want to spend the money for that type of thermal tape. Cross walks and traffic control directions are thermal taped and heated to about 2,000° and melted into the asphalt. All of our lane striping will be paint and all of our lane and traffic directions will be the thermal tape.

**Council Member Bannon** pointed out K-15 was just done 2 years ago, does thermal taping not last that long?

**Mr. Mendoza** explained that thermal tape is designed to be melted into the grooves on concrete which is a beautiful thing but it does not hold up well to snow blades. Once you get ice like we have had ice and you scrape like we scrape, it's gone. The paint will last a little bit longer because it gets lower into the groove. You will still see the stripe but the pretty yellow that you see will fade quickly, within days.

**Council Member Bannon** asked how long the paint will last.

**Mr. Mendoza** advised he hoped to get 3 years out of the striping. The intersections and the turn lanes are the worst areas, where we are plowing. Based on the seasons coming up he doesn't really have a good idea. When you look at Madison, it has not been restriped in 8 years.

**Council Member Bannon** asked if this was something we are looking at having to put into a maintenance type item in the budget and do certain amounts of lane miles every year.

**Mr. Mendoza** responded "absolutely". The history of the public works budget has been that most of the large dollars were put into materials. We looked at 5 years of history and came up with an average cost and took the remaining dollars and looked at different programs we could create with that, that is why we haven't added anything to our budgets.

**Council Member Bannon** asked if we had done this before.

**Mr. Mendoza** responded it was all done in house. We were tasked in doing it but it was not being accomplished.

**Council Member Bannon** clarified that we have not done any striping in a number of years.

**Mr. Mendoza** advised that was correct.

**Council Member Bannon** asked if it would be to our benefit to look at getting the equipment to do it.

**Mr. Mendoza** responded that equipment equals manpower and manpower equals more employees. Over time, as the city grows we will have to find some way to do it cheaply or we have to begin hiring the personnel and buying the equipment to do it ourselves. It is either one or the other.

**Council Member Bannon** asked if Rock Road will be done thermally or will it be painted.

**Mr. Mendoza** advised he could not answer that question, Mr. Brown or Mr. Squires will have to answer it. He believes it will be thermal tape but he does not want to confirm that.

**Council Member Bannon** stated she would hate to see us do that if we only have a 2 year time span on thermal; it makes more sense to look at the paint then.

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

### **GARRETT PARK BALL FIELD LIGHTING REPLACEMENT**

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

#### **Background:**

- Garrett Park Ball Field #3 is a primary and valuable field for all recreational baseball and softball tournaments for the DRC and USD 260.
- The lighting has diminished with time and age of equipment to the point where it is affecting the usability and availability of the field.
- The current lighting system does meet minimum standards for regulation playing fields.
- Requests for bids were sent to three equipment providers and three installation contractors.
- The City received one combination bid from Phillips Southern Electric with pricing for two different equipment systems. The first option included Musco equipment with PSE installation in the amount of \$78,087; the second option included Techline Equipment with PSE installation in the amount of \$76,789.
- We recommend the Musco bid in the amount of \$78,087 because of the type of equipment and long term impact to the life of our existing wooden poles.
- The Derby Bid Board met on August 6, 2007 to review the quote and bid process. The Bid Board approved the bid from PSE with Musco Equipment. The City Manager reviewed and approved the bid board documents on August 8, 2007.
- Work will begin based on a mutually accepted schedule.

#### **Financial Considerations:**

- The Council has approved \$108,000 for this project in the 2007 budget.
- Actual cost \$78,087.

#### **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.

DISCUSSION:

**Council Member Craig** asked if this lighting system was similar to the one installed at the high school baseball field.

**Mr. Mendoza** advised it was very similar but not exact.

**Council Member Craig** asked if it had any sort of longevity in terms of replacement of elements, etc. He heard during that lighting deal that they did not go with the better set of lights that would have lasted longer, are we in the same boat here?

**Mr. Mendoza** stated they are estimating that these fixtures will provide about 10-years worth of service before we have to start talking about replacing bulbs or elements. Lighting is based on a lot of things, it's not just the wattage of the bulb, it is the type of the bulb, the angle of the lighting, the height of the pods and the poles. We have a smaller field than the high school and we are lowering our light system as well and are anticipating 10-years of good lighting before we start worrying about replacing equipment.

**Council Member Craig** clarified that these pods will be lighter with less pods in each one.

**Mr. Mendoza** advised that was correct. The pod construction is different with a smaller number of lights with it. The heavy unit that powers the bulb is now 10-feet off the ground instead of at the top of the pole with all the weight, which is causing them to bow and bend.

**Council Member Bannon** asked about the impact of the lighting on the residences in the area.

**Mr. Mendoza** explained that ballpark #3 backs up to the Park Hill Addition, their back yards would be the back side of the poles.

**Council Member Bannon** asked if we were putting something in to minimize the impact on those residents.

**Mr. Mendoza** advised they are not directional but they are aimed lighting pods. It will be a brighter shine on the field and a lesser impact on those to the east of the fields. The lighting is all the way around so you will have a brighter glow, which causes an ambient glow around you but there will be no directional lighting.

**Council Member Meidinger** asked if the new system is comparable to the high school field.

**Mr. Mendoza** advised it would be, it will be regulation lighting for regulation baseball play, which is exactly what we need to have happen.

MOTION: Craig moved to approve the contract with Phillips Southern Electric Co., Inc., in the amount of \$78,087 for installation of lighting system at Garrett Park Baseball Field in substantially the form presented, and authorize the City Manager to execute the contract. Warren seconded.

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

## **RECLAMITE PAVEMENT SEALER APPLICATION**

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

### **Background:**

- Reclamite is a surface seal that binds small aggregate into the porous asphalt surface. This seals the surface from water infiltration and lengthens the lifespan of the asphalt.
- A list showing work to be accomplished is attached. Designated streets were chosen based on current pavement conditions and expected life span.
- Pro-Seal is the only local vendor working in the South Central Kansas and Oklahoma area. The Derby Bid Board met on August 6, 2007 to review the quote and bid process. The Bid Board approved the Proseal bid as presented. The City Manager reviewed and approved the bid board documents on August 8, 2007 as presented.

### **Financial Considerations:**

- The City has approved \$50,000 for this application in the 2007 budget.
- Actual Cost \$49,548.25.
- Application will seal 91,756 square yards of asphalt surface.

### **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.

## DISCUSSION:

**Council Member Meidinger** asked about Buckner from Red Powell to Patriot, aren't we doing reconstruction of Buckner?

**Mr. Mendoza** stated that was correct, it will stop at Red Powell. Reconstruction will be to the south of that area. We are going to seal Red Powell to the north to maintain our level there.

**Mayor Avello** asked about progress on Hila street.

**Mr. Mendoza** advised it has not been completed; it is a different contract and will come after this project.

**Mayor Avello** asked about deterioration on the bridge at 87<sup>th</sup> and Woodlawn.

**Mr. Mendoza** advised he is aware of that.

**Mayor Avello** commented that was the 2<sup>nd</sup> time in the past three years.

**Mr. Mendoza** explained it is the 3<sup>rd</sup> time in the past three years. The Woodlawn Bridge has begun “spawling”, which means the top layer of concrete is beginning to ripple apart. If you look at bridge construction it is a concrete pad with multiple layers of steel mesh built in. We have lost about ¾ of an inch of the surface and the bridge decking is roughly 8-9 inches thick. It is not as dire as it looks but what has happened is that water has gotten down in that and rusted some of that rebar, allowing air to come in and water freezing it pops it out. The State has been out to show us what the best fix would be. They will be jack hammering down to underneath that first layer of steel mesh matting and repouring the surface to bind to the rebar and build the surface back up to the top. That will happen this season and is currently being temporarily fixed with an epoxy type concrete that hardens and stays in place like a plug to keep it from rusting.

**Council Member Craig** stated he has people approaching him frequently about the millings on Hila. It seems to be that their main concern is that once the millings are put down that it seeks the weakest point as far as the surface goes and creates a pothole very quickly. He asked if there were any corrective action we can do for that? He stated he knows this is off topic and requested some information within the week.

**Mr. Mendoza** advised he could get some information on some opportunities. Any streets that are not paved are the costliest streets we have as far as time goes and the continuous maintenance. There is no doubt those streets used to be gravel roads and at some point in the past millings were brought in. It is not so much the surface but the sub base; whatever the ground is doing that is what the top is doing. Wherever there is water infiltration, that’s where the hole is and that’s where the pothole is.

**Council Member Craig** stated he understands that, but the comments from the people over there for years has been that millings accelerate that process of creating potholes because it cuts right through.

**Mr. Mendoza** advised last year they replenished the millings with a smaller granule size and came back in with a reclamite chemical application which filled in the voids, hardened the surface and lasted about 14 months before we had our first pothole. Normally it would be the first rain or the first time a truck made a 3-point turn you would have a pot hole. There is no doubt there are continuous problems but he doesn’t have a great immediate solution. He can talk with Mr. Craig and provide some information about the options and the things they are talking about doing.

MOTION: Warren moved to approve the contract with Proseal, Inc., in the amount of \$49,548.24 for application of pavement sealer to selected City streets in substantially the form presented, and authorize the City Manager to execute the contract. Arnold seconded.

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

The council recessed at 8:25 p.m. and returned at 8:40 p.m.

**BIDS FOR STONE  
CREEK ADDITION,  
PHASE 6A – SANITARY  
SEWER & WATER LINE  
IMPROVEMENTS**

**Jean Epperson**, Director of Finance presented the staff report.

**Background:**

- A bid opening for the construction of Sanitary Sewer and Water Line Improvements to serve Stone Creek Addition, Phase 6A was conducted on Tuesday, August 21, 2007 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:

Middlecreek Corporation	\$424,899.00
Duling Construction	\$391,548.00
Utility Contractors	\$379,773.00
Dondlinger Construction	\$353,999.60
Mies Construction, Inc.	\$344,754.00
Nowak Construction Co.	\$311,821.80
Engineer’s Estimate	\$377,085.00

**Financial Considerations:**

- Funds for the construction work will be included in the 2007-2 temporary note issue.
- Costs for the Sanitary Sewer and Water Line 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.
- Bids for the project were solicited and evaluated in accordance with established City procedures and a contract may be awarded as recommended by the city engineer.

**Policy Considerations:**

- Nowak Construction Company 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.

MOTION: Warren moved to approve the bid of Nowak Construction Company in the total amount of \$311,821.80 for the construction of Stone Creek Addition, Phase 6A Sanitary Sewer and Water Line Improvements. Arnold seconded.

DISCUSSION:

**Council Member Craig** pointed out this is the first time he has seen a spread this large, over \$110,000 and asked if anybody questioned that.

**Mrs. Epperson** stated that the consulting engineer reviews these for accuracy and verifies them. Charlie Brown, the Director of Community Development is not here this evening, however he seemed to think this was a good bid.

**Council Member Craig** asked who the consulting engineer was that reviewed this.

**Mrs. Epperson** did not recall the name of the company, but they have done a lot of work for us. She later recalled it was Baughman Company.

**Ms. Sexton** explained that typically that kind of a spread is more of a reflection on the contractors and how much work they have and the timing of the project.

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

**INTERGOVERNMENTAL  
AGREEMENT BETWEEN  
THE CITY OF DERBY &  
DERBY USD NO. 260 TO  
PROVIDE SCHOOL  
RESOURCE OFFICERS**

**Doug Chambers**, Derby Police Department presented the staff report.

**Background:**

- On May 28, 1999, the City entered into a four-year agreement with the school district to provide two (2) police officers to be assigned as School Resource Officers at the High School and Middle School. One year contracts were entered into with USD #260 for each subsequent year.
- This year's agreement again has a one-year term with the only change being an adjustment in payment from USD #260 caused by a decrease in salary and benefit costs to the City, due to a change in personnel assigned to the SRO program.
- The police officers work with the school administrators and staff to provide alcohol, drug, and other educational lectures to students; assist with maintaining a peaceful campus environment by their daily interaction with the students; and take appropriate action regarding on-campus or school-related criminal activity. The school essentially becomes the officer's patrol beat.
- Officers assigned to the school are required to complete a specialist-training course from the National School Resource Association.
- The USD #260 school board has reviewed and approved this year's agreement and has authorized the board president to sign the agreement.

**Financial Considerations:**

- If accepted, the agreement requires USD #260 to pay the City \$31,206 in return for two police officers to work 180 days at the schools during the 2007-2008 school year.

**Legal Considerations:**

- The City Attorney has reviewed the renewal Agreement for School Resource Officers between the City and USD #260.

**Policy Considerations:**

- From an enforcement point of view, assigning police officers to the High School and Middle School has proven to be an effective use of our limited resources.

MOTION: Arnold moved to approve the agreement with USD #260 in the amount of \$31,206 for the School Resource Officer Program. Schwarz seconded.

DISCUSSION:

**Council Member Craig** stated the document indicates that additional days may be arranged at a rate of \$86.68 which comes down to \$10.83 an hour, where is the difference coming from?

**Captain Chambers** explained that is divided between two officers. We are taking the salary of the two officers and splitting the cost of those.

**Council Member Craig** advised he split it in half and it still comes down to \$10.83 an hour for 180 days.

**Captain Chambers** stated he would have to go back and check the math on those because \$10.00 isn't enough for the hourly rate.

**Council Member Craig** explained that if you take \$31,206 and divide that by 180 days, divide that by 2 and then divide that by 8 you come out with \$10.83 an hour, he suggested to go back and recheck that.

**Captain Chambers** explained they were basing the numbers on a 6-7 hour day so he is not sure that is the same math they were using.

**Council Member Craig** advised that as long as everyone is satisfied he is satisfied but the numbers are pretty low.

**Council Member Bannon** pointed out the contract states that the district shall pay ½ to the city at the start of the school semester. School just started and she questioned whether we should move this contract negotiation up a month because we are signing a contract after the first payment was actually due.

**Council Member Schwarz** stated that someone had asked him if there was a possibility of having a female SRO since they do seem to have some girl fights at the school.

**Captain Chambers** explained they do have some female officers that will be qualified in the future to fill that role. We do have a selection process for school resource officers and there isn't anything in that selection process that is gender based but the school resource officers tend to run across the same type of situations that other officers working other parts of the city run in to in terms of working with females or females working with males quite frequently and they are able to deal with that in a variety of ways. Right now we are very fortunate to have female officers available most of the time so if a male school resource officer runs into a situation, for instance, makes an arrest and needs to do a search there is generally a female officer available to come help take care of those types of situations.

**Council Member Staats** asked if the school district had shown any interest in having a school resource officer assigned to the 6<sup>th</sup> grade center. He has heard discussion throughout the town about people wanting that.

**Captain Chambers** advised he has heard some of the same discussions informally however they have not had any formal discussion about doing that or what type of arrangement they might enter into to accomplish that. It might be something further down the road for us to talk about because assigning another one of our officers to another school also has an impact on the officers available for the street which means hiring decisions need to be made and so forth.

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

**PERSONNEL POLICY  
MANUAL UPDATE AND  
AMENDMENT OF  
CHARTER ORDINANCE  
NO. 36**

**Kathy Sexton**, City Manager presented the staff report.

**Background:**

- With the exception of four pay-related policies that were brought to the Council in September 2006, the Personnel Policy Manual was last updated in January 1995.
- A rewrite of the entire Personnel Policy Manual is necessary to reflect changes in federal and state laws, as well as numerous changes that have occurred in the workplace in the last 12 years.
- To ensure employee involvement, a personnel policy committee was formed, which included one person from each City department. Each member served as a liaison for their department and brought employee ideas and suggestions to the committee.
- The members of the personnel policy committee met once a week for six months to review and revise policies.
- Personnel policies from Wichita, Sedgwick County, Salina, Hutchinson, Topeka, and Winfield were also reviewed to ensure that our policy manual reflects the best practices in the field.
- Once the committee completed its review of a policy, each policy was taken to senior staff for review, after which it was reviewed and revised by the City Attorney and the City Manager.
- In the future, the Personnel Policy Manual will be reviewed annually to determine if changes are needed.

**Amendment of Charter Ordinance No. 36**

- The City adopted its mayor-council-manager form of government in 1980. The plan:
  - Provided for appointment of the municipal judge and members of specified boards and commissions by the Mayor with the consent of the Council; and
  - Did not address the basis for termination of city employment.
- The plan has been amended several times, including to:
  - Specifically identify the several boards and commissions to which the Mayor appoints members;
  - Provide for appointment of members of the Derby Volunteer Fire Department; and
  - Include a provision which can be interpreted to unnecessarily limit the City's status as an "at will" employer:

- This proposed charter ordinance addresses the following issues:
  - The Mayor would retain authority to appoint the municipal judge and the members of all City boards and commissions with the consent of the Council, but boards and commissions would not be specifically identified.
  - The Mayor would no longer make appointments to the Derby Volunteer Fire Department, reflecting the availability of the fire chief to evaluate the qualifications of applicants.
  - The “for cause” language relating to termination of employment would be removed.:
- The net effect of the proposed amendments is to streamline the ordinance and to confirm the City’s status as an “at will” employer:

**Financial Considerations:**

- The total cost of policy changes resulting from implementing the new personnel manual is approximately \$42,291. Changes in the vacation schedule account for the largest portion of this cost. Changes in these two leave benefits may have spillover effects on overtime costs but otherwise won’t affect the budget immediately. Changes in Standby Pay and Shift Differential affect the budget immediately, and funding is available in the budget. A summary of costs associated with policy changes is below.

**Summary of Cost Increase for New Personnel Manual<sup>1</sup>**

Item	Current Cost	Revised Cost	Difference
Vacation	\$215,691	\$258,537	\$42,846
Bonus Sick Leave	\$6,061	\$0	-\$6,061
<b>Leave Changes Total:</b>			<b>\$36,785</b>
Standby Pay	\$7,504	\$11,256	\$3,752
Shift Differential	\$2,457	\$4,212	\$1,755
<b>Immediate Budget Impact:</b>			<b>\$5,507</b>

**Total : \$42,291**

<sup>1</sup>The FOP is excluded from these calculations for all items except Bonus Sick Leave

- Savings from the change in tuition reimbursement are also expected but are not included above because of annual variances.
- Proposed amendments to Charter Ordinance no. 36 will not have any financial impact on the City.

**Legal Considerations:**

- The proposed Personnel Policy Manual was reviewed by the City Attorney and by Alan Rupe, Esq., of Kutak Rock LLP. Mr. Rupe’s area of legal expertise is personnel law.
- The proposed manual is legally sufficient.

- The proposed charter ordinance to amend Charter Ordinance no. 36, while it includes several editorial changes, is important primarily to confirm the City as an “at will” employer.
- Under Kansas law generally, the City Manager would have authority to terminate an employee’s employment for any reason (other than a bad reason such as race or gender) or for reasons, such as budget constraints or staff reorganization, unrelated to the specific employee’s service.
- Charter Ordinance no. 36, by suggesting that “cause” may be required for termination of employment, represents an unnecessary constraint on the City Manager’s ability to respond to changing circumstances and is contrary to the general law of Kansas insofar as it pertains to municipalities.

**Policy Considerations:**

- Annual updates of the Personnel Policy Manual to account for changes in federal and state law and for changes in City policies will ensure that the City’s personnel policies are legally defensible and competitive with other area employers in terms of employee benefits.
- Annual updates will alleviate the need for a complete rewrite of the personnel manual in the future.
- The proposed amendments to Charter Ordinance no. 36 bring the City’s plan of government in line with Kansas law and give the City Manager greater latitude to respond to changing circumstances.

CHARTER ORDINANCE NO. 44

A CHARTER ORDINANCE AMENDING SECTIONS 1 AND 2 OF CHARTER ORDINANCE NO. 36, PROVIDING FOR APPOINTMENT AND REMOVAL OF CITY OFFICERS AND EMPLOYEES; AND REPEALING ORIGINAL SECTIONS 1 AND 2 OF CHARTER ORDINANCE NO. 36.

DISCUSSION: (occurring during presentation)

Bereavement Leave:

**Council Member Craig** asked if there were some management discretion in the bereavement policy or does it have to be one of those relatives listed in the policy.

**Ms. Sexton** stated it is a pretty clear definition on page 9 of the document. It is the employees parent, spouse, child, step child, sister, brother, grandparent, grandchild, step parent, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, niece and nephew. There are certain times throughout the document where we have had exceptional things happen that we have written into the policies that there is discretion on the manager’s part to make an exception on certain things. Off the top of her head she can’t think of any thing that would apply to immediate family. There are places in the manual that allow for discretion.

**Council Member Craig** asked about the MOA and the FOP, are we under binding arbitration with them?

**Ms Sexton** advised we were not.

Sick Leave Accrual:

**Council Member Craig** asked what the definition of full-time was.

**Ms. Sexton** advised it was 40-hours a week.

**Council Member Craig** asked about the 56-hour employees.

**Ms. Sexton** advised that was the fire department employees. We did not used to have fire employees. Fire and police employees run on different hours per week.

Tuition Reimbursement:

**Council Member Meidinger** asked if other communities offered this program.

**Ms. Sexton** advised many communities and many private sector employers around here offer college tuition reimbursement.

**Council Member Meidinger** stated he understood private but he thinks we need to compare apples to apples. Do other cities do this?

**Ms. Sexton** stated that most cities around have some sort of college tuition reimbursement.

**Council Member Meidinger** asked if it was up to \$1,000.

**Ms. Sexton** advised they do. They are all written differently and we looked at a number of different ones to get ideas and examples and we called some people too. It has become a burden as far as paperwork so we try to keep ours simple; \$1,000 and we are done.

**Council Member Meidinger** stated he looks at this as the office employee's benefit. For example, if a person in the welding shop would want to go to a trade school, would that be beneficial in this case, could they do that?

**Ms. Sexton** advised they could, it is not just college. We reimburse at no more than the WSU rate, but you can go to a community college, tech school, there are a lot of computer classes, that kind of thing.

**Council Member Staats** pointed out that the policy states that courses of study must be related to the employee's position in the city and he understands that but if somebody is wanting to start school and they don't have any school and they take algebra or English, does it cover that? If you work at the fire department or police department obviously that course of study is covered but does it cover your prereq's.

**Ms. Sexton** responded that that has been liberally construed in the past and when you talk about general ed classes, if your mission is to get a degree in whatever subject we all know we have those prerequisites you have to take so that would be part of it. The policy is also written so that there is discretion to be used there.

**Council Member Staats** stated he understands you don't want somebody who works at the fire department majoring in accounting, that doesn't apply to them but you might have to take an accounting class as a prereq. In the past the city has denied some of those and that is why he is asking.

Vacation:

**Mayor Avello** questioned what happens if you have an employee who has worked for 7 months and quits or is let go, do they get a weeks vacation?

**Ms Sexton** explained that if they worked 7 months and left city employment they would have accumulated approximately 2.5, maybe 3 days because they get one week over a course of a year so they are accumulating it each pay period. They would have accumulated a few days and they would have either used those days with approval during that last month or they would be paid for those days when they leave. We also have a maximum carry-over. It is written so people use their vacation, not just save it all up and get paid for it all when they leave.

**Mayor Avello** stated he has a problem with that, he is old school.

**Council Member Meidinger** asked at what rate of pay does this employee get paid when they accumulate vacation leave and take it at a later date.

**Ms. Sexton** stated they are getting it at the rate they are getting paid at that time.

**Council Member Meidinger** clarified that if they are getting paid \$20.00 an hour and accumulate at the rate of \$20.00 an hour and then they take it when they get \$22.00 an hour, at what rate do they get paid at?

**Ms. Sexton** explained they would pay for it at the rate they are currently at, at that time. That is why we have the maximum accrual amounts.

**Council Member Meidinger** asked what the maximum accrual is.

**Ms. Sexton** advised it is 120 hours.

**Council Member Meidinger** pointed out you could accrue that at \$10.00 an hour but if your pay when you leave is \$20.00 an hour you would get that paid at \$20.00 an hour.

**Ms. Sexton** stated that is possible but what we also know is that you have to use everything above that and we have also asked supervisors and department heads to make sure people are

using vacation, that they are not just accumulating it, that they are getting out of the office and remaining healthy. If you have financial positions, people doing bookwork and finances that they would take some vacation each year to make sure, that kind of thing. Whenever you use vacation you first use the amount you accumulated at the beginning.

**Council Member Meidinger** advised that private companies do not allow that to happen, you have to take your vacation. If you are carrying over a certain amount of days you get paid at the end of the year so you don't get in this big accumulation thing. It's really not fair to pay an employee at a different rate than what they accumulated it at.

**Ms. Sexton** stated it is pretty hard to avoid that.

**Council Member Meidinger** stated you could just not have any carry over.

**Ms. Sexton** asked no carry over at all?

**Council Member Meidinger** advised "yes".

**Ms. Sexton** stated she is sure some employers probably do that, but it is pretty common for employers to allow some amount of carry over. To some extent you want that because sometimes people want to save up several weeks so they can go on a longer trip.

**Council Member Meidinger** stated that is okay, as long as they don't get paid for it, that's the difference. He has no problem with them saving it up for an extended vacation, but they shouldn't be able to save it up and exchange it at a different rate when they want to take it as cash. He thinks that should be changed.

**Council Member Schwarz** advised he knows that some employers are now going to a paid time off concept where they merged both the vacation and sick leave and you can use it as needed. There is some carryover, but not a great deal. They start accumulating that after the first month. What that allows, is if people have doctors visits or they are sick or get a flat tire, that is what that is used for.

**Ms. Sexton** responded that hospitals especially are good at using that. As you can imagine we weren't trying to delve into any one policy and totally rehab it. That would take some serious effort to do it in a government sector like this. You don't have holiday pay, sick pay, vacation pay, bereavement; you would eliminate all of those. In a hospital that works because you don't want everyone at home on the holiday, you don't close your doors. At a place like this it would be a lot different and you have to have some carryover. As you well know we have the unlimited sick leave carryover because that is like an insurance policy. When somebody gets a major illness they have all that sick leave saved up and they are literally able to take off three months to deal with a major surgery or cancer. In a lot of organizations you wouldn't be able to do that.

**Council Member Craig** stated he too is in a different time zone. It is a very liberal vacation policy. He assumes that the maximum accrued hours, if a person is at the max and they accrue more it is either use it or lose it at that point.

**Ms. Sexton** advised that is correct.

**Council Member Craig**, therefore the bucket overflows and you can't use it once it's out.

**Ms Sexton** agreed, you lose it.

**Council Member Craig** commented his only concern is that it is a very liberal vacation policy; most do not go in increments of weeks at a time. A lot of companies add two days, then another two days as longevity goes. It is a very generous policy and very attractive for an employee to come and work in Derby because it is a good vacation policy.

**Council Member Arnold** advised what he thinks the city manager is trying to do is make Derby very competitive, which we all know that it has not been over the last 10-12 years because of our lack of polices and our pay scales. It may appear that the benefits are lucrative, but in his company alone he pays more than 120 hours, it can go up to 160, based on seniority and how long you have been with the company. When he looked at this whole package, the policy and procedures manual, he wants to thank the city manager, Jenny and the whole team; it was a wonderful project that has been put together. It is not the easiest thing in the world, these laws change every day. When the state or federal government changes a law they don't send you a copy of it, it's up to you to check the website on a day to day basis. The big thing he sees in this policy and procedures manual is that it puts the City of Derby back on top. If you want to keep good people you have to provide good policies in terms of benefits, vacation pay, consideration for tuition reimbursement. At his company reimbursement is \$1,500 and when he instituted that 20 years ago almost everyone on his staff participated at one time or another. Right now he has six people with their master's degrees because of that policy. It is a good retention tool and that's what it's all about, retaining good people. You do that by being competitive and by having excellent benefits. This policy is a good start, we have some changes we still have to make obviously, but the majority of the work has been done and it's a great job.

**Council Member Warren** agreed with Mr. Arnold, the whole idea here is to remain competitive. We haven't seen in this a matrix like we had last year when we were doing some salary adjustments to find out where we were competitively with the market, but he is assuming in this process you have done some checking around to find out what similar cities to us have been doing. He is in favor of what we are doing here and thinks it is in line, he appreciates the work done.

**Ms. Sexton** stated that this vacation policy is more generous than our old policy but it is not more generous than our competitors. It is very good but there are a lot of organizations, both public and private sector that are giving two weeks at the start and we are still with the one week. Part of the policies that we are changing, if you are a typical employee you are going to like some and not like others. These are making a conscience decision to scale back one benefit and increase another benefit because we are trying to achieve systemic change over time. The

tuition reimbursement, everyone wants to encourage people to have continuing education, but that's different from paying for their entire college degree. We are in a county that has traditionally had relatively high levels of baccalaureate degreed people in the workforce. She wants to hire them with a degree, she doesn't want to hire them and pay for their degree, not really. Advanced education, specific technical things, continuing education is great and this will provide for that but there is no reason for us to think we need to hire people without degrees and then pay for them to go get it. That is one that is significantly cut back. Regarding the vacation policy, people get burned out, they work too hard, they don't take the leave and that was the complaint she has heard since she's been here and that was the vacation leave policy. They were all comparing it to other people they knew, spouses and other people in other employment situations in the regional market and she agreed with them, it is not very generous compared to this market. This market is a high benefits kind of market as you well know with the history of the union participation in the big companies around that that has driven the benefits market.

**Council Member Bannon** thanked Jenny for the great job she did. She is very happy to see a number of items that are in our new policy and documents, especially as far as the technology items that they have to sign. Those things have been in the private sector for quite some time and she thinks it is high time we caught up. She asked if this document covered the water company employees.

**Ms. Sexton** advised it will, but it doesn't yet. With your action tonight it is only for the city. We have a few things we need to custom tailor and we thought we would have that ready for the water board meeting tonight but it's not ready so we plan to bring it back to the council at the water board meeting next month.

**Council Member Bannon** asked if it would be substantially the same.

**Ms. Sexton** advised it will be the same. Mr. Swaney was one of the people who sat on the employee committee because this will be a big change for those employees; they were not used to these kinds of benefits.

**Council Member Bannon** asked about the residency requirements. She was under the impression that the police chief, fire chief and city manager had stricter residency requirements than the 30 minute drive time to town.

**Ms. Sexton** explained that if you hire someone on a contract, you can always put additional requirements in.

**Council Member Bannon** stated she thought the police chief and fire chief also had a requirement.

**Ms. Sexton** stated she does not recall, she knows the fire chief has a contract but does not recall what the requirement was. She thinks he is required to live inside the city limits but she will look that up and if that's wrong she will let the council know. The police chief was not hired with a contract but there might have been terms that she is unfamiliar with.

**Council Member Bannon** commented about the vacation policy and suggested there be a limit on carryover. She does not think they should have to take it all in one year but she thinks we should limit the carryover so they don't build up substantial vacation. She feels very strongly that a minimum of one week should all be taken at one time so someone else can see what goes on in a job.

**Ms. Sexton** advised right now there are a few certain positions where that is critical, Jean's being one.

**Council Member Bannon** believes that across the board it is a good policy because people need that break. Some people get in the habit of taking one day at a time and spread it out and behaviors and moods can be benefited by a full week's break, not just to look at financial positions but across the board so everyone gets a chance to see someone else's job and see what has been going on.

**Ms. Sexton** agrees it does help with the cross training and that's an effort that we are starting to put more emphasis on in some of the departments as well.

**Council Member Bannon** understands this wasn't a total rewrite but now that we have gotten on top of it there will be revisions at some point so those were items she would like to see.

Deferred Compensation:

**Council Member Meidinger** asked for more information on the deferred compensation program.

**Ms. Sexton** explained that generally that ordinance was passed in the 1980's and it provides for a program with ICMA RC, that is a voluntary program for all employees who are not in KP&F retirement, which is Kansas Police and Fire Systems retirement. It is available to them to contribute their own money to but for the other employees there is a match. The match from the city is up to 10% of their salary with a maximum of \$3,750. We need to update that program, there are some IRS rules that apply differently to that, there are also some parts of the city's ordinance that were deemed unworkable a while back but the ordinance wasn't changed yet. We will be back to the council with some updates in that ordinance and in that program and with a lot more details about that program.

**Council Member Meidinger** advised his concern is the matching cost that the city contributes. He asked if it were still dollar for dollar.

**Ms. Sexton** advised it is up to \$3,750.

**Council Member Meidinger** stated that is an expensive program. When we looked at this previously there were some communities that had deferred compensation but none of them matched dollar for dollar and he thinks that should be reviewed. At this point it is a very good retirement program. The city has social security, KPERS and deferred compensation, which is a very strong retirement program.

**Ms. Sexton** agreed, it is one of the good benefits of this city. You have asked for a review and she thinks this will be back before the council next month as an agenda item. We have been doing some research and she does not have it all available tonight but what you would be approving tonight is simply clarification of the current program with no changes.

**Council Member Meidinger** stated this is a very good document; he is just simply amazed that the city has not gone through numerous lawsuits without an updated manual. If we haven't done anything since 1995 that is kind of a reflection on past city administrators. He is glad to see that Ms. Sexton has taken this task and done a very good job with it. It is really a good document. He does not think we will agree with all of the aspects of it but document wise it is excellent.

#### DISCUSSION:

**Council Member Craig** asked if we have a requirement for certain positions to live within the city limits.

**Ms. Sexton** advised the residency requirements for all employees is to live in Derby, Sedgwick County or any of the surrounding counties, as well as a 30-minute response requirement for the police department.

**Council Member Craig** indicated he thought we had a statement about key personnel, such as fire chief and chief of police.

**Ms. Sexton** advised we do not, however that issue was talked about a while ago by the council and no action was taken. Currently the ordinance states surrounding counties. The police department implemented a 30-minute drive time requirement and the fire department had been working under a 10-minute drive time and realized that probably wasn't the best idea. With the council's approval tonight the fire department will be moving to the 30-minute response time, as well as all employees who are subject to call, including wastewater and public works.

**Council Member Craig** stated he thinks we should look into that for some key personnel. It should be at the discretion of the council to require some key personnel, if they are going to work in Derby, to be in Derby. That is something to discuss later on down the road. He commended those that worked on this. The first thing he asked for when he came on the council was a copy of the personnel manual and he has carried that around until tonight because he knew we were going to vote on this. Those that did not review that have missed out on a real opportunity to understand that this is an incredible job compared to what we had that went unattended for over 10 years. There were a few revisions, but nothing significant. This is not only a major undertaking, but absolutely a true victory. We tried to take some action with that handbook before and it was extraordinarily weak, he commended everyone that had anything to do with this. He suggested that every employee get a copy of this document, but not in the current form. It is so easy to lose because it is just a paperback. If we can do anything to spruce this up and make it a little more eye appealing so it doesn't end up being tossed away, that would be great.

**Ms. Sexton** thanked Mr. Alexander for all the effort put into this. She also thanked the department directors because they were hearing things from their employees and reviewing Jenny's drafts and we were dukeing it out in staff meetings on Monday mornings because some policies apply to the public works department a whole lot differently than they apply to an office environment or a police and fire type environment. We also do sometimes stop short of putting things in a policy manual that affect such diverse departments and allow and empower departments to make additional standard operating procedures or regulations for their own departments. Everything is not in here, certain departments have certain things that they need to do and if we put it in here it would screw up life for everybody else. We do intend to make periodic amendments to this and bring them to the council for approval, probably on an annual basis. When we find little things we will bring them to the council for constant updating, rather like the pay matrix we did this time last year. Instead of having it all for a long period we would make small adjustments as we go along. Regarding distribution to employees, our IT people, Ted Austin and Faith Emrich have been working on an "Intranet" for city employees. It looks like a website but it's not on the World Wide Web, it is just on your internal company network and nobody can see that page except employees. That is a fabulous way to communicate with employees who have access to computers. Essentially we will be putting this, as we have all kinds of documents and manuals, forms, all kinds of things on this intranet and that way anytime a page is updated or a policy is changed it gets put out there and a note gets sent out to everybody saying City Council just approved a change to something. They won't keep old manuals that they were given on their first day of employment and keep referring to something that's no longer valid. That will be a new attempt to really keep employees informed of policies and they will understand better and have better participation in their benefits that aren't highly used now, such as their flexible spending account because they don't really understand that. We are also going to have mandatory training for all employees over the course of the next few weeks on this new book, there are a lot of things that affect people and if you don't specifically talk about it with each and every employee then people may not even realize the policy has changed.

MOTION: Craig moved to adopt the new Personnel Policy Manual in substantially the form presented. Meidinger seconded.

Craig moved to adopt a charter ordinance amending Charter Ordinance no. 36 of the City, pertaining to mayoral appointments and removal of officers or employees. Meidinger seconded.

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

## **ADJOURNMENT**

MOTION: Schwarz moved to adjourn at 9:48 p.m. Warren seconded.

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

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Dion P. Avello, Mayor

ATTEST:

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Jean Epperson, City Clerk