

**APPROVED
REGULAR COUNCIL MEETING
January 8, 2008
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Vaughn Nun, Chuck Warren
Charlie Schwarz, Cheryl Bannon
Mark Staats, George Arnold

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Council President Charlie Schwarz.

**CONSIDERATION OF
MINUTES**

Minutes of the December 11, 2007, Regular Council Meeting.

MOTION: Warren moved to approve minutes of December 11, 2007 Regular Council Meeting. Schwarz seconded.

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

PUBLIC FORUM

No comments were received.

PRESENTATIONS

Chief Brad Smith presented the Firefighter of the Year award to Pat Swaney. He also commended Pat's wife Susan.

Pat Swaney accepted the award.

Dallas Love, Derby VFW also recognized Mr. Swaney as the VFW Post 7263 Firefighter of the Year. He advised Mr. Swaney has also been selected as the Department of Kansas Firefighter of the Year and he is in the competition for the National Firefighter of the Year, which will be determined at the national convention.

Mr. Swaney thanked the VFW as well as Chief Smith. He also thanked the department for making him look good and asked that they all stand in the picture with him.

Mayor Avello also thanked Mr. Swaney for all he does.

**REQUEST FOR
REZONING WOLFE
PROPERTY FROM R-1
TO B-3/B-2**

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

Background:

- The subject property is located on the east side of Rock Road between Meadowlark and Patriot.
- The Planning Commission initially considered the request for B-3 zoning on November 15, 2007. After public testimony and discussion by the Commission, the item was tabled until the December 6, 2007 Planning Commission meeting.
- At the December 6, 2007 meeting, the Planning Commission, by an 8-0 vote, approved a combination of B-3 and B-2 zoning for the application area, with B-3 located from Rock Road east to the easterly line of a power line easement and B-2 for the remaining portion of the property.

Financial Considerations:

- No immediate financial impacts can be expected due to this rezoning.
- Ultimately, the rezoning may increase the property value and thus the City's tax base.
- The rezoning will allow the owner to market the property for reference.

Legal Considerations:

- The Public Hearing for this rezoning case was advertised in *The Derby Informer* on October 24, 2007. Notices to nearby properties (within 200 feet in the City and within 1000 feet in the County) were sent out on October 26, 2007. The required Public Hearing was held at the Planning Commission meeting on November 15.
- While one area landowner spoke out against the zoning during the Public Hearing, no official protest petition has been filed.

Policy Considerations:

- The Comprehensive Plan calls for "Mixed Use Commercial" along the Rock Road corridor at this location.
- The proposed zoning is subject to annexation and the normal platting process.

ORDINANCE NO. 1915

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

DISCUSSION:

Council Member Bannon asked if we were pretty well set as far as septic and water in that area, will it handle what we currently have in the ground or planned for future infrastructure?

Mr. Brown advised we were. One of the things we have done recently is restudy our sewer capacity and we are in the process of doing it again. This is something we will do every couple of years. We will look at flow data to ensure the flows are legitimate that are generated by these properties. There is an existing sewer line and with the platting of the Phillips property they will be required to extend sewer. We have an option to get sewer from an exiting line on the west side of Rock Road and we could bore under the street and get to that property as well. From a capacity point of view we are confident that this will be okay, but we will continue studying it to make sure our flows that we assume are legitimate and that our system can handle it. For water, there is a 24 inch water line on the west side of Rock Road and also water lines in Tall Tree so we have access to good water volume and pressure.

Council Member Bannon thanked the Wolf's for their compromise on the zoning, instead of the original all B-3 that they requested. This is a good proposal for everyone.

MOTION: Bannon moved to approve an Ordinance for rezoning the Wolfe property from R-1 Single Family Residential to a combination of B-3 General Business and B-2 Neighborhood Business, subject to annexation and platting within one year, based on the Findings of Fact presented by the Planning Commission. Craig seconded.

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

PROPOSED ANNEXATION OF PROPERTY WITH CONSENT OF OWNER

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

Background:

- Due to the recommendations of McConnell Air Force Base Joint Land Use Study (JLUS), the areas near the north side of Derby are expected to develop in airport-related industrial and warehousing uses.
- William Lusk is the owner of approximately 269 acres of land near 55th and Oliver and has expressed interest in such development.
- Development of the property will require extensions of City sewer and water, which in turn, require the properties to be within the City limits.

Financial Considerations:

- There will be no immediate financial impact on the city as a result of annexation of the subject property. Taxable valuation of the City will increase incrementally.
- Annexation and platting will facilitate marketing of the property for commercial development.

Legal Considerations:

- Because the property owner has requested annexation, the City may annex the subject property without notice and hearing.
- Because the subject property is adjacent to the existing City boundary, and because the owner is consenting to the annexation, only City Council approval is necessary.

Policy Considerations:

- The Council has historically granted requests for annexation in anticipation of development of the property.
- The subject property is within the City’s primary growth area.
- The property will be subject to normal zoning and platting requirements.

ORDINANCE NO. 1916

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS.

MOTION: Staats moved to approve an Ordinance annexing certain properties (generally located near the southeast corner of 55th and Oliver) into the City. Arnold seconded.

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

Council Member Warren asked for the map to be put up and commented that it looks like we are starting to create some “donut holes” again. What is our procedure for addressing those kinds of locations for the possible need to annex?

Mr. Brown advised it is at the council’s direction.

Council Member Warren suggested that it is time for the council to take a look at some of those issues.

Mayor Avello requested a map indicating the annexed areas and the “donut holes”.

Mr. Brown advised they can draw up another map similar to what they did in the past. He pointed out the platting of Hamilton Field will be coming shortly so that will take care of one area. There is another plat that will definitely create a “donut hole”. He indicated they would prepare a map and bring it to the next meeting.

2008 LEGISLATIVE AGENDA

Mandy Cawby, Assistant 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.
- In Derby legislative relations are achieved through relationships and partnerships. The tools in our toolkit are 1) maintaining strong relationships with Derby’s legislative representatives, 2) partnerships with other organizations to identify issues and support legislative action, 3) tracking issues, and 4) publishing a legislative agenda.
- The Governing Body, the City Manager, and city staff are all involved in maintaining strong relationships with Derby’s legislators. In addition, designated City staff members

are responsible for tracking legislative issues and participating in regional legislative partnerships.

- The item for your consideration today is adoption of Derby's 2008 legislative agenda.

Discussion:

- The City of Derby partners with Visioneering Wichita and the Regional Economic Area Partnership (REAP) to develop legislative agendas for state and federal legislators that represent the best interests of the south central Kansas economic region.
- The League of Kansas Municipalities also represents Derby's interests, publishing a legislative agenda and lobbying on behalf of municipalities in Kansas.
- The proposed legislative agenda presents Derby's core legislative principles and its legislative priorities. Derby's proposed legislative priorities are 1) restoration of the Local Ad Valorem Tax Reduction (LAVTR) Program and 2) a statewide smoking ban. These priorities have been carried forward from Derby's 2007 Legislative Agenda.
- The proposed legislative agenda for 2008 also includes endorsement of the legislative agendas published by the League, Visioneering Wichita, and REAP.
- The notable additions from the partners' previous agendas include:
 - The League opposes any federal or state mandate which would require collective bargaining at the local level. This move is in response to recent federal action: H.R. 980. H.R. 980 would mandate one-size –fits-all collective bargaining rights for all emergency responders, preempting Kansas' Public Employer/Employee Relations Act and establishing a precedent for federal interference in all employee-employer relationships in municipal government.
 - Visioneering Wichita supports state funding of additional faculty and research staff for physician residency programs in order to maintain local access to medical professionals in the South Central Kansas region. REAP has also endorsed this initiative.
 - Visioneering Wichita supports state partnership funding for an aquifer recharge project which would ensure a more sustainable water resource for the South Central Kansas region. REAP also endorsed this project.

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:

- Adopting the proposed legislative agenda sets the legislative priorities that the City of Derby would like its legislators to focus on in the 2008 session.
- Adopting the proposed legislative agenda allows City staff to track and pursue issues in the best interest of the city organization and the Derby community.
- Adopting a legislative agenda further strengthens the communications between the City of Derby and its legislative delegation.

DISCUSSION:

Council Member Craig pointed out corrections that needed to be made on pages 6 and 7. He asked if there were any one item that might have more traction as it goes forward for 2008.

Ms. Cawby stated from a personal perspective she feels the clean indoor air policy has a very good chance of being addressed. She thinks a lot of people were surprised at the traction that it got last year, in a neutral way. With the support of the Kansas Health Policy Authority, they are

making some personnel changes and having new people on board, that might get additional traction this year.

Council Member Craig stated that since Ms. Cawby is going to be in Topeka, we ask for some great support.

Council Member Bannon thanked Ms. Cawby for her great presentation and she too hopes that the state pays attention. In case anyone doesn't already know, Ms. Cawby will be moving to Topeka and leaving the city. She thanked Ms. Cawby for all her help and there are a lot of people that are going to miss her friendly, smiling face.

Council Member Warren stated that everyone on the bench is going to miss Ms. Cawby and they wish her great success in her future endeavors. He pointed out on page 4, one of the things the council struggled with when they looked at the clean indoor air ordinance was the fact that there is a multi-level playing field and we would like to see that come across. He also recognizes when the state deals with this they are going to deal both with large cities and the problems associated with that and small farm communities which are fiercely independent and he appreciates that. One of the things he would like to see in our request is that we replace "statewide smoking ban" with "statewide clean indoor air act". This is one of those areas where there may be some need for some compromise; there may be some situations where the state would be looking at the possibility of some exceptions or exemptions. He would really like to see us request a statewide clean indoor air act that would create a level playing field and remove the word "ban".

Mayor Avello wished Ms. Cawby all the best and knows she will succeed in whatever she does.

Council Member Craig advised he does not believe the smoking issue is a negotiable item for the state. If you start out with a lesser position you are bound to end up with a lesser result. He suggests we stick with what we have and let them figure it out instead of making it weaker.

MOTION: Warren moved to change the wording from "supporting legislation for a statewide smoking ban" to "supporting legislation for a statewide clean indoor air act". Arnold seconded.

VOTE: Nun yea, Warren yea, Schwarz nay, Bannon yea, Staats yea, Arnold yea, Craig nay, Meidinger nay. 5 yea, 3 nay, motion carried.

Ms. Sexton clarified that the 3rd paragraph down, last sentence indicates that the Kansas Health Policy Authority recommends a comprehensive statewide smoking ban as good policy. She suggested we use the exact word that the Kansas Health Policy Authority has used there and that might change the words in that sentence too.

Mayor Avello indicated he did not think they used the word "ban".

Ms. Cawby advised she would check on that.

Ms. Sexton pointed out that the Sedgwick County Association of Cities, that meets every month on a Saturday is going to meet in about 2 weeks and they have decided to focus the legislative delegation, that is the one time of year they meet with the delegation and the mayor usually goes to that meeting and she sometimes goes as well. They are going to meet in Wichita and will probably talk about several issues, but the main one they are going to focus on is reminding them a year in advance that they promised to give the LAVTR money back to the local governments. What they have asked all the cities and the county to do is share with them their data. For us is \$285,000 a year that we are losing because of that state action. They are going to prepare a

document and hand it to all the legislatures so each of them know all of the cities and have an understanding of what kind of money that really is, three mils is a lot of money, it is a big amount on our tax bill.

MOTION: Warren moved to adopt the proposed 2008 Derby Legislative Agenda as amended. Arnold seconded.

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

UPDATED CODE OF MEETING PROCEDURE AND GOVERNING BODY MANUAL

Kathy Sexton, City Manager presented the staff report.

Background:

- Agreeing upon and following a code of meeting procedure is an important component of running an efficient public meeting. Likewise, relying on a Governing Body Manual as an orientation resource for new governing body members and as a reference for incumbent elected leaders ensures consistency of protocol and practice.
- The City Council adopted a Code of Meeting Procedure and a Governing Body Manual in February/March 2007. At the request of Council, City staff has prepared updates to both documents to reflect adjustments in Council policy and practice since the documents' original adoption and to propose several updates that have been discussed but not yet decided upon by action of the Council. The updates are as follows:
 - Speakers at the public forum are no longer required to give an address.
 - Conflict of Interest is defined in more detail.
 - Items eligible for Consent Agenda are described, including:
 - § Purchases valued at \$40,000 or less that are in the approved budget and for which the low bid is recommended.
 - § Acceptance of low-bid contractors to construct infrastructure already approved by Council resolution unless more than \$40,000 of City-at-large funding is involved.
 - § Routine annual actions like codification of ordinances, declaration of surplus property, and updating of city boundaries. When ordinances are passed on the consent agenda, a record must be kept of the vote showing that the consent agenda received at least five affirmative votes.

Financial Considerations: None

Legal Considerations:

- Formal establishment of meeting protocol, while not required, promotes predictability and civility in the conduct of governing body meetings. The governing body can update meeting protocol to meet its evolving needs and ensure efficiently conducted meetings.

Policy Considerations:

- In adopting the updates of the Code of Meeting Procedure and Governing Body Manual, the governing body follows the adopted procedure for changing policy and practice.
- Any changes adopted at this meeting will take effect at the next meeting of the Council.

DISCUSSION:

Council Member Meidinger asked about the ordinance vote. Ms. Sexton stated we could pull that off and vote on it but you have to have the majority of the council to do that don't you, so an ordinance could be passed and not even discussed.

Ms. Sexton agreed, but the only ordinances that would go on consent would be the technical matters, such as city boundaries, etc.

Council Member Meidinger commented that any ordinance could be put on there.

Ms. Sexton advised it would not be in the council's protocol to do that. All she is suggesting today is that the council update their protocol that has an actual list. It would be the list included in the staff report.

Council Member Craig indicated it would be a good idea to preface the consent agenda with "are there any items in question that need to be addressed" so we don't have an issue like last time; have the motion and not be able to go back and take an item off.

Ms. Sexton asked for clarification.

Council Member Craig stated that at the last meeting Ms. Bannon asked for a discussion on an item and there is no discussion on a consent agenda item, therefore the motion had already been made and we were not able to discuss the item, we had to vote on the consent agenda item as a whole.

Council Member Bannon clarified that she was given the option of taking that item off of the consent agenda to discuss it and she did not want to make that motion.

Council Member Craig advised technically if the consent agenda is presented and there is a motion made it is done.

Ms. Sexton referred the council to page 17 of the governing body manual. In Derby the process we have right now is that the city manager would read the title of each consent agenda item, which isn't done in a lot of other places but it is a nice reminder. If a council member wants to discuss an item you make a motion to have an item removed.

Council Member Craig clarified that an item has to be pulled in the very beginning so we don't get into the process.

Ms. Sexton advised that is a good point. She has seen in other governing body meetings where the mayor asks if there are any items anyone wants to pull off. That way it prompts the question and you don't have two lights coming on, one making a motion to approve and one making a motion to pull something off.

Mayor Avello suggested he ask at the beginning of the meeting if there were any items on the consent agenda they want to discuss. If Ms. Sexton is going to read them he will remember to ask the question.

Council Member Craig asked about the election of a council president. If we pass this, what is mentioned in the Governing Body Manual will be our direction.

Ms. Sexton advised the council can ignore all the deleted information because they did not make any changes in this paragraph. She made a change but then went back and took it out. Whatever the council decides on the next agenda item we will go back and fix that paragraph and section 33, where it says “except for the vote to elect the council president, no vote shall be by secret ballot”. What is essentially being proposed, she does not have new language for all of this because she does not know what the will of the body is. Once she knows after the next item she will go back and rewrite these two sections.

MOTION: Warren moved to adopt the Code of Meeting Procedure and Governing Body Manual as presented, with the understanding there will be changes following the next agenda item. Arnold seconded.

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

VOTING PROCESS FOR COUNCIL PRESIDENT

Kathy Sexton, City Manager presented the staff report.

Background:

- Each year, the City Council selects one of its members to serve as Council President. Historically, the process used for this selection is secret ballot. Last year, when this agenda item was presented at the Council meeting of April 24, the continued wisdom of using the secret ballot method was questioned.
- Since then, the City Manager informally polled several city managers in Kansas and found that many cities either make an open vote (by voice or show of hands) or, if using a paper ballot, make the voting results a matter of public record.
- The advantage of an open vote is that of transparency and open government. The disadvantage is that sometimes hurt feelings can result when the subject of the vote is one of such a personal nature, which can affect future working relationships among Council members.

Legal Considerations:

- Formal establishment of meeting protocol, while not required, promotes predictability and civility in the conduct of governing body meetings. The governing body can update meeting protocol to meet its evolving needs and ensure efficiently conducted meetings.

Policy Considerations:

- Any changes adopted by the Council will be incorporated into the Code of Meeting Procedure (Section 33) and the Governing Body Manual (Section 5 on page 12).

Options:

- Do nothing. Keep the voting procedure a secret ballot, whereby each Council member writes a name on a ballot, and the recipient of at least 5 votes becomes the next Council President (Multiple votes may be required to obtain a majority.)
- Adopt a procedure for a nomination to be made and seconded by Council members, followed by a vote of the Council (either secret ballot or open vote). If the nomination fails to get 5 votes, the floor could be opened for another nomination followed by a vote.
- Adopt a procedure to open the floor for nominations, receive all nominations, and then proceed with voting (either by secret ballot or by open vote) among only the nominees.
- Consider any other variation on the theme.

DISCUSSION:

Council Member Craig asked about the voting process, within that process it indicates the council has to have a quorum of the council for anyone to be selected/elected to the position of council president. Is there any other way to do that? The quorum on the council is five, is that correct?

Mr. Alexander advised that was correct.

Council Member Craig stated that in order to get a person elected you would have a quorum of five and a vote of how many?

Mr. Alexander explained that unless we made some special provision that would require a vote of three persons.

Council Member Craig clarified the council was not bound by having to have five votes out of five if that was the quorum.

Mr. Alexander advised that was correct, that applies only to ordinances.

Council Member Craig stated that we would not make this an ordinance, it would just be a process or procedure, is that correct?

Mr. Alexander agreed.

Council Member Warren stated that sometimes we get caught up in tradition and the way we do things because that is the way we have always done it and that's not always the best. Personally he felt like there was some merit in terms of keeping some of the harmony within the council and hopefully guard against creating hard feelings. There were some advantages to doing it with the secret ballot but it has become abundantly clear that we cannot do that and stay within the bounds of the open meeting laws. There are a number of ways we can do it and in looking at the options that staff has laid out for us his preference would be for the 3rd bullet; adopt a procedure to open the floor for nominations, receive all nominations and the proceed with voting by an open vote. One of the things we need to take a look at, traditionally the council president has been primarily ceremonial. If the mayor is out of town they get to run the meeting and occasionally the council president will attend a public gathering where the mayor cant' attend. What we have discovered is that we have a very serious issue; if something did happen to the mayor we have a gap in our system. He thinks the way we need to handle this is that we no longer look at the council president as a ceremonial position, but recognize it as a position that will stand in the gap if something happens to the mayor. Even though the mayor's job is frustrating because he or she doesn't get a vote on issues that don't result in a tie there is a lot of leadership ability that comes from that seat and it's a very serious issue that comes before us. We need to rethink our thinking of the role of council president. It very likely will be that once someone is selected, if the rest of the council thinks that person is doing a really good job they may continue to do it rather than go through doing what we have in the past with everyone having a turn at it.

Council Member Bannon agrees with Mr. Warren as far as adopting bullet #3. If something were to happen to the mayor instead of holding a special election, she wouldn't want to do that nor would she want it to go what could be conceivably four years, she thinks two years at the time of the next city wide election, let's not wait the full four years. She also would like to delineate out the council president's duties. They have received a copy of those and she would

like to make some changes to those at a later date. She also believes that it does become somewhat more than ceremonial however we can't always look at "what if". Sometimes there are new members on the council or those that don't enjoy speaking roles that may not be comfortable in that position so she thinks there needs to be some good thought process given from both the nominees and the people doing the voting.

Council Member Craig hopes the council would establish the procedure for electing the council president this evening and get that out of the way. Then ask for some background, he is not ready to move in a direction on how we are going to decide if the mayor is not available or absent, who is going to take over and be mayor until the next city election. We need some further thought and background to find a way to build a procedure for that. He understands that people are in favor of having an open vote and having a motion to open nominations to have someone nominated and a 2nd. Whatever that is he would like to make that motion and have that settled now.

MOTION: Craig moved to adopt a procedure to open the floor for nominations, receive all nominations, and then proceed with voting by open vote among only the nominees. Warren seconded.

The question arose concerning the wording "among only the nominees".

Council Member Bannon explained her interpretation was that you could only vote for someone that was nominated. If someone's name had not been nominated you could not vote for that person.

Council Member Craig indicated we need an interpretation because it says "and then proceed with voting among only the nominees".

Council Member Bannon advised that means you can't vote for someone that wasn't nominated.

Ms. Sexton explained the distinction is that with option 2 you make a motion to nominate person "x" and then you vote. Option 3 indicates open nominations, a call to end nominations and then a vote on each of those nominated.

Council Member Craig indicated that if that is the intent of option 3, so moved.

Council Member Warren again seconded.

Mr. Alexander asked if the intent of the motion is that the vote would be decided by a plurality, that no candidate need receive a majority, just the most number of votes. There could be a situation where 3-4 people were nominated and the person with the most votes has 3 votes.

Council Member Warren advised he would think we would want a majority.

Council Member Craig disagreed; it is like any other election, the person with the most votes wins. When you have a quorum you have three and are we really moving towards a situation where you are voting to have a majority of a quorum? We decide most elections on plurality.

Council Member Warren stated he would have a problem with that, where the council president is going to be leading the council. He would think you would need to have the support of the council and need to have at the very least a majority of the members present voting in favor. That might only be three, it could be as few as three but if you have eight members and one guy gets

three and three guys get two, you could have somebody get elected without the majority of the council present.

Ms. Sexton advised that is very feasible. If you have three nominees and one got two votes, one got three votes and another got three votes. Then you would be doing a runoff between two people who each got three votes. Doing it this way sets up the situation sort of like last year where you are going to have 2-3 votes taken to get there. If you do it the other way of saying "I nominate Jack and I second that, let's vote on Jack". Jack is either going to go up or down pretty clearly because it's either a yes or no. It makes it a little tougher to open the floor for nominations but Mr. Alexander is right, if you want to do it that way you need to designate if you want to win by plurality so if someone gets three votes, even though eight people are voting could win.

Council Member Bannon stated she doesn't know if we could ever get more than five people on this council to agree for who is going to be council president, it could be a really long night that night. In the past the way it has always voted, we don't know that anyone has ever had the majority. One of the reasons she doesn't like the second bullet would be if someone didn't get any votes. She suggested just putting two people up for vote, held the nominations at two names only, as soon as you have two nominated there is a vote. In the case of a tie the mayor breaks the tie.

Council Member Warren stated he has been on the council long enough to know that from time to time people try to get their nomination and second in quick and close it down. You can actually use the procedure to block somebody if you limit it and he has a problem with limiting the nominations. His preference would be going through the process until we get a majority; if it takes ten votes it takes ten votes. He would rather do that than create a situation where people are trying to manipulate the system. If we want to nominate eight council members and we have to go through the votes then that's what we do.

Mayor Avello reminded the council there is a motion on the floor.

Council Member Warren agreed, but we have a question. The intent of the motion was to require a majority of the council present to vote. If that is not the case then he will withdraw his second, that would be a requirement.

Ms. Sexton pointed out that if you are requiring nominations and seconds, if you had three people nominated and each of them had a second basically the worst you can do is a three to three to two. If you nominate somebody and you second it you both better be voting for that person, so each person up there is going to get two votes because there are three nominations each with a second so the one person that gets three votes is your plurality. The question to Mr. Craig is; is plurality three votes when seven are voting or is it to be a majority?

Council Member Warren indicated his second is tied to the majority of the council present.

Council Member Craig advised he thinks we are making it too difficult. The motion has not been amended by anything. He made the motion the way it is and if somebody wants to amend it on how the vote should be taken, so be it. He made the motion and talked about the type of vote we have and if someone else wants to tack onto it you can do that but his motion still stands.

Council Member Bannon called for the vote.

Council Member Warren indicated he was not clear on what we are voting on, he withdrew his second.

Mayor Avello advised he had to ask the council to vote on the call for the question.

Council Member Warren advised if he doesn't understand he's not going to vote, he has to understand what he is voting on.

Mayor Avello asked Mr. Alexander if he had to go ahead with the vote as the motion was presented even if Mr. Warren doesn't understand it.

Council Member Warren stated that first we have to vote on the call for the question.

Mr. Alexander agreed. Beyond that it's not actually a question of whether or not a person subjectively believes they understand the motion; they can individually decide whether they are capable of voting on it.

Mayor Avello called for the vote to end the debate.

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

Council Member Craig explained he brought up the two different types of votes you can have on the issue. If someone wants to decide if they want that to be either plurality or by majority of quorum, then state that as an amendment to the motion, you can do that now.

Council Member Warren stated that can't be done now because we just voted to end debate.

Council Member Craig advised that is not a debate.

MOTION: Warren moved to amend the motion to require a majority vote of the council present voting. Staats seconded.

VOTE ON THE AMENDMENT.

VOTE: Craig nay, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon nay, Staats yea, Arnold yea, 6 yea, 2 nay, 0 absent, motion carried.

VOTE ON ORIGINAL (AMENDED) MOTION:

Ms. Sexton explained the vote is on bullet #3, understanding it will be the majority of those present and voting.

MOTION: Craig moved to adopt a procedure to open the floor for nominations, receive all nominations, and then proceed with voting by open vote among only the nominees and to require a majority vote of the council present and voting. Warren seconded.

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

Ms. Sexton advised staff will write this up and include it in the code and governing body manual. She asked the council if they want staff to write up a charter ordinance specifying that the council president will fill in for the mayor in the event of the mayor's death or otherwise in a capacity to serve as mayor until the next regularly scheduled city election.

Council Member Warren requested staff poll the council, do some research on what other cities are doing and come back with some recommendations on the duties and responsibilities and how long the council president would hold that office before going up for election, then bring it back to the council for discussion by the end of February.

EXECUTIVE SESSION

MOTION: Schwarz moved to adjourn to executive session at 8:40 p.m. for a term of 30 minutes to discuss non-elected personnel, following a 10 minute break. Staats seconded.

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

The council returned at 9:10 p.m. and Council Member Schwarz advised that no binding action had been taken.

Council Member Craig reiterated that it has been a joy to have Mandy Cawby here and congratulated her on her recent marriage and move to a new job in Topeka.

ADJOURNMENT

MOTION: Warren moved to adjourn at 9:14 p.m. Schwarz seconded.

VOTE: Craig yea, Meidinger yea, Nun 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