

**APPROVED  
REGULAR COUNCIL MEETING  
November 10, 2009  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Meidinger  
Vaughn Nun, Heath Horyna  
Chuck Warren, Cheryl Bannon  
Tom Haynes, Mark Staats

COUNCIL MEMBER ABSENT:

WARD I

Jim Craig

Flag salute was led by Council President Mark Staats. The invocation was led by Chaplain Keith R. Saare, McConnell AFB.

**CONSIDERATION OF MINUTES**

Minutes of the October 27, 2009, Regular Council Meeting.

MOTION: Warren moved to approve. Horyna seconded.

VOTE: Motion carried 7-0, Craig absent.

**PUBLIC FORUM**

**Council Member Haynes** reminded everyone that the Derby VFW will be celebrating Veteran's Day tomorrow with an open house from 9:00 to 10:00 a.m. but will be open all day. Thanksgiving Dinner will be served on November 22<sup>nd</sup> from 11:00 a.m. to 1:00 p.m.; plates are \$3.00 each.

**Mayor Avello** thanked Mr. Mendoza for fixing the Woodlawn bridge.

**Council Member Bannon** advised the library opens this weekend. Doors open Saturday at 9:00 a.m. with a ribbon cutting at 10:00 a.m. and activities from 10:00 to 2:00 for adults and children alike. Come check out the new facility; it's beautiful. She also commented there will be a 10-page spread in the Derby Informer on Wednesday.

**DEBT MANAGEMENT POLICY**

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

**Background:**

- At the September 22<sup>nd</sup> meeting, the City Council discussed a draft Debt Management Policy.

- Two sections of the policy were identified as needing clarification and possible revision: Section 3. General Debt Policy, in which an overall debt benchmark was suggested; and Section 13. Conduit Financing, in which clarification of the city manager approval was requested.
- Section 3. General Debt Policy - An additional benchmark is recommended of rapid amortization of total debt with the objective of at least 60% over 10 years.
  - Total debt includes all outstanding general obligation and revenue bonds.
  - Derby's rate of principal amortization is viewed as sound by the rating agencies and is currently at approximately 76%.
  - Standard & Poor's has viewed principal amortization of 50% over 10 years as appropriate; whereas, Derby's recommended policy is more aggressive to reflect the City's conservative approach to debt.
- Section 3 already includes a benchmark of 20% of statutory direct debt as a percentage of assessed valuation, which is more conservative than the state limit of 30%.
  - Derby has historically complied with the statutory requirement and used the 20% benchmark as our goal. However, water and sewer utility and storm water projects are exempted or removed in the statutory ratio, which allows a city's total debt to be higher than 30% of assessed valuation.
  - Future projects in the 5-year Capital Improvement Plan are not exempt from the statutory ratio, with the exception of the wastewater nutrient removal project in 2014, so it will be a good tool for future councils to consider the impact of new debt on the city-at-large.
- After review of several additional benchmarks, it is recommended that the policy include only the two benchmarks noted above (60% of total bonded debt scheduled to be paid within 10 years and 20% of statutory direct debt as a percentage of assessed valuation).
- Section 13. Conduit Financing – After further review, it is recommended that the language remain as shown in the earlier draft.
  - This policy provides for double-barrel approval, meaning that both the Council and the manager must approve, or else the Council would approve an exception to the policy.
  - Since the Economic Development Board is advisory to the Council, the board's recommendation will always be presented to the Council, even if it's for denial.
  - This language is commonly used by many cities in their debt policies. Its purpose is to signal to rating agencies and to the public that the City has in place a mechanism to ensure a professional review of important items like IRBs.
  - Issuers of IRBs in Kansas (cities) are prohibited by law from levying any form of taxation to pay principal or interest on IRBs, so a default is not generally viewed as having any effect on the Issuer's own credit standing. This policy illustrates the conservative nature of the City and the intent to be good stewards with the City's reputation in the financial industry.

- In addition to the above two sections that the Council asked to be reconsidered, a couple of minor changes are recommended:
  - Section 5 General Obligation Bonds: Language has been inserted to reflect the city's current practice with regard to the funds from which debt service is paid. Typically, general obligation bonds are paid out of the Bond and Interest Fund, but the council sometimes directs by resolution that the debt service be paid out of a separate fund, which has been the case with the aquatic park sales tax bonds.
  - Section 11 Administration: Language has been inserted to reflect the City's current practice of making a full report about debt obligations during the annual budget/CIP process.

**Financial/Sustainability Considerations:**

- The policy will have no immediate financial effect, and over the long term may favorably affect bond ratings, improve the fiscal health of the City and reduce interest costs, which ultimately results in savings to the taxpayers of Derby.

**Legal Considerations:**

- The policy has been reviewed by the city's bond counsel Joe L. Norton with Gilmore & Bell and financial advisor Greg Vahrenberg with Piper Jaffray & Company.

**Policy Considerations:**

- The objectives of the policy are to plan and control capital expenditures, provide financing alternatives, provide guidelines for issuance of various debt instruments, hold borrowing costs to a minimum, and maintain ratios within established standards.

RESOLUTION NO. 38-2009

A RESOLUTION ESTABLISHING POLICIES FOR MANAGEMENT OF DEBT WITHIN THE CITY OF DERBY, KANSAS.

DISCUSSION:

**Council Member Meidinger** advised in the future he would like to have a letter from Piper Jaffrey and Gilmore & Bell indicating they have read this and approve of it.

**Council Member Bannon** thanked staff for adding the additional benchmark.

MOTION: Bannon moved to adopt the debt management policy as presented. Nun seconded.

VOTE: Motion carried 7-0, Craig absent.

**HIGH PARK GATE CONSTRUCTION BIDS**

**Robert Mendoza**, Director of Public Works, presented the staff report and introduced Michael Cathcart, the architect on the project.

**Background:**

- A bid opening for the construction of the High Park Gate was conducted on October 9, 2009 at 2:00 p.m. An invitation to bid was sent to qualified local contractors.
- The following bids were received by the Director of Public Works and witnessed by the City Clerk:

<u>Contractor</u>	<u>Base Bid</u>
Commerce Construction	\$ 116,000
Conco Construction	\$ 126,700
Sauerwein Construction	\$ 128,600
Snodgrass & Sons	\$ 144,390
EBY Construction	\$ 158,500
DanCo Enterprises	\$ 172,400

- The 2009 CIP approved construction budget for the High Park gate is \$99,000. The lowest base bid of \$116,000 exceeds the approved budget by \$17,000.

**Financial/Sustainability Considerations:**

- Due to the budget overage, the City negotiated several items that will lower the project bid by \$11,750. The negotiated bid with Commerce Construction is now \$104,250.
- This project received financial support from the Derby Community Foundation in a donation of \$2,836 dollars. These funds will be applied to the total expense of the project.
- The balance of the contract (\$101,414) is available in funds allocated for the project (\$99,000) and from savings from other CIP projects that have come in under budget (\$2,414).
- Several items cut from the project will be completed by City staff and funded from operational budgets.

**Legal Considerations:**

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

DISCUSSION:

**Council Member Haynes** asked if the south entrance on Madison will be closed once this entrance is opened.

**Mr. Mendoza** advised there is no intention to close either one of the gates.

**Council Member Meidinger** stated this is a beautiful project; there is no doubt about that. When he looks at the nation and the economy as a whole he would like to say that Derby could save \$100,000 for future needs. As he looks at the state forecast in their budgets, April 18, 2009, the state forecast was \$328,000 in the red. On November 6<sup>th</sup> it was indicated there was a shortfall in the budget of a half billion dollars. The federal government is billions of dollars in debt, Kansas is many million dollars in the red, yet Derby is skating along and spending money on a project like this. He read opinions from the Wichita Eagle about spending and thinks we might get the same thing here: buyer's remorse on this project. The architecture is great, he understands it's in the budget and we passed it, but he would like to think that we would have a little more regard for the taxpayers of Derby. It's rather interesting the resolution that we just

passed says something to this effect: “Whereas the city government has an important responsibility to our citizens for careful account of public funds...” This is an example of where we could spend our money more wisely some where else. He is going to vote against this and doesn’t think we should pass it at this time.

**Council Member Bannon** stated that there is a dramatic grade difference between the east side and the west side. In this bid of \$104,000, is there dirt work involved in that?

**Michael Cathcart**, advised there is a little bit of dirt work in it. We will be pushing some of the dirt back to the east from the gate. The area will be relatively flat.

**Council Member Bannon** clarified that the east side will be lowered to the level of the west side.

**Mr. Cathcart** advised it would be pretty close, it’s slightly higher but pretty close.

**Council Member Bannon** stated this is a gorgeous gateway and she is sure it will look wonderful out there. Not very far away from it is a roundabout where we have a very expensive sculpture and landscaping plan. She thinks they are too close together, to have something that tall, if you put something that close in front of it you are taking away from the other focal point. If you add those two projects together about how much are we dollarwise, including design fees?

**Mr. Mendoza** advised that we never went that far with the roundabout. That was completely a concept drawing and that concept has been almost imprinted on this gate. We did not look at funding any kind of budget or dollars at all on that roundabout so he doesn’t have any information to provide on that project.

**Council Member Bannon** asked if it’s safe to assume it’s something you are going to want to go forward with in the future.

**Kathy Sexton**, City Manager, indicated the plan is to bring to the council in the budget and CIP process the option of whether the council wants to go forward with that. It’s not about what Robert or Michael want, or myself. It is something that we presented to the public as three opportunities: this gate, the K-15 gateway and how to decorate the interior circle of the roundabout. That could be landscape, at this point it’s just going to be planted to grass and mowed each year. We are years away from doing anything inside that roundabout. It’s really a decision of the council.

**Council Member Bannon** stated that we say a decision of the council but she doesn’t know that the council ever said “let’s get a drawing for a gateway to High Park” and then we end up with it.

Once we were shown pictures of it and a discussion yes, but as far as the council saying, let’s have a major entrance, I’m not gonna go there. Let’s just say there’s a time for everything and she believes this has its place, but she doesn’t think this is the right time. Just because it’s budgeted, if we go into next year ahead \$100,000, good. We have entrances and exits at High Park; this doesn’t add what she would consider usability to the park. She has spoken with Mr.

Mendoza, she was worried about the dock because the dock would add usability and he has assured me that sometime during this next year the dock will be replaced. Unfortunately due some vandalism we lost that. This doesn't add any real usability, it's aesthetic but her vote tonight will be against it. Keep it on the back burner, and there will come a time when we have the money to do this.

**Council Member Horyna** stated that if now isn't the time to go forward with this; will there ever be a time to go forward? We can't be afraid to build for our future. We have had this item budgeted, we have all agreed this is the direction we want to go. There is no need in changing the game plan now. This is a beautiful entranceway, it has been planned the way we wanted it to; he sees no reason why we need to stop now. We are headed in a good direction and he feels we should be going in that direction, his vote will be yes.

**Council Member Staats** thanked Robert and Michael and others who helped pare this down quite a bit. It did start out high and a lot of work, time and effort was put in to see where you can cut costs. He was a part of this project at Derby Days and had the pleasure of standing at the booth while people came through and voted on this, the south city entrance and the roundabout. At Rotary Club when this was presented a lot of people had some positive feedback. He hasn't really heard any negative comments from citizens but that's not to say they aren't going to come. He agreed with Heath in moving forward with this. He understands we do have some tough times ahead of us possibly and thinks we run a little bit tighter budget than the state does and we have a lot more control than they do. Projects like this are important to a city. Derby used to be known, and still is as the city people move to for the great schools. We want to be able to attract people who don't have kids for various other reasons. Public art, if that's what you want to call it or nice aesthetics, is a step in the right direction. We have to be proactive and keep moving forward with these projects and make them happen. Overall it will be good for our community.

MOTION: Staats moved to authorize the City Manager to execute a contract with Commerce Construction for \$104,250 to construct the High Park Gate. Horyna seconded.

**Council Member Warren** stated the debate we are having is the debate we always have, the debate between practicality and things that fall under the category of quality of life issues. Is this something that we have to have to survive? Is it going to add a ball field or a football field that is functional? No it's not. But those are the kinds of things that we find from time to time that are very important. We could have built a library that had just as much square footage but come with a very plain box design that would have been much different than what we came up with. As a city the people feel like having that iconic aspect to it that says this is the type of community we are is important, so we went beyond the box that we could have done from that standpoint. This falls into that category. It will not make High Park any more usable but it is something that says we are the kind of community that really cares about quality of life issues. If we were having to pull back on streets and not be able to do our basic responsibilities because of budget shortfalls, then he might be inclined to say this is a time to pull back but we have managed ourselves well. Future projects may be different, we have talked about gateways on K-15, entrances into the city, those kinds of projects may get pushed back. We have talked about some other projects that aren't absolute necessities but are kind of cool. We may have to push

some of those back. We have got this in the budget, the money is there and he appreciates the staff work to bring this in as close to the original dollars that we talked about. He will stand in support of this project.

**Council Member Meidinger** asked if there was a price tag involved when this was being shown to the public.

**Council Member Staats** advised there was not at that time.

**Council Member Meidinger** stated that the people on his cul-de-sac have been after him for about five years because the cracks in the road have grass growing through them. He doesn't understand why we are building something like this for \$100,000 and there are cracks at the level of which he has on his court. It's either streets or \$100,000 for an architectural design. It is a question between streets and aesthetics.

**Council Member Bannon** pointed out it's a little short sighted to compare an aesthetic gate to a library. If you remember, there is a huge difference; the public voted very decidedly to spend the dollars for that particular library.

MOTION: Bannon called for the vote. Warren seconded.

VOTE: Motion carried 6-1, Horyna no, Craig absent.

VOTE ON ORIGINAL MOTION: Motion carried 5-2, Bannon and Meidinger voted no, Craig absent.

## **ANNEXATION OF PROPERTY WITH CONSENT OF OWNER TO BE PLATTED AS STONE CREEK 5<sup>TH</sup> ADDITION**

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

### **Background:**

- The subject property is approximately 4.4 acres in size and is generally located on the north side of Patriot, adjacent to the existing City boundary, east of Stone Creek 2<sup>nd</sup> Addition and is in the process of being platted as Stone Creek 5<sup>th</sup> Addition.
- The property owner has consented to the proposed annexation.
- Future development of the property will require extension of City water, sewer and streets, which in turn requires the property to be annexed within the City limits.

### **Financial Considerations:**

- Annexation, zoning and platting contemplates extension of municipal services into the new area. The extent of infrastructure extensions will be determined as the zoning and platting process continues. At this point, City staff anticipates no City-at-Large contributions for this area.
- A modest increase in the City's total valuation will be experienced with this annexation. Taxable valuation of the City will increase further as the property is developed.
- Annexation, zoning and platting will facilitate the marketing of the property for development.

**Legal Considerations:**

- Because the property owner has requested annexation, the City may annex the subject property without notice and hearing.
- Since the subject property is adjacent to the existing City boundary, the City Council may approve annexation without action by the Board of County Commissioners.

**Policy Considerations:**

- The Council has historically approved annexations that are requested by developers of landowners.
- The proposed development is in the City’s growth area as identified by the Comprehensive Plan.
- Annexation will not adversely affect any existing uses upon the subject property.
- While this annexation will ultimately require extension of water and sewer services, those extensions will be addressed through the various petitions required with the Final Plat.
- Other City services such as Fire, Police, Public Works & Parks will also be affected by this annexation and its ultimate development.

**ORDINANCE NO. 1999**

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

DISCUSSION:

**Council Member Warren** asked if the 10 lots will be similar in size to the existing Stone Creek Addition, and are we looking at roughly the same requirements as far as square footage on houses?

**Mr. Brown** advised the lots are very similar in size, but he doesn’t have any information as far as developer’s intent on covenants on house sizes but you have to assume if the lots are about the same size that the houses will be as well.

MOTION: Staats moved to approve an ordinance annexing certain lands on the north side of Patriot Avenue owned by Gary L. and Sharolyn K. Tibbetts.  
Warren seconded.

VOTE: Motion carried 7-0, Craig absent.

**ANNEXATION OF LAND ENTIRELY SURROUNDED BY CITY**

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

**Background/Discussion:**

- City staff recommends that the Council commence proceedings to consider annexation of land located in the northern part of the City and entirely surrounded by the City.
  - The land is made up of 30 tracts, 19 of which are platted in Town and Country Estates or Country Lane Addition and 11 of which are unplatted.

- Because this land is entirely surrounded by the City, City services and infrastructure are either currently available or can readily be made available to all tracts.
- Staff has prepared plans for extension of municipal services to this land. These plans will be available for inspection in the office of the city clerk after 8 a.m., November 12, 2009.
- The tracts are either undeveloped or developed for residential uses.
- The land, a diagram of which is attached, is currently eligible for annexation pursuant to state law.

**Financial Considerations:**

- Annexation will not result in an immediate demand for municipal services that are not readily available.
- There will be a modest increase in city valuation.
- Property taxes on the annexed property will increase by the equivalent of about 25-30 mills as imposition of City taxes is offset by elimination of some special district taxes.

**Legal Considerations:**

- Because the land lies entirely within the City and has a common perimeter with the City boundary of more than 50%, it is eligible for annexation under state law (K.S.A. 12-519 *et seq.*).
- A public hearing to receive input from landowners or other interested parties will be held on January 12, 2010, during the regular Council meeting.
  - Notice of the public hearing will be mailed to land owners, utilities and affected agencies, and will be published in the official City newspaper, all as required by law.
  - Following that hearing, the Council will determine whether to annex all or any part of the land by adoption of an appropriate ordinance.

**Policy Considerations:**

- The Council has historically been reluctant to annex land unless requested to do so by property owners but has also wrestled with the consequences of not timely annexing property. The long-held policy of the City is to pursue unilateral annexation at such time as property is surrounded on three sides by the City. In this case, the property has recently become surrounded on all sides.
  - Unilateral annexation is a valuable tool for management of growth and orderly development of resources.
  - Formal consideration of annexation will give the Council an opportunity to assess the advantages and disadvantages of annexation and to receive input from property owners.
- Annexation would not adversely affect any uses to which the property is now being put.
  - All of the properties would be zoned R-1 upon annexation, and all existing nonresidential uses, if currently legal, would remain legal as nonconforming uses within the R-1 zone.
  - Either property owners or the City Council may initiate rezoning following annexation.

RESOLUTION NO. 39-2009

A RESOLUTION SETTING FORTH THE INTENTION OF THE CITY OF DERBY, KANSAS, TO CONSIDER ANNEXATION OF CERTAIN LANDS, ALL PURSUANT TO K.S.A. 12-519 *ET SEQ.*

DISCUSSION

**Council Member Warren** indicated that unilateral annexations are never fun but are necessary for proper planning and growth of the city, as far as being equitable to the citizens that are in the city now that everybody be on a level playing field. His personal feeling is that this area probably should have been brought in a couple of years ago but we have had so many things on our plate that it wasn't a priority.

MOTION: Warren moved to adopt a resolution setting forth the intention of the City of Derby to consider annexation of certain lands, pursuant to K.S.A. 12-519 *et seq.* Haynes seconded.

VOTE: Motion carried 7-0. Craig absent.

**HEALTH AND DENTAL INSURANCE RENEWAL**

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

**Background:**

- The City of Derby contracts for health and dental insurance for its employees and includes the Library employees in its policy.

**Health Insurance**

- PPK's original renewal to continue the current insurance plan (Plan G) with Vitality (see below) provided for a 13.1% cost increase.
  - This increase was based mostly on claims experience in 2008 and the increasing average age of plan participants.
- The City utilized the services of Hardman Benefit Plans, Inc. to negotiate a reduced rate increase of 10.5%, as well as the addition of a new plan (Plan K) to serve as the City's base plan for an increase of 8.8%.
  - Employees who choose to continue Plan G will be responsible for the difference in cost between Plan G and Plan K.
- Employees who are non-tobacco users will receive a \$10 reduction in their premium per month when they sign a statement declaring that they are and will remain tobacco free for the duration of 2010.
- Highlights of differences between Plan G and Plan K include the copayment amounts for the following services:

<u>Item</u>	(Optional) <u>Plan G</u>	(Base) <u>Plan K</u>
Primary Care Physician	\$ 15	\$ 25
Specialist	\$ 30	\$ 40
Obstetrical Services	\$250	\$300
Inpatient stay (per day)	\$200	\$250
Outpatient Surgery	\$250	\$300

Immediate Care Facility           \$ 30                                   \$ 40

- Preferred Plus of Kansas (PPK) has provided the City of Derby with health insurance coverage for eleven years. PPK has provided the City with superior customer service and has been able to resolve the majority of employee problems and concerns.
- Competitive selection was last performed in 2007 and is recommended every 3 to 5 years.
- Proposals were not requested for health insurance this year, because the City intends to request proposals in 2010 using a template under development by the Wichita Business Coalition on Health Care which is designed to improve the quality of health care and decrease the cost.

**Dental Insurance**

- Delta Dental of Kansas has provided dental insurance benefits through a separate contract for 12 years.
- The City of Derby is currently in a three-year agreement with Delta Dental that expires at the end of 2010. The agreement specifies a 7% cap for 2010. Delta has provided a 5% renewal increase for Plan Year 2010.
- Delta Dental has provided the City with the option of a three-year agreement. The rates proposed by Delta for the one-year and three-year agreements are shown below:

<u>Options</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
One Year Agreement	5% increase	N/A	N/A
Three Year Agreement	5% increase	5% cap	7% cap

- Delta Dental’s multi-year proposal provides guaranteed caps for each of the covered years, but provides for lower increases if claims experience warrants a lower increase.
- Delta Dental’s premium history in the last five years has been as follows:
  - 2009 0% increase
  - 2008 0% increase
  - 2007 9% increase
  - 2006 0% increase
  - 2005 0% increase
- Delta Dental has provided the City with superior customer service and has been able to resolve the majority of employee problems and concerns.

**Vitality Wellness Program**

- In January 2009, the City began participating in a wellness program offered by PPK called Vitality and will continue to provide a 5% reduction in health insurance premiums for employees who participate (provided they successfully completed Vitality if signed up in 2009).
- The Vitality program provides rewards based on employees participating in health education, prevention, fitness, and healthy living activities. A few of the rewards include rebates on gym memberships, smoking cessation classes, and weight loss management programs. Members are also awarded Vitality bucks which can be used to purchase items in the Vitality on-line mall. More than 3,000 items are available for purchase.
- PPK has been affiliated with Vitality for three years and has 23 companies that are currently using Vitality.

- Independent studies have shown that members who are active in Vitality for three years have been proven to reduce their healthcare costs by 15% relative to other members.

**Financial Considerations:**

- Based on the current number of employees participating in the health insurance benefit (109 Family and 33 Individual) and assuming 50% of employees select Plan G and 50% Plan K, the total 2010 cost for health insurance will be approximately \$1,423,800, which is a 9.7% increase in cost.
  - Total monthly premium cost for Plan G: Single=\$318.44 Family=\$999.90
  - Total monthly premium cost for Plan K: Single=\$313.41 Family=\$984.11
  - A summary of premium rates based on plan, Vitality status, and tobacco discount is attached.
- The City will pay 85% of the health insurance premium for city employees who participate in Plan K with the Vitality program, and will pay 80% of the health insurance premium for those on Plan K who do not participate in Vitality.
  - Employees who select Plan G will be responsible for paying the difference of the cost between Plan G and Plan K based on their vitality status (refer to attached rate sheet).
  - The City's cost based on 88% participation in Vitality will be approximately \$1,202,970, which is an increase of \$106,370 (assuming 50% of employees select Plan G and 50% Plan K).
  - The non-tobacco incentive will reduce the premium for non-tobacco users by \$10 per month and will add approximately \$15,000 to the City's cost for a total of \$1,217,970.
- The Library will reimburse the City for all costs associated with Library employees (approximately \$29,470).
- Based on the current number of employees participating in the dental insurance benefit (110 Family and 41 Single), the total cost for dental insurance will be approximately \$116,390.
  - The city pays for 85% of the dental insurance premiums for employees, which will be approximately \$98,930.
  - The Library will reimburse the City approximately \$2,500 for coverage for Library employees.
  - Per employee, the monthly premium cost is: Single=\$27.09 Family=\$78.08
    - City portion: Single=\$23.03 Family=\$66.36
    - Employee portion: Single=\$ 4.06 Family=\$11.72
- Budgeted funds are sufficient to cover the City's anticipated cost for both health and dental insurance.

**Legal Considerations:**

- The City may offer health and dental insurance as a part of its employee benefits package and enter into contracts for comprehensive or specific health insurance services for the benefit of its employees.

**Policy Considerations:**

- By continuing health insurance with PPK, the City is able to continue to provide good quality health insurance to employees with a reasonable increase in premiums for the City and employees who participate in the City's health incentives.
  - By providing two plans, the City enables employees to choose the plan that best meets their health care needs as well as their financial priorities.
  - By continuing the Vitality wellness program, the City builds upon its first year of success in getting employees to take more responsibility for their improving their health status.
  - By instituting a discount for non-tobacco users, the City creates an additional incentive for employees to benefit from taking good care of their health. The policy also includes reimbursement of the cost of a program for smoking cessation for employees who choose to participate.
- The multi-year Delta Dental of Kansas agreement provides for guaranteed caps on rate increases for the next two years, which helps protect the City from a large increase during these years.

DISCUSSION:

**Council Member Horyna** asked if Preferred Plus was recently purchased by Coventry.

**Ms. Sexton** advised that Preferred Health Systems is the parent company; PPK is one of its offerings. We have an HMO program here called PPK. There is a sale pending of Preferred Health Systems, the entire company; to Coventry. It is pending review of the Kansas Insurance Commissioner as well as some other background work that is being done currently. They expect a sale to go through in the next 60 days or so. We have been assured that it will not affect this one-year contract with them.

**Council Member Bannon** stated that last year when we started Vitality the DRC was not an approved facility. Is it going to be for 2010?

**Ms. Sexton** advised it will not. There has been some work in that regard but they are not quite ready yet.

**Council Member Bannon** asked if there were anything we could do to help that along. We had a lot of staff that were really hoping they could do some of their workouts here.

**Ms. Sexton** advised the city has done all it can do to encourage the DRC as well as the Vitality folks to get together. We are not in charge of the DRC but we have encouraged them and she thinks we have done what we can do.

**Council Member Bannon** clarified it is the City and not the insurance company that is giving the \$10 cut to non-tobacco users and we are doing that expecting the payoff is much greater down the road.

**Ms. Sexton** agreed. All the insurance company does is tell us what the plan costs. We decide how much we are going to pay and how much the employees are going to pay.

**Council Member Bannon** advised that is a nice incentive. She would like us to track and see if that's worthwhile, whether we have enough people sign up for it and decide to go smoke free and stay that way.

**Ms. Sexton** advised we will track that.

**Council Member Bannon** indicated that otherwise we are giving people a break and we are not getting anyone to change and that's the whole idea of the incentive program is to get them to change.

**Mayor Avello** asked if everyone had to be in this program.

**Ms. Sexton** advised you don't have to take City insurance. Some people don't. Some people are covered through their spouse in another job, some are covered in other ways but most do.

MOTION: Warren moved to authorize the City Manager to execute contracts with Preferred Plus of Kansas for Plan G and Plan K for a one-year agreement and Delta Dental for a three-year agreement. Horyna seconded.

VOTE: Motion carried 7-0, Craig absent.

## **PROPOSED SETTLEMENT WITH UNION PACIFIC RAILROAD (DOUBLE EAGLE SUPERFUND SITE)**

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

**Council Member Meidinger** excused himself from the bench.

### **Background:**

- In the spring of 2009, the City received a demand from Union Pacific Railroad Company (UP) for \$22,500 as contribution to a fund for clean-up of the Double Eagle Refinery Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) site in Oklahoma.
- CERCLA, also known as the Superfund law, imposes the cost of environmental remediation on persons and firms that contributed to the contamination.
  - Under CERCLA, contributors of hazardous material to a contaminated site can be held jointly and severally liable for the entire cost of remediation.
  - The UP demand is based on a receipt indicating that about 2,500 gallons of waste oil from the City's public works facility was delivered to the Double Eagle site in May 1988.
- Hinkle Elkouri contacted UP attorneys on behalf of the City, raised a defense under the "petroleum exclusion" and offered to settle the dispute for \$5,000.
- UP declined the City's offer, disputed application of the petroleum exclusion, renewed its earlier demand for \$22,500 in full settlement of the City's potential liability, and declared its intent to join the City as a party to the litigation if its offer is not accepted by November 13.

### **Financial Considerations:**

- Settlement would cost the City \$22,500.
- Sufficient funds for the proposed settlement are available in the contingency account of the general fund.

**Legal Considerations:**

- CERCLA is a federal law designed to spread the cost of environmental remediation as broadly as possible among persons and businesses that contribute contaminants to a Superfund site.
- Liability for proven contributors to a Superfund site:
  - does not require proof of illegal or wrongful conduct;
  - may be based on merely contracting for shipment of a hazardous substance that is delivered to a Superfund site;
  - may be based on the mere presence of pollutants (including trace elements) like those transported to the site; and
  - does not require proof that the City’s shipment actually caused or contributed to the contamination.
- A defense known as the petroleum exclusion may be available, but the City’s ability to qualify for the defense is uncertain and litigation costs would far exceed the amount of the proposed settlement.

**Policy Considerations:**

- An impromptu informal investigation was conducted to determine whether any of the City’s waste products were delivered to the Double Eagle site. That investigation:
  - Substantiated the City’s use of Waste Oil Service Company of Oklahoma City during the time period alleged;
  - Was inconclusive as to the exact composition of the material picked up from the City’s public works yard and whether such material would relieve the City of liability under the petroleum exclusion.
  - Revealed understandable variance among the recollections of the employees and former employees with knowledge of the City’s practices in 1988.
- While a defense may be available to the City, the cost associated with defending renders litigation unattractive.

MOTION: Staats moved to approve a settlement of CERCLA litigation with Union Pacific Railroad Company in the amount of \$22,500 and authorize the City Manager and legal counsel to execute such instruments as may be necessary to conclude settlement. Haynes seconded.

VOTE: Motion carried 6-0, Craig absent, Meidinger abstained.

**CONSENT AGENDA**

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

**Amended Bylaws of the Planning Commission**

**Background:**

- The Planning Commission is vested with the duties and responsibilities prescribed in Kansas Statutes Annotated 12-736 and 12-741 *et seq.*, and may adopt Bylaws for the conduct of its business.
- A recent problem encountered by the Commission with voting rules established in the Bylaws prompted staff to review both state statutes and the Bylaws to ensure their compatibility.
  - The voting problem was the result of language requiring a majority vote of the entire membership to approve a plat instead of a majority of the members present. This requirement does not apply to amendments to the zoning regulations, applications for rezoning and special use permits.
- Staff recommended that the Bylaws requirement for voting be consistent with state law providing that the Commission act by vote of a majority of the members present.
- Commissioners agreed in principle with all of the recommended changes to the Bylaws, but questions concerning special situations could not be answered by the staff present at the meeting.
  - The proposal was tabled to October 15, so that City Attorney, Phil Alexander could answer questions before the changes were approved.
  - On October 15, the city attorney answered outstanding questions, after which the Planning Commission voted to adopt a resolution amending its Bylaws by a vote of 9-0.
- The Planning Commission's action operates as a recommendation that the City Council approve the Bylaws as amended.

**Financial/Sustainability Considerations:**

- There will be no financial impact to the City as a result of approval of the proposed changes to the Planning Commission Bylaws.

**Legal Considerations:**

- State law requires only a majority vote of members present for action by the Planning Commission.
- The proposed amendment will promote consistency in Planning Commission procedures.
- Current Planning Commission Bylaws require Council approval for amendment, a requirement that will be eliminated by the proposed amendment.

**Policy Considerations:**

- The Planning Commission, like most boards of its type, adopted Bylaws to establish meeting procedures that promote efficiency in its proceedings.
- The Commission may amend its Bylaws from time to time by a majority vote of the total membership when the changes do not conflict with Kansas State Law or Ordinances of the City, but the Bylaws currently provide that amendments are not effective unless approved by the Council.
- Because Bylaws address only procedural matters and apply only to the Planning Commission, Council approval of amendments serves no purpose and should not be required.

**Recommendation:**

- Approve the proposed amendments to the Bylaws for the Conduct of Business by the Planning Commission, as recommended by the Planning Commission.

**Initiation of Codification Process**

**Background:**

- State law authorizes publication of ordinances of general application as a municipal code.
- Derby updates its City code periodically, and the last codification was October 2008.
- It is necessary to update the City Code to include ordinances passed since that time.
- Staff proposes to use the services of Municipal Code Corporation, the City’s current code publisher.

**Financial Considerations:**

- Recodification costs, which are based on the number of pages to be added or amended, are estimated to be approximately \$2,500.
- Improved utility of the new code results in time saved for both City staff and the public.

**Legal Considerations:**

- The City’s code should be kept current to provide easy access to all ordinances.
- Adoption of an updated City Code must comply with K.S.A. 12-3014 and 3015.
- Upon completion of the supplement, the Council will re-adopt the entire City Code, as supplemented.

**Policy Considerations:**

- The new city code will be easier to use for both staff and the public.

**Recommendation:**

- Adopt an ordinance authorizing and directing the supplementation and recodification of the Derby Municipal Code.

ORDINANCE NO. 2000

AN ORDINANCE AUTHORIZING AND DIRECTING THE SUPPLEMENTATION AND RECODIFICATION OF THE DERBY MUNICIPAL CODE.

**Change Order for Water Line Relocation on Buckner Avenue**

**Background:**

- The City began the reconstruction of Buckner Avenue from K-15 to Meadowlark in July of this year.
- The east side of the project is now substantially complete and traffic has been moved to the new pavement to allow for construction of the west side.
- The work on the west side requires that a water line be relocated to provide for continuation of the stormwater sewer system.
- The project plans addressed this relocation and the work was bid as relocation of an 8” ductile iron water line.
- It has been determined that the line to be relocated is actually a 16” waterline.

- The material cost, labor, and equipment required to relocate a 16” water line is significantly greater than the same work for an 8” waterline.
- The contractor (Kansas Paving) has requested compensation for the additional work associated with the change in the amount of \$14,300, which staff negotiated down to \$11,385. Staff believes this change in contract price is fair and appropriate.

**Financial /Sustainability Considerations:**

- Some expense in excess of the construction contract was anticipated due to the nature and location of this project.
- The additional expense will not result in project costs exceeding the approved project budget.
- Once the change order is approved, the amount of the total contract will be \$1,209,044.75.

**Legal Considerations:**

- The construction contract for the project contemplated the need for changes in the scope of work; a change order is the appropriate vehicle to address such situations.

**Recommendation:**

- Authorize the City Manager to execute a change order in the amount of \$11,385 to the existing contract with Kansas Paving for additional work required to relocate a 16” water line.

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

VOTE: Motion carried 7-0, Craig absent.

GENERAL DISCUSSION:

**Ms. Sexton** clarified an earlier discussion regarding Vitality and the DRC. She has learned that the Vitality folks had a contract last year with Genesis and Curves. We were encouraging them to work with the DRC and the YMCA because those are the two companies we have contracts with for fitness centers. We were told then that they were currently working with YMCA. The new information is they did get their contract done with the YMCA this past year, but they did not make progress with the DRC. She doesn’t think it’s anything the DRC did at all. Jenny reminded them several times, but they were just focused on their YMCA contract. We will try that again although she does not know that we will be successful. She understands the reason why they wouldn’t do anything last year because they had a bigger fish to fry, so to speak, but we will try that again.

**Mayor Avello** stated that the public needs to come down to city hall and see the artwork by the local high school students currently being displayed.

**ADJOURNMENT:**

MOTION: Warren moved to adjourn at 7:40 p.m. Staats seconded.

VOTE: Motion carried 7-0. Craig absent.

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Dion P. Avello, Mayor

ATTEST:

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Jean Epperson, City Clerk