

**APPROVED
REGULAR COUNCIL MEETING
January 23, 2007
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Loren Johnson, Chuck Warren
Charlie Schwarz, Cheryl Bannon
Ken Mulanax

Flag salute was led by Council President Cheryl Bannon.

The invocation was led by Pastor Brad Beets, Pleasantview Baptist Church.

**CONSIDERATION OF
MINUTES**

Minutes of the January 9, 2007, Regular Council Meeting.

MOTION: Bannon moved to approve minutes of January 9, 2007 Regular Council Meeting. Schwarz seconded.

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

PUBLIC FORUM

Vicki Walton, 108 N. Brookwood, is in favor of a comprehensive clean air ordinance. She made it clear that while she has been a town hall panel member at the request of the Derby Coalition Promoting Healthy Choices, and while she wholeheartedly supports the coalition's efforts, she is speaking tonight as a concerned Derby citizen. On August 22, 2006 a number of Derby residents spoke before the council in support of efforts towards passage of a clean air ordinance. Since that August meeting she has attended each council meeting that dealt with the issue. She has also emailed the thoughts of her and her husband to council members over the past several months. Because of that she did not feel the need to address the council publicly again. However after sitting quietly at the January 9th meeting she feels compelled to speak tonight. At the last meeting two Derby residents spoke in favor of the clean air ordinance, along with several health agency representatives. It is her understanding that the mayor had requested speakers to be kept at a minimum, with that request being passed along to those attending in support of the ordinance. She is not sure if the same request was made to those opposed to the ban, but numerous Derby business representatives spoke in opposition. In any event, the result of the pro-ordinance majority silence was a completely lopsided report that appeared in at least one of our local newspapers. The media chose to ignore the majority of the standing room only

crowd who were wearing "I support clean indoor air" buttons by reporting that only two Derby residents supported the ordinance, the "silenced" majority was also invisible. The paper even stated that perhaps the majority doesn't really care, they do however, care. Her father, her husband and herself have all had cancer and suffered through chemotherapy treatments. She and her husband quit smoking long ago. Her father smoked his entire adult life, starting when he joined the United States Air Force during World War II. He retired after 31 years of service and lost his life at the age of 69 to bladder cancer, a smoking related cancer. In addition, his entire adult life he suffered from smoking related cardiopulmonary disease. Her husband is a 23 year veteran and she has the utmost respect for those that protect our freedom, she is a proud Air Force brat and Air Force wife. With this strong military background she listened to the Derby VFW manager address the council on January 9th. Mr. Dinino referenced the regulars that come into the VFW each day to hang out and claim that most of them smoke. He also said those vets would drive to Mulvane or Haysville if they could not smoke at the Derby VFW. She stated with certainty that her father would never have set foot in the Derby VFW because of the smoke. Before his death, her father and his retired military buddies met each day for coffee at non-smoking McDonalds. Like her father and his military buddies, she and her husband do not go to the VFW because of the smoke. If the Derby VFW listens to its national leadership it will impose a voluntary smoking ban immediately. Last August newly installed National Commander Gary Corpeus made a speech entitled "Veterans First". In it, Commander Corpeus talks about the need to increase VFW membership across the country because membership is declining. He points to generational differences between past and current soldiers, stressing that today's soldier is more likely to have a family than a single soldier of previous generations. He challenged VFW posts world wide to rethink the way they operate and become more family friendly and he stressed that as long as smoking is still permitted indoors no one will want to join the VFW. She quoted from his speech "we are a democratic organization that is letting 20% of the population tell us that the post will fail if people can't smoke inside, that's bunk. I know many VFW members and spouses who will not attend post meetings or events because of the smoke. I have read many articles about the VFW being the last building in town where indoor smoking is still permitted and some members quoted in the newspaper are celebrating as if they have just won a great battle against government and social interference. Comrades, that is not a victory, it is a sad commentary that unfortunately paints all of us with the same brush. American society and the VFW national office have changed with the times and so must you if you want your post to survive. The VFW's future rests with attracting new members who want to believe that the VFW is more than just a bar and who want to believe that the VFW is an organization that regards change as a recognition of the future and not a criticism of the past." Given the philosophy of the VFW national leadership she was unable to let Mr. Dinino's comments stand as though he was speaking for all veterans, it simply isn't so. She is hopeful that all Derby businesses will embrace the clean air ordinance as an opportunity to expand business. 80% of people do not smoke and those same 80%, even those who quietly tolerate second hand smoke, would prefer non-smoking environments; that is a huge untapped customer demographic. She urged the council to lead the community towards better health and set an example for surrounding communities, be bold. Every individual has the right to breathe clean air and the passage of a clean air ordinance will ensure those who work in Derby, attend our public facilities and events and those of us who reside here are able to do just that. We deserve no less.

Derek Smith, 907 Woodlawn Heights, representing the Derby Community Coalition Promoting Healthy Choices. He advised it is his understanding, as it appears to him, is that the council is looking at two options, one being the contingency option, waiting for Wichita to adopt a new ordinance, or the extended date option. After the last meeting the council spoke with some business members and some council people and there may or may not be a little bit of softening on whether we set it a year from now or two years from now. The coalition obviously would prefer to do that as quickly as possible. But if there is some middle ground and extending that date would help the local businesses have some extra time to formulate their business plans around that and help the surrounding communities have some extra time to go through their

process like Derby has, then the coalition would embrace that and feel it would be a positive step and would congratulate the council. In his mind, the difference between January 1, 2008 and January 1, 2009 in the grand scheme of things is not horribly significant. Obviously we want to get it done as soon as possible but we want to encourage the council to do something that we feel has some substance to it and the coalition feels that a contingency plan does not have much substantial change involved with it. It is their feeling that if Wichita were to adopt an ordinance that most of the surrounding communities would follow anyway so the contingency option reads somewhat hollow in terms of actually getting something done that will result in a more healthy environment for the community. If extending the date would be beneficial to the business members in the community the coalition would embrace that. He advised the coalition will be out in the community for the next two weekends distributing information regarding the clean indoor air ordinance and encouraging people to contact their council people to let them know how they feel. He congratulated the whole community on the tone of the debate, it is an emotional issue and it really has been a great experience to see people on both sides of an issue be able to work together and work towards a solution. He thinks that speaks volumes about our community and about our capacity to tackle not only this issue but many other issues that will come up in the future.

Deane Konkol, Sedgwick County Division of Public Safety Community Liaison Program Manager. She invited the council to attend training for the National Incident Management System (NIMS). This system was rolled out in February of 2004 as a result of the 9-11 findings. NIMS is a system that has been put in place throughout the country to help us manage emergencies and disasters more efficiently. It also puts into play the incident command system, which is what our first responders utilize when they arrive on a scene. With the program, the federal government also put into place some requirements, those being that all first responders take some of the training associated with this. She pointed out in the "County Officials Guide" that it refers to those individuals that are required to take the training and to what level they have to take, depending on their position. They have also tied in some federal funds to this. At this time there are very few communities in Sedgwick County that receive any kind of federal funding that would be withheld because they are not in compliance, but we will start seeing more and more federal funds that will stipulate being NIMS compliant. Mitigation dollars as a result of disasters are not tied to this at this time but that could be a possibility in the future, At this time the other thing is that they have not mandated that elected officials take any of this training and it would be difficult to do that, but they are highly encouraging it and so are they at the county level. The class on Saturday will provide an overview of the program. She advised they are encouraging local elected officials in Sedgwick County to look at the NIMS IS 100 and the IS 700 classes. The IS 700 classes provide information about the National Incident Management System and the IS 100 is a class that provides basic information on incident command. If a disaster ever happens in Derby it will be local and elected officials who will be there to handle the situation. The more information you have on how the incident command system works and the things that are going on will be beneficial, plus you will not have to interrupt to ask questions about what is going on. You will know what is going on and things will flow much easier. She requested those that would like to attend to please contact her by Friday.

Council Member Warren asked if there were any staff that were planning on attending.

Kathy Sexton, City Manager advised staff can attend, but most of the senior staff have already attended the ones pertinent to them, but there are a whole battery of classes so there are different ones for different employees. The one on Saturday is specifically for elected officials and senior executives. She advised she is planning to attend and she has taken two courses on line.

Ms. Konkol explained that the IS100, IS200, IS700 and IS800 are all online classes. You can take them online by logging onto FEMA's website to do that. She recommended that when

taking the classes you download the quick study guide to assist with the class as the study guides are quite lengthy, and then take the test. The thing about taking the test on line is that you can take it as many times as it takes to pass it. If for some reason you don't pass it the first time they will send you an email and you can retake it as many times as it takes to pass it. She did advise they have had some requests to hold some additional classroom training and they will be discussing that at this Saturday's meeting.

Council Member Craig asked if there was any plan to offer this training a second time.

Ms. Konkell advised at this time there are no plans to do that. If after this Saturday's class there are several individuals that express an interest they could consider that. If someone that is not able to attend and would like the information provided at the class she would be happy to provide that either by e-mail or a hard copy.

Council Member Craig advised he would like a hard copy of the information.

Council Member Meidinger asked when construction will begin on Rock Road.

Ms. Sexton advised she did not have a date tonight. It is to be bid in the spring and start sometime in the spring or summer.

Council Member Meidinger questioned when we are going to work on Tall Tree from the golf course west to Derby Hills Elementary.

Ms. Sexton advised she would have to get that date.

Council Member Meidinger asked if it had been bid yet

Ms. Sexton stated she did not recall, but will get the information.

Council Member Meidinger asked if we have done anything regarding making it a policy of the city to charge for water well permits. One of these days that will be a very valuable commodity and he would like to see that addressed.

Ms. Sexton explained that is on the list of projects to work on, in terms of creating a new fee for water well permits. We have staff currently working on updating the fee resolution, pointing out that some of those fees have not been updated since 1999, so there are a number of fees we feel like it is time to do an update on. We are looking to recommend that we add a fee for water well permits to cover staff time involved.

Council Member Bannon thanked the police and fire department and especially public works employees for the extra effort they put in during the recent winter weather. They have done a great job keeping the major streets clear.

Mayor Avello announced council member Lori Payne has resigned and he will be accepting applications for Ward IV through February 28th. He also advised the council will not be having an executive session for the water company meeting. There are two executive sessions for the city council so the meeting will be recessed at the end of the water meeting at which time they will have the executive sessions.

Ms. Sexton advised those who are interested in applying to the Ward IV position, they can get an application at city hall or from the website.

PROCLAMATION

Mayor declared Wednesday, January 24, 2007 as Eagle Scout Day in the City of Derby. The Proclamation was accepted by the following, who have achieved the Eagle Scout Award: From Troop No. 683; Shane Morris and Hunter Rockhill, From Troop No. 692; Jordan Bergmann (not present), Dustin Blencoe, Scott Sanders and Cameron Walker (not present), Phillip Wellemeier (not present), From Troop No. 699; Michael Doesken and Jaron Malin.

ECONOMIC DEVELOPMENT INCENTIVE POLICY

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

Background:

- The City's existing incentives policy was adopted in February 2001.
- In October 2006, City Council discussed the use of cash incentives for various economic development projects, including hotel and retail businesses. Staff was asked to develop a review the policy and to develop a priority list of industries to be eligible for economic development incentives. The attached policy reflects that request.
- Economic Development Board has discussed the new policy in its past three meetings and voted to recommend this policy for approval by the City Council.
- This policy strongly correlates with the Wichita/Sedgwick County Economic Development Incentives Policy, adopted by the Wichita City Council and the Sedgwick County Commission in 2004.
- Notable changes from the City's existing policy include:
 - Types of incentives – this policy integrates references to a wider range of incentive tools, including Industrial Revenue Bonds, property tax exemptions and abatements, sales tax exemptions, forgivable loans and infrastructure improvements. It is noted that while forgivable loans (cash incentives with performance requirements) are still included in the policy, those could be made available only to eligible businesses as listed on page one with certain conditions to be set forth in a formal agreement with the City. Retail businesses are not eligible, and the policy states that hotel projects will be subject to the guidelines set forth in the Policy Statement on Hotel Development.
 - Matrix – this policy uses a different schedule of jobs and capital investment to determine the incentive amount. This matrix is more flexible than in the previous policy, with more job creation and capital investment categories. The end result is a formula that provides more options for granting incentives.
 - Requires a minimum benefit-cost ratio of 1.3:1.
 - Requires the business to pay wages that are equal to or greater than the average wages in the Wichita Metropolitan Statistical Area (MSA).
 - Requires the business to be current in its payment of *ad valorem* property taxes.
 - Establishes a list of eligible businesses that is similar to the businesses included in the Wichita/Sedgwick County policy.

- Items not originally found in the Wichita/Sedgwick County policy but transferred from the City’s existing policy include:
 - The identical criteria used by the Council to determine whether or not the incentive is justified;
 - A provision that allows the Council to deny an incentive if the Council feels the incentive would create an unfair advantage of one business over another competing business within the City;
 - The “but-for” principle: an incentive should be approved only if it is the factor that makes the difference in the business choosing to locate in Derby.
- Several standard exemption/abatement alternatives were discussed. Those options included a 10-year exemption/abatement period; a five-year exemption/abatement period with the option to renew for an additional five years; and a graduated exemption/abatement period beginning with a full 100% exemption/abatement in year one, declining to 0%. It was the Board’s recommendation that the exemption/abatement policy be consistent with Wichita and Sedgwick County, offering an initial five year exemption/abatement plus an additional five years subject to review and approval by the City Council at the end of the initial term. This will put Derby on a level playing field with the larger metro area.

Financial Considerations:

- Running several actual past projects through the matrix suggests that the recommended level of incentives would be very similar to those already granted.

Legal Considerations:

- The policy has been reviewed and approved by the city attorney.

Policy Considerations:

- The new policy brings with it the recommendation of the Economic Development Board.
- The policy establishes clear standards for incentives eligibility.
- The use of a similar policy by Wichita and Sedgwick County helps to create consistency when dealing with businesses seeking incentives in the metro area.

DISCUSSION:

Council Member Meidinger asked if there was a compliance section in the old policy.

Mrs. Moeding advised there is, it is an annual compliance check done by touching base with the businesses that have received the abatement or the IRB related abatement each year and ask them to quantify how many jobs they have created. That is also part of the filing that goes to the County Appraisers Office.

Council Member Meidinger asked if there was something more concrete then just touching base. These companies come in and ask for money from the city council and then we never hear

from them again. He asked how we can be assured we are utilizing the best use for our tax dollars.

Mrs. Moeding explained that in many cases she hears from businesses regularly...

Council Member Meidinger asked if that were in writing. He believes there should be a form of some kind that we would use. In private business, when you make a contract with a company they have to perform or there is a penalty.

Mrs. Moeding pointed out that the city clerk requests a letter from the business that has received the IRB's or the tax abatement, so we do get a response from them in writing.

Council Member Meidinger advised that with the last one we did, BRG, they were talking about increasing jobs and salaries, how do you check on that?

Mrs. Moeding advised that at this point their tax abatement has not taken effect and has not been filed. We are not to the point yet where we will get those regular communications from them. That is something we could do very easily.

Council Member Meidinger asked what would happen if they promised 50 jobs, at \$50,000 and they only came up with 4, what do we do then?

Mrs. Moeding advised that would depend on the specific incentive agreement that is reached with that company. She stated that in order to give an accurate answer she would have to look at that specific agreement.

Ms. Sexton pointed out that in the document, on page 3 under the Compliance Section; it specifically says that the written agreement between the City of Derby and the recipient, the recipient will be required to meet the 5 listed performance criteria. It states the city has the right to audit, to discontinue any incentives being given and require the incentives already given to be repaid in full or in part as set forth in the agreement. It all depends on, as Allison said, what is written in the agreement. The city does have the ability by law to require things be done or else and we will get agreements or updates each year on those items.

Council Member Bannon asked, regarding capital investments if it would be better to require a percentage, 20% to 30%, is that a discussion that came up?

Mrs. Moeding advised that is not something that was looked at. She was afraid when she looked at the abatement model that it would penalize the smaller businesses that maybe weren't doing the \$5 million dollar projects. She ran a number of projects we have worked on and was kind of surprised to find out that in many cases the incentives that were recommended through the new matrix were similar to what we had already awarded. The way it tended to work out in the models she ran was that with companies that created a lot of jobs the tax abatement percentages would come in the jobs part. Companies that did not create as many jobs but needed to create a large warehouse or had large capital needs would find that that capital investment piece picked it up and brought them up to a level that was fair.

Council Member Bannon agreed that having more capital investment is a good idea, she just does not like to see it based on the \$50,000 or \$500,000, she would personally like to see it based on a percentage of the entire project. She thinks that would be looking out more for the city's best interest. Instead of us giving them a reward for having \$50,000 when \$50,000 on a very large project is nothing, but if they have got \$50,000 of a \$200,000 project, that is more substantial, so she suggested doing it on a percentage basis. On the location premium it indicates that businesses in the city will be encouraged to locate and or expand within special redevelopment areas. Currently we don't have any of those and she questioned if that is something we are looking at.

Mrs. Moeding explained that if in the future that were something that were to arise it would be a great idea. Right now there are not any plans to encourage or establish that, but the line of thinking is that for example K-15, as we see development along Rock Road we might want to do something to encourage development along K-15 in the commercial areas and that could perhaps be something we might want to include as a location premium.

Council Member Bannon asked if the 1.3 to 1 was going to be a requirement or is it still just a recommendation.

Mrs. Moeding advised that as written in the policy it would be a requirement, but obviously the council could choose to make an exception if it felt the project warranted it.

Council Member Bannon asked if council would still have approval to deny or accept, even if they met the criteria set forth in the development policy.

Mrs. Moeding stated they would and that is where a lot of those criteria come into play, for example, the but/for policy.

Council Member Bannon commented she is not fond of forgivable loans and does not think people that are looking for loans that are going to be forgiven are necessarily the ones that are going to be in business long term. She likes the first year, 100% rebate, 2nd year 90% rebate because what that does is allows the business to get used to paying those taxes instead of one lump sum at once. It also allows the city to recoup some funds and allows for more interaction between the businesses. She commended the Economic Development Board for doing a great job.

Council Member Craig stated that the council has discussed capital equity at great length and he believes that a percentage is much more appropriate than a block of money and he encouraged the 20%. He advised he also wants to be competitive, but does not feel you can be competitive if you follow someone else's example exactly and he encouraged that we provide more options, for example; a 100% at 5 years, 80% at 4, as well as a 10-year scale. He agrees with Council Member Bannon that businesses sometimes do not prepare for the inevitable tax load that they inherit. To be competitive he thinks it needs some more options available. He also stated he has a problem with forgivable loans and that has been discussed extensively. On page 2 it states that it is the board's recommendation that the exemption/abatement policy be consistent with

Wichita/Sedgwick County and he feels that is too strict. He suggested building two more options in there that would give us an even better opportunity to tailor to whatever business approaches us. He questioned the comment on page 1 regarding public costs and asked if those were defined anywhere.

Mrs. Moeding advised those were defined in the cost benefit analysis tools.

Council Member Craig advised he would like to see the matrix that Ms. Moeding referred to. He stated that he was not in a position to pass this as a policy tonight until recommendations of some of the other materials are provided for him to look at.

Mrs. Moeding stated the matrix is not what you would typically think of as a matrix. The way the matrixes are described are on pages 4 & 5.

Council Member Craig commented that it should be described as a criteria rather than a matrix because a matrix gives a completely different visual impression of what that is.

Mrs. Moeding advised they could create a visual matrix...

Council Member Craig advised a matrix can be construed as a grading scale and advised it appears this is referring to criteria's or requirements.

Mrs. Moeding commented on forgivable loans, knowing that this is a bone of contention. The Economic Development Board did discuss this at length and it was their feeling that because the city has set aside funds in an economic development reserve fund to be used someday for the right project that comes along, including that the reference in the policy made sense. It is certainly at the council's discretion to award those or not award those as it deems appropriate, but the board did not want to remove that from the policy completely because we do have funds set aside and the board feels those are a potentially useful tool for the right business. She also pointed out; regarding the capital investment calculation that when they talk about private investment it is not just of equity that the recipient will have in the project, but includes all of the proceeds from banks, and financing partners. It will include all of the money that will go into the project total, not just the equity that the particular recipient will put in, it is looking at the cost of the whole project.

Council Member Warren stated that he is hearing a couple of different things in this discussion. One being that we want to remain competitive with those communities around us when a company starts shopping for a location, yet when we start talking about making adjustments to our policy it is like we are pulling back from the same level. We don't like the 10-year flat abatement, which the other communities are giving. That goes back to the idea that we are giving away tools and options. The thing he likes about this policy is that it has a tremendous amount of flexibility within it. When a company comes in, the Economic Development Board is going to evaluate each company and determine the strength of the company, the jobs, the investment that is coming in and how it will fit within our community and they will make recommendations to the council. The council will then take recommendations from the board and decide if a flat 10-year abatement is the way we want to go or do we want to

go the 10-90 or 10-80, do we want to do the 5-year and then the reassessment. It is within our means the ability to do all of those things. Let's don't tie into this policy something that puts us below the level playing field that we are going up against with other communities. He has not looked at the details of Wichita or Sedgwick County policies so he is trusting that staff has done so and that ours is basically matching up on a level playing field and that is where we need to be. Anything less than that takes away our options. He would hate to see us cut back and lock ourselves into something, we may want to do that but if we get a plum company with great jobs and great income and it fits what we are looking for, let's don't take that possibility out of the mix. He recommended that we pass this policy as is.

Council Member Johnson agreed with Council Member Warren's last statement. We are not carving anything in stone, this will change with every case we have and it will change as time goes by. If we had something that gave someone some negotiating information and explained the council has the final say because none of this is automatic. Nobody gets all of this stuff in here just because we have written it down. He stated we could belabor this thing to death but it is a guideline only. Industry should tell us what we want and we should decide what they deserve when they come to talk to us. If we give them something they don't deserve then everyone on the bench should have the Tuesday night off after their appropriate election, that is how simple it is in his opinion.

Council Member Craig responded that we are not taking anything away from it. In the policy it mentions two things, but there is no harm in adding the others that are possibly to be considered, that does not detract from it at all. It has already been stated that it can be 10 years; it can be a 5 year, renewable at the five year point. The other two he mentioned are just options to that, they are a subset of that and it does not take anything away from it. If you read this as a prospective business in Derby, then you find a spectrum of what can be expected if applied for. All the way up to maybe 5-years, 100% across the board, but there are other options that can be available to this as they approach this council for approval for those abatements, it does not take anything away from it, it just further defines two other options that could happen.

Council Member Johnson agreed, you can put the kitchen sink in there if you want to, it makes no difference. There will be industries asking for things we don't have in here and we might want to give it to them, we don't need to limit ourselves and we can decide at the proper time when it is appropriate if we want to do that or not. He does not have a problem with anything in the policy and he doesn't have a problem with taking anything out, but we might put it back in if we have a case that warrants it, he is simply saying be flexible.

Council Member Mulanax thanked the Economic Development Board for their efforts on a very difficult issue. He advised that to answer a lot of the questions if you look on page 5; the very last statement is "exceptions to the conditions set forth in this policy may be made by the governing body." He feels that answers almost all of the questions, right there in black and white. This is a guideline and a guideline only and if you want to change it from an Economic Development Policy to an Economic Development Guideline that would be fine with him, but the last statement on page 5 says it all for him.

MOTION: Warren moved to adopt the City of Derby Economic Development Incentive Policy as written. Johnson seconded.

VOTE: Craig nay, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon nay, Mulanax yea, 5 yea, 2 nay, 0 absent, motion carried.

Mayor Avello commented that this policy is very flexible and we have already encountered a situation where someone has come in and asked for something and staff countered and they are still coming.

Council Member Bannon stated that it is not that she is against the policy; there was just that one change she would have preferred to see. She does not want businesses to look at this document and think “oh, this is what I can get”, and then we tell them no.

**DEFEASANCE
ANALYSIS OF THE
G.O. BOND SERIES
2003-A**

Jean Epperson, Director of Finance presented the staff report.

Background:

- In November 2002, voters approved a ½ cent city-wide sales tax to provide for the construction of an aquatic park, the operation and maintenance of the park, and to fund a \$1.5 million reserve.
- General Obligation Bond Series 2003-A in the amount of \$7.0 million was issued to finance the construction of the Rock River Rapids Aquatic Park.
- Due to commercial development that occurred after the bonds were issued, sales tax collections have exceeded initial estimates at the time of debt issuance.
- In February 2005, the governing body directed the establishment of a bond redemption account on the city’s ledger within the Sales Tax Revenue Fund. Revenues from sales tax and interest proceeds totaling \$1,508,110 have been deposited to this account as of December 31, 2006.
- The Finance Department has developed a model of the Sales Tax Revenue Fund activity over the life of the bond issue. Based upon projected sales tax revenues and expenditures, the bond redemption account will be used to defease the 2003-A Series bonds earlier than the current June 1, 2017 maturity.
- The city’s financial advisor Greg Vahrenberg, Piper Jaffray & Company, has developed an analysis reflecting a defeasance date of February 1, 2010. In order to defease the bonds, an escrow account would be established with the proceeds of the bond redemption account and then used to retire the non-callable bonds at maturity.
- Once the bonds are defeased, the sales tax would sunset at the end of the quarter or March 31, 2010, based upon the assumptions in this analysis. Both the February and March dates are estimates and are subject to change.

Financial Considerations:

- The assumptions used in the model include:
 - Sales tax growth of 3% per year, in addition to the expected opening of Kohl's in 2007.
 - DRC Management expenses increase by 3% per year, which is consistent with the current contract.
 - Net revenues received from the DRC operation of the park remain constant in 2007 at \$150,000 and then drop by \$20,000 per year. This is a hypothetical number and subject to variation due to the weather, attendance and competition from other aquatic parks that may develop in the area.
 - Maintenance and repair costs projected to be paid out of the Sales Tax Transfer Sub-Account (pink column in spreadsheet) include \$50,000 for pool painting every 3 years, \$20,000 asphalt repair every 2 years, and \$50,000 per year for emergency repairs to the equipment. Beginning in 2009, under the assumptions in the model, sales tax from the \$1.5 million reserve (last column) would be used to support the operation of the park.
 - The Interest Earnings Sub-Account (three blue columns) is funded with the interest earned on the investment of the \$1.5 million Operation & Maintenance Reserve. No expenditures are shown at this time. This sub-account is projected to build to be utilized to fund new features in the park.
 - The bond redemption account would be used to defease the bonds and the remaining special assessments levied against the property for infrastructure would be paid.

Legal Considerations:

- Defeasance of outstanding bonds can be defined as setting aside an amount of funds in an escrow account which will provide for all future payments due on the bonds. In other words, the city would deposit an amount into an irrevocable escrow account held by an escrow trustee and the initial principal deposit and interest earnings thereon will be sufficient to make all remaining principal and interest payments on the bonds.
- Just prior to the defeasance, a certified public accountant (CPA) will provide verification of the escrow account calculations to certify that there would be adequate funds to provide for all of the remaining payments on the bonds. As a result, the City will not be required to make any payments on the bonds after the defeasance is completed.
- Furthermore, Bond Counsel will provide a defeasance opinion which is a legal opinion stating in general that the City is no longer obligated to make payments on the bonds and that all bond covenants have been released.

Policy Considerations:

- This model has been developed with the guidance of the ballot question approved by the voters and resolutions authorized by the governing body.
- The model has been developed in compliance with the policy of achieving the sunset of the ½ cent sales tax as early as possible, while providing adequate funding of the

operation of the park. Many assumptions are made, and changes will likely occur over the years.

DISCUSSION:

Council Member Warren asked for a definition of the word “defeasance”.

Greg Vahrenberg, Piper Jaffrey explained that a “defeasance” is that point in time when we take an amount of money and put it in an escrow fund, and the amount in the escrow fund plus the interest earnings inside of the escrow fund will provide for all future payments on a bond issue. For example, outstanding bonds that have payments through the year 2017, in the year 2010 they take projections from the city and that bond redemption account and looking at the money in the bond redemption account, making some assumptions of what interest rates would be at that point in time, and when everything aligns itself to where there is enough money to put in the escrow account, they look at current interest rates and set up investments for money in the escrow account. At that point they can go through the “legal defeasance” process and what happens is that they take their calculations and give them to a CPA firm and they verify that the amount of money set aside in the irrevocable escrow fund will be sufficient, and the interest earnings will be sufficient to make all remaining payments on the bond issue for the city. Keep in mind the bonds have payments going all the way through the year 2017, but you have the ability to call in the bonds in 2011. If we set up that escrow fund in 2010 it will not be outstanding that long because we have the ability to call in the bonds, so it may only be sitting in the escrow fund for a year or year and a half, or two years. Once we put that money in the escrow fund and the CPA firm provides a report verifying that no future payments by the city are needed to be made on that bond issue then the bond council will give a defeasance opinion, meaning that the bonds are now payable from the escrow fund and the city is not longer obligated to make payments and at that point in time you can “sunset” that sales tax if you choose to do so because the bonds don’t need to rely on future sales tax collection to make any remaining payments on the bond issue. The defeasance is really the process where they provide for all future payments on the bonds, and even the special assessments. One thing he pointed out that adds to the good news of paying off the bonds early, obviously if you do that there will be a substantial savings on interest expense by cutting the bond short by several years and their calculation shows that could be in excess of a half million dollars, so it is a significant savings to the city to do that.

Council Member Schwarz asked if the city can pay specials off early, and can it be done from any of the funds.

Mrs. Epperson advised that can be done. She spoke with Joe Norton of Gilmore & Bell and he advised that it is considered part of the operation and maintenance costs. There are several ways to do that but the example he provided is that if the council were to take action in 2010 to decertify those specials, the amount that is calculated to pay down those specials would be set up in an informal escrow account.

Council Member Warren stated that he is not sure that the way Derby does specials that there would be any benefit to paying off the specials, we would have to pay the interest on the specials.

Mrs. Epperson advised that was correct, basically we are paying ourselves, but there is approximately \$51,000 savings. That is in the sense that in 2010 you will have an amount, \$284,000, that you owe over \$300,000 in specials, and you are going to set that money in the escrow account and it will earn interest. The bond holders are still going to get their principal and interest, but since we will have the money up front we will gain the benefit off of the interest. It is another escrow account, but it does not have all the formalities that the bond defeasance account would.

Council Member Warren pointed out that we are making projections on future income off of taxes, while he doesn't see anything on the horizon that says we are going to have a major recession/depression, but what would happen if we make this plan for 2010 to pay off in 2011 and we do see a major economic downturn and all of a sudden the income we are getting from taxes does not meet the projections, do we have the ability to extend out past 2013 and can we go to the full 2017 if necessary.

Mr. Vahrenberg explained that the calculations today do have some assumptions built in such as future collections of sales tax and interest rates. The amount needed to set aside in the escrow fund would consist not only of the revenue collected on sales tax, but interest rates. If the interest rates are lower then we will have less interest earnings in the escrow fund, which could cause the date to slide back a month or two. When we get closer to the date we will be watching it much more closely. When enough money has been collected and there is excess in the redemption account and interest rates are at a point where we can put everything in the escrow account we would do that. It could be that it happens sooner if we have growth in sales tax or the economy grows. If the economy slows down it may take a few months longer but he does not think we have used assumptions that are overly aggressive to the point that it is highly likely that it could extend beyond, but there are forecasts that could change that could impact when you are able to defease that, either sooner or later. We just simply watch it and as we get closer we will provide a month to month update on how close you are getting and when the money is there and interest rates would allow you to go ahead and make that deposit you would have the ability to direct city staff to go ahead and complete the defeasance.

Council Member Bannon commented that Rock River Rapids has been a wonderful facility for both the Derby citizens and visitors to our community and by using the sales tax money, both the citizens and the visitors have helped pay for this. It is great to see this come to fruition if we keep on track, but with just the ½ cent sales tax it has been paid for by the citizens, visitors, shoppers. She suggested this would be a wonderful tool for future financing of other facilities within our community. With the growth pattern we are on we are going to have some more facilities and amenities that we are going to need to look at financing.

Council Member Johnson asked what refunded bonds means.

Mr. Vahrenberg explained the page he is referring to is a program used for structuring and modeling bond issues, some of the headings are a little bit different. We are not creating a refinancing but what the page shows is, if you look at the principal column, in the year 2010 that would be the remaining principal outstanding on the Series 2003-A bond issue.

Council Member Johnson asked about paying off specials, he questioned if we can recall bonds and not have interest, therefore not have interest due the city.

Mrs. Epperson stated in the past, because we have so few people that will come in and want to pay them down, we are small enough that in the past that we have not had people in place to call certain amounts, so we don't do that.

Council Member Meidinger advised that in the beginning the tax dollars were not being spent just exactly the way they should have been. With new staff and council members getting on board the tax dollars are now being spent correctly and he applauds staff and Piper Jaffrey and the council members for doing the right thing. The whole point being, in the future, he wants the tax payers to be able to say that city council and city staff did what they said they would do with the money so if we would happen to come back and ask for another sales tax issue he wants the tax payers to know we did everything possible to correct the early errors, and for lack of a better term, you can trust us. He sincerely thanked the city staff and council for doing that.

Council Member Schwarz commented that this is a great reward for the city; the fact that we can pay this off seven years early is pretty phenomenal. If you go out to projections to 2009, 2010 we are looking at about \$1 million a year in sales tax revenue and that includes known entities that are currently building or are in place in Derby, it did not include additional retail that may come into town. About two years ago he and Mrs. Epperson were speaking with Joe Norton about several different options the city has as far as sales tax collections, etc. One of the comments Mr. Norton made that was intriguing to him was the fact that Overland Park did not rely on city property taxes for a lot of their funding, most of their funding came from sales tax collections. After 9-11-2001 when they saw a dip in sales, the bonding agencies cut their ratings somewhat because they relied so heavily on sales tax. What that proves to him is that as we go forward, he wants everyone to remember that we can build things in this community and we can improve the community and invest without the use of property taxes. We can do it in another mechanism that benefits all of us and a great deal of the sales tax will be paid by people outside the city of Derby. He stated he has been asked by numerous people about some moving of funds back and forth between the sales tax reserve fund, but he assured them everything is on the up and up and he is thrilled with the way all of these funds are handled.

Ms. Sexton stated that not only are there assumptions made in the sales tax in the economy remaining healthy and that type of thing, but there are also a lot of assumptions made on the expense side of the ledger. As you know, a swimming pool in Kansas is something that you just don't know what the weather is going to be like every year. It is not like a lot of other projects where you can pretty accurately predict your expenses and your maintenance costs from one year to the next. This is highly dependant on the weather and she suggested that there are assumptions being made on both sides of the ledger, the revenues and the expenses. She also

stated that on the sales tax estimates, the assumption made was a 3% growth each year for the entire period, plus a lump sum chunk that we put in there assuming that Kohl's opens their department store in late 2007. She did not want anyone to think that we were so conservative that we weren't projecting a 3% growth, 3% is a conservative growth and we hope it would be more than that but we are projecting that one new store. As you all know that company has followed a lot of processes in the city but they don't have a building permit yet but we do have ground being moved and plats and site plans approved and we feel pretty good about Kohl's which is why we built it in, but it is still an assumption, not a fact that they are opening this fall. She advised they did not build in any other retail or other establishments that there have been rumors, talk and newspaper articles about because no other major project is as far along as the Kohl's project. She advised staff was conservative with estimates and it is a good place to be. Some things could turn out better than we expect, and we hope so, but some things could turn out worse. She appreciates Council Member Meidinger's comments and it's important to know that the research and review that staff has done in the past year on some of the issues of concern of people on the council and in the community about whether monies were spent appropriately or not, when we brought that issue up a couple of months ago we found that the staff implemented the policies of the council that were set at that time when this was passed, there was no wrongdoing. There are people on the current council that didn't agree with the past council and there are people in the community who did not understand what that council passed. There was no wrong doing found in the exhaustive review that was done. We have changed some things, the council has changed some things and she thinks everyone is on the same page now about what is being done. As Council Member Meidinger aptly noted there are no problems here. She commented that it is no secret that the library staff and herself and Mrs. Epperson are starting to work on financial analysis of what a library will cost, not only to build but to operate a new facility. We are developing that and hope to have that back before the council in about a month and show the council a spreadsheet and some assumptions about costs. They will also present some options on how to pay for it. One option is to raise the mill levy, which is a property tax. City council has that option because that is the tax you have the most flexibility with technically. We also know the council does not have much flexibility with the property tax because people hate property taxes and we don't want to raise them very badly. A second option will be a sales tax that would replace the Rock River Rapids sales tax. When it sunsets, we are predicting in 2010, then our assumptions will be, if you were to pass the same ½ cent sales tax that will start after this one sunsets, so it would not be a tax increase, it is a replacement. That would require voter approval at an election because that is a special tax. We are not saying we need to have that, at this point we are going to bring the council, in about a month, an analysis indicating how much the tax would need to be, how long it would last and what it could pay for. Staff will provide a couple of different scenarios, one being to just pay for the building for the new library and the other to be pay for the operations also. She pointed out that at the time the aquatic park was passed, the council said they did not want this to have a burden on property taxes, but you can tell from the spreadsheet, once the sales tax ends, eventually we will have to find another funding source to fund the operations of the aquatic park and the library is the same way. Presumably, the space where the library is now would be reprogrammed into another city facility, which means we are still going to pay the light bill, gas bill and all of the phone bills. A new building will have a set of new costs for utilities as well as some expansion of staff because when you have that much more square footage you probably need a few more staff members. She stated she is interested in the council's thoughts as staff does the scenarios because if

council has some scenario's in their mind they want staff to put numbers to, they would certainly be glad to calculate those. At this point she is looking at scenarios to build a building, or to build a building and operate a library.

Council Member Warren commented that going back to the very beginning of the water park, 5-6 years ago when it came from a dream to 2011 or 2012 when we are able to pay it off, in the span of all that, one of the consistencies is the integrity of the sales tax and that we would do it exactly like we said we would. He does not think Council Member Meidinger was saying this, but the way it came out is that somehow we were spending the money in some misappropriate way. It was a very complicated process with several funds and there were some grey areas and we probably didn't do a good enough job of defining exactly what monies went into each part of the budget and that is what was done earlier this year, or last year. We made sure we had our definitions correct so that what we did was exactly, to the best of our ability what we told the tax payers we were going to do. We do know that we will have the opportunity to use this again in the future, but we will only get the taxpayers support if they believe that we are in fact going to hold to some integrity, so that is what we have done and that is what we will do in the future.

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

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

ANNUAL REVISION OF DERBY CITY CODE

Jean Epperson, Director of Finance presented the staff report.

Background:

- Pursuant to an ordinance adopted by the Council October 24, 2006, staff contracted with Lexis-Nexis to prepare a comprehensive supplement updating the Derby Municipal Code.
- Passage of the proposed ordinance is necessary to adopt the new code; adoption does not change the substance of ordinances already in force.
- The city code is available on the City's website and is used by stakeholders of the city, so it is important to keep it current.

Financial Considerations:

- There should be no financial impact resulting from adoption of this ordinance.

Legal Considerations:

- The City's code should be kept current to provide easy access to all ordinances.

- Adoption of the new code repeals all ordinances of general application unless they are included in the code itself, or otherwise excepted from repeal.
- Charter ordinances are unaffected by adoption of the new code.

Policy Considerations:

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

ORDINANCE NO. 1879

AN ORDINANCE PROVIDING FOR RECODIFICATION OF THE DERBY MUNICIPAL CODE; PROVIDING GENERALLY FOR THE REPEAL OF CERTAIN OTHER ORDINANCES OF THE CITY NOT INCLUDED IN SUCH CODE; EXCEPTING SPECIAL AND CERTAIN GENERAL ORDINANCES OF THE CITY FROM REPEAL; SAVING RIGHTS, DUTIES, FORFEITURES AND PENALTIES; AND PROVIDING RULES FOR CONSTRUCTION THEREOF.

MOTION: Craig moved to adopt an ordinance providing for recodification of the Derby Municipal Code; to include all ordinances of general application effective on or before November 1, 2006. Warren seconded.

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

**REPEAL OF
ORDINANCES
PERTAINING TO
EMPLOYEE BENEFIT
FUND**

Jean Epperson, Director of Finance presented the staff report.

Background:

- The 2007 Budget reflects the consolidation of three funds into the General Fund. The three funds were consolidated to increase efficiency and make the budget document more understandable.
- The three funds consolidated were Employee Benefits, Tort Liability and Special Utility.
- Special funds were most likely created when the tax lid law was in effect. K.S.A. 79-5011 is the section more commonly referred to as the tax lid requirement and was repealed as of January 1, 1989.
- Charter Ordinance 23 was adopted by the governing body in June 1982 to exempt the city from the aggregate levy limit of the city and to authorize the levy of a tax for employee benefit costs.
- Chapter 3.20 of the Derby Municipal Code provides for the creation and administration of an Employee Benefits Fund and is no longer needed due to fund consolidation.
- The repeal of both ordinances is recommended as a “clean up” of the municipal code.

Financial Considerations:

- The financial benefit of consolidation of funds is difficult to measure but will reduce staff time in accounting for additional funds.

Legal Considerations:

- With repeal of the state tax lid, there is no longer a need to exempt the City from the statute by charter ordinance.
- Repeal of chapter 3.20 will be effective on publication of the ordinance.
- Repeal of Charter Ordinance No. 23 requires six affirmative votes and will be effective 61 days following final publication.

Policy Considerations:

- The Governmental Accounting and Financial Reporting Standards, as published by the Governmental Accounting Standards Board (GASB), contains the principle that only the minimum number of funds consistent with legal and operating requirements should be established. It is believed that unnecessary funds result in inflexibility, undue complexity, and inefficient financial administration.

CHARTER ORDINANCE NO. 42

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 23, EXEMPTING THE CITY FROM OPERATION OF KANSAS STATUTES ANNOTATED (K.S.A.) §79-5011 AND AUTHORIZING THE LEVYING OF TAXES TO CREATE A SPECIAL FUND FOR THE PURPOSE OF PAYING EMPLOYEE BENEFITS.

ORDINANCE NO. 1880

AN ORDINANCE REPEALING CHAPTER 3.20 OF THE DERBY MUNICIPAL CODE, PROVIDING FOR CREATION AND ADMINISTRATION OF AN EMPLOYEE BENEFITS FUND.

DISCUSSION:

Council Member Schwarz asked if this was actually repealed, or was it just suspended by the state.

Mr. Alexander advised it was repealed, however that is not to say that the legislature could not reenact a tax lid, and every year cities kind of get curious about whether or not that might happen, but it hasn't.

Council Member Schwarz clarified that this was repealed in 1989 and we have not done anything with it for 18 years.

Mr. Alexander advised that was correct.

MOTION: Warren moved to approve a charter ordinance repealing charter ordinance no. 23, exempting the City from operation of K.S.A. 79-5011 and authorizing the levying of taxes to create a special fund for the purpose of paying employee benefits, and approve an ordinance repealing chapter 3.20 of the Derby Municipal Code. Bannon seconded.

FURTHER DISCUSSION:

Council Member Schwarz asked if employee benefits can still be tracked in the budgetary process.

Mrs. Epperson explained that a sub-account has been set up for employee benefits. The savings comes in at budget time when you have tax levy funds with calculations, and the more calculations you have, the greater the chance for error. This is just simplification.

Council Member Johnson asked if staff were still planning on looking at employee benefit accounts as was mentioned when the salary revision was looked at.

Ms. Sexton advised that we kept the cost of employee health insurance that began January 1, 2007 level, with no increase in premiums that the city and employees are paying. That was a nice thing for the 2007 budget. We also plan to take on some additional efforts this coming summer to take a more detailed look at health insurance and other benefits.

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

CONSENT AGENDA

Kathy Sexton, City Manager presented the consent agenda.

Scheduling of Special City Council Meeting

Background:

- Due to the length of regularly scheduled council meetings and the need to address a matter that will require lengthy consultation, the scheduling of a special meeting on a more convenient date is recommended.
- The Council will confer with its legal counsel in an executive session to discuss matters privileged in the attorney-client relationship.

- The fifth Tuesday of this month, January 30th, has been suggested at the usual meeting time of 7:00 p.m.

Policy Considerations:

- Business conducted during a special meeting is limited to the stated purpose of the meeting.
- Discussion in an executive session is limited to the purpose stated in the motion to recess.
- The motion must also state the time at which the public meeting will reconvene.
- A quorum of the council is required to hold the special meeting and recess to executive session.

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

DISCUSSION:

Council Member Meidinger questioned what the city is doing in relationship to running Rock River Rapids.

Ms. Sexton stated that if there is desire to have discussion on the item, someone needs to make a motion to pull it off the consent agenda.

**PULL ROCK RIVER
RAPIDS AGREEMENT
OFF OF CONSENT
AGENDA**

MOTION: Meidinger moved to pull Rock River Rapids Agreement off of the consent agenda. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren nay, Schwarz yea, Bannon yea, Mulanax nay, 5 yea, 2 nay, 0 absent, motion carried.

MOTION: Warren moved to approve Consent Agenda. Schwarz seconded.

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

**ROCK RIVER RAPIDS
MANAGEMENT AND
OPERATION
AGREEMENT
AMENDMENTS**

Background:

- The DRC has requested several amendments to the 2006/2007 RRR Management Agreement.
- All amendments are simple clarifications to the standing agreement and have no impact on the overall intent of the agreement.
- City staff has reviewed, edited and agrees with the amendments as provided.
- The DRC Board reviewed and approved the amendments as presented on January 9, 2007

Amendments include the following:

- Section 2. Duties of the City
City agrees to provide intent of security services to the DRC by March 1st of each calendar year
Clarification of fees regarding the initial fill of the pools (per previously adopted council direction)
- Section 3. Shared Duties of the DRC and City
Shared responsibility to create and implement a marketing program replaces city-only responsibility
Establish DRC personnel as primary contact for scheduling special events
- Section 4. Media Contacts
City agrees to notify DRC of all media releases and allow comment prior to distributing to the media organizations
- Section 7. Aquatic Park Fund
City agrees to extend the deadline for receipt of accounting documents and fund transfers to December 31st of each calendar year.
- Section 15. Limitation of DRC Duties
States that the DRC makes no representations regarding the structures or equipment at the facility and will play no role in the repair or replacement of such.

Policy Considerations:

- The 2006/2007 agreement is in effect until December 31, 2007. At that time, it will be renegotiated and brought to the DRC Board and Derby City Council for discussion of any substantive issues and approval.

Legal Consideration:

- The amended agreement has been reviewed and approved by City Attorney Phil Alexander and attorneys for the DRC.

DISCUSSION:

Council Member Meidinger indicated he would like to discuss, under Section 3, shared duties between the DRC and the City. He questioned what exactly we are sharing with the DRC, and vice versa. He asked why the city is still trying to run Rock River Rapids and questioned why we don't just turn it completely over to the Derby Recreation Commission so we don't have this conflict going back and forth as to who is in charge.

Ms. Sexton explained that as far as she knows there is no conflict about who is in charge of the facility. The city has a two-year agreement with the DRC to operate and manage the facility. This agreement spells out what we do and what they do. It was never the intent of this document to make it appear that they do everything and we do nothing, or just the opposite. It spells out very clearly what each party does. What is being changed in that section is that staff has talked with the DRC, they have a new marketing director and they are ready, willing and able to take on some marketing duties. They agreed that this first year should be a joint thing, they just hired a brand new person and our people have extensive experience in a rather complex marketing and advertising situation so that will be jointly done this year. The rest of the items in that section are about performing safety inspections. There are certain things on site that the DRC staff does every day, certain things public works, city staff do weekly or monthly, so they have a pretty good working relationship there of what each other does.

Council Member Meidinger advised that was his basic concern. He knew the DRC hired a marketing director and he did not realize we had one.

Ms. Sexton agreed that we do not have a person called "marketing director". The people we have at the city fill lots of roles, but we definitely have a person who for the last 2.5-3 years has bought media outlets, we have been on radio, television, in newspapers and all kinds of regional marketing devices.

MOTION: Bannon moved to approve and direct the Mayor to sign the RRR Amended Management and Operation Agreement, as presented. Schwarz seconded.

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

The council recessed for 10 minutes at 8:45 p.m., until 8:55 p.m.

MOTION: Warren moved to recess from the regular City Council Meeting for a meeting of the El Paso Water Company Board.

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

The council returned to the regular meeting following the Water Board meeting at 9:00 p.m.

EXECUTIVE SESSION

MOTION: Bannon moved to adjourn to executive session for a period of 50 minutes for the reasons of attorney client privilege and non-elected personnel. The council will return at 9:50 p.m. Meidinger seconded.

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

The council returned from executive session at 9:55 p.m. with no binding action taken.

ADJOURNMENT

MOTION: Bannon moved to adjourn at 9:55 p.m., Meidinger seconded.

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

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

[Go to special meeting minutes](#)