A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, April 21, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

PRESENT: **Mayor Fred Hanna; Stephen Miller, Kit Williams, Len Schaper, Heather Daniel, Cyrus Young, Randy Zurcher, Trent Trumbo, and Donna Pettus; Assistant City Attorney LaGayle McCarty; City Clerk/Treasurer Heather Woodruff; staff; press; and audience.**

ABSENT: **None**

Mayor Hanna called the meeting to order with eight aldermen present.

CONSENT AGENDA

Minutes of the April 7, 1998, City Council meeting.

BID 98-12

A resolution accepting the lowest qualified bidder for item 1, self-propelled broom sweeper, for Street Department, bid 98-12, with trade in of item 2. The vender of this purchase is Mitchel Machinery Co., 2218 Industrial Park Road, Van Buren, Arkansas;

RESOLUTION 46-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

BID 98-16

A resolution awarding and approving Bid 98-16 for the purchase of curbside recycling bins and accessories from Rehrig Pacific Company, Dallas, Texas, in the amount of $134,810 for implementation of our curbside-sort recycling program and to approve a budget adjustment in the amount of $12,810;

RESOLUTION 47-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

RESEARCH & TECHNOLOGY PARK

A resolution authorizing the City of Fayetteville to apply to the State of Arkansas Department of Finance and Administration for a grant from the Economic Development of Arkansas Fund for construction of water and sewer lines and streets necessary to develop the Research & Technology Park;

April 21, 1998

RESOLUTION 48-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

MAHLER LAND PURCHASE

A resolution authorizing the purchase by the City of 2.6 acres from Alex W. and Lori K. Mahler, located on Happy Hollow Road, for the future expansion needs of the City. Agreed to price is $50,000 for the 2.6 acres. Resolution should include purchase price and closing costs, together estimated at $53,000 and to approve a budget adjustment in the amount of $50,000.

RESOLUTION 49-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Miller moved the consent agenda. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 8 to 0.

OLD BUSINESS

WARD BOUNDARIES

Mayor Hanna introduced an ordinance changing the ward boundaries for the City of Fayetteville. The ordinance was left on first reading at the April 7, 1998, meeting.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Trumbo seconded. Upon roll call, the motion carried on a vote of 8 to 0.

Assistant City Attorney McCarty read the ordinance for the second time.

Mayor Hanna explained that Fayetteville is no longer in compliance with State law requiring wards to have populations within 10% of each other.

There were no comments from the audience.

By consensus, this was left on second reading.

RZ98-6/DINERSTEIN

Mayor Hanna introduced an ordinance rezoning property located at the southeast corner of Cato Springs Road and Razorback Road. The property is zoned I-1, Heavy Commercial-Light Industrial, and

contains approximately 19.47 acres. The request is to rezone the property R-2, Medium Density Residential. The ordinance was left on first reading at the April 7, 1998 meeting.

Alderman Trumbo moved to suspend the rules and go to the second reading. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

Assistant City Attorney McCarty read the ordinance for the second time.

Harold Heady, Dinerstein Company, addressed their willingness to cap the number of units built at 108 units, as was brought up by Alderman Schaper at the last meeting. Mr. Heady stated he does not have a problem doing this. He asked if there is any vehicle to change it in the future. He was told the bill of assurance would go with the title of the land.

Mr. Heady stated the relationship his company has with the City is different from the normal buyer-seller relationship. The City, as a seller, has a lot of different people he must communicate with regarding many issues. He does not understand the costs associated with what will be required to provide the City, whether storm drainage, city streets, etc. He asked that the May 15 date in the contract between the City and the Dinerstein company be extended and revised to read that the money for the sale of land will be escrowed at the time his company is issued the large scale development approval. He stated the only way he will understand all the costs associated with what the City is going to require is to go through that process. He wants to be able to do the appropriate feasibility. He does not want to be pushed into a corner early on in this process.

Mr. Heady stated he has discovered that they may be required to build a road across the property. He stated they find this highly undesirable. It does not allow the property to be used as intended in the initial agreement to purchase the land. He stated he would ask the City to make a tentative contract stating the City will not require the Dinerstein Company to put a public road through the middle of the property.

Joe Tarvin, McClelland Engineering, asked if the Dinerstein Company would be required to put a permanent street in.

Mayor Hanna stated it is being assumed the Planning Commission will require a road, but from what Mr. Tarvin has shown, the

chances don't look good that will happen. The Dinerstein Company would get some sympathy from the Council for several reasons. One is the way they have cooperated with the City. This discussion may be premature at this point.

Alderman Schaper noted there is already a road there that accesses that property.

Alderman Williams stated he has no problem with altering the contract to allow this to be submitted to large scale development to see what the actual costs will be.

Alderman Pettus asked if that would alter any other provision of the contract.

Assistant City Attorney McCarty could not answer this as she had not reviewed the contract.

Mr. Heady stated it doesn't appear to alter anything.

Kevin Crosson, Public Works Director, stated it is not a problem, if the City's exit date is also floated for the same amount of time.

Mr. Heady asked when that would put the City moving from the property.

Mayes replied ten months.

Mr. Heady stated it would be no problem.

Alderman Williams stated that would be his motion. Alderman Zurcher seconded. Alderman Williams stated his motion is to change the contract. Upon roll call, the motion carried on a vote of 8 to 0.

Alderman Schaper asked Mr. Heady if he is volunteering a bill of assurance on the 180 units.

Mr. Heady replied yes.

There were no comments from the public.

Alderman Williams moved to go to the third and final reading. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

Assistant City Attorney McCarty read the ordinance for the third time.

There being no further comments, Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 8 to 0.

ORDINANCE 4090 AS RECORDED IN THE CITY CLERK'S OFFICE.

AFFIRMING PLANNING COMMISSION FINDINGS

Mayor Hanna introduced an ordinance requiring the Planning Commission to take a separate vote to affirm findings. The ordinance was left on the first reading at the April 7, 1998, meeting.

Alderman Young stated this will be before the Planning Commission at its upcoming meeting. He suggested reading it for the second time then leaving it on second reading.

Alderman Miller moved to suspend the rules and go to the second reading. Alderman Williams seconded. Upon roll call, the motion carried on a vote of 8 to 0.

Assistant City Attorney McCarty read the ordinance for the second time.

This item was left on second reading.

TOWN CENTER BOND ISSUANCE

Mayor Hanna introduced an ordinance providing for the execution of documents needed to complete the issuance of the Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, the proceeds of which will be used to partially finance the construction of the town center and parking garage on the south side of the downtown square. In addition, the City Council is requested to grant the authority for the Budget Coordinator to execute any budget adjustments necessary to recognize the bond proceeds and bond issuance cost. The ordinance was left on first reading at the April 7, 1998, meeting.

Mayor Hanna stated we do not want this ordinance passed until we get all the issues regarding the town center worked out. He noted the bond counsel was present to answer questions.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 8 to 0.

Assistant City Attorney McCarty read the ordinance for the second time.

Ben Mayes, Administrative Services Director, recommended tabling the ordinance until the City Attorney brings the bond issue back.

Alderman Pettus asked questions regarding the bond purchase agreement. On the first page, the last sentence in the second paragraph states the bonds do not constitute and indebtedness of the City, within the meaning of any constitutional or statutory limitation or restriction. Paragraph K of the third page says the indenture in this agreement when adopted, executed, and delivered by the City will be the legal, valid, and binding obligation of the City. She stated that seems to be a conflict.

Ann Parker, the Mitchel, Williams Law Firm, stated she has been retained as bond counsel for this. She stated the bond purchase agreement is a document drafted by the City's underwriter's counsel, but she thought she could answer this question. The last sentence in the long paragraph on the first page is just the recitation put in bond purchase agreements as well as in trust indentures that attempts to say we are not violating the Constitution of the State of Arkansas or any statutes, because they are not pledging anything they or the City are not authorized to pledge. Paragraph K is a true statement that the indenture and the bond purchase agreement will be, and will have to be, a legal and binding obligation of the City; otherwise, there would be no legally issued bonds. It is not in contradiction to the first sentence because what is being pledged by the City is the Hotel & Restaurant Tax as authorized by Arkansas law, the lease payment on the Continuing Education Center, and any other revenues from that Center or the new facility, any money received from the State under the Tourist & Convention Center Assistance Act, and miscellaneous funds held by the trustee to prevent default.

Ms. Parker stated this is an unusual situation. The bonds have to be an obligation of the City because the A&P Commission has no authority to issue them. The City is pledging the A&P Commission's money. It is the only legal way to do it.

Alderman Schaper asked what would happen if there is not enough

money in the A&P tax to pay off these bonds.

Ms. Parker replied the City is limited to the specified sources of funds. There would be no legal obligation to go into the General Fund of the City or anywhere else.

Alderman Williams asked if the penny from the HMR tax that goes to the parks would be in jeopardy.

Ms. Parker replied it is absolutely not pledged. What is called the '77 penny has been pledged.

Alderman Young asked if the Council is guaranteeing that all the papers are correct and that the A&P money that's legal will be guaranteed towards the payment of the bonds.

Ms. Parker stated the Council is authorizing the use of the sources she described. They are not guaranteeing repayment of the bonds at all. They have no obligation to use any other funds, which is stated clearly in several different ways in the documents. It would not be legal to use other funds; that is not what people voted on.

Alderman Pettus asked how the CEC bond money would be separated from the town center bond money, if there is a legal challenge to the town center bonds.

Ms. Parker stated the City collects all of the tax money and revenues. She assumed the City would continue to send to the trustee the amount of money being paid the other bonds without interruption.

Mayes stated the money comes to the City and is held by the City except for the debt service reserve fund held by the trustee. There would be separate accounts set up for the two bonds. The bonds are not tied to where they would be challenged together. We would continue to make payments. The money is kept by the City, just like other funds, and deposited in banks where we have collateral agreements or security agreements.

Alderman Pettus asked if it costs more for the A&P Commission to deposit $1 million in the construction fund or would it be cheaper for them to just pay the bills during the construction process.

Mayes stated there should be no additional cost.

Alderman Pettus asked if this project would be subject to challenge if we supplemented the construction with CIP funds, based on the wording of the ballot.

Ms. Parker did not believe the Council is authorized to do that, based on the little information just given. It would bear looking into.

Alderman Pettus asked about a public space dedicated to free public use. She understood this could not be done with this bond money. She asked about using CIP funds to pay for the separate public place and how that could be done.

Ms. Parker stated she is not completely familiar with this issue. She did not think there would be a problem using City funds to do that, but it would depend on the facts. If that is the main priority, then you don't really have a civic/convention center.

Mayes stated if the City proposed to add such a community room, they would have to be able to identify the cost of that within the bid documents. There is not a problem with the public using the space; you just can't say it is exclusively for not-for-profit use.

Alderman Schaper asked what would happen if proms and wedding receptions became the primary use because convention business didn't materialize.

Ms. Parker did not think there would be legal problems if this happened for reasons beyond the control of the City. It is not prohibited to rent the facility for local groups. There could be a problem if the building was used and not charged for. The exclusive part and the free part concern her.

Alderman Pettus asked who is liable if the bonds are challenged.

Ms. Parker stated it would depend on who is alleged to have done wrong and what is proved in court. The City can issue the bonds. She stated the City's bond counsel has sufficient liability coverage.

Mayes stated the City does not anticipate having insurance on the bonds.

Ms. Parker stated the bond holders would purchase bonds based on repayment by certain revenues. If those revenues aren't there,

they don't have a promise that it would be paid another way if the revenues are insufficient. They may try to make someone pay, but no one is obligated to pay. The tax cannot be repealed before the bond is paid.

Alderman Young asked if the City owns the site the town center will be sited on.

Mayes replied it does.

Alderman Young asked if the City is combining the CEC bonds and the town center bonds, or will they still be separated.

Ms. Parker stated they are two separate series issued under one main trust indenture and have the same trustee.

Alderman Young asked if the A&P Commission has pledged the tax for the bonds.

Mayes stated they will do it before the Council does the final reading.

Alderman Young asked if the University has an option to buy the CEC building once the proposed bonds are paid off.

Mayes replied they do.

Alderman Young asked about turnback funds being used for 1998 bonds.

Ms. Parker replied that turnback funds generated by the CEC must be used to pay those bonds. Turnback funds generated by the new town center must be used to pay debt service on those bonds.

Alderman Young asked about setting up a provision to float additional bonds but not requiring a vote of the people.

Ms. Parker stated it is required and it has been done. As far as the trust indenture is concerned, these were the requirements that must be met before the trustee can consent to the new bonds being issued and secured. The trustee must be presented with this documentation, including a revenue projection. It doesn't really speak to the City's legal requirement to have an election to pledge a tax.

Alderman Young asked why words could not be inserted stating it

would require a vote of the people for additional bonds.

Mayes replied it could be done.

Ms. Parker felt sure the statement discloses an election has been held. She would pass the suggestion on to the underwriters to have it clearly stated the election is required.

Alderman Schaper asked if the City can pay off the bonds at any time.

Mayes replied there is a schedule that says when they can be paid off early. You can defease the bonds at any time. They are callable under certain conditions.

Alderman Young asked what the requirements are to meet tax-exempt status.

Ms. Parker replied the most important is to make sure the profit is used for the chosen purposes, that you don't sell it to a private business. There are also restrictions on how much money you can earn and what you can invest in.

Alderman Young asked if the bonds are challenged, is there a limit on paying other lawyers.

Mayes replied in the trust indenture with the Bank of Oklahoma they cannot exceed a certain amount in legal expenses without our permission.

Alderman Young asked who Ms. Parker is working for.

Ms. Parker stated the City has retained the Mitchel Law Firm and she works for the City. The issuer is her client.

Alderman Trumbo asked what would happen if the City decides not to go through with the project.

Ms. Parker thought it was the City's decision, either the A&P Commission or the Council, since neither could go forward without the other. She did not know of any legal ramifications.

Alderman Pettus asked what the underwriter's discount is based on.

Mayes replied it is based on the $6,950,000.

Jeff Erf, Fayetteville citizen, asked if the City would have exclusive rights to the community room.

Alderman Williams thought it would be dependent on whatever the lease agreement is with the A&P Commission.

Sue Clemons, citizen, asked if there would be a problem with the issuance of the bonds if the City dedicated a room to local usage. She was informed this will be researched.

Alderman Miller moved to table the ordinance. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 8 to 0.

RAZE AND REMOVAL/2173 DEANE STREET

Mayor Hanna introduced approval for raze and removal of structure at 2173 W. Deane as per ordinance 3948.

No representative of the property owner was present.

Alderman Schaper stated the Council has additional documentation that notice was served.

Kevin Crosson, Public Works Director, stated there has not been any further activity.

Alderman Daniel moved the Council approve the raze and removal. Alderman Schaper seconded.

There were no comments from the audience.

Upon roll call, the resolution carried on a vote of 8 to 0.

RESOLUTION 50-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

NEW BUSINESS

RZ98-7.00 APPEAL/DYKEMA

Mayor Hanna introduce an appeal of rezoning request RZ98-7.00 submitted by Michele Harrington on behalf of Mark Marquess and Dan Dykema for property located a the southwest corner of 46 St. and Persimmon and contains approximately 60 acres. The request is to rezone the property from A-1, Agricultural, to R-1, Low

Density Residential.

Alderman Pettus stated she would abstain because of an attorney-client relationship.

Alderman Young stated a person involved is a client of his company and he would not participate in the discussion and would abstain on the vote.

Alderman Schaper had it confirmed that this was an appeal by right and did not need to be voted on.

Michele Harrington, attorney, stated this is an appeal from a 4-4 vote of the Planning Commission, a close call at that level. Staff had recommended this rezoning. The 2020 Plan designates this parcel as residential. She explained the situation of the property and its relation to other subdivisions. It is inside the city limits and utilities are present on the site. There is an R-1 parcel immediately to the north of this parcel; it will not be the first R-1 in the area. The remaining surrounding land is residential in use. There will be a 5-acre neighborhood park. The developer will improve half a mile of frontage. They expect to build about 15% fewer homes than would be permitted under R-1 density. The present usage developed without sewer, which is the reason for the larger lots. This is a flat parcel and is the kind of parcel not inclined to large lots. The traffic of this subdivision would go north on 46th. There will not be a large flow turning left in the morning hours. Wedington is being widened near there and may be widened further due to growth in the area.

Ms. Harrington stated the developer will consider entering into a bill of assurance regarding density, so that he doesn't go over a certain number of lots. He can also consider fencing around the property. There could also be no drives entering onto the street.

Ms. Harrington stated there is less than a one-year supply of available lots in this growth area of the city. This development would follow the normal growth the staff has considered in the sewage treatment time frame.

Ms. Harrington pointed out one of the important considerations for landowners is to be able to use their land in the highest and best use they can. That is what this family is trying to do.

Ms. Harrington stated the drainage around the area will be channelled. The neighbors to the immediate southwest will benefit from this, as it is channelled into Owl Creek.

Cyrus Kooshesh, citizen, expressed concerns about the traffic. He stated the immediate neighboring houses average over 25,000 sq. ft. He stated he would ask the builder to use larger lots and build larger homes. The drainage now is a problem.

Bill Jowers, 452 N. 46th Street, understood this project is for 206 homes. He would like to see fewer houses. Traffic will also be a problem. He has noticed a lot more water in the creek than in the past, because of the development already there.

Greg Spencer, realtor, addressed the number and size of houses. In researching the multiple listing for Northwest Arkansas he found one house on the market west of the bypass that would fit into this market. There were seven lots available. There is a need for this size house on the west side of Fayetteville.

Gary Adam, an area resident, expressed the difficulty of accessing the highway, because of the heavy traffic. He suggested constructing the four-lane highway past 46th Street. He believed there was enough affordable housing in the area. He asked that the developer consider higher priced housing.

Steve Estu, Engineering Design Associates, addressed the drainage issues. He stated the development's drainage would be taking their water directly to Owl Creek, which would bypass two property owners. The subdivision would be contributing to the traffic problem. 46th Street was shown as a collector street on the Master Street Plan. He believed the subdivision would improve the streets in the area.

Tom Sagger represented the owners. He stated the property had been in his wife's family for over 100 years. The property was owned by elder people. He stated the traffic problem was all over Fayetteville. The Wedington Sewer Improvement district went with the property. They had been paying for the Sewer Improvement District since the beginning. He asked the Council to consider the R-1 rezoning request.

A citizen who lives on Persimmon Street expressed concern about homes and bridges flooding along Owl Creek. He does not believe all the water can be contained from the subdivision. He believes the owners have a right to develop their property; however, the

area needs nicer homes. There is plenty of affordable housing in the area. He added if people can afford nice homes on the east side of town, they can afford it on the west side of town.

Alderman Schaper questioned the amount of street frontage the property had.

Mr. Mark Marquess, developer, replied the property had approximately one quarter of a mile of frontage on 46th Street as well as a quarter of a mile along Persimmon Street.

Alderman Schaper expressed concern about the subdivision only having one access. He noted the city had required more ingresses and egresses on other subdivisions.

Mr. Marquess listed a number of subdivisions in the area with only one entrance. He did not believed the subdivision had an usual design. He noted three stubouts had been planned to the north for the future development of the adjacent property. He believed it was in line with the way the other development occurred in town.

Alderman Daniel stated she was concerned about connections because they have seen so many cul-de-sacs in the past. It has created problems. The City was now insists on more connections. . She noted stubouts do not mean a street will be connected in the future. Once people move into the neighborhood, it hard to make the connection.

Mr. Marquess stated he was not asking for anything out of the ordinary. They are trying to be reasonable. Accessibility and traffic problems are common all over town. He asked the councilmen if they have noted what has happened to Fayetteville within the last four years in regard to residential growth and new homes sold compared to cities to the north. Fayetteville has lost new housing starts; it has decreased over the last three years. Of Fayetteville, Springdale, and Rogers, we are the only town to lose housing starts.

In response to questions from Alderman Schaper, Mr. Marquess stated the stubout locations would be determined by the Planning Commission during the large scale development.

Mayor Hanna asked which school district the property is in.

Mr. Sagger replied the west 20 is in the Farmington School

district.

Mayor Hanna noted some of the traffic would turn toward Farmington, which would help the traffic situation.

Alderman Schaper cautioned Mr. Marquess that the sewer plant could still be located in the area.

Mayor Hanna called a point of order. He stated the Council was hearing the appeal; however, it needed to come before the Council as an ordinance.

Alett Little, Planning Director, agreed. The item came to Council as an appeal from the petitioner, rather than a recommendation from the Planning Commission. It is an amendment to the zoning ordinance and would have to be amended by appeal. The appeal would be considered through the ordinance process. The item needs to be placed on its first reading then go through three readings.

Assistant City Attorney LaGayle McCarty read the ordinance for the first time.

Alderman Trumbo asked Charles Venable, assistant to the Public Works Director, for his opinion on the impact of the traffic generated by the development.

Venable replied the traffic generated would depend on the school district. Each home would generate eight to ten trips per day. Two hundred homes would generate approximately 2,000 trips per day.

Alderman Schaper asked what the traffic count is on the highway.

Venable stated that section of the highway carries approximately 7,000 trips a day. 7,000 on a two-lane is not too bad. The highway could carry approximately 14,000-16,000. The need for four-lane in the area can not be justified at the present time. The sections under construction now will help the situation.

Alderman Schaper stated the problem with the traffic would not be the capacity of the road, but would be the left turn lane.

Venable replied it might be possible to have a left turn lane installed.

Alderman Schaper asked if the left turn lane could be required as on off-site improvement.

Little replied the Planning Commission would have to make the determination and the Highway Department would have to agree.

The item was left on the first reading.

HUMAN DIGNITY POLICY

Mayor Hanna introduced a resolution declaring the Human Dignity Policy of the City of Fayetteville and establishing the Fayetteville Human Dignity Council.

Alderman Zurcher read the resolution. He stated he had been working on the resolution for over a year. He stated the city had seen an unprecedented amount of growth. With growth always comes problems. A lot of the problems come from different groups of people living together in the same community. The resolution deals with a lot of those problems, not in a reactive way, which has to do with the courts, but in a proactive way, which has to do with education and public forum and getting material out to the public on how to live with the different groups and how to live in peace. Alderman Zurcher stated if it were up to him, he would pass the resolution as presented; however, he had seen some opposition on the Council. Some had questions with some merit about two parts of the resolution.

Alderman Zurcher stated one point of opposition is has to do with the City's bidding procedures. To him, the City should use its power of persuasion to make sure everyone treats people right. The best way to do this is through the pocketbook.

Alderman Zurcher stated the other section of the resolution he has heard comments and fears about is the section regarding the Human Dignity Council. Some people were afraid this committee would have enforcement powers. He had not written any enforcement power into the resolution, trying to get away from a system of fining people who discriminate.. He does not want to go that way.

Alderman Zurcher stated that before the Council began to discuss the resolution, he wanted to propose an amendment to it. The amendment would be to strike Section 1 (B) and (C) as well as Section 2. He stated he would like to see these thing later. He stated he would like to make the amendment in the form of a

motion.

Alderman Zurcher stated he would like to mention that the University of Arkansas of Fayetteville has a policy very similar to this resolution. Their policy includes all of these groups. He believes the County would also have a similar policy. He added the City is not currently discriminating against these human conditions. He believed they needed to have it on record in case future councils and administration are not as fair as this one.

Alderman Williams asked Alderman Zurcher to define "familial status."

Alderman Zurcher replied "familial status" was the marital status.

Alderman Miller added the term could also mean non-traditional families.

Mayor Hanna asked how the City of Fayetteville would know this.. If someone were to apply for a job, how would the City know their sexual orientation.

Alderman Schaper responded that the City is still a small town. A lot of people know other people and they talk about other people.

Mayor Hanna stated he does not feel the City of Fayetteville needs to aspire to the higher standards of the University of Arkansas and the public schools because they have already gone there.

Alderman Daniel presented policies from the University and the County. She added the Affirmative Action Equal Employment Opportunity of the University mentions that they do not condone the discriminatory treatment of students or faculty based on age, disability, ethnic origin, marital status, race, sex, or sexual orientation, and any of the activities, etc. Washington County stated it was their policy to provide employment opportunities to all qualified persons, to prohibit any discrimination against any employee or applicant for employment because of race, color, religion, sex., age, national origin, sexual orientation, political affiliation, veteran status, or disability.

Alderman Pettus noted neither of the policies mention the word

ancestry. She questioned how that is different from race or national origin.

Alderman Zurcher replied it would be if they come from a certain family.

Alderman Williams asked if some departments have age requirements, such as firemen.

Mayor Hanna replied there are age requirements for firemen and policemen.

Ben Mayes, Administrative Services Director, stated the City follows all State laws on age requirements. He noted there are five Federal laws which cover all of these. The City has a non-discriminatory policy. He was not sure of the wording.

Assistant City Attorney McCarty read the City's policy, "City employment shall be on the basis of merit, including such factors as abilities, capabilities, aptitude, and experience, without regard to race, sex, color, national origin, religion, age, or political affiliation."

Alderman Miller noted the resolution would add "familial status" and "sexual orientation" and "ancestry" to the hiring policy. He commended Alderman Zurcher for bringing the resolution forward. The resolution does nothing but put into words what the City is already doing. He stated he did have some problems with the committee and the part forcing bidders to abide by the City's hiring practices. In the same way, he has a problem with the United States telling other countries they can not trade with Cuba because the United States does not approve of the way they are doing business. He had been with the civil rights organization during the '60s and did not support the Vietnam War. He sees this as an on going process to get rid of personal hates and fears and learning to live together. .

John Adams, citizen, stated Alderman Miller was waffling in his support. He stated Alderman Zurcher's amendment gutted the resolution. It removed all economic sting and all power of persuasion. He stated the City of San Francisco has a wider ranging ordinance that has been held up in Federal court. He suggested Alderman Zurcher withdraw his amendment to the resolution and add the exemption of companies engaged in interstate commerce. He felt it was shameful for the Council to look through other ordinances or for other justification for a

decision that they should make. He felt they were looking for excuses and abandoning their responsibility to lead. He felt this would be a good start. He urged Alderman Zurcher to withdraw his amendment to the resolution.

Alderman Zurcher explained he had mis-spoke in referring to the change as an amendment. The resolution was being considered as changed; an amendment was not being considered.

Alderman Miller explained he was against the committee because morality is a personal issue. He believes eating animal flesh is a sin. He would not be a part of a committee that would impose morals on other people.

Mr. Gene Fulture, pastor of Calvary Baptist Church, asked Alderman Zurcher why this is needed, if the City is currently practicing it.

Alderman Zurcher replied this Council and administration are fair and just and do not discriminate, That may not be true in the future with a different Council and administration. He felt the city should be proud that they are a tolerant place to be. It is good for business and a good example to other cities.

Mr. Fulture asked if all the employment rights in the proposed resolution were already protected under current Federal law.

In response to questions from Mr. Fulture, Alderman Zurcher stated he would not pursue the resolution if the phase "sexual orientation" were removed.

Mr. Fulture stated the City has more important business to attend to than to delve into the sexual orientation of its citizens. He felt the City is to take care of streets and other similar items.

Alderman Zurcher replied it is the City's responsibility to ensure fairness to all its citizens.

In response to questions from Mr. Fulture, Alderman Schaper asked the speaker to address the item on the floor.

Mr. Fulture stated the issue of sexual orientation should never be brought up. He did not believe the City needed more bureaucracy. He asked how this would affect our children, if the City were to place a stamp of approval on this kind of sexual

orientation.

Mr. Rhett Beard, Unitarian minister, stated he had worked closely with Alderman Zurcher in the creation of this resolution. He believed the resolution could be a good and positive, healthy and honorable thing for the City to do. He believed the passage of some form of this resolution would provide a positive statement of policy that affirms the worth and dignity of all people. He commended the City on not discriminating and invited the City to announce it proudly to the community and state that they advocate basic human justice and fairness.

Frank Periginee, English Professor, stated a resolution of this nature was needed. It would be nice for Fayetteville to let everyone know that the City wants to see open dialog and that no one would be harmed professionally or personally if they were to speak out on an issue. He asked the City to reconsider the ideal of a Human Dignity Council. He felt the committee could do a lot of good things. They could solve problems of discrimination and racism. The City needs to provide a forum for citizens to work out their differences, without resorting to lawsuits.

Gary Carnahand stated the City has always selected bids on qualifications and price. He was surprised the city was willing to state there was something more important than price and qualifications. He stated the intent was to have a gay protection ordinance in the City of Fayetteville. He asked for them to define "sexual orientation" to avoid lawsuits. He stated "sexual orientation" was a behavior. If the definition was sexual practice, then it had to mean practice that was not normal or mainstream.

Alderman Schaper called a point of order. He did not believe the Council needed to listen to discussion of an item that was not on the table.

Mr. Carnahand stated most cities did not have a policy like this. The only city he knew of was San Francisco.

Erin Jenkins, citizen, thought the resolution would promote love, acceptance, tolerance, brotherhood, sisterhood, community respect, and dignity to all in the community. Since Fayetteville does not discriminate, she did not see a problem with stating they did not discriminate. She did not see a problem with stating the truth.

April 21, 1998

David Garcia, citizen, stated this is an issue of discrimination and prejudice. This ordinance goes further than the question of gayness and is important to a lot of other people. He stated that when he moved here 10 years ago, the community was very warm and receptive. This is changing. He recited several examples of prejudice directed at him or people known to him and likened it to what the gay community is experiencing.

Ken Maddox, pastor, stated there is no place for prejudice or discrimination in this community but sexual orientation is not a special class. He asked city leaders to step back and consider the direction they are taking the city.

Charlie Brown, Ward 1 resident, stated this policy could be harmful in that it elevates the rights of certain minority groups to that of a special status based on their chosen actions and lifestyles. Rights pertaining to discrimination involve inalienable rights, which present no choice. We have a choice in our actions. He did not support a special interest committee. He read from a magazine regarding a gay rights hidden agenda.

Shohreh Noorbakhsh, Fayetteville resident, read from Romans, Chapter 1, of the Bible. She spoke about God's judgement on nations that practice what he abominates.

Sam Campbell, citizen, clarified that part of the resolution has been withdrawn. He stated Alderman Zurcher is really after the whole thing, part now and part at another time. This type of action diverts dollars from the police department, street maintenance, etc. Section 1, which encourages all institutions, organizations, and businesses, is vague but seems to exempt no one. He thought the human dignity council would be a reversal of the democratic process. He thought there would be problems with rental housing.

Vickie Kelly, citizen, stated you can't see a person's sexual preference or their choice of religion. She stated gays are invisible and are therefore discriminated against. It is their invisibility that allows others to say they are already protected. She noted religion is a choice and a protected right.

Lamar Pettus, past president of the Arkansas Bar Association and Washington County Bar Association, citizen, and Vietnam veteran stated he was the most discriminated person in the audience because he is left handed. He stated this is the type of resolution that would be added in lawsuits against the City. He

responded to comments made earlier by Stephen Miller regarding protesting the Vietnam war.

A citizen asked if this has been reviewed by legal counsel. He stated this will be answerable to the people. Making this a legal matter will cause trouble.

Assistant City Attorney McCarty responded that this has been reviewed by the legal department. Asking the people what they want regarding this is a separate issue.

A citizen stated she would leave this meeting feeling less safe than she did before but was encouraged that the city government could transcend the petty differences that exist in the community.

Joe Hart, citizen, stated racial discrimination in hiring was changed when races were counted to enable affirmative action. The City will have to know if a person is homosexual if they adopt this resolution. The City will have to prove it has been tolerant and open. People would have to be asked and able to prove their sexual orientation. Sexuality does not belong in the work place.

Alderman Miller stated he has faced prejudice for not being Christian. He stated Christians should not pick and chose which parts of the Bible to quote.

Alderman Pettus thought the resolution was having the opposite effect of what was intended. She saw division, dislike, and distrust. These feelings were very personal, moral, and religious and should not be imposed on others of either side.

Alderman Zurcher stated he did not expect anyone to endorse a lifestyle or choice. He felt this is an excuse. His resolution is about banning discrimination.

Alderman Williams supported the resolution as changed. He thought the term sexual orientation needs to be defined. He suggested saying homosexual or heterosexual orientation. He agreed religious belief is an invisible and protected choice. He stated this resolution says what the City of Fayetteville is already doing is correct, that it does not discriminate in this way. He suggested having it say the City shall continue to insure that all qualified applicants are not discriminated

against.

Alderman Trumbo stated he has problems with the way this resolution is written and its broad context. He felt it will open up a lot of potential litigation. This has not yet been done on a state or federal level.

Alderman Schaper stated people are valuable to the city if they can do the job, regardless of other considerations. He stated there is no established religion in this country. People have a right to conduct themselves in private as they wish, as long as they are not hurting someone else. That is part of human dignity and responsibility.

Alderman Daniel felt there has been a lot of misinterpretation of the resolution.

Alderman Young stated many people think this idea is fine, but are unaware of the technical aspects. The removal of certain aspects has brought it into compliance with what people would be in favor of.

Alderman Williams questioned the last whereas clause.

Alderman Zurcher suggested striking it.

Alderman Williams proposed having what was paragraph A read, "The City shall therefore continue to insure that all qualified applicants for all City positions shall have equal access to such employment opportunities regardless of race, sex, religion, color or national origin, age, ancestry, familial status, homosexual or heterosexual orientation, or disability."

Alderman Zurcher stated sexual orientation is universally accepted as meaning homosexual or bisexual.

Alderman Schaper agreed it is an accepted term.

Alderman Williams agreed to that.

Alderman Williams stated he made that motion [as proposed above]. **Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 6 to 2, with Aldermen Trumbo and Pettus voting no.**

Alderman Schaper moved the resolution. Alderman Miller seconded. Upon roll call, the resolution passed on a vote of 6 to 2, with

Aldermen Trumbo and Pettus voting no.

RESOLUTION 51-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

EMINENT DOMAIN/SWEETSER/24TH ST.

Mayor Hanna introduced a resolution approving an offer of $18,000 as full settlement of the eminent domain action against Jerry D. Sweetser on property for the 24th Street Improvements.

Alderman Trumbo stated he would abstain on this because of a client relationship.

George Faucette, realtor, handed out and reviewed a map. He stated Mr. Sweetser lost one lot and potentially the value of another lot worth $35,000 to $40,000.

Alderman Schaper stated a utility easement makes that piece of it unbuildable. He was informed this is a new utility easement. He noted the City's appraisel did not reflect this. He thought throwing out the City's appraisal could be dangerous.

Alderman Williams moved to accept the settlement offer. Alderman Miller seconded.

Ben Mayes, Administrative Services Director, stated staff would take this as a budget adjustment on the sales tax for the balance.

Alderman Williams added that to his motion. Upon roll call, the resolution carried on a vote of 6-0-1, with Alderman Zurcher absent for the vote and Alderman Trumbo abstaining.

RESOLUTION 52-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

STREET NAME CHANGE

Mayor Hanna introduced an ordinance changing the name of a section of Cato Springs Road between U.S. Highway 71 and the junction of Razorback Road, a distance of approximately .39 miles, to Razorback Road.

Assistant City Attorney McCarty read the ordinance for the first time.

Alderman Miller stated that since the City rebuilt the street

there, it does not look like Cato Springs Road.

Alderman Schaper stated this would split Cato Springs Road into two pieces, which is confusing.

Alderman Williams suggested having Charles Venable, Assistant to the Public Works Director, solve this.

Ben Mayes, Administrative Services Director, stated one of the conditions in the sale agreement was that they would have a Razorback Road address.

This was left on first reading.

APPEAL OF A.B.C. DECISION/U.B.C. YOUTH BUILDING

Mayor Hanna introduced an appeal of A.B.C. decision to license the dispensing of alcoholic beverages within 100' of the U.B.C. Youth Building.

Mayor Hanna explained this requires no action from the council. It was intended for information only.

COMMUNITY NON-PROFIT MEETING ROOM

Mayor Hanna introduced a resolution supporting the use of Capital Improvement Project funds for additional expense to provide a Community Non-Profit Group Meeting Room above the lobby or in another appropriate place within the Fayetteville Town Center.

Alderman Williams moved to table this pending an opinion from the bond counsel about whether it can be done. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

ADJOURNMENT

Mayor Hanna adjourned the meeting at 11:50 p.m.