A MEETING OF THE FAYETTEVILLE CITY COUNCIL

A meeting of the Fayetteville City Council was held on Tuesday, May 5, 1998, at 6:30 p.m., in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

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

ABSENT: **None**

Mayor Hanna opened the meeting with eight aldermen present.

Mayor Hanna announced that the resolution establishing the Human Dignity Council has been removed from the agenda at the request of the councilman who proposed it.

NOMINATING COMMITTEE REPORT

Alderman Daniel moved to nominate Lloyd Seaton to the Walton Arts Center Foundation, a reappointment. Alderman Zurcher seconded. Upon roll call, the motion carried on a vote of 8 to 0.

CONSENT AGENDA

Mayor Hanna introduced consideration of items which may be approved by motion or contracts and leases which can be approved by resolution and which may be grouped together and approved simultaneously under a consent agenda:

Minutes of the April 21 meeting;

WATER/SEWER OPERATIONS CENTER: A resolution approving an architectural contract with Cromwell Architects Engineers for architectural design and construction supervision of the new water/sewer operations center in the amount of $231,005 plus approval of a 10% contingency of $23,100;

RESOLUTION 53-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

BCBS/U.S. ABLE LIFE: A resolution exercising option to renew BCBS/U.S. Able Life, AD&D and LTD Group Policies for policy year 5-1-98 through 4-30-99. There is no increase in premium.

Annualized total City contributions for this policy year will be approximately $167,467;

RESOLUTION 54-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

SOUTHEAST TARGET AREA: A resolution approving a budget adjustment and contract award to Sweetser Construction, Inc., for improvements to streets, sidewalks, and storm drainage in the Southeast Target Area;

RESOLUTION 55-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

TCA CABLE BUILDING: Moved to regular agenda.

AIRCRAFT RESCUE & FIRE STATION: A resolution approving the low bid from Buildings, Inc., in the amount of $666,600 for the airport's new aircraft rescue and fire station. The project is currently being reviewed by the FAA. The project will be 90% funded by the FAA grant. A stated grant of 5% will be applied for, and the remaining 5% will be reimbursed to the airport through the passenger facility charge;

RESOLUTION 56-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

Alderman Miller moved the consent agenda. Alderman Trumbo seconded. Upon roll call, the motion carried on a vote of 8-0-1, with Alderman Young abstaining.

OLD BUSINESS

HUMAN DIGNITY RESOLUTION VETO

Mayor Hanna introduced discussion of his veto of the Human Dignity Resolution. He asked the Council if they would like to hear public comment.

Alderman Trumbo felt everything had been said publicly at the last meeting. He stated nothing would change his decision and he wanted to keep the discussion closed to the Council.

Alderman Daniel noted the crowd was too large to enable all to be heard. She stated she had read the letters sent her and received the messages and did not expect to hear much that was new.

Alderman Schaper also noted the large number of calls he has received and that nothing new has been heard. He encouraged having the vote and getting on with the meeting.

Alderman Pettus agreed the audience was too large to be heard individually. She agreed to keeping the discussion among the Council members.

It was determined there was a consensus not to have public comment.

Mayor Hanna explained his veto. The overwhelming number of people who contacted his office was against this resolution. About 1,450 calls supported the veto and 63 opposed it. He stated the resolution was divisive and not conducive to the spirit of Fayetteville, contrary to the resolution's intent. The resolution could result in an additional financial burden on citizens because of litigation arising from it. The resolution is unnecessary because current City policy conforms to Federal and State statutes regarding civil rights. Because of the response to this resolution, Mayor Hanna stated a referendum to place it before the public could be considered by the Council.

Alderman Williams asked about possible litigation exposure.

City Attorney Rose responded that this is a valid concern of the Council. He stated there is a risk of increased litigation, which can be true any time the Council acts. Regarding causes of action, he stated city councils are lower on the food chain than most governments and create no new Federal cause of action. No Federal court action is created. There is no State cause of action and no County. No new civil right is created. The Council is only passing a resolution.

Rose stated the only two areas he saw causing litigation would be for someone to fail to get employment because of their sexual orientation or any of the other named categories. The defense to that might include there is no contract. There are many cases that say there is no right to city employment. They may seek to have a conference with the Mayor, supervisor, staff, and aldermen to get a perceived wrong corrected. This is merely a policy and has no legal enforcement.

Rose stated another cause of action might occur if an existing employee were disciplined, fired, demoted, or in some way affected by their sexual orientation or other categories. There are a number of defenses to that. The most obvious is the phrasing of the resolution, which states all qualified applicants for all City positions have equal access to such employment opportunities. It applies to the hiring relationship, not the employment relationship. Another defense is the City has at-will employment. The personnel policy has administrative remedies rather than legal remedies.

Rose stated if all the defenses fail and a wrongful discharge case occurs, relevant depositions would be taken regarding prejudices. Damages are generally limited to reinstatement and back pay. He has not had a wrongful discharge case during his term in office. The County has a similar policy and to his knowledge has not had litigation.

Alderman Pettus asked if there is potential for punitive damages.

Rose stated he is not aware of anything that would give rise to a punitive damage claim. Regarding outrageous acts, we have tort immunity for negligent acts, not for willful or intentional acts. There are some protections under Title 7, the Civil Rights Act, for sexual harassment, but there is no direct mention of sexual orientation. The Arkansas Civil Rights Act does not mention it. He knew of no other municipality that has this. He mentioned the County has one and that the Council had been provided with the University's affirmative action statement. Nineteen states have some form of it. A number of cities across the United States have some form of it. Louisiana has a governor's proclamation along these lines and New Orleans has a lengthy sexual orientation document.

Alderman Trumbo stated he understands the City's resolution is quite a bit different from the County's and the University's.

Rose stated the County's seems a little broader than the City's. He read from the University's statement. He also read from the City's current policy, which says the City is committed to providing a work place free of discrimination. He noted it does not include ancestry or familial status. Also, familial status usually pertains to having children and is generally included with regard to housing, not employment.

Rose agreed the County and University policies do not encourage institutions, organizations, and businesses to conduct their behavior in a manner that promotes the values of this resolution.

Alderman Trumbo read a prepared statement. He thanked the citizens who contacted him regarding this resolution. He stated he is not aware of the City discriminating against anyone in its hiring policies and does not believe it should. He apologized to David Garcia, a citizen who felt his comments had been cut off at the last Council meeting. He explained his intent was to afford everyone present who wished to speak the opportunity to do so.

Alderman Trumbo stated he would support the veto for several reasons. The resolution is poorly written and too broad. Sexual orientation is not defined. Other cities and counties that have included this phrase have defined it. Also, institutions, organizations, and businesses are not defined and are subject to interpretation. The language that the City will encourage these entities to conduct their behavior in a manner that promotes the values represented by the spirit of the resolution is an attempt to dictate or regulate the values of others and to establish social policy. This is not appropriate action for the Council. Alderman Trumbo stated discrimination can be made illegal and have legal remedies, but you cannot force people to hold certain values or morals or to believe one way or the other. Neither the United States nor the State of Arkansas has included the term sexual orientation in its civil rights act. The City has the authority to pass an antidiscrimination act that applies to the City. It does not have the authority to regulate any discrimination policies that apply to the private sector and which are broader than the Arkansas Civil Rights Act.

Alderman Trumbo stated this resolution has not promoted better relations between the gay and straight communities. He would have supported a resolution that provided protection against discrimination against homosexuals by the City. This resolution is not in the City's best interest. He stated he thinks Alderman Zurcher will attempt to reintroduce the provisions he removed from this resolution, if the veto is overridden, specifically the Human Dignity Council. He hoped any anger and any ill feelings that have surfaced will be forgotten and forgiven and that all people will respect each other's moral convictions.

Alderman Pettus read a prepared statement. She thanked all citizens who contacted her on this issue. The overwhelming majority of calls supported her vote against the resolution. Many asked about putting this resolution to a public vote. She had no hope the present Council would allow or listen to these concerns. The insidious wording of the resolution is such that you can't vote against it without voting against human dignity and being branded a heartless bigot.

Alderman Pettus stated she would support the veto because the language of the resolution does more than say the City will not discriminate against certain classes of people. If that were its sole purpose, she doubted the proponents of the resolution would have submitted it. She read from the City policy concerning discrimination, which says the City is committed to providing a work place free from discrimination. She supports the City's already stated policy. The new resolution reads, "The City of Fayetteville shall model for the community and encourage all other institutions, organizations, and businesses in the city to conduct their institutional behavior in a manner that promotes the values represented by the spirit of this resolution." She asked what the proponents of this resolution would ask the Council to do next in order to enforce this part of the resolution.

Alderman Pettus stated she sees this resolution as a slap in the face to those who practice what others preach. The voters have never had opportunity to test the Council's mettle on this kind of issue. Arguing that this is just an administrative act is sophistry. The Council was not elected to make this decision or to decide what should or should not be the social mores and values of our people. The Council passed in one meeting a resolution with political, economic, or legal effects we can't begin to gauge. The proponents took a year to put it together. The relative merits of this resolution are larger than the Council. It belongs to the people to study and debate. This has become a major issue. She challenged the Council to let the people decide this issue.

Alderman Miller stated we should extend civil rights to everybody. Fayetteville is a ground breaking city; he would vote to support the resolution.

Alderman Williams responded to concerns about the language encouraging others to promote the values represented by the resolution. Those values are not homosexual values. As stated in the resolution, they promote a prevailing climate of fairness, justice, and inherit worth and dignity of all persons. Quality of life is promoted by equal protection under the law. Human bonds are strengthened when respect and dignity are reflected in our laws. The City of Fayetteville wishes to promote equal protection under the law.

Alderman Williams stated the meat of the resolution is in the second part, that the City will not discriminate against homosexuals, which supports what the City practices. This resolution does not affect any private business or landlord in Fayetteville. This is a resolution to keep the government's nose out of the citizen's private life. It is a resolution of neutrality. All citizens will be treated equally, without favor.

Alderman Williams stated it became obvious to him at the last meeting that a vote against the resolution was a vote for discrimination and prejudice. He stated if he gave in to political pressure to vote against this resolution, he would not be worthy of re-election. Referring this issue to the voters might be a smart political move, but it is not wise. It would continue the polarization in Fayetteville. The decision is for the Council to make.

Alderman Schaper stated this resolution simply states the City will not discriminate in hiring against a few additional classes of folks that have a concern. Some are already protected; some are not. He personally feels a person should be hired on his or her merits and on no other consideration. It is a fine thing for the City to model.

Alderman Daniel stated the resolution is simply a goodwill gesture. In this country we have a fundamental separation of church and state. A lot of the opinions she heard were based on religious beliefs. As a municipality, she wanted to join the side of equality and nondiscrimination.

Alderman Young stated one basis for judgement is what is in the best interest of Fayetteville. He also must represent the majority view of Ward 2 and of the city. This cannot be based on phone calls. The cost has been addressed by the City Attorney. It would be hard for the University Chancellor to attract quality faculty and students if this resolution fails. The University is the main economic engine of this city. He'd received a call indicating the company he works for might lose business if he votes for this resolution. The owner of the company he works for came to Fayetteville just to talk to him. He stated this demonstrates what depths of degradation religion has been reduced to. Aldermen take oaths to uphold our State and Federal constitutions and their principles; therefore, he would vote for this resolution.

Alderman Zurcher stated he had believed this was mainly an administrative measure stating what the City already does. The passing of this policy affirms the worth and dignity of all people. It is good to announce we advocate basic human justice and fairness.

Mayor Hanna recognized the presence of State Representative Dave Bisbee in the audience. He had come to address the Council, but would not be heard as the Council had declined to hear public comment.

Alderman Zurcher moved to override Mayor Hanna's veto of the Human Dignity Resolution. Alderman Schaper seconded. Upon roll call, the motion carried on a vote of 6 to 2, with Aldermen Trumbo and Pettus voting no.

WARD BOUNDARIES

Mayor Hanna introduced an ordinance changing the ward boundaries for the City of Fayetteville. The ordinance was left on second reading at the April 21, 1998, meeting.

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

City Attorney Rose read the ordinance for the third time.

David Garcia, Citizens for Fair Government, stated that on the first reading of this proposal, Citizens for Fair government opposed it. He publicly apologized to Councilman Williams for the organization's distribution of flyers in Ward 1 which contained inaccuracies and misinterpretations of Williams' motivation for this ward redrawing.

Mayor Hanna called for the vote.

Upon roll call, the ordinance passed on a vote of 6 to 2, with Aldermen Young and Zurcher voting no.

ORDINANCE 4091 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 second reading at the April 21, 1998, meeting.

Alderman Schaper moved to take this off the table. Alderman Miller seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

Alett Little, Planning Director, stated the Planning Commission discussed this at two meetings. At the April 27 meeting, they took a vote which failed 5 to 1.

Alderman Young stated if they are making the findings, it should not be difficult to have a separate vote.

Rose did not know if a separate vote would make the City more secure or not, from a legal point of view. He could not think of any court cases relating to Planning Commission findings of facts or conclusions of law.

Alderman Schaper felt the language would unduly restrict the Planning Commission.

Alderman Trumbo would have given it more consideration if the vote had been stronger than 5 to 1 in the Planning Commission.

There were no comments from the public.

Mayor Hanna called for the vote.

Upon roll call, the ordinance failed on a vote of 3 to 5, with Aldermen Young, Zurcher, and Miller voting in favor of it.

REZONING APPEAL/RZ98-7.00/MARQUESS/DYKEMA

Mayor Hanna introduced an appeal of rezoning request RZ98-7.00 submitted by Michele Harrington on behalf of Mark Marquess and Dan Dykema for property located at the southwest corner of 46th Street and Persimmon and containing approximately 60 acres. The request is to rezone the property from A-1, Agricultural, to R-1, Low Density Residential. The ordinance was left on first reading at the April 21, 1998, meeting.

Alderman Miller moved to suspend the rules and go to the second reading. Alderman Schaper seconded. Upon roll call, the motion

carried on a vote of 8 to 0.

City Attorney Rose read the ordinance for the second time.

Mike Pehosh, 46th Street resident, asked that this property be zoned for half-acre lots or at least have a bill of assurance that the property would have at least one-third acre lots. This subdivision will devalue his property. He estimated 500 cars will be added to the traffic on 46th Street, which is somewhat dangerous now. Fifteen acres will be in the Farmington School District, but historically the likelihood is those people will go to Fayetteville schools. Traffic will be locked up to Persimmon Street. Property along Highway 16 has developed rapidly with small homes and small lots. Some of it is already deteriorating. The long-term quality is questionable. If this type of development is allowed to continue, residents who really care about the west side of town and have maintained their property will be forced to move.

Gary Adams, N. 46th Avenue, stated he'd bought his house ten years ago because of the neighborhood, nice houses on nice sized lots. Over the past five years, he has been surrounded by "affordable" housing. He asked for RL or RE zoning, not R-1.

Michele Harrington, attorney representing the developers, passed out copies of a recent newspaper article showing the need for this type of housing. R-1 is able to be developed into nice homes and subdivisions. This development will have houses in the $70,000 to $110,000 range. This category should not be neglected.

Mark Marquess, developer, stated there has always been conflict in Fayetteville on where to put a subdivision of homes not valued at $150,000. Most planning commissions and councils nationwide consider R-1 good zoning. He stated he is not talking about putting in slum housing, apartments, duplexes, PUDs, or an R-1.5 subdivision. R-1 is a fair zoning. He asked where the working public would live if not provided with affordable housing. He stated we are a block grant community. We are given a grant every year to provide infrastructure or to empower the City to promote affordable housing. He did not think pride in homes is limited to expensive homes.

O. E. Luttrell, 4480 Luttrell Lane, stated the issue is that a neighborhood of larger homes exists here. It is only fair that the rezoning not be taken to the extreme of this type of R-1.

There should be consideration for the value of property around there.

Wayne Flora, 5890 Michael Cole Drive, lives on three, three-acre lots. A son who wants to build on one of the lots was told by the City that the sewer system at that end of town is overloaded. He stated the sewer and road infrastructure needs to be upgraded before there is more development.

Bill Jowers, 452 N. 46th, stated water drainage will be a problem. There is a natural gas line on the far east end of this property. They have a 20' easement on the west side and a 40' easement on the east side, which needs to be considered. There is an electric transmission line where an entrance is planned. He commended the Council on the number of building permits issued being down.

Millard Goff, N. 46th Avenue, stated there are a few good houses on the west side of town. There are no new good houses on the west side of town. There are no lots available for good houses to be built on the west side of town. The reason is because affordable housing began to be built a few years ago. He asked what is wrong with having a few good lots on the west side. The people who were originally there did not change the housing environment on the west side. The City did.

Steve Estes, Engineering Design Associates, stated three accesses are proposed. Regarding drainage, they are required by ordinance to take into account fully developed upstream conditions. Two hundred and six lots are proposed, which will probably go down because the Parks Department does not want the property set aside, so they will have to take out some other lots or give money. The gas line will be addressed during the preliminary plat phase.

Tom Sager represented the owners of the property. He stated everything is motivated by supply and demand. If there was a demand for RE or RL, it would be asked for. He stated this developer puts up quality homes that are in demand. They are entitled to make money on the risk they take.

Mark Marquess, developer, stated he did not think this was going to pass and asked that it be withdrawn so as not to put anyone on the hot seat. He did not want to see the landowner be distressed in selling it. If the rezoning is voted down, the owner would not be able to come back for one year.

City Attorney Rose did not know if withdrawing this would allow the owner to come back within a year.

Alett Little, Planning Director, stated the Planning Commission does allow the applicant to withdraw if there has been adequate public representation. This was a Planning Commission denial, so the year is in effect. They could come back with a different designation.

Mr. Sager, representing the land owners, asked that it be voted on as R-1.

Ms. Harrington stated Mr. Marquess agreed to go ahead with the vote, if there is going to be a penalty anyway.

Alderman Williams suggested leaving it on second reading unless it was certain the penalty still applies.

Ms. Harrington thought they would rather not belabor the issue. The landowners want to know if it is voted down.

Little read from Section 160.156 of the Code of Fayetteville, "No application for zoning amendment will be considered by the Planning Commission within 12 months from the date of final disapproval of a proposed amendment, unless there is evidence submitted to the Planning Commission which justifies reconsideration." She stated from the date of final disapproval would be the Planning Commission's vote, if there is no vote taken by the Council. If there is a vote taken by the Council, that is the date of final disapproval.

Alderman Daniel asked about the sewer plant's DPC&E application.

Kevin Crosson, Public Works Director, stated an agreement was reached that the application would not be considered until the stream studies were done and the facility plan was done. He stated he is not aware of a situation that would not allow a hook up here.

Mr. Sager stated he approved of Ms. Harrington's and Mark Marquess's request.

Alderman Schaper moved to suspend the rules and go to the third and final reading. Alderman Daniel seconded. Upon roll call, the motion carried on a vote of 5-1-2, with Alderman Miller voting no and Aldermen Young and Pettus abstaining.

City Attorney Rose read the ordinance for the third time.

Alderman Schaper stated Fayetteville has a very large percentage of rental housing. It is important to be consistent when considering this kind of subdivision and the subdivisions on the east side of town. One of the major issues of a recent large rezoning on the east side was access. We were very insistent in that case on having access to Highway 45 and to Township. This proposed subdivision basically has one access; it all comes out to 46th Street. This area is already overloaded. It is premature to rezone this and allow this kind of density.

Alderman Zurcher agreed the city is not ready for more traffic out there at this time.

Alderman Trumbo stated he would be in favor of it as R-1 with a bill or assurance that they wanted to offer one-third acre lots.

Alderman Williams stated the Council protected county residents on the east side of town when a subdivision was proposed near their large lots. The same thing applies here. He is not sure more R-1 is needed in the west side of town.

Mayor Hanna called for the vote.

Upon roll call, the ordinance failed on a vote of 0-6-2, with Aldermen Young and Pettus abstaining.

STREET NAME CHANGE/CATO SPRINGS/RAZORBACK

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. This ordinance was left on first reading at the April 21, 1998, meeting.

Alderman Schaper 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.

City Attorney Rose read the ordinance for the second time.

Charles Venable, Assistant to the Public Works Director, stated that according to the 911 coordinator this is no problem. He stated he had been reminded that the sale was contingent on having a Razorback Road address. He will send a copy of this to the State for use when making up the highway exit sign.

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

City Attorney Rose read the ordinance for the third time.

There were no comments from the audience.

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

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

ORDINANCE 4092 AS RECORDED IN THE CITY CLERK'S OFFICE.

NEW BUSINESS

RZA98-8.00 & RZ98-9.00/PRESTIGE PROPERTIES

Mayor Hanna introduced ordinances approving annexation and rezoning requests submitted by Michele A. Harrington on behalf of Prestige Properties for property located north of Mt. Comfort Road and east of Hugh Mount Road. The property is located within the county and contains approximately .93 acres. The rezoning request is to rezone the property from A-1, Agricultural, to R-1, Low-Density Residential.

City Attorney Rose read both ordinances for the first time.

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

City Attorney Rose read both ordinances for the second time.

Alderman Schaper moved to suspend the rules and go to the third and final readings. Alderman Williams seconded. Upon roll call, the motion carried on a vote of 8 to 0.

City Attorney Rose read both ordinances for the third time.

There were no comments from the public.

Mayor Hanna called for the vote on the annexation.

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

ORDINANCE 4093 AS RECORDED IN THE CITY CLERK'S OFFICE.

Mayor Hanna called for the vote on the rezoning.

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

ORDINANCE 4094 AS RECORDED IN THE CITY CLERK'S OFFICE.

BID WAIVER/PARKING METERS/DUNCAN INDUSTRIES

Mayor Hanna introduced approval of an ordinance providing for a bid waiver for the purchase of replacement parking meters from Duncan Industries for 1998.

City Attorney Rose read the ordinance for the first time.

Ben Mayes, Administrative Services Director, stated this is the continuation of a three-year plan to replace the meters in the downtown-Dickson area.

There were no comments from the public.

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

City Attorney Rose read the ordinance for the second time.

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

City Attorney Rose read the ordinance for the third time.

Mayor Hanna called for the vote.

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

ORDINANCE 4095 AS RECORDED IN THE CITY CLERK'S OFFICE.

BID WAIVER/RECYCLING PROGRAM

Mayor Hanna introduced approval of an ordinance providing for a bid waiver to purchase H. D. Cab and Chassis and Compartmentalized Body for use in the Curbside Sort Recycle Program.

City Attorney Rose read the ordinance for the first time.

Alderman Miller stated this was discussed at the Equipment Committee meeting. The trucks needed do not exist. If we bid it, we could probably get delivery in the middle of 1999. Fulton Sanitation is kicking us out in January. This will allow the City to buy what we need so that we can seamlessly go into our new curbside recycling program.

Alderman Williams 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.

City Attorney Rose read the ordinance for the second time.

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

City Attorney Rose read the ordinance for the third time.

There were no comments from the public.

Mayor Hanna called for the vote.

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

ORDINANCE 4096 AS RECORDED IN THE CITY CLERK'S OFFICE.

TCA CABLE BUILDING

Mayor Hanna introduced a resolution authorizing the Mayor and the City Attorney to approve the purchase of property located at 125 W. Mountain Street (formerly TCA Cable Building) for an amount not to exceed $277,000 plus applicable closing costs and approval of a budget adjustment for the purchase. The property is 17,312 square feet in area and the building contains 9,763 square feet. This item was removed from the consent agenda.

There were no comments from the public.

Alderman Williams moved the resolution. Alderman Miller seconded. Upon roll call, the resolution carried on a vote of 7 to 0, with Alderman Young absent for the vote.

RESOLUTION 57-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

BRADBERRY PROPERTY

Mayor Hanna introduced a report from the City Attorney on the Bradberry property acquisition.

City Attorney Rose stated the Council had instructed him to negotiate a sale of the Bradberry property to allow the south plaza to be built on that area. Since that time, he has met with Ann Boyd and John Bradberry, attended A & P meetings where public comment was heard, and has talked to a number of the council members. His meetings with Ms. Boyd and Mr. Bradberry have been cordial. They have been cooperative and open about supporting the town center. They are still reluctant to enter into a sale. They wish to discuss a lease that has many of the advantages of a sale of property to the City. They are willing to discuss an evergreen lease, a lease that would allow the City a lengthy term that may be renewed at the option of the City. It gives the Bradberrys the protection they desire for their property. They want parking next to their building, underneath the town plaza, for approximately 32 automobiles. We have talked about them having reasonable design oversight. They want to ensure the plaza fits in with their two buildings and allows them reasonable access on either side and does not run up their wall, block their view, or diminish rental value. We have begun to talk about Mr. Alderman doing a rather detailed drawing of the plaza and having this and written assurances attached to the lease. Substantial changes to the design would require approval of the Bradberrys.

Rose asked for further instructions.

Alderman Pettus asked how we got back to a lease, having voted to consider a sale only.

Alderman Williams replied he had informed Mr. Bradberry's son that one of the reasons the Council had voted that way was because Mr. Bradberry had said he would never consider a sale. Williams stated he asked the son if he would put everything back on the table and see what the Council would come forward with.

The line blurs between a sale and a lease if different things are built into a lease. He stated he did not try to commit the Council but had indicated to City Attorney Rose that he was amenable to listening to everything if the Bradberrys were willing to start again.

Alderman Schaper stated he was concerned with protecting the public interest by not having the entrance to a $7 million public facility cut off by a private land owner. If we have a way to arrange a lease where it is absolutely not possible to hold us up at any point in the future, that may not differ from a sale. It would be simpler to sell us the land; but if it can be done in a way that guarantees the public interest will be served, it doesn't matter what it's called.

Alderman Miller agreed the vote was to not consider a lease, but that ties the City Attorney's hands. He advocated not closing the door.

Alderman Pettus was concerned about the legalities of a 99-year lease. The Arkansas Constitution prohibits such a thing. You can do an annual renewable lease.

Rose stated you can do a number of things along those lines. You can have budgetary approval year to year or pay all the lease payment the first year.

Alderman Williams stated a letter from the Bradberrys to the A&P Commission indicated a "nominal" rent.

Rose stated no figure has been agreed on. The Bradberrys want to be sure it is okay for him to take this direction. They thought a dollar a year was ridiculous and he told them a thousand dollars a year was ridiculous.

In response to a question, Rose stated the City could go forward with a condemnation after entering into a lease. The value of the land could be a lot higher then.

Alderman Williams could not see how they could request more than a dollar a year, since we are giving them better parking and building a beautiful facility next to them.

Alderman Trumbo suggested having another vote in order to continue negotiations.

Alderman Trumbo moved to give City Attorney Rose the authority to enter into negotiations with the Bradberry family for purchase price, if not that, then in conjunction with a lease proposal to bring back to the Council. Alderman Miller seconded.

Lamar Pettus, Chairman of the Off-Street Parking Improvement District No. 1, stated he watched the A&P Commission meeting and it was definitely represented by Alderman Williams that the Council might change its mind and talk about a lease instead of a sale. He stated Williams undermined the Council's authority. He stated the Off-Street Parking Improvement District owns a lot of the parking in this area and sold the City the parking lot on which the town center would be built. They did that because they were promised 250 parking spaces for public use. That was reduced by the A&P Commission to 150. If the City gives Bradberry 32 spaces, the number is reduced to 120 spaces. The Off-Street Parking Improvement District passed a resolution protesting the number of parking spaces in the area. They want the 250 parking spaces as promised for free public use.

Mr. Pettus pointed out the City appraised parking space in downtown Fayetteville at a minimum of $2,700 a space. Mr. Bradberry's dreams of building on that lot would not be admissible in court. The lot can be bought for 32 x $2,700 in a condemnation. The Off-Street Parking Improvement District thinks the City has misrepresented the facts to them. They represent some 87 land owners and have paid taxes for 20-something years to assure parking, and the City has consistently given it away. He asked that the City take a position to only buy the land.

Richard Alderman, architect, stated the highest number of parking spaces listed is 230. That included the parking spaces under the plaza. To save money, 30 parking spaces were taken from under the plaza and put in the deck, as it was redesigned. There would still be 230 parking spaces. We can bid the lower area or the area under the plaza for about the same money. We are going to bid 230 parking spaces no matter what.

Mr. Pettus read from an A&P Commission report which states very specifically there will be a 14,000 sq. ft., multiple use convention center with 250 parking spaces. The Off-Street Parking District has asked the Attorney General's office to determine if they can sell the rest of their parking spaces to an entity other than the City. He asked for an opportunity to have public input from downtown businesses.

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

Upon roll call, the motion carried on a vote of 7 to 1, with Alderman Pettus voting no.

GREENSPACE WAIVER/EASTON PARK

Mayor Hanna introduced a resolution accepting a 2.48 acre park land parcel and waiving the remainder of the greenspace requirement to accept money-in-lieu for the proposed Easton Park Subdivision.

Jim McCord, attorney, stated this is a recommendation of the Parks Advisory Board, not a request from the developer. The Board is advising that part of this land be dedicated as park land and part be money in lieu of land dedication. The developer has acquiesced to that, $26,250. He asked that the Council approve the recommendation.

Bill Ackerman, Parks & Recreation Advisory Board, stated the tract of land is adjacent to a 20-acre park we already have. The development has a little over two acres that has a pond area that is not conducive to needs in that area. However, 2.48 acres ties in nicely with the Crossover Park and a path to the school. This is the best use of money and land at the Parks level. We are now overloaded with property scattered throughout the community and underbudgeted to maintain it.

Alderman Miller moved the resolution. Alderman Williams seconded. Upon roll call, the resolution carried on a vote of 8 to 0.

RESOLUTION 57-98 AS RECORDED IN THE CITY CLERK'S OFFICE.

ADJOURNMENT

Alderman Schaper announced a Water & Sewer Committee meeting.

Mayor Hanna adjourned the meeting at 9:35 p.m.