Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

City of Fayetteville Arkansas
City Council Meeting Minutes
June 17, 2008

A meeting of the Fayetteville City Council was held on June 17, 2008 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Allen, Rhoads, Ferrell, Lucas, Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance was recited.

Mayor's Announcements, Proclamations and Recognitions:

None

Presentations, Reports and Discussion Items:

1. **Historic District Commission Appointment:**
   Appointed by the Mayor and approved by the City Council.

   Cynthia Kalke – One Term Ending 06/30/11
   Mikel Lolley – One Term Ending 06/30/11
   Leslie Belden – One Unexpired Term Ending 06/30/09

Alderman Cook moved to approve the Historic District Commission nominations. Alderman Allen seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

2. Nominating Committee Report:

Alderman Cook read the Nominating Committee Report. A copy of the report is attached.

Alderman Ferrell: Kyle is this out of the ordinary not to have applicants for some of the openings. Does that happen from time to time?

Alderman Cook: It does happen from time to time. The Civil Service Commission is unusual because they had someone step down at the last minute, so I don't know if they really had enough time to get applications for that one. The Construction Board of Adjustments and Appeals, we usually fill that but from time to time we do have openings. The Tree and Landscape Committee, I hate to say but we almost always have an opening on the Tree and Landscape. It does happen.

Alderman Allen: Mr. Hilton applied for that position, I wonder if you could explain the reasons why you thought he would be an inappropriate candidate.

Alderman Cook: Speaking for myself, in our discussion and I'll the other members speak also, we did talk about Mr. Hilton. I think personally he is highly qualified with his knowledge; there's no question about that. I think there was some concern with him being terminated by the City and whether that would affect his judgment on the board. That was what I got from our discussion. I'll let the other members speak, too.

Alderman Gray: I know that Mr. Hilton is quite qualified. We are very well aware of that. We just felt at this time, with all that has been going on, that it was not a good fit to put him on the board at this time.

Alderman Rhoads: I would take exception to the word "inappropriate". I want to see if there are other folks out there. I thought we talked about extending the time. Maybe I'm remembering this wrong, Kyle, but he's not necessarily ruled out as much as we'd like see if there are other candidates out there.

Alderman Jordan: So you're still open to look at other candidates?

Alderman Rhoads: Am I remembering that even close?

Alderman Cook: We did discuss that since we didn't make a recommendation that it would be on the table and the Council could discuss that.

Mayor Coody: So is it your wish to extend the time frame for the applications for this position?

Alderman Lucas: I think they're always open.

Mayor Coody: Opened until filled?

Alderman Lucas: I agree with all of them, we discussed it in length. I'm the other member on the Nominating Committee and I agree. I was just disappointed there weren't more applicants.

Alderman Allen: I guess I don't know why he was terminated so it's hard for me to make a judgment.

Mayor Coody: So do you want to leave it open until filled. Is that the recommendation from the Nominating Committee Chair?

Alderman Cook: That was my understanding.

Alderman Gray moved to approve the Nominating Committee Report. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

CONSENT:

Approval of the May 20, 2008 City Council meeting minutes.

Approved.

Park Land Dedication Funds: A resolution approving a budget adjustment in the amount of $195,450.00 to reallocate Park Land Dedication funds within the Southwest Quadrant.

Resolution 124-08 as Recorded in the office of the City Clerk.

State and Tribal Assistance Grant (STAG): A resolution authorizing the Mayor to apply for a State and Tribal Assistance Grant (STAG) from the U. S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant.

Resolution 125-08 as Recorded in the office of the City Clerk.

Wal-Mart Corporate Grant: A resolution authorizing Fayetteville Parks & Recreation Division to accept a grant from Wal-Mart Corporate giving in the amount of $10,000.00 to partially fund the Lights of the Ozarks; and approving a budget adjustment to recognize the grant revenue.

Resolution 126-08 as Recorded in the office of the City Clerk.

Wedington Drive Widening Project: A resolution approving a payment to the Arkansas State Highway and Transportation Department (AHTD) in the amount of $30,889.11 for a change

order to cover city-requested revisions to the Wedington Drive Widening Project; and approving a budget adjustment in the amount of $31,000.00.

Resolution 127-08 as Recorded in the office of the City Clerk.

Humane Society of the Ozarks Donation: A resolution accepting a donation of $20,000.00 from the Humane Society of the Ozarks to benefit the Fayetteville Animal Shelter; and approving a budget adjustment recognizing the revenue.

Resolution 128-08 as Recorded in the office of the City Clerk.

Security Equipment Purchase: A resolution approving the purchase of operational and security equipment and cameras from Spytown USA in the amount of $26,771.82 for the West Side Wastewater Treatment Plant; and approving a contingency in the amount of $2,500.00.

Resolution 129-08 as Recorded in the office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: A resolution to approve the hiring of a Parks Maintenance Worker II replacement employee.

Connie Edmonston, Parks & Recreation Director: This is a full time maintenance worker who is responsible for mowing, weed-eating, trimming, pruning, cleaning and picking up trash. This is very essential to us especially this time of the year.

Alderman Jordan: Connie, I know it's a full-time position, how come it cannot be filled with part-time personnel.

Connie Edmonston: Because of the hiring freeze. We need this person year round. It is a summer position but during the winter we utilize them in other areas. They help with Lights of the Ozark and on athletic fields. The position is very essential.

Alderman Ferrell: Is there any chance of migrating occasionally an obligation from the General Fund into Parks.

Mayor Coody: Parks comes out of General Fund.

Connie Edmonston: Maintenance is not allowed to have HMR money spent on it. We can not apply it to Parks Development. This is totally a maintenance position.

Alderman Ferrell: Any maintenance dollars can not be funded by HMR?

Connie Edmonston: Correct. It's only for promotional and development of parks.

Alderman Lucas: That was because when the vote was taken it was left off the ballot. Isn't that correct? It was a mistake.

Alderman Ferrell: That could be amended but it would have to go to the public?

Mayor Coody: You have to go back to the public.

Alderman Lucas: You said this is a year round position, I wondered if the Lights of Ozarks won't take as much manpower because we don't have the big trees to cover. It might be less this year.

Connie Edmonston: Actually we have $15,000 less in money to buy new lights.

Alderman Lucas: Well that's good. It's come at a good time then.

Connie Edmonston: But as you know we're taking in more park land. We're having trails developed. Our duties are becoming more.

Alderman Cook: From the trails perspective as we continue to build out these trails, the parks take on more duties for those. I know a couple of years ago we asked for an extra maintenance worker just for the trails maintenance alone and that was denied. So I know from the trails perspective they are taking on more.

Mayor Coody: Well that's just part of the problem. I've been talking to some developers and I've asked them to help fund the installation of some landscaping, developers will do the installation but they ask the city to do the maintenance. We can't take on that maintenance. So we're walking away from some free beautification work because we can't take care of what we have. One of these days we're going to have to really rethink our position on our parks and landscape maintenance to keep Fayetteville a beautiful town.

Connie Edmonston: We are having more and more acres of our parks that we are leaving more natural because of all the new parks we are taking on that need attention. Some day in the future we'll be glad that we have those parklands.

Mayor Coody: We're glad we have them now. We just wish we could maintain them as we wish we could.

Alderman Cook moved to approve one Parks Maintenance Worker II position. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-2. Alderman Lucas and Jordan voting no.

Resolution 130-08 as Recorded in the office of the City Clerk.

Amend Chapters 151, 152 and 166: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions, Chapter 152: Administration and Chapter 166: Development in order to prohibit or regulate decentralized sewer systems within the city limits. ***This ordinance was left on the First Reading at the April 1, 2008 City Council meeting. This ordinance was left on the Second Reading and then tabled at the April 15, 2008 City Council meeting to the May 20, 2008 City Council meeting. This ordinance was tabled at the May 20, 2008 City Council meeting to the June 17, 2008 City Council meeting. This ordinance was left on the Second Reading. This item was left on the third reading of the ordinance June 17, 2008.***

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

David Jurgens, Water &Wastewater Director: The ordinance as presented previously does not reflect some of the changes from the White Paper that was presented to the Water & Sewer Committee last Tuesday. In summary what that White Paper said and what we discussed last week was to prohibit decentralized sewers within the city limits of Fayetteville but allow, in unusual circumstances only by City Council approval, the consideration of an exception to that. If there is an exception to the ordinance customers on those decentralized sewer systems would have to pay impact fees at the time that the water connection is made. Staff will have to rewrite this ordinance in order to reflect those changes.

Alderman Ferrell: David is the language in the text now about the extenuating circumstances appeal to the Council or is that something you're going to add?

David Jurgens: That's something we're going to add.

Alderman Ferrell: Thank you.

Alderman Cook moved to table the ordinance to the July 15, 2008 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the third reading and tabled to the July 15, 2008 City Council meeting.

Public Hearings:

Raze and Removal at 402 E. Center Street: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Roy Lee and Sandra Ruth Taylor located at 402 E. Center Street in the City of Fayetteville, Arkansas; and approving a budget adjustment in the amount of $4,945.00.

Yolanda Fields, Community Resources Director: There was a change in ownership on this property therefore we have to begin the notification anew. I would like to request that this item be tabled indefinitely.

Alderman Ferrell moved to table the resolution indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This resolution was tabled indefinitely.

New Business:

ADM 08-3017 39 East South Street ROW Variance: A resolution approving a variance of the Unified Development Code Chapter 164.12 (F) Nonconforming Uses and Structures, Repairs and Maintenance and Chapter 166.18 Master Street Plan Setbacks, allowing the existing structure located at 39 East South Street to remain within the existing East South Street right-of-way and to be improved greater than the 10% allowed by code, within the existing limits of the structure.

Jeremy Pate, Director of Current Planning gave an overview of 39 East South Street. Three to six inches of the structure actually encroaches into the city's right of way. This is the last step in order to be able to permit this property owner to continue with his renovations. Staff recommends approval and the Planning Commission voted to approve the conditional use permit.

Alderman Jordan moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 131-08 as Recorded in the office of the City Clerk.

Wedeco, Inc: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of spare parts for the West Side Wastewater Treatment Plant's ultraviolet disinfection system from Wedeco, Inc. in the amount of $54,300.79.

City Attorney Kit Williams read the ordinance.

Alderman Allen: I just don't quite understand why we would waive competitive bidding on anything. Why it's not feasible?

David Jurgens: Nobody else makes bulbs that will work in this particular ultraviolet disinfection system. There are only a couple of systems that are out there and the bulbs are not interchangeable at this time. It is fairly new technology that is protected by patent and nobody can make an after market type of bulb. It is not possible to get a competitive bid because there's

only one person that makes it. We expect that when the patents run out then there probably will be competitive after market type parts.

Alderman Allen: I think that's an excellent answer.

Alderman Ferrell: So it's a sole provider.

David Jurgens: Yes, sir.

Alderman Cook: I know some people have heartburn about the no bid contracts. I can't argue with that. I think in this situation that's what we have. At some point I would like to give staff direction, if at all possible, to think of that in future contracts for goods. So that if we could we would steer away from purchases of products like that. In this situation I don't think we have much choice.

David Jurgens: That's correct. There are two vendors and it is the nature of the specialized type equipment where you only have two or three manufacturers and they specifically made their stuff different from anybody else partly so there to be no competitive bidding, but also to make theirs different and special so they can be specified that way. Where ever we could we would specify or ask for an approved equal. We used approved equals when ever it is most cost effective alternative. We always go with the competitive bid whenever we possibly can. These two items that I have before you tonight are two of those cases where it's just not physically feasible. You can't make them work with any other part.

Alderman Jordan: So when you buy from this one company you're locked in?

David Jurgens: Yes sir. At this point when you buy from this company with the relatively new manufactured products you are locked in. Over time the competitive market will catch up but it has to be out there long enough for the patents to wear out.

Alderman Jordan: I guess my concern is that I hate giving a monopoly to a company.

David Jurgens: I agree.

Alderman Jordan: I said that at the Water and Sewer Committee meeting the other night. I have concerns about that. My concern about monopolies is that if they want to raise the prices they can and there's absolutely nothing we can do about it.

David Jurgens: Yes sir. I don't like being helpless either.

Alderman Cook: On the next item, I supported buying that equipment when we bought it. I believe in the competitive bidding process and I know now to try to look a little closer at that. I hate that we have to do that but that's what it is right now.

Alderman Jordan: It kind is what it is.

Mayor Coody: This has been going on since the beginning of time. It's just the way it's been done for as long as business has been business.

David Jurgens: When you have something brand new like this that is under warranty the manufacturer will void their warranty if you install something that isn't from the manufacturer and that's not worth the risk on a half million dollar piece of hardware or on a million dollar system. So it's one of those judgment choices that you make when you specify it up front.

Mayor Coody: All of our divisions are good in the city, but our purchasing department, they really do follow the specifications and guidelines. They go through a rigorous documentation process to get the best deal that they can. We always take the low bid unless there's some reason why we have to do something else. It really is the exception. It's not a common occurrence. We have a couple tonight but this isn't something that just happens every meeting. It's a pretty rare occurrence actually.

Alderman Allen: I understand that it is a rarity but just wanted to kind of echo what Alderman Cook said that whenever possible that it's real important to have competitive biddings. It's awful hard for people to understand when the bid is twice their annual salary and it just floats on through.

Alderman Ferrell: With the way technology is going today David, what is the life expectancy on this thing? Do you think that if the life expectancy is five or six years that the only constant anymore is change. There will be new technologies coming along probably.

David Jurgens: Yes there will be new technologies coming along however the fact that new technologies will come along does not degrade the performance of the system we have in place. This is a very effective method of disinfection and we have every reason to believe that in 20 years it will still be doing the job very well as long as it is properly maintained. There is no reason that the performance will be degraded. Even though there are new items available that doesn't mean that you have to use the new items just because it is available if it will still accomplish the task. We specified items that would last for the long term and we believe that this system in particular will continue to do that.

Alderman Ferrell: I think I like what I'm hearing. So what you're saying is as long as it's working well and maintained, regardless of the technology that comes along, we'll use it as long as it's economically feasible.

David Jurgens: Yes sir, absolutely.

Mayor Coody: In other words, just because it's old doesn't mean it doesn't have some use left in it.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5148 as Recorded in the office of the City Clerk.

Cues, Inc: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of sewer televising equipment from Cues, Inc. in the amount of $27,627.78.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Allen seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5149 as Recorded in the office of the City Clerk.

Northwest Arkansas Regional Mobility Authority: An ordinance providing for Fayetteville's participation in the Northwest Arkansas Regional Mobility Authority and approving an agreement with participating members of the Northwest Arkansas Regional Mobility Authority.

City Attorney Kit Williams read the ordinance.

Jeff Hawkins, Regional Planning Commission: The Regional Planning Commission is responsible for long range transportation planning in Northwest Arkansas. Years ago the federal government recognized that transportation problems and solutions know no political or jurisdiction boundaries.

He gave an overview of the transportation legislation and how federal funds are spent and how federal transportation investments are made. He said projects have to be approved by the

Transportation Policy Committee of which Fayetteville and all local governments in Northwest Arkansas have representation on.

The Northwest Arkansas Council is a private nonprofit and is very interested in promoting regional infrastructure improvements in Northwest Arkansas. The sooner an RMA is set up, the bugs get worked out, and we get everybody on the same page with regard to funding and implementing major projects at a regional significance the better off the region will be. We would encourage you to give consideration and approval to joining. The RMA is not a "silver bullet" there are still some severe limitations and constraints. Voter approval is required for virtually any of the funding measures that law provides for at this time and it is going to be a challenge to make it work for the region.

Scott Van Laningham, Northwest Arkansas Council: The Council is a private, nonprofit organization that is taking a look at this highway funding both at the federal and state level. As the price of gasoline goes up we are all driving less and buying more fuel efficient vehicles, so their revenue stream is flat if not declining. The cost to build a mile of new highway has skyrocketed. The Council has come to the conclusion that there must be a local component to this. We will continue to go after all of the federal and state funds we are entitled to. We're going to have to at least attempt to pass a local option. Any of these projects will have to have voter approval.

There are large regional projects and the Highway Department is very interested in partnering with local folks that are willing to step up and bring additional resources. With the increase in fuel prices we are going to have to look for alternatives. Mass transit is an authorized and eligible function for the RMA Board to consider. The mayors or their designees will actually be the representative to that Regional Mobility Authority. It will be a public entity subject to all of the FOIA requirements. The RMA will give cities an opportunity to try to meet some of the demands from constituents and the projects that they know need to be done. The Council has some projects that they have identified but again the RMA board, that public entity, is going to be the one that comes up with the final program that they will have to try to sell to the voters. The Council is prepared to do all we can to support and help. At some point if a RMA is successful and has some sort of funding source it will want to look at setting up staff.

Mike Malone, Northwest Arkansas Council and a Fayetteville resident: The financial obligations of the RMA are the financial obligations of the RMA alone. A decision by the RMA Board doesn't obligate the City of Fayetteville to provide funds for anything. A RMA Board decision may result in a question coming back to each of the member cities that are member to ask if the city wants to contribute to the potential costs. Also if the RMA incurs debts and sells bonds those bonds are backed by the faith and credit of the Regional Mobility Authority not the member cities. The obligations of the RMA are of the obligations of the RMA alone.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell: We need to work cooperatively as a region. We need to move forward as a region to remain competitive and start building up our roads that overdue. I've read this back and forth, and I think the way that this RMA is set up things that will benefit the region and/or our city they are going to go to a vote before anybody is obligated. I think we need take a step forward. People in this part of the state have done this in the past, as opposed to waiting for somebody to come and push us. I think that we have an opportunity and this is the vehicle to help us. Thank you.

Alderman Thiel: If the City of Fayetteville does not have a representative then we've left ourselves out of any discussions. I'm not sure why we would not want to be a part of the authority. I tend to agree with Bobby. That would just give us our voice on the authority as to what they consider.

This ordinance was left on the second reading.

Meeting adjourned at 6:55 PM

Dan Coody, Mayor

Sondra E. Smith, City Clerk/Treasurer