

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
August 17, 2010**

A meeting of the Fayetteville City Council was held on August 17, 2010 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

ABSENT: Alderman Lucas

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Quarterly Report of the Financial Condition of the City – City Clerk Sondra Smith, Finance Director Paul Becker.

Sondra Smith: The quarterly report has been emailed to the City Council.

Paul Becker, Finance Director: This is through June so it is one half of the year. Sales tax is down 4.2% compared to budget. That will equate to about \$850,000 if it continues to the end of the year. Interest earnings are down. It appears that our cost containment plan is working. We are actually positive form where we had expected to be. The HMR taxes are down about 5% compared to budget and 2% compared to last year. Water and Sewer is down about 4% in usage. We are still generating a cash flow and we can still meet the capital plan.

Alderman Petty: How is this affecting the budget discussions for 2011? Are you going to project revenues to be flat again or are you projecting a decrease?

Paul Becker: At this point in time I'm going to project everything flat to this year. That is going to be a decrease from last year as far as sales taxes are concerned. I do not feel confident that anything is going to improve in the future.

Alderman Ferrell: If you're projecting about the same 3.5, the spending would correspondingly be down.

Agenda Additions:

None

Consent:

Approval of the July 20, 2010 and August 3, 2010 City Council meeting minutes.

Approved

Amend Resolution No. 98-09: A resolution to amend Resolution No. 98-09 to change all references from "Arkansas Western Gas Company" to "SourceGas, LLC."

Resolution 149-10 as recorded in the office of the City Clerk.

Bid #10-49 Danny Robinson Construction, LLC: A resolution awarding Bid #10-49 and authorizing a contract with Danny Robinson Construction, LLC in the amount of \$394,450.00 for renovation and lighting of the Wilson Park Trail, approving a 15% project contingency, and approving a budget adjustment.

Resolution 150-10 as recorded in the office of the City Clerk.

Arkansas Department of Aeronautics Grant: A resolution authorizing application and acceptance of an Arkansas Department of Aeronautics Grant in the amount of \$18,984.00 to be used for the repair of airport fuel farm overfill protection and inventory management systems and approving a budget adjustment.

Resolution 151-10 as recorded in the office of the City Clerk.

Arkansas Historic Preservation Program: A resolution approving a grant agreement with the Arkansas Historic Preservation Program in the amount of \$4,500.00 for travel and training expenses in support of the Fayetteville Historic District Commission; and approving a budget adjustment recognizing the grant revenue.

Resolution 152-10 as recorded in the office of the City Clerk.

Alderman Cook moved to approve the Consent Agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Unfinished Business:

None

New Business:

ADM 09-3466 (UDC Chapters 151 & 164 Vehicle Related Businesses): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, Chapters 151: Definitions and 164: Supplementary Zoning Regulations, in order to include additional definitions and requirements for vehicle related businesses.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Internal Services and Development Director stated staff and Planning Commission are recommending approval of the ordinance amendment. He gave a brief description of the ordinance.

Alderman Ferrell: What is the zoning on the city shop?

Jeremy Pate: I think it's all industrial.

Alderman Ferrell: Would they be allowed to have vehicles there for a prolonged period of time?

Jeremy Pate: Potentially, it depends on the type of business. There are exemptions from the time frame depending on the use of the property. I don't think we would have a problem meeting our own regulation.

Alderman Lewis: Under parking and storage of certain vehicles that applies to residential as well?

Jeremy Pate: That's correct.

Jeremy Rose: After 45 days if the car is towed who would pay for it?

Jeremy Pate: The City would not be towing any vehicles after 45 days. If we received a complaint about a vehicle we would investigate and try to determine how long the vehicle had been there. If we determine it has been there longer than that period of time we would send a

violation notice to the property owner requesting they remedy that violation and become compliant with city codes.

Jeremy Rose: If the company was to move the vehicle would they charge the customers?

Don Marr, Chief of Staff: It would be whatever the business chose to do. It is not dictated in the ordinance and the City is not requiring a particular party to be responsible.

Billy Banks: This issue neglects an area for a hobbyist that builds or repairs automobiles and hotrods. Some of these are on commercial zoned properties. Where does that put us in that arena?

Jeremy Pate: Last year City Council passed an ordinance regarding Parking (Chapter 172). It included a hobbyist permit for vehicles like that. It would allow you an exemption.

Billy Banks: I didn't realize there was an exemption. Thank you.

A citizen stated he was a friend of Jeremy Rose. Is there an exemption so you can keep your car there longer?

Mayor Jordan: The Council is going to discuss this. Mr. Pate is a fair man. He will look at every situation and he will make determinations.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell asked to leave the ordinance on the second reading in case there was anyone from the public that wanted to come and speak on the issue.

This ordinance was left on the Second Reading.

RZN 10-3614 (WRMC): An ordinance rezoning that property described in rezoning petition RZN 10-3614, for approximately 4.37 acres, located at Lot 5 Brookstone Subdivision, the southeast corner of Wimberly Drive and Longview Street from R-O, Residential Office, to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated staff and Planning Commission are recommending in favor of the ordinance. He gave a brief description of the ordinance.

Alderman Ferrell: We certainly need to be sensitive to health care and our hospital. As we continue with our transportation needs surrounding the hospital I certainly hope everything continues to work hand and hand.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis spoke on the drainage in the area. She stated that through the development process we need to look at what happens on this property.

Alderman Thiel moved to suspend the rules and go to the third reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lucas was absent.

Ordinance 5344 as Recorded in the office of the City Clerk

VAC 10-3617 (Timmermans): An ordinance approving VAC 10-3617 submitted by Blew and Associates, Inc. for property located at 3968 Edgewater to vacate a utility easement, a total of 1,008 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a description of the ordinance. He stated we require the applicant to notify all utility representatives and city representatives. We received those responses back and all were in favor of the utility vacation, therefore we forwarded it to the Planning Commission who also recommended approval.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lucas was absent.

Ordinance 5345 as Recorded in the office of the City Clerk

Amend §117.80 Definitions (Pedicabs): An ordinance to Amend §117.80 Definitions of the Fayetteville Code, to enact a new **Article IX Pedicabs of Chapter 117 Vehicle-Related Business** of the Fayetteville Code and to declare an emergency.

City Attorney Kit Williams read the ordinance.

Alderman Petty thanked everyone that has been involved. He gave a brief overview of the ordinance. I would like for suggestions to be brought back to us after sixty days.

City Attorney Kit Williams: The City Council asked that we address what the City Clerk brought forward about the public notification. He reviewed the section in question and read the proposed amendment.

Alderman Petty moved to amend the Exhibit, Section 117.101 (C) and 117.111 (C). Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Alderman Petty moved to require one mirror on a pedicab as opposed to two mirrors and to require that helmets be available for children. Alderman Lewis seconded the motion.

City Attorney Kit Williams: Do you have an age limit for the child, below a certain age they need to have a helmet?

Alderman Petty: No, the amendment was not to require that children wear a helmet but that it is available for them if their parents wish for them to wear one.

Todd Gilmore with Fayetteville Pedicab Company: We have no problem with keeping helmets under the seats to accommodate customers. We are also in complete agreement with the other amendments that have been made.

Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Todd Gilmore stated the Fayetteville Pedicab is very happy that you have decided to move in this direction. We think it is needed. We are concerned with the permitted zones of operation. We would like to request that the central and western zone be one zone. He explained their reasons for one zone as opposed to two zones.

Mayor Jordan: I would like the Transportation Department to be able to decide where you are going to be able to operate on some of the streets. I want us to come to some sort of agreement but I also want to keep everything safe.

City Attorney Kit Williams: The City Council can allow you to operate in both zones. You certainly can ask that you be able to operate in both zones.

Alderman Ferrell asked if the operators are going to be physically fit.

Todd Gilmore gave an explanation of the job training given to their employees.

Alderman Lewis asked how the zones were determined.

City Attorney Kit Williams gave a brief description of how the permitted zones were determined.

Alderman Petty: How do you feel about our Attorney's explanation about the zones? Do you feel they should be united into one zone or do you think the way it is written now is satisfactory?

Todd Gilmore: We would like to see them united. We feel it would be easier on the Police Department to regulate us. We would like to see it be one zone.

Alderman Thiel: At the Agenda Meeting there were concerns about the area around the University and whether or not pedicabs can operate around the University. Has it been determined that it is okay to go into that western zone.

Police Chief Greg Tabor: What I heard him say was that when something is coned off they would not be allowed in those areas during those times but it would be okay to be on the City Streets at any other time.

Alderman Thiel: So the Police Department doesn't have any problems with this?

Police Chief Greg Tabor: Absolutely not. I can tell you from an enforcement standpoint if we had one zone, and every company was authorized in the one zone, it makes it much easier because we are not having to identify which company it is and if they are or are not authorized for a particular zone.

Alderman Ferrell: I don't have a problem with that but as proposed there are two zones and the rates that are described in the ordinance are for one zone and a second zone.

City Attorney Kit Williams: We would need to revoke or delete the last sentence in subsection 117.12 (A).

Don Marr: Since one of the operators is speaking to a business model that includes the Baum Stadium baseball area I just want you to note that right now that is not included in either of these zones that are outlined. I hope you will visit whether these are the right boundaries or if they need to be adjusted.

Police Chief Greg Tabor: Right now as far south as you can go is Martin Luther King Jr. Blvd. so that would not include Baum Stadium.

Alderman Rhoads: What would you say the rate should be if it is one zone?

Todd Gilmore: When we looked at this business we found out very quickly, from successful pedicab businesses, that a rate isn't something that we charge. We can charge but we work off of gratuities and tips. Our rate right now is \$1 plus tips.

Alderman Rhoads: Unless you change your mind and decide to charge \$20.

City Attorney Kit Williams: I don't think they can do that without coming back to the City Council. Their rates are part of their application.

Mayor Jordan: If you are going to combine them I would stay with what the boundaries are and put them together.

City Attorney Kit Williams: It has never been suggested that it go south of Martin Luther King Jr. Blvd.

Alderman Petty: There have been some other suggestions made. We can handle baseball games with pre approved routes from the Transportation Director. The plan is to take the next 60 days, evaluate how things work, and come back to update the legislation with what is practical.

Alderman Rhoads moved to amend the ordinance to combine the two permitted zones of operation into one zone and to delete the fee for two zones. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Alderman Cook: There has been some discussion about allowing pedicabs on the trails system. I have some concerns about their access on the trails. The trails are 12 feet wide and the pedicabs are roughly 4 ½ feet wide.

Alderman Thiel: I thought we removed that part?

Alderman Cook: What is going to happen is they are going to request a regular route most likely from our Transportation Director. It's not just going to be for an event. I think it is going to be a full time thing.

Mayor Jordan: You are bringing up some concerns that I have.

Alderman Cook: I have concerns with mixing with the activity that is on there now because sometimes the trails are not wide enough at 12 feet because of the amount of activity on them. I'm not against what they are doing I am just concerned about them mixing with the traffic that is already on the trails system.

Mayor Jordan: We can try it for 60 days and if we are having issues then we can come back and do whatever we need to do.

Alderman Cook: We polled the Sidewalks and Trails Committee and it was split.

Mayor Jordan: We put a change in the ordinance on what they can and can't do.

Alderman Cook: I appreciate that.

Alderman Thiel: Kit, I thought we dealt with that at the Ordinance Review Committee. I thought your recommendation was that they wouldn't be allowed on trails.

City Attorney Kit Williams: Without the approval of the routes. It's only the streets within the permitted zone of operation that they are automatically allowed on. The trail use would have to be approved by the Transportation Director.

Mayor Jordan: That was the amendment I put in there before we went to Agenda Session.

Alderman Rhoads: The City Administration can say lets not use the trails for 60 days and see how things go verses the other way, which I would rather we do.

Alderman Petty: I would prefer that we allow them to use them for 60 days. I know it is the administrations decision but I think in the interest of experimentation that is a good idea. I think the main concern is that we have some sections of our trails that are not 12 feet in width. I think it is something the Transportation Director can work out.

Mayor Jordan: I would say that they will probably be allowed on certain portions of a trail.

Alderman Lewis: I like the idea of trying it and seeing how it works because we have created an entire new transportation plan with the trails including saying that they are part of our transportation system. I think pedicabs are starting to look at us because of our trails system.

Alderman Rhoads: I think we shouldn't try it for 60 days on the trails to get use to having people use the pedicabs on regular streets but make a commitment to try it after the 60 days.

Mayor Jordan: My concern is some of the trails are not very wide.

Alderman Petty: It is my intention that the businesses pay attention to the practices that are being put in place and what is practical between now and 60 days and come back with their comments and suggestions for improving the ordinance after they have had some experience operating in our town.

Don Marr: For clarification on the trial period, if staff approves a route on Scull Creek Trail, what would be the provision if it doesn't work to be able to change the route? Will that need to come back to the City Council?

City Attorney Kit Williams: The routes are all controlled by the Transportation Director both giving them and taking them away.

Don Marr: What is the process that allows us to do that?

City Attorney Kit Williams read subsection (D). *No Pedicab may operate on a City transportation trails without the express prior approval of the route and fare by the Transportation Services Director.* I think it is clear by this that if he withdraws his approval then there is no prior approval for continued use of the trail. He might want to approve a route for a trial period, for a particular time or time period, and not say they can use it anytime they want to. They may approve day light times when it might be safer and more visible. They may approve different sections of the trail that are wider. It is within his power to authorize or not authorize a Pedicab to use our transportation trails.

Todd Gilmore: In regards to the trail, as Ms. Lewis stated, one of the reasons that drew our business to Fayetteville is because they are a bike friendly city. That trail system was built to help carry people through the City of Fayetteville and help make it a lot safer. We feel our bikes, being 50 inches wide fit well within a six foot section of a traffic lane on a trail. We probably should crawl before we walk and we are very happy to operate within the zone and prove to you that we are not going to disrupt flow and people really want to utilize us. We want you to be aware that to help bring revenue into the Entertainment District that trail is a vital part of that.

Alderman Thiel: The discussion about the trails is going to be more with Terry than us. The ordinance permits the use of trails.

Alderman Ferrell moved to suspend the rules and go to the second reading as amended. **Alderman Lewis** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan thanked **Alderman Petty** for bringing the ordinance forward.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Alderman Thiel moved to approve an Emergency Clause for the ordinance. **Alderman Petty** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent.

Mayor Jordan thanked the Ordinance Review Committee for their work on the ordinance.

Ordinance 5346 as Recorded in the office of the City Clerk

Public Hearing:

Certificate of Public Convenience and Necessity (Razorback Pedal Cab): A resolution to approve the granting of a Pedicab Certificate of Public Convenience and Necessity to the Razorback Pedal Cab.

Chief of Police Greg Tabor: We have an application from James and Nina Mason operating as Razorback Pedal Cab. They are requesting the approval of two pedal cabs. They have supplied us with all the appropriate documentation and they have listed on their application for rates "tips."

Mayor Jordan: Is this the one that wants to change the name?

James Mason, applicant: I would like to change the name of the company to **Main Street Pedal Cab**. I would also like to have four cabs instead of two.

Alderman Petty: It looks like the equipment you bought is manufactured by a company called Main Street Pedicabs.

James Mason: Yes.

Alderman Petty: Do you think that is a good idea to name your company that.

James Mason: Those people are based out of Florida so I don't think it will be a big problem.

City Attorney Kit Williams: We have researched the name you suggested and it is not listed in Arkansas as "A Doing Business As". If you are going to operate under a fictitious name you will need to register that with the State. Your insurance must be under a corporation, yourself or something that is directly related to this. The Certificate of Public Convenience and Necessity, even it is granted by the City Council, cannot be issued by the City Clerk until there is proof of an insurance policy in affect that properly names your business as the covered entity.

James Mason: I turned all that in about a year ago to Sergeant Harter.

City Attorney Kit William: I think that was a proposal.

Chief Greg Tabor: That is correct. We have a letter in their name personally that advises they can issue a policy but there is not a policy in affect.

James Mason: Yes.

City Attorney Kit Williams: We do it this way because you don't want to pay for a policy until you know you can operate but we can't issue a certificate until we actually have the policy.

James Mason: Okay.

Mayor Jordan: What about the name change?

City Attorney Kit Williams: It is up to them what they want to call it.

Mayor Jordan: Do we need a motion?

City Attorney Kit Williams: No, he is just amending his application.

Alderman Thiel: All we are approving now is just their ability to go forward.

City Attorney Kit Williams: There are findings that the City Council is supposed to make according to the ordinance. You must find that the pedicab service is required by the Public Convenience and Necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to the provision of the sub chapter and then the City Clerk can issue the certificate. You do not need to find if they have adequate insurance. The City Clerk will determine that.

Chief Greg Tabor: There is another section in the ordinance that says at this point they need proof that someone is willing to give them insurance. Before the certificate is issued they must provide proof they have it. There are several items in the ordinance that need to be done once this certificate is approved.

City Attorney Kit Williams: I would ask the pedal cab companies to get with the Chief to help him with the training for drivers.

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

Resolution 153-10 as recorded in the office of the City Clerk.

Certificate of Public Convenience and Necessity (Fayetteville Pedicab Company): A resolution to approve the granting of a Pedicab Certificate of Public Convenience and Necessity to the Fayetteville Pedicab Company.

Chief Greg Tabor: We also have a certificate from Jason Sexton operating as Fayetteville Pedicab Company. He is requesting a maximum of eight pedicabs. He has provided a document from an insurance company saying they are willing to issue him insurance. He has listed his rate as a \$1 flat rate with tips.

City Attorney Kit Williams: Since we had two different required signs, one if it was rate only, one if it was gratuities only, if you authorize me to I will work with the pedicab companies to combine the two signs.

Todd Gilmore: The reason we put the \$1 rate is when we had discussions I thought you wanted us to have a rate. We are happy to work off of tips and gratuity as well.

Alderman Petty: Do you want to amend your application?

Todd Gilmore: No, we will keep it that way.

Nickel Potter, thanked the Council for making a bicycle friendly city. He spoke in favor of the ordinance.

Alderman Ferrell moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-0. Alderman Lucas was absent.

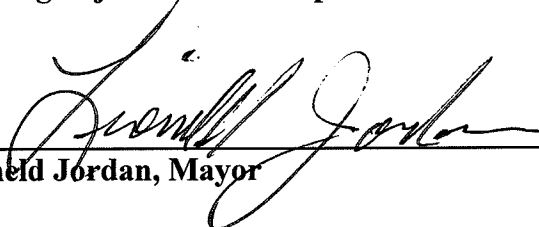
Alderman Ferrell welcomed the new entrepreneurs and the entrepreneurs that are coming. I hope everything fairs well for you.

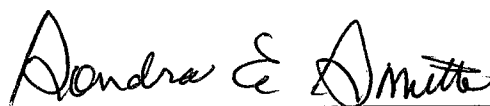
Resolution 154-10 as recorded in the office of the City Clerk.

Announcements:

Don Marr reminded City Council and citizens that the opening filling period for City Council seats runs through August 24th.

Meeting adjourned at 7:25 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

