

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
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
March 15, 2011**

A meeting of the Fayetteville City Council was held on March 15, 2011 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, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Thiel

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

Nominating Committee Report

Alderman Gray moved to suspend the rules and add the Nominating Committee Report to the agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

Alderman Gray gave the Nominating Committee Report. A copy of the report is attached.

Alderman Ferrell moved to approve the Nominating Committee Report. Alderman Adams seconded the motion.

Alderman Petty: Obviously there has been some confusion with the process. Our City Clerk handed out a timeline which has been very helpful. I was wondering if we could get a little more detail from the Nominating Committee on what happened with the Walton Arts Center Council nomination.

Alderman Gray: We followed the procedures that we've always followed. She explained the timeline of the correspondence between the City and the Walton Arts Center Council.

City Clerk Sondra Smith: On the day of the application deadline we received an application from Steve Clark. It came in before the deadline.

Alderman Petty: On the timeline it says we received a rescinding resignation for Curt on March 8th which was a little more than a week after the application deadline. Did the Walton Arts Center have internal discussions with Curt before that date where he told them he had worked out another arrangement and he was not going to resign?

Hershey Garner, Chair of the Trustee Committee of the Walton Arts Center: Yes and Terry probably has that timeline. That is why we were not aware that there was an opening. Curt sent Peter a letter and copied the Mayor. He explained his interpretation of the resignation letter.

Matthew Petty: Is your main concern, with the solution the Nominating Committee came up with, to keep Curt through the end of June and then bringing Mr. Clark on board, that Mr. Clark would be a first term member? Do you want to keep as many of the third term members as you can?

Hershey Garner: That is a major concern in the process of the issue. We had a letter of resignation, we had discussion between Peter and the trustee committee and we thought we had resolved that. We were not looking for a board position except for the positions that are due to come up in June of this year. Technically the Arts Center received a notification about the opening. The Mayor received a letter that explained why we felt that position could be argued was not open and why if it was it was important to keep Curt there through his term. I want to do what is right, what makes sense and what is in the Arts Center and City's best interest.

City Clerk Sondra Smith: We have an email list in the City Clerk's office and we add anyone to the email list that has requested to get information from our office. The openings were also advertised on our local television channel.

Hershey Garner: This is nothing about Steve. He will be an excellent candidate when we have a position open. It's a question about the process and the resources that we spent seven years cultivating.

Alderman Lewis: It says on the timeline that a letter from Curt was sent rescinding his resignation but then he went ahead with the application process. So I am trying to figure out did he rescind his application meaning the board position was not open?

Don Marr, Chief of Staff: That email came in at 8:54 p.m. on the March 7 after the offices were closed. I actually got it on the following day which was the day before the Nominating Committee interviews were going to take place. I did communicate to Terry that I had forwarded it to the Clerk's office but I had no idea what the Nominating Committee would choose to do. Up until that rescinded resignation all of the dialogue was about Curt serving until June 30, 2011. It was not about his continuation of his term through 2013. We did not have any problem with him serving until June 30, 2011. The Mayor, Clerk or I do not control it. The Council has a Nominating Committee and whether they deemed the position to be open or too late to rescind it once the positions had been advertised, closed and interviews scheduled. It had not been communicated to the City that Curt had agreed to stay through June 30, 2011 even then it was not communicated that he would be staying through 2013.

Alderman Adams: As a new member of the Nominating Committee I am concerned about the process too and the way you and I view it. There were other unexpired terms on other committees. I was encouraging citizens to get in the process. Is it my duty to contact people on that board and say are you sure this unexpired term stands? I do not understand what duty the Nominating Committee would have had to expect, when I got my packet of applications, that I should be concerned whether the people on those boards really wanted to let that person go.

Hershey Garner: I thought the City knew that it had been worked out and that we knew we did not have an opening. I thought you all were aware of that.

Alderman Adams: I became aware of it. I don't know what the Nominating Committees duty would be to start checking in to see if it is real.

Hershey Garner: I thought we had worked through that and you all knew that as the City. The Walton Arts Center is a hybrid and other than time the City Council is the only one that creates openings and fills openings. You could create an argument that there was no opening.

Alderman Lewis: It seems like there is a breakdown there and the City launched it into the process but their process is different. So they are expecting the City Council to open a position whereas on City committees it's not like that.

Hershey Garner: Every other position we have filled either from the University or from the City there has been dialogue early in that process when the position is open. It lets the Nominating Committee know what kind of round pegs we need in round holes. That has always happened. This time there was no dialogue. We did not know we had a position open and that we needed people to apply until two hours before the deadline.

Alderman Lewis: Can this topic be removed from the Nominating Committee Report until we can figure it out and then vote on the rest of it?

City Attorney Kit Williams: You could move to amend any motion on the floor. I would say that when it comes to whether or not a position can be vacant without City Council action obviously a position can. What if someone dies? It doesn't take City Council action to say that position is vacant. If someone resigns and moves out of state then obviously the position is open and when someone resigns that position is understandably believed to be open.

I think the City Clerk did the right thing in assuming that when someone submits their resignation, which says I respectfully submit my resignation, that is pretty clear that someone has submitted their resignation and therefore the position is going to be vacant. No matter what your by-laws might say it's clear that the City Council can assume that it is a good resignation and accept it if you want to. We do not have a lot of established procedures on how the Nominating Committee will act. It is really up to the City Council to make the determination in this particular case.

Alderman Lewis: In looking at the list a lot of those others are internal committees. Is there a process in place, it seems like that is something that is needed. I have noticed this from the beginning that there is no point at which we touch that outside organization before action is taken.

Hershey Garner: That is new because we always have before. There has always been dialogue before this.

Don Marr: I take exception to that because we don't go out and specifically call outside boards. There are multiple non-profit appointments that the City makes. The dialogue that may be happening with the Board at the Walton Arts Center is typically generated initially by the Walton Arts Center staff who watches and sees the information that is posted on the terms. I was chair of the Nominating Committee for four years when I was on the Council and we made numerous appointments to the Walton Arts Center. We always got a letter of recommendation from them and we always had applicants from them. We didn't always take their recommendation. My point being is that dialogue has typically come from the Board to the Council not the Council to the Board.

The announcements that go out are the announcements that go out to all individuals. Whether they are the right people or not is not up to us to decide who needs to be on it. We are trying to develop that dialogue. There is improvement opportunity all the way around. I think there is a responsibility both ways. The dialogue you are speaking about is the dialogue that happens between your executive leadership and your board. You typically have a letter of recommendation. The reason this stood out to the Mayor and me is that when the Clerk's office said applications are closing tomorrow and we have four committee appointments that don't have applicants, our action item in that staff meeting was to call the Walton Arts Center because it is unusual to not have an applicant. That would have been the point at which we would have initiated that historically.

Hershey Garner: I can only speak to my appointment but mine was initiated by the Mayor so it's not always the Arts Center.

Alderman Ferrell: There has never been a resignation from the Walton Arts Center. The Nominating Committee takes this very seriously. We had a resignation and two applications came in. We spent five hours deliberating on this and this is the conclusion that the Nominating Committee came to and that is what we are bringing to the Council. We tried to factor in what would be the best for everyone.

Alderman Adams: I believe we have to go to our meetings and constituents in good faith. I commented about how many Ward 4 applicants there were. In good faith we went out and said these are the openings based on what we had. I don't see how we can go back and say never mind we didn't have an opening because someone changed their mind. We deliberated and worked very hard on this. I hope you walk away knowing that it is upsetting a little bit for you to be upset about it because we worked so hard to get it right.

Hershey Garner: I am not upset about the result. I am upset about the process. I don't know how you look at a candidate with seven years experience, Treasurer of the Finance Committee and say he is not the best qualified to fill that next 2 ½ years.

Alderman Adams: He resigned, that's how we did it.

Terry Trotter, with the Walton Arts Center: We have some big projects on the horizon. We have a lot of money to raise to make these expansions happen. One of our goals is to try to build a strong relationship with our partners, particularly with the University and the City. The challenge that we had here is a miscommunication. We did not understand that the resignation letter kicked off the process. What we are hoping as we move forward is that we can continue to find a way to work together to have dialogue and try to understand each others needs the best that we can.

Alderman Petty: When is the next expired term on the Board?

Mayor Jordan: Since there seems to be some sort of issue with the letter that was sent to the City Clerk that was sent to me on January 12th. Whatever comes to me is public information so I sent it to the City Clerk like I should. That starts a process, if the process does not agree with everybody I can't help that. Nineteen days later the advertisement was emailed for vacancies on various boards and the Walton Arts Center Board was included in the advertisement. On the same day the following Walton Arts Center staff received a copy of the Board and Committee openings Bill Baker, Erin Jepson and Jennifer Ross. February 28th was the deadline to receive applications. We had Lisa call the Walton Arts Center about their opening. There were conversations that Mr. Rom wanted to stay through June. On March 8th we received a letter stating that he decided not to resign. I do not believe I had ever seen that before so I talked to the City Clerk and she had never seen that before.

As always I leave that up to the elected officials of this City to make a call one way or the other and they did. I am not saying the process is right or wrong but we have been doing this same process for a long time around here. If the City Council wants to change that it's fine, they have that right. I am telling you we followed the process just like we have always followed it. If I

had to do over again and I received that letter I would do the same thing. Everything that comes into my hands becomes a public document.

Don Marr: Hershey Garner's term expires June 30, 2011 and Tina Hodne's term expires June 30, 2011. There are two appointments in the next quarter for the Walton Arts Center. They are eligible to re-apply. The appointment after that is Bill Waite whose term ends June 30, 2012, provided that there are no resignations between these time periods.

Alderman Gray: Sharon Lawson and Greg Lee will be ending their terms June 30, 2011 those are at-large positions that the Arts Council could fill.

Alderman Petty: I was thinking of offering an amendment but I don't think I am going to. I don't think there is consensus to amend the Nominating Committee Report. I trust the Nominating Committee that they deliberated this at length. I agree that this is a miscommunication. It's a shame that it's a miscommunication with these kinds of consequences but I think that is where we are at now. I think we need to look at what is going to happen at the end of the day. Although we might be losing Curt and his experience come June, I think Mr. Clark will be excellent on the board. I hope that we can focus on what we are gaining rather than what we are losing because of a miscommunication.

Alderman Lewis: I agree with Matthew that it's unfortunate. Thank you for clarifying the process. I appreciate the time that went into it. It sounds like there are other opportunities coming up in June for people to re-apply.

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

A copy of the report is attached.

Consent:

Approval of the March 1, 2011 City Council meeting minutes.

Approved

Bid #11-16 Downing Sales and Service: A resolution awarding Bid #11-16 and authorizing a contract with Downing Sales and Service in the amount of \$166,308.00 for the purchase of one (1) refuse roll off truck for use by the Solid Waste Division, and approving a budget adjustment.

Resolution 40-11 as recorded in the office of the City Clerk

Bid #11-18 Sweetser Construction, Inc.: A resolution awarding Bid #11-18 and authorizing a contract with Sweetser Construction, Inc. in the amount of \$1,057,331.00 for the construction of water main interconnections and the Stone Mountain Pump Station for the Canterbury Road Water Tank, approving a project contingency of \$53,000.00, and approving a budget adjustment.

Resolution 41-11 as recorded in the office of the City Clerk

Insituform Technologies, Inc.: A resolution approving a contract extension with Insituform Technologies, Inc. in the amount of \$330,000.00 for cured-in-place sanitary sewer linings.

Resolution 42-11 as recorded in the office of the City Clerk

Bid #11-20 North Point Ford: A resolution awarding Bid #11-20 and authorizing a contract with North Point Ford in the amount of \$90,020.00 for the purchase of two (2) Ford F-250 heavy duty pickup trucks for use by the fire department, and approving a budget adjustment.

Resolution 43-11 as recorded in the office of the City Clerk

Lake Sequoyah Lease Agreement with William Keith Shofner, Jr.: A resolution approving a lease contract with William Keith Shofner, Jr. on 82.55 acres of land adjacent to Lake Sequoyah for purposes of pasturing cattle and horses, and cutting and baling hay.

Resolution 44-11 as recorded in the office of the City Clerk

Lake Sequoyah Lease Agreement with Jeff Price: A resolution approving a lease contract with Jeff Price on 54.55 acres of land adjacent to Lake Sequoyah for purposes of pasturing cattle and horses, and cutting and baling hay.

Resolution 45-11 as recorded in the office of the City Clerk

Amend Resolution No. 05-07: A resolution amending Resolution No. 05-07 to reduce the payment guarantee required of Meadows Enterprises, Inc. for the Dead Horse Mountain Road Bridge from \$36,668.92 to \$7,703.00.

Resolution 46-11 as recorded in the office of the City Clerk

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

Unfinished Business:

Huntingdon Heights Appeal: An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting. This item was tabled at the February 15, 2011 City Council meeting to the March 15, 2011 City Council meeting.*

Jeremy Pate: The individual making this appeal is trying to work with the adjacent property owner to come to a resolution. They have not quite made those arrangements yet but we are still working with them. We are hoping to find some compromise. We are recommending that it be tabled for another two weeks.

Alderman Ferrell moved to table the appeal to the April 5, 2011 City Council meeting. **Alderman Gray** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Thiel** was absent.

This appeal was tabled to the April 5, 2011 City Council meeting.

New Business:

2011 Employee Service Award Program & Merit-based Pay Increases: A resolution amending the 2011 City budget by appropriating \$629,900.00 for the implementation of an Employee Service Award Program for 2011 and for Merit-based Pay Increases not given during the last half of 2009.

Paul Becker, Finance Director gave a brief description of the resolution. He stated I would fully recommend that this be adopted. I believe it's affordable and it is the Mayor's plan and recommendation.

Alderman Ferrell: I support this and give a well done on cost containment. I certainly hope that we can be optimistic in our cost containment going into the next budget where we will not need to go into the reserves. It has been a while since people have had any pay treatment.

Alderman Kinion: I think the additional component of the bonus is also a good component of this because it recognizes that the employees have been very proactive in cost containment. This at least lets the employees know how much we appreciate that and gives them some incentive to continue that. I have deep appreciation for the work they are doing in that area.

Alderman Adams: I agree and I am going to support it. I think the collective efforts of the staff are noticeable when we are in the offices and it is a collective effort. I am very pleased that the city will provide incentives. I believe it's a staff morale builder. The staff appreciated not having any loss of jobs or furlough days and they have worked hard to prevent that and we should do all that we can to reward that.

Alderman Gray: I appreciate the fact that the Mayor didn't overlook the fact that part of the staff didn't get a raise. It is not just a blanket bonus but it's also making up for that. We have a wonderful staff and in addition to saving money they have been willing to pick up the slack. We are down employees and they have had to pick up the slack. I definitely support this.

Alderman Lewis: I agree that this is good news and an incentive. I also support the constant communication that has been happening. That helps the Council but it also helps the staff see that this is part of the conversation.

Mayor Jordan: I appreciate the Council and staff. We haven't had an employee increase. Since I have been in this office we have cut \$2.6 million out of this budget and we have kept everyone's jobs. \$1.1 million of this is excess that this staff has helped us save. I really don't

look at this as an expense but as an investment into the people that helped get us here. I want to thank you and the staff.

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

Resolution 47-11 as recorded in the office of the City Clerk.

CH2M Hill Engineers, Inc.: A resolution approving an out of scope agreement with CH2M Hill Engineers, Inc. in the amount of \$265,000.00 for development of a Use Attainability Analysis (UAA) on the White River, approving a \$50,000.00 contingency, and approving a budget adjustment.

Alderman Lewis: We discussed this at Water and Sewer and we voted to move it forward to the Council.

Alderman Lewis moved to approve the resolution. Alderman Adams seconded the motion. Upon roll call the resolution passed 7-0. Alderman Thiel was absent.

Resolution 48-11 as recorded in the office of the City Clerk.

Arkansas Western Gas Company: An ordinance waiving the requirements of formal competitive bidding and approving a contract with Arkansas Western Gas Company in the minimum amount of \$715,560.00 for the provision of natural gas service and the construction of necessary piping and infrastructure extensions for biosolids drying operations at the Noland Wastewater Treatment Facility.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director: We discussed this at the Water and Sewer Committee meeting. Are there any questions?

Alderman Lewis: Can you clarify the hybrid design of the thermal drying because this is for the gas component but there is also the solar component.

David Jurgens gave a brief description of the drying process.

City Attorney Kit Williams: Even though it was discussed at the Water and Sewer Committee, it might be helpful for our citizens to know where this three quarter of a million dollars is going and if we are actually going to have to pay all this construction cost or how is the payment devised in this particular contract.

David Jurgens gave a brief explanation of the contract.

City Attorney Kit Williams: So possibly we wouldn't even pay for construction, we would just pay for the gas we are using.

David Jurgens: That is correct.

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

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Lewis seconded the motion.

Alderman Ferrell: If we get to where we are going to be able to sell some of the product left over is that going into the Water and Sewer Fund or into the General Fund?

David Jurgens: It's a wastewater function. It would all go into the Water and Sewer Fund.

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: This process keeps Fayetteville from having to truck it's biosolids a few hundred miles.

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

Ordinance 5391 as Recorded in the office of the City Clerk

Amend §114.03 First Thursday Fayetteville: An ordinance amending subsection (B) of §114.03 First Thursday Fayetteville of Chapter 114: Food Sales of the Code of Fayetteville to add additional locations for the event.

City Attorney Kit Williams read the ordinance.

Julie McQuade, Community Outreach Coordinator gave a brief description of the ordinance. She stated this is simply expanding the space allowed for the First Thursday event.

Alderman Ferrell: Are you all satisfied that you touched base with all the affected people up there and there are no problems?

Julie McQuade: Yes sir. Brian Bailey with the Convention & Visitor's Bureau has delivered a letter to all the merchants in that area.

Alderman Ferrell: And everyone is okay with it?

Brian Bailey, Fayetteville Visitor's Bureau: We handed out letters to the Mountain Street folks and we had no objections from any of those folks. I have not heard any negative feedback. We are making adjustments and will be adding things to not interfere with business and clients that may be coming by from the time we close the road until normal business hours or later for the restaurants.

Alderman Ferrell: It will be 4:00 p.m. for the closing time of the street?

Brian Bailey: That is how it worked last year with East Avenue as well.

Alderman Adams: I would like to say thank you Brian and all of you for your good communication efforts. I was concerned about our businesses and how they felt. I wanted some strong words in writing from you that communication had occurred and I believe it has. I appreciate the way Julie's office and you worked together. Thank you all. I think this is great. I hope it proves to be very successful.

Alderman Petty: I think I read recently that you were about to open your own business. I wanted to thank you for all your hard work over the last year and a half getting First Thursday put together. It's been one of the most important things for the Square so thanks.

Brian Bailey: I appreciate that, I believe so too.

Alderman Lewis: I am really excited about this and I think it's a great opportunity. I too thank the people that worked on it. I have only heard good things. I have received some emails in support of this.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Gray: I am excited about this and I think our Square is wonderful. Anytime we can do anything to bring folks up there that's a feather in our cap. I am very pleased. Thank you all for your work in developing this.

Mayor Jordan: Brian and Julie I want to thank you for all your hard work on this. Well done. I think First Thursday is one of the most successful new events that we have had in the City in a long time. I am very supportive of it and it's really good.

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

Ordinance 5392 as Recorded in the office of the City Clerk

Amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes: An ordinance to amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes (B) Route Approval and (F) of the Fayetteville Code to allow use of pedicabs on streets with a posted speed limit of thirty-five (35) miles per hour or higher if authorized by the Transportation Services Director and (D) to allow pedicabs to operate on Scull Creek Trail, Mud Creek Trail and Frisco Trail.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Alderman Petty asked that under Subsection 3 that instead of having the Transportation Services Director be the one that controls the trails that the Parks and Recreation Director be the one to give that authority to.

Alderman Petty: That is correct.

Alderman Gray: Has Connie been notified and is she agreeable?

Don Marr: Yes she has. Connie currently has the decision on event permits that have trail requests and this would be consistent with that.

Alderman Petty moved to amend the ordinance to allow the Parks & Recreation Director the authorization process. Alderman Kinion seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent.

Alderman Petty gave a brief description of the ordinance. He stated we have heard from our Police Department in Ordinance Review meetings who actually believe that pedicabs operating on the trails is safer than having them operating on the streets outside the downtown area. That is why I brought this forward. I would like to invite the owner of the pedicab company to explain why he is pursuing these changes and why they are important to his business.

Jason Sexton, Owner of a pedicab company stated if there is an event where a street is going to be shut down and we are not going to be clogging things up then we feel we should have the right to be there to provide our service. He explained why this ordinance would be beneficial for the citizens of Fayetteville and the safety measures that would be taken. He stated we would like to open our services up to the rest of the community.

Alderman Ferrell: How is your business doing?

Jason Sexton: We have been operating for about two months and all our drivers are coming back as soon as the weather breaks. I think we have a bright future.

Alderman Ferrell: Do you get quite a bit from the RV Park during baseball season?

Jason Sexton: We haven't had a baseball season yet. We are really trying to pursue that section of road during the games. We were a big hit during the football games and I would hope it would be the same for baseball. That is one of our big plans for the business.

Alderman Gray: I am glad to hear that. I am glad you are here but I am a little concerned about the trails. You are sure that for most of the trail you will only be covering one third?

Jason Sexton: The majority of the trail is 12 feet as I understand and then there are the 10 foot sections through the tunnels and the tight areas. On a 12 foot section we are a 4 foot wide vehicle so we are on the edge. There is room for a biker to pass us and still not be in the other lane.

Alderman Gray: I am not as concerned with the mountain bikers as I am the walkers.

Jason Sexton: We just don't travel that fast, it's a fancy tricycle. We have bells, mirrors and lights. I don't see it as being a safety issue. Our drivers have to go through training in order to be permitted by the Fayetteville Police Department. I feel like our drivers are aware of safety.

Alderman Adams: Are your lights on all the time while you are pedaling?

Jason Sexton: We have running lights that we can run whenever we want.

Alderman Adams: When you are in the tunnel?

Jason Sexton: As of right now we are only required to run them at night but we can have them on during the day if that would appease the powers that be.

Alderman Adams: They don't run all the time then, you have to actually flip them on?

Jason Sexton: Yes, it's a switch on the bike and you turn them on or off.

Alderman Petty: I have ridden in a pedicab twice now and you are lucky to get going up a hill on Dickson Street at 5 MPH. That can present some concerns when you have serious traffic on a hill. I never witnessed anything unsafe but if you think about a pedicab on a trail and you think about a walker they are not going to be passing any walkers. If you have ever been on a trail if you are on a bicycle you pass people all the time. If you are a walker or jogger you get passed all the time. Part of having a trail system is trail etiquette.

We had a memo from the attorney saying that if we allow pedicabs on the trails it might open the door to having to allow golf carts. I am a little bit surprised by that. We have a request from Alderman Boudreaux to hold this on the first or second reading. I would like to do that not only for her but I would also like the opportunity to analyze the attorneys opinion and see if it's appropriate to present an argument.

Jason Sexton: I think there is a pretty substantial difference between a bicycle and a golf cart.

City Attorney Kit Williams: I would agree but not a pedicab and a golf cart. A bicycle and a golf cart there is a difference.

Jason Sexton: A pedicab is a 150 pound bicycle. A golf cart is a 500 to 800 pound car that can travel 15 to 20 MPH. I am 150 pounds and I am traveling at 5 MPH. I don't see how anyone could make the case that a golf cart is the equivalent of a pedicab.

City Attorney Kit Williams: Alderman Petty you made a good point that you need a chance to analyze this and the big concern is not the weight but the comparable size. Our ordinance says that golf carts or comparably sized vehicles are not allowed on the trails and that is how I am trying to avoid problems with new Federal Regulations. He explained the Federal Regulations. I am not saying that it means we would be in violation of the ADA, I don't think we are but this would make it a more difficult defense for the City if someone decided to challenge us.

Jason Sexton: Are golf carts allowed on the streets of Fayetteville?

City Attorney Kit Williams: State Law would prohibit the use of golf carts on City streets or highways.

Jason Sexton: I am just curious how a cart would get onto the trail system if it can't be on the streets.

John Rownak, a citizen: The original intent of the trail system was for recreational use. I think they have met their objective. I think it would be a mistake to commercialize the trails. I ask you to not commercialize the trail system.

Alderman Ferrell: You said that you don't think we should commercialize the trails and obviously you use the trails quite a bit. If a use charge was proposed for the trails and it was either a use charges or commercialization where would you sit on that?

John Rownak: A use charge for anybody using the trail or just commercial use?

Alderman Ferrell: Noncommercial use.

John Rownak: I would be opposed to that but I think it would depend upon the circumstances. The amount of the use charge is a big factor. If I have other alternatives I may not use the trails.

Mayor Jordan: Did you all mention Dickson Street? Why would we be running down Dickson Street?

Alderman Petty: It was part of the zone of operation that was originally approved by the City Council. That was one of the main areas of service for the market.

Mayor Jordan: So there are a lot of people down there? So we can establish that one of the reasons you would be running a pedicab is because there is a lot of people down there.

Alderman Petty: Sure. Even though they are used recreationally that was not the original intent of developing the alternative transportation master plan. That was designed so we could create a culture of alternative transportation in this community. As for safety, our Police Department has been clear in the Ordinance Review Committee meetings that pedicabs on the trails are much safer than pedicabs on the streets. In those places where the trail is 8 or 9 feet wide it is a part of the Transportation Master Plan that those are widened in the future. On the subject of blind curves and hills I think we need to remember that these are trained operators that are certified by the Police Department. They have gone through a skills training and these are fantastic cyclist who know how to be safe. I don't think that is a legitimate concern. I think that our City departments have the expertise to address the concerns that our citizens have and the pedicab operators have the expertise to do this safely.

This ordinance was left on the First Reading.

Amend §174.03 Exemptions: An ordinance to amend §174.03 Exemptions of Chapter 174 Signs of the Fayetteville Code to allow advertising on pedicabs.

City Attorney Kit Williams read the ordinance.

Alderman Petty gave a brief description of the ordinance. He passed out a memo that showed the justification for doing this. I would ask that you look at the pictures I have given you and see the billboards and pedicabs and ask yourself if there is a difference. I believe a majority of our citizens would not find the kind of advertisings shown in these pictures to be offensive as they would billboard lined streets and interstates. He continued to discuss the differences between billboards and pedicab advertisements.

Jason Sexton: When we started the business, that was part of staying in business, to get those advertisement dollars. I don't think we are going against the sign ordinance because we are not a billboard. Where we are going to operate is one of the most heavily advertised areas in the community. I don't see that we would be a distraction to Fayetteville by advertising in that zone. The cabs are currently allowed to advertise as is Ozark Regional Transportation.

Alderman Ferrell: If the signs were allowed on the pedicabs would they be allowed in the Entertainment District or would they be able to go down to the trails also?

Alderman Petty: Trails would be the only spot they would be prohibited from advertising. That is to be consistent with the ordinance we passed last year prohibiting advertising and sponsor signs within the parks.

Alderman Ferrell: Do you have a problem with them on the trails if they take someone from the Entertainment District across the trail?

Alderman Petty: Personally I don't because we are talking about 5 pedicabs in operation right now and frequent use on the trails. In speaking with the business they did not have any problem with this restriction because the way the signs are attached it's very easy to attach and detach them. Since they are vinyl signs they roll up so they can be stored underneath the bench seat where the passenger sits so it is no problem at all. I think there would be a lot of accountability and I don't think it would be much of an issue.

Alderman Ferrell: If pedicabs were allowed on trails and assuming they generate revenue and pay taxes on the revenue, currently the capital expense and maintenance on the trails is borne by the government, this might be a case where a little of that would be recouped. Can you see that as a possibility if that were allowed?

Alderman Petty: We do collect fees from both the driver permitting process and the business permitting process. Those go to offset the staff time to do those reviews. I can't say that there is money left over after we pay staff for those reviews. I am pretty sure if there is any left that it goes to the General Fund.

This ordinance was left on the First Reading.

Amend §117.47 Advertising: An ordinance to amend §117.47 Advertising of the Fayetteville Code to remove authorization to place advertising signs on taxicabs.

City Attorney Kit Williams read the ordinance.

Alderman Lewis gave a brief description of the ordinance. She spoke on the current sign ordinance. I brought this forward because I think that we have weakened the sign ordinance by allowing signs on taxicabs and I think we would weaken the sign ordinance if we were to allow them on pedicabs.

City Attorney Kit Williams gave an explanation on why allowing advertisements on taxicabs could create potential lawsuits. He stated you all are policy makers but from a legal point of view I can tell you this does weaken to some extent our sign ordinance.

A discussion followed on how this ordinance was created.

Alderman Lewis: I would like to propose that we hold on this as well.

Mayor Jordan: On the first reading? Are you saying in your proposal that you are going to take those off the busses or leave them on?

City Attorney Kit Williams: They are still on the busses according to the proposal.

Alderman Ferrell: Kit cited the 9th Circuit Court of Appeal. It's the most overturned court in the United States of America. I would just hope that in looking at this thing that we can keep a

frame of mind and somehow massage this to where it's not going to be viewed as an anti business thing. That is what we need to try to do.

Bryce Curry, Owner of Dynasty Transportation spoke on the taxicab ordinance and its creation. I do not charge for ads on my cabs. I do it for people to help them out. If you take the signs off of cabs then take them off of busses and everything. Don't let just one have them. You could be taking away a source to compensate me for not raising my prices to the City.

Mayor Jordan: What area of town does most of your business come from?

Bryce Curry: We are all over the town everyday. We have grown and a lot of our business comes from Dickson Street because of the college.

Mayor Jordan: So you do a lot of business on Dickson Street?

Bryce Curry: I do a lot of business on Dickson Street.

City Attorney Kit Williams: I think we should recognize the good work that Bryce has done because the taxi situation has vastly improved with much cleaner and better cabs. It's been a boon to Fayetteville and our citizens. I want to salute you for your hard work in getting that accomplished.

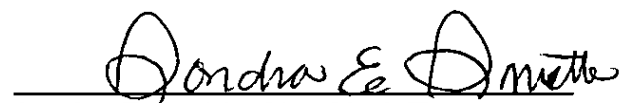
Bryce Curry spoke on how long his employees have worked for him and how he operates his business.

This ordinance was left on the First Reading.

Announcements:

Meeting adjourned at 8:05 p.m.


Lionel Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

Nominating Committee Report

Meeting: Wednesday, March 9, 2011

City Hall, Room 326, 5:00 p.m.

Members Present – Adella Gray, Bobby Ferrell, Rhonda Adams, and Mark Kinion

The Committee recommends the following candidates for appointment:

Advertising and Promotion Commission

- **Hannah Mills** – One term ending 03/31/15.

Airport Board

- **Joshua Mahoney CM** – One unexpired pilot term ending 12/31/13.

Board of Adjustments

- **Jeff Hagers** – One term ending 03/31/16.
- **Kristen Knight** – One term ending 03/31/16.

Civil Service Commission

- **Peggy Hart** - One term ending 03/31/17.
- **Martin Schoppmeyer** – One term ending 03/31/17.

Environmental Action Committee

- **Connie Crisp** - One unexpired term ending 06/30/13.

Fayetteville Public Library Board of Trustees

- **Kim Agee** - One term ending 04/01/16.

Planning Commission

- **Kyle Cook** - One term ending 03/31/14.
- **Tracy Hoskins**– One term ending 03/31/14.
- **Jeremy Kennedy**– One term ending 03/31/14.

Walton Arts Center Council, Inc.

One unexpired term ending 06/30/13

- **Curt Rom** – thru 6/30/11.
- **Steve Clark** – 7/1/11 – 6/30/13

Tree and Landscape Advisory Committee

- **Shannon Sowerwine** – One unexpired Utility Representative Term Ending 12/31/11
Citizen at Large substituted due to no applicant from the appropriate category applying