Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

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

City of Fayetteville Arkansas
City Council Meeting Minutes
April 5, 2011

A meeting of the Fayetteville City Council was held on April 5, 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 Thiel, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Gray

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the March 15, 2011 City Council meeting minutes and the March 22, 2011 Special City Council meeting minutes.

Approved

Carrier Corporation: A resolution authorizing a contract with Carrier Corporation in the amount of $3,476.00 for the purchase and installation of HVAC controls added to the contract authorized by Resolution No. 184-10 for the Police Department building.

Resolution 49-11 as recorded in the office of the City Clerk

King Electrical Contractors: A resolution authorizing a contract with King Electrical Contractors in the amount of $1,075.00 for the purchase and installation of lighting work added to the contract authorized by Resolution No. 185-10 for the Police Department building.

Resolution 50-11 as recorded in the office of the City Clerk

Animal Services Citizen Donation Revenue: A resolution approving a budget adjustment in the amount of $17,464.00 representing citizen donation revenue to the Animal Services Division during the fourth quarter of 2010.

Resolution 51-11 as recorded in the office of the City Clerk

United States Geological Survey (USGS): A resolution approving a contract with the United States Geological Survey (USGS) in the amount of $19,600.00 to model the upper end of the Beaver Reservoir related to the White River water quality standards petition to the Arkansas Pollution Control and Ecology Commission, and approving a $4,000.00 project contingency.

Resolution 52-11 as recorded in the office of the City Clerk

Mitchell, Williams, Selig, Gates & Woodyard, PLLC: A resolution approving a contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the maximum amount of $48,000.00 for the provision of legal services related to the White River water quality standards petition to the Arkansas Pollution Control and Ecology Commission.

Resolution 53-11 as recorded in the office of the City Clerk

Fayetteville Municipal Property Owners' Improvement District Appointment: A resolution to appoint John Russell Meeks, Melissa Meeks and Patricia Chambers Dixon as successor commissioners for Fayetteville Municipal Property Owners' Improvement District No. 12 - Belclaire.

Resolution 54-11 as recorded in the office of the City Clerk

Amend Resolution No. 210-10 Bid #10-66: A resolution amending Resolution No. 210-10 to approve a project contingency of $8,000.00.

Resolution 55-11 as recorded in the office of the City Clerk

Fayetteville Police Department Policy Changes: A resolution approving amendments to Fayetteville Police Department Policies 16.2.3 Temporary Light Duty, 41.1.4 Bicycle Patrol, 41.3.5 Grooming and Uniform Requirements, and 52.1.1 Office of Professional Standards.

Resolution 56-11 as recorded in the office of the City Clerk

Alderman Thiel moved to approve the Consent Agenda. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray 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. This item was tabled at the March 15, 2011 City Council meeting to the April 5, 2011 City Council meeting.*

Jeremy Pate, Development Services Director: The applicant in this appeal has withdrawn his request entirely so there is no need to discuss or vote on this item. We will be requiring this individual to replace the driveway in accordance with our City specifications and he has agreed to do so, therefore there is no need for an appeal.

The petitioner withdrew his appeal therefore there was no action taken.

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. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting.*

Alderman Petty 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 Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Adams moved to amend Section 3 of the ordinance. Alderman Thiel seconded the motion. The following is the proposed amendment

Amend Section 3 of the proposed ordinance by striking Section 3 in its entirety and replacing it with the following new Section 3, which shall read as follows:

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §117.102 Pedicab **Permitted Zone of Operation And Approved Fixed Route** of the Fayetteville Code by repealing (D) in its entirety and enacting a new (D) as follows:

"(D) *Operation on City Trails.* No pedicab shall be operated on city transportation trails (Frisco Trail, Scull Creek Trail, Mud Creek Trail, etc.) without the express prior approval of the date, time, route and fee for the special event by the Director of Parks and Recreation. Pedicabs may not be operated on any city recreational trails in city parks (such as Lake Fayetteville, Gulley Park, Wilson Park, etc.)."

Mayor Jordan: Basically they can't get on the trails unless they have permission and it has to be a special event.

Alderman Adams: We are reverting back to the original ordinance.

Alderman Lewis: Does this put it back to its original form or does it change what was proposed?

City Attorney Kit Williams: It pretty much puts it back to its original form except it says that the approver would be the Director of Parks and Recreation instead of the Transportation Services Director. You made that change last time and so that is incorporated within it.

Alderman Adams: I love the idea of pedicabs and I am excited about them. Back in August, I was part of the audience, I listened to the debate, comments and explanations of why we might do what we did. A lot of work was put into some zones that were established for the pedicabs. I liked those then and I like them now. I would like to see us continue to welcome pedicabs to our town and use them and encourage their use but not have them on our City trails.

Alderman Ferrell: Can you give me an example of the type of day that permission would be approved?

Alderman Adams: Festivals, certain hours during the evenings and during events in town. Prohibition is easier to enforce than laws imposing fewer restrictions. By doing this we allow 24/7 use on the trails. We should let the City Parks Director decide when the appropriate and best time would be based on studies and accidents.

Alderman Thiel: We received an email from someone that brought up some very good points about the trails not being used much at night by the public. That is primarily when the pedicabs might be interested in using the trails. It concerns me that if special event is in there it kind of confuses it a little bit. I have heard from the public that there is a concern about them being there during the day but I don't know if I necessarily see them being there during the day that much. That might be a good compromise.

Alderman Kinion: I received a lot of feedback on this and I think we need to look at restricted times rather than an open access because there is concern in specific areas of the trail where there is blind corners and a lot of pedestrian traffic. The concerns I have received from individuals are with the safety of children and pedestrians. I think this needs to be discussed further with some specific and restricted times. We know there are even specific areas on the trail such as between Maple and the Dickson Street area where it is not very wide and there is a lot of pedestrian traffic, and also areas where there is a blind corner. I like the notion that in the evening and night time, if we have more traffic with pedicabs on the trail, that it actually increases safety.

Alderman Petty: I don't think this is the best way of doing this. I would ask that we vote down the amendment and give me a chance over the next few weeks to work with Alderman

Adams and come up with an acceptable solution that we can present together to the rest of the Council. I think we can do this in a better way. He addressed some of the other comments previously made.

Mayor Jordan: If you vote this amendment down then you would craft another amendment, is that what you are proposing?

Alderman Petty: I would like the opportunity to do that.

City Attorney Kit Williams: Or you could table it and it can be worked on in the interim. We should get some public comment before you all do anything.

Alderman Petty: I think it is cleaner for the public in the media reports if we were to vote this down and bring forward an entirely new amendment. We also have some other issues that I think are pertinent to the discussion today that are not related to this amendment. I want to make sure we get to those instead of tabling the whole thing.

City Attorney Kit Williams: I did not mean table the whole thing. I meant tabling this particular amendment.

Alderman Thiel: But you are suggesting leaving this on this reading.

Alderman Petty: Yes.

Alderman Thiel: I agree with that. Adella wanted to be here for these ordinances so that would be fine with me.

Alderman Petty: I have also heard some other suggestions that I want to speak with the City Attorney about and some other people that may lead to some additional amendments.

Alderman Adams: One of the reasons I did this is because these two things are on the same ordinance and I felt like I would be forced to vote it down because I wanted to be able to talk about streets and trails separately instead of in one lump sum vote yes or no.

Melissa Jackson, a citizen stated I would like you to keep the pedicabs off the trails during the day and night. She listed safety concerns about the trails and why pedicabs should not be on the trails.

Jason Sexton with Fayetteville Pedicab Company educated the public on what pedicabs are and how they operate. He also explained safety precautions that are taken by the operators.

Wesley Owens, a citizen expressed his concerns on trail safety should the pedicabs be allowed on the trails. He stated a study should be done on what the trails system will support safely.

Laura Kelley, a citizen questioned Section B. 2 of the ordinance. I am not sure why Parks and Recreation would be involved instead of Matt Mihalevich in the Engineering Division.

City Attorney Kit Williams: The Transportation Director, if they are riding on the streets, will be the one authorizing them if they go outside the zone. It is only for the trails themselves that the Parks and Recreation Director would have control because they do the maintenance on the trails.

Don Marr: Staff requested that change. When trails are under construction they fall within the Transportation Division of the City. Once the trail is opened for use it is then transferred to Parks and Recreation. All maintenance including snow removal is done by Parks and Recreation once the trail is completed and opened.

Laura Kelley: There is a fundamental principal of pedicabs that they don't drive anywhere where they can't make a fare. I am very much attached to the transportation value of our trails. I see bicyclist as the most dangerous occupants of the trails and not pedicabs. She spoke on how safe pedicab operators are.

Alderman Petty: Ms. Kelley is the leader of the Bicycle Coalition of the Ozarks. She brings that expertise to the table.

A discussion followed on whether or not to table the amendment.

This amendment was not voted on and was tabled to the April 19, 2011 City Council meeting.

Alderman Lewis moved to table the above amendment to the April 19, 2011 City Council meeting. Alderman Kinion seconded the motion. Upon roll call the motion to table the amendment passed 7-0. Alderman Gray was absent.

Alderman Petty addressed some concerns about the width of the pedicabs on the trails. He stated in the ordinance it says "except that portions of these trails may be closed to pedicabs if the trail section is deemed too narrow for pedicabs or if the use of pedicabs on that section of trail could cause safety issues". We want to make sure we are doing this in the safest way possible if this is passed. We were advised that if we allow pedicabs on the trails it may open the door to golf carts. He read an email from the City Attorney to the Parks and Recreation Director regarding golf carts on the trails. I do not think this would have much of an effect on golf carts on the trail.

Don Marr: We had a couple of Aldermen ask for the areas of width that would be a concern to the staff. He handed out a list of the areas of concern. One item we would also like you to look at is under Section 117.108 (B) which speaks specifically to the equipment necessary for pedicabs, that there would be something to add an audible signal as you approach pedestrians. We feel that would be appropriate based on these discussions.

Amend §174.03 Exemptions: An ordinance to amend §174.03 Exemptions of Chapter 174 Signs of the Fayetteville Code to allow advertising on pedicabs. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting.*

Alderman Petty: I heard a suggestion which I am seriously considering as an amendment but as before I need some time to discuss this with the City Attorney and other personal advisors.

City Attorney Kit Williams: We probably should place this on the second reading.

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

City Attorney Kit Williams read the ordinance.

Left on the Second 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. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting.*

Alderman Ferrell 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 Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis gave a brief history of the ordinance. Amending this ordinance would strengthen our sign ordinance and add to Fayetteville's ability to protect its aesthetic values.

Alderman Ferrell: Sarah, do you remember when you were talking about signs in parks and you said you feared this would lead to commercialization of the parks.

Alderman Lewis: Yes.

Alderman Ferrell: Do you think that the continued scrutinization of the sign policy as welcomed by the City Attorney, as long as I have been on the Council, can lead anywhere to the constant changing? I know he doesn't want to mess with the sign deal and he has a good point because he may have to defend it again.

Alderman Lewis: I can't know that answer. I do recognize that this type of thing can weaken the sign ordinance. We have a City Attorney and staff and they are the ones who defend that. If they think they can't defend it as we weaken it that is a big deal. As a Council member I feel like that I need to help us protect that ordinance.

Alderman Ferrell: You said since you were on the Council people have brought to your attention the signs on the cabs. I have been on the Council five years and I can only recall mentioning this once or twice. I would have to disagree on the number of times that I recall it coming up as a matter of policy.

Alderman Lewis: I have heard from people on this topic that were worried about these issues threatening the sign ordinance.

Alderman Petty: If our sign ordinance was challenged after we pass this ordinance, wouldn't the exemption for buses be able to be used in the same way by the plaintiff?

City Attorney Kit Williams: We could get sued for it as we did in 2002 or 2003 where our sign ordinance was questioned. Every exception we make weakens the sign ordinance. I think our sign ordinance is constitutional. We will defend it as hard as we can if it is brought into court. Every exception we make to allow offsite signs weakens it.

I agree that signs on taxis and pedicabs are not the same as billboards, but whether the judge would agree with me on that I am not sure. I think it is my responsibility to try to defend your ordinances as best as I can and if I see that you are going to take some sort of action that might possibly weaken it it's my duty to tell you. It's your decision to make, and it's my duty to tell you there is a risk.

Alderman Petty: I agree, if our sign ordinance was challenged could the exemption for buses be used in the same way by the plaintiff as they might our taxi exemption?

City Attorney Kit Williams: I would like to see the exception for buses removed also. I would rather defend one as opposed to three exceptions. Right now we have two and you are thinking of adding a third one for pedicabs.

Alderman Petty: If our sign ordinance was challenged and it was exactly as it is today, how would you go about defending it?

City Attorney Kit Williams: I would argue along the lines of the Ninth Circuit saying that aesthetics is a recognized support for a sign ordinance and that our sign ordinance still complies with that even though we have allowed some exceptions. I think our sign ordinance is constitutional and I would like to make it stronger.

Alderman Petty: I am curious why Alderman Lewis is not being more consistent in removing the exemptions for buses.

Alderman Lewis: The discussion in Ordinance Review was about taxis. That is how this came about and what this is focused on.

Alderman Petty: Do you plan to offer an amendment to strengthen the sign ordinance further by removing all the exemptions? I am not going to support this or vote for it.

Alderman Ferrell: Kit, you said you felt like our sign ordinance was legal and that you could defend it. The bus placards are there right now and you feel you could defend it and it's legal.

City Attorney Kit Williams: Yes, that is my position and I am going to stick to that all the way

through any court trial.

Alderman Tennant: We heard from a taxi owner that said he is putting a terminal in Rogers. A lot of people take taxis to Dickson Street and back to their hotel in Rogers. So if he had a taxi, that is based in Rogers that had an advertisement on it, and he drove someone to Fayetteville and then they stayed on Dickson Street to solicit other business before they made their way back to Rogers, they would be in violation because they had a sign on the car even though that car is based in Rogers.

City Attorney Kit Williams: I think you are absolutely right. We would not penalize a Fayetteville company and reward a Rogers's taxicab company. The violation would be if you are driving a taxicab that has a sign on it in Fayetteville.

Jason Sexton: I wanted to reiterate what Matthew said. I think it needs to be all the way across the board. Currently the cabs and buses can do it. What I don't understand on the bus situation is that is public transport and the company selling the advertising isn't even based in the State of Arkansas. We are letting outsiders sell advertisement on our public transit but we won't let local businesses advertise. What is off-site advertising? I see a ton of vehicles advertising all kinds of stuff?

City Attorney Kit Williams: Off-site advertising is when you are advertising a different business not your own. That is the distinguishment between them and we don't attempt to regulate businesses that have their own vehicles painted in their company colors.

Left on the Second Reading

New Business:

VAC 11-3764 (Ozark Dermatology): An ordinance approving VAC 11-3764 submitted by McClelland Consulting Engineers, Inc. for property located at 152 East Appleby Road to vacate a portion of a utility easement, a total of 436 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated the Planning Commission and staff are recommending approval of this vacation.

Alderman Ferrell 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 Gray 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 Gray 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 Gray was absent.

Ordinance 5394 as Recorded in the office of the City Clerk

ADM 11-3773 (Bungalows at Cato Springs R-PZD Amendment No. 2): An ordinance amending a residential planned zoning district entitled R-PZD 05-1797 Bungalows at Cato Springs to revise the zoning criteria for Planning Area Two, to include Use Unit 12, Limited Business, as a permitted use on lot number 30.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff and the Planning Commission reviewed this and all recommended in favor of this amendment.

Burke Larkin, part owner of the homes in the proposed area stated we think this is a good idea for us to move the development forward now that things are settling down in that area.

Alderman Thiel 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 Gray 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 Gray 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 Gray was absent.

Ordinance 5395 as Recorded in the office of the City Clerk

ESRI, Inc.: An ordinance waiving the requirements of formal competitive bidding and approving a contract with ESRI, Inc. in the amount of $31,682.50 for maintenance and upgrades to Geographic Information System Software for 2011 and for future years.

City Attorney Kit Williams read the ordinance.

Paul Becker, Finance Director gave a brief description of the ordinance. He stated we are

requesting the bid waiver because no one else can supply the software upgrades and ongoing maintenance to the system.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5396 as Recorded in the office of the City Clerk

J. E. Lindsey Family Limited Partnership Condemnation & Possession: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by the J.E. Lindsey Family Limited Partnership needed for water and sewer improvements along Crossover Road (State Highway 265).

City Attorney Kit Williams: Mr. Jurgens and I told the Council during the Agenda Session we would work on this. We have never had problems coming to an agreement with Mr. Lindsey. This morning Mr. Lindsey's attorney came to my office and we resolved this issue. We compromised it out to a very small dollar figure. We also agreed again to ask the Highway Commission to allow a left turn out of Coy Kaylor Drive which we had already requested once and the Highway Department turned it down. At this point in time we need a motion and a second to table this indefinitely.

Alderman Ferrell moved to table the resolution indefinitely. Alderman Thiel seconded the motion. Upon roll call the motion to table indefinitely passed 7-0. Alderman Gray was absent.

Meeting adjourned at 7:10 p.m.

Lioneld Jordan, Mayor | **Sondra E. Smith, City Clerk/Treasurer**