Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – 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 19, 2011

A meeting of the Fayetteville City Council was held on April 19, 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, Thiel, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: I would like to recognize Alana Massey and the Spring International students from the Ford Fellows. It's wonderful to have you here.

Mayor Jordan announced that the Northwest Arkansas Land Use Planning Program received a National Green Infrastructure Implementation Award. He stated this award winning project is a result of hard work and a partnership between the Fayetteville Natural Heritage Association Representatives, Beaver Water District and the Arkansas Forestry Commission.

Dr. Bob Caulk, FNHA Chair spoke on the success of the project and stated this is where real success comes from when the product of your work is used by the community as we go forward and grow and it's used in guiding discussion. That is personally very satisfying.

City Council Meeting Presentations, Reports and Discussion Items:

Botanical Garden Annual Report – Walt Eilers and Ron Cox

Ron Cox with the Botanical Garden Society of the Ozarks gave a brief presentation on the highlights of events that took place in 2010.

Alderman Lewis: I am glad to hear that the Earth Day Celebration with kids is still going on because in spring of 2005 I took my 8th Graders and it has really grown since then. It is really good to hear that it has continued and you have 1,900 students coming.

Walt Eilers, City Representative on the Botanical Garden Board stated you asked me to make sure that people got to the garden who could not otherwise afford to get there. Each of you have in your mailbox your first 100 guest passes. He listed other organizations that have been provided with guest passes.

Mayor Jordan: Thank you all very much. I think that the Botanical Gardens are one of the Crown Jewels of this City and I think the Council would certainly agree with that. You have done a wonderful job.

Agenda Additions:

Alderman Petty: Part of the discussion around the pedicabs was about the safety concerns and I have an amendment here that would require pedicabs to have a sound warning device and an identification and phone number on the back of the vehicle.

Alderman Petty moved to add the following ordinance to the agenda. Alderman Adams seconded the motion. Upon roll call the motion passed unanimously.

Amend §117.108 Pedicab Equipment Inspections: An ordinance to Amend §117.108 **Pedicab Equipment; Inspections** of the Fayetteville Code by enacting requirements for a sound-warning device and an identification and phone number displayed on the rear of all pedicabs.

This ordinance was added to New Business Item # 1

Alderman Ferrell: On the Consent Agenda I had communications with Victor Rosetta and he said he would like to speak to the City Council regarding Consent Item # 10. Could we remove that and put it before unfinished business.

Mayor Jordan: Sound good to everybody? Do we need any kind of motion on that?

City Attorney Kit Williams: No, any Alderman can remove something.

Consent:

Approval of the April 5, 2011 City Council meeting minutes.

Approved

Bid #11-27 R&R Truck and Trailer Manufacturing, Inc.: A resolution awarding Bid #11-27 and authorizing a contract with R&R Truck & Trailer Manufacturing, Inc. in the amount of $43,835.00 for the purchase of two (2) thirty-five foot (35') mobile litter conveyors, and approving a budget adjustment.

Resolution 57-11 as recorded in the office of the City Clerk

Bale Chevrolet, Street Maintenance Division: A resolution authorizing a contract with Bale Chevrolet of Little Rock, Arkansas in the amount of $20,404.00 for the purchase of one (1) Chevrolet pickup truck pursuant to a state procurement contract for use by the Street Maintenance Division, and approving a budget adjustment.

Resolution 58-11 as recorded in the office of the City Clerk

Landers Dodge, Traffic Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of $13,863.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Traffic Division, and approving a budget adjustment.

Resolution 59-11 as recorded in the office of the City Clerk

Landers Dodge, Meter Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of $17,560.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Meter Division.

Resolution 60-11 as recorded in the office of the City Clerk

Landers Dodge, Transportation Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of $17,560.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Transportation Division.

Resolution 61-11 as recorded in the office of the City Clerk

Fleet Budget Adjustment: A resolution approving a budget adjustment in the amount of $11,924.00 to transfer funds to the fleet expense account.

Resolution 62-11 as recorded in the office of the City Clerk

Parks Top Dresser Budget Adjustment: A resolution approving a budget adjustment in the amount of $19,900.00 for the purchase of a top dresser for the Parks Division.

Resolution 63-11 as recorded in the office of the City Clerk

McClelland Consulting Engineers, Inc. Amendment #2: A resolution approving Amendment #2 to the engineering services agreement with McClelland Consulting Engineers, Inc. in the

amount of $247,013.00 for construction and design phase services for the Highway 265 water and sewer relocations project, and approving a $20,000.00 project contingency.

Resolution 64-11 as recorded in the office of the City Clerk

Bid #11-28 Garney Companies, Inc.: A resolution awarding Bid #11-28 and authorizing a contract with Garney Companies, Inc. in the amount of $4,989,135.00 for the construction of Highway 265 water and sewer replacements, approving a project contingency of $200,000.00, and approving a budget adjustment.

This resolution was removed from the Consent Agenda for discussion.

McClelland Consulting Engineers, Inc. Task Order #2: A resolution approving Task Order #2 to a contract with McClelland Consulting Engineers, Inc. in the amount of $12,900.00 to develop and bid an airport security improvements project for Fayetteville Executive Airport-Drake Field contingent upon receipt of a grant award, authorizing application for and acceptance of a grant from the Arkansas Department of Aeronautics in the amount of $144,000.00, and approving a budget adjustment.

Resolution 66-11 as recorded in the office of the City Clerk

Alderman Thiel moved to approve the Consent Agenda with Item # 10: Bid # 11-28 Garney Companies, Inc. removed form the Consent Agenda for discussion. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

The following resolution was removed from the Consent Agenda for discussion.

Bid #11-28 Garney Companies, Inc.: A resolution awarding Bid #11-28 and authorizing a contract with Garney Companies, Inc. in the amount of $4,989,135.00 for the construction of Highway 265 water and sewer replacements, approving a project contingency of $200,000.00, and approving a budget adjustment.

Alderman Ferrell: Mr. Rosetta sent an email saying that he had questions and would like to be heard at the Council meeting.

Victor Rosetta, with Rosetta Construction gave a brief history of his company projects. Our bid was rejected for this project and there was a cost difference between our bid and the bid of Garney Companies of nearly $90,000. The Act of Assurance form was not part of an addendum that changed the entire bid form. A couple of sheets which includes this Act of Insurance form was left within the spec book and was not completed by our firm. Nine bids were received and there were two other contractors, one third of the bidders, that did not sign this Act of Assurance form. The City's Legal Council recommended not waiving this irregularity and to not consider our bid. It is the right of the City but in this particular case the City may have to pay additional dollars for something that does not impact the bottom line of that bid.

He explained what an Act of Assurance was. He pointed out various reasons why the City should reconsider this bid.

Alderman Petty: What was your bid amount?

Victor Rosetta: Our bid was $4,899,365.

Alderman Lewis: We discussed this at the Water and Sewer meeting. You mentioned that the Assurance forms are State and Federal forms.

David Jurgens, Utilities Director: The form was not filled out.

Alderman Lewis: When you were talking about the Act of Assurance, you said those are already a part of the State and Federal?

Victor Rosetta: Yes if you review what David has provided the first three items are quoting State and Federal regulations. We have to do this regardless of whether it was within the specs. They tell us that we have to abide by all Federal and State regulations. Part of the requirements which was in the bid form was to provide a Statement of Bidders Qualification. We provided that and the issue of debarment and suspension is a question asked within that statement which has been signed and notarized and was also included in our bid. David and I have discussed why one third of the bidders failed to sign this. I can't explain it other than the bid form itself, which was changed, was in a package separate from the addendum that we completed, perhaps because of that we missed this Assurance form. It was a mistake. Dollars to community are very important so if it could be rebid or if this is looked at as an irregularity in the bid and could be reconsidered we would be grateful.

David Jurgens spoke highly of Rosetta Construction and explained why their bid could not be accepted. On the front page of the handout it specifically says that "bidders shall execute the following contractors Act of Assurance form and submit it with the other bid documents. Bids not including an executed Act of Assurance form will not be accepted." That does not give us the choice or option of waiving that as an irregularity or informality. We discussed this and the consensus was unanimous that unfortunately we cannot award this to Rosetta Construction. There is a strict timeline on this project. We have never re-bid packages when we have had a responsive responsible bidder that was within the allocation of the cost. It is not a viable option to re-bid.

Alderman Petty: Does the City Council have the power to accept Rosetta's bid contingent upon the Assurance form?

City Attorney Kit Williams: I do not think the City Council does. The Assistant City Attorney spoke with Purchasing about this but I support his opinion. The provision in there that you can occasionally accept something that has a technical problem would go more toward someone forgetting to put the date down when they sign their name or something like that. We have not tried to waive something. If we go down that road we don't have a bidding system if you waive

something that says it won't be waived. You could not accept any of the bids and require it to be re-bid. That is your only legal option at this point in time.

Alderman Petty: I am not interested in re-bidding the project. I am a little disappointed with that answer. I guess I would like to go with staff's recommendation on that advice.

Alderman Ferrell: David, this has happened before where people have turned in a bid and forgot to have stuff signed and we had to reject it.

David Jurgens: Yes sir.

Alderman Thiel: Based on what David has told us and my understanding of this I would move that we go ahead and pass the resolution.

Alderman Lewis: I appreciated the discussion on it.

Alderman Thiel moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 65-11 as recorded in the office of the City Clerk.

Unfinished Business:

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. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan read the following amendment that was tabled at the April 5, 2011 City Council Meeting.

A. **Amend Section 3 of the proposed ordinance Amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes** 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.)." ***This amendment was tabled at the April 5, 2011 City Council meeting to the April 19, 2011 City Council meeting.***

Alderman Adams spoke on her efforts along with Alderman Petty and Don Marr to come up with a solution that would be the safest.

Alderman Adams moved to amend the amendment. Alderman Petty seconded the motion.

Don Marr, Chief of Staff gave a brief description of the areas of concern and stated those areas would be restricted for pedicab usage due to safety reasons.

Mayor Jordan: Do we need to strike anything on the original one Kit?

City Attorney Kit Williams: No, I prepared a new subsection "D" and we should probably just use that rather than try to strike and replace.

City Attorney Kit Williams read the amendment as follows:

Amend Section 3: §117.102 **Pedicab Permitted Zone of Operation and Approved Fixed Route** of the ordinance by repealing (D) of the Fayetteville Code in its entirely and enacting a new (D) as follows:

"(D) Operation *on City Trails.* Pedicabs may be operated on the entire length of the Frisco Trail, the Scull Creek Trail, the Mud Creek Trail, and other transportation trails during the hours of 10:00 p.m. until 5:00 a.m. except that portions of these trails may be closed to pedicabs by the Parks and Recreation Director for special events or if the trail section is deemed too narrow for pedicabs or if use of pedicabs on the section of trail could cause safety issues. Pedicabs may not operate on any recreation trails in city parks (such as Lake Fayetteville, Wilson Park, Gulley Park, etc.)."

Alderman Thiel: I think this is a good compromise and I can support it. I think it is more acceptable to the citizens also.

Alderman Gray: I had reservations earlier but I think this is a great compromise.

Jason Sexton, Fayetteville Pedicab Company stated I am excited about the compromise too but we would still like to ask a couple things here. The fact that we are never allowed on a park trail is a little bit restrictive for us. Hopefully we could work something out to where we would be allowed on the park trails explicitly with permission and only during events. We would also like to ask for all day access. Is safety the main concern here with pedicabs?

Mayor Jordan: That is one of my concerns.

Jason Sexton: I would like you guys to reconsider what is safe on a multi use trail. I can find no incident of a pedicab being involved in any kind of accident on any bike trail anywhere. You should really be looking at a multi use trail mixing pedestrians and bicycles. If it is in fact a bike trail then I feel like I have a right to be there. He spoke on the benefits to having pedicabs on the trail and asked the Council to reconsider this and table the part about the trail.

Mayor Jordan: If I understand what you are asking, the 35 MPH would be split off from the trails system.

Jason Sexton: Yes sir.

Mayor Jordan: That would certainly be a decision the Council would have to make.

Alderman Thiel: I would support that.

Stephan Pollard, a citizen stated if we can show that pedicabs are being used for commuting purposes this opens up an entirely new funding set here. There might be a funding source from the State Highway Department if you can show that the trails are being used for commuting purposes. He spoke on how safe the trails would be if pedicabs were allowed to be on the trails. He spoke in favor of the amendment.

Melissa Jackson, resident of 11 W. Montgomery St. stated pedicabs should use the roads not the trails. She listed reasons why they should not be allowed on the trails.

Wesley Owens, a citizen voiced his concerns with pedicabs being allowed on the trails. He stated it would be good to determine a set width for safety on these areas that have been identified and we need to make it across the board. He pointed out some other areas that needed to be added to the list of concerns.

City Attorney Kit Williams: That part is done administratively and is not a case by case decision by the City Council. That is a decision by the Parks and Recreation Director.

Wesley Owens: Will they use this map while determining that?

City Attorney Kit Williams: I am sure she will look at that and also any other information she might want to look at.

Wesley Owens pointed out the area between Maple and Dickson Street which is extremely narrow.

Sibylle Barton voiced her concerns with allowing pedicabs on the trails. She stated I am against it and would like them to at least be limited to the evening hours only.

Bob Barton, a citizen stated they have no reason to be on the trails. They are for families and they need to be kept safe.

Alderman Petty: I would like to make a motion to separate these two sections and then after doing that we can resume discussions.

City Attorney Kit Williams: I don't think you can just cut it into but you can simply not consider Section 3 by taking it out of the ordinance and bring it back as a new ordinance. I don't think you can pass half an ordinance and consider the other half later on.

Alderman Petty: I am happy with the compromise that Alderman Adams and I have come up with. I am curious are there other members of the Council that would be willing to meet with Mr. Sexton and consider what he has had to say tonight and see if there are legitimate reasons for allowing them on the recreational trails.

Alderman Ferrell: I am willing to meet with him.

Alderman Lewis: I am willing to as well. My overall perception on this is to me it's a really good thing that we have so much interest in the trail system and that we want to use it as a transportation mechanism more and more. The idea that we have a compromise here that would get us towards this. We need alternative transportation. I think it would make the trails safer and there would be more presence on the trails. I think we could just move forward with the amendment that has been presented and I like the idea that they would be able to use the streets.

Alderman Kinion: We have reached a compromise on the issue of safety. I have to endorse more activity on the trails which are an alternative transportation system. This compromise answers the concerns that we discussed at the previous two meetings. We have discussed it thoroughly and reached a compromise. We can revisit this at some point in the future if it needs to be amended. He spoke on how safe pedicabs are and stated I think we should move forward with the amendment as proposed. I support this and I want to get it taken care of this evening.

Upon roll call the motion passed unanimously.

Bob Barton: I just want clarification on the ordinance.

Mayor Jordan clarified the ordinance.

Alderman Adams: I would like to comment that there is a big difference when you talk about alternate transportation trails. What we are talking about here is not alternate transportation in my mind as much as we are talking about commercializing. I am very glad that we are

considering putting them on the trails and giving them a chance. I think this is a good way to try it.

Alderman Ferrell: I think we better go for this deal. I would support coming back on this, but in conclusion the trails belong to everybody that pays taxes.

Jason Sexton reminded the Council that they do not charge for rides. I like the compromise and I think it's great.

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

Ordinance 5397 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

Alderman Thiel moved to suspend the rules and go to the third reading. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jason Sexton: We are only asking to advertise in the Entertainment District. The cabs and buses get to and we feel like we should get to.

Stephan Pollard: I would hate to jeopardize our existing sign ordinance where it concerns off-site advertising.

Alderman Adams: Mr. Sexton, when you don't charge a fee and you only accept gratuity's how much would your company depend on advertisements on the pedicabs to succeed?

Jason Sexton: Not knowing the situation in Fayetteville when we hatched this idea, it was a big part. It can be a very lucrative thing for a pedicab company. It is powerful and can be successful for a local business. It helps offset the nights that we don't get gratuities that we need. I don't think that our 2'x 3' sign on the back of a bicycle is going to detract from the quality of life in Fayetteville.

Alderman Lewis: You are going to have to hire new people for the new routes?

Jason Sexton: Most of our return drivers will come back. I just want the right to be a presence in the Entertainment District which has a value to a lot of businesses.

Alderman Petty: We have heard a lot of points that need proper consideration. It is a fact that every exception to the sign ordinance weakens it. However in my opinion we need to assess what that risk is from a practical perspective and decide what is fair with that in mind. In my opinion this exception would not be a substantial weakening of the sign ordinance. I think this is acceptable and I hope we pass this tonight.

Alderman Kinion: Initially I did not support this but I did get online and look at some of the advertising that you suggested. This is going to be in the Entertainment District. I am going to say that it is worth the risk to allow a tiny sign on a whimsical vehicle in our Entertainment District. If you walk down the street right now you are going to see a giant bus and a taxi with signs on it and this is inconsequential in comparison.

Alderman Thiel: These are off premises signs and when we supported allowing taxi cabs to have signs we should have realized then we were opening a door and we are going to continue to open doors. I am not going to support this.

Alderman Ferrell read a portion of a memo given to the Council by City Attorney Kit Williams and also read a portion of Ordinance 1910 approved in 1973 which allows advertising on taxicabs. He asked how many times have we been sued and how many arrests have taken place since 1973 over taxicabs? From what I have been able to determine we had zero suits over taxicabs. Chief, have you ever had anyone? This ordinance changed in 2004 but you said we did not allow taxicab advertising before that.

City Attorney Kit Williams: I was not aware that we had. I am not sure if that ordinance actually survived when we enacted the sign ordinance and I am not sure if that was in actual existence in 2004. The question for the City Council is whether you want to extend an exception like that and have another potential off site sign exception and if you feel like it is aesthetically what you want for the City and if you feel like it is enough of a danger to the sign ordinance that you don't want to support it.

Alderman Ferrell: Talking about aesthetics you're painting with an awful big brush for a sign that small. Chief as long as you have been a police officer can you ever remember anybody being arrested or having a complaint filed for an advertising sign on a taxicab?

Chief Tabor: No, sir.

Alderman Ferrell: Thank you that is all I have.

Alderman Lewis: For me is it worth the risk? To me it's the old saying of opening Pandora's Box. Once that is opened there is no going back. You're not ever going to be able to establish a sign ordinance like we have in the City because it is unique. It was established during a time when it was the first of its kind and it is looked upon by other communities with envy because we are able to protect the aesthetic value of our community. It's a great thing that we haven't had it challenged and making one more exception just takes us even closer. How risky do you want to be is the question? The pedicab signs are cute, funky, and little but it's not about that. It's about the legal ability for us to protect the sign ordinance that keeps us from having to have

billboards along the streets and big tall blinking signs. I support pedicabs it has nothing to do with that. It's about off site signs.

Alderman Tennant: I respect our sign ordinance and I love the fact that we don't have big billboards along our interstates. However, I think everybody up here is looking at the harm done by allowing these advertisements and we are weighing that against the benefit. I don't see a huge harm by having a small sign on the back of what is really a pretty small structure in the Entertainment District. There may be some businesses we don't want advertised. I think there will be some limitations but I think the benefit to the business, the City, and to keeping this business operational and successful, so it can be an alternative mode of transportation, is a good thing in the long run and it out weighs the harm.

Alderman Gray: I like the way pedicabs look just like they are. I like the esthetics. I don't think it is going to do a huge amount of harm but I think we need to listen to our attorney and not keep on weakening our law. I like the beauty of Fayetteville and I want to keep it that way.

Alderman Ferrell: If signs are allowed I don't see how we are weakening it.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-4. Alderman Kinion, Petty, Tennant, and Ferrell voting yes. Alderman Gray, Thiel, Adams, and Lewis voting no. Mayor Jordan voting yes.

Mayor Jordan: I'm going to vote in support of this. I did research on this and had the City Clerk look at all the documents and the best I can tell is the first taxicab ordinance with advertisements passed in 1973. Additions were made to it in 2004 and I don't think five pedicabs are going to make a whole lot of difference. We've had this for 38 years.

Mayor Jordan voted yes to break the tie and pass the ordinance.

Ordinance 5398 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I brought this forward for the same reasons I argued earlier in that this type of thing is an exception to our sign ordinance. Regardless of when it was enacted it is an exception to our sign ordinance that causes it to be weakened.

Alderman Thiel: I want to discuss briefly why I have changed my mind. Some of us on this Council voted for the taxicab signs but we recognized that maybe that decision was not the best one. I wouldn't have a problem in six months or a year, if the pedicabs on the trails works out really well saying let's open it up. I don't have a problem with reconsidering something one way or another.

Sarah has made some good points and I feel like passing this before it leads to something else. I will support rescinding our original ordinance. I agree with the restrictions not being on the Ozark Regional Transit and Razorback Transit because they are both non-profit public mass transportation. That is one way we can help them without having to fund them anymore at any higher level than we do now by allowing them to advertise.

Alderman Petty: What if a taxicab was a non profit taxicab? Our goal with public services is to provide services at the lowest cost to the taxpayers. When it comes to buses, it is very difficult, in a region of this size, to run a non profit bus system. Those public bus systems in a region of our size require public support to exist. However, that is not the ideal scenario. The ideal scenario would be that there is enough demand that they could provide that service without a cost to the taxpayers with cost only to their customers. Taxicabs provide a very similar public transportation service, and they are able to do it privately without public funds. Advertisements are one of the ways they are able to avoid those kinds of subsidies and we should keep that in mind.

Alderman Adams: I do not plan to vote to repeal this. I don't believe we have a problem with signs on taxicabs now. The reason I voted no on the last one is because we've allowed them on trails. If we are going to have businesses on the trails then I don't want signs on the trails.

Alderman Ferrell: I don't think this put this at anymore jeopardy then we have been in before. I asked the City Attorney if he felt comfortable that he could defend that when we had cab advertising and he said yes.

City Attorney Kit Williams: I didn't mean that I would be comfortable. I would be much more comfortable if we didn't have these exceptions to the sign ordinance. You asked me if I could defend the sign ordinance and I certainly can and will defend it. I contend that it is constitutional but every exception you make makes my job harder.

Alderman Tennant: There is not a lot of advertising on the taxis right now but they may need to do that in order to save their business. I would hate for a taxicab company to close and then six months from now we realize that, if this had not been taken away, maybe they would be a legitimate business working for the people and providing a service.

Mr. Pollard: Maybe there is a way to limit the size and visibility. That is counter productive from an advertising perspective but it would also prevent potential future threats to the ordinance. What if it was license plate size and was on the sides of the cab so that only people that could see it are the ones on the sidewalks. Is it possible that you could have both worlds?

City Attorney Kit Williams: The ordinance has restrictions on the size and it must be placed only on the back. There are reasonable restrictions on the size of the sign right now. That makes it a stronger ordinance and less of a danger by having these restrictions.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 2-6. Alderman Thiel and Lewis voting yes. Alderman Gray, Kinion, Petty, Tennant, Ferrell, and Adams voting no.

This ordinance failed.

New Business:

The following ordinance was added to the Agenda at the beginning of the City Council meeting to New Business # 1:

Amend §117.108 Pedicab Equipment Inspections: An ordinance to Amend §117.108 **Pedicab Equipment; Inspections** of the Fayetteville Code by enacting requirements for a sound-warning device and an identification and phone number displayed on the rear of all pedicabs.

City Attorney Kit Williams read the ordinance.

Alderman Petty: I spoke earlier with Mr. Sexton. He already has some of these in place on a voluntary basis. He supports it 100% and I ask for your support.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5399 as Recorded in the office of the City Clerk

VAC 11-3769 (Bracey): An ordinance approving VAC 11-3769 submitted by John Bracey for property located at 237 Ray Avenue to vacate a portion of a utility easement, a total of 178.7 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated we had all the utilities take a look and all have signed off recommending approval. The Planning Commission voted 8-0 in favor and we are recommending approval.

Alderman Thiel: Building Safety staff is not very busy right now so I would like to know how this slipped by?

Jeremy Pate: We probably have more inspections right now for our Building Safety inspectors then we have in a number of years. We are quite busy.

Alderman Thiel: When did this happen?

Jeremy Pate: The building was constructed in 2008 or 2009. It has currently been turned over to a new homeowner. They got an existing survey for the property. This is in a PZD and there are different building setbacks and utility easements than a normal subdivision. I would anticipate that is part of why this occurred. In addition the over hangs were originally suppose to be a 6" overhang and was increased to a one foot overhang. The option is to remove a portion of the overhang. They chose to go this route and we felt that was perfectly fine. There is still amply utility easement within that location and we are recommending approval.

Alderman Thiel: I hope we keep working on this. This is a very minor thing. It is unfair that some people have to comply and other people do it this way.

Jeremy Pate: I agree. Everyone has to comply. There are fewer of these than we use to see because we have some measures in place to correct that. I will say there are mistakes in the field by contractors as well. Those are instances we can't always catch once the roof is on and we've completed the final inspection. The choice is to ask the homeowner to remove a portion of their structure or ask them to come through this process. You all have the option to deny this application and we can go back and let the homeowner know. We view everyone on a case by case basis.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5400 as Recorded in the office of the City Clerk

VAC 11-3792 (U of A): An ordinance approving VAC 11-3792 submitted by H2 Engineering for property located on the north side of Douglas Street between Oakland and Storer Avenues to vacate a 15-foot wide alley right-of-way.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff is recommending approval.

Alderman Ferrell 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 Gray was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Petty 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 during the vote.

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 during the vote.

Ordinance 5401 as Recorded in the office of the City Clerk

VAC 11-3793 (U of A): An ordinance approving VAC 11-3793 submitted by H2 Engineering for property located on the north side of Douglas Street between Oakland and Storer Avenues to vacate a 15-foot wide utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff is recommending approval.

Alderman Lewis: The University owns the property but is it still considered campus? Are they subject to city codes?

Jeremy Pate: Because they are a state entity they are not required to coordinate. They don't go through our building permits or inspections. We inspect any work done within our public right of way. They also pay impact fees for any water or wastewater impact they have on our system that we own. We inspect all those types of connections. We coordinate with the facilities

management group who oversees all the construction on the campus. We have quarterly meetings with them if not more regularly about different projects that are ongoing.

Alderman Ferrell: Do they have an internal sign control policy?

Jeremy Pate: Yes.

Alderman Ferrell: They are not subject to our sign ordinance.

Jeremy Pate: Theirs is stricter than ours.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5402 as Recorded in the office of the City Clerk

Amend §35.19 and §35.30 Definitions: An ordinance to amend §35.19 and §35.30 Definitions of the Code of Fayetteville to change the definition of concession stands to remove the exemption for stands operated on a short term basis for festivals.

City Attorney Kit Williams read the ordinance.

Alderman Tennant: This came up in the A & P Commission meetings and we discussed the fact that at festivals there are temporary concession stands and they are not subject to the HMR tax. The businesses in Fayetteville are at a disadvantage during those things. The local businesses are the ones that are here all the time not just during festivals. I think it's a fairness issue during the times when temporary stands come in that they should be subject to the same rules as the local businesses.

Mayor Jordan: I certainly support the A & P Commission. Anybody that comes in from out of state should pay the same HMR taxes that the local businesses are paying.

Alderman Lewis: The reason I think it's a good idea is that HMR tax goes to the A & P Commission and that helps fund the festivals.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5403 as Recorded in the office of the City Clerk

Washington Regional Medical Center Roundabout: An resolution to designate the location of Washington Regional Medical Center as the new location of and the successor hospital of the City Hospital, to approve and authorize the mayor to execute a quitclaim deed to convey the current site of the City Hospital to Washington Regional Medical Center, all contingent upon the concurrent action of the Board of Trustees of the City Hospital to designate Washington Regional Medical Center as the successor City Hospital and the donation of approximately 1.1 acres by Washington Regional Medical Center for construction of the roundabout at North Hills Boulevard and Futrall Drive.

Chris Brown, City Engineer gave a brief description of the resolution.

Alderman Ferrell: How long ago was it when you first started to acquire this parcel? How many are still not acquired?

Chris Brown: This project has two properties. Washington Regional on one side and the Medical Park on the other. We made the offers in about August of last year. Both of these are large acquisitions with a lot of money involved. There have been things that have taken awhile to work through.

Alderman Ferrell: I represent the citizens of Fayetteville. I don't represent the hospital although I am very glad to have such a great hospital here. When this was presented to me at the Street Committee a swap was talked about. A swap for the easement in lieu of the City paying for the appraised value, $172,000 is the appraised value, how did we determine that was the value that the hospital was willing to give for that trade?

City Attorney Kit Williams: This is the value that our appraiser placed on it and sometimes when you do condemnations you get a much higher value by the owner of the property. They claim that the property is worth much more. I'm not asking the City Council, in this resolution, to accept the counter offer because there were certain things within that that I was unwilling to recommend to you. This requires a quitclaim deed not a limited warranty deed. I have concerns about the title to this property. There were two deeds, one in 1906 and then a sequent one in

1909 both by the same grantors. The one in 1909 made it easier to transfer any funds from this property to the replacement successor City Hospital. That is going to be the duty of Washington Regional to make sure that happens. I don't want to put us out there presenting some sort of warrant to them.

I'm not asking you to accept the counter offer. I'm asking in this resolution, as stated in various sections of the resolution, which is appointing new members, accepting gratefully their donation of this property regardless of what its value is, and conveying by quitclaim deed to the hospital the land that we own in trust. We don't own the land for our own value.

I believe in the early 1900 the citizens of Fayetteville used tax dollars to build the first City Hospital on land donated by the Stone family. That has certainly served us through many generations very well. At this point in time the true city hospital that is in Fayetteville is Washington Regional. That is one thing I have asked that you would do and that is something that must be done under the deed of 1909 in order for them to be able to receive any of the proceeds from the land if they decided to sell. They could sell the city hospital land and apply the proceeds to Washington Regional's other hospital needs. The bottom line is this seems to be a situation where we can save our tax dollars, the cost of acquiring this 1.1 acre no matter how much that would be and moving the sign. We think the minimum would be about $200,000, we might have to negotiate and it could be much higher. This would be something where we could work with them. They are from a logical point of view the replacement city hospital and therefore would be entitled to the proceeds of this. Our treasury is not entitled to the proceeds.

Alderman Ferrell: Because of the trust if they sell it the money would have to go towards something at the hospital if it's declared the city hospital.

City Attorney Kit Williams: Yes, the deed says it must be devoted exclusively for hospital purposes. We want to thank the Stone family for their generous donation in 1906 and 1909 and to honor the terms of their deed, we as a trustee of this property must honor their intent as best we can. Their intent was that if the city hospital ever had to move then the proceeds from the sale of the land would be devoted to the new city hospital which I'm asking you to designate Washington Regional as the new city hospital.

Alderman Ferrell: I contacted two survivors that were on the board and visited with both of them about this and they thought it was a good deal.

Alderman Thiel: I appreciate Bobby's concerns about the taxpayer's money being used to build the original hospital. I think we tried to ascertain how much that amounted to and I don't think we were able to in the Street Committee. Kit pointed out that the citizens had the use of the hospital for many years and we are getting $172,500 for it in this trade. I feel like we are getting a value for this. We can't sell this property. I feel this is the way we need to move forward and I support this.

Alderman Lewis: If I were going to be asked to sign it I wouldn't want to sign it until I knew what the exact interest was that I was trading and $172,000 does not equal the interest of that

property and building. I don't feel like I've been told enough about what our interest is in it. Would we have a right to sell it?

City Attorney Kit Williams: We would not have a right to sell it in order to enrich our City treasury. The deed says any proceeds you get from selling the land must be used exclusively for hospital purposes at the new city hospital. Unless we want to establish a new city hospital where we can put those funds in it we can't receive any of the proceeds back. The value of the land that the city hospital sits on now is immaterial because we only hold it in trust. We are not the beneficiary. The beneficiary is the city hospital. We own the land legally but we don't have the right to profit from the sale of the property.

Alderman Lewis: From a citizen's point of view when spending $172,000 you think about what their intent was. If it gets absorbed into the corporate system of Washington Regional, which is a very good hospital, but it gets lost into the system and not identified as a major part our community. This community came together and built this and it's a bid deal. I feel the history is worth more than $172,000.

Alderman Thiel: At the Street Committee you suggested that Washington Regional was willing to replace their sign. Is that still agreeable to them? You said that was worth additional money too.

Woody Basset 1555 Sunset Place, Chairman of the Board Washington Regional Hospital: It is our intention to move the sign and bear the costs. I believe this will be a win win if you pass this resolution and we move this forward. It is our intention to build a replacement facility to replace what we have in the way of long term nursing care. The Fayetteville City hospital has served this community extremely well for a number of years but the building is old and we believe it is time to do something about it. We need your help.

Alderman Adams: What makes us decide that the city hospital is Washington Regional?

Woody Basset: Mr. Williams and his staff have done a great job looking at it from the city's point of view as has Mr. Olmstead in looking at it from a hospitals point of view. The Washington Regional Medical Center, before moving to North Hills was located on North Street and College and, was built and opened in 1950. Since 1950 Washington Regional has been "the hospital."

Alderman Lewis: I think it sounds good that Washington Regional would want to improve the facility. According to this the thing that would allow that would be us calling Washington Regional the City Hospital. The City could still maintain the trust.

City Attorney Kit Williams: The deed in 1909 says we shall hold this land in trust and maintained as a city hospital. In case it should be determined here after to change the location of said hospital to some other point in said city in such case the entire proceeds of the above described premises shall constitute a trust fund to be devoted exclusively to the establishment and maintenance of such city hospital at the point selected. We hold the land in trust but if the city hospital is now Washington Regional which I would have to agree that it is and we designate

that and the City Hospital Board of Directors designates it as a new city hospital then any assets remaining in this property, the land, buildings, and any other assets would be in a trust fund that would be designated for Washington Regional as the new city hospital for there use exclusively for the maintenance and establishment of such hospital.

The only trust situation we have is the ownership of this particular piece of land. Once we have conveyed that, and we would have to do it for them to get any proceeds from the property, then our trust situation is over and we have done what the Stone family asked us to do.

Woody Basset: I can't answer the question any better than that, thank you that is the answer. He thanked the Council for listening and also thanked them for their service.

Alderman Lewis: You are saying this is just allowing what?

Mayor Jordan: The Mayor to negotiate a contract.

City Attorney Kit Williams: It authorizes the Mayor to sign a contract. We don't have a contract directly in front of you and it is not an acceptance of their counter offer because it will include a quitclaim deed and not a warranty deed. It will follow what is outlined before you which would be to convey this property to them with the quitclaim deed and in exchange we will accept their donation of this 1.1 acres to the City. It is a reasonable donation because the roundabout should help Washington Regional, its patients, and staff. It is designed to correct the congestion that is there. We appreciate their donation and we think this money will be well spent to help the congestion problem.

Alderman Petty moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 6-2. Alderman Ferrell and Lewis voting no.

Resolution 67-11 as recorded in the office of the City Clerk.

Landers Chevrolet, Sewer Maintenance Division: A resolution authorizing a contract with Landers Chevrolet in the amount of $67,767.00 for the purchase of three (3) Chevrolet Silverado pickup trucks pursuant to a state procurement contract for use by the Sewer Maintenance Division.

Alderman Ferrell: I asked Barbara if she could give me the price difference between three Dakota's and three Silverado's.

Dennis Pratt: The price difference between the three is $5,030 a piece higher for the Silverado. That would be $15,090.

Alderman Ferrell: Mayor, we are a green community and I think when you drive Silverado pickups it doesn't scream out green. If you drive a Dakota pickup, which is smaller and uses less fuel, I think it is a better deal. The Equipment Committee vote was 3-1.

Alderman Thiel: Why was the rest of the committee convinced that this was a right thing to do?

Dennis Pratt: When this was presented we brought forward the operation that these three vehicles performed. They are supervisor trucks, half ton 4x4 trucks. Before we made any commitment to what size they would be we brought them in and inspected them. We looked at the tools they carry and what their operation required for them to go out in the field and do the work. We look at each individual vehicle and we weigh them with the load to see if a smaller vehicle could do it. These vehicles for their operation need to be half ton 4x4 pickups. They go off road they follow the pipe they don't follow the road. We do not want to hinder their operation for what they are supposed to be doing out in the field.

Mayor Jordan: That is the reason you went with the bigger trucks.

Dennis Pratt: That's correct.

Alderman Kinion: This is specifically to meet the demand of the job associated with this particular vehicle.

Dennis Pratt: That's correct.

Alderman Thiel moved to approve the resolution. Alderman Lewis seconded the motion.

Alderman Adams: I appreciate Bobby bringing this up because this gives the public a chance to hear your explanation and to see that the Council is paying attention.

Don Marr: Alderman Ferrell and former Alderman Lucas were two huge advocates of this kind of discussion taking place over the last three years. Just because we bring a vehicle forward that is a 4x4 doesn't mean we haven't given it that level of consideration. The reason why we have the ninth best fleet is because of the level of management in that department.

Alderman Ferrell: Dennis has worked to bring the number of 4x4's down.

Alderman Gray: I asked our Fleet manager to monitor carefully a new purchase and make sure that we make good decisions. Our Chief of Staff has assured me that he will do that. I appreciate his monitoring and careful watching. That is what we need him to do. Thank you.

Upon roll call the resolution passed 7-1. Alderman Ferrell voting no.

Resolution 68-11 as recorded in the office of the City Clerk.

Announcements:

Alderman Lewis announced the upcoming Ward 4 meeting.

City Attorney Kit Williams announced the Town Hall meeting at the Law School.

Mayor Jordan stated the Council did an exceptional job tonight.

Meeting adjourned at 8:50 p.m.

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