Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

City of Fayetteville Arkansas
City Council Meeting
December 16, 2014

A meeting of the Fayetteville City Council was held on December 16, 2014 at 5:30 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 Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Mark Kinion arrived at 5:39 p.m.

ABSENT: Alderman Rhonda Adams

Pledge of Allegiance:

Mayor's Announcements, Proclamations and Recognitions:

Alderman Rhonda Adams Recognition

Alderman Adams was absent.

City Council Meeting Presentations, Reports and Discussion Items:

Mayor Confirmation of the Public Facilities Board Appointment

Alderman Tennant stated the Mayor recommends the appointment of Tommy Deweese to the Public Facilities Board.

Mayor Confirmation of the Northwest Arkansas Regional Airport Authority Appointments

Alderman Tennant stated the Mayor recommends the appointment of Mike Johnson and Blake Woolsey to the Northwest Arkansas Regional Airport Authority.

Nominating Committee Report

Alderman Tennant read the Nominating Committee Report and recommended the appointments as submitted.

Alderman Gray moved to approve the Nominating Committee Report, Public Facilities Board appointment and the Northwest Arkansas Regional Airport Authority appointments. Alderman Long seconded the motion. Upon roll call the motion passed 6-0. Alderman Kinion was absent during the vote. Alderman Adams was absent.

A copy of the report is attached.

Town Center Annual Report

Sandra Bennett, Facilities Manager presented the Town Center report.

City Attorney Kit Williams stated his appreciation for the leadership of the Town Center and the success it has achieved.

A copy of the report is attached.

Agenda Additions: None

Consent:

Approval of the December 2, 2014 City Council meeting minutes.

Approved

Housing Contract Services & Community Outreach Projects: A resolution to approve a budget adjustment for Housing Contract Services in the amount of $11,364.00 representing

Community Development Block Grant Program income received through a housing program lien payoff, and to approve a budget adjustment for Community Outreach Projects in the amount of $627.00 representing donations to Ranger's Pantry and the Senior Giving Tree.

Resolution 216-14 as recorded in the office of the City Clerk

Benchmark Construction Change Order No. 2 at Fire Station No. 1: A resolution to approve Change Order No. 2 to the contract with Benchmark Construction in the amount of $6,703.00 for installation of a sidewalk and an Americans with Disabilities Act Compliant Ramp for the Fire Station No. 1 Driveway Replacement Project.

Resolution 217-14 as recorded in the office of the City Clerk

Bid # 14-45 JL Bryson - Noland Wastewater Treatment Plant: A resolution to award Bid #14-45 and authorize a Contract with JL Bryson, Inc. for the installation of an ozone disinfection system at the Noland Wastewater Treatment Plant in the amount of $867,010.00, to approve a project contingency in the amount of $86,701.00, and to approve a budget adjustment.

Resolution 218-14 as recorded in the office of the City Clerk

Bid #14-64 to Evans Enterprises, Inc. - Noland Wastewater Treatment Plant: A resolution to award Bid #14-64 to Evans Enterprises, Inc. to rebuild four (4) motors and to purchase four (4) Variable Frequency Drives and Load Reactors for the Noland Wastewater Treatment Plant in the amount of $42,341.74 plus applicable taxes.

Resolution 219-14 as recorded in the office of the City Clerk

Bid #14-61 to Rogers Iron and Metal: A resolution to award Bid #14-61 to Rogers Iron and Metal for the removal and recycling of scrap metal items for an amount established in the seventh effective issue of the American Metal Market Automobile Scrap Index each month for the Arkansas/Tennessee market less Rogers Iron and Metal's operating costs in the amount of $96.00 per ton.

Resolution 220-14 as recorded in the office of the City Clerk

Federal and State Law Enforcement Forfeiture Revenue: A resolution to approve a budget adjustment in the total amount of $44,018.00 recognizing Federal and State Law Enforcement Forfeiture Revenue received through November 2014.

Resolution 221-14 as recorded in the office of the City Clerk

Fayetteville Police Department Donation Revenue: A resolution to approve a budget adjustment in the total amount of $7,900.00 recognizing donation revenue to the Fayetteville Police Department in support of officer service awards, general recognition and repair of the vandalized police memorial monument.

Resolution 222-14 as recorded in the office of the City Clerk

Watershed Conservation Resource Center Amendment No. 2 Niokaska Creek: A resolution to approve Amendment No. 2 to the Memorandum of Understanding with the Watershed Conservation Resource Center in an amount not to exceed $6,020.00 for enhancement of the existing floodplain of the Niokaska Creek in Sweetbriar Park, monitoring of bank erosion and repairs to rock structures constructed as part of the original stream restoration project.

Resolution 223-14 as recorded in the office of the City Clerk

CH2M Hill Engineers Amendment No. 6: A resolution to approve Amendment No. 6 to the agreement for operations, maintenance and management services between the City of Fayetteville, Arkansas and CH2M Hill Engineers, Inc. in the amount of $7,902,543.00 for services in 2015.

Resolution 224-14 as recorded in the office of the City Clerk

Master Transportation Plan: A resolution to approve a budget adjustment in the amount of $500,000.00 for the development of a Master Transportation Plan.

Resolution 225-14 as recorded in the office of the City Clerk

Hotel, Motel and Restaurant 2014 Bond Capital Improvement Walton Arts Center: A resolution to approve the attached budget adjustment for both the 2014 and 2015 budgets to create the Hotel, Motel and Restaurant 2014 Bond Capital Improvement fund in the amount of $7,181,004.00 for the Walton Arts Center Expansion and Enhancement Project and $3,642.656.00 for Phase I of the Regional Park Project.

Resolution 226-14 as recorded in the office of the City Clerk

Alderman Marsh moved to accept the Consent Agenda as read. Alderman Long seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

Unfinished Business:

Hanna's Landing Appeal: An ordinance rezoning that property described in Rezoning Petition RZN 14-4850, for approximately 4.96 acres, located along the north side of Martin Luther King Boulevard between Government and Hill Avenues, from I-1, Heavy Commercial/Light Industrial, to C-2, Thoroughfare Commercial.

City Attorney Kit Williams: Late this afternoon we received a Bill of Assurance from the applicant. The ordinance needs to be amended to show our reliance upon that Bill of Assurance. We have a minor change in the title and change the current Section 2 to Section 3. The new Section 2 will read, that the City Council accepts the proffered Bill of Assurance from the applicant and relies upon this Bill of Assurance in making this rezoning decision. This would need to be an amendment to the ordinance in order to accept and consider the Bill of Assurance.

Alderman Petty moved to amend the ordinance to accept a Bill of Assurance. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

City Attorney Kit Williams read the entire ordinance, therefore there was no need to suspend the rules and go to the third reading.

Jeremy Pate, Director of Development Services stated the City Attorney office has submitted a memo outlining some concerns with the Bill of Assurance.

City Attorney Kit Williams: I noticed some problems with the Bill of Assurance. No applicant needs to ever provide a Bill of Assurance. If an applicant wants to provide a Bill of Assurance, then we have designed a form we feel is easy to understand. Our form is clear as to what the city's rights would be and how to enforce it. We provided a form to the applicants. Their attorney chose to not use many parts of the form and to put in other language. It causes me some concern and some of the form is incorrect.

They say the Planning Commission relied upon this. The Planning Commission met a few months ago and the Bill of Assurance showed up today. They say the Planning Commission can change it and that can't happen. Only the City Council can change the Bill of Assurance in the future with the concurrence of the applicant. A Bill of Assurance normally does exclude uses that the City Council might feel would be objectionable. The wording they chose only excluded uses as a primary business activity. This is a five acre site. You can have a primary activity and still have a couple of acres left for non-primary activities, which could include some of these objectionable uses they claim they are excluding. There is other language in here which is confusing and this is not a normal Bill of Assurance. There are enforcement provisions in it, but the primary business usage and incidental things they talk about make it where this is not a very enforceable Bill of Assurance.

Stephen Giles, Agent for Property Owner: I agree with some of the things that Kit is saying. Anytime Wal-Mart presents something that is going to be filed of record, it has gone up and down the channels at Wal-Mart legal. Several lawyers have looked at this and they have seen Kit's. We feel like ours is the better document. We have said over and over again what we plan to do if you rezone the property. The Hanna's have committed to the City Council and everybody in the City of Fayetteville in a written document that clearly tells you what is not going to be on the property.

A discussion followed about what would not be permitted by the Hanna family and Wal-Mart on the property.

City Attorney Kit Williams: Why didn't you just say these specific activities will not be allowed, instead of not be allowed as the primary business activity? When you say that, you are saying we might allow those activities, just not the primary business activity. These are your words and I have talked to you about this before and tried to have you do a very simple form which says you won't do this. You won't have these activities on here like you just told the City Council, but when I see it in black and white, I see a lot of wiggle room because it could be a secondary business

activity. I know Wal-Mart is not planning on doing that, so I don't know why that language is in there.

Stephen Giles: It was in there to try to present it in Wal-Mart corporates approval. A document telling you that's what it says. We are not trying to do incidental uses or permitted uses. The store is going to be there for thirty years or more and we don't want to go down the line here when we get into an argument about what we can or can't do. We are telling you now, what we are going to do.

Alderman Long: If this is the case, then why couldn't we have it rephrased to what Kit suggested?

Stephen Giles: I don't have the authority to change this. This is the document we want to present. It says what Kit's paragraph one and two does. It just has the other things in it that in Wal-Mart's vast experience, they run into trouble if some of these things aren't explicitly stated.

City Attorney Kit Williams: At the end of my memo I pointed out that before there was a Bill of Assurance, I still thought having a shopping goods opportunity, which is only allowed in C-2 and not in I-1, made a lot of sense for this thoroughfare. Even before the Bill of Assurance I thought this fit within the 2030 Plan to some extent. However, this is your decision and the Bill of Assurance that was proffered to us is not a normal Bill of Assurance and has language that can be interpreted as such, that the alleged restrictions on activities is not very strong.

Stephen Giles: It is our word.

A discussion followed about the total acreage of the property.

City Attorney Kit Williams: In most rezoning's, you can't talk about what the project is going to be. These are the standards we've held too. Is that correct, Jeremy?

Jeremy Pate: That would be consistent with any other applicant. If the Bill of Assurance had an attachment that showed what the project is going to be, I think you could then go into the details. As it stands, there are a number of uses this could still be in 30 or 40 years.

City Attorney Kit Williams: State law is that you are supposed to consider all the uses that are available for the rezoning and decide whether all of the uses are something that is more desirable than the current uses of I-1, which does not allow shopping goods. That is one of the primary differences.

A discussion followed about the Bill of Assurance in the construction of sidewalks to permit trees to be planted between the sidewalk and street.

Mayor Jordan discussed the rules for public comment.

Jeff Williams, Ward 1 spoke in favor of the ordinance. Mr. Williams presented a petition with 24 signatures in support of the ordinance.

Edward Hejtmanek, spoke in opposition of the ordinance.

Adam Cox, 533 South Church stated he is in favor of Form Based Zoning.

Davis Trice, University of Arkansas student spoke in favor of the ordinance.

Jerry Hogan, East Oaks stated the area has residual historical value and that should be taken in consideration.

Erin Burton, 588 South Block Avenue spoke in opposition of the ordinance.

Brady Carmen, 440 South Locust spoke in opposition of the ordinance.

Laura Walsh, 224 South Church spoke in opposition of the ordinance.

Johnny Chamberlin, 502 South Mashburn Avenue spoke in opposition of the ordinance.

Pam Burton, 671 South Block Avenue spoke in opposition of the ordinance.

Alan Ostner, 312 South Block spoke in opposition of the ordinance.

Brian Hurley, 215 South Block spoke in opposition of the ordinance.

Carter Yeatman, 324 South East Avenue spoke in opposition of the ordinance.

Woodrow Shew, 525 North Walnut Avenue spoke in opposition of the ordinance.

Skip Deaton, Corner of Hill and MLK spoke in favor of the ordinance.

Sarah House, East Prospect Street spoke in opposition of the ordinance.

Angela Wisely, 502 South Mashburn Avenue spoke in opposition of the ordinance.

Rachel Tubbits, 426 South Government Avenue spoke in opposition of the ordinance.

Rob Sharp, East 4th Street spoke in opposition of the ordinance.

Jamie Davis, 1227 South Maxwell spoke in favor of the ordinance.

Darlene Graph, 7 East South Street spoke in opposition of the ordinance.

Jeff Peterson, 2642 East Golden Oaks spoke in favor of the ordinance.

Alice Beetz, 512 South East Avenue spoke in opposition of the ordinance.

Thad Hanna, 16308 East Black Road spoke in favor of the ordinance.

Hank Kaminsky, 641 West 6th Street spoke in opposition of the ordinance.

Steve Clark, 438 East Fairway Lane spoke in favor of the ordinance.

Michael Lindsey, Director of Public Affairs for Wal-Mart spoke in favor of the ordinance.

Aubrey Shepherd spoke in opposition of the ordinance.

Alderman Gray: I have been torn on this issue. I am a City Council person that believes in doing what is best for Fayetteville. Fayetteville needs this grocery store. The plan they have produced for us is a beautiful plan. I will be supporting the C-2 zoning.

Alderman Petty: The neighbors have banded together against the rezoning. I'm not willing to step through that line. The applicant is one of the best negotiators in the world. When you are negotiating with one of the best negotiators in the world, it puts you at a disadvantage. When you look at the C-2 zoning, it's virtually the same zoning that exists in almost every community in America. It's not a great economic development strategy on our part to say we are going to try and out compete other cities by being just like them. Be a little different, which is the whole point to all the public input sessions that we had. I understand it means having to think outside of the box that is used to build so many of these stores every year, but they have done it.

Alderman Marsh stated she is listening to her constituents and they want a superbly walkable environment. She stated her citizens want a city that looks more like Downtown, such as the pictures that are used on Fayetteville's tourist brochures. She referred to the Fayetteville Downtown Master Plan and stated designing for pedestrians first is what makes a good street. She stated she would not support C-2 zoning, but would support a change to Urban Thoroughfare.

Alderman Kinion stated when neighborhoods identify what they want in their neighborhood, it needs to be taken seriously. He stated he participated in and knows the vision for the Fayette Junction Master Plan, Walker Park Master Plan and Downtown Master Plan. He believes anyone who develops in this area needs to be held to the same standards. He stated he didn't want to impede anyone from developing on this property who can supply a need. He believes the vision can be met that was set by individuals who participated in the neighborhood plans and still invite good development to meet the needs for this property. He spoke about the development history of troubled areas in regards to large boxed retail stores. He stated he can't support the C-2 zoning of this property even though he supports the concept.

Alderman Long: I've heard a lot of people say they support UT zoning, but no one has applied for UT zoning at this point. When looking at our overall zoning map, I see C-2 directly adjacent to this, as is I-1. I think C-2 is more appropriate than Industrial Zoning, where someone could build a factory, car lot or gas station. Something else that's troubled me is that I've heard about the walkability and how this won't encourage that. At the intersection of Garland and Wedington, there is a Harps with a transit stop. I see almost as many pedestrians there at that transit stop as I do vehicles. In the Bill of Assurance we've been told there will be a transit stop.

Form Based Zoning was meant to be an option, not something we would require when it was established. If it was something we were going to require, we would be talking about putting parking in the back behind the residence which would draw more traffic in toward where the neighborhood is at. If I lived there, I wouldn't want that. I will be supporting C-2.

Alderman Marsh: Kit, in our discussions at the last Council meeting you mentioned that the City Council can rezone a piece of property to anything it would like to do. Is that correct?

City Attorney Kit Williams: Zoning is a legislative decision that can be made by the City Council. It can't be made arbitrarily and capriciously.

Alderman Marsh: Can I move that we rezone this to Urban Thoroughfare?

City Attorney Kit Williams: I would like to defer to Jeremy Pate on this.

Jeremy Pate: My preference would be if the Council is looking for a different zoning, than the applicant has requested, would be to table the item to allow public consumption and the applicant to think about that idea as well.

Alderman Marsh: The Planning Commission, staff and neighborhood are speaking against the C-2. The neighborhood is saying they are fine with the use, but want the urban form.

Alderman Marsh moved to amend the zoning to Urban Thoroughfare. Alderman Petty seconded the motion.

A discussion followed about zoning the property to Urban Thoroughfare and a brief description of Urban Thoroughfare was given.

City Attorney Kit Williams: I've not seen a City Council on a spur of the moment attempt to force an applicant to make a major change in their zoning request. There were some zoning changes that were forced in the Walker Park Plan, but that was after many charrette's and conversations with the landowners. I've never seen when we get to the third and final reading and close to a vote and a suggestion that we make a major change that has not been requested by the applicant.

Mayor Jordan stated he agreed with City Attorney Williams.

Alderman Petty: I would like to table it until the next meeting. I don't think we need to vote tonight. That would give staff enough time to come up with a recommendation regarding UT. It would give us time to consider the City Attorney's memo which has told us that compatibility should be the number one consideration of any rezoning decision.

Thad Hanna: I can't believe that we are on a third reading and a City Council member tries to force a zoning request change on me without giving us any input. I have property for sale in the City of Fayetteville. I have a potential buyer who asked us to rezone it. I am doing a voluntary downzoning from I-1 to C-2.

Alderman Petty moved to table the appeal and ordinance to the January 19, 2015 City Council meeting. Alderman Marsh seconded the motion.

A discussion followed about the procedural process with the motions that are on the table and giving more time for the City Council and public to evaluate the Bill of Assurance.

City Attorney Kit Williams: Mr. Giles, are you opposed to the tabling and would like to have a decision tonight?

Stephen Giles stated they were under contract and opposed to the tabling of the ordinance.

Alderman Kinion stated the Bill of Assurance was received less than 24 hours ago and not similar to anything he has seen in the past. He stated more time is needed to responsibly review the Bill of Assurance to see if it is appropriate.

Stephen Giles stated he has been working for weeks on the Bill of Assurance and it takes a lot of time to go through corporate to get this approved.

Mayor Jordan explained the process of tabling the item and rezoning to C-2 or Urban Thoroughfare.

Rob Sharp: The worst thing you can do for economic development, investment or landowners is to not have predictability. If we are all over the map, then no one wants to do business in our town. We are overriding our staff, Planning Commission and our 2030 Goals. We should table this to have more time to consider it. If the landowner wanted to expedite the process, he could have met with the staff and found out what the best chance is to get this through. They didn't want to go that route and they wanted to ram this down our throats. They are now saying they don't have enough time and it's disingenuous.

Thad Hanna: This has been a long drawn out process. This is the third reading and we have had it tabled one reading already. It's disingenuous to have a Council member who has already said they are against the C-2 to say they want to look at the Bill of Assurance, because they are going to vote against it anyway. We have done everything that has been asked of us from the city. As the property owner I want a vote on the C-2 and if it fails, then we will go back to I-1.

A discussion followed about voting procedures.

The motion to table the appeal and ordinance to the January 19, 2015 City Council meeting upon roll call the motion failed 3-4. Alderman Kinion, Petty, and Marsh voting yes. Alderman Tennant, Schoppmeyer, Long and Gray voting no. Alderman Adams was absent.

Alderman Petty stated City Attorney Williams has written us a memo about the criteria we are allowed to consider about rezoning decisions. He stated compatibility was number one on the list and Urban Thoroughfare is now on the floor.

Mayor Jordan: I would like to apologize to the Hanna's for any remarks that was made to them. I don't allow people to attack one another's character. I want everyone to be respectful.

Alderman Marsh stated the neighborhood wants the use, but they want the Form Based Zone. She stated that the Planning Commission voted against C-2 and staff did not recommend C-2. She encouraged the ordinance to be voted Urban Thoroughfare.

The motion to amend the zoning to Urban Thoroughfare upon roll call the motion failed 3-4. Alderman Kinion, Petty, and Marsh voting yes. Alderman Tennant, Schoppmeyer, Long, and Gray voting no. Alderman Adams was absent.

Mayor Jordan: I will be supporting C-2 if necessary. It has not been an easy decision for me because the property is located on the edge of the Downtown and Mill District. However, the benefits you gain, the destination site, sidewalks, accessibility improvements and overall beautification of an area that is extremely run down, will hopefully spur additional investment and revitalization.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Tennant, Schoppmeyer, Long, and Gray voting yes. Alderman Kinion, Petty, and Marsh voting no. Mayor Jordan voted yes and therefore the ordinance received five (5) affirmative votes and passed. Alderman Adams was absent.

Ordinance 5727 as Recorded in the office of the City Clerk

New Business:

RZN 14-4875 - Truckers Drive: An ordinance rezoning that property described in Rezoning Petition RZN 14-4875, for approximately 20.54 acres, located at the west end of Truckers Drive from R-PZD, Residential Planned Zoning District, Park West 05-1796, to RMF-12, Residential Multi Family, 12 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Planning Commission voted 9-0 in support of the rezoning. Staff recommends approval of the rezoning. He requested the Exhibit A map to be amended due to the property boundary being shifted.

Alderman Marsh moved to amend the Exhibit A map. Alderman Petty seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Brian Moore, Engineering Services stated he was representing the owner.

Alderman Marsh moved to suspend the rules and go to the second reading. Alderman Long seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Ordinance 5728 as Recorded in the office of the City Clerk

Northwest Arkansas Bicycle and Pedestrian Master Plan: A resolution to endorse the Northwest Arkansas Bicycle and Pedestrian Master Plan created by the Northwest Arkansas Regional Planning Commission and Alta Planning and Design.

Matt Mihalevich, Trails Coordinator introduced Tim Conklin.

Tim Conklin, Northwest Arkansas Regional Planning Commission gave a brief description of the Northwest Arkansas Regional Bicycle and Pedestrian Master Plan.

Mayor Jordan: It's a great plan.

City Attorney Kit Williams: Matt, does their Community Plan for Fayetteville match our current Master Bicycle and Trail Plan?

Matt Mihalevich: It closely matches. We are currently reevaluating our plan and using this as an opportunity to update our plan. We will be presenting that plan to City Council in March, 2015.

Tim Conklin: We are asking each city to take a look at the plans that have been developed and we are expecting there will be adjustments and revisions to what has been developed.

Alderman Gray: This is very exciting. Thank you.

Loraine O'Neal, 3001 West Wedington: How many miles will be involved?

Tim Conklin: We have around 100 miles of shared use paved trail within a two county region. I will have to get back to you with overall miles.

Alderman Marsh moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the resolution passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Resolution 227-14 as recorded in the office of the City Clerk.

Motorola Solutions, Inc.: An ordinance to waive the requirements of formal competitive bidding and approve a one year contract with Motorola Solutions, Inc. in the amount of $98,422.92 plus applicable taxes with automatic renewal for four additional years for maintenance of the city's Motorola Simulcast Radio System, contingent on approval of the 2015 Annual City Budget and Work Program.

City Attorney Kit Williams read the ordinance.

Don Marr, Chief of Staff gave a brief description of the ordinance.

Alderman Marsh moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Ordinance 5729 as Recorded in the office of the City Clerk

Amend §31.16 Aldermen, Compensation: An ordinance to Amend §31.16 Aldermen, Compensation to provide that aldermen may participate in the City of Fayetteville Employee Health Insurance Plan as a defined class during their elected terms of office.

City Attorney Kit Williams read the ordinance.

Don Marr, Chief of Staff gave a brief description of the ordinance.

Alderman Long stated he had a hard time with this. He stated everyone should have access to health care, but doesn't believe that when his constituents elected him, it was to be his full time

job. He reviewed the cost to the City of Fayetteville. He requested the item to be held for his further review.

Don Marr: This is a compliance issue for us. Gallagher Benefits is required to make sure the city is complying with all benefit laws under the Affordable Care Act. In order to be in compliance, we would have to be in place prior to January 1, 2015.

Alderman Long: In order to create that class we have to have some mandate that says certain people work over 30 hours on average every week. There are weeks I have worked 10-40 hours, but how do we determine that?

A discussion followed about documentation to record weekly hours worked by Aldermen.

Michael Collins, 1625 Giles requested and received confirmation of the previous discussion about the cost of healthcare to the city and that it was part of the Affordable Care Act.

Alderman Kinion stated most of the City Council members were employed and it was not mandated they participate. He stated the main thing is to stay in compliance with Federal law.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-1. Alderman Kinion, Petty, Schoppmeyer, Gray, and Marsh voting yes. Alderman Long voting no. Mayor Jordan voted yes in order to suspend the rules. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-1. Alderman Kinion, Petty, Schoppmeyer, Gray, and Marsh voting yes. Alderman Long voting no. Mayor Jordan voted yes in order to suspend the rules. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-1. Alderman Kinion, Petty, Schoppmeyer, Gray, and Marsh voting yes. Alderman Long voting no. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Ordinance 5730 as Recorded in the office of the City Clerk

§71.016 Insurance Requirements for Motorized Bicycles, Motor Scooters and Mopeds: An ordinance to amend the Fayetteville Code by enacting § 71.016 Insurance Requirements for Motorized Bicycles, Motor Scooters and Mopeds.

Alderman Long stated he would like to amend the second whereas clause in the ordinance.

Alderman Long moved to amend the Second Whereas Clause to change the word from "operate" to "could come into contact with" in the ordinance. Alderman Gray seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Long: We have seen a rapid number in the increase in motorized bicycles, not just in Fayetteville, but the State of Arkansas. State law has not dealt with that yet. Conway and Fayetteville have been having a large issue with it. Many motor driven cycles are not licensed or insured and many of them drive with suspending driving privileges. A lot of the collisions that involve motorized bicycles don't have insurance. It cost about $5.00 to $7.15 a month to insure these for the State Liability Insurance minimums. The motorized bicycles are operating on a public street and can cause a major liability to other drivers.

Alderman Marsh: This is for anyone who operates their motorized vehicle on a Fayetteville city street?

Alderman Long: If they are pulled over in our city limits, they would have to show proof of insurance.

Mayor Jordan: That's for everybody?

Alderman Long: Yes, for driving a scooter.

Alderman Marsh: People who don't live here and aren't aware of this ordinance would be fined for breaking it?

Alderman Long: Just like a lot of the other laws that we have in Fayetteville that people outside the city aren't aware of.

Alderman Marsh: I feel this should be a state mandated issue. I understand the intent, but it doesn't make sense with an area as small as Fayetteville. We have a lot of people who live outside the city. I don't want them to say they aren't going to shop at Fayetteville stores because of this type of insurance.

A discussion followed about penalties when an ordinance is broken.

Alderman Kinion: I think the intent is good, but I worry about the enforcement and the practicality.

Alderman Long: Which portions of enforcement? I would be happy to work on it.

Alderman Kinion stated if you are in Farmington coming down Broyles Road and then suddenly you are now in Fayetteville. He believes there will be some resentment when people come into Fayetteville unaware and have another regulation.

Alderman Gray: I hope the whole region would see the need to have this. It's not a huge expenditure. There are considerably more on the highway these days.

Alderman Long: After talking to insurance agents, most people that they have insurance policies for, that own scooters do have this coverage. There is a population of people who don't and those are the ones that if they caused an accident could cause financial strain on another person. This is what I want to prevent.

A discussion followed about the process of keeping the public informed of city ordinances and how the ordinance could be executed administratively.

Tim Kring, 1777 West Halsell spoke in opposition of the ordinance.

Michael Collins, 1625 Giles spoke in opposition of the ordinance.

Loraine O'Neal, 3001 West Wedington stated the ordinance needed more study.

Tony Blansett, Grove Street spoke in opposition of the ordinance.

Alderman Long: There was a head on collision by the University involving a scooter. Someone was very badly injured. This is not a problem I have created. We have had issues in the city that haven't been addressed. We haven't kept statistics because there hasn't been anything to keep statistics on. Bicycles are considered pedestrians, but motorized bicycles are not considered pedestrians. We shouldn't charge someone $500 or $1,000 and I'd be willing to change this to a maximum fine of $50.

Our Fayetteville police force does not respond to University incidents. That would be handled by University police and they would have to make the decision as a state entity whether or not they would have to follow this or not.

Alderman Long moved to amend the ordinance and incorporate a maximum fine of $50. The motion died for lack of a second.

Alderman Long moved to send the ordinance to the Ordinance Review Committee. Alderman Schoppmeyer seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

This ordinance was left on the First Reading and sent to the Ordinance Review Committee.

Chapter 120 Real Estate Sale and Leasing Regulations: An ordinance to amend the Fayetteville Code by enacting Chapter 120 Real Estate Sale and Leasing Regulations for the purpose of educating buyers and tenants about City of Fayetteville occupancy limits.

City Attorney Kit Williams read the ordinance.

Alderman Long gave a brief description of the ordinance.

Alderman Marsh: I have rented a lot of apartments in this town and very few of them have had a signed written lease. What do we do for enforcement if there is no lease that can document that the information transferred?

Alderman Long: This is one of those situations where the enforcement mechanism like all of our other ordinances are complaint driven. I've rented apartments in Fayetteville and they all made me sign a lease with a deposit. I would have liked to known about this ordinance at that time. I would never imagine anyone responsibly owning a rental property and not have a lease because they aren't protecting themselves. It is violation of city code for more than three people to live there already. We would just be educating them about it. They could still be found in violation.

City Attorney Kit Williams: The City Prosecutor has some responsibilities of enforcing the definition of family and over occupancy. It would be of assistance to the City Prosecutor if the number of violations could decrease because proper notification has been made. This is a good step. I would like to suggest to the City Council we have a delayed enforcement so we would have six months of educational opportunity. It could prevent problems we see every year where someone has leased a house in a single family residential district where you're only supposed to have three people. If it has four bedrooms, then they have four unrelated people and are in violation of our ordinance. This will place the burden on the landlord to do the right thing.

Alderman Long: I think that would be a good point to add a delayed period of education.

Don Marr, Chief of Staff: This is one of the most challenging laws our Code Compliance division deals with that the Council has passed. There is a real balance between the code and trying to determine that you don't have more than three unrelated individuals living in a single residential property and at the same time making sure you are not infringing on people's personal private property rights. We hear numerous cases that someone was not aware of the requirement.

In the recent research of over occupancy, that our Planning Division has done, we have looked at University communities who typically deal with this. One effective item is a notification process to property purchasers as well as landlords. As staff, this would give us one more tool of notification. We would like the time period our City Attorney speaks about, because in the Town and Gown relationship that we're trying to improve, it will give us the time period to utilize their network of property listings and the city's network of permitted business license entities to try get this word out. The Prosecutor's Office has asked staff to research this as an additional tool they might be able to utilize.

Alderman Long moved to amend the ordinance to have an effective date of July 1, 2015. Alderman Petty seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Tim Kring, 1777 West Halsell spoke in support of the ordinance.

Steve Clark, 438 East Fairway Lane spoke in favor of the ordinance.

Loraine O'Neal, 3001 West Wedington stated she would not like to see a burden put on the city in trying to enforce this.

Alderman Marsh: What is the penalty for violating this and who is it accessed against?

City Attorney Kit Williams: Any ordinance violation that does not have a specific penalty provision within it goes back to our general penalty provision. That follows old state law which puts the maximum fine at $500 and continuing violation of up to $250 a day. New state law would allow that to be doubled, but we have never done that and I've never suggested we do that.

A discussion followed about notification and violation fees of the ordinance.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Long seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Long seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Ordinance 5731 as Recorded in the office of the City Clerk

Outsourcing Core Public Services: A resolution for a general statement on taxpayer empowerment and the provision of core city services providing that the City of Fayetteville will continue all services currently provided or performed by public employees rather than outsourcing those core public services; and to outline contract terms to be utilized when outsourcing any other services requiring unique professional expertise not available from city employees.

Alderman Long gave a brief description of the resolution. He requested the resolution to be amended due to some basic wording.

City Attorney Kit Williams requested the item to be amended to the new version and then tabled to give more time for Council members to review.

Alderman Long: I would like to amend it and vote on it tonight.

City Attorney Kit Williams stated the proposed amended version was an improvement.

Mayor Jordan stated this is a resolution of intent and is part of his hiring practice. He believes outsourcing creates insecurity for people working for your organization. He stated the city is open and transparent.

Alderman Long moved to amend the resolution to the new resolution presented by City Attorney Kit Williams. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Alderman Gray moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 6-0. Alderman Tennant was absent during the vote. Alderman Adams was absent.

Resolution 228-14 as recorded in the office of the City Clerk.

Announcements:

Don Marr, Chief of Staff: City offices will be closed on December 24-25, 2014.

Lights of the Ozarks will remain on through midnight until January 1, 2015.

On New Year's Eve, December 31, 2014, Last Night Fayetteville will offer a variety of performances.

Alderman Long: We haven't been given our appointments for the next year. Even if I am left on Ordinance Review, I wouldn't want to chair the meeting for my own ordinance. I will hold off until the appointments come out on January 1, 2015.

Alderman Marsh encouraged everyone to shop locally.

Sondra Smith, City Clerk: Alderman Rhonda Adams was not able to be with us tonight and this would have been her last meeting. I want to thank her for her service to the City of Fayetteville and wish her well.

Mayor Jordan expressed his appreciation for Alderman Rhonda Adams. He stated Alderman Adams was the most kind and compassionate Council member he had ever been associated with while in city government. He thanked her for her service and wished her well.

Adjournment: **9:35 p.m.**

City Council Agenda Session Presentations:

Agenda Session Presentation - Spring Street Parking Deck Construction Update - Jeremy Pate, Development Services Director

City Council Tour: None

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer