Council Member Adella Gray
Ward 1 Position 1

Council Member Sarah Marsh
Ward 1 Position 2

Council Member Mark Kinion
Ward 2 Position 1

Council Member Matthew Petty
Ward 2 Position 2

Council Member Justin Tennant
Ward 3 Position 1

Council Member Sarah Bunch
Ward 3 Position 2

Council Member John La Tour
Ward 4 Position 1

Vacant
Ward 4 Position 2

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

City of Fayetteville Arkansas
City Council Meeting
November 21, 2017

A meeting of the Fayetteville City Council was held on November 21, 2017 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: Council Members Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, John La Tour, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Note: Council Member Alan Long resigned on November 18, 2017

Absent: Council Member Sarah Bunch

Council Member Justin Tennant arrived late.

Don Marr, Chief of Staff: Council Member Tennant is attempting to arrive at the meeting, but there is an accident on I-49. He will be here as soon as possible.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports, and Discussion Items: None

Agenda Additions:

Mayor Jordan: We need to add a Ward 4, Position 2 Council Member replacement to the agenda.

City Attorney Kit Williams: This must be on our agenda according to state law.

Council Member Petty: Where on the agenda?

Mayor Jordan: I would like to put it as the last item after we finish all our business tonight.

Council Member Kinion moved to add the Ward 4, Position 2 Council Member replacement to the agenda. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

Mayor Jordan: Since there is a vacancy in Ward 4 Position 2, the Council has to make the decision of either appointing someone or putting it out for a Special Election.

Council Members Gray and Marsh stated they would like to appoint a replacement for the Ward 4 Position 2 Council Member vacancy.

Mayor Jordan: You would rather appoint instead of an election?

Council Member Gray: Yes.

Council Member La Tour spoke about his parents and their failing health. He stated his mother continued to vote even in poor health because she considered the vote important. He stated he can't support to appoint a representative for the people of Ward 4. He stated he knows there would be a cost incurred with a Special Election, but if there were only a few months left in the term, he could see where an appointment might be appropriate. He stated there's still more than 77% of the term left to fill. He believes it's immoral to take the vote away from the people.

Council Member Gray: I want to remind Council Member La Tour that on a couple of items like the Civil Rights and library, you were very much against the vote.

Council Member Tennant: I have an issue with appointing someone to longer than a one-year term. I've been on record against several Special Elections that we have had because I thought it may not be best use of the peoples' money. Do we know what the cost of this election would be?

City Clerk Sondra Smith: It would be anywhere from $10,000 to $30,000.

Council Member Tenant: My problem with having an appointment is it's well over 75% of a person's term. That is a long time for us to just appoint someone. I received a flood of correspondence from some people I've heard of and some I haven't. All of them may be really qualified good people, but to expect me to appoint someone in less than 24 hours based on an assumption is difficult. I don't know that we are in a huge hurry to do this. I thank Council Member Long for his service. Regardless of who wants to be seated next to Council Member La Tour for the next three years and two months, I don't feel comfortable appointing someone. It would simply

be a popularity contest and this position is more important than that. This should be left up to the people.

Nathan Allen stated he ran against Mr. Long last year for the Ward 4 Council Member position. He spoke in favor of a Special Election.

Andrew Miles, 1884 North Cate Drive spoke about having an interim for a period of time and then having a Special Election to elect someone to finish the term out.

Laura Phillips spoke in favor of an appointment.

Council Member Gray: We need the City Attorney to clarify what our options are according to the law. We have two options, correct?

City Attorney Kit Williams: Yes. I like the suggestion of Mr. Miles. He needs to talk to the legislature so we have that option. For other offices, such as the City Clerk and myself, the option would be that you would serve until the next General Election of you were appointed. I don't know why for Council Members they make it the entire remaining term. It's not a very wise law and it should be until the next General Election, but that isn't an option we have. One option is to appoint someone for the remainder of the term or to call a Special Election for the remainder of the term.

Jake Pezwick, Ward 4 spoke in favor of a Special Election.

Kyle Smith, 2801 West Dove Drive, Ward 4 spoke in favor of an appointment.

Nathan Eikenberry, Ward 4 spoke in favor of a Special Election.

Mayor Jordan: I have been on this Council for a while and this is the 5th time we have come to this sort of thing. I have seen one Special Election and three appointments.

Council Member Tennant: Do you recall the length of time left on those three appointments?

There was a discussion about the length of appointments based on memories from many years ago.

Council Member Gray stated that this was a unique situation. She requested City Attorney Williams to quote the law.

City Attorney Kit Williams: At this point, if it's under one year, then it's automatically up for an appointment. If it's more than one year, then it is your choice to elect by your votes or to call a Special Election. When I was on the Council in the 90's we only had two-year terms so we never had to worry about extended terms. We always had appointments when we had people that left. Those were never a three-year appointment.

Council Member Gray: Based on the history, I don't think that was ever a bad thing. I don't think an appointment tonight would be a bad thing. We have some people who have put their name out here and worked hard to make sure that we knew they were planning to run for Ward 4. They

have been preparing themselves by attending many Council Meetings as well as serving other capacities.

Council Member Kinion: Judging from the amount of interest we have had in this, not only are we looking at the election, but most likely a run off too. It would be the cost of two elections and could bring it up to the $30,000. People voted all of us to be here and there is a trust for us to do the best we can. Being immoral isn't a valid characterization of anyone up here.

Council Member La Tour: I'm not going to defend my position on the Civil Rights and the library, Council Member Gray. It wouldn't be productive. We spent $300,000 with the Kessler Group to revamp our Recycling Program. I believe spending 1/10 of that to guarantee the people of Ward 4 their right to vote has to be more compelling than how we throw away our trash. I can't abide taking the vote away from any voter in Fayetteville. I request we table it for two weeks.

City Attorney Kit Williams stated it couldn't be tabled. He spoke briefly about the state statute.

Council Member La Tour reiterated his request to take it to a public vote.

Council Member Kinion spoke briefly about Enterprise Funds and General Funds.

Council Member Petty stated he didn't care about the cost of the election because it would be worth it. He spoke of his concerns about absences at the City Council meetings and sub-committees' due to a lack of a quorum. He stated there is a cost either way the City Council decides. He stated he could justify making an appointment if there was someone sufficiently qualified. He requested to know if a consensus was reached to make an appointment and then after listening from interested parties, if there wasn't someone qualified, would they be able to make the other decision for a Special Election?

City Attorney Kit Williams: Yes. If you vote in favor to appoint and then you don't believe there is someone qualified, then you could move to reconsider. It has to be someone that voted with the side that won, to make the motion.

Council Member Petty: With that in my mind, I can support hearing from people for the appointment. I resent that so many public decisions are reduced to popularity contest and not qualifications. I will be making every effort tonight to assess qualifications to the exclusion of anything else.

Council Member Marsh: I reviewed all the letters of intention we've received. I have identified several qualified applicants. I agree with Council Member Petty that qualifications are key. Things I will consider are community involvement, community engagement, and ideological similar to Alan Long so we are consistent with the will and intention of the voters. We are getting ready to interview people for boards and committee openings. Alan was on our Nominating Committee, Environmental Action Committee, and Transportation Committee. We need Ward 4 represented.

Council Member Tennant: I believe this just happened in Bentonville. They voted for a Special Election.

City Attorney Kit Williams: They are covered by the same statute as us. It was up to their City Council to determine whether they wanted to appoint or call for a Special Election.

Council Member Tennant reiterated that he believes there should be a Special Election. He stated in his career he has never hired somebody from beginning to end of a process in one day, especially with just a letter of interest.

Council Member Marsh: Alan Long was our Vice Mayor and that position is currently unfilled.

City Clerk Sondra Smith: Mayor, that will be on the next agenda.

Mayor Jordan: Okay.

Council Member La Tour: I would be glad to fulfill Alan's place on the Transportation Committee. I would be glad to fill in on any committee appointment he had. I will do my best to fulfill the duties of the committees.

Council Member Petty: Thank you. I have no doubt you would do that. I wouldn't have any concern with that specifically to you. I don't believe any Council Member could fulfill the duties of serving on all these committees and do it with the amount of attention it demands.

Mayor Jordan: However this goes, I have confidence in this Council to make the right decision.

A discussion followed about what a yes or no vote would mean.

Council Member Gray moved to appoint a replacement for the Ward 4, Position 2 Council Member vacancy. Council Member Marsh seconded the motion. Upon roll call the motion passed 4-2. Council Members Kinion, Petty, Gray, and Marsh voting yes. Council Members Tennant and La Tour voting no. Council Member Bunch was absent.

Mayor Jordan: We need to hear from everybody that is interested in the position. We will give everybody five minutes to comment.

A discussion followed about the way the process would be conducted.

Kyle Smith, 2801 West Dove Drive stated his interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

JL Jennings, 4198 West Bradstreet Lane stated his interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

Andrew Miles, 1884 North Caton Drive stated his interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

Spencer T. Brown, 4446 West Lofty Wood Drive stated his interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

Mike Emery, 2598 North Indian Oaks stated his interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

Teresa Turk, 1408 West Cleveland stated her interest in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

Brian Isham, 4209 West Marlo Lane stated he is in favor of a Special Election and is interested in serving the Ward 4 Position 2 vacancy.

Council Members and Mayor Jordan asked questions and the candidate answered.

There was a discussion about selecting a Council Member for the Ward 4 Position 2 vacancy.

Council Member Marsh stated her reasons she believed Kyle Smith would be the best decision for the Ward 4 Position 2 vacancy.

Council Member Gray stated her reasons she believed Kyle Smith would be the best decision for the Ward 4 Position 2 vacancy.

Council Member Tennant asked about the procedural process if multiple names are nominated and none get his vote?

City Attorney Kit Williams gave a brief explanation of the proceedings.

Council Member Petty spoke about all the worthy candidates and their qualifications. He stated he hopes that anybody who is not chosen, will not shy away from a campaign in the future. He spoke about Kyle Smith's qualifications.
A discussion followed about instant run-off voting.

Council Member Kinion stated many of the candidates had been interviewed in the past by the Nominating Committee for Fayetteville Boards and Committees. He believes that is beneficial in seeing how they perform once they are selected for a committee. He spoke about Kyle Smith's qualifications.

Council Member Marsh moved to select Kyle Smith for the Ward 4, Position 2 Council Member vacancy. Council Member Gray seconded the motion. Upon roll call the motion passed 5-2. Council Members Kinion, Petty, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Tennant and La Tour voting no. Council Member Bunch was absent.

Mayor Jordan stated his reason for voting yes on the selection of Kyle Smith.

City Attorney Kit Williams read the resolution.

Council Member Kinion moved to approve the resolution to elect Kyle Smith for the Ward 4, Position 2 Council Member vacancy. Council Member Marsh seconded the motion. Upon roll call the motion passed 5-2. Council Members Kinion, Petty, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Tennant and La Tour voting no. Council Member Bunch was absent.

Mayor Jordan thanked the Council for their work.

Resolution 246-17 as recorded in the office of the City Clerk

Consent:

Approval of the November 7, 2017 City Council Meeting Minutes.

Approved

Paymentus Corporation: A resolution to approve a contract with Paymentus Corporation in the amount of $5,000.00 expanding the scope of services to add a field displaying customer past due balances in the online utility billing system.

Resolution 239-17 as recorded in the office of the City Clerk

2017 Bulletproof Vest Partnership Program: A resolution to authorize acceptance of a fifty percent (50%) matching grant award from the 2017 Bulletproof Vest Partnership Program in the amount of $6,070.00 for the replacement of body armor vests for Fayetteville Police Officers, and to approve a budget adjustment.

Resolution 240-17 as recorded in the office of the City Clerk

Federal and State Law Enforcement Revenue: A resolution to approve a budget adjustment in the total amount of $81,516.00 recognizing revenue associated with federal and state law enforcement forfeitures and insurance proceeds from a wrecked vehicle.

Resolution 241-17 as recorded in the office of the City Clerk

Fayetteville Police Department Policies: A resolution to approve Fayetteville Police Department Policies on Grooming and Uniform Requirements and Body-Worn Cameras.

Resolution 242-17 as recorded in the office of the City Clerk

Bid #17-65 Nabholz Environmental Services, LLC: A resolution to award Bid #17-65 and authorize a contract with Nabholz Environmental Services, LLC in the amount of $257,802.00 for asbestos abatement services at the old city hospital as part of the Fayetteville Public Library Expansion Project, and to approve a project contingency in the amount of $40,000.00.
Resolution 243-17 as recorded in the office of the City Clerk

Community Access Television, Inc. d/b/a Your Media: A resolution to approve a renewal of the contract with Community Access Television, Inc. d/b/a Your Media in the amount of $161,580.00 for the provision of public access television services and the operation of the public access television channel through 2018, contingent on approval of the 2018 Annual City Budget and Work Program.

Resolution 244-17 as recorded in the office of the City Clerk

Council Member Marsh moved to accept the Consent Agenda as read. Council Member La Tour seconded the motion. Upon roll call the motion passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Unfinished Business:

Small Cell Communications Facilities: An ordinance to enact §110.03 **Small Cell Facilities and Networks** into Chapter 110: **Telecommunication Franchise, Billposting, and Small Cell Facilities and Networks.** *At the November 7, 2017 City Council Meeting this ordinance was tabled to November 21, 2017 City Council Meeting and left on the third reading. At the October 17, 2017 City Council Meeting this ordinance was left on the second reading. At the October 3, 2017 City Council Meeting this ordinance was left on the first reading.*

Assistant City Attorney Blake Pennington gave a brief description of the ordinance. He stated that administrations final recommendation of Exhibit A contains six changes on what Council adopted two weeks ago. He stated the only significant change between what Council saw last Tuesday and tonight is the removal of the requirement for a non-franchise holder to provide four pairs of dark fiber for public purpose. He believes that is questionable legal territory by requiring that of some providers and not others. He believes it needs to be put aside and studied for potential changes in the future.

Council Member La Tour: This week I had a conversation with representatives from the industry. I understand in conversations with the city, they were told our administrator will be reasonable in his efforts. If the administrator is reasonable in his efforts, when we say they must

put forth all effort to achieve stealth or camouflage, it seems like all is very exhaustive. Do you mean commercially reasonable practices?

Assistant City Attorney Blake Pennington: Probably.

City Attorney Kit Williams: There is presumption of reasonableness in every contract that is read into it by the courts. If you are concerned about all, maybe you could insert it in one place. Normally, contracts have a presumption of reasonableness throughout the contract and that's the way it would be interpreted by the courts.

Council Member La Tour: I'm trying to head off a court challenge, which is expensive and time consuming. I was trying to tighten up the language to put one paragraph at the beginning that says, all efforts shall be reasonable on both sides. That is a presumption, but why not state it overtly and avoid the controversy. Would you agree that when we say, all effort, we mean all reasonable effort?

Assistant City Attorney Blake Pennington: Sure. I think the administrator would be reasonable in applying this ordinance. If a provider thought it was unreasonable, then the provider can appeal to this body.

A discussion followed about reasonable effort.

John Scott, Ward 3 citizen stated his appreciation for the extra time in allowing the providers to make technical comments. He asked for the word, reasonable, to be added in four areas of the ordinance.

A discussion followed about the exact place the word reasonable is being proposed.

John Scott: I don't believe it substantively changes the intent of the act.

City Attorney Kit Williams: Blake has been working hard on this and he's done a very good job. I agree with Mr. Scott. Our office doesn't have any objections to adding, reasonably. That is the way it is going to be interpreted. We require that all our code sections be reasonably interpreted.

Council Member La Tour: There is no substantive change. Businesses need predictability.

Mayor Jordan: Thank you to the staff and the providers for their work on this. I'm pleased with the ordinance.

Council Member La Tour moved to amend to Exhibit A and reasonably added to the ordinance. Council Member Gray seconded the motion. Upon roll call the motion passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Ordinance 6009 as Recorded in the office of the City Clerk

VIP Club: An ordinance to approve the application of Sami Ammar Haddaji, on behalf of VIP Club for a permit to operate as a private club in the City of Fayetteville at 326 North West Avenue #6. *At the November 7, 2017 City Council Meeting this ordinance was left on the first reading.*

City Attorney Kit Williams stated he handed out an amended ordinance that Police Chief Tabor worked out with Mr. Mourton, who is the attorney for Mr. Haddaji. He stated there is a new Section 2 that places some conditions upon the approval.

Mayor Jordan requested he read the ordinance for clarification.

City Attorney Kit Williams read the ordinance.

Kenneth Mourton, Applicant's Attorney stated Mr. Haddaji intends to close his establishment at 1:30 a.m.

Greg Tabor, Chief of Police: We met with the applicant and his attorney. They were receptive to the 1:30 a.m. closing time and agreed for employees to attend training at the Police Department for fraudulent underage ID class. We have no objections to this ordinance.

Council Member Marsh: Do we require other bar operators to take the same ID class?

Greg Tabor, Chief of Police: This is the first time we have ever asked for that requirement. Most bars in town attend the training, but there is no requirement. This is a new state law and only the second one of these brought forward. We are working on getting a more formal process.

Council Member Marsh: I don't recall us having this requirement in the last private club that we approved recently.

Greg Tabor, Chief of Police: That is correct.

City Attorney Kit Williams: It seems like a good idea. I imagine you might be seeing that provision in the rest of the ordinances that come through.

Council Member Gray moved to amend the previous ordinance to the one read. Council Member Kinion seconded the motion. Upon roll call the motion passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Council Member Gray moved to suspend the rules and go to the second reading. Council Member Kinion seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Council Member Gray moved to suspend the rules and go to the third and final reading. Council Member Kinion seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan thanked everyone involved for their work on the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Ordinance 6010 as Recorded in the office of the City Clerk

New Business:

University of Arkansas Joint Lease Agreement Termination: A resolution to terminate the Joint Lease Agreement between the City of Fayetteville and the Board of Trustees of the University of Arkansas for the City's use of 27.5 acres on Lewis Avenue and the University's use of 10.02 acres on Razorback Road, contingent upon approval by the Board of Trustees of the University of Arkansas.

Don Marr, Chief of Staff: The Town & Gown Advisory Committee discussed this item at their meeting. There was a recommendation by the committee for the city to not terminate its lease early and allow interested stakeholders a longer time. The recommendation was discussed with Mayor Jordan. He has directed our staff to request this item to be tabled indefinitely and allow the lease to run to its expiration date of June 30, 2018.

Mayor Jordan: Maybe something can be worked out. When I was on the Council years ago, we talked about the lease being up around 2018. We were talking about a new Regional Park because the University wanted the property back. The University has sent us notice they were not going to renew our lease. Is that correct?

Don Marr, Chief of Staff: Yes, Mayor.

Mayor Jordan: We proceeded to build the Regional Park. I am very supportive of preserving all the green space I can, but there's also so much money I have to work with. We built the new Regional Park to move the soccer fields out there. Now, this piece of property is available, but right now I don't see the finances to where we can buy another piece of property. This isn't about whether we buy a piece of property, it's whether the lease is terminated early. By tabling, it will allow this to go until June 2018.

Council Member La Tour: How much does this lease cost us per year?

Don Marr, Chief of Staff: There is no cost for the actual lease period. The cost associated with the property is maintaining the property.

Matthew Ramsey, Town & Gown Advisory Committee member stated the six additional months will give concerned stakeholders more time to cultivate relationships and talk about potential solutions that would be agreeable to all parties.

Will Dockery stated he supported tabling the item indefinitely to allow something to be worked out.

Dana Bassi, 1649 North Timber Ridge Court spoke in favor of tabling the item.

Ron Chioldi, 1535 West Hefley St. spoke about sidewalk and other needs in the area.

Council Member Kinion moved to table the resolution indefinitely. Council Member Marsh seconded the motion. Upon roll call the motion passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

This resolution was Tabled Indefinitely.

Amend Telecommunications Board: An ordinance to amend Article IX **Telecommunications Board** in Chapter 33 **Departments, Boards, Commissions, and Authorities** of the City Code to reduce the frequency of meetings from monthly to bi-monthly.

City Attorney Kit Williams read the ordinance.

Doug Bankston, Director of Media Services gave a brief description of the ordinance.

Council Member Kinion moved to suspend the rules and go to the second reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Council Member Kinion moved to suspend the rules and go to the third and final reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Ordinance 6011 as Recorded in the office of the City Clerk

RZN 17-5950 (4847 W. Wedington/Leisure Homes Corp.): An ordinance to rezone that property described in rezoning petition RZN 17-5950 for approximately 1.83 acres located at 4847 West Wedington drive from RSF-4, Residential Single Family, 4 units per acre and NC, Neighborhood Conservation to RSF-18, Residential Single-Family, 18 units per acre, for 1.27 acres and NC, Neighborhood Conservation for 0.56 acres.

City Attorney Kit Williams read the ordinance.

Andrew Garner, City Planning Director gave a brief description of the ordinance. He stated staff is recommending approval. The Planning Commission recommends approval.

Council Member La Tour: It seems reasonable to rezone.

Ferdi Fourie, Civil Design Engineers: We have moved further with the design and established a little bit better layout that would require two more areas to be rezoned Neighborhood Conservation. Is it possible to add those to this request?

Andrew Garner: If they are adding additional land, we would need to renotify the neighbors adjacent to the areas.

Ferdi Fourie: Can we do that and then come back to City Council?

Mayor Jordan: Yes, but we can't do it tonight.

Ferdi Fourie: Can we table it and then come back after we put out the notifications?

Mayor Jordan: You can go ahead and pass what you have before us tonight and then come back with the other one later.

Ferdi Fourie: Can I add to it?

Don Marr, Chief of Staff: You can't add to this. Either you would approve tonight and then bring your additional property as a second approval or you need to go back to the very beginning with renotification and Planning Commission for all of it together.

A discussion followed about rezoning procedures.

Council Member Marsh moved to suspend the rules and go to the second reading. Council Member La Tour seconded the motion. Upon roll call the motion passed 6-0. Council

Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Council Member La Tour moved to suspend the rules and go to the third and final reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Ordinance 6012 as Recorded in the office of the City Clerk

VAC 17-5960 (North of Barton Ave. & Huntsville Rd./Meehan): An ordinance to approve VAC 17-5960 for property located East of Barton Avenue and North of Huntsville Road to vacate a portion of a utility easement.

City Attorney Kit Williams read the ordinance.

Andrew Garner, City Planning Director gave a brief description of the ordinance. He stated all utility companies recommend approval. The Planning Commission and staff recommend approval.

Council Member Gray moved to suspend the rules and go to the second reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Council Member Marsh moved to suspend the rules and go to the third and final reading. Council Member Gray seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Mayor Jordan voted yes. Council Members Bunch and Tennant were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Council Members Kinion, Petty, La Tour, Gray, and Marsh voting yes. Council Members Bunch and Tennant were absent.

Ordinance 6013 as Recorded in the office of the City Clerk

VAC 17-5963 (Rock St. between West Ave. and School St./Rock St. Row): An ordinance to approve VAC 17-5963 for property located at Rock Street between West Avenue and School Street to vacate a portion of the Rock Street right-of-way.

City Attorney Kit Williams read the ordinance.

Andrew Garner, City Planning Director gave a brief description of the ordinance. He stated all utility companies recommend approval. The Planning Commission recommends approval with an alley, but staff does not recommend an alley.

City Attorney Kit Williams: On number six, which doesn't require the construction, but requires dedication of minimum right-of-way for an alley is what came from the Planning Commission and staff doesn't recommend that.

Mayor Jordan: Would we strike number six?

Andrew Garner: We recommend instead of striking it, you modify it to say that pedestrian and cyclist connection be provided between School and West with the development of the library. We recommended that to the Planning Commission.

Council Member Petty: If that was your original suggestion, can you contextualize why the Planning Commission modified it?

Andrew Garner: The Planning Commission was concerned it would create a super block. You would have two long stretches. I believe that was an attempt to mitigate the traffic speeds along here and create more opportunities for vehicles to go through there.

David Johnson, Executive Director of Fayetteville Public Library stated he supports the city's recommendations.

Council Member Marsh: If there's not going to be an alley way, how would waste and recycling, as well as general services be handled?

David Johnson: We are still in the preliminary design phase. We have a service entry where a portion of Rock would remain open off West. It would allow access into our current loading dock.

Council Member Marsh: It is likely there still would be some sort of service alley, but not something open to the public?

David Johnson: Correct.

Council Member Petty: I support keeping the Planning Commission recommendations the same. If there's a concern or constructability issue whenever plans move to the next detailed phase, then

I'm open to revisiting the issue. When we say alley, we mean something very specifically in our street standards. I am not concerned at all with you building an alley to the standards we currently have on the books. The standard alley is meant to serve a different purpose. The right-of-way is what's important.

A discussion followed about leaving the ordinance as written.

Council Member Kinion: They will have the opportunity to design for safety as they move along.

Council Member Marsh moved to suspend the rules and go to the second reading. Council Member Kinion seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

City Attorney Kit Williams read the ordinance.

Council Member Gray moved to suspend the rules and go to the third and final reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

Ordinance 6014 as Recorded in the office of the City Clerk

Chapter 151 and 161 UDC Revisions: An ordinance to amend the Unified Development Code to change building height restriction measurements from feet to stories in Chapter 161 and to amend §151.01 **Definitions** to define "Story".

City Attorney Kit Williams read the ordinance.

Garner Stoll, Development Services Director gave a brief description of the ordinance. The Planning Commission and staff recommends approval.

Council Member La Tour: Would you say most developers in Northwest Arkansas would view this as a positive change?

Garner Stoll: I believe after they gain some experience with it, they will support it. We haven't heard any negative feedback.

Council Member La Tour: We need to balance our UDC changes. We want to keep Fayetteville beautiful and have design standards, but we don't want to run development up to Benton County.

Garner Stoll: Absolutely.

Council Member Petty: I couldn't be more supportive of this. This is one of the few kinds of policy changes that can be made that's good for everybody. Especially the tendency for building projects to bring habitable space all the way up to the height limit when it's defined in terms of feet, which incentivizes certain roof forms. When you are talking to a bank, the city or an architect, the same terms can be defined differently by every single group. Building height is one of those examples often defined differently. This ordinance references the International Building Code, which is adopted everywhere and enforced nearly everywhere in the country.

Garner Stoll: Measuring building height is problematic, if you measure it in feet. In your ordinance, you have to establish what your baseline is for measuring vertical space from the ground. It can get very complicated and this is much simpler.

Council Member Marsh: I have advocated for this change for years. This means more quality buildings. It will allow for taller spaces, instead of the eight-foot floor heights. You will get greater natural light penetration into the building. You get an opportunity for heat to rise. This is an environmental win. It adds visual interest to our public spaces.

Council Member Kinion moved to suspend the rules and go to the second reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

City Attorney Kit Williams read the ordinance.

Council Member Kinion moved to suspend the rules and go to the third and final reading. Council Member Marsh seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: This is a good ordinance change. Thank you, staff for your work on this.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

Ordinance 6015 as Recorded in the office of the City Clerk

Rezone College Avenue: An ordinance to rezone all parcels within or near College Avenue as shown on Exhibit C of the Planning Department's agenda memo comprising about 24.62 acres.

City Attorney Kit Williams read the ordinance.

Garner Stoll, Development Services Director gave a brief description of the ordinance. He stated this is an important section and street. He stated it has received a lot of review. He stated in order to make sure everybody was aware of this item being considered by Council, they re-notified the adjacent property owners. He spoke about the vision of College Avenue.

Council Member Marsh: Was there any discussion about removing Use Unit 18, drive throughs and fueling stations from this as a by right and moving that to a conditional use?

Garner Stoll: There has been some discussion in the last two or three weeks about doing that.

Andrew Garner: There was one Planning Commissioner mentioning that. When the Commission talked about this particular corridor, there was not a consensus other than one Commissioner thought about removing the drive throughs. One of the main things was realizing that the retail use and existing zoning allows drive throughs and that is an expectation on this portion of College.

Mayor Jordan: They did not remove it?

Andrew Garner: That's correct. They did not feel like it needed to be removed.

Garner Stoll: As this corridor evolves and matures, there's going to be less demand for the automobile single story buildings and uses. Whether those uses should be eliminated right now is a policy decision for the Council. The economics of this corridor, if it's successful, will move away from those uses.

Council Member Marsh: The other concern I had was both of the form base zoning districts that were recommended have build to lines of 10 to 25 feet. It would prohibit us from doing zero lot line build we see along Dickson Street or on Block Street. Why are we allowing buildings to set back up to 25 feet in this proposal?

Garner Stoll: Both of those districts were drafted that way. Those are the requirements in the present districts. They weren't crafted for this particular corridor. In other communities where tall buildings of four stories or higher were placed on similar corridors, they ended up being too tight.

Mayor Jordan: I'm not sure I want to pass these tonight. I want to mull these around.

Council Member Petty: I don't think we should pass this tonight, especially since we have a couple of absences. This is in Ward 2, but anytime you talk about Downtown or College Avenue, these are places owned a little bit by every person in the community, regardless of where you live. I agree with Council Member Marsh in regard to the questions about some of the more auto oriented uses. I understand staff's concerns that it would create some non-conforming buildings in this area. I don't believe that is much of a problem. I don't think allowing those uses by right

without any oversight is a wise move that is in alignment with the vison that has been cast. Shifting those uses, including some of the other auto oriented uses that we would look at in these two districts to conditional uses instead of by right uses is a wise move that would bring that more into alignment while allowing businesses here to have an avenue for expansion and allowing prospective businesses that might fall in those categories. I'm a little apprehensive about the recommendation from staff that residential uses be limited to three stories, regardless of the total numbers of stories of the building. The Planning Commission recommended unanimously against it. We've talked about the need for public transit. More than 60% of residents in Northwest Arkansas think that should be our top priority. I expect the proportion of Fayetteville residents who believe it should be a high priority for us is even greater. As the number of households in the area rises, the operational efficiency of transit goes up to the point where it becomes viable and productive. If we are looking at any area of town that should be transit ready, this is one of those areas. I'm concerned about the long-term implications of the limitation as recommended by staff for that reason. I'm concerned about housing affordability. More people want to live here than we have households for. Providing diverse housing options for a diversity of incomes is the only way to solve the looming crisis. I fear this limitation will inhibit our ability to address that. I understand this is a genuine attempt to address the concerns that have been expressed by the neighbors. Some of those concerns have been rooted in an argument that expresses a fear of the sort of people who will live in these buildings if we allow them to be constructed. That is an argument that treads dangerously close and even crosses a line with respect to what is proper and appropriate to consider when we are making these decisions.

Don Marr, Chief of Staff: It is staffs' belief that we have had 13 public meetings and in those meetings this discussion of changing the use unit has not been a prevalent acknowledged topic with all the stakeholders that have been involved in this process. In some ways, it's been more at the committee levels. We don't think it has had the outreach publicly to make sure people are aware of it. We remember a mayoral campaign when Mayor Jordan ran and people made the accusations of doing away with uses. It had people feeling like we were trying to put them out of business, simply because we were making a non-conforming use, even though they would be allowed to be sustained. We need to make sure that the people who are going to impacted by the changes, from a non-conforming use perspective, don't feel like they are being blindsided because we've done the public outreach steps needed to make them aware and understand why. A positive of this district is that these uses don't exist there today. The staff is supportive of talking about it within this boundary. We think it should be an open and transparent public process. The reason staff has picked the limit of three residential stories is not based on a biased to any group or student housing. There is a reality that we have neighborhoods concerned about their impact. It's our experience that fear of the unknown kills ideas long before they get the chance to make it on the ground. We are talking about an area that has been defined as a healthy corridor to be developed. We need a successful visual process. The pictures shown don't show five and seven story buildings, they are showing two and three stories in most cases. We get stuck on these items of the perfect versus the pilot. If most of us looked at the economics of this, even if they were all residential three-story buildings, it's still in keeping with the 2025 Plan and the original discussion with the public. As staff, we are concerned about perception and transparency.

Council Member Marsh: What disappoints me about this proposal is that I was hoping we were going to get more tools and that we were going to have new zoning designations that can help us

address issues in our city with a greater level of granularity. Instead we are using the same tools over and over again. I don't feel like they're the best fit to create this walkable vital urban revitalized space we are seeking. Most of what we are seeing the proposal to rezone, it's Community Services, which allows up to five stories. Urban Thoroughfare says that it's predominately an auto oriented type of development. It can go up to six stories and allow a setback of up to 25 feet, which is parking spaces in front of the building and that is not what we desire here. I have issues with the three-story limit on residential. We are over 60% rental in this city and over 75% of households have no children present. We have a growing number of senior citizens. It would be great to take an elevator up to an apartment that was within walking distance of a grocery store. That's the type of city I thought we were trying to build. The proposal on the table falls short of that. I hope we hold the item tonight.

Council Member Kinion: We've been discussing this a long time and received a lot of input from the neighborhood. One of the concerns is the preservation of the current integrity and the heritage of the neighborhoods that are connected between Wilson Park and the Washington Willow Historic District. The experience that tall high-density buildings can be, not inviting to pedestrian right-of-way's, but they can be dividing within a neighborhood. We have to look at the topography because it's not level. People are not going to utilize this as a main street, downtown square pedestrian right-of-way because of the topography. The recommendation of the three stories doesn't say a building can't be more than three stories. It says it can be mixed use with a maximum of three stories of residential. You could still have retail, restaurant, or office. We have to look at connecting the historic value of these two beautiful neighborhoods and not having a line of division between the two. We aren't prohibiting density to the point that it's going to be prohibitive of transportation development.

Garner Stoll: The build to line is from 10 to 25 feet. Both districts prohibit parking in that space. They would have to landscape it and create plazas.

This item was left on the first reading.

Amend §166.21 Downtown Design Overlay District: An ordinance to amend §166.21 **Downtown Design Overlay District** by amending the applicability section to include College Avenue Overlay District and to enact §166.26 **College Avenue Overlay District.**

City Attorney Kit Williams read the ordinance.

This item was left on the first reading.

2018 Annual Budget and Work Program: A resolution to adopt the 2018 Annual Budget and Work Program.

Paul Becker, Chief Financial Officer gave a brief description of the resolution. He spoke about an article that was in the newspaper about the library budget. He clarified some confusion of the

article. He stated we are not taking anything that the voter voted for in construction and diverting it any other way.

Council Member La Tour: You are complying with the wishes of the voters?

Paul Becker: Correct.

Council Member La Tour: You consider that to be very important?

Paul Becker: Absolutely.
Mayor Jordan stated his appreciation for everybody that worked on the budget. He believes the most important job done as an elected official is protecting the taxpayers' money.

Council Member Gray moved to approve the resolution. Council Member Marsh seconded the motion. Upon roll call the resolution passed 6-0. Council Members Kinion, Petty, Tennant, La Tour, Gray, and Marsh voting yes. Council Member Bunch was absent.

Resolution 245-17 as recorded in the office of the City Clerk

Announcements:

Don Marr, Chief of Staff: City offices will be closed on November 23rd and November 24th for the Thanksgiving holiday.

City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 9:43 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk Treasurer