



FAIRBANKS CITY COUNCIL
REGULAR MEETING MINUTES, NOVEMBER 5, 2012
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA

The City Council convened at 7:00 p.m. on the above date, to conduct a Regular Meeting of the Fairbanks City Council at the City Council Chambers, 800 Cushman Street, Fairbanks, Alaska, with Mayor Jerry Cleworth presiding and with the following Council Members in attendance:

Council Members Present: Renee Staley, Seat A
 Perry Walley, Seat B
 Bernard Gatewood, Seat C
 Jim Matherly, Seat D
 Lloyd Hilling, Seat E
 John Eberhart, Seat F

Absent: None

Also Present: Warren Cummings, Fire Chief
 Paul Ewers, City Attorney
 Janey Hovenden, City Clerk
 Ryan Rickels, IT Director
 Tony Shumate, Director Personnel/Purchasing/RM

INVOCATION

The Invocation was given by City Clerk Janey Hovenden.

FLAG SALUTATION

Mayor Cleworth led the Flag Salutation.

Mayor Cleworth asked Vivian Stiver and Chad Roberts to come forward to accept City of Fairbanks gold pans in appreciation for their six years of service on the City Council.

CITIZEN'S COMMENTS

Frank Turney, 201 7th Avenue, Fairbanks – Mr. Turney welcomed new City Council Members Renee Staley and Perry Walley. He thanked the Mayor and Council for introducing the Resolution to honor “southern” Ruby Riddle who was his neighbor for about 15 years. He stated that there was an in-depth article written about Ms. Riddle by a military writer and that he would try to find it and bring copies to the next meeting. He spoke to the new work standard implemented at the Fairbanks Police Department and commented that no such standard would have gone into place without the approval of the Mayor. Mr. Turney stated that he is shocked that the City’s legal department has not looked into the supreme court’s ruling that quotas are unconstitutional. He questioned how much revenue the Downtown Association brings in for pull tabs and bingo and commented that he’d like to see some checks and balances. He spoke in

opposition to Mr. David van den Berg's continued employment at the Downtown Association. Mr. Turney stated that the photo he turned in to the News Miner of the new Council Members being sworn in was rejected. He commented that they also refused to correct an error that appeared in the article regarding Ruby Riddle. He announced that a service for Ms. Riddle would be held at 4:00 P.M. on Wednesday, November 6th at the Pioneer Park Civic Center and that she would be missed.

Mr. Hilling asked Mr. Turney if he believes there is a lack of transparency in the accounting of the Downtown Association and, if so, to speak to it.

Mr. Turney replied that he has been bringing up the issue for many years and has never seen an audit of the Downtown Association or a breakdown of wages for the employees of the organization.

Charity Gadapee, 1224 Gilmore Trail, Fairbanks – Ms. Gadapee stated that she is the Director of Visitor Services and Membership for the Fairbanks Convention and Visitor's Bureau (FCVB). She stated that the Visitor Industry's Walk for Charity held in May of 2012 raised a grand total of \$249,471.72. She recognized individuals and organizations who raised large amounts of money for the event. Ms. Gadapee recapped events and activities sponsored by FCVB for the summer of 2012. She thanked the City for supporting FCVB.

Mr. Matherly asked about projections for the 2013 tourist season.

Ms. Gadapee replied that there are no indicators yet for 2013.

David Lerman, 126 2nd Avenue, #15, Fairbanks – Mr. Lerman stated that he will be running for City Council in the 2013 Municipal Election. He spoke to his website, *Renovation Fairbanks*, which has had a total of 1,483 views. He stated that he now has a second website titled *Voter Butter* which was created to "churn" good ideas. Mr. Lerman spoke to his recent conversation with the owner of the Polaris Building, Mark Marlow. He stated that Mr. Marlow will be meeting with U.S. Bank and may soon have the funds needed to renovate the building and create 117 apartments. Mr. Lerman encouraged the Council to have faith in Mr. Marlow and his renovation efforts and to grant a waiver of building permit fees the Polaris Building. He suggested that the City begin posting statistics to its website on topics such as DUI's, deteriorated properties, domestic violence and voter participation; then create task forces as necessary to help improve those statistics.

Mr. Eberhart asked when Mr. Marlow would be meeting with U.S. Bank.

Mr. Lerman replied that when he spoke with Mr. Marlow last week, the meeting was scheduled for the next day. He added that Mr. Marlow also spoke of a federal grant he would be applying for in early 2013.

Mr. Eberhart asked if Mr. Marlow indicated why he was meeting with the bank.

Mr. Lerman replied that Mr. Marlow did not give him the details.

Mr. Eberhart asked if Mr. Marlow had spoken about a timeline for the renovation.

Mr. Lerman replied that he did not.

Mr. Eberhart asked if Mr. Marlow mentioned approaching the City to ask for concessions of any type and if he talked about closing any financial gaps before renovation could begin.

Mr. Lerman stated that Mr. Marlow had not mentioned approaching the City and that he only spoke of federal funds required to perform the renovation.

Victor Buberger, PO Box 58192, Fairbanks – Mr. Buberger expressed his sorrow in the loss of Ms. Ruby Riddle, stating that she was an asset to the community. He congratulated the new Council Members and welcomed them. He stated that he was disappointed that the termed-out Council Members did not stick around to see the new members sworn in. Mr. Buberger thanked Public Works and Mike Schmetzer for the fine job of snow removal throughout the City. He spoke to the new work standard and commented that if traffic stops are legitimate, he sees no problem. He spoke of personal experiences with rude officers from various agencies.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

APPROVAL OF AGENDA AND CONSENT AGENDA

Mayor Cleworth explained that Hand-carried Resolution No. 4550 in recognition of Ruby Riddle would need to be added to the agenda by unanimous consent in order to be passed.

Mr. Matherly, seconded by **Mr. Walley**, moved to APPROVE the Agenda and Consent Agenda.

Mr. Matherly, seconded by **Mr. Gatewood**, moved to ADD Hand-carried Resolution No. 4550 to the Agenda under New Business.

Mayor Cleworth called for objection to the ADDITION of Hand-carried Resolution No. 4550 to the Agenda and, hearing none, so ORDERED.

Mayor Cleworth called for objection to the APPROVAL of the Agenda, as Amended, and, hearing none, so ORDERED.

City Clerk Hovenden read the Consent Agenda into the record.

APPROVAL OF PREVIOUS MINUTES

a) Regular Meeting Minutes of October 8, 2012.

PASSED and APPROVED on the CONSENT AGENDA.

SPECIAL ORDERS

- a) The Fairbanks City Council, Sitting as a Committee of the Whole, heard interested citizens concerned with the below-referenced Appeal of Denied Application for new Chauffeur License.

Applicant: Michael R. Meyerkorth

Mr. Gatewood, seconded by **Mr. Matherly**, moved to GRANT the Chauffeur Appeal.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed (Mr. Meyerkorth was not present for the appeal).

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO GRANT THE CHAUFFEUR APPEAL AS FOLLOWS:

YEAS: None
NAYS: Walley, Matherly, Gatewood, Hilling, Eberhart, Staley
Mayor Cleworth declared the MOTION FAILED.

- b) The Fairbanks City Council, Sitting as a Committee of the Whole, heard interested citizens concerned with the below-referenced Appeal of Denied Application for new Chauffeur License.

Applicant: Jeffrey K. Webster

Mr. Matherly, seconded by **Mr. Walley**, moved to GRANT the Chauffeur Appeal.

Mayor Cleworth called for Public Testimony.

Jeffrey Webster, 600 Winch Road, #1, Fairbanks – Mr. Webster stated that he recently moved to Alaska from Phoenix, Arizona. He stated that he does construction work in the summer, and has recently applied for a mining job. He explained that, right now, he is looking to drive cab as his primary source of income. He spoke reason for his denial, an assault conviction in 2012, and explained that it was an argument in which no one was hurt. He stated that he had letters of recommendation available if the Council wished to see them and asked the Council to grant his appeal.

Mayor Cleworth asked Mr. Webster to read the letters of recommendation into the record.

Mr. Webster read aloud letters of recommendation from Wally Wallace, manager of Arctic Taxi, and Tiffany West, local bar owner. He remarked that he offers help to individuals who are intoxicated or exposed to the elements, sometimes without compensation.

Mr. Eberhart spoke to the “grandmother” test he gives cab drivers. He asked Mr. Webster if the original charge was a felony Assault 3, Cause Injury with a Weapon. He asked Mr. Webster to speak to his plea to the charge.

Mr. Webster confirmed that the original charge was an Assault 3, but that he was arrested for an Assault 4. He explained that he pled to the Assault 4 charge in order to shorten his jail time and get back to work.

Mr. Eberhart asked Mr. Webster to speak to the incident.

Mr. Webster stated that his ex-fiancé was attempting to drink and drive and, to prevent her from doing so, he removed her from the vehicle.

Mr. Eberhart spoke to Mr. Webster's sentencing by the judge. He asked Mr. Webster if he was still on probation.

Mr. Webster replied that he is still on probation and confirmed that he spent 60 days in jail prior to entering a plea to the Assault 4.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

Mr. Eberhart stated that Chauffeur Appeals are tough cases. He spoke to the recent changes to the Code pertaining to Chauffeurs and pointed out that Mr. Webster's conviction was in January of 2012. He read aloud a portion of FGC Section 86-95 regarding Chauffeur Appeals, which states that "...the Council may consider whether the applicant: has made significant efforts at rehabilitation; has successfully completed any period of probation; has made positive contributions to society in general." **Mr. Eberhart** stated that based on the Code and the evidence presented, he would be inclined to deny the appeal.

Mr. Hilling asked if all the cases listed under Jeffrey Webster's criminal history were, in fact, the applicant.

Ms. Hovenden explained that all the records listed on the summary page may not actually belong to the applicant. She clarified that the record was obtained by a nationwide search of all individuals named Jeffrey Webster and that the Clerk's Office has to research and verify which records belong to the applicant. She stated that not all criminal reporting agencies provide a date of birth or other unique identifier and that some cases may not have detail attached if they did not affect Mr. Webster's eligibility for a Chauffeur License.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO GRANT THE CHAUFFEUR APPEAL AS FOLLOWS:

YEAS: None

NAYS: Staley, Matherly, Gatewood, Hilling, Eberhart, Walley

Mayor Cleworth declared the MOTION FAILED.

MAYOR'S COMMENTS AND REPORT

Mayor Cleworth requested that Fire Chief Cummings come forward to speak to the City's new Insurance Services Office (ISO) rating, which went from a Class 3 to a Class 2.

Chief Cummings stated that the ISO rating is done about every 10 years and was last done in 2010. He explained that the 2010 mutual aid agreement with the Fort Wainwright Fire Department and the University Fire Department increased the total number of responding firefighters, but ISO would not give credit for the mutual aid until the program had been underway for a year. Chief Cummings stated that the City reapplied to the ISO after that 12-month period and was given an improved Class 2 rating. He explained that the classes range from 1 – 10, with a Class 10 being no fire protection at all. He stated that there are only two other Class 2 fire departments in the entire state and no Class 1's. Chief Cummings commented that the Dispatch Center and the City's water supply are also taken into consideration for the rating.

Mayor Cleworth stated that the mayors in the area have been asked to give a presentation at the Chamber Luncheon on November 6, 2012. He reminded the Council of the upcoming City budget meetings. He spoke to the recent complaints of a fire truck seen around the City displaying political messages. He clarified that the fire truck belongs to a fireman's union, not the City of Fairbanks. **Mayor Cleworth** spoke to Resolution No. 4549, stating that the grant funding will go towards upgrading FPD's video surveillance system. He indicated that any leftover funds would be used for surveillance cameras in the FFD parking area. He stated that while grants are helpful, they are somewhat obligatory when used for technology and encouraged the Council to be cautious in their decisions to allow the City to apply for or accept grant funding. He thanked Chief Cummings for monitoring the Homeland Security Grant Program throughout the years and commented that the City has received much-needed items from the grant funding. **Mayor Cleworth** spoke to the criminal report included in Mr. Webster's Chauffeur Appeal; he stated that only those records pertaining to the applicant should be included in the appeal packet. He apologized to Mr. Webster for the confusion.

Mr. Hilling asked if the fire truck displaying political signs around town has a label.

Chief Cummings replied that the truck is labeled, "Fairbanks Firefighter's Association."

Mr. Gatewood asked if it would be possible in the future to have the total cost to the City for the life of the grant included in the fiscal notes of resolutions pertaining to grants.

Mayor Cleworth stated that in the case of Resolution No. 4549, the total cost is unknown. He stated that he is unsure of how to include future City costs in a fiscal note for items purchased with grant funds because the choice to replace or upgrade those items would be a decision for the Council to make at that future date.

Mr. Hilling asked if the Homeland Security Grant comes from federal funds.

Mayor Cleworth replied that the grant does come from federal funds. He explained that the State of Alaska receives the federal money and serves as a pass-through in the distribution to local governments.

UNFINISHED BUSINESS

- a) Ordinance No. 5900 – An Ordinance Amending FGC Chapter 74, Taxation, Article III, Alcohol Beverage Sales Tax, Sections 74-69, 74-73(a), 74-73(d)-(e), 74-74.1(a), and 74-82(a)-(c) to Modify Factors Relating to Taxes Due and the Penalty Structure. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mayor Cleworth explained that the three tax ordinances came about due to the City's efforts to move sales tax processing and tracking from the old AS-400 system to the MUNIS system.

Mr. Gatewood, seconded by **Mr. Hilling**, moved to ADOPT Ordinance No. 5900.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

Ms. Staley asked how cash sales and credit card sales are tracked in reporting.

Ms. Hovenden replied that the reporting required by the City does not have anything to do with a differentiation between cash and credit card sales. She clarified that the changes proposed in Ordinance No. 5900 speak to due dates and penalties for not filing or paying in a timely manner.

Mayor Cleworth referenced Section 74-82 of Ordinance No. 5900, Penalty for Violations. He stated his belief that the proposed penalties are excessive. He informed the Council that there is an "as Amended" version of each tax ordinance included in their packets with a simplified penalty structure.

Mr. Hilling, seconded by **Mr. Walley**, moved to SUBSTITUTE Ordinance No. 5900, as Amended, for Ordinance No. 5900.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SUBSTITUTE ORDINANCE NO. 5900, AS AMENDED, FOR ORDINANCE NO. 5900 AS FOLLOWS:

YEAS: Eberhart, Gatewood, Staley, Hilling, Matherly, Walley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5900, AS AMENDED, AS FOLLOWS:

YEAS: Hilling, Eberhart, Walley, Staley, Matherly, Gatewood

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5900, as Amended, ADOPTED.

- b) Ordinance No. 5901 – An Ordinance Amending FGC Chapter 74, Taxation, Article IV, Hotel/Motel Tax, Sections 74-121, 74-125(a), 74-125(d)-(e), 74-127(a), and 74-135(a)-(c) to Modify Factors Relating to Taxes Due and the Penalty Structure. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Mr. Matherly**, moved to ADOPT Ordinance No. 5901.

Mayor Cleworth called for Public Testimony.

Marnie Hazelaar, 345 Minnie Street, Fairbanks – Ms. Hazelaar stated that she is the owner of Minnie Street Bed and Breakfast. She stated that she heard “through the grapevine” that the penalty for late or unfiled taxes may be increased, although she has never had to pay a penalty. She stated that circumstances beyond an individual’s control could result in a late payment and indicated that a \$1,000 is an unfair penalty. Ms. Hazelaar stated that she did not receive any correspondence from the City as to the proposed changes in the Code regarding Hotel/Motel Tax. She spoke of a letter she received from the City about 17 years ago encouraging businesses to help beautify the City of Fairbanks in order to attract more visitors. She stated that she took that request very seriously and has been penalized through taxes for improving her property and making her business more attractive. She asked the Council when “enough is enough.”

Frank Turney, 201 7th Avenue, Fairbanks – Mr. Turney spoke against the penalty changes and referred to it as another “cash cow” for City government. He requested that the Council take a serious look at Ordinance No. 5901.

Mary Richards, 763 7th Avenue, Fairbanks – Ms. Richards stated that she owns All Seasons Inn and that she, like Ms. Hazelaar, just happened to find out about the proposed changes to the City Code regarding Hotel/Motel Tax. She stated that she spent quite a bit of her day researching Ordinance No. 5901 and has found it to be unfair, unreasonable and excessive. She stated that the change doesn’t seem to have been brought about by a problem with collection, but an internal problem with a City computer system. She commented that it is unfair to punish business owners for a City problem. Ms. Richards spoke to the penalties presented in Ordinance No. 5901, comparing the proposed timeline for the execution of penalties to that of the Borough. She stated that as a small business owner, she is the only one that calculates and submits payment for her business which is difficult to do during peak summer season. Ms. Richards spoke to instances when she has filed and paid in a timely manner, but made an error in the calculation or payment. She spoke against the newly proposed Code that would disallow the postmark date to be considered for filing timely and, in her opinion, would not allow for corrections on errors of filed returns. Ms. Richards spoke to the credit card processing fees that she must pay as a business owner. She suggested that the City take the \$565,000 in bed tax revenue and pay an IT employee to “fix” the City’s computer system.

Mr. Eberhart thanked Ms. Richards for her comments. He asked her if it would be easier to make the deadline if it were pushed out from the 15th of each month till the 25th.

Ms. Richards replied that an extended due date would be very helpful. She stated that the Borough allows small businesses to report quarterly instead of monthly.

Mayor Cleworth clarified that under the proposed ordinance, the due date of City sales tax would remain the 15th of every month; however, the penalties would not be charged until after the last day of the month in which the taxes were due.

Ms. Richards stated that Mayor Cleworth's clarification was helpful. She suggested that the language of Section 74-135 be reworded to make it easier to understand.

Victor Buberger, PO Box 58192, Fairbanks – Mr. Buberger spoke of his efforts a number of years ago to open a 26-room motel on the Richardson Highway. He stated that after visits from numerous State, City and Borough officials, he closed the operation down and sold the building. He commented that the penalties outlined in Section 74-135 of Ordinance No. 5901 are too steep for local businesses and spoke to lowering City taxes.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

Mr. Eberhart asked if the potential penalties outlined in Ordinance No. 5901, as Amended, may actually be lower than the penalties currently in place for late or unfiled taxes.

Mayor Cleworth indicated that the penalties outlined in Ordinance No. 5901 may be more advantageous for larger businesses. He stated that interest would still be incurred for unpaid taxes.

Mr. Hilling commented that the grace period after the due date is meant to replace the consideration for a postmark. He pointed out that the Hotel/Motel Tax revenue does not belong to the business owners, but is collected by business owners to pass along to the City. He stated that it is the customer that is being taxed, not the business owner. **Mr. Hilling** stated that he does not believe the penalties are unfair.

Mayor Cleworth pointed out that Ordinance No. 5901, as Amended, allows for an appeal process.

Mr. Matherly asked Mayor Cleworth to elaborate on the City's computer issue that instigated the changes to the Code. He stated that he does not want to public to believe that the only reason for the changes is because of a City computer problem.

Mayor Cleworth asked City Clerk Hovenden to speak to the issue.

Ms. Hovenden stated that the City is making efforts to streamline the penalization system and make it easier for business owners to understand. She stated that the proposed penalties are much simpler and work well with the City's computer system. She explained that the Finance Department currently "babysits" accounts with late payments to ensure accuracy of penalties, but indicated that the new system will automatically calculate the penalties and save time for City employees.

Mr. Gatewood, seconded by **Ms. Staley**, moved to SUBSTITUTE Ordinance No. 5901, as Amended, for Ordinance No. 5901.

Mr. Eberhart asked where the language regarding the interest penalty is found in Ordinance No. 5901, as Amended.

Mr. Ewers stated that the interest penalty language is in Section 74-134, which isn't referenced in Ordinance No. 5901, as Amended, because it remains unchanged. He read aloud the existing Code regarding interest.

Mr. Eberhart asked on which day during the delinquent period interest charges begin.

Mr. Ewers replied that he was unsure, but would assume interest charges begin on the first day of delinquency.

Mayor Cleworth stated that he would assume the interest is applied when the penalty is applied. He commented that there was no Finance staff present to answer Mr. Eberhart's question. He spoke to the City's efforts in trying to get away from a convoluted calculation system for penalties and interest.

Mr. Matherly stated that the last thing he wants to do is hurt small businesses.

Ms. Hovenden commented that the Finance Department is "hands-on." She stated that they contact businesses in a timely manner whenever there is a missed or late payment or filing. She reminded the Council that the appeal rights are still in place.

Mayor Cleworth stated that three ordinances up for second reading pertain to sales tax. He stated that some businesses have purposely avoided paying taxes in the past and have pocketed the tax revenue they've collected from customers. He spoke to a need for some severity in penalties to serve as motivation for those business owners who may take a conscious risk by not filing. He spoke to the different collection problems with the various types of sales tax and stated that the penalties outlined in the penalty section of each ordinance is the City's effort to make the consequences of non-filing or non-payment as uniform and fair as possible.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SUBSTITUTE ORDINANCE NO. 5901, AS AMENDED, FOR ORDINANCE NO. 5901 AS FOLLOWS:

YEAS: Matherly, Hilling, Walley, Staley, Gatewood, Eberhart

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5901, AS AMENDED, AS FOLLOWS:

YEAS: Gatewood, Walley, Eberhart, Matherly, Staley, Hilling

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5901, as Amended, ADOPTED.

- c) Ordinance No. 5902 – An Ordinance Amending FGC Chapter 74, Taxation, Article V, Tobacco Products Distribution and Excise Tax, Sections 74-154(a), 74-154(d)-(e), 74-154.2(a), and 74-157(a)-(c) to Modify Factors Relating to Taxes Due and the Penalty Structure. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Ms. Staley**, moved to ADOPT Ordinance No. 5902.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

Mr. Hilling, seconded by **Mr. Matherly**, moved to SUBSTITUTE Ordinance No. 5902, as Amended, for Ordinance No. 5902.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SUBSTITUTE ORDINANCE NO. 5902, AS AMENDED, FOR ORDINANCE NO. 5902 AS FOLLOWS:

YEAS: Staley, Matherly, Gatewood, Hilling, Eberhart, Walley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5902, AS AMENDED, AS FOLLOWS:

YEAS: Walley, Matherly, Gatewood, Hilling, Eberhart, Staley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5902, as Amended, ADOPTED.

- d) Ordinance No. 5903 – An Ordinance Amending FGC Chapter 34, Article VI, Section 34-201, To Allow Replacement of Hydronic Heaters. Introduced by Council Member Stiver. SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Mr. Matherly**, moved to ADOPT Ordinance No. 5903.

Mayor Cleworth called for Public Testimony.

David Lerman, 126 2nd Avenue, #15 – Mr. Lerman recalled witnessing heavy black smoke coming from a hydronic heating system at a pawnshop near an apartment complex in Fairbanks. He stated that he was so concerned that he called the shop owner the next day to inform her of the pollution coming from the heating system. He shared that her reply was simply that Alaskans must tolerate these systems in order to stay warm. Mr. Lerman spoke in support of Ordinance No. 5903 and expressed hope that someday hydronic heating systems could be eliminated in Fairbanks. He stated that he has suggested that the Borough do a study on air

quality so that people can see what is in the air. He indicated that pedestrians breathe in more polluted air than motorists and that people ignore the air quality issue.

Frank Turney, 201 7th Avenue, Fairbanks – Mr. Turney stated that Ordinance No. 5903 speaks for itself.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

Mayor Cleworth stated that Ms. Stiver had additional language she wanted to add as the sponsor of Ordinance No. 5903. He asked Mr. Ewers if he could distribute the proposed language to the Council since Ms. Stiver had to leave the meeting early.

Mr. Hilling, seconded by **Mr. Matherly**, moved to AMEND Ordinance No. 5903, Section 34-201 by striking the word “heater” at the end of the paragraph and replacing with, “appliance or, in the event EPA regulations do not address a particular appliance, if the replacement appliance’s emissions are improved and demonstrated as such by a certified U.S. EPA laboratory or official federal opacity assessment method.”

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO AMEND ORDINANCE NO. 5903, SECTION 34-201 BY STRIKING THE WORD “HEATER” AT THE END OF THE PARAGRAPH AND REPLACING WITH, “APPLIANCE OR, IN THE EVENT EPA REGULATIONS DO NOT ADDRESS A PARTICULAR APPLIANCE, IF THE REPLACEMENT APPLIANCE’S EMISSIONS ARE IMPROVED AND DEMONSTRATED AS SUCH BY A CERTIFIED U.S. EPA LABORATORY OR OFFICIAL FEDERAL OPACITY ASSESSMENT METHOD” AS FOLLOWS:

YEAS: Eberhart, Gatewood, Staley, Hilling, Matherly, Walley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

Mr. Eberhart stated that he is conflicted by the ordinance. He spoke to the upgrading of hydronic heaters as being a good thing if emissions are improved. He recalled reading ordinances in 2009 from some eastern states indicating that hydronic heaters were never intended for urban use. He suggested that hydronic heaters should have never been approved for use within the City of Fairbanks. He questioned to what degree air quality would improve by upgrading these heating systems and commented that, even after upgrade, systems may still be very unhealthy in urban areas.

Mr. Hilling referred to the fifth “whereas” of Ordinance No. 5903, as Amended. He asked if the EPA emission standards take population density into consideration. He stated that he would like to know what the EPA’s language on standards is before proceeding.

Mr. Ewers stated that Ms. Stiver would likely have the information Mr. Hilling requested. He spoke briefly to those heating systems which are “grandfathered” for use within the City.

Mr. Matherly suggested that a specification of model year be made wherever “new model” is referred to within the ordinance.

Mayor Cleworth explained that in 2009, the City banned the use of hydronic heaters within City limits and only those “grandfathered” in could continue to be used. He stated that his question at that time was not knowing whether or not all hydronic heaters were bad. He commented that there has been no incentive for owners to upgrade their “grandfathered” systems and that Ordinance No. 5903, as Amended, would give those owners the incentive and would allow them to upgrade to a newer hydronic heating system. **Mayor Cleworth** stated that the technology of heating systems is a rapidly changing industry and that the City should allow owners to upgrade these systems.

Mr. Eberhart stated that if the Council does not pass Ordinance No. 5903, as Amended, and if hydronic heating systems are not efficient, people may eventually stop using them. He stated that if the ordinance is adopted and owners begin upgrading to newer hydronic heating systems, the City may never be able to get rid of the systems. **Mr. Eberhart** indicated that there isn’t enough information to make a decision.

Mr. Hilling, seconded by **Mr. Eberhart**, moved to POSTPONE Ordinance No. 5903, as Amended, until the Next Regular Meeting so that more information could be provided on the EPA’s standards in regard to the use of hydronic heaters in urban areas.

Mr. Gatewood stated that he does not have a problem with Ordinance No. 5903, as Amended, and would vote against its postponement.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO POSTPONE ORDINANCE NO. 5903, AS AMENDED, AS FOLLOWS:

YEAS: Walley, Eberhart, Matherly, Hilling

NAYS: Gatewood, Staley

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5903, as Amended, POSTPONED to the Regular Meeting of November 19, 2012.

- e) Ordinance No. 5904 – An Ordinance Amending FGC Section 58-39 Regarding the Method for Property Owner Approval of Local Improvement Districts. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Mr. Matherly**, moved to ADOPT Ordinance No. 5904.

Mayor Cleworth called for Public Testimony.

Chris Miller, 410 2nd Avenue, Fairbanks – Mr. Miller stated that he understands the reasoning behind changing the method of property owner approval for the LID. He explained that property owners who choose not to vote on the implementation of the LID would be counted as “no” votes. Mr. Miller stated that there may be reason to delay Ordinance No. 5904 until the Mayor’s Advisory Board convened and worked out the details of the LID. He explained that there are

only about 70 owners within the LID to fund the Clean Team and Community Service Patrol (CSP) and suggested that there be as much education as possible in order to have an informed vote.

David van den Berg, 332 Slater Drive, Executive Director of Downtown Association (DTA) – Mr. van den Berg stated that he has some ideas for possible amendments to Ordinance No. 5904. He stated that the DTA does not have a position on the ordinance, but that those property owners that sit on the DTA Board of Directors are in support of Ordinance No. 5904. He offered a suggestion to change Section 58-39(b) by striking the words “concurrence with” and replacing with “approval of.” Mr. van den Berg also suggested amending Section 58-39(c), page 2, by adding the language “or objection” after the word “approval” on the third line of text. On behalf of a DTA Board Member, Mr. van den Berg proposed a third amendment to Ordinance No. 5904, Section 58-39(a) by adding the language “by certified mail” after the word “notification” on the last line of the paragraph.

Mr. Eberhart asked Mr. van den Berg to clarify his suggested amendment to Section 58-39(b).

Mr. van den Berg repeated his proposed amendment and stated that the purpose of the amendment would be to parallel the uses of the word “approved” throughout that section of Code.

Ms. Staley asked Mr. van den Berg to repeat his suggested amendment to Section 58-39(a).

Mr. van den Berg repeated his proposed amendment to Section 58-39(a).

Frank Turney, 201 7th Avenue, Fairbanks – Mr. Turney asked Mayor Cleworth to explain Ordinance No. 5904 in layman’s terms.

Victor Buberger, PO Box 58192, Fairbanks – Mr. Buberger concurred with Mr. Turney’s request for a simplified explanation of Ordinance No. 5904. He suggested that the LID tax is being created to benefit the DTA and spoke against the taxing of only a small portion of City property owners. He accused Mr. van den Berg of lobbying for the LID tax to benefit himself and stated that Mr. van den Berg does not disclose where the DTA funds are spent.

Mr. Hilling asked Mr. Buberger to speak to the reason he believes Mr. van den Berg has not been transparent with DTA funds.

Mr. Buberger replied that the funds are probably being accounted for “somewhere along the line” but indicated that DTA revenues from grants and bingo should go towards the City.

David Lerman, 126 2nd Avenue, #15 Fairbanks – Mr. Lerman spoke to the expansion of the LID to all businesses City-wide.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

Mr. Eberhart stated that he doesn't see any harm in the amendments Mr. van den Berg suggested other than the cost of certified mail. He expressed interest in hearing Mayor Cleworth's explanation of Ordinance No. 5904. He pointed out a typo in Section 58-39(a), line 4 which should be the word "by" instead of "be." **Mr. Eberhart** stated that while he appreciates Mr. Buberger and Mr. Lerman's comments on expanding the LID to be City-wide, the ordinance to create the LID has already been adopted with set boundaries for the downtown area.

Mayor Cleworth stated that discussion at the Finance Committee on Ordinance No. 5904 addressed the methodology of how to ascertain a majority vote of property owners within the downtown boundary. He explained that it makes more sense to count a non-response as a "no" vote instead of a "yes" vote and that the public is more familiar with a "yes or no" voting system. He spoke to the self-tax process and compared the LID process to the service district elections that the Borough conducts on a regular basis. **Mayor Cleworth** stated that the difference between the service district election and the LID election is that a minority could carry the LID vote because of the assessed value of the property. He stated that anyone can form a LID in a geographic area to self-tax if they have a majority vote of property owners within a specific area. He stated that he suggested notification to property owners be sent by certified mail to ensure receipt. **Mayor Cleworth** spoke to Mr. van den Berg's other two proposed amendments, stating that they seem fine and are only for clarification purposes.

Mr. Hilling asked for clarification on the statement, "the assessed cost of the improvements" used twice in Section 58-39(c). He stated that it was his understanding that the assessment was based only on land value, not to include the value of improvements.

Mayor Cleworth stated that when the Code on LID's was created, the Council chose to base assessments on improvements. He commented that Mr. Hilling's point was well-taken and that the LID for clean and safe services calls for an assessment on land value only. He asked Mr. Ewers to address whether or not the language in the Code should be changed to specify land value only.

Mr. Ewers stated that not all LID assessments may be performed in the same way as the LID currently being discussed. He stated that there could be cases where the assessed value of the property may be different from the equity of the mill rate an owner must pay. He recommended that the language in question remain unchanged.

Mr. Eberhart stated that he believes the word "improvements" used in Section 58-39(c) is confusing and suggested that it should be changed to "services."

Mr. Ewers explained that when the FGC Section 58-34(a) pertaining to local improvement districts for services was added in 2002, the Council also modified Section 58-34, Character of local improvements, to include public services. He stated that the FGC's definition of "local public improvement" includes structures and services.

Mr. Eberhart, seconded by **Mr. Hilling**, moved to AMEND Ordinance No. 5904 by adding the language "by certified mail" after the word "proposal" in Section 58-39(a); by striking the words "concurrence with" and replacing with "approval of" in Section 58-39(b); and, by adding the language "or rejection" after the word "approval" on the twelfth line of Section 58-39(c).

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO AMEND ORDINANCE NO. 5904 BY ADDING THE LANGUAGE "BY CERTIFIED MAIL" AFTER THE WORD "PROPOSAL" IN SECTION 58-39(a); BY STRIKING THE WORDS "CONCURRENCE WITH" AND REPLACING WITH "APPROVAL OF" IN SECTION 58-39(b); AND, BY ADDING THE LANGUAGE "OR REJECTION" AFTER THE WORD "APPROVAL" ON THE TWELFTH LINE OF SECTION 58-39(c) AS FOLLOWS:

YEAS: Walley, Matherly, Gatewood, Hilling, Eberhart, Staley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5904, AS AMENDED, AS FOLLOWS:

YEAS: Matherly, Hilling, Walley, Staley, Gatewood, Eberhart

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5904, as Amended, ADOPTED.

NEW BUSINESS

- a) Resolution No. 4549 – A Resolution Authorizing the City of Fairbanks to Accept Funds from the Alaska Division of Homeland Security and Emergency Management Under the FFY2012 Homeland Security Grant Program. Introduced by Mayor Cleworth.

PASSED and APPROVED on the CONSENT AGENDA.

- b) Resolution No. 4550 – A Resolution of Recognition and Appreciation for Ruby Riddle, the Official Hostess of the City of Fairbanks. Hand-carried. Introduced by Mayor Cleworth and All City Council Members.

Mr. Matherly, seconded by **Mr. Gatewood**, moved to APPROVE Hand-carried Resolution No. 4550.

Mayor Cleworth spoke to the recent loss of Ms. Ruby Riddle. He stated that he was unable to find the documentation of when Ms. Riddle was first named the hostess of the City of Fairbanks under Mayor Hayes, but stated that he found documentation from 2001 that recognized her as the City's official hostess. He read aloud Resolution No. 4550 in Ms. Riddle's honor.

Mayor Cleworth called for objection to the APPROVAL of Resolution No. 4550 and, hearing none, so ORDERED.

DISCUSSION ITEMS

Committee Reports

Permanent Fund Review Board – Mr. Gatewood gave a brief report of the October 21, 2012 meeting and an update on the status of the Permanent Fund. He stated that the Permanent Fund Board is recommending a change to the Code with respect to the ranges of equities and fixed income and that Pat Cole is working on an ordinance to introduce those changes.

COMMUNICATIONS TO COUNCIL

- a) Appointment to the Hotel/Motel Discretionary Fund Committee.

APPROVED on the CONSENT AGENDA.

- b) Re-appointment to the Permanent Fund Review Board.

APPROVED on the CONSENT AGENDA.

COUNCIL MEMBERS' COMMENTS

Mr. Matherly expressed his condolences in the loss of Ms. Ruby Riddle and commented that she was a very close friend. He stated that he is excited for his first meeting as Chair of the Hotel/Motel Discretionary Fund Committee on Thursday. **Mr. Matherly** spoke to Mr. Webster's Chauffeur Appeal and stated that his vote on the appeal was based on the recent assault conviction. He spoke to the upcoming budget meetings and remarked at how well-managed the City's finances are. He stated that the LID discussed earlier in the meeting was brought about by downtown business owners who believe that self-taxing is an appropriate way to pay for clean and safe services. He pointed out that the property owners would be the ones to accept or reject the implementation of the LID and clarified that it is not a forced tax.

Mayor Cleworth stated that services for Ms. Ruby Riddle would be held at Pioneer Park at 4:00 PM on Wednesday, November 7, 2012.

Mr. Hilling addressed Mr. Turney's testimony on the Supreme Court's ruling in regards to quotas. He stated that he would like more information about the ruling to ensure that the City of Fairbanks' new work standard at FPD does not violate that ruling. He spoke to Mr. Turney and Mr. Buberger's comments regarding Mr. van den Berg's lack of transparency in the financials of the DTA. **Mr. Hilling** expressed his distaste for such accusations without a basis. He stated that Mr. Lerman's suggestion for including various statistics on the City's website may be a good idea and asked Mayor Cleworth to speak to the feasibility of providing the information online. He commented that Ms. Riddle would be greatly missed. **Mr. Hilling** asked if it would have been appropriate to somehow notify all hotel/bed and breakfast owners of Ordinance No. 5901 in advance.

Mr. Ewers, in response to Mr. Hilling's question regarding the work standard, stated that it is not a quota and that the new work standard does not violate any federal guidelines or laws.

Mayor Cleworth stated that typically there is an employee from the News Miner present at City Council Meetings to write about important issues that may affect the public; and that, unfortunately, there was not a journalist present at the first reading of the sales tax ordinances.

Mayor Cleworth commented that all City ordinances have an affect on City residents and spoke to the public's responsibility to stay informed. He stated that all Council agendas are posted on the City's website and are advertised regularly in the News Miner.

Mr. Eberhart spoke to his past service as Chair of the Hotel/Motel Discretionary Fund Committee and offered his help to Mr. Matherly. He commended Chief Cummings and the Fire Department for their persistent work in receiving an improved ISO rating for the City of Fairbanks. **Mr. Eberhart** announced that the Public Safety Commission will hold a special meeting on November 13, 2012, at the Fire Department at 11:00 AM. He stated that there will be a presentation on the operations and procedures of the Fire Department and discussions on the public safety officer concept. He encouraged everyone to participate in the upcoming state and Presidential election.

Mr. Gatewood supported Mr. Hilling and Mr. Lerman's suggestion of placing public safety statistics on the City's website. He stated that he does not support the City's implementation of the new FPD work standard, commenting that something about it smells "fishy." He remarked that he appreciates the Council's discussion and that the dialogue is much richer when all members are present. **Mr. Gatewood** expressed condolences for the loss of Ms. Ruby Riddle and spoke to her incredible involvement in the community throughout the years.

Mr. Walley echoed Mr. Gatewood's comments regarding Ms. Ruby Riddle. He stated that he will be attending his first FMATS Policy Committee Meeting telephonically at noon on Wednesday, November 7, 2012. He reiterated the importance of voter participation in the upcoming election. **Mr. Walley** spoke to the sound decibel level at the Carlson Center and stated that he would like to see improvements to the venue's sound system. He announced that there has been an addition to the radio family in Fairbanks, WILD 94.3 FM, making a total of six radio stations for his company.

Ms. Staley stated that she was happy to hear of FCVB's 18.5% increase in 2012. She thanked Chief Cummings for his explanation of the ISO rating and commended the Fire Department for their hard work. **Ms. Staley** stated that she will be attending the next Borough Assembly meeting as the City Representative and will also attend the AML Conference next week in Anchorage. She spoke to her interactions with Ms. Ruby Riddle and commented that she would be greatly missed. **Ms. Staley** asked to be excused for the Regular City Council Meeting of November 19, 2012, due to international travel plans.

No Members objected to Ms. Staley's request to be excused for the Regular Meeting of November 19, 2012.

ADJOURNMENT

Mr. Hilling, seconded by **Mr. Matherly**, moved to ADJOURN the meeting.

Mayor Cleworth called for objection and, hearing none, so ORDERED.

Mayor Cleworth declared the meeting adjourned at 10:30 P.M.



JERRY CLEWORTH, MAYOR

ATTEST:



JANEY HOVENDEN, CMC, CITY CLERK

Transcribed by: DS