

Council Member Sonia Harvey  
Ward 1 Position 1

Council Member D'Andre Jones  
Ward 1 Position 2

Council Member Mark Kinion  
Ward 2 Position 1

Council Member Mike Wiederkehr  
Ward 2 Position 2



Council Member Sloan Scroggin  
Ward 3 Position 1

Council Member Sarah Bunch  
Ward 3 Position 2

Council Member Teresa Turk  
Ward 4 Position 1

Council Member Holly Hertzberg  
Ward 4 Position 2

Mayor Lioneld Jordan  
City Attorney Kit Williams  
City Clerk Treasurer Kara Paxton

**City of Fayetteville Arkansas  
City Council Meeting  
October 4, 2022**

**A meeting of the Fayetteville City Council was held on October 4, 2022 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.**

**Mayor Lioneld Jordan called the meeting to order.**

**PRESENT: Council Member Sloan Scroggin, Sarah Bunch, Teresa Turk, Holly Hertzberg, Sonia Harvey, D'Andre Jones, Mark Kinion, Mike Wiederkehr, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Staff, Press, and Audience.**

**Pledge of Allegiance**

**Mayor's Announcements, Proclamations and Recognitions: None**

**City Council Meeting Presentations, Reports, and Discussion Items:**

**Monthly Financial Report**

**Paul Becker**, Chief Financial Officer gave the monthly financial report that provided data from the month of August 2022. The General Fund was up 11% over the projected budget and has a balance of \$4 million. Sales tax was up by 12%, franchise fees up by 9%, and building permits up 26%. Beverage taxes and licenses were up, and total service fees (Parks & Recreational Programs) was up. Court fees and fines along with the interest rate was down. Mr. Becker went on to provide data about the Street Fund which was up by 16%. Gasoline sales were up, the half percent sales tax was up, which Mr. Becker explained was inflationary driven. He moved on to provide data

about the Parking Fund which was up by 19% from what Mr. Becker had anticipated based on last year's data and explained that there will be several expenditures made in 2022 from the Capital Improvement Project Funds in order to replace current equipment like parking meters. Hotel, Motel, and Restaurant (HMR) taxes were up 17% over last year and 15% as compared to the projected budget. Recycling and Trash Funds were also up by 2%, water and sewer billings up 6% to 8%, total revenue for the Water and Sewer Funds was up by 6%. He finished his report by explaining the Airport was up 58% more than the projected budget due to fuel sales.

**Agenda Additions: None**

**Consent:**

**Approval of the September 6, 2022 City Council Meeting Minutes.**

**Approved**

**Food Recycling Solutions, LLC:** A resolution to approve an agreement with Food Recycling Solutions, LLC for the hauling of organic compostables and recyclable material in the City of Fayetteville.

***Resolution 219-22 as recorded in the office of the City Clerk***

**Hawkins-Weir Engineers, Inc. Amendment No. 1:** A resolution to approve Amendment No. 1 to the Professional Engineering Services Agreement with Hawkins-Weir Engineers, Inc. in an amount not to exceed \$32,240.00 for construction management services related to Recycling and Trash Facility Improvements.

***Resolution 220-22 as recorded in the office of the City Clerk***

**J.A. Riggs Tractor Company D/B/A Riggs Power Systems, Station W1:** A resolution to authorize the purchase of a Caterpillar Generator from J.A. Riggs Tractor Company d/b/a Riggs Power Systems in the amount of \$74,265.00 plus any applicable tax and freight charges, pursuant to a Sourcewell Cooperative purchasing contract, for use at the South Mountain Pump Station.

***Resolution 221-22 as recorded in the office of the City Clerk***

**J.A. Riggs Tractor Company DbA Riggs Power Systems, Station W18:** A resolution to authorize the purchase of a Caterpillar Generator from J.A. Riggs Tractor Company d/b/a Riggs Power Systems in the amount of \$55,990.00 plus any applicable tax and freight charges, pursuant to a Sourcewell Cooperative purchasing contract, for use at the Gulley Road Water Pump Station.

***Resolution 222-22 as recorded in the office of the City Clerk***

**Alltel Corporation DBA Verizon Wireless Fifth Amendment:** A resolution to approve the Fifth Amendment to the Water Tower Attachment Communications Site Agreement with Alltel Corporation d/b/a Verizon Wireless to allow Verizon to replace the cellular communications equipment on the older of the two Gulley Road Elevated Water Storage Tanks.

*Resolution 223-22 as recorded in the office of the City Clerk*

**Crafton, Tull & Associates, Inc.:** A resolution to approve a professional engineering services agreement with Crafton, Tull & Associates, Inc., pursuant to RFQ 22-01 Selection #12, in an amount not to exceed \$146,780.00 for design services associated with the Lake Fayetteville Ballfield Renovation Project, to approve a project contingency in the amount of \$7,340.00, and to approve a budget adjustment - 2019 Park Improvement Bond Project.

*Resolution 224-22 as recorded in the office of the City Clerk*

**Recognize Interest Revenue for Sales & Use Tax Capital Improvement and Refunding Bonds Series 2019:** A resolution to approve a budget adjustment recognizing interest revenue generated from the Sales & Use Tax Capital Improvement and Refunding Bonds Series 2019.

*Resolution 225-22 as recorded in the office of the City Clerk*

**Beaver Water District:** A resolution to approve a budget adjustment in the amount of \$800,000.00 for the purchased water account due to increased water usage.

*Resolution 226-22 as recorded in the office of the City Clerk*

**Rightseat, LLC Agreement:** A resolution to approve a thirty (30) year ground lease agreement with Rightseat, LLC for airport property located north of the Drake Field Terminal Building at 4200 South School Avenue for the construction of a 80' x 70' hangar, with an option to extend the ground lease for an additional ten (10) years.

*Resolution 227-22 as recorded in the office of the City Clerk*

**Purchase Additional Loads of Fuel:** A resolution to approve a budget adjustment in the amount of \$579,000.00 for the purchase of additional loads of jet fuel and Avgas due to increasing fuel sales and rising fuel costs.

*Resolution 228-22 as recorded in the office of the City Clerk*

**WT Equipment of Springdale:** A resolution to approve the purchase of a Bobcat E42 Compact Excavator with attachments and trailer from WT Equipment of Springdale in the amount of \$101,205.00, plus any applicable sales taxes and freight charges, pursuant to a Sourcewell Cooperative purchasing contract, and to approve a budget adjustment.

*Resolution 229-22 as recorded in the office of the City Clerk*

**Bid #22-43 Legacy Construction Management, Inc.:** A resolution to award Bid #22-43 and authorize a contract with Legacy Construction Management, Inc. in the amount of \$279,684.69 for improvements to the recycling and trash collections transfer station floor, and to approve a project contingency in the amount of \$50,000.00.

*Resolution 230-22 as recorded in the office of the City Clerk*

**Carbon Reduction Program Federal-Aid Funds:** a resolution to express the willingness of the City of Fayetteville to apply for and utilize carbon reduction program federal-aid funds in an amount of up to \$500,000.00 for street lighting improvement projects.

*Resolution 231-22 as recorded in the office of the City Clerk*

**Railroad Crossing Upgrade Cost And Maintenance Agreement:** a resolution to waive competitive bidding and authorize a railroad crossing upgrade cost and maintenance agreement with the Arkansas and Missouri Railroad in the amount of \$839,774.60 for modifications required for the Razorback Road and 15th Street intersection project, to approve a project contingency in the amount of \$80,000.00, and to approve a budget adjustment - 2019 Street Improvement Bond Project.

*Resolution 232-22 as recorded in the office of the City Clerk*

**U.S. Geological Survey Joint Funding Agreement:** a resolution to approve a joint funding agreement with the U.S. geological survey for stream gauge operation and maintenance and water quality sampling and monitoring at various locations in the City of Fayetteville in 2022 with the amount paid by the city not to exceed \$61,582.00.

*Resolution 233-22 as recorded in the office of the City Clerk*

**RFQ 22-01 Olsson, Inc.:** a resolution to approve a professional engineering services agreement with Olsson, Inc., pursuant to RFQ #22-01, in the amount of \$89,900.00 to provide an assessment of lands with high ecological value and to develop an ecosystems services plan, and to approve a project contingency of \$8,990.00. *At the September 6, 2022 city council meeting, this resolution was pulled for further discussion and tabled to the October 4, 2022 city council meeting.*

*Resolution 234-22 as recorded in the office of the City Clerk*

**Railroad Crossing Improvements Application Grant:** a resolution to authorize an application for a 80/20 matching grant in the amount of \$312,000.00 for railroad crossing improvements through the railroad crossing elimination program.

*Resolution 235-22 as recorded in the office of the City Clerk*

**Council Member Turk moved to accept the Consent Agenda as read. Council Member Harvey seconded the motion. Upon roll call the motion passed unanimously.**



**Unfinished Business:**

**Raze And Removal of Structure At 2860 E. Wyman Rd.:** A resolution to order the Razing and Removal of a dilapidated and unsafe structure on property owned by Leroy H. Scharfenberg located at 2860 East Wyman Road in the City of Fayetteville, Arkansas, and to approve a budget adjustment in the amount of \$17,800.00. At the July 5, 2022 City Council meeting, this resolution was tabled to the August 2, 2022 City Council Meeting. At the August 2, 2022 City Council meeting, this resolution was tabled to the October 4, 2022 City Council meeting.

**Billy Bryant**, Senior Code Compliance Officer provided an update to the City Council by displaying pictures of the dilapidated house from the morning of October 4<sup>th</sup>, 2022 and compared the pictures taken from last year. Mya Scharfenberg applied and received a demolition permit on August 15<sup>th</sup>, 2022 and while some progress has been made most of the structure is still standing.

**Mya Scharfenberg**, daughter of homeowner, also provided an update regarding the demolition of the structures on the property. She has cleaned out the house, demolished the back portion of the house along with filling two 20 ft. dumpsters with trash and debris. A Go Fund Me account has been created and the money has been used to pay for tools and safety equipment. Ms. Scharfenberg asked the City Council to provide her with 120 days in order to finish and explained she needed 60 days to finish the house, 30 to demolish the other two structures, and 30 days to finish the cleanup. Depending on the holidays and potential weather, Ms. Scharfenberg said she would continue to work toward cleaning the property.

**Council Member Scroggin** asked Ms. Scharfenberg what she plans on doing with the demolished materials. He mentioned that she might be able to donate it to Habitat for Humanity.

**Ms. Scharfenberg** responded to the question and explained that most of the material is not salvageable.

The City Council received 1 public comment regarding this resolution.

**Council Member Scroggin** expressed concern for Ms. Scharfenberg's safety since she has been demolishing the structures using hand tools. He also proposed a question to the City Attorney regarding if the City would have any liability in the circumstance of the structure falling in on Ms. Scharfenberg if the City Council were to let her continue to demolish the structures on the property.

**City Attorney Kit Williams** explained that the liability belongs to the property owner. He went on to provide an example of another citizen who demolished a building one brick at a time.

**Council Member Scroggin** expressed his support of approving to give Ms. Scharfenberg additional time to demolish the structures on the property. He explained that he knows it will be a long process since she is completing an estate sale while also working to demolish the structures. However, since she is working to make the property better, he wanted to give her more time in order to complete the demolition.

**Council Member Bunch** also expressed support of approving additional time for Ms. Scharfenberg to demolish the structures. She provided a personal experience that related to the topic and explained that she felt Ms. Scharfenberg was making a strong effort to clean up the property.

**Council Member Wiederkehr** communicated that he agreed and supported giving Ms. Scharfenberg more time. He also requested the City Attorney to verify that if a lien were to be placed on the property, then the lien would not be collected until the property sold.

**City Attorney Kit Williams** confirmed Council Member Wiederkehr's understanding of how liens work. He also explained that if the property owner were to take a loan on the home then it would also give the City the right to collect the lien.

**Ms. Scharfenberg** communicated to the City Council that the family did not want a lien on the property as it would affect their ability to obtain a loan on the property in the future.

**Council Member Turk** commended Ms. Scharfenberg and explained that she supports giving her more time to demolish the structures but wanted to receive an update on her progress in 60 days.

**Mayor Jordan** clarified that Ms. Scharfenberg asked for this item to be tabled for 120 days.

**City Attorney Kit Williams** agreed with the clarification provided by Mayor Jordan.

A brief discussion happened regarding the procedures of tabling an item in 2022 to sometime in 2023. The City Attorney confirmed that if the City Council tabled the resolution to a specific date the item would not be discarded at the end of the year.

**Council Member Turk** voiced her request again to receive an update after 60 days.

**Mayor Jordan** stated that the City staff will provide an update after 60 days.

**Council Member Harvey** moved to table the resolution until the February 7, 2023 City Council Meeting. **Council Member Kinion** seconded the motion. Upon roll call the resolution passed unanimously.

*This resolution was tabled to the February 7<sup>th</sup>, 2023 City Council meeting.*

**VAC 22-018 (W. Sligo St and S. Razorback Rd/Meadow Vale Development, LLC):** An ordinance to approve VAC 22-018 for property located at West Sligo Street and South Razorback Road in Ward 1 to vacate a portion of street right-of-way. At the September 6, 2022 City Council Meeting, this Ordinance was left on the first reading and tabled to the October 4, 2022 City Council Meeting.

**Council Member Jones moved to suspend the rules and go to the second reading. Council Member Harvey seconded the motion. Upon roll call the motion passed unanimously.**

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director provided the history of the property. In 2019 the City received a vacation request that the Planning Commission and staff did not support. The property was sold, and the new owner has combined the parcel. The Planning Commission still has concerns regarding the vacation. The Planning Commission expressed concern that the development would be internally focused and developed despite the City's goal to prevent site plans that are not oriented toward the street. Mr. Curth also explained that the Planning Commission felt that even though the parcels have been combined, there are still opportunities for connectivity despite what the staff found.

**Adam Osweiler**, Applicant explained that the site plan shows that the structure will face Razorback Rd., accessible via Sligo St, and the structure will be a multifamily building. Now that the lots have been combined into one single property, there is no longer a need for two public access areas.

**Rodney Baker**, Applicant provided a detailed explanation of the project. The land has been paid for in full and will be donated to the Alpha Gamma Rho Alumni Association in order to build a new fraternity house. The two acres of land that the fraternity house will be on will be landscaped to include natural solutions for noise cancellation. All neighbors have been notified and none were opposed to this ordinance.

The City Council received 1 public comment regarding this ordinance.

**Council Member Kinion** clarified that the council makes decisions regarding the vacation request and cannot take proposed projects into consideration. He also explained that due to the location, of this property, it will always be potentially developed as multi-family due to the proximity to the UofA.

**Council Member Bunch** asked Mr. Curth how many Planning Commissioners voted against the vacation request after she had verified that the planning staff recommended approval.

**Mr. Curth** explained that the vacation request was unanimously forwarded to the City Council with the recommendation of denial from the Planning Commission.

**Council Member Bunch** expressed concern that the current owners might sell the property and not complete the proposed project. She went on to express her support for staff's recommendation and stated she wanted to override the Planning Commission.

**Council Member Kinion** spoke and asked Council Member Bunch what her thoughts were regarding recouping the investment since she is a real estate agent. If the vacation was approved, he felt that the property would be more valuable.

**Council Member Bunch** agreed with Council Member Kinion that the property would be more valuable.

**Council Member Scroggin** voiced his concerns regarding the Planning Commission's decision and spoke in support of the staff's recommendation.

**Council Member Harvey** explained that she received one comment of support for the ordinance and zero that were opposed. She thanked the applicant for raising the money in order to potentially build a home for the Alpha Gamma Rho students. She also commended the applicant for all the supplemental information provided. She ended her comments by explaining she will support the ordinance.

**Council Member Jones** echoed the comments of Council Member Harvey.

**Council Member Turk** requested Mr. Curth to provide more information regarding the decision that the Planning Commission had made.

**Mr. Curth** reiterated what the applicant had said regarding when the item was brought before the Planning Commission, the proposed project had not been presented. Mr. Curth noted that even though the proposed project was not presented, that the deciding entity cannot place weight on the proposed project since there is a possibility that the proposed project might not be completed. Mr. Curth felt that the Planning Commission and staff struggled to make the decision regarding the undeveloped right-of-way.

**Council Member Wiederkehr** expressed his support of the ordinance due to receiving additional information regarding the potential future project being built on the property. He described his understanding of why the Planning Commission made the decision to recommend denial. However, felt that the supplemental information that the applicant provided was adequate for him to go against the recommended denial and explained that as long as only one structure was built on the property, the property, would be an asset to the City of Fayetteville as opposed to a liability.

**Council Member Bunch** wanted to know when the properties were rezoned.

**Mr. Curth** explained that the property west of the right-of-way appeared to be zoned as multi-family since the conception of zoning in Fayetteville. However, the other portion was rezoned in April of 2021 to CS, Community Services.

**Council Member Harvey** had researched the decision made by the Planning Commission before the City Council meeting and wanted to know if Council Member Turk wanted additional information about why the proposed project was not shared at the Planning Commission meeting.

**Council Member Turk** responded that she had received enough information.

**Council Member Harvey** moved to suspend the rules and go to the third and final reading. **Council Member Jones** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

***Ordinance 6608 as Recorded in the office of the City Clerk***

**Miller Boskus Lack Architects, P.A., D/B/A MBL Planning:** A resolution to approve a professional architectural services agreement with Miller Boskus Lack Architects, P.A., d/b/a MBL planning pursuant to RFQ #21-09, in the amount of \$212,257.00 for the development of a pre-approved building design program, to approve a project contingency in the amount of \$10,613.00, and to approve a budget adjustment. At the September 20, 2022 City Council meeting, this resolution was tabled to the October 4, 2022 City Council meeting.

**Jonathan Curth**, Development Services Director explained information about the pre-approved building program. One-third of the proposed budget allocation was dedicated to public engagement like one-on-one interviews, webinars, meetings that include committees, focus groups and staff implementation training. The company would also provide a market study of the area to determine housing affordability. For an extra fee the company would also complete an ordinance audit to determine if legislative actions needed to take place to address housing affordability. Mr. Curth explained that this company played a critical role in the success in the recent Cobblestone Farm project that created 100 new family homes. Mr. Curth explained that it was very difficult to compare this proposed project to other pre-approved building projects completed by MBL Planning because each agreement is unique. Claremore, Oklahoma, one-fifth the size of Fayetteville, reported that their pre-approved building program had been in place for one year. The City of Claremore reported that 3 units were currently under construction with 18 more beginning construction soon.

**Council Member Turk** expressed her concerns about the cost of the program, the additional market study, and explained that house designs could be found online for a nominal fee. Due to previous market studies completed for the City of Fayetteville and NWA she felt that another study was not needed. She ended her comments by saying she would not support the item.

**Council Member Scroggin** agreed with Council Member Turk that house designs can be found online but explained they are not contextual to the area. He expressed his support of the item due to being able to collaborate and talk with citizens to find out what type of housing they wanted in their neighborhood and that the City's building codes would be placed in the pre-approved designs.

**Council Member Bunch** asked for staff to provide an example of a citizen going through the process to build a home from the pre-approved designs.

**Mr. Curth** referenced the comments made by Council Member Scroggin regarding the ease of use of the pre-approved designs since they will already be contextual to the city and meet the current building codes. By using the pre-approved plans an individual would be able to have their plan approved by the City within 7 days as opposed to several months.

**Council Member Bunch** referenced her memory of serving on Planning Commission. She explained she remembered talking about the City of Fayetteville adopting pre-approved plans to be used. She ended her comment by explaining she thought the pre-approved plans would benefit the citizens of Fayetteville.

**Council Member Kinion** explained that the pre-approved designs would still be able to be customized by using different colors on the outside or using brick versus siding. He explained that he would support the item due to the program saving costs for the citizens and staff time.

**Council Member Turk** refuted the statements that the program was good for Fayetteville. She explained that maybe 10 or 12 years ago it was needed but it is not needed now. She also identified that the pre-approved designs were just options, and no one will be required to use the plans. Due to the designs only being an option, she felt that the money for this program should be dedicated to a different program within the City.

**Council Member Bunch** asked staff to provide information regarding the restrictions placed on the Parkesdale Development which is an older subdivision in Fayetteville.

**Mr. Curth** researched and provided the restrictions. The zoning code for the subdivision was RMF-24, Residential Multi-Family 24 units per acre. Since that zoning had high entitlements, a development overlay was placed on the area that limited the build to height and determined how the buildings would face the street.

**Council Member Bunch** explained that she remembered the discussion and was glad that the City listened to the neighbors and came to a compromise.

**Mayor Lioneld Jordan** agreed with Council Member Bunch and spoke about all the meetings that were held in order to obtain the compromise.

**Council Member Kinion** mentioned the Fayette-Junction and Walker Park Planning Project that made an industrial area into usable land.

**Council Member Wiederkehr** provided a summary of feedback he had gathered over the years and explained that citizens are concerned mostly over design not density. Freeing up staff time to work on other workloads and wide-spread community involvement were the reasons for his support of the item.

**Council Member Harvey** echoed all the comments made previously in support of the item. Neighborhood involvement and the ability to obtain inclusive public input were the reasons for her support of the item.

**Council Member Hertzberg** asked staff if there was away of determining the success of the program by identifying benchmark metrics.



**Mr. Curth** thanked Council Member Hertzberg for her question. Mr. Curth explained that the benchmark metrics would be determined during the planning process. The metrics will also be affected by outside forces like housing prices.

**Council Member Harvey** moved to approve the resolution. **Council Member Hertzberg** seconded the motion. Upon roll call the resolution passed 7-1. **Council Member Scroggin, Bunch, Hertzberg, Harvey, Jones, Kinion and Wiederkehr** voted yes. **Council Member Turk** voted no.

*Resolution 236-22 as recorded in the office of the City Clerk*

**RZN 22-037: (SE of W. 18th St & W. Custer LN/Southern Living Construction LLC):** An ordinance to rezone that property described in rezoning petition RZN 22-037 located Southeast of West 18th Street and West Custer Lane in Ward 1 for approximately 3.10 acres from RMF-24, Residential Multi-Family, 24 units per acre and C-1, Neighborhood Commercial to RI-U, Residential Intermediate-Urban.

**Council Member Scroggin** moved to suspend the rules and go to the second reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director explained that he had not received any new public comments and did not have any updates to present regarding the item.

**Brian Teague**, Applicant's Representative explained that the owner would like to have more flexibility regarding lot width, tree and streamside preservation. Mr. Teague explained that the owner understands that the request would be considered a downzone.

**Mayor Lioneld Jordan** asked staff if anyone had seen the plans for the required road or driveway.

**Mr. Curth** explained that he had not be able to see the proposed road or driveway since development plans had not been submitted. Mr. Curth explained that he had verified that emergency services will be able to access the property. He had verified the width of 40ft. by tape and aerial measurement.

**Council Member Turk** asked about the streamside ordinance information that was mentioned during the tour of the property. She expressed her concern about the stream that runs through the property. She was also concerned about the constraint on development and wondered if a large building, bridge or culvert would be added to the property.

**Mr. Curth** displayed a map of the area and explained that if a bridge was built then the bridge would have to expand the width of the stream. If the stream had a 15% or greater slope, then the streamside protection ordinance dictates the bridge would have to expand farther than the width of

the stream. There are exceptions to this rule and would need to be reviewed if it was not practical to expand the bridge that far.

**Chris Brown**, Public Works Director verified the information that Mr. Curth provided. Mr. Brown explained that the requirements would be different for a development. The requirement for a development is that the developer must ensure the protection of the stream from erosion or other drainage issues from a 10- and 100-year flood event.

**Council Member Turk** asked staff to verify her understanding that based on the map Mr. Curth displayed, the owner would only be able to build in the southeast corner of the property as well as ensure the area in green, red, blue, and purple were protected against a 10- and 100-year flood.

**Mr. Brown** explained that he recommends that developers and owners to stay out of the stream. He clarified Council Member Turk's question and explained that development could be placed in the purple area. Mr. Brown reiterated that each development was case specific and if it is not feasible to span the stream, then alternatives need to be reviewed.

**Mr. Curth** clarified his earlier use of the word structures being defined as buildings, residences, and commercial buildings.

**Council Member Harvey** expressed her concerns regarding flooding issues and questioned if RI-U, Residential-Intermediate Urban was an appropriate zoning for the property.

**Mr. Curth** explained that staff had taken a lot of factors into consideration before making their recommendation. The current zoning of the property had high entitlements and felt that RI-U was a more viable zoning code.

**Council Member Harvey** made a motion to suspend the rules and go to the third and final reading.

**Council Member Kinion** expressed his concern with Council Member Harvey's motion. He took a moment to look over the future land use map and noted that it would be easy to place development above the stream.

**Council Member Harvey** moved to suspend the rules and go to the third and final reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Scroggin** expressed his support for the item and explained that RI-U is a more appropriate zoning than RMF-24.

**Council Member Turk** also expressed her support and explained that the area to the southeast of the property appeared to be of higher elevation than the rest of the property.

**Mayor Lioneld Jordan** expressed his support to change the zoning to RI-U. He went on to explain the housing types in the area and felt that RMF-24 is not the right zoning for the area.

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

*Ordinance 6609 as Recorded in the office of the City Clerk*

**New Business:**

**Repeal Reduction Of Election Standard Allowance:** a resolution to repeal Resolution 89-22 and to authorize the reduction of the election of the standard allowance of \$10,000,000.00 in revenue losses due to the public health emergency created by the covid-19 pandemic from the previously awarded American Rescue Plan Act funds to the calculated loss of \$6,914,393.00.

**Council Member Kinion** shared his thoughts regarding how the initial decision regarding the ARPA funds should be amended. Council Member Kinion explained that by taking the calculated loss of \$6,914,393.00 instead of the standard allowance of \$10M it would allow the smaller organizations in the community to receive assistance. He explained that there are several organizations in the Fayetteville community that have not paid their executive directors in three years in order to survive the pandemic and to keep aiding community members. He emphasized that \$1.00 is a lot of money for the smaller organizations. Even though the organizations are help driven, they still require funds in order to keep the electricity on and staff paid.

**Paul Becker**, Chief Financial Officer provided a history of the previous decision made in April 2022 by council to approve the standard deduction allowance of \$10M. He went on to explain that several of the projects that the administration had been looking into could not be funded by ARPA without additional metrics like the Walker Park Project. Mr. Becker explained the administration was looking into a voucher program for head start childcare and reminded the council that when the non-profits applied for ARPA funds they had two options to choose from.

**Council Member Kinion** agreed with Mr. Becker regarding the history of the previous decision. However, he had received information from the organizations in the area that they were very confused and were under the impression that they could not apply for both programs. Council Member Kinion explained that since the federal guidelines kept changing the individuals, who would benefit the most from these funds, were very confused on how to recoup their losses during the pandemic.

**Mr. Becker** explained that the City of Fayetteville had provided an explanation to the organizations on how to file to recoup their losses. Staff fielded a lot of calls and were available to help anyone who called in. Mr. Becker also explained that if any of the council members had a program they were interested in, then the City could always take more submissions or put together an RFP, Request for Proposal or RFQ, Request for Quote.

**Council Member Turk** reminded the council that she had been very reluctant in April 2022 to approve to take the standard allowance of \$10M. She explained that she would support the amendment since it would provide more money to the non-profits in the area.

**Council Member Jones** echoed the comments made by Council Member Kinion and Turk. He had been contacted by several non-profits regarding issues with applying to recoup their losses. He also reminded the council that he had voiced his concerns regarding taking the standard allowance of \$10M. He ended his comments by talking about the need for social equity.

**Council Member Harvey** shared that she had also received comments that the application process was confusing. She expressed her desire to ensure the ARPA funds are used for the non-profits even if that means that the Walker Park Project of laying smoother roads must be put on hold.

**Mr. Becker** verified that Council Member Harvey was correct in her previous comment. He went on to explain the differences between the beneficiary and sub-recipient applications. He highlighted that the beneficiary application must clearly identify the loss and provide documentation for the loss.

**Council Member Harvey** thanked the ARPA committee and the City's internal auditor Steve Dotson for their work on this project.

**Council Member Hertzberg** wanted to know if the item was approved, what projects would the City not be able to fund.

**Mr. Becker** explained how the applications received from non-profits were ranked.

**Council Member Hertzberg** clarified her question. She wanted to know what City projects would not be funded if the item was approved.

**Mr. Becker** explained that the difference of \$3,085,607.00 could be used for the Walker Park Project or for the \$4M Water and Sewer Project that would help prevent leaks. Mr. Becker expressed that the Water and Sewer Project would have to be completed no matter what the Council decided that evening. He further explained that the rate payer may experience an increase in their bill in order to pay for the Water and Sewer Project if the council decided to amend the resolution and not take the \$10,000,000.00 standard deduction.

**Council Member Jones** wanted to know if a workshop was given to the non-profits in the area in order to understand the jargon used and how to complete the application.

**Mr. Becker** asked Mr. Steve Dotson, Internal Auditor, to answer Council Member Jones' question since it was Mr. Dotson's department who handled outreach.

**Steve Dotson**, Internal Auditor explained that the City developed a guide on how to fill out the application. The City also took calls and emails from individuals and non-profits that had specific questions about how to fill out the application.

**Council Member Jones** rephrased his question into a statement. The City had provided no workshop to the non-profits on how to complete the application. The City also did not have a public community meeting regarding the application for ARPA funds. He identified that the Community Resources Director/Equity Officer, Yolanda Fields, always holds a public meeting for the funds she manages for the City.

**Mr. Dotson** explained that based on his understanding the meetings that Ms. Fields held were to discuss deadlines and filing options of funds that her office manages. The City took strides to simplify the application process for non-profits to receive ARPA funding. The revised application forms were posted online in order to help answer questions.

**Council Member Jones** expressed his appreciation and explained that St. James Baptist Church created and managed the largest food pantry in the region. He wanted to ensure that the non-profits who had direct contact with the community were positively impacted by the decisions of the City. This was due to the enormous amount of work they do in the community.

**Susan Norton**, Chief of Staff asked for Mr. Dotson to provide the time frame of revenue loss that non-profits experienced. She went on and explained that she was speculating when it comes to the reason the non-profits had not received reimbursement. Ms. Norton explained that maybe it was due to not providing documentation of losses or maybe the non-profit had not kept the proof for that timeframe.

**Mr. Dotson** explained that the time frame was March 3, 2021 to March 3, 2022.

**Council Member Jones** responded to Ms. Norton and stated that was not the reason for the St. James Baptist Church.

**Mr. Becker** explained that the St. James Missionary Baptist Church filed two applications. One as a sub-grantee and one as a beneficiary. Mr. Becker explained that the City was currently working with the church and was ready to move forward regarding the reimbursement. He finished his comments by emphasizing the City's appreciation of the outstanding work of St. James Missionary Baptist Church.

**Council Member Jones** expressed his appreciation for Mr. Becker's explanation.

**Council Member Harvey** asked for clarification regarding the dates of March 3, 2021 to March 3, 2022 that Mr. Dotson had provided.

**Mr. Becker** verified the dates were correct that Mr. Dotson provided. He went on to explain that if there is any money left over from the allocation for non-profits, the City could take another look to see if the left-over money could be allocated to the non-profits who initially did not receive ARPA funding.

**Council Member Harvey** provided her understanding that the reimbursement was capped at \$900,000 by the City Council.

**Mr. Becker** explained that the \$900,000 was appropriated not capped. He went on to explain the future process of presenting an item to Council regarding the non-profits. Mr. Becker explained that the item would be a lumpsum request to reimburse non-profits with the left-over allocation. He also reminded the council that they had until 2024 to appropriate ARPA funds and 2026 to complete payment of the expenditures.

**Council Member Harvey** thanked Mr. Becker for answering and clarifying her questions regarding the reimbursement process for ARPA funds. She finished her comments by explaining she was ready to move to approve the resolution.

**Council Member Turk** asked if the dates of March 3, 2021 – March 3, 2022, period to demonstrate loss, had been set by the federal government.

**Mr. Becker** answered no to the question. Explained that it had been decided when the City created the process of applying for the program.

**Council Member Turk** asked if the timeframe could be expanded.

**Mr. Becker** answered yes. He went on to explain that the City Council could ask for another timeframe for expenditures to be reimbursed.

**Council Member Turk** asked if there were any limitations identified by the federal government regarding the timeframes that could be reimbursed for.

**Mr. Becker** explained that the only limitation was that ARPA funds had to be committed by 2024.

**Council Member Turk** thanked Mr. Becker.

**Council Member Scroggin** expressed concern regarding the previous decision to reimburse non-profits. He went on to explain that he was worried that the City Council would create new metrics that might affect past decisions. He did not want the decision that the City Council made regarding the item to affect distribution of funds for reimbursement for non-profits who had already gone through the submission process.

**Mr. Becker** explained that reimbursement was only for the 2021-2022 period that had been identified by the City.

**Council Member Bunch** expressed concern that by approving this item the City would lose funding for the \$4M Water and Sewer Project. She wanted to stick to the parameters that had been set by the City and explained she understood the burden on staff for the process of reimbursement.

**Mr. Becker** explained that during the application process the City had received \$21 million dollars' worth of requests.

**Council Member Wiederkehr** expressed his desire for the current applicants who have been approved to be reimbursed. Also, the applicants who had already filed for one option should be



able to come back and apply for the other option to receive ARPA funding. He thanked City staff for their work amongst each other to identify the need for the Walker Park Project and the Water and Sewer Project.

**City Attorney Kit Williams** asked Mr. Becker if the council would be able to change their decision again later if there were not enough applicants to receive the left over \$3,085,607.

**Mr. Becker** explained that he does not know at this point. The federal government has changed the rules several times regarding the ARPA funds.

**City Attorney Kit Williams** asked if the City might lose the funds if they approve to repeal their initial decision.

**Mr. Becker** answered that the city council may be able to come back and amend their decision later but might be restricted to spend the money on specific projects like water quality or sewer quality.

**City Attorney Kit Williams** explained that he just wanted to ensure the City did not lose the funds.

**Mr. Becker** explained that the City would not lose the funds. He went on to say that the City has plenty of water and sewer projects that the money could be spent on.

**Mayor Jordan** stated that no, the City would not lose the funds.

**Council Member Kinion** moved to approve the resolution. **Council Member Harvey** seconded the motion. Upon roll call the resolution passed 7-1. **Council Member Scroggin, Bunch, Turk, Harvey, Jones, Kinion, and Wiederkehr** voted yes. **Council Member Hertzberg** voted no.

*Resolution 237-22 as recorded in the office of the City Clerk*

**Amend §118.01 Applicability, §151.01 Definitions and §163.18 Short-Term Rentals:** an ordinance to amend §118.01 **Applicability** of the *Fayetteville City Code*, and § 151.01 **Definitions** and §163.18 **Short-Term Rentals** of the *Unified Development Code* to remove the conditional use permit requirement for type 2 short-term rentals, and to repeal the sunset provision.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director spoke about the history of short-term rentals. The topic was brought up about 10 years ago when it was discovered there were no rules in place to govern short-term rentals. Since there were no rules in place, short-term rentals became a health and safety violation as well as a disturbance to the neighbors who lived near the short-term rentals. When the short-term rental ordinance passed that included a sunset clause, all the short-term rentals that were currently operating within city limits were given a grace period in order to come into

compliance with the City's code. The grace period was extended two separate times but expired and the Planning Commission had to start reviewing the short-term rentals identified by staff that were not complying with the ordinance. Mr. Curth finished his comments by explaining there are two separate types of short-term rentals, Type 1 and Type 2.

**Britin Bostick**, Long Range Planning/Special Projects Manager provided the number of short-term rentals operating in Fayetteville as of that morning. She stated there were 875 Type 2 but only 323 of the Type 2 have a business license. Ms. Bostick directed everyone to view her presentation on the screens and explained that the Planning Commission would like the conditional use permit removed, 12 month start up language removed, and they also wanted the ordinance to be moved from the use conditions section to development and zoning standards section in the Unified Development Code for the City of Fayetteville. She ended her presentation by listing parking issues, vacancy of the short-term rental, and number of guests staying in the short-term rental as complaints she had received.

**Council Member Scroggin** asked how many conditional use permits the City had revoked.

**Ms. Bostick** responded that none had been revoked.

**Council Member Scroggin** expressed his concern that none had been revoked so far due to the amount of complaints that had been made. There was a circumstance where someone renting a short-term rental was flying a helicopter in and out of the property. He had also heard that when the neighbors started complaining about the short-term rentals the owners of the short-term rentals started harassing the neighbors. He finished his comments by stating that people need to be removed and not allowed to operate a short-term rental if they are not following the rules.

**Council Member Turk** expressed her concern that the only action the City can take regarding short-term rentals that are not operating according to ordinance, is to refer the issue to the City's prosecuting attorney.

**Council Member Harvey** expressed interest in the recommended changes included in the memo from the Planning Commission.

**Council Member Turk** voiced her preference of potentially zoning by type or by certain areas.

**Council Member Harvey** suggested that the short-term rentals be zoned by ward.

**Council Member Turk** followed up and spoke to Council Member Harvey and said that she felt that would be too strenuous.

**Council Member Kinion** asked if the data of how many short-term rentals were operating could be imposed on a map.

**Ms. Bostick** explained that short-term rentals are broken up into two separate groups. One group as conditional use and the other as having a business license.

**Mr. Curth** demonstrated that the map Council Member Kinion requested already exists on the City's website under GIS maps. The filters allow someone to select different types of licensed short-term rentals to be displayed on the map.

**Council Member Turk** thanked Mr. Curth for showing the map.

The City Council received 5 public comments regarding this ordinance.

**Council Member Turk** requested staff to provide a report showing how many unlicensed short-term rentals there are in the city.

**Mr. Curth** explained that he would be able to collect the data from AirDNA and would provide it during the next meeting. He also noted that several staff members and planning commissioners have mentioned that maybe the reason that short-term rental owners are not complying, is because they are nervous to go through the public hearing process. He went on to say, that is not a good reason to not comply with City ordinance. He suggested that there might be another way in order to obtain compliance from the owners. Mr. Curth finalized his comments by asking the City Council to provide guidance on their requests for staff regarding the item.

**Council Member Scroggin** asked if AirDNA had a cost.

**Mr. Curth** answered that yes, AirDNA had a cost. Mr. Curth explained that about 5 years ago a University of Arkansas class reached out to the City of Fayetteville to ask if there were any projects that the City needed to be completed and that could be completed by the students in the class. The City took the University of Arkansas up on the offer in order to determine how many short-term rentals were operating in Fayetteville. At that point in time the students were able to identify around 600 short-term rentals in Fayetteville by using AirDNA.

**Council Member Scroggin** expressed concern regarding the suggestion by the Planning Commission to remove the requirement for short-term rentals to obtain a conditional use permit. He went on to explain that he agreed with the public comment he received regarding short-term rentals reducing the housing stock in Fayetteville.

**Council Member Wiederkehr** provided a list of items, as guidance, that he wanted to have for the agenda item. He asked for a definition of what a sunset clause encompasses to be provided, does the City support the 1 or 2% threshold for short-term rentals, conversation regarding capping it at 1%, requiring parking permits, notification process to neighbors, examples of notification signage, discussion on how town-homes would differ than condos due to the land being exempted due to ownership for one but not the other, review of how many will be allowed per neighborhood, block, or street and will the owner of the short-term rental be required to be a Fayetteville or Arkansas resident in order to operate a short-term rental in Fayetteville. He ended his request by explaining that the collection of HMR taxes from the short-term rentals was at the top of his list.

**Council Member Hertzberg** asked if Mr. Curth could provide the University study that was mentioned earlier in the meeting.

**Mr. Curth** answered Council Member Hertzberg and explained he would search for the study.

**Council Member Harvey** expressed her appreciation of the citizens who provided public comment regarding the agenda item. She requested staff to provide information from other cities where short-term rentals have been restricted by zoning.

**Mr. Curth** explained that he would provide access to the PowerPoint presentation slides since the data was included in the slides and not the staff report.

**Council Member Harvey** explained that she wanted to be able to review the data from the slides.

**Council Member Hertzberg** asked for more information regarding short-term rentals being capped at 1% per neighborhood.

**Mr. Curth** asked for clarification regarding the request from Council Member Hertzberg.

**Council Member Turk** explained that she understood Council Member Hertzberg's question. If an area was zoned RSF-4, Residential Single-Family four units per acre, could a density cap be placed on that zone. She provided an example and asked if a RSF-4 zone could have a cap of 100 short-term rental units or if that could be determined by area.

**Mr. Curth** spoke and thanked the council members. He went on to explain his understanding was that the council wanted to know how the city can be divided into sections in order to determine how many short-term rentals can be in each section.

**Council Member Hertzberg** thanked Council Member Turk for the clarification.

**Council Member Wiederkehr** added an additional item to his earlier list. He asked to have a discussion on not removing smaller homes, that are affordable, from the housing market only to be turned into short-term rentals by the owner.

*This ordinance was left on the First Reading.*

**VAC 22-021 (927 E. Rockwood Trail/Thompson):** an ordinance to approve VAC 22-021 for property located at 927 East Rockwood Trail in ward 1 to vacate a portion of a utility easement.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director explained that a single-family home sat on the property with a 25ft. utility easement on the east property line. The property directly to the east mirrored the single-family home on the property. Mr. Curth went on and gave the history of the application and a summary of the discussions between the applicant and SWEPCO. Ultimately, the applicant and SWEPCO came to an agreement to reduce the easement to 5ft. SWEPCO also removed the other conditions they had initially requested.

**City Attorney Kit Williams** read the proposed condition change.

**Mayor Lioneld Jordan** asked for the proposed condition to be read again for clarification.

**City Attorney Kit Williams** re-read the proposed condition change.

**Council Member Bunch** moved to amend condition two to a 5ft. general utility easement shall be retained along the east side of the property. **Council Member Hertzberg** seconded the motion. Upon roll call the motion passed unanimously.

**Mr. Curth** explained that he did not have any additional information to provide to the council. He announced that Will Kellstrom was the applicant.

**Will Kellstrom**, Applicant's Representative explained that his client was currently adding on to the single-family home on the property. The applicant would like to use some of the property he will gain from reducing the utility easement to build on.

*City Attorney Kit Williams read the ordinance.*

**Council Member Scroggin** moved to suspend the rules and go to the second reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

**Council Member Scroggin** moved to suspend the rules and go to the third and final reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6610 as Recorded in the office of the City Clerk*

**VAC 22-020 (1070 N. Marinoni Dr/Marinoni Inc.):** an ordinance to approve VAC 22-020 for property located at 1070 North Marinoni Drive in ward 4 to vacate a portion of a utility easement.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director gave a description of the property and of the 1.4-acre utility easement. He called attention to the presentation screens to show the survey form. The franchise utilities consented to the vacation and did not ask for a new dedicated easement. Mr. Curth explained that due to no new dedicated easement being created, he requested that condition number three and four be removed from the ordinance.

**Council Member Hertzberg** spoke and made a motion.

**Mayor Lioneld Jordan** asked for clarification regarding removing condition three and four.

**City Attorney Kit Williams** requested that the council amend the word plant to facility in condition number two. He explained the change was for grammatical reasons only.

**Council Member Hertzberg moved to amend to remove conditions number three, four, and change the word plant to facility in condition two. Council Member Harvey seconded the motion. Upon roll call the motion passed unanimously.**

**Mr. Curth**, explained that he did not have any additional information to add and introduced the applicant, Connor Threet, with Crafton Tull.

**Connor Threet**, Applicant's Representative explained that before any property splits are done, he wanted to bring the vacation to be heard by the council. He went on to say that if the vacation was approved, it would allow the lot splits to be completed without having to come back to council.

**Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed unanimously.**

*City Attorney Kit Williams read the ordinance.*

**Council Member Scroggin moved to suspend the rules and go to the third and final reading. Council Member Bunch seconded the motion. Upon roll call the motion passed unanimously.**

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6611 as Recorded in the office of the City Clerk*

**RZN 22-041 (1453 South Root Ln./Holt):** an ordinance to rezone that property described in rezoning petition RZN 22-041 located at 1453 South Root Lane in ward 1 for approximately 2.50 acres from R-A, Residential-Agricultural to RSF-1, Residential Single-Family, 1 unit per acre.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director gave a description of the property and explained that the property was not connected to any public streets. The applicant originally requested to rezone the property to RSF-4, Residential Single-Family four units per acre. However, the Planning Commission and staff did not support RSF-4, Residential Single-Family due to this area being in the Hilltop Hillside Overlay, within tree canopy, and that it did not align with the future land-use map. The Planning Commission worked with the applicant and amended the request to RSF-1, Residential Single-Family one unit per acre. Once the applicant agreed, the rezone was



forwarded to the council with the recommendation of approval for RSF-1. Both the Planning Commission and staff supported changing the rezone request from RSF-4 to RSF-1.

**Justin Holt**, Applicant summarized the history and discussions he had with the Planning Commission and staff. He explained that he was surprised to see the item on the agenda again since he thought it was already approved at the Planning Commission. He finished his comments by saying there were two homes located on this property in the past. One of which was not covered by the tree canopy and had its own access to the private drive.

**Mayor Lionel Jordan** asked Council Member Harvey and Jones, ward 1 representative, if they had heard anything regarding this item.

**Council Member Harvey** answered no, that she had not heard anything.

**Council Member Jones** answered no, that he had not heard anything.

**Council Member Wiederkehr** moved to suspend the rules and go to the second reading. **Council Member Turk** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Harvey** expressed that she felt the request was reasonable.

**Council Member Harvey** moved to suspend the rules and go to the third and final reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6612 as Recorded in the office of the City Clerk*

**RZN 22-042 (N. Gregg Ave And N. Futrall Dr/Washington Regional Medical Center):** an ordinance to rezone that property described in rezoning petition RZN 22-042 located at the southwest corner of North Gregg Avenue and North Futrall Drive in ward 2 for approximately 4.05 acres from C-3, Central Commercial to UT, Urban Thoroughfare.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director presented the rezone request and explained that a portion of the area was kept clear until around 2000. C-3, Central Commercial, has a lot of entitlements and by down zoning the property to UT, Urban Thoroughfare, would create zoning

consistency in the area, potential development and supporting infrastructure. The Planning Commission and staff supported the request.

**Tim Hearndon**, Applicant spoke and thanked the council and explained he was available to answer questions.

**Council Member Bunch** asked Mr. Curth for a larger aerial view of the property.

**Mr. Curth** clarified and asked if Council Member Bunch wanted an aerial view or a zoning view.

**Council Member Bunch** answered with aerial view.

**Mr. Curth** displayed the aerial view on the screens in the chambers and explained the property was in the turquoise triangle.

**Council Member Kinion** moved to suspend the rules and go to the second reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Harvey** 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 unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6613 as Recorded in the office of the City Clerk*

**RZN 22-034 (113 E. Davidson St/Graves)**: an ordinance to rezone that property described in rezoning petition RZN 22-034 located at 113 East Davidson Street in ward 2 for approximately 0.14 acres from RSF-4, Residential Single-Family, 4 units per acre to NS-L, Neighborhood Services – Limited.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director provided a history of the property. The building on this property, that is fronting Davidson St., has been used as a business for the past 20 years based on business licenses that have been issued. Staff supported the rezoning due to the item creating consistent zoning in the area and due to the infrastructure already being in place. Mr. Curth commented on the fact that if the rezone passed, the required canopy would go from 25 to 20%.

**Navid Samavati**, Applicant's Representative stated that he was present if the council had any questions.

**Council Member Harvey** moved to suspend the rules and go to the second reading. **Council Member Kinion** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Harvey** 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 unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6614 as Recorded in the office of the City Clerk*

**RZN 22-040 (2255 E. Huntsville Rd/Broomfield)**: an ordinance to rezone that property described in rezoning petition RZN 22-040 located at 2255 East Huntsville Road in ward 1 for approximately 1.16 acres from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre to NS-G, Neighborhood Services – General.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director began his presentation by describing the location of the property and the surrounding buildings. The applicant requested to rezone the area of the property that is R-A, Residential Agricultural to NS-G, Neighborhood Services – General. The applicant wanted to maintain the current zoning of RSF-4, Residential Single-Family, four units per acre on part of the property in order to continue to have a single-family home there. The Planning Commission and staff supported the item for approval due to the request aligning with the 2040 plan. Mr. Curth explained that NS-G was the maximum zoning district the Planning Commission would consider for this property.

**John Broomfield**, Applicant explained that he has already reached out to his neighbors regarding his request. Mr. Broomfield explained that his neighbors do not have any issues with this request.

**Council Member Harvey** moved to suspend the rules and go to the second reading. **Council Member Bunch** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Harvey** thanked Mr. Broomfield for reaching out to his neighbors regarding his rezone request.

**Council Member Harvey** moved to suspend the rules and go to the third and final reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6615 as Recorded in the office of the City Clerk*

**RZN 22-043 (560 W. Van Asche Dr./Tune & Tune):** an ordinance to rezone that property described in rezoning petition RZN 22-043 located at 560 West Van Asche Drive in ward 2 for approximately 13.56 acres from R-A, Residential-Agricultural to UT, Urban Thoroughfare.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director described the location of the property and the surrounding area and structures. A concrete plant has been located on the property for around 20 years. A recycling center and a protected stream is also located on the property. Mr. Curth provided the history of how the property was annexed into Fayetteville in 2010 and was zoned Residential Agricultural. The applicant originally requested to rezone the property from R-A, Residential Agricultural to I-2, Heavy Industrial. Once the planning staff completed their review of the property and the request, they did not support the request to rezone from Residential Agricultural to Heavy Industrial. Mr. Curth provided information regarding the protected stream and displayed a map of the stream on the large screens in the chambers. Staff reached out to the applicant and shared the reason they recommended denial. The applicant decided to amend the request and asked to rezone the property to UT, Urban Thoroughfare. Staff supported the amended request.

**Robert Rhoades**, Applicant's Representative explained that one of the tenants on the property wanted to continue the recycling business that has been on the property in previous years. In order to continue the recycling business, the property needed to be zoned I-2, Heavy Industrial by right. The current owner of the recycling business has not been able to move forward with his business. This is because 6 months has passed since the previous owner had operated the business and the business is no longer grandfathered in. Mr. Rhoades went on to explain that the applicant understands that he will have to submit a conditional use permit request in the future in order to allow a recycling business on that section of the property.

**Mayor Lioneld Jordan** commented on remembering when the property was annexed by the City of Fayetteville.

**City Attorney Kit Williams** made a comment as well and explained that Lioneld Jordan was already the mayor at that point in time. Mr. Williams went on and said when the City annexes

property it is automatically zoned as R-A and explained that when businesses stop operating for 6 months their right to continue lapses.

**Council Member Scroggin** asked Mr. Curth if the council decided to zone the property UT, Urban Thoroughfare then the recycling issue would have to come back as a conditional use permit request.

**Mr. Curth** answered yes and explained that Council Member Scroggin was correct. He went on to explain that there are exceptions in the City's code that allow the business to continue operating. However, as City Attorney Kit Williams explained, since the business did not operate for 6 months, they lost the ability to continue to operate without a conditional use permit.

**Council Member Scroggin** asked Mr. Curth if recycling would be allowed if the property was zoned to I-2, Heavy Industrial.

**Mr. Curth** explained that recycling would be allowed by right if the property was zoned I-2, Heavy Industrial.

**Council Member Scroggin** explained that he did not want the property to be rezoned to I-2. He agreed with staff that UT, Urban Thoroughfare made sense in the location.

**Mayor Lioneld Jordan** asked the ward 2 council members if they had heard anything regarding the item.

**Council Member Kinion** answered and said he had not heard anything.

**Council Member Hertzberg** moved to suspend the rules and go to the second reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Hertzberg** moved to suspend the rules and go to the third and final reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6616 as Recorded in the office of the City Clerk*

**VAC 22-010 (2015 S. Vale Avenue/ Titan Vale, Llc):** an ordinance to approve VAC 22-010 for property located at 2015 South Vale Avenue in ward 1 to vacate a portion of an alley right-of-way.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth**, Development Services Director gave a description of the property's location and the area around it. Staff and the Planning Commission supported vacating the alley since it no longer served a purpose. The applicant also obtained signatures from the adjacent property owner agreeing to vacate a portion of the alley. Staff talked to the utility companies and they did not have any issues with the request.

**Will Kellstrom**, Applicant's Representative explained that he would be happy to answer any questions the council had.

**Council Member Wiederkehr** moved to suspend the rules and go to the second reading. **Council Member Harvey** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

**Council Member Harvey** moved to suspend the rules and go to the third and final reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed unanimously.

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 6617 as Recorded in the office of the City Clerk*

**Appeal Cup 22-039 (2992 N. Oak Bailey Dr./Oak Bailey Cluster Development):** a resolution to grant the appeal of Council Members Sarah Bunch, Teresa Turk, and Sloan Scroggin to deny conditional use permit CUP 2022-039 for a cluster housing development for property located at 2992 North Oak Bailey Drive in ward 3, and to deny a variance to § 164.22(d) of the Unified Development Code to exceed the maximum number of dwelling units permitted.

**Jonathan Curth**, Development Services Director explained that the property had a zoning code of RSF-4, Residential Single-Family four units per acre. He went on to describe the property and the area around it. The applicant initially requested a conditional use permit in order to build cluster housing on the property. The zoning of RSF-4, Single-Family four units per acre allows, by right, cluster housing of 12 units. The applicant wanted to include 19 units in the cluster housing, shared open places, parking per bedroom, and had taken traffic into consideration. Mr. Curth explained that the planning staff supported the conditional use permit request. The applicant did have another option suggested to him and it was to apply for a variance. The applicant chose not to apply for a variance since it would alter the layout for the cluster housing. Mr. Curth went on to provide answers to the questions that he had received during the scheduled tour of the



property. The questions he received were about access to the property, how many units allowed by right, he verified there were no hydric soils, and he calculated a slope of 8%.

**Brian Teague**, Applicant's Representative gave a presentation that included slides. Mr. Teague reference that the appeal addressed the compatibility of the project, variance request, and other development related items. Mr. Teague provided a background regarding the property and presented the slides on the screens located in chambers. He explained that in 2018 there were 5 buildings located on the property, one single-family home, large out buildings, and a driveway. He said due to these structures being placed on the property before shows that the property can be developed. Mr. Teague went on to display the floor plans and elevation plans of the cluster housing being proposed. He also talked about the scale of the homes, price point, and growing popularity of cluster housing. At the end of his presentation Mr. Teague explained that the applicant would like to have more time to talk to the neighbors in the area. By tabling the item, it would allow them additional time to talk with the neighbors.

**Council Member Scroggin** explained that one of the neighbors in the area asked him to support the appeal so it could be heard by council.

**Council Member Bunch** explained she also had a citizen that requested her to support the appeal.

**Council Member Turk** explained that she always wanted to give people the ability to appeal and was glad the council got to tour the property.

The City Council received 13 public comments regarding this resolution.

**Council Member Hertzberg** expressed her support of tabling the item in order to give the developer more time to talk with the neighbors.

**Council Member Scroggin** expressed his support to table the item.

**Council Member Bunch** also expressed her support to table the item. She then asked Mr. Curth what the property's current zoning code was.

**Mr. Curth** answered that the property had a zoning code of RSF-4, Single Family four units per acre.

**Council Member Bunch** explained that she was very tired due to how late the meeting had already ran.

**Council Member Turk** expressed her support to table the item and wanted the item to be placed first in the unfinished business section.

**Mayor Lioneld Jordan** explained that it should be the first one heard under unfinished business.

**Council Member Bunch** explained that Mr. Teague asked for the item to be tabled until the November 15, 2022 City Council meeting.

**Mr. Curth** explained that if a project is still active and is tabled to a specific date, it does not fall off the agenda at the end of the year.

**City Attorney Kit Williams** echoed the response given by Mr. Curth.

**Council Member Harvey** asked who created the packet that listed the requirements the neighbors have requested. She went on to explain that she would like to talk to the neighbors because the neighbors might not want the item tabled.

**Mayor Lioneld Jordan** explained that it was up to the City Council if the item was tabled or not.

**Council Member Turk** asked to speak to Mr. Warner.

**Council Member Harvey** expressed support for Council Member Turk's request.

**Mr. Warner** explained that he appreciated the City Council allowing him to address the topic of tabling the item. Mr. Warner explained that he understood that it was late at night and that the council wanted to make sure they were making the right decision once they had a chance to rest. However, he went on to state that he did not think the developers would reach out to the neighbors since they had not in the past. He went on to provide a history of the item and shared his experiences with the developer not sharing information with the neighborhood.

**Council Member Kinion** asked for Mr. Warner to provide pictures or video of the flooding that has happened in the area.

**Mr. Warner** answered and said he would look back through his photos and photos that others had sent him.

**Council Member Bunch** expressed her concern that two weeks is not enough time for the developer to get in contact with the neighborhood.

**Council Member Kinion** asked to hear from the developer regarding tabling the item.

**Council Member Hertzberg** asked to bring the developer up to the podium.

**Mr. Teague** explained that the developers had more material and would be able to share it with the neighbors. He felt that the item needed to be tabled until November 15, 2022 in order to give the developers enough time to reach out to the neighbors.

**Council Member Wiederkehr** explained that the developers own the property and have the right to develop it. He went on to talk about the number of units being proposed to be placed on the property and about the developer applying for a variance.

**City Attorney Kit Williams** explained that due to the type of development being designed the developer would still have to obtain a conditional use permit.

**Council Member Wiederkehr** identified that the conditional use permit appeal of the Planning Commission's decision to deny was the item before the council.

**City Attorney Kit Williams** agreed with Council Member Wiederkehr and added the fact that the developer was also appealing the decision regarding the variance.

**Council Member Wiederkehr** asked Mr. Curth, if the developer omitted the variance if they would need to submit a new conditional use permit request.

**Mr. Curth** explained that it would need to be an amendment to the existing request.

**Council Member Wiederkehr** expressed his desire to clear up any misconceptions regarding development and stormwater issues to the neighbors of the potential development. He explained that if the development moves forward, it does not have to solve their stormwater issues; it just can't exacerbate it. He finished his comments by thanking all the citizens for coming to the meeting and talking about the item. He also expressed appreciation for city staff and the other members of council.

**Council Member Scroggin** talked about stormwater and flooding issues. He went on to express his hope that a plan can be created to prevent future flooding and alleviating the current stormwater issues.

**Council Member Bunch** asked Mr. Curth about the drawings of the project and the fact that it did not have sidewalks.

**Mr. Curth** explained that the watercolor drawing she was given was only the conceptual drawing. By ordinance, circulation or pedestrian access or sidewalks are required for cluster housing.

**Council Member Bunch** asked for additional information regarding the applicant for a variance.

**Mr. Curth** explained that the only variance request that had been received regarding the project was to allow 19 units.

**Council Member Bunch** asked if that decision caused the developer to have to place sidewalks in the development.

**Mr. Curth** answered with yes.

**Council Member Turk** agreed with Council Member Scroggin regarding the stormwater issues. She expressed that the city code needed to be amended to ensure that citizens are protected.

**Council Member Kinion** moved to table the resolution until the November 15, 2022 City Council meeting. **Council Member Bunch** seconded the motion. Upon roll call the motion passed 7-0. **Council Member Scroggin, Bunch, Turk, Hertzberg, Harvey, Kinion, and Wiederkehr** voted yes. **Council Member Jones** was absent for the vote.

*This resolution was tabled to the November 15, 2022 City Council meeting.*

**Announcements:**

**Susan Norton**, Chief of Staff announced that the final bulky waste pick-up event would be held in ward 2. It would take place the weekend of October 8, 2022.

**City Attorney Kit Williams** announced that the lawsuit that was filed by a citizen regarding Prairie Street Live's conditional use permit has been dropped. He went on to explain that the decision made by the City Council would be upheld.

**City Council Agenda Session Presentations:**

**City Council Tour:**

**Date:**

October 3, 2022

**Time:**

4:00 p.m.

**Address:**

2992 N. Oak Bailey Dr.

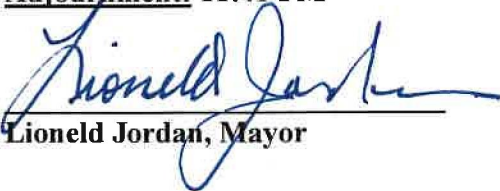
**Parking:**

Parking is available on-street on Oak Bailey and on the extended driveway apron into the property from Oak Bailey.

**Request:**

Appeal by Council Members Bunch, Scroggin and Turk on behalf of a resident from the Planning Commission's CUP approval for a 19-unit cluster housing development.

**Adjournment: 11:41 PM**

  
Lioneld Jordan, Mayor

  
Kara Paxton, City Clerk Treasurer

