

Council Member Sonia Gutierrez
Ward 1 Position 1

Council Member D'Andre Jones
Ward 1 Position 2

Council Member Mark Kinion
Ward 2 Position 1

Council Member Matthew Petty
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 Kara Paxton

**City of Fayetteville Arkansas
City Council Meetings
January 5, 2021 and January 7, 2021**

A meeting of the Fayetteville City Council was held on January 5, 2021 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas. The agenda was completed through Unfinished Business. The meeting was reconvened on January 7, 2021 starting at New Business.

Mayor Jordan called the meeting to order.

Oaths of Office:

Lioneld Jordan, Mayor

Kara Paxton, City Clerk Treasurer

D'Andre Jones, Council Member Ward 1

Matthew Petty, Council Member Ward 2

Sarah Bunch, Council Member Ward 3

Holly Hertzberg, Council Member Ward 4

Judge Casey Jones administered the oaths of office.

Mayor Jordan thanked Judge Jones. He congratulated the Council Members and stated he looks forward to serving with them.

In order to create social distancing due to the Coronavirus, COVID-19 pandemic, Council Members Sonia Gutierrez, Mark Kinion, Matthew Petty, Sloan Scroggin, and Teresa Turk joined the meeting via online using a video conferencing service called Zoom.

Mayor Lioneld Jordan, Council Member D'Andre Jones, Council Member Sarah Bunch, Council Member Holly Hertzberg, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Deputy Chief of Police Jamie Fields, Chief Financial

Officer Paul Becker, and two staff members from the IT Department were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: In light of the current health concerns, Fayetteville City Hall is closed to the public. This meeting is being held virtually. I am present in Council Chambers with Council Member Sarah Bunch, Council Member D'Andre Jones, and Council Member Holly Hertzberg. Also present is a handful of essential support staff consisting of City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Deputy Chief of Police Jamie Fields, Chief Financial Officer Paul Becker and two representatives from the IT Department. Other City Council Members, city staff, and the public are participating online or by phone. Other than those of us you see before you, the voices you hear during the course of this meeting are being recorded for public record and piped into the Council Chambers. In anticipation of an unusually full agenda, the City Council will meet two times this week. Today's meeting will adjourn after the conclusion of Unfinished Business items. The second meeting will be held on January 7, 2021 at 5:30 p.m. and will commence with New Business items. Participation remains of the upmost importance to the City of Fayetteville. We have provided many ways to participate in the meeting, which includes contacting Council Members, City Clerk office or city staff prior to the meeting. The meeting can be viewed through Fayetteville's government channel online, YouTube, and joining the Zoom conference by smartphone, tablet or computer. Staff can view when you join the meeting and when you raise your virtual hand. We ask that you refrain from raising your virtual hand until the public comment portion of the item on which you wish to comment. I will provide a longer than usual period of time for you to raise your virtual hand, so as to ensure time to be recognized. Fayetteville residents will be allowed to speak first. When recognized, please state your name and address for the record. Public comment shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Each speaker has one turn to speak. Each speaker is allowed five minutes to be broken into segments of three and two minutes, which staff will monitor. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote.

City Council Meeting Presentations, Reports, and Discussion Items:

Election of Vice Mayor

Mayor Jordan opened the floor for nominations.

Council Member Turk: I would like to nominate Council Member Bunch for Vice Mayor.

There were no other nominations.

Mayor Jordan closed the floor for nominations.

Council Member Turk made a motion to nominate Council Member Bunch as Vice Mayor. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

Council Member Bunch was elected as Vice Mayor.

2021 City Council Committee Appointments

Mayor Jordan sent the appointments out to everyone for review. There was no discussion on the City Council Committee Appointments.

Council Member Gutierrez made a motion to accept the City Council Committee Appointments. Council Member Bunch seconded the motion. Upon roll call the motion passed unanimously.

Report of Firemen's and Policemen's Pension and Relief Fund

Mayor Jordan presented the report on the Firemen's Pension and Policemen's Pension to the City Council.

Monthly Financial Report

Paul Becker, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated property taxes are down, which is to be expected. He stated when you have a recession the delinquencies go up in the current year and then you pick them up in delinquent taxes the next year. He stated sales taxes are very strong and up 6% compared to last year. He stated this is not only a very welcome surprise, but the best that could be expected under the circumstances. He spoke briefly about licenses, permits, and court fees. He stated the revenue is relatively flat compared to what the budget was. He stated he is very happy to see where the city is and doesn't think we could expect to be in a better position than where we are right now. He spoke about expenditures. He stated street funds are up 4%. He spoke about the parking fund being down 40% of the budget, but it's still not in danger of not being able to meet operations. He stated HMR funds are down 80% of collections. He stated Water & Sewer fund billings are up about 2%. He spoke about Trash & Recycling holding its own at this time and will have a bit of a loss for this year, but it was expected. He stated Airport gas fuel sales are about 80% down and flights are similar to what they were last year. He stated we are doing much better than we could have expected in view of the pandemic and how it has cut back drastically on the economic activity in the city.

Council Member Gutierrez: Thank you for the HMR information. Will the art subsidy continue, despite the down income?

Paul Becker: It will not continue. We will not be able to afford that in 2021. We will look at that moving forward, but it is not budgeted into 2021. We will have enough issues just maintaining operations, but we will not have that additional amount to help fund some of the arts.

Council Member Gutierrez: Okay. Thank you.

Advertising and Promotion Commission Appointment - Elvis Moya

Council Member Petty stated at times the Advertising and Promotion Commission has to make appointments to fill vacancies. He stated about two months ago, one of the members was no longer eligible to serve as a representative from the tourism sector. He stated we had a committee that interviewed several applicants and it was unanimous in its recommendation for Mr. Moya and the full Commission agreed with that. He spoke about State law.

Council Member Bunch made a motion to approve the appointment of Elvis Moya. Council Member Gutierrez seconded the motion. Upon roll call the motion unanimously.

Mayor Jordan: Thank you all very much. I want to congratulate Kara Paxton for being elected City Clerk.

Kara Paxton, City Clerk Treasurer: Thank you very much. I've really enjoyed working here at the City of Fayetteville for the last year. I've met so many wonderful people here at the city. I love that we always work very hard for the citizens, even throughout this entire pandemic. I feel that leadership comes from the top down. I appreciate everything our Mayor does, our Chief of Staff, and all of our department heads.

Mayor Jordan: Thank you, Kara. Congratulations.

Agenda Additions: None

Consent:

Approval of the December 15, 2020 City Council Meeting Minutes.

Approved

CEI Engineering Associates, Inc. Amendment: A resolution to approve an amendment to the contract with CEI Engineering Associates, Inc. in the amount of \$23,300.00 for additional design services associated with Phase I of Centennial Park at Millsap Mountain, and to approve a budget adjustment – 2019 Park Improvement Bond Project.

Resolution 01-21 as recorded in the office of the City Clerk

G & W Diesel/EVS - 2019 Firefighting Facilities Bond Project: A resolution to approve the purchase of a new fire apparatus from G & W Diesel/EVS in the amount of \$818,021.00 plus any applicable delivery charges, pursuant to a Houston-Galveston Area Council Cooperative Purchasing contract, for use by the Fayetteville Fire Department, to approve a project contingency in the amount of \$65,000.00, and to approve a budget adjustment - 2019 Firefighting Facilities Bond Project.

Resolution 02-21 as recorded in the office of the City Clerk

Environmental Consulting Operations, Inc. Amendment No. 7: A resolution to approve Amendment No. 7 to the contract with Environmental Consulting Operations, Inc. in the amount of \$63,000.00 for wetlands mitigation site monitoring and management in 2021.

Resolution 03-21 as recorded in the office of the City Clerk

Alltel Corporation dba Verizon Wireless Second Amendment: A resolution to approve the Second Amendment to the Tower Attachment Lease Agreement with Alltel Corporation d/b/a Verizon Wireless to provide for equipment modifications, authorize the transfer of equipment to the new Township water tank, and increase the monthly rental payment to \$2,400.00.

Resolution 04-21 as recorded in the office of the City Clerk

Arkansas One-Call System, Inc.: A resolution to approve the purchase of utility locating services for 2021 from Arkansas One-Call System, Inc. in an amount not to exceed \$30,000.00.

Resolution 05-21 as recorded in the office of the City Clerk

Bid #20-78 Vance Brothers, Inc.: A resolution to award Bid #20-78 and authorize a contract with Vance Brothers, Inc. in the amount of \$201,924.00 for asphalt repairs and microsurfacing at the Noland and West Side Water Resource Recovery Facilities, and to approve a project contingency in the amount of \$20,192.40.

Resolution 06-21 as recorded in the office of the City Clerk

CH2M Hill Engineers, Inc. Amendment 12: A resolution to approve Amendment No. 12 to the Agreement for Operations, Maintenance and Management Services between the City of Fayetteville, Arkansas and CH2M Hill Engineers, Inc. in the amount of \$7,339,051.00 for services in 2021.

Resolution 07-21 as recorded in the office of the City Clerk

Bid #21-01 Reflectorized Paint Markings: A resolution to award Bid #21-01 and authorize the purchase of reflectorized paint markings from Time Striping, Inc. in variable amounts and for varying unit prices as needed through the end of 2021.

Resolution 08-21 as recorded in the office of the City Clerk

Bid #21-03 Truck Hauling Services: A resolution to award Bid #21-03 and authorize the purchase of truck hauling services from Trulove Dirt Works, LLC as a primary supplier and to authorize the use of other bidders based on price and availability as needed through the end of 2021.

Resolution 09-21 as recorded in the office of the City Clerk

Bid #21-05 Aggregate Materials: A resolution to award Bid #21-05 and authorize the purchase of aggregate materials from APAC-Central, Inc. as primary supplier in variable amounts and for varying unit prices and to authorize the use of other bidders based on price and availability as needed through the end of 2021.

Resolution 10-21 as recorded in the office of the City Clerk

Bid #21-07 Hillside Gravel: A resolution to award Bid #21-07 and authorize the purchase of hillside gravel from Les Rogers, Inc. in variable amounts and for varying unit prices as needed through the end of 2021.

Resolution 11-21 as recorded in the office of the City Clerk

Bid #21-09 Concrete Drainage Pipe: A resolution to award Bid #21-09 and authorize the purchase of concrete drainage pipe from Scurlock Industries as a primary supplier in variable amounts and for varying unit prices as needed through the end of 2021.

Resolution 12-21 as recorded in the office of the City Clerk

Bid #21-10 Screened Topsoil: A resolution to award Bid #21-10 and authorize the purchase of screened topsoil from Les Rogers, Inc. as needed through the end of 2021.

Resolution 13-21 as recorded in the office of the City Clerk

Bid #21-11 Retaining Wall Blocks: A resolution to award Bid #21-11 and authorize the purchase of retaining wall blocks for varying unit prices from various vendors, based on individual job design, specification and cost evaluation, as needed through the end of 2021.

Resolution 14-21 as recorded in the office of the City Clerk

Bid #21-12 High-Performance Cold Mix Asphalt: A resolution to award Bid #21-12 and authorize the purchase of high-performance cold mix asphalt from Hutchens Construction Company, LLC as needed through the end of 2021.

Resolution 15-21 as recorded in the office of the City Clerk

Bid #21-14 Tree Grates and Frames: A resolution to award Bid #21-14 and authorize the purchase of tree grates from Neenah Foundry Company as needed through the end of 2021.

Resolution 16-21 as recorded in the office of the City Clerk

Bid #21-15 Preformed Thermoplastic Pavement Markings: A resolution to award Bid #21-15 and authorize the purchase of preformed thermoplastic pavement markings from Geveko Markings, Inc. as primary supplier and from Preform, LLC and Ennis-Flint, Inc. as secondary suppliers in variable amounts and for varying unit prices as needed through the end of 2021.

Resolution 17-21 as recorded in the office of the City Clerk

Bid #21-17 Curb and Gutter Construction Services: A resolution to award Bid #21-17 and authorize the purchase of curb and gutter construction services from Sweetser Construction, Inc. in variable amounts and for varying unit prices as needed through the end of 2021.

Resolution 18-21 as recorded in the office of the City Clerk

Seven Hills Homeless Center Repair and Maintenance Agreement: A resolution to approve a contract with Seven Hills Homeless Center to provide funding assistance in the amount of \$51,000.00 for maintenance and repairs at the Walker Family Residential Community Complex in 2021.

Resolution 19-21 as recorded in the office of the City Clerk

Cellco Partnership d/b/a Verizon Wireless: A resolution to approve the purchase of wireless services and equipment from Cellco Partnership d/b/a Verizon Wireless, pursuant to a National Association of State Procurement Officials ValuePoint cooperative purchasing agreement, on an as needed basis through August 11, 2024.

Resolution 20-21 as recorded in the office of the City Clerk

Chevrolet of Fayetteville: A resolution to approve the purchase of nine vehicles from Chevrolet of Fayetteville for Fleet Operations in the total amount of \$283,021.00, pursuant to a state procurement contract.

Resolution 21-21 as recorded in the office of the City Clerk

HUB International Mid-America: A resolution to approve a contract with HUB International Mid-America in the amount of \$13,000.00 for insurance brokerage and consultation services from January 1, 2021 through December 31, 2021, with automatic renewals for four additional one year terms in the amount of \$13,000.00 per year, to authorize the payment of policy premiums, to authorize the payment of deductibles related to claims filed by the city, and to approve a project contingency in the amount of \$1,300.00 per year.

Resolution 22-21 as recorded in the office of the City Clerk

Northwest Arkansas Regional Planning Commission: A resolution to approve a one-year contract with the Northwest Arkansas Regional Planning Commission in the amount of \$42,591.11

for a Stormwater Education Program for 2021 to satisfy portions of the NPDES Phase II Stormwater Permit Requirements.

Resolution 23-21 as recorded in the office of the City Clerk

Council Member Bunch moved to accept the Consent Agenda as read. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Express Intent for Trail Economic Development: A resolution to express the intent of the City Council to study and develop ordinances to regulate and promote trail economic development in the City of Fayetteville. *At the December 1, 2020 City Council meeting this item was tabled until the first meeting in January 2021.*

Mary McGetrick, Long Range Planning & Special Projects Manager gave a brief PowerPoint presentation. She stated in our research, a common development initiative associated with trail systems and green ways have garnered heightened interest from developers and governmental agencies. She stated trends hold some tremendous potential for economic development as an important convergence point of transportation economics. She stated these spaces, especially in mid-sized cities tend to be underutilized for a variety of different reasons, including existing and underlying zoning regulations, access difficulties, and environmental considerations. She stated staff has found that with the Cultural Arts Corridor, we expect to see additional heightened interest in real estate development and retail sectors, adjacent to the green way. She stated our primary goal is to encourage the continuing use of the transportation corridor for community and recreation, while creating a framework for future economic and residential growth so that growth can be guided in a responsible way. She spoke briefly about the goals in the report. She stated we hope that by clearly identifying areas prime for success, staff will be able to focus as we move through our various initiatives. She stated encouraging defined geographical nodes allows us flexibility and control. She stated her hope is that the Greenway is governed by flexible regulation, which allows for growth, while at the same time balancing increased developmental interest with the need for a solid environmental and neighborhood protection.

Hugo Agosto stated on Goal 1, Section C, we wanted to focus on increasing local entrepreneurship presence and resiliency adjacent to the trail. He stated this is to expand and diversify our commercial space. He stated this requires more creativity defining commercial spaces and revising our food vendor ordinance creates conditions for entrepreneurs to envision their business thriving by expanding their spatial opportunities to engage consumers. He spoke about revising existing mobile vendor regulations to operate in more public locations and converting underutilized city property into temporary mobile vendor courts. He stated diversification of commercial spaces permits an entrepreneur to access different price points of entry and allows them to start climbing the commercial spatial ladder. He spoke about viable city owned property

Council Member Turk: I like the revisions. They are really good. You highlighted Goal 1, Section C. Do you anticipate developing a plan and bringing it back or phasing that plan in that

you present to the Council? This looks like a resolution of intent so you can start digging deep into this. I'm wondering how you might roll it out.

Mary McGetrick: We are going to create a timeline for all of our goals should this resolution be passed. We have three goals and within each goal there are sub-goals, which is included in the report. We would have to create a timeline based on staff time and resources. Some of these are larger goals and some of them are smaller. They're associated with an ordinance amendment here and there. For the most part, our goals would have to come back to Council for review and approval. However, if you'd like us to provide a timeline, we'd be happy to do that.

Council Member Turk: I would appreciate that, and it would help me to understand the process a little bit more that you all anticipate. This is really great and I'm excited about it. I want to make sure that environmentally we're sustainable and that those considerations are taken up.

Council Member Gutierrez moved to approve the resolution. Council Member Kinion seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 24-21 as recorded in the office of the City Clerk

Short-Term Rental Regulations: An ordinance to Amend §118.01 *Applicability* of Chapter 118 **Business Registry and Licenses**, Chapter 151 **Definitions**, Chapter 161 **Zoning Regulations**, §162.01 *Establishment/Listing* of Chapter 162 **Use Units**, and Chapter 163 **Use Conditions** of the *Unified Development Code* to classify the types of short-term rentals and create regulations to permit and inspect the rentals. *This agenda item was tabled until the first meeting in 01/2021. At the December 1, 2020 City Council meeting this item was tabled until the 01/05/2021 City Council meeting.*

Council Member Turk moved to suspend the rules and go to the second reading. Council Member Bunch seconded the motion. Upon roll call the motion passed 6-2. Council Members Bunch, Turk, Hertzberg, Jones, Petty, and Scroggin voting yes. Council Members Gutierrez and Kinion voting no.

City Attorney Kit Williams read the ordinance.

Mary McGetrick, Long Range Planning & Special Projects Manager stated she feels that this item is best amended at the community level before being brought back to the full Council for further consideration. She stated this is something that Planning Commission worked on for a really long time and staff has been working on for over a year now. She stated to navigate and review the amount of public comment and research we've done in the last six months, that it would be best that this is reviewed at the subcommittee level.

Council Member Bunch: I think that's an excellent suggestion to send it to the Ordinance Review.

Mayor Jordan: I think so too.

Council Member Kinion: I agree.

City Attorney Kit Williams: Mayor, since we're just getting organized, we thought it should probably go to the first meeting in February. This would give the Ordinance Review Committee time to meet and discuss this before taking it back to the City Council.

Council Member Turk: Going to Ordinance Review is a good idea. I would appreciate Ordinance Review taking a look at a third type of short term rental and not just having a type one and type two, but sort of the hybrid between type one and type two. I don't know if that's appropriate to make that request right now, but since it's going to go to a review, I might throw that in there.

Mayor Jordan: You are on the Council and I guess you can make that ask.

City Attorney Kit Williams: It's appropriate for other Council Members, not even members of the Ordinance Review Committee, to attend and make suggestions or comments. That's up to the Chairman of the Ordinance Review Committee, but usually that's allowed.

Council Member Turk: Thank you. I would appreciate being included when that meeting gets scheduled.

Mayor Jordan: Any of those meetings that we have, any Council Members can attend those meetings and voice their opinion. They may not be voting on that particular committee, but they can certainly make their recommendations to the committee.

Council Member Gutierrez stated she looked forward to attending the Ordinance Review Committee. She stated she received comments asking about parties or gatherings and how that will be enforced and what are the consequences for not following the rules. She spoke about unrelated people living in the same place. She spoke about the rooms being safe.

Council Member Scroggin: I got a lot of calls from both sides. It seemed like what both sides could almost agree on is that if there are bad actors, the neighborhood should be able to have a mechanism to let the city know and maybe remove that specific house from being able to be an Airbnb. I don't think either side wanted all the restrictions, but if somebody is bringing in 10 to 12 cars and having a party, that the city could do something about that.

There was a brief discussion about the Council Members who are on the Ordinance Review Committee.

Mayor Jordan: I know you all don't have a Chair yet, but I would like to have an idea when you might be able to meet. Does anybody have an idea? They don't have a Chair right now.

Council Member Scroggin: We are meeting this Thursday at 5:30 p.m. for a City Council meeting, so maybe we can meet the next Thursday at 5:30 p.m.

There was a brief discussion about possibly having the Ordinance Review Committee meeting on January 14, 2021.

City Attorney Kit Williams: Are we going to table this until the second meeting in February?

Council Member Scroggin moved to table the ordinance to February 16, 2021. Council Member Petty seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled to the February 16, 2021 City Council meeting.

Fayetteville Police Department Policies: A resolution to approve Fayetteville Police Department Policies 44.1.1 Juvenile Operations and 84.1.1 Property Management: Acquired and In-Custody. *Council Member Marsh requested to remove this agenda item from the Consent Agenda per a request she received from a citizen. Member of public was not logged into zoom. City Council voted to table this item until the beginning of NB. At the December 15, 2020 City Council meeting this item was tabled until the January 5, 2021 City Council meeting.*

Jamie Fields, Deputy Chief of Police gave a brief description of the resolution. She stated the Police Department is accredited by the Commission on Accreditation for Law Enforcement Agencies and by the Arkansas Law Enforcement Accreditation Program. She stated as part of our accreditation program through CALEA, we go through a continual process of reviewing and revising our policies. She stated it's not unusual for us to be bringing forward revisions to existing policies. She stated we are proud of the CALEA designation because only about 5% of law enforcement agencies in the United States achieve that accreditation through CALEA. She stated we have been accredited since 2013 and the events that occurred this past year shows the value to the Police Department and the city for that accreditation process. She stated while other law enforcement agencies across the country were scrambling to establish policies in areas such as de-escalation, use of force continuum, duty to intervene and early warning systems, the Fayetteville Police Department had already established those processes because of our CALEA requirements. She stated both the Juvenile Operations and Property Management Policies were previously approved by City Council. She stated the changes to the Property Management Policy are being made to tighten up security protocols and oversight. She stated the amendment to the Juvenile Policy is due to new CALEA standards on non-custodial interviews. She stated non-custodial interviews are not new to the Fayetteville Police Department, nor to Arkansas Law or the Rules of Criminal Procedure. She stated it's only an addition to our policy. She briefly explained the difference between custodial interrogation and non-custodial interviews. She stated per Council Members request to soften the language in the policy, we have added amendments that are in your agenda packet. She stated per Council Member Smith's recommendation to ensure gender pronouns are neutral throughout the policy, we can easily clean those up. She stated the policy follows the law as it relates to interviewing juveniles and our policies and laws should never be in conflict.

The City Council received two public comments regarding this resolution.

Council Member Turk: I appreciate the Police Department taking a look at the language and making some of these revisions and softening this a little bit and also making it clear in certain instances. This goes a long way. I know they're trying to balance the CALEA requirements with some of our local concerns. That sometimes can be a very difficult balancing act.

Council Member Gutierrez thanked the two citizens for coming forward to share their concerns. She stated we are just getting out of the holidays and probably don't have as much participation on this item that we would normally see. She spoke about the difference between interrogation versus another type of questioning for children. She requested for Deputy Fields to clarify the two types of questions of juveniles.

Jamie Fields, Deputy Chief of Police stated we encounter juveniles daily in our line of work. She stated she thinks we're getting focused on what we see as maybe being a juvenile offender and thinking that everything we do is about juvenile interrogation and that's just not the case. She stated many times when we encounter juveniles, we're encountering them as victims and witnesses. She gave brief examples of recent incidents where serious injuries were sustained, and information was received from juveniles to help the injured individuals to receive immediate assistance because time was of the essence. She stated our officers are well trained, educated, and professional. She stated our officers encounter juveniles every day and the juveniles are not always the suspect. She stated our officers need to be able to do their job. She stated we are not compliant with CALEA until we update these policies and we need this resolution to be passed.

Council Member Gutierrez: Is it possible that we can pass it and continue to bring more clarity to it? I understand trying to stay compliant. It's an education element to help everyone understand interrogation versus a question about safety. Is that something we could keep working on and going ahead and passing?

Jamie Fields, Deputy Chief of Police: We are always in discussion because as a part of our accreditation process, we are always reviewing our policies to make sure we're compliant. Not only with best practice standards, but with the law. Our discussion is always ongoing.

Council Member Turk: I understand the interrogation versus the interview process is very different. I appreciate the definitions being included in your policy, but Fayetteville Police Officers are wearing body cameras. Is that correct?

Jamie Fields, Deputy Chief of Police: That's right. Thank you for making that note because everything is on the record that Fayetteville Police Officers do. We have dash cams. Officers are wearing a body microphone. We have body worn cameras. Everything we do, for the most part, is recorded. We're always on the record.

Council Member Turk: Thank you very much. If there's any kind of issue, we can go back and it can be looked at. I'm sure you do that often to just review how incidents occur and the process.

Jamie Fields, Deputy Chief of Police: That is correct.

Council Member Bunch: On the body cams, does the officer have to turn those on or is there something that turns it on automatically when they leave the car? Is the dash cam always running?

Jamie Fields, Deputy Chief of Police spoke briefly how everything in the police vehicles and body cameras are automatically triggered to come on. She stated officers are also accustomed to manually activating their camera when they encounter citizens or some kind of enforcement action.

Council Member Scroggin: Could a Police Officer turn his camera off?

Jamie Fields, Deputy Chief of Police Yes, a Police Officer can turn his camera off. We monitor that pretty closely and we are quick to correct that type of issue.

Council Member Scroggin: What would happen if a Police Officer inappropriately turned off his camera? What disciplinary actions are automatic?

Jamie Fields, Deputy Chief of Police: There's a review process for that and formal discipline. Our agency begins with supervisor counseling and it goes through termination. It would just depend on the circumstances, but we do have a progressive discipline system. We take that very seriously.

Council Member Scroggin: Thank you.

Council Member Petty: I appreciate the changes and the diligent approach to this so far. I've supported every CALEA amendment that's come forward in the past. What exactly is it, in terms of its significance? Is it a body of standards or are there tangible benefits that come with accreditation or consequences from not having it?

Jamie Fields, Deputy Chief of Police: There are benefits to being CALEA accredited. A lot of that comes with the credibility for your agency. Recognizing that you follow best practice standards, recognizing that those standards are on the leading edge of what's going on in our communities today. For instance, in 2020 we had a lot of discussion about police reform and a lot of the discussions that I mentioned earlier, CALEA already required those things. Two of the greatest benefits is we are on a continual review of our policies to make sure they are current, but also our training is ongoing and current. Those two major benefits really hold our feet to the fire.

Council Member Petty stated he remembered last year the relief he felt that we already had some of those policies in place. He stated he doesn't want to trivialize that in any way. He stated he is prepared to support this tonight but has a growing recognition that we would benefit from having subject matter experts review things like this in advance when it comes to the Council. He stated his expectation is that a lot of this stuff is going to already have been vetted through the community before it comes to the Council. He stated in the past it was really normal for us to take these and barely review them and to approve them because there was trust in the system, but what we are seeing now is a growing recognition that we might need as a Council, to assign some additional resources to vet these things and improve upon them before they come to us.

Council Member Gutierrez: Council Member Petty, that is a great point. I wonder if it fits already in the Civil Service Commission or where other committees that are existing could potentially discuss it?

Council Member Petty: I don't know right now, but the main thing seems to be that we do need people who we can call experts on the things that need to be reviewed. Maybe that is a good venue for it or maybe it will be something else. In any case, I'm open minded.

Council Member Gutierrez: Council Member Jones, could you speak from your experience on the Civil Service Commission. Do you think this would be an appropriate conversation for that committee?

Council Member Jones: I feel that the Civil Service Commission is more of a hiring aspect. Deputy Fields, has this been a problem with our Police Department? Have we had any of these issues as it relates to the interrogation issue?

Jamie Fields, Deputy Chief of Police: No. I think we are focusing on what we're thinking of is interrogation, when in fact most of our interactions are not interrogations. In 2020, we've interrogated 18 juveniles at the Fayetteville Police Department. That is not a large number when we're thinking about officers encountering juveniles every single day. Council Member Jones is correct. The Civil Service Commission primarily addresses hiring, promotions, and disciplinary issues.

Council Member Jones: Interrogation could be more subjective. You do it daily and you haven't had any issues. I see the recommendations and it's what we've been needing. The Civil Service Commission is basically the HR of promoting, hiring and terminating. I don't think this would fall under that category.

Council Member Gutierrez: Thank you for that clarification. That's a good point and 18 is a very tiny number. I do want that policy in place for a parent, which right now as it's written we have the triggers to decide which kind of questioning it is. I'm feeling pretty good about the policy and ready to vote on this.

Council Member Turk: How often do you have changes to CALEA? How much advanced notice do you have to those changes? The timing on this issue was kind of unfortunate because it was right before the holidays.

Jamie Fields, Deputy Chief of Police: I can't give you a definite number. We had several this year because CALEA changed their numbering system. Some of those changes were very minor and had to just change the numbering system. This particular policy I think fell late in the year because there are so many things that took precedence for CALEA, law enforcement and oversight in general because of the events of 2020. Agencies needed to get their de-escalation training and use of force continuum in order, which are things we're already doing. They really took the focus and attention up front and that's why it took us late in the year to get this policy before the City Council.

Council Member Turk: This was like an, A Typical year. Last year in 2019, you had very few changes or any changes to CALEA. Would that be a fair statement?

Jamie Fields, Deputy Chief of Police: I would say this was an unusual year and the number, but CALEA is cyclic and it just depends on what's going on in the country and what's going on in the criminal justice system. When we became accredited in 2013, we have some Council Members here who suffered that painful year with us, and we brought forward dozens of policies that were new policies and revisions to policies. Once we get over that initial hurdle, we've had several each year, but this is an unusually high number this year.

Council Member Turk: Thank you very much.

Council Member Jones moved to approve the resolution. Council Member Gutierrez seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 25-21 as recorded in the office of the City Clerk

Bank of Fayetteville/Depot Lot Site: An ordinance to approve a contract with the Bank of Fayetteville, Greg House, Fayetteville Depot, LLC (and possibly Ted Belden) to purchase about one half acre in the Depot/Bank Lot for \$350,000.00, to approve a lease-to-own arrangement with Greg House for the .2 acre lot on the north end of the Civic Plaza, to agree to convey to Greg House the ownership of about 14,000 square feet of the bottom floor of the city's public parking deck and other items, and to pass an Emergency Clause. *At the December 1, 2020 City Council meeting this item was left on the First Reading. At the December 15, 2020 City Council meeting this item was left on the second reading.*

Mayor Jordan: We've been going back and forth at this thing for a while. We can go to the third reading, but I would like to table this until the second meeting in February. I want some time to work on this. My interest in the project of the Depot lot when we began this conversation was to ensure the public gets the highest quality product that drives Downtown redevelopment and new commerce to a Cultural Arts Corridor. This is why we were directed back in the spring that the Depot lot was the area, but we had to work out the details of the contract. We started on that and worked through the spring and summer. We turned it over to the City Attorney and they also had an Attorney. They've worked on it since the middle of August. We have not come to anything settled on it. I would like to ask for another month to continue the discussions. I also want to see some additional expertise from some organization that specializes in public-private partnerships. I believe we're going to need this third party resource so we can affirm our efforts or dissuade us from moving forward.

Susan Norton, Chief of Staff: We have had feedback from several Council Members that encouraged us to go this path. We've been looking at how the best process with the Purchasing Department or how we will seek the outside real estate development legal services that would have experience in negotiations involving public-private partnerships that is typically related to land development and commercial multi-party transactional agreements. I think we can get that done, have the oversight and review of the terms and the contractual negotiation done in time for the timeline that Wade Abernathy has already indicated that we're fine within about month.

Mayor Jordan: In a month's time, we will either have something or we will be having an entirely different discussion around here.

City Attorney Kit Williams: This has been a long contract. My whole goal was to try to effectuate what the city staff had negotiated and still make sure the contract would be legal and not make any problem with our bond indenture. We received a letter on the 22nd from Greg House and Ted Belden's Attorney, with six or seven final issues. The first one was the only one I heard back from the Council that they didn't have any problem with us having an LLC, rather than Greg House and

Ted Belden as the contracting parties. The other six issues, which were all outlined in their letter are pretty minor compared to the overall contract itself. We got down to about six issues, which I discussed in a memo. I've not heard back from any City Council Member about these six issues. Most of them are policy issues about whether they're willing to agree to some other terms that Greg House and Ted Belden wanted to have into the contract before they would agree to it. If you want to bring some other entity in to look at it, that's fine, but with this contract, which is a multi-page contract, we're down to a very few issues that have not been resolved at this point in time. I have no problem having a separate contract with the bank and a separate contract with Greg House and Ted Belden. Most of these issues are not some that should stop this contract, but if you all want to bring some other entity in, I'll do whatever I can to cooperate with this other entity.

Council Member Kinion: I absolutely think we need to bring someone in. The last public-private partnership we had was the TIF District. We didn't get anything out of that and because of that, it makes me think we need someone that's specifically aware of issues that could come up. You mentioned we have very few issues. I don't know if we'll ever get to no issues. The whole LLC and contracting partners is we're getting more risk and they're getting less liability. Public-private partnerships are a tricky thing that you need to do the best you can. This is the public's money and an investment in something that can be seen as not so complicated, but then later we don't get maybe what we thought we were getting. I would like to hold off and to get a specialist in here. It would make me feel more comfortable.

Mayor Jordan: It would make me feel more comfortable too.

Wade Abernathy, Bond Projects & Construction Manager: I think we have a little time to get this third party on board. We're still working through some developmental design pricing and we hope to get a guaranteed maximum price. I think that's going to make the developer more comfortable with the money he's going to be laying out. Sometime in March, we should have those numbers.

Mayor Jordan: That's good.

Council Member Scroggin: I also think we need a third party. This is big enough, has gone on long enough, and it's complicated. I would hate that a year from now if we're so off that this almost becomes a derelict of duties on our part because we haven't properly vetted this. Can Spring Street hold a proper size deck?

Wade Abernathy stated yes. He spoke briefly about two different studies. He stated the footprint of the building we're looking at right now would fit on that site.

Council Member Scroggin: When was the last time a coring has been done that would verify that there is bedrock? A worst case scenario would be that we get to March, we say, no. You go to Spring Street and then three months later we can't even build there.

Wade Abernathy: There has not been a Geotech report done on that site. You could assume that site is similar to the site where the Spring Street Deck is on because it's right across the street. It's all in the same vein, but you would have to do some actual cores and soil borings to really know.

If you put the building on top to where you're not having to do a lot of excavation, there are ways and mechanisms to support your foundation.

Council Member Scroggin: I'm hoping we can continue this conversation. I may bring forward an ordinance to pay for a coring. I'm terrified that we may say no and then we go with this other option and that's not even an option. I want to know that.

Wade Abernathy: That's a good point. In the big scheme of things, we're talking about a ten million dollar project and a coring or soil analysis would be pretty nominal.

Council Member Scroggin: Up to \$20,000?

Wade Abernathy: Yes.

Council Member Scroggin: That would probably be important in our current negotiations either way.

Mayor Jordan: We will make that happen on the core drillings if you want to do that.

Wade Abernathy: We can amend the contract with our engineer that is already doing coring for us.

Council Member Scroggin: I look forward to having the deck on the Depot lot and the liner buildings. I hope that works out. I just want to make sure we have other options in place.

Council Member Turk: It's really important we have the coring done to ensure that we have a legitimate backup plan.

Mayor Jordan: We will get that done.

Council Member Bunch: I am very supportive of bringing on this third party. There are probably just a few issues that need to be resolved, but an expert could get through those in no time at all. We are the stewards of the city dollars and I think that's the best route to take.

Mayor Jordan: Council, I need about a month.

Council Member Gutierrez stated she was able to speak with Kit about her concern. She stated one of the concerns she had with the details was a lack of the survey provided by Ted and Greg to know the actual data of the amount of property on the Depot lot. She spoke about wanting to know the value. She stated we don't even have a survey for it, and they have been requesting it.

Council Member Bunch: It was my understanding we weren't looking at per square foot or whatever on the value of the property, but that we were looking at the totality of it. What are we talking about, as far as the difference in the land? Are we talking like 10 feet or a thumbnail sliver of land that's not going to make any difference or are we talking about not being able to build the project on the property because it's not large enough?

Susan Norton, Chief of Staff: I think we're talking about a very small piece of land. When it comes to surveys, we will need surveys for closings. We entered into this negotiation talking about the end product and the gains that we would have from the land being swapped and we weren't counting inches.

Wade Abernathy: The property on the north Civic Plaza space is about 6,000 square feet. The property that Greg has, I believe is point two acres and I can't remember how much exactly the bank had. Basically, we're looking at the footprint of the new proposed deck and the space required for that for this early discussion. Once we had an agreement, then there would be surveys that would lay out the exact footage.

City Attorney Kit Williams: I agree with Council Member Gutierrez that it would be nice if we had a survey of what they're proposing to sell to us. The banks portion from the overhead that you provided to me looks significantly larger than what Greg House owned. When you're buying property, it is good to know exactly what you're getting. A survey is not very expensive and if they won't do surveys on their property, then maybe we need to do it ourselves so we actually know what we might be buying.

Wade Abernathy: We have engaged our engineers to do the survey on our property. The same engineer has reached out to Ted and Greg to do the survey on their property as well.

Susan Norton, Chief of Staff: It's safe to say the surveys are underway.

Cary Arsaga spoke briefly about the project.

Ted Belden, Developer stated he would like to encourage the Council to go ahead on the next item on the agenda. He stated it's important that the developers understand their costs. He stated delaying the fees to the architects and the engineers to determine these costs is not wise.

Mayor Jordan: By February 16, 2021 we will have something to vote on because this needs to move on.

Council Member Bunch moved to table the ordinance to the February 16, 2021 City Council meeting. Council Member Kinion seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled to the February 16, 2021 City Council meeting.

RFQ-19-01 Olsson, Inc. Amendment #2: A resolution to approve Amendment No. 2 to the professional engineering services agreement with Olsson, Inc., pursuant to RFQ #19-01, in the amount of \$154,900.00 for the remaining architectural services related to the replacement parking deck for the Cultural Arts Corridor Project, and to approve a budget adjustment – 2019 Cultural Arts Corridor Bond Project. *At the 11/17/20 City Council meeting this item was tabled for two weeks. This agenda item was tabled for two weeks. At the December 1, 2020 City Council meeting this item was tabled for two weeks. Table until the first meeting in January 2021. (January 5, 2021).*

Wade Abernathy, Bond Projects & Construction Manager gave a brief description of the resolution. He stated this is to carry the design development through construction drawings on the architectural portions.

Council Member Turk: I'm very concerned that we continue to spend money on this location where we aren't certain. I would like to hold back on using any of those monies further until we get a contract in hand on this project. This is quite a bit of money. Yes, we're being delayed, but I want to make sure we're very fiscally responsible with the public's money. This has gone on quite a while and we've already spent quite a bit on the project. I would ask that we table it, or we hold it until we have a decision on the previous item.

City Attorney Kit Williams: Wade, you heard Ted Belden say they need to get these figures so that they will know how much they'd have to pay to increase the strength of the superstructure and things like that. Do we currently have the engineer that can give that figure? We also need to have an architect to arrive at the figures that Ted Belden was talking about.

Wade Abernathy: The superstructure costs, which would be the cost for the developer to increase the live loads, are already in the design by the engineer. We would not need this particular amendment for those additional cost calculations.

There was a brief discussion about tabling the resolution to February 16, 2021.

Council Member Scroggin: If there was some reason we needed to bring it back early, can the Mayor do that?

Mayor Jordan: I will bring it back as soon as I can get it done. If I can get it done before the 16th, you'll get a good look at it.

Council Member Petty moved to table the resolution to the February 16, 2021 City Council meeting. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the February 16, 2021 City Council meeting.

RZN 2020-014 (SE of I-49 & Wedington Dr./Marinoni Farm): An ordinance to rezone that property described in rezoning petition RZN 20-014 located southeast of I-49 and Wedington Drive for approximately 112.85 acres from RSF-4, Residential Single Family, 4 units per acre; RMF-24, Residential Multi Family, 24 units per acre; R-O, Residential Office; and C-2, Thoroughfare Commercial to UT, Urban Thoroughfare and CS, Community Services. *At the December 1, 2020 City Council meeting this item was left on the First Reading. During the December 15, 2020 City Council meeting the City Council members requested to set up a site tour of this property. Mayor Jordan stated that this will be set up. At the December 15, 2020 City Council meeting this item was left on the second reading.*

Mayor Jordan: This is on the second reading. I'll entertain a motion to go to the third and final reading.

No Council Member made a motion.

City Attorney Kit Williams: Without that motion, I'll read the body. I should note for the record that the applicant has submitted a Bill of Assurance. We have redrafted the ordinance to include the Bill of Assurance in case this would be passed. At the end of the title it says, subject to a Bill of Assurance. It says it again right at the end of Section 1.

Council Member Scroggin made a motion to amend the ordinance to accept the Bill of Assurance. Council Member Turk seconded the motion. Upon roll call the motion passed 7-0. Council Members Turk, Hertzberg, Gutierrez, Jones, Kinion, Petty, and Scroggin voting yes. Council Member Bunch was absent during the vote.

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez: If there were parts of this resolution we didn't agree with, would I either vote up or down on the whole thing? Would you concur with that?

City Attorney Kit Williams: Normally, that's what the City Council does. The City Council has tremendous authority when it comes to rezoning property. It's legislative power that you have. You actually can do something that's not been requested by the applicant. Normally, it's just an up or down vote, but that's not the only thing the City Council can do. You can amend the ordinance to reflect what you would like to see. However, that's very rarely done, and we need to hear from the applicant about that to give them a chance to respond to anything the City Council might suggest, as a better way of resolving the property.

Jonathan Curth, Development Review Manager: The Bill of Assurance was offered this afternoon. I've not had a thorough chance to vet it, but Ms. Marinoni is available to describe what's being offered in the bill.

Paula Marinoni, Applicant gave a brief description of the Bill of Assurance. She spoke about the Council Members property site visit. She stated she has been under contract nine times and six of those times her contracts have been crashed by city representatives or the neighbors. She stated she needs Council's help. She stated in the last 10 years there have been 30 sales in that area and 29 of them became rental properties. She stated her property with the massing of it, the energy of it, the centrality of it with the parks and the trails, it will revitalize that whole area. She stated we have a right to develop our property and we have a right to request reasonable zoning. She stated city staff and the Planning Commission said this was reasonable. She stated it follows the city guidelines for the future 2040 Land Use Map. She stated it checks all the boxes of the six development guidelines of the 2040 Plan. She spoke about following the recommended zoning. She stated it is ridiculous that we are not able to develop our property.

City Council received 4 public comments regarding this ordinance.

Council Member Gutierrez thanked the neighbors who spoke. She spoke about touring the property site. She stated on the southwest corner the topography changes quite a bit. She stated there's a convergence of two creeks and feels like the property absolutely does not need any kind of up-zoning. She spoke about the property being wet and muddy and does not believe that quadrant needs to be touched. She stated along 49 and Wedington that frontage area seems like a great place to put some commercial space. She stated we need to rezone the front commercial area, but not section three, which is right behind the Lauren Circle neighbors.

Council Member Scroggin: Kit, if we turn this down and they come back with UT, but in different areas, is that enough that they don't have to go through a year wait?

City Attorney Kit Williams: They don't have to go through a year wait if they make a substantial change in what they are actually asking for. If they divide it up and only ask for a particular parcel to be UT, rather than the whole area or something like that, it would be a different enough request that they wouldn't have to wait a year. I should defer to Jonathan Curth because that's the Planning Department's decision about whether any proposal is changed enough so that it would not be barred by that particular code section.

Jonathan Curth: That is in the section of code that Planning administers and it is ultimately a Planning Commission determination, which makes it a situation where it's not until the proposals being considered that it could be ascertained whether it's substantially different. Consistently in my time here, we have determined that if it's a change in area or change in zoning that has been enough to merit reconsideration. Ultimately, it's the Planning Commission's discretion.

Council Member Scroggin stated UT makes sense on the access road and Wedington, but we've had properties where we zone back 1,000 feet that didn't make sense. He stated he has some issues going Urban Thoroughfare all the way back. He stated with the CS, he's kind of on the fence because the UT makes a lot of sense, although he has seen some UT that's just been giant parking lots. He stated mostly he'd like to see a PZD, but would be okay with Urban Thoroughfare, and then some scaling back and preservation as you get farther back. He stated this is one of the last large pieces of land that can be developed and just given a blanket, go for it, he's got some issues. He stated the only land that's similar in size is off the Fulbright Expressway and they're going the PZD route and they are going to do something very intensive and that makes sense there.

Council Member Petty stated on the face of it, he feels similar to Council Member Scroggin, although he is less inclined to favor a PZD. He stated he is on board per his review with the Urban Thoroughfare portion of the requests and even perhaps a good portion of the Community Services area. He stated he would prefer at the very rear of the site something less intense proposed. He stated he would be ready to vote for something like RI-U, Neighborhood General or Neighborhood Services Limited, which would probably preserve pretty much everything that has been described to him about the project without opening the door up to a future sale to somebody that wants to do something like a gas station. He stated he is not in favor of advocating for a PZD because it's a very blunt way of going about development negotiations. He stated they should strive to grant the right entitlements up front, through a good deliberate rezoning and trust our design standards, which generally work pretty well with some notable exceptions we're working on. He stated what troubles him more is the way the conversation seems to proceed anytime they see a lot of big

rezonings because people have to have a place to live. He stated neighborhoods have to look different if we're going to have a transit system. He stated he doesn't know that the rezoning proposed is exactly what he would be enthusiastic about supporting and the Bill of Assurance helps a little bit, but it's the land uses at the very end of Community Services that gives him a little bit of pause. He stated if this was slightly revised, he'd be enthusiastic to vote for it. He stated if the applicant insists on an up or down vote tonight, he's not sure how he will vote.

Council Member Bunch stated she visited the property site and the UT in some of the areas is appropriate but has some concerns about the CS zoning in the back. She stated she knows this was a simpler way to just say we are going to do two zonings but wishes there had been more finesse applied to this because it's a large piece of property and would have liked more consideration for the back part of the property. She stated she considered not just what could go in if it's rezoned to CS, but what the land and other factors might create there. She believes a portion of what is in the CS zoning is part of the Hilltop Overlay District. She stated the topography defines what can go in there. She stated when it is gets to the development phase, we have a lot of discretion about how things are laid out. She stated while she's not thrilled about the CS zoning, 100 feet is a pretty good buffer for a neighborhood. She spoke about trying to anticipate what Fayetteville is going to be in the future. She stated she's lucky and blessed to be able to have a home in Fayetteville and would love for the next generation to have the same things, but we can't keep saying we can't do this here and we can't do that there. She stated if we don't develop anything, then we run into the risk of us being a community that even people like her might not be able to afford because the tax base is not large enough. She stated she is challenged with this because she likes the idea of the UT, but the CS gives her a little bit of pause. She stated maybe not for the same level of pause that it does some of her other Council Members and maybe not for the same reasons.

Council Member Turk stated she appreciated Ms. Marinoni allowing them to tour the site and the information she provided. She spoke about finding some water issues that will need to be considered. She stated the Temple Shalom folks spoke passionately at the last City Council meeting. She stated she's very concerned about any access out to the east side through the Temple or close to the Temple. She stated on Maple Street she doesn't see how CS would be used, except accessing the Maple Street area. She spoke about the many neighbors that have their backyards that backup right to Maple Street. She stated it's a very unused, yet paved street back in there and those folks will be affected if Maple Street is used as an eastward access out of the current Marinoni property. She spoke about traffic issues and with CS there could be gas stations. She stated there are a whole host of challenges. She stated UT might be appropriate, especially over at Wedington and on the Futrall Drive access street, but it's not small enough. She stated we've got a huge area that's requested to be UT and without a PZD. She stated if they approve these 112 acres without a PZD, it's precedent setting and irresponsible because they don't know what's going in there. She stated this is the highest density allowed in city code. She stated she will not be supporting the rezoning. She stated she would be open if the applicant came back with something much more modest and something more considerate of the long standing east side neighbors. She spoke about the area having a well-established and thriving neighborhood.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Council Members Bunch, Hertzberg, Kinion, Petty, and Scroggin voting yes. Council Members Turk, Gutierrez, and Jones voting no.

Ordinance 6398 as Recorded in the office of the City Clerk

Amend §161.22 Community Services and §161.24 Urban Thoroughfare: An ordinance to amend §161.22 **Community Services** and §161.24 **Urban Thoroughfare** by changing certain permitted uses to conditional uses. *At the December 15, 2020 City Council meeting this item was left on the First Reading.*

Council Member Petty moved to suspend the rules and go to the second reading. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Blake Pennington, Assistant City Attorney, upon my request has submitted a potential Section 3 as I have spoken to you all about. It is to protect the city from a regulatory taking lawsuits. If we remove the right of some landowner right now that has the right to build a gas station or fast food station and has plans to do it and we don't give them the opportunity to do that, then it's possible the city could be liable for that. This is very similar to what happened with the Streamside Protection Ordinance where we were removing property from the development rights if you are on one of the Streamside Protection areas and to prevent suits against us, we phased that in, rather than adopting it immediately and it was successful. We had no suits against us. Section 3 allows owners who have some vested property rights on this purchase property and are ready within the near future to do Preliminary Plats, Large Scale Developments or other development items like that. It gives them a savings period. New Business on the agenda has a proposal to rezone to Community Services for an entity that wants to build a gas station. The City Council has plenty of rights when it comes to a zoning and rezoning not to do that, but we do face some legal problems if we do not have this savings period that Section 3 represents. This is a recommendation from the City Attorney's office in order to try and protect the city from regulatory takings claims, which could be successful. It has nothing to do with whether or not this is a good idea. That's certainly up to you all, but assuming it is a good idea, we still feel like it'd be better to have this Section 3 added to it.

Council Member Turk: Mr. Mayor, could we allow public comment before we vote on that amendment?

Mayor Jordan read the rules of public comment and it was determined that no Council Member was opposed to the public speaking on the amendment.

City Council received 4 public comments regarding this proposed amendment.

Council Member Petty: I'd like to hear a little bit more about how moving this to a Conditional Use may mitigate some of the concerns about takings clauses, as opposed to a wholesale deletion of these uses from the zoning designation.

Jonathan Curth, Development Review Manager: When it comes to takings, the case history usually involves the determined taking of value of a property. They usually associate it with some

perceived or entitlement associated with zoning, sometimes with a development approval. By moving it from a permitted to a Conditional Use, that's not effectively removing the allowance for it. It just means it's subject to a higher degree of scrutiny and development review. I loosely describe them as mini PZD's in some instances. It is a higher threshold and more of a challenge for developers to achieve that threshold, but it doesn't remove it as a potential land use on the property.

City Attorney Kit Williams: I agree it is safer to move it to a Conditional Use than just remove it totally from any right to build at all. Unless someone does apply for a Conditional Use and either does not like the terms of an approved Conditional Use thinking that prevents their project from going forward or being successful or if it's denied, then at that point in time it's possible that three Council Members could appeal and then grant the Conditional Use or whatever you would want to do. There wouldn't be a takings until the applicant has in fact suffered a loss of his right to build that he has right now. It would be a longer process before the city could ever get sued on that, but it is something I needed to caution the City Council about. It is possible that you could undo the problems if you were faced with a Conditional Use that had been denied or with such restrictive conditions that the applicant says it has damaged his property. If the City Council chose not to do that, the city could be sued and the difference in value of the property with and without the ability to build a gas station could be fairly substantial. That is a longer process and it's much better to move it to a Conditional Use than it would be just to remove it.

Council Member Petty: I appreciate both of those explanations. That helps me make my mind up on the amendment itself. It seems like there is, in terms of the support for this ordinance, that the broadest support is around gas stations and changing how gas stations are treated. It seems like from both of those answers that if there was a dispute, there are several opportunities to settle the case before it ends up in a courtroom where a takings claim is being made. I'm pretty comfortable voting against the amendment for the new section and assuming that if we do vote for this, it's about Conditional Uses and not about eliminating the land uses entirely. That's the only thing that makes me comfortable for it. I've seen at least a half dozen times on this Council where we've gone through that exact same thing, not about takings clauses, but where there's been a dispute about a Conditional Use Permit. The conditions that have been imposed by the Planning Commission, the City Council has reconciled that and settled the dispute. I'm confident we can do that again.

There was a brief discussion about there not being a motion or second for the amendment.

Council Member Kinion: If we vote for the amendment, we need people to know exactly what we are voting for or against. Since we didn't read it, how do we get this information?

City Attorney Kit Williams stated he could read the proposed amendment.

Council Member Kinion: I don't want you to read it. I just want to know the impact if we do it and if we don't do it. Obviously, it's changing things and I need to know exactly what it's changing.

City Attorney Kit Williams: This ordinance without this amendment goes into effect, assuming it's passed, goes into effect 31 days later. There are parts of the Unified Development Code that says if you are trying to renew your building permit or other development permits, then you've got

to comply with new changes to the code. This would be one of the new changes. That's more likely how this might come about as a takings against us, but as Council Member Petty said, the City Council has tremendous powers to protect the city from litigation if you would go in there and approve the Conditional Use. What this says is that, if you own property right now that's zoned for Community Services, then you have a right to file a building permit, Large Scale Development within six months of this ordinance. If you don't, then you lose that right. That's what we did with the Streamside Protection Ordinance. We gave people the right to develop regardless of the Streamside Protection Ordinance for up to two years depending on the size of their lot. I don't know how many things, if any were developed then, but I do know we didn't get sued and now the Streamside Ordinance is protecting our streams. If you don't pass this, it doesn't necessarily mean we will ever have to be liable. A lot of it will depend on what the City Council might do in the future.

Council Member Kinion: I think I want to go ahead and move forward with this. Being around back when the Streamside Ordinance came in, it's not about litigation with me, it's about allowing people that are already some way vested that intend to develop under Community Services six months to do that or to get started on it. That's more palatable than 31 days because if you're developing something, you've already invested in that and it's fair to allow six months to bring it in. I don't understand why we're in such a rush. Did we not learn a lesson on the last one with the driveway stuff about getting more engaged with the people that it impacts the most? We certainly haven't done that because it's been put on the agenda very quickly at a time where people aren't paying a lot of attention. It does impact a person who has something already in the works. We should respect that for at least six months.

Council Member Turk: I'm wondering if six months is too long. I would like to potentially make an amendment for three months, rather than six months.

Council Member Turk made a motion to amend the ordinance to three months, rather than six months. The motion died due to a lack of a second.

Council Member Kinion stated in order to support the amendment he wants people to put themselves in the shoes of the owner of the property that might have something in the works. He stated to get things financed, designed, and in order with your engineering is not instant. He spoke about six months being fair. He stated Fayetteville already has a reputation of being a hard place to build and it should be because of the topography and watersheds.

Council Member Bunch spoke about financing, studies, and contracts taking a long time. She stated six months is probably okay and would not be in favor of anything less than six months.

There was a brief discussion to clarify the amendment.

Council Member Petty stated to talk about six months and an implementation grace period, all that sounds fine if that's all we're talking about, especially if this were like the Streamside Protection Ordinance, but he feels they are splitting a difference that doesn't exist and making a false equivalency. He stated the Streamside Protection Ordinance completely removed development rights from the riparian zone and the management zone that's adjacent to our riparian

corridors. He stated this proposal doesn't do that and it maintains a permanent pathway to those projects. He stated any application that's already in process, is grandfathered in, whether that's a development application or a rezoning application. He stated just because you bought the land and had an idea, it doesn't mean you have a right to get the rezoning you want. He stated you have to go through the process and the deliberations, and we have to bring it up for a vote. He stated if you bought a piece of land and had an idea to put a gas station on it, you're not guaranteed the zone until you get it. He stated zoning has to proceed financing. He stated he doesn't see how six months protects anybody.

City Attorney Kit Williams: You're absolutely right when it comes to zoning. They don't have any rights at all if they don't have zoning. This would only apply to development and development issues if they already had the zoning. The City Council is never under any requirement to grant a developer the zoning they want, just because they want it. The one that's coming forward, it'll be much safer for the city to not grant the rezoning to allow a gas station, as of right, as opposed to removing it from properly zoned land that's already owned. There are exit ramps we would be able to take on this to probably avoid liability. I chose six months because I figured that would be very defensible in court. I'm not sure if three months would work. I'm not trying to be helpful to the developers, I'm trying to protect the city.

Council Member Petty stated he appreciated that. He stated he's going to be far less likely to vote for any Community Services zoning in sensitive locations until this passes and he doesn't think he's the only one on the Council that feels the same.

City Attorney Kit Williams: I think that's a wise position to be taking at this point.

Council Member Kinion spoke about processes and deliberations. He stated commercial financing is not easy and there's a lot of things that have to be put together in order for the bank to take the risk. He stated we don't have to approve it and there's still ways to be sure we are making an impact on the development area, but in 31 days that's really quick. He spoke about protecting the city from a lawsuit. He stated he thinks it's a good amendment.

Council Member Bunch: When did the UT and CS changes first show up on our agenda? When was it first requested to be put on the agenda and how long have we discussed it? This is the second meeting we've had about it. We've been discussing it for less than 31 days. It may be a nice gesture to give six months. I don't see any harm in the amendment to give people the right to have six months.

Jonathan Curth: Mr. Mayor, I feel I'd be remiss if I didn't make a quick point of clarification and Mr. Williams can correct me if I'm wrong. The conversation has revolved purely around gas stations. I believe this ordinance and the amendment also relates to the proposal to move single and two family dwellings from permitted to Conditional Uses and CS and UT. I wanted to make sure that was well known before the vote was taken.

Mayor Jordan: This came in the original ordinance. Kit is giving a six month grace period if it passes, for this to go into effect. Is that correct?

City Attorney Kit Williams: That's right. At this point, it would be for the gas stations and for the residential uses.

Council Member Bunch: All the uses would be six months?

Jonathan Curth: Correct.

Mayor Jordan: We're not just talking about gas stations. This is a six month grace period for the whole ordinance if it passes. Correct?

City Attorney Kit Williams: That is correct.

Council Member Gutierrez: The amendment is just for the time period and then we're going to vote again for the overall ordinance?

City Attorney Kit Williams: Yes. Whether or not this passes, the regular ordinance either amended or not amended will come before you.

Mayor Jordan reiterated what City Attorney Kit Williams stated.

Council Member Kinion made a motion to amend the ordinance as City Attorney Kit Williams described. Council Member Scroggin seconded the motion. Upon roll call the motion passed 7-1. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Kinion, and Scroggin voting yes. Council Member Petty voting no.

Council Member Kinion: This is the second reading, right?

Mayor Jordan: Yes.

City Council received 4 public comments regarding this ordinance.

Council Member Gutierrez stated she would like to potentially table this and have Ordinance Review take a look at it. She stated we have had 31 days of talking about this, it's very new, and it's a big change. She spoke about it affecting a lot of people. She stated she feels they are trying to do too much at once with mixing up the housing types and gas stations.

Mayor Jordan: We are on the second reading. If you just left it right here, it would be another two weeks before you heard it again. If you wanted to table it after that, then you could.

Council Member Gutierrez: That's what I'm going to be in favor of. I am requesting for Ordinance Review to take a look at it.

Council Member Kinion: I support Ordinance Review. This is bigger than just gas stations. We haven't even talked about the housing types and the impact it has. Theoretically, it has an impact, but also realistically it has an impact with immediacy. We've got to balance that out. Maybe we

should separate these two issues. It's hard to negotiate support because maybe one side you support and the other side you don't.

Council Member Scroggin: I'm definitely okay if Ordinance Review looks at it. I had a developer call me a couple of hours before the meeting. I think they would like some more time. I'm also okay with dividing the question.

Mayor Jordan: If we table it, are we going to table it until the middle of February or are we going to leave it on the second reading and then see where we are in two weeks? If we just left it right here, we would send it to Ordinance Review, and it would be two weeks before it came back to the Council.

Council Member Petty: Let's wait to table it, until we know we need to table it.

Council Member Gutierrez: That sounds good to me.

Council Member Turk: Should we separate these two items tonight? They would be much better served looking at them separately and it might be better to do it tonight, so we have them in different paths. How do you all feel about that?

Council Member Kinion: I feel good about it.

Council Member Gutierrez: I was looking at trying to remove the fourth Whereas, if we are going to separate it. I need some help on that.

Council Member Turk: Kit, please provide some guidance procedurally on how we can do that.

City Attorney Kit Williams: I think it would be difficult tonight to do that. The Whereas clauses are basically just the context, they don't have any force and effect. You have to look at the actual Sections. If the City Council wants to do that, it's best handled by the Ordinance Review Committee and recommending maybe two separate ordinances. It also would give me a chance to draft something up that makes sense so that we're not missing something along the way. I do understand what you're saying, and it makes a lot of sense. There are two different issues here, and therefore they should probably be looked at separately, but that's what should be done at the Ordinance Review Committee level.

Mayor Jordan spoke about receiving phone calls and emails from citizens that are against the gas stations, but he hasn't heard too many against the single family homes and duplexes.

Council Member Bunch stated she agrees with Kit Williams. She stated it is hard and unnecessary to try and craft a new policy right now. She stated Ordinance Review can decide that. She stated she has the same issues with gas stations that a lot of the community has. She stated with the CS zoning, she doesn't recall any gas stations that have been built in CS zoning. She requested to know if CS zoning requires that the building be flipped.

Jonathan Curth: That is correct. There are several site design standards and building design standards associated with gas stations in our mixed use or form based zoning districts, including the building being closer to the street and the canopy has to be behind the building. There are standards for even what the gutters on the canopy look like.

Council Member Bunch stated she doesn't recall anything ever coming forward with a gas station in CS zoning. She stated all of the gas stations are in the commercial zoning areas, but it is an issue we have so many complaints about. She spoke about restructuring it somehow. She stated with the single family and duplexes, she doesn't want to take that off because when you talk about building a community, it's always great to have things to walk to, but you also need the houses for people to live in. She stated between commercial or duplexes is a good option that people should be able to look at and plan for. She stated it seems appropriate to her. She stated it wasn't single family homes and duplexes that ruined College Avenue. She stated she is in favor of sending the item to Ordinance Review Committee.

Council Member Turk: Instead of tabling it tonight, we need to send it to Ordinance Review. They can separate it out and not delay this too long. This could go on for quite a while and that's not fair to anybody.

Mayor Jordan: We will leave everything together and send it to Ordinance Review. In two weeks, we will look at again. Correct?

Council Member Turk: I was thinking we would send it to Ordinance Review.

There was a brief discussion about who was on the Ordinance Review Committee and the Agenda.

Council Member Petty stated it's easy to split these things. He stated almost everybody wants to split them and consider them separately. He stated it seems fair and realistic to suggest that, although the changes might have some significant impacts. He spoke about the legislation being exceedingly simple. He stated Ordinance Review has its most value when it's reviewing complicated legislation. He stated it's not that Ordinance Review wouldn't have input on this but feels obligated to manage expectations about how much Ordinance Review might have to say about this legislation.

City Attorney Kit Williams: My plan would be to divide up the sections. You would probably end up with five sections. It would be up to the City Council to choose which of the sections they like, and which they do not.

Council Member Petty stated we can we can get that done pretty quickly in the meeting. He stated they hear from a lot of citizens that want new neighborhoods to be mixed use and to have a mix of housing types and we can't find a new neighborhood under our new zoning that does that. He stated no matter how far we've come with our zoning codes and our development department, we've failed, and we are still failing. He stated if we want to fix that, we're going to have to do something. we've got to really face the facts. He stated we've got to face the facts on the goals we've expressed for brand new neighborhoods and what our citizens have said they want very clearly for brand new

neighborhoods. He stated we need to realize our policies are not getting us there. He stated we are going to have to change something, so we get more than just single family homes.

Mayor Jordan: What do you all want to do?

Council Member Petty: We decided to leave it here and Ordinance Review is going to take it up in nine days.

This ordinance was left on the Second Reading.

Announcements:

Mayor Jordan: This concludes our business for tonight until Thursday.

City Attorney Kit Williams: We are recessing this meeting. We are not adjourning it because that would end the meeting. We are recessing this meeting until 5:30 p.m. on Thursday, January 7, 2021.

Adjournment on January 5, 2021: 9:24 p.m.

This meeting was reconvened on January 7, 2021 starting at New Business

Mayor Jordan called the meeting to order.

In order to create social distancing due to the Coronavirus, COVID-19 pandemic, Council Members Sonia Gutierrez, D'Andre Jones, Mark Kinion, Matthew Petty, Sloan Scroggin, Sarah Bunch, Teresa Turk, and Holly Hertzberg joined the meeting via online using a video conferencing service called Zoom.

Council Member Petty arrived after Roll Call.

Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Deputy Chief of Police Jamie Fields, Chief Financial Officer Paul Becker, and staff members from the IT Department were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: In light of the current health concerns, Fayetteville City Hall is closed to the public. This meeting is being held virtually. I am present with a limited number of essential support

staff. City Council Members, city staff, and the public are participating online or by phone. Other than those of us you see before you, the voices you hear during the course of this meeting are being recorded for public record and piped into the Council Chambers. Due to the unusually full agenda, the City Council met two times this week. Tuesday's meeting recessed after the conclusion of Unfinished Business items. Today's meeting will commence with New Business items. Participation remains of the utmost importance to the City of Fayetteville. We have provided many ways to participate in the meeting, which includes contacting Council Members, City Clerk office or city staff prior to the meeting. The meeting can be viewed through Fayetteville's government channel online, YouTube, and joining the Zoom conference by smartphone, tablet or computer. To request to speak during the public comment period, you must raise your virtual hand to be recognized. If you are accessing the meeting through a smartphone, tablet or computer, please click the raise hand option to request to speak during public comment period. If you are calling into the meeting by phone, please press, *9 to raise your virtual hand for public comment. When it is your turn to speak, please unmute your microphone. For instructions on how to use Zoom, please go to the City of Fayetteville website and type, Zoom Instructions, in the search bar. I will provide a longer than usual period of time for you to raise your virtual hand, so as to ensure time to be recognized. Fayetteville residents will be allowed to speak first. When recognized, please state your name and address for the record. Public comment shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Each speaker has one turn to speak. Each speaker is allowed five minutes to be broken into segments of three and two minutes, which staff will monitor. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote.

New Business:

2021 Adopt Rules of Order and Procedure: A resolution to adopt the Rules of Order and Procedure of the Fayetteville City Council for 2021.

Mayor Jordan: This is something that the Council passes at the first of the year that directs me on how to conduct the City Council meetings. Council Member Turk wants to make an addition to the Rules of Order and Procedures.

Council Member Turk: I refamiliarized myself with the Rules of Procedure we had drafted last year. Through that review, I discovered some oversights. In the code of ethics responsibility to all citizens, it talks about law enforcement will be impartial throughout the city with respect to race, creed, color or economic and social position of individual citizens. I thought there were a few other folks that needed to be added to this to be very clear and up to date in 2021. I've proposed that we add gender, sexual orientation, religion, and gender identity to the list that is due equal and impartial law enforcement throughout the city. The second is about the special procedures during the pandemic. I tried to figure out ways we could improve citizen participation in our virtual meetings. Staff has made every effort they can to make sure our citizens get the ability to speak, but we've had some technology problems. The Mayor, by adjusting and improving his note to the

city he just mentioned with allowing a call in number, making it more prominent that people can call in by phone and press *9 to be recognized with their virtual hand, will be helpful if people have problems during the public comment section. I did not make any changes to that because of technological constraints that don't allow us to improve it any further than we have. The special procedures were drafted by Kit and they authorize us to meet virtually and also for the public to speak virtually.

City Attorney Kit Williams: We do need to have this special procedure during the pandemic emergency. We were able to have virtual meetings because of what the legislature had done, and specifically authorizing that. Unfortunately, they had a termination date of December 31st. In researching this, I found some Attorney General opinions talking about if we put it in the rules, we are more likely to be recognized as being allowed to have these virtual meetings. That's why I asked Council Member Turk if I could add this to what she had wanted to do. I sent the information out yesterday and again today to City Council. This is how it reads, "During the pandemic emergency, City Council Members are authorized to attend, speak, and vote using Zoom or other virtual communication means during the City Council meetings and committee meetings. Citizens are also authorized to attend and speak virtually if in compliance with other provision of these rules." I would recommend both of these potential changes to the Rules of Order and Procedure be approved by the City Council.

Council Member Petty: With respect to the Attorney General's opinions that were cited and the expiration of the legislature's authorization, is there anything binding us to only doing this during a state of emergency or could this be a more general policy in the future?

City Attorney Kit Williams: I don't think it's necessarily binding us at this point in time. I don't know what the legislature might do, but especially for the pandemic emergency where it is not safe to have the Council Members all here and voting, that we needed to have this. If in the future after the pandemic emergency hopefully has come to an end, certainly, these rules can be looked at. It's a good thing to have City Council Members and the audience here because there's much communication that goes on beyond your voices, the ability to speak and see the room, and to also see the Council Members is an advantage. I do think the Attorney General's opinions, which are not court decisions, but their opinions did not limit it to a pandemic emergency.

Council Member Petty stated he prefers in person meetings in general but thinks they would be remiss to not note some of the benefits they've been able to observe from the virtual formats. He stated at the beginning of the pandemic it was a novelty to be able to see all of your faces at the same time while talking, but that is a real persuasive benefit for a lot of us and we can tell what different people are thinking at different times and respond appropriately. He stated he would never suggest they needed to be in 100% virtual format forever, but some limited format of virtual participation is probably here to stay. He stated a Council Member could travel for work and still participate in a meeting or a working mother would be able to participate in the meeting as a commenter. He stated he hopes they're all prepared to find some way to work together of extending these benefits in a limited fashion forever.

Council Member Gutierrez made a motion to amend the resolution as read by City Attorney Kit Williams. Council Member Turk seconded the motion. Upon roll call the resolution passed unanimously.

Council Member Petty moved to approve the resolution. Council Member Kinion seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 26-21 as recorded in the office of the City Clerk

2020 Merit Staff Pay and Benefits Study: A resolution to approve the 2020 Merit Staff Pay and Benefits Study Report prepared by the Johanson Group, and to adopt the 2020 Merit Staff Pay Plan structure.

Missy Cole, HR Director gave a brief description of the resolution. She stated we brought forth this pay structure at the beginning of the pandemic and it was tabled until we could revisit it. She stated staff is recommending adoption of the pay plan structure as presented back in March, based on the study and the market data in order to keep the city competitive in the market.

Council Member Turk: I am happy that we're able to do this financially. I appreciate all the patience the staff has exhibited during this pandemic. I'm very happy this is before us right now.

Mayor Jordan: Me too.

Council Member Gutierrez moved to approve the resolution. Council Member Turk seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 27-21 as recorded in the office of the City Clerk

2021 City-Wide Employee Compensation: A resolution to approve a budget adjustment in the amount of \$1,700,000.00 to facilitate the city-wide 2021 Employee Compensation Adjustment.

Paul Becker, Chief Financial Officer gave a brief description of the resolution. He stated he is happy to bring this item forward and recommend it to Council. He stated in March of 2020, the administration, very much with his forecasting and advice deferred the implementation of the plan because of not knowing what would happen economically due to the pandemic. He stated the pandemic intensified and as it intensified, we felt it was still responsible to withhold or defer the salary increases because we were concerned if our economics would continue to hold their own or increase. He stated at that point, he thought we were going to see a significant decrease in sales tax. He stated he was happy that he was wrong. He stated sales taxes increased 6.5% and leveled out the General Fund. He spoke about the 2021 budget. He stated if we hit the same sales tax numbers in 2021 as we did in 2020, the plan will pay for itself. He stated we've increased our reserve position and we're very fortunate to do that in 2020. He stated we are happy to recommend the salary increase be implemented. He thanked all the employees who have shown great patience

and acted very responsibly. He stated we need to consider that other local municipalities and governmental bodies in this area granted an increase last year when we didn't and deferred.

Mayor Jordan: You all heard my remarks at the Agenda Session. I want to thank the staff for their patience, work, and diligence to keep the service level at such a high rate. I want to thank the Council for showing great finance management during this time. We want to thank the citizens that helped bring in the sales tax revenue that made this possible. One of the most important things you can do as an administration is invest in your employees that keeps the service level where it needs to be. You'll be the best of the best as long as you invest in the people that gets you there. This staff has gotten us there and it's a privilege to be able to have the finances to bring this raise package forward.

Council Member Gutierrez moved to approve the resolution. Council Member Turk seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 28-21 as recorded in the office of the City Clerk

RZN 2020-021 (NE of Catalpa Dr. & S. Ruppel Rd./Fayetteville Public Schools): An ordinance to rezone that property described in rezoning petition RZN 20-0021 located Northeast of West Catalpa Drive and South Ruppel Road for approximately 22.98 acres from CS, Community Services and NC, Neighborhood Conservation to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He stated when considering the request, staff had some mixed findings. He stated the property does have a varied future land use map designation, which reflects the split zoning. He stated the areas that are zoned CS are designated as city neighborhood area where Fayetteville anticipates wide spectrum of uses, whereas the remainder of the property to the east as a residential neighborhood area designation, which is intended for a spectrum of residential uses. He stated staff finds that the proposed P-1 zoning district is generally inconsistent with this aspect of the city's long range plans. He stated the P-1 zoning district is fairly limited in its uses and does allow activities that can be very complimentary of the uses currently allowed in CS or UT, such as libraries and schools. He stated however, it is limited to those institutional uses. He stated when it comes to City Plan 2040 and its goals, staff had some mixed findings. He stated we feel the P-1 zoning district does indeed allow a lot of uses that do absolutely complement the potential land uses that can be developed and all the surrounding properties, whether those are residential or non-residential, but the P-1 zoning districts inherit limitation to one type of land use. He stated institutional land uses is somewhat restricting. He stated on the balance of issues, staff is recommending approval. He stated after some discussion, the Planning Commission did opt for the request, but with an alternative recommendation to rezone the entirety of the property Community Services, which would allow a school or institutional use as a buy right use. He stated the Planning Commission had a split, 4-3 vote. He stated staff has not received any public comments on this request.

Dr. John L Colbert, Fayetteville Public Schools Superintendent and Applicant requested for Council to support the P-1 zoning of the property to allow the Fayetteville School District to build a new middle school for grades five through six. He spoke briefly about a demographic study. He stated in February of 2020, 89% of the Fayetteville voters approved a bond restructuring that includes the purchase of land to build a middle school on the west side of the city. He stated they have until May of 2023 to spend the money from the bond restructuring.

Dr. Megan Duncan, Associate Superintendent of Support Service and Applicant stated they have spoken to students, teachers, administrators and parents about the needs of the community. She stated the building and the design was to optimize those options and requests that we heard from so many stakeholders.

Matt Morningstar, Principal at Holt Middle School and Applicant spoke briefly about the input on the design process, the footprint that the schools serve, and the safety aspect of the school design. He stated outdoor and indoor activity space and the library was very important to students and teachers. He spoke about safety for car rider pick-up. He spoke about reconfiguring a stacking lane. He spoke about the separation of the traffic asphalt and cars and the learning environment. He stated the building is a natural separator at Holt. He stated the parking lots and bussing loops are out front and all of the learning environment is out back, which is awesome. He stated the rezoning of this property would be a blessing to the students who will attend the school in the Fall of 2023 and for decades to come.

Council Member Scroggin: If Planning Commission recommended CS, why did this come to us as P-1?

City Attorney Kit Williams: Our rules, which we have always followed, are the applicant's recommendation for their requested rezoning as what is drafted. It takes five affirmative votes to pass an ordinance. We always go with what the applicant has requested, whether or not the Planning Commission has recommended denial or any other potential changes. This rezoning, just like every rezoning that comes to you, is going to be what the applicant has requested.

Council Member Scroggin: When did they have meetings with our staff that showed P-1 is somehow safer than CS?

Jonathan Curth: Speaking from a Planning perspective, I did not have that conversation with anyone. It sounds like the school may have had the opportunity to work with our Engineering Division quite a bit, but Planning did not get into that issue at any point.

Council Member Scroggin: I keep hearing that putting parking lots in front of buildings is safer and I would love to see peer reviewed evidence of that. I don't really believe that. This could be side loaded and there's ways to do that. We rezoned all of Ruppel hoping to have a certain aesthetics and unfortunately, it's escaped us.

Council Member Petty stated it's obvious that this is the right site. He stated the research has been done and we should validate it. He stated we have a blind spot about how school grounds can make the community better. He stated it is one of the last places in our society where it's explicitly about

being oriented to the community and it's amazing to see, but on the other hand, when we look at our buildings, they don't do that at all. He stated they're turned in on themselves and away from abutting properties. He stated when it comes to transportation, we aren't being creative and are designing according towards parameters out of a book. He stated maybe that's some criticism of our Engineering Department who has been advising the school district. He stated he's looking around on our team and the school district team and doesn't see an expert in urban design or an expert in municipal tax revenues affecting the adjacent land uses in a positive and deliberate way. He stated he is unconvinced and hasn't made up his mind to oppose the request. He stated it seems like the plan has already been designed and it's going to look like every other new school, in terms of the way the transportation circulation happens and that's probably going to set us back on what we've envisioned for this corridor.

Council Member Scroggin: This is the correct place for a school. Unless some crazy knowledge comes to me, I will vote for P-1 or CS on this. This is definitely needed.

Council Member Turk: If there are safety studies that have been done that compare and contrast parking lots in front versus the form based design that we're discussing here tonight, what is safer for the citizens and the children that are going to be using the school in the near future? Have any of those kinds of materials been reviewed or incorporated into your plan?

Clayton Vaden, Lewis Architects & Engineers stated we've been involved in educational school design since 1965 and there's a lot that has changed. He stated the security has ramped up more for the administrators, parents, and trying to take care of the children inside an elementary school. He stated the idea of keeping public and the children separated and protected is the most important part. He stated we're pushing parking for staff and busses away from the front of Ruppel. He stated we have a small parking area to accommodate guest and to have one point of entrance and exit from the street front. He stated we want to allow students to safely go out into an environmental outdoor classroom, which is on the Fayetteville Public School Districts list.

Dr. John L Colbert: As we look at the research and construction of schools, especially when it comes to accessibility, we try to make sure there is one entrance into the building and that the administrators and the staff would be able to keep a close eye on those students as they get ready to depart from the school. Having the entrance from the beginning provides that safety issue for us. All the information and studies we've looked at recommends having the entrance at the front for safety.

Council Member Turk: Thank you both. That answered my question and I appreciate it.

Council Member Petty: It was mentioned earlier that we helped you reconfigure a stacking lane. Was that for this site or for a different school site?

Matt Morningstar stated it was for Holt Middle School. He spoke about Ruppel being a dead end and big trucks barreling down fast. He stated it's between Holt and Clabber Creek where over the last 30 to 45 days moved it back and gave them nine extra feet, which today was the first time that we got to see it in action. He stated no kids entered on Ruppel, which is a safer way.

Council Member Petty: Does the site plan associated with this rezoning proposal, which obviously already has been created, does it use one of the side streets for stacking?

Dr. Megan Duncan: There is no side street located around the property. The road that's available currently, is off of Ruppel Road.

Council Member Petty stated back when we agreed to build Ruppel, we were promised that it was going to have an average speed of 25 or 30 miles an hour and it doesn't. He stated if it did, it would be safe to have a parking lane off of the side of it. He stated we have a street that didn't meet our intentions and the promises are unfulfilled, and the only way to slow traffic down on the street is to get things back close to it. He stated when are we going to take opportunities with projects that come in to slow the street down to the speed of traffic that is actually safe for everybody. He spoke about pedestrian safety.

Susan Norton, Chief of Staff: City Engineer Chris Brown has let me know that he has not yet been involved in the analysis of this. Thank you, Mr. Morningstar for talking about the clarification about it being with Holt Middle School, rather than the new site. If you want Chris to enter into the conversation, he would be happy too, but he doesn't have any information at this time.

Council Member Gutierrez stated a side street could open up some design possibilities to pull that traffic off of the road and make it where people don't have to cross the road to reach their vehicles. She stated if the traffic created by the entity is on the property, it seems like it would be safer on the property. She stated trying to figure out what the new design is with this working on our plans for this area, it seems like the entrance of where the public is going to come in and having some accessible parking that's near it along with the parking that's not on the traditional front is possible with this this bigger piece of property. She requested information about zoning options.

Jonathan Curth: I would have to defer to the applicant on that. I was consulted early on about options for zoning districts, but I don't know what the basis was for the ultimate decision for P-1 across the whole site.

Blake Jorgensen, Jorgensen & Associates Representing the Applicant stated he was the engineer on Ruppel Road and understands some of the concerns about speeding. He spoke about the school site being an ideal location. He spoke about the community input on the school. He stated this site has been strategically designed to isolate the bus drop off. He stated there is a parent section and a staff section. He stated we know who the landowner is and what their intention is. He stated the design features will be amazing and it will be something that the city is going to be proud of. He spoke about the adjoining landowner value. He stated the reason we went with P-1 was because if you have this 20 plus acre, the school is fluid. He stated a Conditional Use is not ideal. He stated the vast majority of all the other schools are developed under P-1, which he believes is the most appropriate zoning for a school.

Council Member Gutierrez stated perhaps the design has happened with the people in mind who are going to use the building, which is incredibly important, but we have to consider the people who lives in the neighborhood and how the neighborhoods are designed. She stated having the two considerations are equally important.

Council Member Jones: What's your timeline? When are you scheduled to start breaking ground?

Blake Jorgensen: If this rezoning goes through tonight, then we would immediately proceed to Large Scale Development. It'll take several months for us to go through the city planning to get our grading permit. Architecturally, they'll have to get building permits pulled. The pressure is then on Mike Davis of Milestone and they have to have this project built out by next spring, or else that bond money could go into a situation where they can't fully execute that bond. We do have a time constraint. In this case, we have a bond that is going to expire. It is important to get this thing going. We would appreciate everyone's vote of confidence for that tonight.

Council Member Jones: I appreciate this presentation and giving me the information that I need.

Council Member Hertzberg: When does the bond expire?

Dr. John L Colbert: May of 2023.

Council Member Turk: The bond expires in 2023 and those funds have to be spent or the majority of those funds have to be spent by then. They have to be close to fully expended. Is that correct, Dr. Colbert?

Dr. John L Colbert: Yes, ma'am. That is correct. We must have it spent or encumbered by 2023. It will not carry over.

Council Member Jones: If there needed to be some other type of design, that would impact the progress and the timeline. Correct?

Dr. John L Colbert: Yes, sir. Very much so.

Matt Morningstar spoke to Council Member Petty about the design of the school. He stated the school is two stories and it takes some of the community involvement in mind. He spoke about after school activities. He spoke about the L shaped design allowing easier access into the gymnasium and theater. He stated the design is fresh and are pods. He spoke about activities that could be done there by families. He stated this is usable with what the city's plan is right now being the mountain bike capital.

Council Member Petty stated he has zero criticisms of the building. He stated he doesn't have any expertise on school buildings. He stated he has expertise on how urban design affects public health and public safety. He stated traffic speeds on Ruppel are faster than what we wanted, and those speeds are deadly. He stated the way we slow speeds is by traffic friction, which means you put stuff closer to the road, people drive slower and the best things that have the most impact are buildings. He stated this is why we have the build to zones in our form based codes. He stated it not about aesthetics. He stated it's convenient to attend an after school event at most of our schools in a car, but it's not convenient to attend events or even get to school for most people who are pedestrians. He spoke about the responsibility of the school district with the design site and the city's responsibility in how neighborhoods get planned and constructed. He stated fast traffic becomes more deadly at an exponential rate for every mile per hour that gets increased, and the

only way to make people drive slower, is to change the way it feels when they're behind the wheel. He spoke about partnering with developers and applicants to make sure that when they build their projects, it makes the situation better. He continued to speak about speeding problems. He spoke about coordinating with the Engineering Department or active transportation experts to review the plan to suggest cooperative revisions, not to the building design and site, but instead to make traffic speeds on Ruppel Road safer for anyone to cross.

Mike Davis, Milestone Construction stated from Densmore Trail to Ruppel, there's 52 feet of fall on the site. He stated during the design the building has been pulled forward several times, getting it as close to Ruppel as we feel we can, while still separating the traffic. He stated the building is pulled forward to help accommodate the look, but mainly to get full size play areas behind the school, such as a soccer field and basketball courts where children are safe. He stated the drop going from Ruppel up to Densmore is not conducive to being a parking lot. He stated the district is looking at various things that could happen there in terms of a walking trail or nature studies that can all be involved with the community and help the area to increase property values. He stated he understands the concern about speed on Ruppel, but that's only one aspect of the total site.

Council Member Petty stated this illustrates the theme of what he is trying to say. He stated if you think there are only two options for serving the public with their vehicles and those only two options are a parking lot in front of the building or behind the building, then we are not addressing this creatively. He stated we're addressing it parametrically in the same manner we address it on almost every other site. He stated we have a plan to queue cars on the site so we can keep traffic lanes on Ruppel empty and fast. He stated that right-of-way is under our control. He stated he's optimistic there are solutions that haven't been yet vetted and thinks it would probably be easy to implement because we wouldn't be touching the architecture and utility layout. He spoke about using the city's right-of-way to accomplish the goals he would like to see.

Blake Jorgensen stated this site has specifically been designed and the school doesn't want a building 10 feet from the road. He stated if you have a kid that bolts out the doors, you don't have a chance to rescue that kid or chase them down. He stated schools need a buffer and stated some tragedies have occurred where kids did get outside of the doors. He stated the concern is valid about slowing traffic down on Ruppel but hopes the city can come up with something for the whole street. He stated there has already been a lot of thought that has gone into this plan.

Council Member Petty stated he is focusing on this one particular issue because the rest of it is so good. He stated Community Services zoning doesn't require a building to be 10 feet away from the curb line and has more flexibility than that. He stated a kid running out of the front door into a parking lot can be just as dangerous as a kid running out the front door into a lane of traffic. He doesn't think it's correct to say what you've already designed, before there has been a meeting to go over design details with the Engineering Department or Transportation Committee, that design is the only way it works.

Council Member Kinion stated what we're voting on tonight is if this property would be appropriate to zone P-1. He stated we can talk about all sorts of theories, but he trusts the school board, school administration and the professionals that are working on this project to continue to

work with the city and stakeholders as the process moves forward. He stated we are not voting on the design. He stated it is appropriate for the property to be zoned P-1 as requested.

Council Member Petty: We're only talking about setbacks. It's in the zoning code.

Council Member Gutierrez stated it wasn't very long ago where we were discussing these things with our new public safety campus and that was a lot of work for us to come together on a solution. She stated design considerations had already been designed for various needs that were established and have been done for a very long way in a certain way. She stated if we make one exception for one group, what does that mean for future groups. She stated where we want to go with the use of the land here with zoning is with Community Services. She stated we have found solutions where the challenges were great and believes that is possible. She stated she would love to see a school in this neighborhood and for people to have a safe walkable space.

Council Member Petty stated he would like to hear from somebody about the prospect of putting the design in front of the Transportation Committee and the Engineering Division to look at alternatives.

Dr. John L. Colbert: We will be willing to do that. We were hoping to get the zone approved because we're not talking about the design. We need to consider the different safety issues we have to face as a school. With the active shooter, research tells us they need to be separated from everyone coming into the building. When we did this design, we had all that in mind.

Council Member Hertzberg: Would the CS zoning cause a delay in the building process?

Blake Jorgensen: Yes, it would. If you all voted to have CS zoning, it would delay us because we'd have to alter the site plan significantly. There is a provision that would allow us to get a variance, but it'd be impossible to bring this project through with CS without a single variance. It would be an uphill battle.

Council Member Jones: Is it possible to do the collaboration that Council Member Petty suggested if we decided tonight to support the zoning or does it have to be afterwards? I don't feel comfortable delaying this at all.

Blake Jorgensen: The next step is to go to Large Scale Development, which would go through Planning Commission. We could easily work with the Transportation Committee and Engineering staff and vet that. The process is not done. This is step one.

Dr. Megan Duncan: We will also go through the process with the Arkansas Facilities and Transportation Division. There are so many checks and balances we have on our end because we are building a public institution. We will make sure we meet all of those requirements and request that we can to make sure to move forward as a public school.

Council Member Jones: Thank you so much.

Council Member Bunch: When is our next Transportation Committee meeting?

Council Member Petty: It is typically scheduled for the fourth Tuesday of the month. However, for something like this I would propose meeting with this being the only item under consideration. I would commit, if I presided over that meeting to keep the conversation focused to the issues that have been raised tonight and not talk about anything else.

Council Member Bunch: If we could put together a quick Transportation Committee meeting, it wouldn't hurt us to look at this in a little more detail. Blake, would you agree with that?

Blake Jorgensen: I don't think there's an issue with that. Are you suggesting we table this until we have the Transportation Committee meeting or are you going on good faith we could potentially vote on this tonight and then follow up with the Transportation Committee?

Council Member Bunch: I usually prefer to table something and get the details worked out.

Mayor Jordan explained that the ordinance is currently on the First Reading.

Council Member Bunch: Mr. Mayor, I'm getting the feeling that the applicant is expecting us to approve it tonight.

Mayor Jordan: The Council can do three readings.

City Attorney Kit Williams: That will happen unless there's a motion to suspend the rules and go to the second reading.

There was a brief discussion about leaving it on a reading and schedule a Transportation Committee meeting.

Council Member Kinion stated he has confidence in the school system and other professionals who have spoken, to work with the city to make sure it meets all the needs. He spoke about the construction being under time limits that are placed on bonds and spoke about get the zoning taken care of. He stated P-1 zoning is appropriate.

Council Member Scroggin: If we were to rezone it and then decide we don't want the parking in the front, that would require variances, which would take longer because they would have to go through Planning Commission.

Council Member Turk requested public comment.

Council Member Kinion requested moving forward after public comment.

City Council received 9 public comments regarding this ordinance.

Council Member Kinion stated we have a heard a lot of sentiment that there was a lot of care taken in considering this rezoning and a lot of support for it.

Council Member Kinion moved to suspend the rules and go to the second reading. Council Member Turk seconded the motion.

Council Member Petty: Are we going to have comment on the motion?

Mayor Jordan: I don't know. We haven't quite done that before.

City Attorney Kit Williams: We have very rarely had some comment after someone has moved to suspend the rules and go to the second reading. It's not usual, but I think we have allowed that.

Mayor Jordan: I'm going to allow it.

Council Member Petty stated everybody is eager to solve this equation, for yes. He stated even though the discussion is only focused on one potential improvement, the debate has been anchored to a suggestion that one improvement means we're talking about a whole scale rejection of the plan, which is not true. He stated the major change between P-1 and CS is the way the front of the property is treated. He stated he's not advancing to vote on it tonight because the question of how this project could be used to slow traffic on the street out in front, wasn't asked. He stated that question in a forum, may produce meaningful results.

Council Member Bunch stated there's so much thought that's gone into this about safety and the concerns of the children, parents, and the stakeholders that were all active in this. She stated when everyone is talking about the site, that is in support of it, they are talking about this as if it's contained unto itself. She stated she's looking at it as how it fits in with this greater area. She spoke about looking at it with more detail and we wouldn't have to change a whole lot to make it more agreeable. She stated the bond was approved, COVID hit, and then everything went out the window for timeline, which she understands how difficult it has been. She stated it's a great place for a school and loves that it is two stories.

Council Member Kinion moved to suspend the rules and go to the second reading. Council Member Turk seconded the motion. Upon roll call the motion failed 4-4. Council Members Turk, Hertzberg, Jones, and Kinion voting yes. Council Members Bunch, Gutierrez, Petty, and Scroggin voting no.

There was a brief conversation about scheduling a Transportation Committee meeting.

Council Member Scroggin stated he looks forward to hearing what the Transportation Committee comes back with. He stated the number one fatality for students is school related transportation. He stated if you group together homicides, school shootings and suicides, that is a little bit larger. He stated he doesn't think that includes people driving to school. He stated transportation is the most dangerous part of schooling.

This ordinance was left on the First Reading.

Bid #21-06 Asphalt Materials: An ordinance to waive the requirements of formal competitive bidding during calendar year 2021 for the purchase of asphalt materials for use by the Transportation Division but to require informal quarterly bids or quotes.

City Attorney Kit Williams read the ordinance.

Terry Gulley, Transportation Services Director gave a brief description of the ordinance.

Council Member Scroggin 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 Scroggin moved to suspend the rules and go to the third and final reading. Council Member Gutierrez 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 6399 as Recorded in the office of the City Clerk

Club Rush Hookah and Cigar Lounge: An ordinance to approve the application of Sami Ammar Haddaji, on behalf of Club Rush Hookah and Cigar Lounge, for a permit to operate as a private club in the City of Fayetteville at 550-B West Dickson Street.

City Attorney Kit Williams read the ordinance.

Jamie Fields, Deputy Chief of Police gave a brief description of the ordinance. She stated when she submitted the packet on December 2nd, they were in support of this application. She stated since that time, Mr. Haddaji has had some ABC violations at another establishment that he has in the Entertainment District and is specifically related to COVID-19 type violations. She stated the Hookah Lounge is a much smaller venue and doesn't anticipate having the same type of problems there. She stated there is a pending ABC violation, which is the third COVID type violation at the VIP lounge. She stated we're not necessarily opposed to the application but would expect Mr. Haddaji to tighten things up. She stated we have found him to be available, accommodating and helpful to our officers on Dickson Street.

Robert Rhoads, Hall Estill Law Firm stated he was representing the applicant. He stated the applicant is working diligently on the violations that have been brought against him to get a good solution to those. He spoke briefly about the applicant's business plan and the location of the business. He stated the applicant agrees to follow all of the conditions set before him. He stated in order to get his ABC permit, we have to do this first. He stated the applicant would like to get this

business up and running as a private club from a quicker standpoint. He requested to go to a third reading.

Council Member Turk: Could you address what the violations were and precisely what steps you've taken to resolve those. Have they been resolved or in the process of being resolved?

Robert Rhoads: He's already paid the tickets. He received another ticket and we are working on those. There's a hearing set and I'm representing them on that. We literally just got notice of the second one. He is endeavoring to operate with high standards.

Council Member Turk: Aside from paying the fine, what other actions have been taken to resolve any gaps or any mass violations? As we all know, COVID is worse than it has ever been.

Robert Rhoads: Remember, we're talking about the VIP Club. The VIP Club is not the large clubs that we have on Dickson Street. It's relatively small. The owner is there with normally four security people, three bartenders, and a manager just about every night. He understands what the requirements are. He's constantly talking to people asking them to maintain their distance and to put on their masks if they take it off when they're not drinking.

Council Member Scroggin: If we grant the private club and for whatever reason it doesn't work, what mechanisms are there to revert back to what's currently allowed?

Robert Rhoads: Let's just say that you don't pass the ordinance and we never get before the ABC, but if you pass the ordinance and we go before the ABC and they don't grant him a private club, then he still has his current beer and wine permit.

Council Member Scroggin: Let's say he gets it granted, and for whatever reason the club doesn't behave as well as it has been, what can the city do to take away the private club?

City Attorney Kit Williams: It's much more difficult to remove a permit that's been granted than to hesitate or not immediately pass this ordinance, which would probably lead to the granting of the permit by the ABC. This is an ordinance that requires three separate readings unless you suspend the rules. You could see if he can improve his behavior by not immediately passing this ordinance and waiting to see how he's going to perform during this most dangerous time of the COVID-9 pandemic.

Council Member Scroggin: I agree with that. Hopefully, we can go to the second reading. There's no reason to table or move forward quicker.

Robert Rhoads: If you look at the ABC records, you will see there's probably pretty much every club during COVID that has received the same type of violation. He is not an aberration and before COVID he had absolutely no violations in either the Hookah Club or the VIP from the ABC or tobacco.

Council Member Scroggin: What is the benefit to you to be a private club, as opposed to not being a private club?

Robert Rhoads: It's a different financial model and different hours.

Council Member Scroggin: Are you allowed to go past 11 now?

Robert Rhoads: No. That's under the Governor's emergency order.

City Attorney Kit Williams: The primary difference is that with a private club permit, you're allowed to sell mixed drinks and you're not if you only sell beer and wine, which is what he's doing now.

Council Member Kinion: When we approved the permit for the VIP lounge, it did have a history of trouble. I live two blocks from it. I've never had trouble with it, but it has a history of that. Recently it has not been the troubled venue that it was in the past. They have stood up by the promises and guarantees they've made, as far as any ABC violations or any other type of activity that would be considered a crime. He has run a good bar. Everyone is struggling with COVID and it's absolutely necessary that he step it up. We can't continue to see violations up and down our Entertainment District. We need to take time to think about it and see how things are happening in our Entertainment District.

Council Member Turk: I'd like to hold it here on the first reading. This will give the applicant an opportunity to demonstrate that he's resolved any issues with ABC. We can come back and address it in two weeks.

Council Member Petty: I prefer to deal with it tonight but will defer to the majority.

Council Member Gutierrez stated she would like to deal with it tonight. She stated our business owners and HMR have been hit terribly economically. She stated we take COVID and mask wearing seriously, and it needs to be balanced with considering the hit it has taken with our bars. She appreciates that the applicant stepping up to try and figure out how to make it work. She spoke about the violations needing to be addressed and is confident that they will.

Council Member Petty moved to suspend the rules and go to the second reading. Council Member Gutierrez seconded the motion. Upon roll call the motion passed 7-1. Council Members Bunch, Hertzberg, Gutierrez, Jones, Kinion, Petty, and Scroggin voting yes. Council Member Turk voting no.

City Attorney Kit Williams read the ordinance.

Council Member Turk: If we do this, then we're saying, it doesn't matter if you get written up by ABC for mass violations. That's the message we are sending and undermining our whole masks provision idea. All he's asking to do is mixed drinks. He's not being shut down. He still has his business with beer and wine. This is the biggest time of COVID, and 65 people died yesterday.

Council Member Kinion: I do appreciate that point of view. It's a tough thing because it is an economic issue. A public health issue supersedes the economic issue that has been brought on by the fact that his club did have mass violations. It's the nature of the violation.

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Petty seconded the motion. Upon roll call the motion failed 5-3. Council Members Bunch, Hertzberg, Gutierrez, Jones, and Petty voting yes. Council Members Turk, Kinion, and Scroggin voting no. Mayor Jordan chose to not vote.

This ordinance was left on the Second Reading.

RZN 2020-020 (915 S. Hill Ave./Norvell): An ordinance to rezone that property described in rezoning petition RZN 20-0020 located at 915 South Hill Avenue for approximately 1.03 acres from RMF-24, Residential Multi-Family, 24 units per acre to RI-U, Residential Intermediate-Urban.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He stated city staff feel like the request is complimentary of the City Plan 2040 goals, particularly those for appropriate infill. He spoke about an active transportation network. He stated it has access to infrastructure needs. He stated staff is recommending approval and has not received any public comment. He stated the Planning Commission voted 7-0 to forward it to Council.

Sasi Sundaram, Applicant stated he agreed with what Jonathan Curth said and was available for questions.

Council Member Gutierrez 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 Gutierrez 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.

Council Member Gutierrez: It's an exciting area and very dynamic. This zoning could add a lot, especially with the School of Art there and all of the amenities. I'm excited to see what the developer will bring to South Hill.

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

Ordinance 6400 as Recorded in the office of the City Clerk

RZN 2020-022 (3670 W. Mt. Comfort Rd./Landmarc Homes & Hardin): An ordinance to rezone that property described in rezoning petition RZN 20-0022 located at 3670 West Mount

Comfort Road for approximately 6.05 acres from R-A, Residential Agricultural to CS, Community Services.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He spoke about transportation routes and the amenities. He stated there is water and sewer on the site. He stated the CS zoning district has an associated higher design standard requirement associated with it for non-residential development. He stated staff is in support of the request. He stated the Planning Commission unanimously forwarded the item to Council recommending approval. He stated staff has received public comment on this item, which much of the comment is opposed to the zoning. He stated some public comments were in favor of the rezoning if the Council were to approve the amendment to make gas stations and drive through restaurants a Conditional Use in the CS district.

Suzanne Clark stated she's representing Tony and Sherry Hardin and Landmarc Custom Homes. She stated she is not representing Kum & Go and this is not an application for a gas station. She spoke about the Hardin's personal connection and attachment to their property. She stated any suggestion that they do not care about how this area is developed, is unfair and untrue. She spoke about CS being the proper zoning. She stated a lot of the prior complaints about this when the applicant was Kum & Go, was traffic references and citizen claims that it's a rural area. She stated this is a high traffic area, no matter how you want to define it. She stated it was unanimously supported by staff and Planning Commission. She spoke about this rezoning not being an application for a gas station. She requested Council to disregard any claimed opposition that does not have a name and address attached to it and submitted to Council. She stated it is way too easy in our social media day, to put together something like a Google survey, shoot it out to your friends and get somebody to click and say, I'm for or against it. She stated if you're hearing references to there are 400 folks who are against this, take that with a giant grain of salt because those folks have not been identified.

Council Member Petty: Mrs. Clark and Jonathan Curth referenced the project that's across the street. What is that project? I think it goes to the compatibility question of our vote.

Jonathan Curth: What's been presented to staff to this point is purely residential, but it does include several outlets for non-residential development near the corner of Salem and Mount Comfort. The majority of it is intended for residential right now, with some multifamily buildings located near the street and along Ruppel. That segways towards the center of the site toward some smaller attached residential. Along Hamstring Creek to the south are a series of two and single family dwellings that are oriented towards some green space and will ultimately be trail, once it's built.

Council Member Petty: Thank you. I want to be transparent. That is something at the forefront of my mind as we consider this request for this piece of land.

Council Member Scroggin: Could a gas station be built on the south side?

Jonathan Curth: Yes. The current zoning entitlement on all the CS properties in this area could have a gas station. None of them have Bill of Assurances or otherwise, preventing it.

Council Member Scroggin: Almost all the entirety of the opposition has been basically one use unit. If we don't plan on doing that here, there are tools in our toolkit that could alleviate that concern for the people that are worried about it.

Council Member Hertzberg: Does the applicant have any current contracts with any gas stations?

Suzanne Clark: No.

City Council received 10 public comments regarding this ordinance.

Jim Hazen, Citizen spoke about his property in the same area that was previously rezoned to Community Services.

Council Member Kinion: Mr. Hazen, your property to the south of this that you sold for millions of dollars did indeed get the CS zoning approval. I cannot imagine you're casting doubt on the current owners of this property as being dishonorable. I can't look at it from that point of view. We are talking about property that's very similar to Mr. Hazen's property that did get the CS zoning. Tell me the difference between the two properties.

Jim Hazen, Citizen: I talked to Landmarc Construction. They indicated they felt that a Kum & Go was a possibility in that corner, even though the residents opposed it. This was just a week ago. It took me two years to get my property rezoned. I had a lot of neighbors ask me to not put in a gas station. I didn't go through a formal letter of assurance against it, but I assured them I would not do that. I have not done that and there's no plan to do that because a gas station is inappropriate in this type of CS neighborhood town center environment. It's not a question of honorability. It's a question of assurance that they're going to use their CS zoning to enhance the neighborhood and not to create an obstacle to a neighborhood walkable environment.

Council Member Kinion: I'm uncertain, but I don't think that Landmarc owns the property. I don't think they develop gas stations. They develop residential homes.

Jim Hazen: One of the owners of Landmarc has a vested interest in the property. I don't know if he owns it or if they're waiting for the zoning to change to CS before they close on it. They are the company that's involved in buying the property.

Council Member Kinion: I value what you have to say. It doesn't seem congruent with what was zoned in your property that you sold for millions of dollars. Everyone deserves to get a return on their investment of the property that they own. I voted for that zoning for you. We voted for your property immediately south of this and it was right for that property. The same reasons I voted for your property to be zoned CS, are the same reasons with all probability that I would support this property to be CS.

Jim Hazen: I agree that it should be Community Service. I don't agree that it should have a gas station on it.

Council Member Kinion: I don't think anyone has said there is going to be a gas station on it.

Jim Hazen reiterated his previous comments. He spoke about protecting the neighborhood.

Council Member Kinion thanked Mr. Hazen for his comments

Chris Erstine, Citizen asked what the walkability score was and what influenced that score.

Jonathan Curth: The city does not curate a walk score. There's a commercially known firm that offers walk scores. This property is about a nine, which is quite low. The city has their alternative metric. We've been referring to often since the adoption of City Plan 2040, which is the infill score. This property scores a mix of a six or seven, depending where on the property you are. That's a mid-range score and that's based on the future land use map, the proximity to park, trail, public school, immediate access to water and sewer, and the Fire Department's response time. Elements of that relate to walking, but it's not purely about that.

There was a brief discussion clarifying that a Bill of Assurance can't be requested of an applicant and an applicant would have to volunteer that on their own. The public was reminded that this ordinance was about a rezoning and not a development proposal.

Council Member Petty: It seems unclear what the consensus of the Council would be if a vote was held right now. One thing that does seem clear is that the consensus would very likely be stronger if the gas station question was resolved. I'm going to vote on whatever proposal is before us, however the applicant chooses to frame it.

Council Member Gutierrez: I'm looking forward to Ordinance Review. We should look at that before we make a decision. There's an enormous amount of comments against this that I have received. We need to not rush through this decision tonight.

Mayor Jordan stated this is an ordinance and it can go three readings. He briefly explained the number of meetings it could be heard at.

Council Member Kinion: By holding this until we make a rule change, is like changing the rules in the middle of a game. This property owner has already come to us and asked for the CS with the CS we have in place now. It's unfair to change the rules in the middle of the game. I have to consider that from a moral and ethical point of view. I'm not wanting to rush through it, but to wait six months so we can change the rules of the game on an applicant that's already come to us and asked for this doesn't feel right at all.

Council Member Turk: I don't think we need to advance this tonight. We need to give it some time. I hope the applicant was listening carefully about the neighbors' concerns and some of the concerns expressed by the Council, especially when this issue came up about six or seven months ago. Maybe they might consider a solution to where this could advance forward without a problem.

We need to take a look at it at Ordinance Review. I agree it's changing the rules in the middle of the game and I never liked that, but at least we'll have a little bit of clarity and the applicant will have time to consider some other options.

Council Member Hertzberg: I agree with Council Member Kinion, right now. It's not fair that we are asking to change the rules. They don't have a contract right now with a gas station. I don't think the gas station is a concern or it's not a concern I would be voting on.

Council Member Jones: I agree with Council Member Kinion. It's not fair to change the rules.

Council Member Hertzberg: The zoning across the street is exactly the same. I'm not sure it makes sense to say the property directly across the street in question, would be inappropriate.

Mayor Jordan spoke about holding the items for two weeks.

Council Member Kinion moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-3. Council Members Bunch, Hertzberg, Jones, Kinion, and Scroggin voting yes. Mayor Jordan voting yes. Council Members Turk, Gutierrez, and Petty voting no.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

VAC-2020-010 (2747 & 2785 E. Stone Mountain Dr./Kimbrow): An ordinance to approve VAC 20-0010 for property located at 2747 and 2785 East Stone Mountain Drive to vacate a portion of a general utility easement.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He stated there were no issues identified and all the utilities have agreed and signed off on the proposal. He stated staff is recommending approval. He stated this is the first easement to travel directly to the Council under the ordinance that was revised in 2020 allowing easement vacations to proceed the Council without Planning Commission consideration.

Jason Kimbrow, Applicant: I'm going to build a house that will overlap on the lot line. All the utility companies have signed off and we will still have the north and south easements. Thank you.

Council Member Scroggin 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 Scroggin moved to suspend the rules and go to the third and final reading. Council Member Turk 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 6401 as Recorded in the office of the City Clerk

ADM-2020-010 (SE of Salem Rd. & Jewell Rd./Forest Hills PZD Amendment): An ordinance to amend the Forest Hills Residential Planned Zoning District (07-2793) to reconfigure Planning Area 3 to allow for the development of single family, multi-family, and cottage housing.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He stated staff is recommending in favor of the request. He stated the Planning Commission forwarded the item recommending approval with the conditions outlined in the ordinance. He stated we've not received any public comment.

Cody Sexton, Blew & Associates stated he was representing the applicant's representative. He spoke briefly about the planning area concept. He spoke about working with city staff on the list of conditions that were developed for the project and agrees with all of those. He feels that everything they've got checked off is going to make the project more conducive to the city's needs and the developer.

Will Dockery, 4149 West Bradstreet stated he commends the developer and hopes City Council approves the ordinance.

Council Member Turk: It seems like this is a big improvement and there's a lot more trees that are left. It's more green space oriented than the current approved PZD. I applaud the developer for taking that in consideration and changing with the times.

Council Member Kinion: I agree with Council Member Turk. It's nice to see this type of improvement on a PZD with support from Will Dockery. It looks good to me.

Council Member Bunch: I think this looks great and I respect the changes. It does fit more with our changing times, it's more fitting with our economy, and it is a better use of the land. I like that the tree preservation has been increased. I am in favor.

Council Member Gutierrez: Is there a way to see if that Shagbark Hickory tree is getting preserved?

Jonathan Curth: It's my understanding that it's on the southernmost reaches of the property. I believe it's where a townhome element of the PZD is still entitled.

Will Dockery: It's a little further to the east and south side. It is a large Shagbark Hickory. I know that sometimes trees can't be saved because of where they situate on the land, but I do appreciate this developer. It's good when we have developers that take these things into account. I commend that.

Council Member Gutierrez 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 Kinion moved to suspend the rules and go to the third and final reading. Council Member Turk seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: This is a good looking development.

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

Ordinance 6402 as Recorded in the office of the City Clerk

ANX 2020-0001(3435 E. Zion Rd./Burge): An ordinance to approve the annexation petition of Patricia Lynne Severino, as trustee of the Robert Eugene Burge Irrevocable Trust, and annex 59.00 acres of land located at 3435 East Zion Road.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He spoke about the City Plan 2040 five major guiding policies. He stated staff is recommending in favor of the annexation and feels as though they have a clear understanding of the issues on the property. He stated it would be better for this property to be within the city and subject to the much higher standards regarding drainage, tree preservation, stream side protection ordinance, and connectivity. He stated the standards are much higher within the city than they would be in the county. He stated the Planning Commission voted 7-1 to forward to the Council recommending approval. He spoke about the significant amount of public comment.

Alli Quinlan, Flintlock Limited spoke briefly about the project. She spoke about the City's Land Use Map. She stated the redesign of the master plan template intentionally incorporated the principles of the future land use maps guiding policies. She stated the commercial frontage is appropriate to the high volume frontage on Crossover, but also an important walkable amenity to the new neighborhood. She stated there is transit access directly across the street from the site. She stated there is one minor typo in the staff report. She stated the total number of residential units is 370, rather than the 240 that's listed in the packet. She stated the new master plan brings the commercial planning area into the neighborhood, providing space for walkable food or retail

services. She stated responding to concerns and staying in line with conservation development best practices, we propose that no intensive development will occur north of Hilton Creek. She stated the project will be required to meet Fayetteville's drainage criteria manual. She spoke about dedicated parkland. She spoke about flooding concerns. She stated by annexing this land and accepting the proposed PZD, Council will ensure that the land is developed following best practices and all of Fayetteville's development codes, including stormwater quality, tree preservation, and the proposed design codes.

Council Member Bunch: The part of this that's in the county is three tenths of a mile outside the city limits. Is that correct?

Jonathan Curth: It directly abuts the city limits on its western most edge.

Council Member Bunch: The greatest distance from the city limit boundary, what is the distance there? How far away is it?

Jonathan Curth: It's about a quarter mile.

Council Member Turk: Did the Park Board reject the parkland piece? What was their recommendation?

Jonathan Curth stated when residential projects are proposed in Fayetteville, they are either required to dedicate parkland or pay a fee in lieu that is based on a formula. He spoke briefly about the process. He stated after the PZD was forwarded to City Council, the applicant took the opportunity to engage with park staff and take that proposal to the Parks Board, where staff and the Parks Board did not support it. He stated the main reasons was due to the proximity to nearby parks and the condition of Hilton Creek through this property along which the parkland was proposed. He stated park staff was concerned that the responsibility of stream bank restoration would fall on the city. He stated staff was concerned about taking on some elements of liability for those property owners immediately downstream that have been affected by the flooding that's resulted from increased rainfall and Copper Creek subdivisions construction. He stated park staff commented on the potential for detention facilities or water quality facilities being incorporated into the parkland and concerns among staff about the ability of the city to maintain those or to take on the cost of maintaining. He stated this would represent a standalone floating piece of parkland and wouldn't be part of a chain of properties that could go along Hilton Creek. He stated there was some concern that it would not contribute to the larger park system and would represent a maintenance liability. He stated procedurally the decision to whether it's accepted will fall to the Planning Commission.

City Attorney Kit Williams: According to the Unified Development Code and State law, if the land that a developer is trying to dedicate for parkland rather than paying a fee and the land is suitable to be parkland, then it must be accepted. We've got a stream and they've got some issues with that. The Planning Commission can look at that. We are accepting a very wide stream out by the Razorback Golf Course as parkland and we have many streams that flow through our parks. Our most established parks, like Gulley Park and Wilson Park have a creek going through it. This is something they can look at because it looks like this stream has some problems. If the Planning

Commission and the Parks Department believes this particular area being offered is not quality and not acceptable parkland, then they would not have to accept it. If it is acceptable parkland, the developer has the right pursuant to the UDC and State law that we must accept it and not require payment, instead. Other parks being close by is not a proper reason to be able to deny the developer the right to dedicate proper parkland.

Council Member Turk: If the Planning Commission went along with the recommendation of the Parks Board and took a fee in lieu, then the developer could potentially place housing units or whatever in that parkland area that they are requesting to dedicate. Is that accurate?

Jonathan Curth: The PZD is programmed such that Planning Area 3, where this land falls has very low impact development anticipated. There's the possibility that the developer could choose to keep it as open space. There's nothing to prevent that. It's understandable to Mr. Williams point that someone would want to dedicate it, as opposed to paying a fee in lieu. It's my understanding that given the scale of the development, the fee in lieu for this overall project would total somewhere in the vicinity of \$400,000.

Council Member Kinion: This might be one of those properties we want to take a tour of. There are some interesting water issues and also the location is expanding urban sprawl, perhaps.

Mayor Jordan: That's a good idea.

Will Dockery, Chair of the Parks Advisory Board requested clarification about parkland dedication versus fee in lieu. He spoke briefly about the Parks Advisory Boards decision making process regarding parkland dedication.

City Attorney Kit Williams spoke briefly about the parkland dedicated ordinance history. He stated there might be land in this proposed development that would not qualify as reasonable parkland and if that's true, we would not have to take that. He stated generally, until we're willing to give up the current parkland dedication ordinance and maybe replace it with a regular parkland impact fee ordinance, then the option will be with the landowner about whether to dedicate quality parkland or to pay money in lieu. He stated with State law, the developer has full option of either dedicating land or paying money. He stated as long as we want to keep our parkland dedication ordinance effective, then that's the rules. He stated if the developer wants to pay money, they can do that. He stated if the developer wants to dedicate a reasonable and usable quality parkland, the developer has a right to do that. He stated he knows that the smaller parks are harder to maintain, but when a citizen survey was done many years ago, the number one park that people said they liked, were the neighborhood parks. He stated State law right now controls that. He stated if we want to have the option ourselves, then we will have to do a parkland impact fee study so we can justify it, but at that point in time the only thing we're going to get then would be money. He stated this is one of the oldest impact fee ordinances in the state.

Mayor Jordan briefly reviewed the rules about Fayetteville residents speaking first.

The City Council received 10 public comments regarding this ordinance.

Scott Hancock, Fayetteville Citizen stated it was never clarified through Planning Commission and doesn't think it's purposeful at all, but with Alli's presentation, there's some conflict in what Jonathan referred to as the corners. He stated it's been referred to as uniqueness on the boundaries for the peninsula or the island. He stated the annexation shows the cutouts and the PZD shows the northern border along Zion to be contiguous. He stated all of that is not going to be covered under the PZD. He believes some of it will still be in the jurisdiction of the county and this land is in the Springdale School system. He spoke about safety concerns and doesn't think it's clear on the boundary lines of the three farm lots. He spoke about concerns of David Lashley Park having no parking and is all street parking or walkability, especially if 370 residential units shared his neighborhood park. He requested for clarification on the northern boundary of whether that's in the city and under the jurisdiction of this PZD. He stated there are definite safety issues, as people will traverse east and west on Zion Road and the city will not have jurisdiction over all of that because a lot of it is still county road.

Jonathan Curth: I appreciate Mr. Hancock bringing that up to me and other Planning staff's attention. That was something that got through the Planning Division without being included as a condition of approval. I think that's probably a product of the fact that this item was before the Planning Commission four times. Excuses aside, it would be appropriate, and I was going to do so with the PZD presentation to verbally include a condition that the PZD boundaries be reflecting the legal description of the annexation. We cannot legally exert our zoning authorities over county property.

City Attorney Kit Williams: Neighborhood parks don't necessarily require any kind of parking. They're supposed to be for the neighborhood and have the advantage of being able to walk to the park and not have to drive.

Susan Norton, Chief of Staff reminded Council that Council Member Kinion asked for a tour.

Council Member Bunch stated a tour would be a great idea. She requested for Jonathan to speak about the dog-eared property.

Jonathan Curth: The portion on the map you can see outlined going all the way up Zion Road, it's indicated as a part of the PZD even though this red outline represents the approximate location of the annexation's legal description. These portions could not legally be subject to the city zoning code.

Council Member Bunch: Thank you.

Alli Quinlan: Any sort of discrepancy on that boundary is just a graphic error in our presentation, but the way those are provided in the PZD portion of those lots that's in the city and the use of them as farm lots, the RA zone that planning area is based on, is more stringent than what the county requires. Those lots wouldn't be subject right to full city control. Those portions are still in the county, but the uses of those lots are still within the PZD.

Council Member Turk: Looking at the graphic, these two wings off to the side would be in the PZD, but they would still be retained within the county?

Jonathan Curth: They cannot legally be a part of the PZD. We do not have that authority as a city to apply that zoning to the county. We do have some extra jurisdictional territory powers, but they do not extend to that. If the applicant would like to clarify if that would be some sort of contractual commitment, like a property owners association that limits that or not. Those portions you're talking about, the west and east of that portion proposed to be annexed in, the city would not be able to subject it to our zoning code. We don't have authority to look at building permits and things of that nature.

Alli Quinlan: As you'll note the red line of the PZD line goes across a lot. We will update that in a PZD, but my reference is just the portion of that lot is in the city. It's in more or less, RA. If in the future the neighbors decided they did want to annex and those ever came in, those would also automatically come in as RA.

Council Member Turk stated a tour would be extremely helpful. She stated she went out there a couple of months ago and walked the area. She stated there's a prairie remnant and intact non-plowed areas that are in pretty good shape down to the south of the property where the PZD would occur and where the intensive development is planned. She stated Lake Fayetteville is on the impaired water body list and already has some recognized problems. She stated the city has done a lot of work in cleaning up the West Fork of the White River. She spoke about strengthening stream banks, reduce erosion and increasing water quality.

Mayor Jordan: Council, do you want to hold it here?

Council Member Bunch: Let's hold it. This is a lot to process. I'd like to go out and look at the site. When we have complaints, it's better if I can put my boots on the ground and actually see it in person.

This ordinance was left on the First Reading.

PZD-2020-002 (3435 E. Zion Rd./Chandler Crossing SD): An ordinance to approve a Residential Planned Zoning District entitled R-PZD 2020-0002 for approximately 81.80 acres located at 3435 East Zion Road to allow the development of 260 mixed use lots.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Review Manager gave a brief description of the ordinance. He stated staff does feel that the proposal generally aligns with the future land use map in the area. He stated the infill score is widely varying as you may expect from a property that extends over a quarter mile away from Crossover. He stated near the street it has an infill score of seven, which indicates its access to transit, trail, water, sewer and parks. He stated staff did recommend approval of forwarding the item. He stated the Planning Commission agreed and spoke about the conditions to that approval.

Alli Quinlan, Flintlock Limited spoke briefly about the project. She stated she looks forward to doing a tour with everybody. She stated we will need to amend the ordinance with the correct number of lots.

Mayor Jordan briefly reviewed the rules about Fayetteville residents speaking first.

The City Council received 5 public comments regarding this ordinance.

Margaret Britain, 1931 North Wheeler Avenue: Can the city make a condition of approval if it wants, for the ponds to accommodate a 100 year flood?

City Attorney Kit Williams: For the zoning it's a legislative decision and if there's conditions in a PZD that they want to add, they can do that. It's up to the applicant to accept at that point in time. Even though it's a PZD, I think the applicant still has the right to have the kind of zoning they have requested, and at least for it to be considered up or down.

Chris Brown, City Engineer: That's maybe not a complete picture of all of the drainage requirements. We have four minimum standards that are required to be met. One is a water quality standard, which is about the first inch of rainfall. That has to be treated. The one year event is what we call the channel protection volume, so that has a certain requirement for detention to reduce the amount of velocity downstream of the project. We also have the flood protection requirements, which is up to the 100 year storm. The 100 year event in any development has to be mitigated so the peak flow from the 100 year event is not increased beyond the current flow.

Margaret Britain: The flood protection to the 100 year storm needs to be the same as it is now and since we know there's considerable flooding causing hardship for the neighbors and the quality of water, is that something the Council could require as a condition to be improved upon to have more capacity?

Chris Brown, City Engineer: In that instance, there may be opportunities for the city to add to the project or partner with the developer to do some additional detention above and beyond what they would be required to do. There are instances where if there are existing downstream drainage problems, then the development may be required to handle that. This is a very large drainage area and a very large flooding problem. It's not easy to solve, but there are opportunities to work with the developer to get some relief for some of those property owners.

City Attorney Kit Williams: I certainly agree with Chris. We're bound by the Unified Development Code and its requirements when it comes to stormwater management and drainage. I don't think we can go beyond what our code says we can do. This is a very large watershed and we can't expect a downhill property on their own to be able to fix the problems that are coming from uphill, including a very large phosphorus flow off of a field that has been covered with chicken manure in order to make the grass grow. There's a limit to what we can require a downstream landowner to do.

Council Member Turk stated the clean water act needs some investigation. She requested a tour of the property.

This ordinance was left on the First Reading.

Announcements:

Susan Norton, Chief of Staff stated the FEMA flood map changes are available for viewing. She stated the deadline for residents to review the floodplain mapping and get feedback to FEMA is January 16, 2021. She stated a Media Release was issued and the information can be viewed on the city website.

Mayor Jordan: The agenda is fairly long in two weeks. I appreciate you all meeting twice this week.

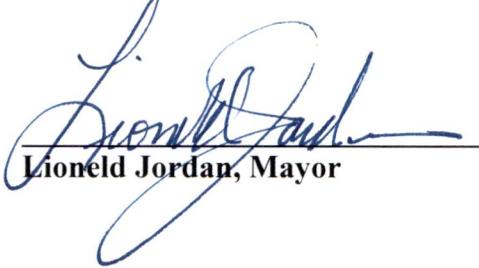
City Council Agenda Session Presentations:

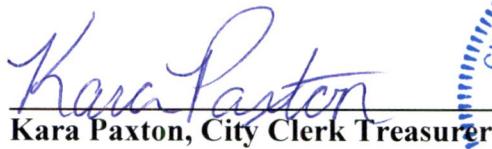
Agenda Session Presentation - 2020 Merit Staff Pay & Benefits Study results, Blair Johanson with Johanson Group and Missy Cole, HR Director.

Agenda Session Presentations: Sales Tax Report - Paul Becker

Energy Report - Peter Nierengarten

Adjournment: 12:02 a.m.


Lioneld Jordan, Mayor


Kara Paxton, City Clerk Treasurer

