

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 19, 2021**

A meeting of the Fayetteville City Council was held on January 19, 2021 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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.

Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Chief of Police Mike Reynolds, 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 in Council Chambers 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. 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 raised hand option to request to speak during the 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.

Presentation of the City of Fayetteville Martin Luther King Brotherhood Award

City Attorney Kit Williams: For 19 years it has been my honor and privilege to recognize a worthy City of Fayetteville employee to receive the City of Fayetteville, Dr. Martin Luther King Jr. Brotherhood Award. This award has been given annually in recognition of that city employee who service to our city and community exemplifies Dr. Martin Luther King's dream of equality, justice, brotherhood and service. This year's honoree joins a distinguished list of city employees who have embodied Dr. King's dream and have helped fulfill his legacy of service. The first recipient of this award in 2002 was Frank Johnson, then a captain and later the first African American Police Chief of Fayetteville. Fayetteville's most recently retired Chief of Police is Greg Tabor, who is now the United States Marshal for the Western District of Arkansas. We have been blessed with excellent leadership in our Police Department for 20 years because of our Chiefs leadership and determination that our Fayetteville Police Department will accept only the highest and most exemplary and ethical conduct. Our Police Officers operate with unparalleled professionalism and respect for the constitutional rights of all of our citizens. For over 20 years, not a single allegation presented to the federal courts for alleged police misconduct for violating a suspect's constitutional rights have been found valid. Every case has confirmed that our Fayetteville Police Officers have acted properly within their constitutional powers. I believe that 20 year perfect record is unmatched in our state and maybe in our nation for any large Police Department. That perfect record does not happen by chance. It requires consistent and determined leadership from our Police Chief and the Chief's leadership team, as well as a personal commitment from every one of our officers. Last year, a true test of that leadership and of our officers' professionalism occurred during the protest of George Floyd's inexcusable and tragic death. This protest overflowed the Fayetteville Square with citizens expressing their opposition to police violence against unarmed black men that has plagued much of America. Just a couple of days earlier, the Bentonville Square protests erupted into vandalism and violence between the protesters and police. Police Chief Mike Reynolds was determined that such violent and disorder would not occur in Fayetteville. Chief Reynolds worked hard and well with protest organizers,

including our very own, D'Andre Jones to prevent the violence and disorder suffered by Bentonville. Chief Reynolds prepared our Police Officers to maintain both order and proper respect for the protesters. Chief Reynolds and his officers were respectful and knelt with the protesters in memory of George Floyd's tragic and unnecessary death. I listened to D'Andre and other leaders speak eloquently to our large crowd. Our larger protest was night and day different from the embarrassment in Bentonville. Chief Reynolds and all of our Police Officers showed that they were truly peace officers, by never letting their professionalism and restraint give in to the provocation by a few in the crowd that wanted trouble. Our officers held their ground, head high, and refusing the bait. I have never been so proud of Police Chief Mike Reynolds and our entire Police force. They showed the world their professionalism and honor that our citizens rightly expect from Fayetteville Police Officers. I believe that evening Dr. Martin Luther King Jr. would be smiling down from the mountaintop upon Chief Reynolds, our Police Officers, and all of us peaceful protesters. Dr. King might tell us that while we still have not made it all the way to the Promised Land of freedom, equality, and justice, Chief Reynolds is pointing the way. As Dr. King told his congregation the night before he was taken from us in 1968, we as a people will get to the Promised Land. Chief Reynolds has 27 years of dedicated service to our Fayetteville Police Department and city. He had eight years of service as Assistant Chief before he was wisely promoted to Police Chief by Mayor Jordan in September of 2019. He has continued his professional education with the FBI National Academy, United States Secret Service, University of Arkansas leadership and diversity and inclusion, Racial Equity Institute Leadership training and many others. Chief Mike Reynolds is an active and well respected member of several professional law enforcement organizations and was recently appointed by Governor Hutchinson to his task force to advance the state of law enforcement in Arkansas, in part, to help end racial profiling and bias based policing. Chief Reynolds is loyal, true and a very worthy recipient of the 2021 Dr. Martin Luther King Jr. Brotherhood Award.

Mayor Jordan: Congratulations, Chief.

Mike Reynolds, Chief of Police: Thank you, Kit. I appreciate it. I'm certainly humbled and honored by this prestigious award. I'm proud, not only for the individual award, but this isn't about me. This is about, we. That's the way I've always treated leadership at the Fayetteville Police Department. It's about the men and women of the Police Department. It's about the City Council Members. It's about the city staff and Mayor. It's about we, the community. We could not have made it through this past year that's been so difficult, if we would not have united. I'm very proud to receive this award. Thank you so much.

Mayor Jordan: I was honored to attend our state celebration of the 5th Annual National Day of Racial Healing in Little Rock at the invitation of friends from the Arkansas Peace and Justice Memorial movement. The City of Fayetteville was the first city in the state to proclaim today's day of racial healing. Later, 75 other cities around Arkansas signed on through outreach efforts via the Arkansas Municipal League. Today in Little Rock, I joined other Mayors and speakers to memorialize the National Day of Racial Healing on the day after we celebrated and honored Dr. Martin Luther King Jr.'s life in service. We pledge today to dedicate ourselves to the principles of truth, racial healing, and the necessary changes in thinking and behavior to become a unified force for racial biases to become a thing of the past.

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

Agenda Additions: None

Consent:

Bid #21-04 Concrete: A resolution to award Bid #21-04 and authorize the purchase of Concrete from Tune Trucking, Inc. d/b/a Tune Concrete Company 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 29-21 as recorded in the office of the City Clerk

Creamer Pilot Services, LLC: A resolution to approve an assignment, assumption, and consent agreement to transfer the lease agreement for office space in the Airport Terminal Building at 4500 South School Avenue to Creamer Pilot Services, LLC, and to release M.K. Rockwell Investments, LLC from the Lease Agreement.

Resolution 30 -21 as recorded in the office of the City Clerk

Airport Beacon and Wind Cones Project: A resolution to authorize the issuance of two-party checks on the Airport Beacon and Wind Cones Project to ensure the project's sub-contractors receive compensation for their work.

Resolution 31-21 as recorded in the office of the City Clerk

Washington County Regional Ambulance Authority: A resolution to approve an Interlocal Agreement for continuation of ambulance services through the Washington County Regional Ambulance Authority, and to authorize the Ambulance Authority to operate Central Emergency Medical Service as the exclusive emergency and non-emergency ambulance service within the cities.

Resolution 32-21 as recorded in the office of the City Clerk

Washington County Election Commission: A resolution to authorize a payment to the Washington County Election Commission in the amount of \$45,482.91 for election fees related to the November 3, 2020 General Election.

Resolution 33-21 as recorded in the office of the City Clerk

Amend the 2021 Adopted Budget: A resolution to amend the 2021 Adopted Budget by re-appropriating \$201,308,000.00 in bonded or ongoing capital projects, outstanding obligations, and grant funded items.

Resolution 34-21 as recorded in the office of the City Clerk

2020 Disaster and Replacement Funds: A resolution to approve a budget adjustment transferring \$1,000,000.00 from the General Fund to replenish the Disaster and Replacement Fund for expenditures made to address the COVID-19 Pandemic.

Resolution 35-21 as recorded in the office of the City Clerk

Council Member Gutierrez moved to accept the Consent Agenda as read. Council Member Bunch seconded the motion. Upon roll call the motion passed 7-0. Council Members Turk Hertzberg, Gutierrez, Jones, Petty, Scroggin, and Bunch voting yes. Council Member Kinion was absent during the vote.

Unfinished Business:

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. At the January 5, 2021 City Council meeting this item was left on the second reading.*

Mayor Jordan: I believe we have an amendment.

City Attorney Kit Williams: Yes. The City Council asked me at the last meeting if they could break up the portion related to Community Services, which changes one use unit for gas stations and another use unit for residential property. I drafted a proposed amended change that would do that and not change the ordinance. I took it to the Ordinance Review Committee, and they agreed with splitting it, but making no judgment on the ordinance itself. Council Member Scroggin is the Chair of the Ordinance Review Committee and I will defer to him if he wants to go into any further detail.

Council Member Scroggin: That was a pretty good assessment. We had different ideas about the individual items. We didn't come with any recommendations, but we definitely agree that we would like to break this up.

City Attorney Kit Williams: We probably need a motion from a Council Member to replace the current ordinance with the one that I presented to the Ordinance Review Committee. It splits up Section 1 into Sections 1 and 2 and the Council will be able to vote on each of those individually.

Mayor Jordan: The amendment would be to replace the current ordinance, which has them both together and split the housing and gas stations. Is that correct?

City Attorney Kit Williams: That's right. I sent out this proposed amendment to the Ordinance Review Committee and the whole City Council.

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

Council Member Petty: The Ordinance Review Committee recommended we split this into two questions. When we move this to the third reading, are we moving both questions or one question or the other?

City Attorney Kit Williams: It's already been amended to what the Ordinance Review Committee recommended.

City Attorney Kit Williams read the body of the ordinance that was changed.

Mayor Jordan: Since you read it, does that mean it's automatically on the third reading?

City Attorney Kit Williams: No. We still need a motion to suspend the rules and go to the third reading.

Council Member Petty: The Ordinance Review Committee's intention was to vote separately on single family and duplex changes and then separately on the gas station change.

City Attorney Kit Williams: If someone thought one of those use units should not be changed from a permitted use to a conditional use, then the proper motion would be to remove Section 1 or remove Section 2 from the ordinance and then that could be voted on. That's the way you would vote on each use unit separately. If you don't want single family dwellings, and two family dwellings to be moved from permitted uses to conditional uses, you would move to amend the ordinance by removing Section 1.

Council Member Scroggin: Can we not just make a motion to split the question?

City Attorney Kit Williams: The proper motion, if you don't want to have any discussion, it would be a motion for an immediate vote. That requires a two thirds majority. You can have a motion to approve, which will be approving it all, unless someone wants to change that.

Council Member Scroggin: I feel like we don't need to go to the third reading and vote tonight.

There was a brief discussion about tabling the item or going to the third reading.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: This ordinance has been read for the third and final time. It is ready for action, which can be tabling if the City Council is not clear on what they want to do.

Council Member Turk: The intent of the Ordinance Review Committee was that you would make these separate ordinances. It wouldn't be one combined ordinance. It would be a separate ordinance

that just dealt with use unit 18, the gas station and drive through. The other ordinance would deal with the duplex and single family residence. Is that possible Kit?

City Attorney Kit Williams: Yes, you can, but you're creating a new ordinance, which normally goes to New Business and this is on the third and final reading. With the City Council's approval, I can create three ordinances. One for Urban Thoroughfare, one for Community Services with the use unit eight and nine to dwellings, and one with use unit 18, gas stations. If you will suspend the rules at the next meeting, then they can all be on Old Business. I will have to read each one separately so there won't be any parliamentary problems.

Mayor Jordan: Let's table this tonight until we can get everything straightened out.

City Attorney Kit Williams: Does the City Council want me to make three ordinances out of this?

Council Member Turk and **Council Member Kinion** stated that would be their wish.

Council Member Bunch: Is that going to be the simplest thing to do? I thought what had gone to Ordinance Review was fairly easy for me to understand and now it's not.

City Attorney Kit Williams reiterated and clarified his earlier statements.

Council Member Bunch: I'm in favor of the three.

City Attorney Kit Williams stated okay to three ordinances.

Council Member Kinion moved to table the ordinance to the February 2, 2021 City Council meeting. **Council Member Turk** seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled to the February 2, 2021 City Council meeting.

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. *At the January 7, City Council meeting this item was left on the first reading.*

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

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated as an update from the January 7, 2021 City Council meeting, city and Fayetteville Public

School staff met to discuss the school's goals on the property on Ruppel Road. He stated the next day, the Transportation Committee held a special meeting where the issues were shared with the Council Members in attendance. He stated the school district may be presenting an amended proposal.

Dr. Megan Duncan, Associate Superintendent and Applicant stated we are wanting to go through the approval process. She stated we have a lot of other people that we get to go through this process with, including people in the City of Fayetteville and a lot of entities across the state to become an official approved public school. She stated we're going to go through that process as we normally would with several considerations. She spoke about safe routes to school recommendations, how emergency vehicles can access the property, drainage utilities, environmental center, and bike trail components. She spoke about master street planning. She spoke about increased landscape options between Ruppel Road and the visitor parking. She spoke about the front parking lot. She requested an amendment for a P-1 zoning with an out parcel becoming CS and with the understanding that they are going to make good faith efforts as they move through Large Scale Development to make modifications to the parking lot to accommodate visitors.

Blake Jorgensen, Jorgensen Engineering spoke about the different avenues of people, boards and committees they are working with. He requested Council's support to get the item approved since they are dealing with an urgency of bond money. He stated the revised submittal shows that we want to honor the city's goals for Ruppel Road by creating the out parcel to remain CS.

Council Member Turk: Why are you having that 80 foot out parcel to remain Community Services? I don't quite understand that logic. I was not in the Transportation Committee discussion.

Blake Jorgensen: During the Transportation Committee it was efficient, and Council Member Petty was re-elected as the Chair. In his wisdom, he had the foresight to say, if you had a 75 to 80 foot swath of land, it's viable to create any type of business entity that can re-structure that vacant property to be a tax basis. The history of why the school adopted that 80 foot is at the suggestion of Council Member Petty. We want to utilize his experience and commit to dedicating an 80 foot swath along Ruppel Road.

Council Member Turk: That still remains the ownership with the school district. Correct?

Dr. Megan Duncan: Yes, ma'am.

Council Member Petty thanked everyone for their contribution to the project with a consensus mindset. He stated we had a good meeting of the minds and it's resulted in some prospective changes. He stated it creates a solid foundation for us to get together on the next one. He stated the notion of the out parcel potentially being a source of ongoing tax revenue or a revenue from a sale or a partnership is the kind of leap of faith for the school district to test the waters of public private partnerships. He stated he is excited on the basis of this being a good foundation for moving forward.

Council Member Gutierrez thanked Council Member Petty for his leadership with an innovative solution. She spoke about this being a good resource for parents and teachers to use for services in one location. She thanked the applicant for being considerate and open to the feedback.

City Council received 2 public comments regarding this ordinance.

City Attorney Kit Williams: If the Council wants to agree to the new proposal, we have drafted an ordinance, which we sent out to the Council that would effectuate their changed plan and proposal. If someone supports the new plan, they need to move to replace the current ordinance to the one that was sent out this afternoon that reflects the school board's recommendation and proposal.

Mayor Jordan: Replace the old ordinance with the new?

City Attorney Kit Williams: Yes. This is very similar, but there are some changes that need to be made.

City Attorney Kit Williams read the proposed amendment.

City Attorney Kit Williams: I should note for the record that we have a plat that was shown by Blake Jorgensen, and we have two legal descriptions. One which remains CS, and one that goes from CS to P-1 that was supplied by Blake Jorgensen. That would be attachments to the new ordinance.

Kara Paxton, City Clerk Treasurer clarified what reading Council was on.

Council Member Scroggin thanked the Transportation Committee for looking at this and presenting something reasonable.

Council Member Turk stated she hopes consideration will be given to retaining trees during the design process. She stated the trees are few and far between on Ruppel Road. She stated she appreciates everybody compromising and coming up with a solution.

There was a brief discussion about the reading that City Council was on.

Council Member Petty moved to amend the ordinance as read by City Attorney Kit Williams. Council Member Bunch seconded the motion. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 6403 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. *At the January 7, 2021 City Council meeting this item was left on the second reading.*

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

City Attorney Kit Williams read the ordinance.

Mike Reynolds, Chief of Police gave a brief description of the ordinance. He stated we've had no issues from Mr. Haddaji at the Hookah and Cigar Lounge, in which he's applying for this private club permit, but we have had a few issues as it relates to the mask ordinance and social distancing that are related to ADH guidelines and regulations with Mr. Haddaji's VIP Lounge. He spoke about the violations at the VIP Lounge.

Robert Rhoads, Hall Estill Law Firm Representing the Applicant spoke about what the applicant has done to protect his employees, patrons, and the general public after receiving the ABC Division violations regarding the wearing of masks and social distancing at the VIP Lounge. He stated this request for a mixed drink permit is for the Hookah Cigar Lounge, not the VIP Lounge. He stated the Hookah Cigar Lounge has never had any kind of violation in its three years of existence, however, the VIP Lounge has the same owner and can see why the City Council would be interested in what's going on in that club, as well. He spoke about Mr. Haddaji's high standards at the VIP Lounge and before COVID, the VIP Lounge had never received any kind of violations. He spoke about Mr. Haddaji's actions in taking social distancing and cleaning mandate requirements seriously. He stated the applicant is requesting this because his two businesses are financially strapped, and this is what he needs for his business to survive. He stated the applicant understands the seriousness of the ABC rules and regulations. He stated that a number of bars in the Fayetteville area and across the state joined as plaintiffs last week in a curfew ban lawsuit. He stated Mr. Haddaji and his two businesses were asked and he refused to join that.

Council Member Turk: When were the new provisions implemented? Was that after the third violation?

Robert Rhoads: The masks have been in place, I think the entire time, pursuant to every sign they see around Fayetteville. The lowering from 2/3 to 1/3 was done after the violations.

Council Member Turk: He's there every single night. I'm supposing that when the ABC came in those three times when they found some irregularities, he was present at that time?

Robert Rhoads: He was there every time. The VIP is across West Avenue and he goes back and forth, but he's at both of his places.

Council Member Turk: He was there when they came in and they saw something he wasn't enforcing at the time. That's what's concerning to me.

Robert Rhoads: He's going to do all the things I laid out for you. The other two violations are pending. He has not pled guilty to those. I am still in the process of getting the state's information and investigating those. Again, those were not the Hookah Lounge. Those were at the VIP Club. Mr. Haddaji realizes you have every right to look at what he's doing in either one of his clubs.

Council Member Turk: We've got a pandemic going on and this variant that's coming here is going to allow even more rapid spread than we have right now. I don't think there's any way to overstate how important it is to ensure that all the masking requirements are followed and the social distancing. Previous track record is very important in my consideration of this decision, even though it was at the VIP Club and not at the Hookah Lounge. Thank you for making those increased safeguards to our community.

Council Member Kinion: I live in this area. Whenever you look at the two clubs, the patronage is very different. One club is a dance club. People are maybe in a different mode than they would be in a Hookah Lounge when managing the establishments. I'm trying to make my decision on the merits of the Hookah Lounge. They've got to get their stuff together at the VIP Club. Does Mr. Haddaji see his patrons as very different between the two businesses?

Robert Rhoads: Yes, he does. Right now, at the Hookah bar, people don't dance. At the VIP Club, he is discouraging that dancing as much as possible. It's legal for people in the State of Arkansas to dance at a club if they engage in social distancing. I'm guessing if two people that live together dance, then that's still following social distancing. Putting in the tables and chairs is meant to physically discourage.

Council Member Kinion: In no way am I trying to make light of anything that would put the health of the community at risk. This pandemic is real, and it's got to be taken very seriously, but the patronage is two different types of crowds.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Council Members Hertzberg, Gutierrez, Jones, Kinion, Petty, Scroggin, and Bunch voting yes. Council Member Turk voting no.

Ordinance 6404 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. *At the January 7, 2021 City Council meeting this item was left on the second reading.*

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

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director stated he did not have any new information regarding the request since the January 7, 2021 meeting except to advise the Council who did not have a chance to review the documents that the applicant sent. He stated there were expressions of support for their request broadly and specifically the potential for supporting a gas station on this property.

Suzanne Clark, Clark Law Firm stated she was representing Tony and Sherry Hardin and Landmarc Custom Homes. She stated this is a request to rezone and there is no development plan in place on this project. She stated there has been a great deal of discussion around the use of that property potentially for a gas station. She stated there has been some opposition raised to the concept of a gas station and as their Attorney she does not recommend that they restrict their options in advance of trying to move forward to develop this property. She spoke briefly about the rezoning history. She stated about 65 different residents in Fayetteville have said that at that corner, not only are they not opposed, they would be in favor of a gas station convenience store or perhaps a drive through restaurant. She stated she would like Council to consider the residents who say they are in favor of it, as they are to those who are saying they are opposed. She spoke about CS being the correct zoning for the area. She spoke briefly about the major interstate intersections.

City Council received 6 public comments regarding this ordinance.

Council Member Scroggin: I believe the neighbors would be okay with this and it would be good for the area under the zoning minus one use. It seems like that use is going to stay on the table. I'll be voting against this.

Council Member Turk: There's a school close by. Across the street is a cemetery and historic church. We are trying to make it a more walkable neighborhood area. By retaining that use unit 18, I've gotten a lot of emails. I do find that it's incompatible with the area. I have gotten maybe one email of somebody that wants to support it. I will not be supporting the CS Zoning.

Council Member Kinion stated it is CS all around that area. He stated one of the people that previously got a CS rezoning is the ringleader trying to get this property not zoned CS and that rubs him in a bad way. He spoke about the area being appropriate for the CS zoning. He stated there is no convenience store in the area. He spoke about form based codes. He stated how can we deny CS on these few acres when we did a vast approval of CS right in the area. He stated he is supporting this on the matter of fairness and compatibility with the surrounding properties.

Council Member Hertzberg: My vote tonight will not be based upon whether or not a gas station will be placed there. My vote is strictly going to be based upon whether or not CS zoning is appropriate for the area. The property across the street is zoned CS and this is the fairest choice. We can vote on whether or not gas stations are appropriate for CS at the next meeting.

Council Member Petty spoke about fairness and what is on the adjacent properties. He stated he is leaning towards voting in favor. He stated he has very little faith in our design standards to produce a good fueling station under Community Services zoning. He stated we've never had the stomach to insist they tried to develop under the old Community Services design guidelines for fueling stations and so we watered them down to try and put ourselves in this exact situation that we are in today. He stated there's no such thing as a gas station development oriented for walkable development that has 17 pumps. He stated those gas stations have two pumps or maybe four pumps. He stated we are kidding ourselves to say a fueling station that comes in under CS is going to meet our goals, even though it's going to be held to higher design standards. He stated there are fueling stations out there that do a fine job of addressing the context of the community and walkability goals, but they only get constructed when the cities make them be constructed that way.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Council Members Hertzberg, Gutierrez, Jones, Kinion, Petty and Bunch voting yes. Council Members Turk and Scroggin voting no.

Ordinance 6405 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. *At the January 7, 2021 City Council meeting this item was left on the first reading.*

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.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated the annexation request remains the same. He spoke about the Council attending a tour. He stated he had previously misinformed the Council that the Streamside Protection Ordinance would apply to Hilton Creek, but has since learned that a nuance of the Streamside Protection Ordinance when it was adopted in 2011 was tied to a very specific exhibit. He stated the exhibit was a map that indicated what streams and creeks within the city limits that it would apply to. He stated despite annexing this property, that would not inherently change the boundaries of the Streamside Protection zone to apply to Hilton Creek that runs through this property. He stated the Streamside Protection Ordinance would have to be amended separately.

Mayor Jordan: If we annexed in the land, our Streamside Protection Ordinance would not apply to this property?

Jonathan Curth: That is correct.

City Attorney Kit Williams: We need to modify the Streamside Protection Ordinance to make it clear that if it drains 100 acres, regardless of where it comes from or if it's not on the exhibit map at that point in time, the wording in the ordinance takes precedence over the map.

Alli Quinlan, Flintlock Limited spoke briefly about the project. She stated the project boundaries with corrected annexation boundaries for clarity are shown on the 2040 Land Use Map. She spoke about the site having significant access to goods and services within walkable or bikeable distances. She spoke about transit connections. She proposes that no intensive development would occur North of Hilton Creek. She spoke about water quality and storm flow. She spoke about stream restoration and planting of this area and high phosphorus uptake native grasses. She stated combined with a hay contract for those areas to be mowed annually, she believes the area can be provided to the Parks Department and restore condition with little to no ongoing maintenance burden. She spoke about the option if Council chose to not support the future parkland dedication. She spoke about flooding issues. She stated she's confident that by annexing and developing the property, they will be able to improve, but not entirely solve some of the existing water quality and flooding issues. She stated in addition to the PZD's design standards, we've included a clause that prevents snout houses by limiting the width of the garage door facing the street to 25% of lot width. She stated by annexing the land and accepting the proposed PZD, it will ensure that the land is developed following best practices and all of Fayetteville's development codes, including stormwater, tree preservation planting and the proposed design codes.

Council Member Scroggin: Do we need to take care of the Streamside Protections first? If we approve the PZD and they're not in there and then we say they have to do those standards, would that be a taking?

City Attorney Kit Williams: I just heard about this problem with the Streamside Protection Ordinance a few minutes ago, as you did. I think the fix is not going to be that difficult and I can do it quickly. I do agree with Council Member Scroggin's concern. The annexation is what I'm concerned about. I would rather have the Streamside Ordinance fixed before any property is annexed into the city. When it is annexed into the city, the Streamside Ordinance is already in place and therefore it would avoid a possible taking. It would put us in a better position as a city, if we had the Streamside Ordinance fixed. I would draft something with an Emergency Clause that would need to be passed, prior to the passage of the annexation ordinance.

Council Member Scroggin: I appreciate that. I like PZD's and being able to see what's going on. I think neighbors like to be able to see that too. There are some neighbors that are going to disagree, no matter what you do. Having this under our control and under our Streamside Protection is better for Lake Fayetteville and other downstream properties.

Council Member Turk: I would like to get rid of that ambiguity that might exist with whether the Streamside Protection Ordinance is relevant or enforced here. Maybe we could table this item tonight and the next one since they're linked together. I hate to delay it, but we should clear this provision up before we move forward.

Mayor Jordan: This is on the second reading right now, so it's going to be two weeks out before you hear it again. I'm concerned about the Streamside Protection Ordinance. I'm sure the City Attorney can get something put together in two weeks.

City Attorney Kit Williams stated he could get something put together.

Council Member Gutierrez: Alli, have you already planned for the Streamside Protection in your design?

Alli Quinlan: We have and were hopeful for a vote this evening. We would be happy to extend a Bill of Assurance to follow all Streamside Protection guidelines as that glitch in code is fixed. We expect to comply with that and are happy to offer a Bill of Assurance to prevent any administrative issues with passing this project before the code is corrected.

Council Member Gutierrez spoke about the owner being an avid watershed advocate. She stated the owner talked to them extensively about prairie mounds and with the potential development there are parts that can be preserved and approved for water quality for the lake. She stated in order to not delay this, did Kit think a Bill of Assurance would be something that he could work with in court if it ever came up.

City Attorney Kit Williams: There are two problems with that. Number one, I haven't seen a Bill of Assurance. It hasn't gone through the process and been signed. Secondly, you have to pass the annexation ordinance first and then comes up the rezoning ordinance where they want to rezone it to a PZD. It's a zoning ordinance that carries a Bill of Assurance, not the annexation. If the rezoning is not completed, then we have an annex, but we don't have a Bill of Assurance. It's much safer for the city to make sure that the fix to the Streamside Protection Ordinance precedes the annexation ordinance in passage.

Council Member Gutierrez stated she is in favor of holding it.

Council Member Scroggin: When you say proceed, does that mean it can happen at that meeting or have it as a prior item?

City Attorney Kit Williams: I think that would be okay. I'm always cautious. The more cautious thing to do would be in the meeting before the annexation ordinance would be passed. As long as it preceded it in the same meeting with an Emergency Clause on it, then that would probably protect us. We'd be more protected if there was a meeting in between.

Alli Quinlan: Could it be included as a condition of approval of one of these applications? The applicant has no expectation or disagreement with the Streamside Protection Ordinance. We were not aware of that, until this meeting. We certainly would have gotten that to you quickly had we been aware. If there is an administrative way that can be put through, we are amenable.

City Attorney Kit Williams: The safest thing for the city is that you fix the code before adoption of the annexation ordinance.

Council Member Turk: In the previous meeting, one of the citizens brought up the possibility of there being a wetland on that property. Has any kind of wetland delineation study been done to confirm if that area is a wetland? That's a big question that needs to be solved before we move on to annexing or approving the rezoning and the PZD.

Alli Quinlan: There are no known wetlands on the site. There is a leaking pond that is on the farm directly to our east, right over the boundary. It is a damn that's leaking. It's a spring fed pond and there is slow drainage from that. It's not a wetland area, but it does have water on it, seasonally, due to that spring on an adjacent property. Our plan is to route that spring water as sort of an irrigation alternative through that linear park to Hilton Creek.

Council Member Turk: You just suspect it is wet because of the leaking damn. There's been nobody out there conducting a study that has the proper background or information to make that determination?

Alli Quinlan: Not yet. My understanding is there is a wetland field study that has been scheduled after conversation two weeks ago, but that field work has not been completed yet. There's been no prior designation of any wetlands on the site.

Council Member Turk: Do you have a date when that study might be done or when a report would be out? That would be an important item in us making some of these determinations.

Alli Quinlan: We don't have a date that will be available yet, but it sounds like we may be tabled. I will have that information for you at the next meeting.

Council Member Turk: Thank you.

Alli Quinlan: I'm getting texts from the engineer. It sounds like that's a preliminary type of study. If further information is needed, we can look into that. I believe that information will be required prior to development plans. If there is a designated wetland on the site, that would limit development under our current codes.

City Council received 7 public comments regarding this ordinance.

Mayor Jordan: I assume we are going to hold it right here.

City Attorney Kit Williams: There was a question about how we could get the ordinance passed to fix the Streamside Protection Ordinance. The City Council has tremendous power and discretion over their own agenda. If I can draft up an ordinance that would be satisfactory and City Council would support, they could make it first on the agenda. They'd have to suspend the rules and it would take six affirmative votes to do it. I should put an Emergency Clause on it. That also requires six affirmative votes from the City Council. With proper City Council support, we can get the Streamside Protection Ordinance fixed pretty quickly. I would like to get that completely fixed and signed by the Mayor before the City Council decides on the annexation ordinance.

Mayor Jordan: What are the thoughts of the Council?

Council Member Turk: Leave it here or table it. I want to make sure we have all of our ducks in a row. I'd like to see the wetlands delineation study and that will take a little bit of time.

Mayor Jordan: You want to table it for a certain amount of time?

Council Member Turk: That is what I would like to do. We wouldn't feel rushed, we would make sure our code is correct, and it would give the applicant time to have the wetland study completed.

Council Member Bunch: I would agree with that suggestion. It gives us time to not feel rushed, get the code straightened out, and they can get their wetland study done. It would be great if we can have that before we cover this item the next time.

Mayor Jordan: Do you know how long it will take to do a wetland study?

Chris Brown, City Engineer: The first step is a jurisdictional determination. It's a determination if there are elements for a wetland. That doesn't take very long to do. It can take a while for the Corps of Engineers to agree with it and that sort of thing. Typically, on these types of situations where we see soils, are other things that may look like a wetland, that is part of the development process. It's a little way past the annexation and the zoning. It's part of the development review.

Jonathan Curth: Chris is correct. That's a study we typically see at the time of development submittal.

City Attorney Kit Williams: The City Council has great discretion when it comes to whether they want to annex or not. They can look at many different things to decide if they think this land should be in Fayetteville. If the City Council as a whole wants to see some sort of study like this, then they're entitled to do that and wait for it.

Council Member Turk: The area has got so many issues, such as flooding that the neighbors are experiencing, the proximity, and the drainage in Lake Fayetteville. It's important that we figure out the complexity and the components of this piece of property. I ask my colleagues to have a lot more information than we typically do because of the nature of this property. In other times I can see waiting for this kind of information to come out during the development process, but we need to be extremely thoughtful. We've heard lots of comments from citizens about the flooding that they're experiencing. I am very concerned about those algal blooms. We have an opportunity here and I don't think we should rush it.

Council Member Kinion: I support Council Member Turk's point of view.

Mayor Jordan: How long would you all like to table it for?

Council Member Petty: I'd like to see how much progress can be made in the next two weeks. In that time, I'd especially like to see a map of the extent of the watershed for Lake Fayetteville so we know the relative impact we can assign to this property.

Mayor Jordan: We can leave it where it is for two weeks and see where we are. If after two weeks you want to table it longer, we can still do that. In the meantime, what do we need to look at?

Council Member Turk: We definitely need to make headway on the Streamside Protection Ordinance. We need to encourage the applicant and city staff to work together to see if we can make some progress on the wetland determination. I do understand this can be complicated and can take a while. I'd also like to have an independent person to make sure we're following all the rules and with the right background. Not that the staff doesn't have that, but independence is a good thing.

Mayor Jordan spoke about working with staff to make some determinations.

City Attorney Kit Williams: We can probably start with what Chris was talking about with the initial look to see whether there's anything there that would indicate more study is needed. Something like that would not take forever.

Chris Brown: To clarify, that's not something our staff would do. That is something we require of the developer and their consultant.

Council Member Turk: Sandy Formica, who we do a lot of business with is a consultant for the city on many projects. It might be worth reaching out to her. She may have some expertise in this area or may have people she could suggest for the applicant and city.

Mayor Jordan: I don't know if I can just go out and hire somebody.

City Attorney Kit Williams: No. The private business can move much faster than government. We have purchasing rules and selection rules that we must follow to hire experts and other people. This is the responsibility of the applicant, if they so decide to do it. If they decide they won't do it, then it's up to the Council to decide whether or not that's important enough for them to say yes or no on this annexation.

Mayor Jordan: The decision before us tonight is that we either let it sit here for two weeks or we table it from some unknown time period.

Council Member Bunch: I suggest that we let it sit here and then we see where we are at in two weeks.

Mayor Jordan stated that is a good idea. He spoke about correcting the Streamside Protection Ordinance.

Council Member Turk moved to table the ordinance to the February 16, 2021 City Council meeting. Council Member Kinion seconded the motion. Upon roll call the motion failed 3-5. Council Members Turk, Jones, and Kinion voting yes. Council Members Hertzberg, Gutierrez, Petty, Scroggin, and Bunch voting no.

This Ordinance was left on the Second 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. *At the January 7, 2021 City Council meeting this item was left on the first reading.*

City Attorney Kit Williams: This needs to be amended. Some items were left out.

Jonathan Curth, Development Services Director: Based on the comments made from the City Council, we did revisit the ordinance and sorted out where the conflict had occurred between a previous proposal. Now that the ordinance has been revised, it refers to the three planning areas that are in the project. The first of which is along Crossover and predominantly allows for non-residential multifamily use. The predominantly single family portion that's planning area two that represents the interior of the project with over 300 single family units. Planning area three, which is intended for open space or low density residential.

City Attorney Kit Williams: We have already sent this ordinance out to the City Council.

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez moved to accept the amendment as read by City Attorney Kit Williams. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the First Reading.

New Business:

2021 Justice Assistance Grant: A resolution authorize acceptance of a 2021 Justice Assistance Grant in the total amount of \$134,915.00 which will be used to pay a portion of the salaries and benefits of 4th Judicial District Drug Task Force Officers with the Fayetteville, Springdale, and Prairie Grove Police Departments and the Washington County Sheriff's Office.

Mike Reynolds, Chief of Police gave a brief description of the resolution.

Kirk Lane, State Drug Director spoke about federal and state funding. He stated the City of Fayetteville has been the fiduciary for the Task Force because of its leadership ability and its efficiency in processing the paperwork. He spoke about the options available if the Council chose to not pass the resolution.

Tim Franklin, Fayetteville Police Lieutenant spoke about the violent crime experienced in Fayetteville that is related to drug offenses. He stated over the last two years crime has continually increased in Fayetteville. He spoke about the need of a specialized unit to work these types of crimes. He stated violence is up across the nation. He stated businesses are pivoting and changing because of the pandemic, so are the criminals and so must we as investigators.

Council Member Jones: We will be receiving this funding quarterly?

Mike Reynolds: We receive it three times a year. Twice from the state and once from the High Intensity Drug Trafficking Area office.

Council Member Jones: These funds are intended for what purpose?

Mike Reynolds: These funds are intended and directed for drug enforcement. There are other monies out there that are available for prevention and treatment.

Council Member Jones: When we meet again to discuss this, it'll be the same thing. Does it ever change as it relates to the use of the money?

Mike Reynolds: The use of the money does not change as it relates to the JAG or to the State Drug Crime Enforcement and Prosecution grant through Director Lane's office. In April, we will be receiving some funds from the High Intensity Drug Trafficking Area. Those are specifically allocated for the Fayetteville Police Department. They come directly to us and they are directed to offset expenses for overtime, vehicles, and for purchase of evidence and information. That equates to \$153,800 and there are no matching funds associated with that.

Council Member Jones: This came up last year and it was the same thing. You could not use this funding for anything else?

Mike Reynolds: That is correct. We had a Special City Council meeting in August of 2020.

Council Member Jones: There is other funding out there for other purposes. Correct?

Mike Reynolds: There are numerous grants that are out there for law enforcement purposes. There are also grants for social services and prevention and treatment.

Council Member Jones: With violent crime and what is happening in our city, if Fayetteville wasn't involved with the Drug Task Force, could you keep us safe?

Mike Reynolds: I could not provide the same level of safety to the community without the Drug Task Force and without narcotics enforcement.

Council Member Petty: Chief, the way you have explained it in the past is that there may be other allowable reimbursements at the JAG offices, but that at the state office they only allow reimbursements for a subset of those expenses. Can we get some clarification on whether or not there is any difference between the federal list of allowable reimbursements and the list that gets sent to you at the Drug Task Force by the state?

Mike Reynolds: Director Lane, are you able to answer that question at the state level as it relates to this particular grant?

Kirk Lane: There's money that comes through for the Drug Task Force coordinated through the Alcohol Drug Coordinating Council. Part of that money is from the JAG, which is the federal grant and part of the money is from the Drug Crime Assessment fund, which is the state funding part of the grant. It's all brought forward and combined into a JAG, offered by DFA under the coordination of the Alcohol Drug Coordinating Council. With that becomes a very specific list of allowable expenditures that the state combining these funds will fund to the 19 Drug Task forces in the state. The 4th Judicial and the City of Fayetteville is one of those recipients.

Council Member Petty: What I understood you to say was that you restrict the list of reimbursements farther than the federal grant requires?

Kirk Lane: No, I don't think so. It's a combining of what the federal provider requires us to restrict what allows that. It's similar to that. What we do is restrict reporting. Not so much what the funding can be spent for and it's outlined by the federal, part of this grant. We add some parameters so we can pull in data and resources that are required for us to report back to the federal partner of how that grant is doing.

Council Member Petty: The full list of allowable expenses from the feds is maintained and it's up to the individual Drug Task Force to take advantage of that list in how they see fit?

Kirk Lane: It's outlined by DFA in accepting the grant.

Council Member Petty: I would like to see a side by side comparison in our next memo.

Kirk Lane: That is the parameter of DFA. The DFA would be the keeper of that list. Part of that agreement that is signed outlines what the expenditures can be for.

Council Member Petty: I feel like we have been asking for that information since that Special City Council meeting last year. It would help me to see a side by side list. I feel similar as I did back in August. I don't see how I can support transferring the fiduciary away from Fayetteville, given what we know about the other jurisdictions. I hear things like, there's three times as much money for other efforts that aren't enforcement, but we aren't spending three times as much of our resources on other efforts as compared to drug enforcement dollars. I feel conflicted fundamentally and it doesn't seem like it's working. Chief, at that Special meeting you volunteered that you were going to take a number of changes to the Drug Task Force Committee for consideration. Do you have an update of progress on issues?

Mike Reynolds stated he brought items forward to the Drug Task Force. He briefly spoke about how the Drug Task Force Control Board is comprised. He spoke about the use of confidential informants between the age of 18 to 20. He stated a juvenile informant can't be utilized without the authority of a parent or without the authority also of the Washington County Prosecutor. He stated he has been an officer for 28 years and can't remember one time that they have ever used a juvenile as a confidential informant. He spoke about confidential informant agreements. He spoke about officers emphasizing to the confidential informants to consult an Attorney. He spoke about No-Knock warrants. He spoke about increased transparency measures. He spoke about Use of Force.

Council Member Petty spoke about the Police Department making meaningful progress. He stated in the future he would be a lot less conflicted if we could present this as a portfolio of things being done with respect to drug treatment, prevention and enforcement.

Kirk Lane: The 4th Judicial Task Force is one of the most progressive Task Forces out of the 19 Task Forces in the state and often stands as a model for the other Task Forces we have in the state. The Task Force operation in the state is about a \$3 million dollar endeavor for the state to fund in our portion. On a yearly basis, I oversee over \$45 million dollars that goes into prevention, treatment, and recovery. That is outside of that \$3 million dollars. If you would like to email me, I will give you a list of all the programs we have. If Council or a progressive group within the city wants to partner with somebody that has an interest in doing specific things, we can help and guide them in that purpose.

Council Member Jones: I would like a copy of the list. I could identify some groups in Fayetteville who would be interested in doing what they can to help the Drug Task Force. Chief, have you mentioned to the Council about the social worker internship and the partnership with the U of A School of Social Work?

Mike Reynolds: I have not mentioned that to Council. It was something we just released today. The Mayor, Susan, and I have been in discussion for months about this internship program. We are extremely proud of this opportunity. We launched that last week and we announced it today. We hope to provide those mental health services to our community that they desperately need. We continually ask our Police to do more and we can't be all things to all people. We are looking for avenues on how we can help folks. Before I come back to Mayor Jordan and the Council with a long term recommendation, I want to consult with a subject matter expert.

Council Member Jones: You are correct. We must have the subject matter experts lead this. I appreciate what you are doing and how you are being progressive as it relates to helping to create resources in looking at a solution to the bigger problem. The School of Social Work is really going to help guide you. We know that the money can only be used for a certain purpose. Will we have to continue to have this conversation every quarter when it comes up? This conversation has been going on for some time and the response is the same.

Mike Reynolds: That will be a decision of the Council and Mayor Jordan. The Mayor sets the agenda and the Council decides as to if anything is on the Consent Agenda. If it's not on the Consent Agenda, it's placed on New Business to have discussion about it. It's my responsibility and the law to bring these grant funds forward. I will be bringing grant funds forward in April for acceptance. I will then bring the grant funds forward to Council around July through September and then towards the end of the year. I have a time cycle and I have to operate under a deadline.

Council Member Jones: It sounds like you are utilizing social workers and you are also addressing the criminal issues our city is experiencing. You have limited manpower and are down a few officers too.

Mike Reynolds spoke about statistics of crime and police employment. He stated out of 25 cities in Arkansas surveyed, the Fayetteville Police Department has 1.55 officers per 1,000. He stated

the average of the other 24 cities is 2.26 officers per 1,000. He stated Fayetteville is ranked 24th and Bella Vista is the only city that has fewer officers per thousand than the Fayetteville Police Department.

Council Member Jones thanked Chief Reynolds for all the work he does.

Council Member Scroggin: I'm pretty sure the increase of crime is in line with other cities with the pandemic. It's not a surprise that Fayetteville has less Police Officers per capita. We have the flagship university. There's a high correlation between education and crime. There's a correlation between income and crime and a lot of people have lost their income in the last year. We need some more Police Officers, but when we start looking at metrics to track, it needs to be more than just a linear correlation. It has to be very multi-varied. Old people don't commit crimes at the same rate as young people do and Bella Vista has an older population.

Mike Reynolds: I have asked our Washington County Prosecutor's office to attend tonight. During the public comment section, they can provide insight on some of the things our community is doing outside of the Fayetteville Police Department or the 4th Judicial Drug Task Force.

Council Member Petty stated we are going to find a way to follow up with Kirk Lane. He stated what is missing is that we don't have a strategy that is apparent. He stated we have funding that we are trying to take advantage of, and we have an ADHOC strategy that we've developed around the available funding. He spoke about developing a portfolio of solutions to attempt. He spoke about the need of a public safety plan.

Kirk Lane requested for Council Member Petty to contact Chief Reynolds to get his contact information. He spoke about strategic plans and partnerships.

City Council received 8 public comments regarding this ordinance.

Council Member Petty stated his appreciation with Chief Reynolds for following through with what he said he would do. He stated he was raised to believe that he had to be cautious in our policies and that he had to avoid relying on the Police for everything. He stated we've got in a position in Fayetteville where asking a question is taken by a subset of the population as criticism. He stated it's his job to do these diligent investigations. He stated it is necessary to have Police and to make arrest, but there is no such thing as a good arrest. He spoke about every arrest being a failure of society. He stated Council Members aren't in the business of writing grants, developing charts, and putting together programs for the city. He stated we are in the business of doing the due diligence, helping set the strategy, and making sure the Mayor and his team have the resources they need to implement the policies that we set.

Council Member Gutierrez thanked everyone for their time tonight. She stated the topic was a meaningful and worthwhile conversation.

Council Member Jones: We have two different issues. The first issue was accepting the grant and then we started talking about the police having to do social service work. That's not the job of the Police Department. It's a joint effort. We all want a safe and healthy Fayetteville. As a Council,

we have to take some form of responsibility as it relates to partnering with another group and helping identify resources so the Police Department can do their job effectively. The Police Department is understaffed, overworked, and applying for this grant to keep us safe.

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

Resolution 36-21 as recorded in the office of the City Clerk

RFQ #19-05 Flintco, LLC: A resolution to approve Change Order No. 1 to the Construction Manager at Risk Contract with Flintco, LLC, in the amount of \$1,278,675.00 for the Earthwork Bid Package related to the Construction of the new Police Headquarters and Fire Station No. 8, to approve a project contingency in the amount of \$100,000.00, and to approve a budget adjustment - Police Headquarters and Firefighting Facilities Improvements Bond Project.

Wade Abernathy, Bond Projects and Construction Manager gave a brief description of the resolution.

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

Resolution 37-21 as recorded in the office of the City Clerk

2021-2025 Five-Year Capital Improvements Plan: A resolution to adopt the 2021-2025 Five-Year Capital Improvements Plan.

Paul Becker, Chief Financial Officer gave a brief description of the resolution.

Council Member Petty: Every year that I've been here, we have had meetings with Council to develop the Five Year Capital Improvements Plan. That didn't happen this time. Is that for a particular reason?

Paul Becker: We normally do reach out a little more to Council. The reason we didn't this year is primarily because of the funding and the Coronavirus. We are most concerned about having to pull back the funding as we discussed in the 2021 budget. We had to pull back a lot of the funding that we had previously planned. We will correct that in the future and go back to that plan.

Council Member Petty: My concern is that after 12 years, I've seen a Five Year CIP get approved on the basis it can be adjusted later. I've also seen it be used as justification for not adjusting it whenever it comes back in, which is why I hold that initial input with such high importance.

Council Member Kinion moved to approve the resolution. Council Member Gutierrez seconded the motion. Upon roll call the resolution passed 7-1. Council Members Turk,

Hertzberg, Gutierrez, Jones, Kinion, Scroggin, and Bunch voting yes. Council Member Petty voting no.

Resolution 38-21 as recorded in the office of the City Clerk

VAC-2020-009 (East of 662 W. Taylor St./Gregg Ave. R-O-W): An ordinance to approve VAC 20-009 for property located East of 662 West Taylor Street to vacate a portion of street Right-Of-Way.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated none of this has ever been built according to any sort of historical aerial imagery that can be identified. He stated it's been existing in its current state for about 100 years. He stated the main use of it is for a fairly significant major overhead power line which currently runs along the same location. He stated all utilities have signed off on the proposal. He stated the adjoining property owner has no issues with the vacation. He stated staff is recommending approval with two conditions, one would be easement dedication over the existing right away and the second is any damage to the utility infrastructure in the area would be at the developer's expense. He stated the Planning Commission voted in favor 5-2. He stated no public comment was received.

Blake Jorgensen, Jorgensen Engineers stated he was available for questions.

Council Member Turk: I drove by there today and looked at the property. It looks like there's a creek running right through it. I looked at the background information and it talked about Scull Creek, the flood way and then a sanitary sewer main.

Blake Jorgensen: Yes, there is a creek that runs on the east side between the railroad tracks and the right of way. The sewer main lies to the west of that. All of that would be redirected through a dedication of sewer easement and drainage easement. That's part of the utilities sign-off from the other divisions. Anything that does occur, would be accommodated through dedication of easement.

Council Member Turk: If we vacate this right of way, I suppose you all could build on top of that. Would that impact the stream that's running to the east of there? How would you deal with that and do you have any plans that you would care to share with us tonight?

Blake Jorgensen: Any development on that property would go through either a site improvement plan or Large Scale Development. Any impact to the stream or the trees that are in the area would be displayed within that Large Scale Development process. There are no immediate plans right now.

Council Member Petty: There is potential for development combination with publicly owned land to the east. Could you expound on that?

Blake Jorgensen: There is a right of way that's unused. The City of Fayetteville owns a very large swath of land that runs north and south along the railroad tracks. The goal is to vacate the right of way and then enter into an agreement to purchase the property from the City of Fayetteville and that would open up an opportunity for development.

Council Member Kinion: Due to the unique nature of the property, I've got to go look at it again. I didn't understand about the city's property to the east and I need a better understanding. The sewer main does run through there. The way Scull Creek cuts across the top of it, I want to be sure it doesn't have much impact on the streamside on the north end. It's not as simple as just filling in where that runs through there.

Council Member Gutierrez moved to suspend the rules and go to the second reading. The motion died due to a lack of a second.

This ordinance was left on the First Reading.

Amend §75.10 Operation of Scooter Share Programs: An ordinance to Amend §75.10 Operation of Scooter Share Programs to increase permit fees and update operational and pricing requirements, and to approve a budget adjustment.

City Attorney Kit Williams read the ordinance.

Peter Nierengarten, Environmental Director gave a brief description of the ordinance.

Council Member Turk 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.

Council Member Turk 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 6406 as Recorded in the office of the City Clerk

Amend §151.01 Definitions and §164.02 Accessory Structures and Uses: An ordinance to Amend §151.01 Definitions and §164.02 Accessory Structures and Uses of the Fayetteville Unified Development Code to permit and regulate electric vehicle charging stations.

City Attorney Kit Williams read the ordinance.

Peter Nierengarten, Environmental Director gave a brief description of the ordinance.

Council Member Turk 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.

Council Member Turk 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 6407 as Recorded in the office of the City Clerk

Amend §111.07 Outdoor Refreshment area: An ordinance to Amend §111.07 Outdoor Refreshment Area by converting limited outdoor consumption district pilot programs to more permanent districts subject to rules established by the City Council, and to approve an Emergency Clause.

City Attorney Kit Williams read the ordinance.

Devin Howland, Director of Economic vitality gave a brief description of the ordinance. He stated this removes the sunset provision from the pilot program, allowing it to continue. He spoke about the outdoor refreshment being adapted to help accommodation and service industries survive the pandemic. He stated while its original intent was about Downtown place making it became clear that this tool could be used to allow bars and restaurants to safely increase sales while adhering to social distancing measures.

Blake Pennington, Assistant City Attorney: I feel good about the changes that are in front of you. I recommend one more change in (C)(3). I would recommend adding, the Mayor shall also have the authority to implement such rules and regulations as are necessary for the administration of such districts. This will provide the Mayor with explicit authority to maintain all the existing rules and regulations that are working well in the districts. It's going to allow the administration to react more quickly to issues than if we have to bring everything back to you to make changes. This could address some of the issues that have been raised in the past and would allow the Mayor to act immediately if an issue arose. The other alternative that Council Member Turk discussed at the Agenda Session would be pushing out the expiration date on the pilot program. That is another option available to the Council.

Council Member Turk: We hear comments all the time about a taking. I think we all acknowledge that what we've seen right now has been very successful, but not very representative of the number of people that will be down there once we're post COVID. I'm concerned if we make this permanent and a business says they were counting on the ORA for my business and for some reason we are going to scale it back or it's going to be removed, then that could be considered a taking. Could something like that be pursued down the road in five or six years?

City Attorney Kit Williams: There are always inventive attorneys. I did talk with Blake about this. There doesn't seem to be a tremendous danger, although with the presentation it talked about how the businesses could rely on this. If they do rely upon on this and it makes a lot of money for them and then we decide it's causing too many problems, potentially there could be some pushback. We would basically be regulating something we had authorized in a permanent nature and we're removing that, which could potentially allege that is costing the business a lot of money. That could be a problem. It could be alleviated if we had some sort of sunset provision built into this. We're authorizing them to do it for a number of years, but then after three or four years it would come back to the Council for renewal. If they didn't want to renew it, there would not be any liability at that point in time because everyone would have known they can only continue it as long as the City Council renews it. That would be a safe way to do it and not too inconvenient on the Council to hear it every four years or whatever you want to do. We would eliminate the relatively small chance this could be a problem for the city. We are trying to always keep the city out of court.

Council Member Turk: The world is unpredictable. If this beautiful program that's been designed turns into a Bourbon Street, I want to be able to figure out a way where we can control that and reassess it. If we had this sunset provision, we would be able to make a correction immediately if it turned into that and eliminate our possibility of having lawsuits for takings or some other kind of similar claim.

Council Member Petty stated Devin said that the law only enabled us to regulate consumption and it didn't allow us to regulate sales or anything other than consumption. He stated that's the whole answer to the takings question. He stated when we look at takings with respect to property rights, it's with respect to rights that are granted to property owners. He stated this isn't a right that's granted to businesses. He stated we didn't give businesses a new right to sell alcohol in a different way. He stated we gave consumers a new right to consume alcohol in a new way and to leave the establishment where they bought it. He spoke about visiting New Orleans and believes not everything that goes with open consumption is going to become irresponsible behavior. He stated he doesn't see a Bourbon Street happening in Fayetteville. He requested for Blake Pennington to list some potential things that might come up for discussion that he envisions the Mayor being empowered to respond.

Blake Pennington: If we had a big event in the Entertainment District and there were some concerns about drinking alcohol outside on the streets, then the Mayor would have the power to limit that. The Mayor would have the power to limit a business's ability to participate in the ORA if they violate the regulations that are in place. He could change the operating hours of the Entertainment District. Devin has implemented an education program. Any business that wants to

participate has to sit through a lecture from Devin about the rules and they have to agree to follow them.

Council Member Petty: Could he change the map boundaries?

Blake Pennington: No. The map boundaries are set by the ordinance.

Council Member Petty spoke about doing what they thought was right for Fayetteville, what they thought was exceedingly safe and intended by the legislature. He spoke about the boundaries being drawn according to explicitly commercial zoning. He spoke about changing our internal policy or in recognition that we have other zones that are used commercially. He stated a world cyclocross championship is coming to Fayetteville in a couple of years and we're going to need an ORA to pull that off and that is P-1. He stated we had an internal determination that P-1 wasn't considered to be a district that was used for commercial purposes, but he doesn't think that's correct. He stated we have beer gardens in every park at almost every event. He stated we have vendors during festivals that sell goods in P-1 zoned areas. He stated this is something we might want to get ahead of with respect to the Cultural Arts Corridor and events. He stated he would like to turn it into a policy discussion for the future.

Devin Howland: In regard to what facets of the outdoor refreshment area actually touch private property. You could see that come up in events, but also on the sidewalk cafe provision. We're, permitting some of those where you see it on private property. Those are not subject to the sunset revision, ORA. When we researched these districts, one of the things that became clear, was that it was incredibly hard and very uncommon to generate a road like Bourbon Street or Beall Street. ACT 812 specifically under Section E and point one, says, the determining factor is zone for or customarily used for commercial purposes. There is an ORA differentiating the zoning and use.

Council Member Turk: When you did your research, did any of those other places you looked at have sunset clauses or review processes to ensure it is that great hometown fun cultural experience? I love New Orleans and I was born there. Bourbon Street is the extreme example. Are there other safeguards you saw within your review process?

Devin Howland: Absolutely. In regard to the safeguards in our study, we found one district like this that have been turned off and that was in Georgia. That city started out with two or three at one time and one just wasn't in the right place and they turned it off. There was one in Colorado that did have a sunset revision where what we got that idea from. Colorado does not allow these where traffic can flow. The only other pilot program I saw was in Eureka springs, but that is a whole different topic for that district.

Council Member Gutierrez stated she is interested in doing the sunset policy. She stated the reality is that Mayor Jordan can't be our Mayor forever and would like to be able to bring it back to the Council if they wanted. She stated she would like to be able to come back and check in on it in a reasonable time.

City Attorney Kit Williams: The benefit with a sunset clause is that the City Council remains in control. There's never an issue. Even though this has been termed to be as a right for people to go

outside with their drinks, I guarantee that the bar who is selling those drinks knows people are going out and what kind of percentage of their sales are that. If it would be stopped, then they would feel that, and they might want to make claims against the city. If we had a sunset clause, they would not be able to do that. This keeps the City Council in the driver's seat with no problems if they want to stop something or adjust it. It's the City Council decision and they can make that decision without any fear of any litigation against them and I would recommend that.

Mayor Jordan requested clarification on the sunset clause.

City Attorney Kit Williams: A sunset clause would mean that in three or four years it would come back to the City Council. The Council would either renew it or not.

Blake Pennington: Mayor, I would still recommend that we adopt the language explicitly granting you the authority to make additional rules and regulations for the districts.

Mayor Jordan: Until the sunset clause comes back around?

City Attorney Kit Williams: No that stays in there, but when the sunset clause hits, then it's just up to the City Council to whether they want to renew or not.

There was a brief discussion about where to place the language for the Mayor's authority.

Council Member Petty moved to amend the ordinance with the clause in (C) (3) granting the Mayor authority as described by Assistant City Attorney Blake Pennington. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: The ordinance now includes that power for the Mayor. The only other issue I'm aware of is whether or not there would be a sunset clause.

Council Member Turk: I propose to amend the ordinance to allow a three year sunset clause, where the City Council would take up and Devin or whoever is in his position would provide a review to the City Council on whether the ORA should continue or not.

Council Member Scroggin: In three years it would phase out, but when would it kick in with us needing to talk about that?

Devin Howland: It would be very reasonable to begin that process nine months out to give a heads up. I'm sure you'll see us again on it before that time, but we'll keep providing that information.

City Attorney Kit Williams: I would like to ask Council Member Turk if it wouldn't be a straight three years. Having something at the very start of the year like this is a busy time. If you would make it a date like April 30, 2024, which is a little over three years. I think it might make it a little bit easier to make sure there's plenty of time to get it back before the City Council.

Council Member Turk: That sounds like a really great suggestion.

Council Member Turk moved to amend the ordinance to allow City Council to review the sunset clause by April 30, 2024. Council Member Gutierrez seconded the motion. Upon roll call the motion passed 7-1. Council Members Turk, Hertzberg, Gutierrez, Jones, Kinion, Scroggin, and Bunch voting yes. Council Members Petty voting no.

City Attorney Kit Williams: The ordinance has been amended twice.

Council Member Scroggin: This phases out in 12 days. If we don't vote to extend this tonight, do we lose it?

City Attorney Kit Williams: That's why it has an Emergency Clause on it.

City Council received 1 public comment regarding this ordinance.

Council Member Scroggin 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 Turk, Hertzberg, Gutierrez, Kinion, Petty, Scroggin, and Bunch voting yes. Council Member Jones was absent during the vote.

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.

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

Emergency Clause Approved

Ordinance 6408 as Recorded in the office of the City Clerk

Announcements:

Susan Norton, Chief of Staff stated we issued a media release on the first Mayor's Environmental Stewardship award. She stated the Environmental Action Committee has announced they're calling for nominations for the Environmental Stewardship Stewart award and the categories of environmental stewardship, pollution prevention, environmental advocacy, recycling and sustainable product lifecycle, environmental sustainability or resiliency education outreach, energy conservation, clean energy production and or innovation, resource conservation, and rehabilitation and reclamation. She stated the City of Fayetteville Environmental Action

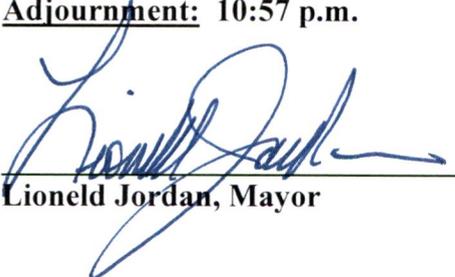
Committee will review nominee packets and forward recommendations to City Council for the approval of the award. She stated the deadline for nominations is March 1, 2021. She stated all information is available on the city website.

City Council Agenda Session Presentations:

Agenda Session Presentation - Proposed 2021-2025 Five Year Capital Improvement Plan, Paul Becker.

Agenda Session Presentation: Economic Vitality Contract Services

Adjournment: 10:57 p.m.


Lioneld Jordan, Mayor


Kara Paxton, City Clerk Treasurer

