

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 Meeting
April 20, 2021**

A meeting of the Fayetteville City Council was held on April 20, 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, Mark Kinion, Matthew Petty, Sarah Bunch, 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 Sloan Scroggin, Council Member Holly Hertzberg, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Chief Financial Officer Paul Becker, Chief of Police Mike Reynolds, Deputy Chief of Police Jamie Fields, Fire Chief Brad Hardin, staff members from the IT Department, and members of the press were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: We have Council Members, city staff, and the public participating in this meeting, virtually and in-person. Participation remains of the upmost importance to the City of Fayetteville. We have provided many ways to participate in the meeting, which includes joining in-person at City Hall, joining virtually through Zoom, viewing through Fayetteville's government channel online or the city's YouTube channel. If you are joining through Zoom, you must raise your virtual hand to request to speak during the public comment period. You can do this by clicking the raised hand option in Zoom online or by pressing *9 on your phone. When it's 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. If you're attending the meeting in-person, you must sign up to speak by completing a public comment form. Forms can be found on the table outside of Chambers. I will take public comments from virtual attendees first, in order to give in-person attendees enough time to line up to speak. Public comments will be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they may wish to address being open 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:

Presentation of the Mayor's Environmental Stewardship Award to Selected Award Recipients

Mayor Jordan: This week is earth week and April 22, 2021 is the 51st celebration of Earth Day. In honor of Earth Day, the Fayetteville Environmental Action Committee has developed the inaugural Environmental Stewardship Award Program. This award recognizes excellence in environmental stewardship demonstrated through sustainable practices, programs or projects undertaken by Fayetteville community members, nonprofits, businesses and educators. The Environmental Action Committee received nine applications and were impressed by the quality and diversity of the entities and individuals that were nominated. This made the selection process very difficult. Each of the three winners will receive a trophy. In the spirit of Earth Day and sustainability, the three trophies are old trophies that have been recycled for this new award. The only thing new on each trophy is the new plaque, which we have engraved with the name of the award winner.

Susan Norton, Chief of Staff presented the trophies to the three award winners. She thanked the individuals, businesses and industries that embrace and accelerate sustainable practices and environmental stewardship. She stated our community is made more resilient by individuals and organizations that institute sustainable practices, set high standards, and lead by example. She thanked the Environmental Action Committee for developing the award.

The 2021 Environmental Stewardship Award for an individual was presented to Pattie Erwin.

The 2021 Environmental Stewardship Award for business was presented to Pack Rat.

The 2021 Environmental Stewardship Award for Industry was presented to Arkansas Myriad.

Mayor Jordan: Congratulations to all the award winners. Thank you all very much.

Monthly Financial Report

Paul Becker, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated sales tax was up very strong for January and February. He stated sales tax was up 11.8%, compared to budget. He stated he budgeted for the city to have a slight decline this year, which happily hasn't happened. He stated the total revenue for the General Fund was up 5% compared to budget because of the strong showing of sales tax and was driven primarily by internet sales. He stated the Street Fund was up about 5% compared to the budget. He stated Parking revenue was down about 26% for the period compared to budget, however when we constructed the budget for this year for the Parking Fund, we reduced capital expenditures. He stated we are in line with expenses and down about 1% of expenses over revenue at this point in time. He stated HMR taxes are down 14% compared to last year, however they're up 13% over budget. He stated Water and Sewer is up about 2%. He stated Recycling and Trash is 10% down below budget. He stated the Airport fuel sales are 60% of budget.

Agenda Additions: None

Consent:

Council Member Gutierrez requested for A.3, Gulf Coast High Intensity Drug Trafficking Area (HIDTA) to be pulled from the Consent Agenda. She stated a citizen requested to speak on the topic.

Approval of the April 6, 2021 City Council meeting minutes.

APPROVED

Officer Stephen Carr Memorial: A resolution to approve a sculpture commission agreement with Brodin Studios, Inc. in the amount of \$51,483.55 for the Officer Stephen Carr Memorial bronze statue, to approve a cost share agreement with Fraternal Order of Police Lodge #10 with an amount not to exceed \$35,000.00 to be paid by the City of Fayetteville toward the cost of the sculpture, and to approve a project contingency in the amount of \$5,000.00.

Resolution 119-21 as recorded in the office of the City Clerk

Gulf Coast High Intensity Drug Trafficking Area (HIDTA): A resolution to approve a Memorandum of Agreement with Washington County regarding funding from the Gulf Coast High Intensity Drug Trafficking Area in the amount of \$66,108.00 for the Police Department.

This resolution was pulled from the Consent Agenda for discussion.

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

Gulf Coast High Intensity Drug Trafficking Area (HIDTA): A resolution to approve a Memorandum of Agreement with Washington County regarding funding from the Gulf Coast High Intensity Drug Trafficking Area in the amount of \$66,108.00 for the Police Department.

Council Member Gutierrez stated she received communication from Sarah Moore requesting the topic to be removed from Consent for discussion.

Sarah Moore, Ward 2 citizen spoke briefly about the resolution. She spoke about metrics. She spoke about recidivism.

Mike Reynolds, Chief of Police gave a brief description of the resolution. He gave a historical synopsis about the Drug Task Force, funding, and the JAG Grants. He stated Washington County is the fiduciary. He stated this is a grant with the allocation being for overtime expenditures, purchase of evidence, and purchase of information. He spoke about the the main focus being the disruption of drug trafficking organizations. He gave an overview of metrics and a drug threat assessment. He spoke about treatment and prevention programs.

Council Member Gutierrez stated we have a new person on the team that is working on the social side with the Fayetteville Police with our social worker. She stated she wondered how there might be opportunities for that person to be part of helping with the prevention.

Mike Reynolds, Chief of Police stated part of the social work internship program is embedding our social worker into primary response and we are moving in that direction. He stated our intern worked with the Drug Task Force detectives. He stated they encountered an individual that was battling substance and mental illness issues and they were able to work together to get that individual into the crisis stabilization unit. He spoke about collecting data over the next year to bring back to Council.

Council Member Jones: Besides the Police Department, there are other nonprofits who can apply for these grants as it relates to prevention. Is anybody having a conversation with these other nonprofits about applying for these grants or is the burden being placed on the Police Department? It sounds like your Social Worker is doing a lot of other things. I know there are several nonprofits who would be willing to apply for those grants to help the Police Department and to help Fayetteville.

Mike Reynolds, Chief of Police stated he would be happy to work with those partnerships. He stated we are just one prong of this issue, which is the enforcement arm of it. He stated we can't arrest our way out of this problem alone. He stated that doesn't mean we need to do away with the Drug Task Force and enforcement, but we need to partner with our community in treatment and prevention. He encouraged citizens and organizations to reach out with help in applying for grants for treatment and prevention.

Council Member Jones: I would like to see if we could have a community conversation as it relates to collaboration in getting some of these nonprofits to partner with the Police Department. We have several organizations in Fayetteville and Northwest Arkansas who would be willing to partner with you. I'm hoping we can disseminate that information as it relates to the grant, so they

can be involved in the conversation and work with you, so that burden won't be placed on the Police Department.

Mike Reynolds, Chief of Police Thank you. I often worry about having the capacity to deal with all of that. Right now, we're just trying to keep our heads above water. I would certainly embrace anybody that wants to partner with us in any way.

Council Member Jones: We appreciate your openness to do that. You are right in that we can't arrest ourselves out of this problem. We have to look at it from a community perspective. We have many nonprofits who would be more than willing to support you and to work with you.

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

Resolution 120-21 as recorded in the office of the City Clerk

Unfinished Business:

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. At the January 5, 2021 City Council meeting this item was left on the second reading and tabled until the February 16, 2021 City Council meeting. At the February 18, 2021 City Council meeting this item was left on the second reading and tabled until the March 16, 2021 City Council meeting. This item was sent back to the Ordinance Review Committee. At the March 16, 2021 City Council meeting this item was tabled to the 04/06/2021 City Council meeting. This item is currently on the second reading. At the April 6th, 2021 City Council meeting this item was left on the Third Reading and Tabled for Two Weeks.*

Mary McGetrick, Long Range Planning & Special Projects Manager gave a brief description of the ordinance. She stated staff proposes amending the ordinance to strike the requirement for proof of operation for the past three years, allowing for a more level playing field for all operators and potential operators. She stated staff was requested to research various ways to ensure a Type 1 owner is present for the majority of the year should problems arise with guests. She stated the following are the most common ways and best practices to ensure regular residency as found in various peer city code. She stated 180 days, which is the amount of time you must live in Arkansas to be considered a permanent resident and a number of municipalities used some form of this to determine the length of time a Type 1 operator would be required to be present in their home. She stated municipalities such as Kansas City use 270 days, which the time limit equates to roughly nine months requiring the owner to be living in the unit for the majority of the year. She stated this appears to be the standard for Type 1 or owner occupied units across various municipalities. She stated the ordinance currently requires the homestead exemption or copy of a long term lease for

Type 1 rentals, but we may consider adding two or more of the following, which are motor vehicle registration, driver's license, Arkansas state identification card, voter registration, tax documents or utility bill.

The City Council received one public comment regarding this ordinance.

Council Member Scroggin: Is the draft that Mary talked about, is that technically what's in front of us now or do we need to make some motions?

Mary McGetrick: We would need to make an amendment in regard to the six month grace period. That language, we can provide to you as needed. It would be the updated language presented in the presentation as prepared by the City Attorney.

City Attorney Kit Williams requested for Mary to pull up her presentation to make sure the proposed amendment is written correctly.

Mary McGetrick stated she recommends the language provided by City Attorney Williams. She stated he clarified some portions of it.

City Attorney Kit Williams: We talked about this grace period in two different parts of the code. Is that right?

Mary McGetrick: Correct. We would need to amend it in two different places in the code.

City Attorney Kit Williams read the proposed amended ordinance.

Council Member Gutierrez: Did this help to address and clarify the fairness of what you were saying? Would it make sure people who are doing these Short Term Rentals are different from people who are doing Long Term Rentals?

City Attorney Kit Williams: This would grant to any person, whether you've been operating a Short Term Rental or not, the opportunity to get a free Conditional Use and then apply for a business permit. You would have to go through the inspections just as normal. You won't have to pay the \$100. You won't have to go to the Planning Commission. You will automatically get that awarded by this subsection. The downside of this is that no neighbors will ever get a chance to object to any Conditional Use being granted because the City Council is granting Conditional Use themselves. We don't know how many people might want to do that and we have a potential limit on the number of Short Term Rental, Type 2 permits to be allowed. Potentially, it could even exceed that amount, probably not, but those are the downsides. The upside is that we are no longer favoring the illegal operators over citizens who did not break the law.

Council Member Turk: It goes a long way to equalizing things out, by not having preferential treatment to illegal activity or unregulated activity within the city. On the other hand, we need to beef up and have a more robust complaint system than we have. Staff should be prepared to address those kinds of complaints once we implement these regulations. We are short circuiting the

neighbors that have had issues with unregulated Short Term Rentals. We need to provide an easy pathway for them if they have future complaints or concerns to have those addressed.

Susan Norton, Chief of Staff: Mary and Jonathan addressed that last time. It's been discussed.

Mary McGetrick: I can add a little bit of language. Typical nuisance complaints would be handled by the Police Department. Currently, that is how we operate. On the weekends these nuisance complaints might include loud music, large parties or illegally parked cars. All of those types of complaints are handled by the PD. However, staff wouldn't rely on the PD to enforce this ordinance. We would use their reports, in order to enforce the ordinance.

Mike Reynolds, Chief of Police: We commonly respond to those types of quality of life issues. We enforce noise type violations and don't have a problem with that. We can take reports on these kinds of violations and forward those to Code Compliance, as well.

Mayor Jordan: I want it clear that the Police Department is only doing code enforcement when it is loud noises and when stuff is going on that's not legal.

Mike Reynolds, Chief of Police: That is correct.

Council Member Turk: I want to paint a scenario I've heard about that occurred. There's a party at a Short Term Rental and it's New Year's Eve. There are 300 cars blocking traffic and there are noise problems and drunk people all over the place. Glass is being thrown in the road. You all are extremely busy because that's a holiday. Do you have the capacity to be able to handle such an event and how would that work with code enforcement when New Year's Eve is on a Saturday? I want to make sure we don't have any gaps and you have the capacity with city staff and the Police force to be able to deal with these kinds of activities.

Mike Reynolds, Chief of Police: The scenario you gave is a very difficult scenario, with it being New Year's Eve. Certainly, we would be busy, so the types of calls you are referring to is what I refer to as a Priority 3 call. That's the lowest level call that we respond to as law enforcement. It depends on how busy we are handling higher priority calls. Parking violations are something we are regularly responding too. We are not very familiar with over occupancy rates and something we don't respond to on a regular basis. It's usually those types of violations that are co-mingled into the type of violation you are talking about with Short Term Rentals.

Council Member Turk: Would a report be filed and that would be handed off to city staff? I'm trying to find the mechanics because the Short Term Rentals operating illegally, the Police force when this occurred, was not able to do anything about it. Once we make them legal, I'd like to make sure I understand how the whole process will work.

Mike Reynolds, Chief of Police: If that was something we respond to after hours, then we would take a report on that. It would be an informational report on over occupancy and then Code could get that report the following business day and follow up on it. We would not take an enforcement action on something like a code violation. Our stance would be going out and taking a report as time is allocated for officers to do that.

Council Member Turk: In that situation, you would not be able to stop the party or disband it?

Mike Reynolds, Chief of Police: If it's based upon over occupancy, I don't think we would be able to intervene with the current legislation the way it's written. If it's a loud party and falls under the noise ordinance and a host issue, there's very different statutes and ordinances that apply to that situation. You are just merely asking me about over occupancy on what we're talking about here tonight on an Airbnb, Short Term Rental, we would not be able to take enforcement action.

Council Member Turk: If there were parking situations and bottles being thrown, you would be able to do something about that and you would include it in your report?

Mike Reynolds, Chief of Police: Absolutely. Anything ancillary that's a violation and Police would normally handle, we would be able to take immediate enforcement action on something like that.

Council Member Scroggin moved to amend the ordinance to add language in two sections of code as presented by City Attorney Kit Williams. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

Council Member Turk stated she looked into the regulations because she has several long term properties. She stated a lot of residents are very concerned about the occupancy limits that we have in place. She stated she has a Short Term Rental and wants to make sure Council gets this right. She gave a brief summary to clarify and identify several provisions. She stated she is open to sending this back to the Ordinance Review Committee. She stated when she looked in the code, she found a lot of inconsistencies. In Section 118.01, item C, this prohibits minors from being required to have a business license for a Short Term Rental. She stated she thought the intention was to prohibit minors from engaging in Short Term Rentals because as it's written right now, a minor could be engaged in a Short Term Rental if they are a renter. She stated we should change some of the language to make clear what the intent is.

Mary McGetrick: I agree. Most of the platforms require that you be 18 years of age to rent, but not everyone rents through a platform. We have the business license requirement that prevents minors from holding a business license. There could potentially be a situation in which a minor could possibly rent a Short Term Rental. If we want to add that, staff could support an amendment adding that language.

Council Member Kinion: I'm glad Council Member Turk pointed that out and it could be a concern.

Council Member Bunch: I agree we don't want minors subletting their apartments for Short Term Rentals. However, that subletting ability is in a contract between the landlord and the minor. I'm concerned how the city can enforce or jump in on somebody's private business in this way. I don't see how we could enforce that. In my leases, no one can sublet anything.

Council Member Turk: I thought about that too, but we have a very loose language that is not making it clear that the landlord needs to get a business license. They need to have all of these

different things if they allow their lessee to sublet. It's very open ended. If I allowed subletting in one of my Long Term Rentals, I would not have any guidance in how to follow City Code because it's not clear. We don't have a requirement that the business owner or the landlord allow it sublease in the language to the renter.

Council Member Bunch: I don't see any problem with putting some extra language in here dealing with minors, but when you're talking about the language that allows someone to sublet, then you're getting into the city enforcing someone's private business contract. I don't know that's the role of the city. I don't see this as being the straw that broke the camel's back on the Short Term Rental. We put in the time and focus groups to come up with the best possible ordinance to begin with. If we found this was a challenge, later on, we could tighten it up even more.

Council Member Turk: I suggest we tighten the minor part up. I agree with you about not getting into the business of reviewing leases and making sure that a sublease is included. Right now, we don't have an insurance requirement for the landlord. If they're going to allow subleasing and their renter can sublease that out, there's no insurance requirements and it needs to be very clear about what they need to have. The owner is going to have to have a business license. They're going to have to allow a safety inspection. They're going to have to have insurance. They may not know their renter is engaging in a Short Term Rental.

Mary McGetrick: Currently in our business license, Section 118.01 C, minors cannot hold a business license. I'm not sure that is where we would want to put the prohibition of minors operating Short Term Rentals. If we want to add that as an amendment, we may need to add it somewhere else in the ordinance. If a long term lease holder wants to operate a Short Term Rental, they are required in the ordinance as it's written, to provide a copy of their long term lease. They would be responsible for holding the business license, getting the inspection and providing the insurance. If they couldn't do that, then they would not be able to obtain a license. We require that lease, but we also can't enforce a contract between two private parties.

Council Member Turk: You would require the tenant to show you the long term lease that they have with the owner. The owner would still be required to carry the insurance, have the business license, and have the safety inspection?

Mary McGetrick: No. The leaseholder would be responsible for that. That's how it is written now.

Council Member Turk: I don't think that is a very good idea. They don't own the place and it is a gap that we need to discuss.

Mary McGetrick: The insurance requirement overall is in the ordinance that you have. If you are a long term lease holder, you can get renters insurance and then you can get a rider on that to do Short Term Rentals. You can get that as part of your renter's insurance, but it would have to be approved by your lease.

Council Member Turk: As part of that bundle, maybe it could be a joint requirement with the landlord and the long term lease holder, so that all the parties are on board about this. I have a hard

time seeing how this would work. As a landlord, I don't allow subletting and maybe others do, but you want to make sure everybody's informed. I don't know if the Council would entertain requiring both the landlord and the long term lease holder to have the business license.

Council Member Bunch: To have it jointly?

Council Member Turk: Have it jointly. Let's say the long term lease holder has lots of parties and problems, they're going to have compliance issues. Do you want to hold the long term leaseholder responsible, or do you want to have the landlord be responsible for that? It's their property. The renter could move to another area of town, set up a situation over there, and then there's no accountability in residential areas.

Council Member Petty: It sounds like in the scenario you just described, that the long term lease holder is the problem. If they're going to pick up and move to another end of town, we need the business license to follow them, so enforcement actions can follow them. This feels like an edge case that we're not going to see very often, especially the minors, but also tenants, who are subletting. If that's going on right now, they're going to be a lot less likely after the ordinance passes to try and do an unapproved sublet than they might be today because they will have to file documentation with someone. This is unlikely to happen. If it does happen, it seems like the ordinance is capable of handling it.

Council Member Turk: How are you going to be able to collect taxes on this? This is a big loophole that we don't need. If it's not used very much, why don't we close this loophole. Mary, have you found this kind of provision very common in other cities?

Mary McGetrick: For the most part they allow subleases, especially in some of the peer cities where there are college towns. They did require the long term leaseholder to provide the lease. I don't know how much we could enforce that, but if it was clear in providing the lease that subletting was not allowed, then we could not issue a business license. I researched maybe 30 cities, and I saw it in about a little over half with these types of provisions.

Council Member Gutierrez: I'm glad you brought up the college cities. Let's say the landlord is open to subletting. They know they are doing Short Term Rentals and the student may be out doing a summer study abroad. They do a Short Term Rental through their time they are gone and then they come back in August. If the landlord is okay with that, which I don't know very many that are good with subletting, hopefully, they would figure that out with their landlord. If they are okay with that, then it's good for the person who's subletting to be fully responsible with the business license. If they do something wrong, they are at risk of losing their opportunity to do Short Term Rentals.

Council Member Bunch stated what Council Member Gutierrez described might not have been a Short Term Rental. She stated if it's longer than 30 days or more, then it's just a regular rental. She spoke about professors going on sabbaticals. She stated she has no problem with putting some language in, since we are a college town. She stated she doesn't see this as being a giant problem of subletting Short Term Rentals. She stated if there are problems, it's probably going to be something else that's the problem, such as the actual renter.

Council Member Hertzberg: If we were to add language, regarding minors, would we have an exception for emancipated minors?

Council Member Turk: I would be open to that.

Council Member Petty: Are there any motions to be considered? We've discussed this at least three full Council meetings, two Ordinance Review Committee meetings, and so far, we've had consensus to move forward on the basis that we have a grace period and a review with potential amendments in the future. I understand some Council Members may have lingering concerns, but without a motion with specific language to be considered, it seems like we are spinning our wheels.

Council Member Turk: I'm happy to make a motion to table this for two weeks, so we can have some proposed language to come back with in two weeks that is very specific, not just about the minor issue, but about a couple of these other ones. I was hoping we would discuss those and move us forward. I've got several other ones that are important and would like to discuss them openly and with the public. Do you want me to make a motion or can we continue the discussion?

Mayor Jordan: If you're looking at some stuff to bring forward, make a motion and get a second. Then we can vote it up or we vote it down and then go on to the next one.

Council Member Scroggin stated he would like to vote immediately. Council Member Hertzberg stated she would second the motion.

City Attorney Kit Williams: This is one of the most privileged motions and according to the Municipal Leagues requirements, it says a motion to vote immediately is a motion to close debate, shut off subsidiary motion and take a vote at once. The motion to vote immediately is that you can't interrupt the speaker. I don't think a speaker was interrupted, but that would be up to the Mayor to decide. It requires a second. It's not amendable and requires a two thirds majority, which is six affirmative votes to pass. Once it's been done and seconded, we go straight to the vote. It is not debatable.

Council Member Petty: This is a vote, to vote, not a vote on the ordinance. Correct?

Mayor Jordan: It's a vote on the ordinance. Is that correct?

City Attorney Kit Williams: Yes. It would be to vote for the ordinance, either up or down.

Mayor Jordan: It takes six votes. If that vote fails, where do we go from there?

City Attorney Kit Williams: Then we are right back at it again.

Council Member Scroggin made a motion to vote immediately. Council Member Hertzberg seconded the motion. Upon roll call the motion failed 4-4. Council Members Bunch, Hertzberg, Petty, and Scroggin voting yes. Council Members Turk, Gutierrez, Jones, and Kinion voting no.

City Attorney Kit Williams: That fails, and we are right back where we were.

Council Member Turk spoke about tabling the item for two weeks to look at some of the questions she has and to receive more clarity. She spoke about having Mary McGetrick draft some different language for her concerns.

Mayor Jordan: The Ordinance Review has had it twice and we have your recommendations.

Council Member Kinion: Out of respect to Council Member Turk and the concerns she's received and researched, I want to table it to the next City Council meeting. I'm sorry if it seems like we've drug it on and on, but that's no excuse not to have a better piece of legislation.

Mayor Jordan: If we table it, I need some kind of pathway for Mary. Council Member Turk, you sent us a document with about 16 items. Do you want Mary to try and incorporate all of them?

Council Member Turk: Many of them are just trying to clarify the language. They weren't all issues. There were many that were clarifying the language quite a bit. I would love to address each one of them with Council Members. It seems that was not what Council wanted. I can work with Mary on these or we can discuss other ones that are in the list. It would be important to have Council input.

Council Member Bunch stated when she read over the items, a lot of them are covered in other parts of our code. She stated if we want to have a discussion, we need to have the discussion now, so we know what we're talking about. She stated she does not feel comfortable sending this list with Mary and asking her to craft something that she may not agree with.

Mayor Jordan stated he would rather have the discussion out in public and get it over with and then try to have Mary go back and craft something.

Council Member Turk: I'm happy to carry on with the discussion.

Mayor Jordan spoke about Council Member Turk making amendments if she so desired.

Council Member Turk moved to table the ordinance until the May 4, 2021 City Council meeting. Council Member Kinion seconded the motion and then withdrew his second.

Council Member Turk: In Section 118.01 (C), Mary said she would work on some language for that. Do I need to have a motion to request Mary to work on some language? I think she understood what the intent was.

Susan Norton, Chief of Staff: The more guidance we can give Mary with language, the better off we all will be.

Council Member Turk moved to amend Section 118.01 (C) to redraft language that clarifies minors are prohibited from leasing, advertising, managing, or any other activity involved in Short Term Rentals, unless they are an emancipated minor. Council Member Gutierrez

seconded the motion. Upon roll call the motion passed 6-1. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones and Petty voting yes. Council Member Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: In Section 118.01 (E), I recommend we define room better. We need to define bedroom. Our occupancy limits on Short Term Rentals references bedroom. We need a clear definition of what a bedroom is, and that definition can come from the Fire Department or some other kind of real estate defined bedroom.

Mary McGetrick: Currently, as it's written, a room is an enclosed portion of a building designed or intended to be used principally for sleeping purposes. We don't have a definition of bedroom anywhere in our code. We rely on the IBC and the International Fire Code as adopted by the State of Arkansas to provide the definition for us. If we added a definition of bedroom, following either IBC or Fire Code, it would need to apply to the entire development code. It would make sense if we're defining bedroom specifically, it would not necessarily be specific to this section of code. There are a number of things the building code requires.

Jonathan Curth, Development Services Director: There's a lot to be said for deferring to codes that are adopted on a State level. When those codes change, we don't have to go back into our ordinances and find every instance where they already occur. We have found that to be an effective way of making sure our code stays up to date, without having to do an amendment every single time.

Mayor Jordan: Does the State define what a bedroom is?

Jonathan Curth: The State of Arkansas adopts the International Building Code on a semi yearly basis. It's not always the most current one and from there that's where our building codes are established. Every time the State of Arkansas adopts a new one, the City of Fayetteville can adopt it with the potential for amendments that are a higher level of scrutiny or higher requirement. Mary has the information in front of her.

Mary McGetrick stated the information about what constitutes a bedroom was about two and a half pages long.

There was a brief discussion about amending the definition of "room" to "bedroom."

Council Member Turk moved to amend the definition of "room" to "bedroom" in Section 118.01 (E). Council Member Gutierrez seconded the motion. Upon roll call the motion passed 5-2. Council Members Bunch, Turk, Gutierrez, Jones, and Petty voting yes. Council Members Hertzberg and Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: In Section 118.01(E)(5). This provision requires the platform, such as Airbnb or Vrbo to not allow Short Term Rentals to advertise. I don't see how we can enforce that. I have received several emails from those groups, saying that won't work for them. I want to strike that requirement requiring platforms to make sure that STR's are adequately licensed.

Council Member Bunch: Mary is that something covered in some of the other cities we looked at? Is this common language in a city ordinance?

Mary McGetrick: I have not seen it in that many ordinances. It was based on best practice in our research into that. The more I've researched, especially ordinances that have been passed recently, I haven't seen something like that included. Enforcement may be difficult for something like that.

Mayor Jordan: You want to strike 118.01(E)(5). Is that correct?

Council Member Turk: Yes.

Council Member Gutierrez stated she was not completely clear about Section 118.01(E)(5).

Mary McGetrick gave a brief description of Section 118.01(E)(5).

Council Member Turk: I suggested striking and deleting that provision. I don't think we can enforce that.

Council Member Gutierrez: Mary, do you think striking it is okay or do you want to rewrite it?

Mary McGetrick: If we are wanting to deal with it, either keeping it or striking it is probably the best way. I don't think there's a way we can rewrite it that would change the intent or make it more enforceable.

Council Member Petty: I want to be able to support this one. I don't believe the claims of the Short Term Rental booking companies. We heard the same things about how they could never collect the taxes they are required to collect and have always been required to collect, but when we stuck to our guns, we were able to get agreements to get them to start collecting. Implementing a simple document upload check is something they already do for copies of driver's licenses, insurance riders, and it should be simple for them to do it for a copy of a business license. They're just trying to avoid the burden of doing this.

Council Member Turk moved to amend the ordinance by striking Section 118.01 (E)(5). Council Member Gutierrez seconded the motion. Upon roll call the motion passed 4-3. Council Members Bunch, Turk, Gutierrez, and Jones voting yes. Council Members Hertzberg, Petty and Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: Section 118.01(E)(9), I want to request we clarify the insurance requirements and the amount we require on insurance. I want to specify the amount and the type we are requesting.

Mary McGetrick: I've done a lot of research into this. One room in a 1,000 square foot house is going to have a completely different insurance requirement than a six bedroom 3,000 square foot house. It's a little hard to put a number on what they would require. A private homeowner working with their insurance company, most of these standard riders I saw, they included medical, disaster,

and liability insurance. Most of that is already there. The numbers vary wildly in the amount of coverage. It would be difficult to put a cap on it.

Council Member Gutierrez: It would be helpful to advise them to say a minimum of these three things. You're saying it hasn't been evident that other places haven't put a minimum?

Mary McGetrick: I haven't seen it. The language we use is that the owner of the dwelling unit or operator of the Short Term Rental provides proof of a valid and current homeowner insurance rider policy, which fully covers each unit when operated as a Short Term Rental. I haven't often seen a threshold of any type applied to it.

Council Member Turk made a motion to amend the ordinance to clarify the insurance type and amount. The motion died due to a lack of a second.

Council Member Turk: I want to make a motion that we require whoever the holder is of the business license of the Short Term Rental to be included in the landlord registry. This will be a way to contact them quickly if the need arises.

City Attorney Kit Williams: This would require a small amendment to the landlord registry code section.

Mayor Jordan: It would include Short Term Rental owners into the landlord registry.

Council Member Hertzberg: Does the ordinance that we have, not already do that? It's the ordinance that Mary drafted.

Mayor Jordan: I don't think it covers Short Term Rentals.

Council Member Bunch: Short Term Rentals aren't legal in lots of places.

Council Member Hertzberg: My question was more about the contact information. Is the contact information not already addressed in the ordinance that we have right now?

Mary McGetrick: It is.

Council Member Gutierrez: It's not public and there is no directory to be able to look it up. Correct?

Council Member Turk: That is correct. You want to make it accessible to the public.

Mayor Jordan: Which would be in the landlord registry, if it passes. Correct?

Council Member Turk: Correct.

Council Member Gutierrez stated she would second the motion.

Susan Norton, Chief of Staff: I thought I understood Kit to say that would require a change to the landlord registry ordinance, not this ordinance. I want to be clear that Mary doesn't have anything to do on this, if that's the case.

City Attorney Kit Williams: Right. I think we would need to bring back another ordinance to change that code section, rather than including it in with this.

Mary McGetrick: Correct. That would be my recommendation.

There was a brief conversation that this topic would be for a later discussion and action.

Council Member Turk: I will remove the motion with the understanding that this will come back and we can vote on it with the landlord registry. Vote for inclusion or not with the landlord registry.

Council Member Turk made a motion to amend the ordinance to require whoever the holder is of the business license of the Short Term Rental to be included in the landlord registry. Council Member Gutierrez seconded the motion. After discussion, Council Members Turk and Gutierrez withdrew their motion and second.

Council Member Turk: I would like to move that we prohibit lessees from renting out their Short Term Rentals, even if they have the ability to sublet with the homeowner. It's too loose and we are going to have a very big problem with enforcing that.

Council Member Kinion: I'll second that.

Mayor Jordan: The motion is to prevent lessees from renting out Short Term Rentals. Correct?

Council Member Turk: That's correct.

Council Member Kinion: That's important. If someone wanted to come in and lease some property, but they would make a profit if they did Short Term Rentals in the property they're leasing, then it could become a business deal. It's not earnest and it's kind of getting around the code.

Council Member Scroggin: We are starting to try to restrict businesses here. I understand what you're concerned about and that somehow, they are in cahoots to do this together. If you've got somebody renting your place and they are short on cash and they're going to go back for a month or two to home, they should be able to Airbnb and pay their rent during that time. We just went through a pandemic, where a lot of people went back home and would have been able to Airbnb and pay their bills and not have to get evicted. I don't think this is a good idea.

Council Member Petty: I agree with Council Member Scroggin. It seems as though the animus for this may be low opinions of people who lease units. We've gotten dangerously close tonight in trying to keep very careful language in how we talk about people who rent. I am struggling to understand why we think it's wrong and why it needs to be regulated for renters to sublet a space, with the permission of the property owner. What is so fundamentally different when the property

owner agrees? If a person who rents a space operates a Short Term Rental during Bikes, Blues & Barbecue or the person who owns the space operates a Short Term Rental for Bikes Blues & Barbeque, I'm struggling to understand what is so different.

Council Member Bunch: If a landlord agrees to let someone sublet, then I don't see any challenges with this. If your goal was just to prevent people from subletting their apartments, why you started out talking about minor subletting and now here we are, nobody can sublet. I'm not going to be in support of this.

Council Member Turk: I started out with minor subletting because it was the first item in the regulation. Mary, you have found in this scenario where the lessee is subletting out for a Short Term Rental, that they've been able to acquire insurance?

Mary McGetrick: I can send you some of my research. It will take me a minute to dig through this information, but I can attempt to find some of that.

Council Member Gutierrez: I've held renter's insurance in all of my places and they're more than happy to add anything I want to increase my insurance variety. I haven't tried to get a Short Term Rental rider.

Council Member Petty: If the insurance provider won't give a rider, then it's moot. They can't get the business license and they operate outside of the law. I don't understand why an additional code sentence is necessary.

Council Member Turk: In our requirements, we don't have insurance in there yet, unless Mary has updated that. We need to require them to display and confirm that they do have insurance when they get a business license.

Mary McGetrick: That is in the most recent version. The version you have in front of you now in Section 118.01(E)(3)(C) is where our insurance requirement is. It is in the version you're considering tonight.

There was a brief discussion about the regulations.

Council Member Turk: I'm going to withdraw my motion. I think they are going to have a problem getting insurance. I'm glad you pointed out that the insurance is identified in there.

Council Member Turk made a motion to amend the ordinance to prevent lessees from renting out Short Term Rentals. Council Member Kinion seconded the motion. After discussion, Council Members Turk and Kinion withdrew their motion and second.

Council Member Turk: I would like to move that if you have a Type 1 rental, which is the owner occupied Type 1 rental, that the owner be required to be in the house when you rent it out as a Short Term Rental. I know there's been reluctance to do that, but we've had a lot of problems with parties when the owners are away.

Mayor Jordan: Your motion is that the Type 1 owner has to reside in the house. Correct?

Council Member Turk: They have to be present when they rent it out as a Short Term Rental.

Council Member Bunch: Are you saying if someone rents their house out during Bikes, Blues & Barbeque, they can't rent their house out unless they are in the house with the people? I couldn't rent my house out, go across the street and stay at my neighbor's house? Would I have to be physically in my house to rent it out as a Type 1?

Council Member Turk: I would be okay with you going across the street and staying at your neighbor's house. If you're going away where there's no cell phone coverage, there could be lots of potential problems. I've gotten several complaints about this happening.

Council Member Kinion stated he would second the motion.

Mary McGetrick: We have a requirement that if there is an emergency or an issue with the unit, someone has to be on site within three hours. If you aren't able to do that, you can designate an agent to do that for you when you get your business license. That is how we have covered that issue.

Council Member Bunch: That is adequate. This change would be prohibitive and unreasonable. That they would have to be in the physical house is not appropriate.

Council Member Scroggin: The purpose of Airbnb when it started was the idea of going on vacation and switching houses, so you don't waste resources constructing buildings we don't need. This would take away that entire purpose. I don't want business Airbnb's where somebody has 20. I want an Airbnb when I go to the outer banks and somebody could pay a little bit of money while I'm there.

Mayor Jordan: You want the Type 1 owner to be present in the house when it is rented. Is that correct?

Council Member Turk: That's correct.

Council Member Gutierrez thanked Council Member Turk for spending the time to go through the ordinance. She thanked Mary for her work on the ordinance.

Council Member Turk made a motion to amend the ordinance to have the Type 1 owner to be present in the house when it is rented. Council Member Kinion seconded the motion. Upon roll call the motion failed 2-6. Council Members Turk and Kinion voting yes. Council Members Bunch, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting no.

Council Member Turk: I move that we add a date. In Section 118.01(E)(7), that any change in ownership requires a new or amended license within 30 days after the sale or change in ownership.

Mary McGetrick: In our business license code in Section 118.02 (B), a business license must be obtained within two months of moving or starting a business. We have that language already in the code. If we were going to amend this section, then we would need to either amend both sections or we would need to specify that this particularly applies to Short Term Rentals.

Council Member Turk: If you can reference that or put two months in there, that would be helpful. If we can do that, I'll withdraw that motion.

City Attorney Kit Williams: You can do that. It would be up to Mary or the Council if they want to put something like that in there.

Mary McGetrick: It's already in our ordinance. You may need to vote to amend this section to add it there if we want to add it in this section as well.

Council Member Turk: I move to amend we add a reference or identify that it's 60 days after the sale or change in ownership.

Council Member Gutierrez seconded the motion.

Council Member Petty: Mary, did I hear you explain that's already a requirement in the business license section?

Mary McGetrick: That is correct.

Council Member Petty: I won't be able to support this. I'm against duplicative code sections.

Council Member Kinion: The problem is, people that have looked at it, that have Airbnb's are the ones that have to understand it and they don't. This helps a little bit with some of that understanding. There's nothing wrong with putting a little coaching in there. It's not easy for some people to read code and understand it. I'm going to support it.

Council Member Scroggin: It is hard to read code when it's super long and there's duplicated sections in it. If we make a change, we might miss it and then it's contradictory to what it says in another place. I'm not in favor if this.

Council Member Bunch: More words don't always make it clearer. I don't think I'm going to be in support of this. When you get a business license, you have to fill out the form. It's clear when you fill out a business license what you're required to do. I don't believe in duplicating this.

Council Member Hertzberg: Mary, do you think this would be possible to add to the website to make it clearer, but not necessarily add it to the code?

Mary McGetrick: Absolutely. We could add this to the website. We have had discussions about maybe creating a brochure when people get their business license and we could add it to that as well.

Council Member Gutierrez: I really like it, because of its clarity. If you're wanting to start to operate an Airbnb, you are not going to go read a bunch of other codes. It's helping for customer service. I understand the duplicity thing, but if I was going to try to start to do it, I would just read my ordinance and read other references.

Council Member Bunch: It's not that you have to read all the other code. It's when you go in to fill out the business license application. It's pretty clear.

Council Member Gutierrez: It's just clarity. I wouldn't assume my businesses is the same thing as a what the Short Term Rental requirements are.

Council Member Petty: There have been maybe close to a dozen times where we have had to bring back new ordinances simply because in an ordinance that just got passed in the prior month or six months, we missed a cross reference. It's so common. We've got 350 printed pages of local regulations and they are layer caked. They are ordinances based on new complaints or new opportunities stacked one on top of the other, year over year, decade over decade. It's not best practice for management of the regulation. Most people who operate Short Term Rentals, don't read the code at all. They are far more likely to read the brochure and the website than any code section.

Council Member Turk: The easy solution is to cross reference this. What we want is compliance with our regulations and understandability.

Council Member Turk made a motion to amend the ordinance that any change in ownership requires a new or amended license within 60 days after the sale or change in ownership. Council Member Gutierrez seconded the motion. Upon roll call the motion failed 4-4. Council Members Turk, Gutierrez, Jones, and Kinion voting yes. Council Members Bunch, Hertzberg, Petty, and Scroggin voting no.

Council Member Turk: Section 118.01 (E), item, 15. Right now, it talks about notifying the Police after suspecting a criminal activity, but again there's no time reference. I suggest we put in 12 hours of knowing there's some suspected criminal activity. I move we add that timeframe to 12 hours or something reasonable.

Council Member Kinion stated he would second the motion.

Council Member Gutierrez: Who is getting notified?

Council Member Turk: The way the code reads is that you are required to notify the Police if there's suspected criminal activity, but it is open ended. It doesn't say how long from the suspected activity that you notify the Police.

Mary McGetrick: It says criminal activity, the owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department.

City Attorney Williams: It says, timely?

Mary McGetrick: It does.

Council Member Turk: Putting a number in there would be helpful. Timely can be a lot of different things.

There was a brief discussion about notifying the Police within 12 hours.

Council Member Scroggin: I really want to keep the word timely in there. If you suspect somebody was killed in your place, you've now got 12 hours.

Council Member Turk: It's within 12 hours of knowing or suspecting. If you found a dead body, it's 12 hours from the time you found the unfortunate incident.

Council Member Scroggin: I hope timely is faster than 12 hours on a dead body.

Council Member Bunch: Who's going to find a dead body and not call the Police immediately.

Council Member Kinion: It's turned into some kind of thought that people are not going to call in if there's an urgency. There are those that will not call in until they have too, and 12 hours seems like at least putting a limit on those that don't see the sense of urgency.

Council Member Scroggin: Can we do timely, with a max of 12 hours?

Council Member Turk: I would accept that as a friendly amendment.

Council Member Turk made a motion to amend the ordinance to notify the Police in a timely manner with a max of 12 hours of knowing of suspected criminal activity. Council Member Kinion seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: There are some cleanup amendments since you've made some changes. Chapter 151, Definitions. Mary, has a whole page of them. One of them is a definition of bedroom. Maybe in light of what Jonathan said, we should not define it, but leave it to State Law, which we do in other cases. Is that what you said Johnathan?

Jonathan Curth: Yes, that would be my recommendation.

Mary McGetrick: There was a vote on this. It says room and we've changed it to bedroom.

City Attorney Kit Williams: The definition of bedroom is what I'm talking about. Further on down, where it says Short Term Rental, it's got the same definition that we change room to bedroom, and so it should be changed in this definition too, if you want to keep that definition in. Those are just consistency things. If we don't change anything, then we've got two different definitions of Short Term Rental. One of the definitions chapter says residential dwelling unit, portion of dwelling unit or room within a residential dwelling unit, and you have just changed that in the actual code to say or bedroom. They should say the same thing.

Council Member Kinion made a motion to amend the ordinance to clarify language as read by City Attorney Kit Williams. Council Member Turk seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: The other one where you defined bedroom, Jonathan has suggested we remove it. Right now, it says, a fully enclosed portion of a building designed or intended to be used, principally for sleeping purposes. That sounds nice, but if we define bedroom in this code, then that's the actual definition we will have to use. Nothing about fire safety or anything else like that. We should not have this definition of bedroom in here. Instead we should rely upon the State definitions of bedroom. If we put it in our code, that is the definition of bedroom and that's all it has to be, and we can't require anything else.

Mary McGetrick: I agree.

Council Member Turk: I hope there's a reference so that somebody that's reading the code can find out what a bedroom really is. If there's some way to reference that back to the State, that would be helpful.

Mary McGetrick: They would have the opportunity to learn that when they got their life safety inspection and the Fire Marshal was doing their inspection. They could tell them what qualifies as a bedroom.

Council Member Hertzberg stated she would like to amend the definition to reference State Law.

Council Member Scroggin: Do we have anywhere that is referenced in any other definition in our code?

Mary McGetrick: I don't believe so.

Jonathan Curth: If the concern is about making that apparent and readily available in our ordinance, it is not there explicitly. The International Building Code is hundreds of pages long, similar to our ordinances. We have a section of code within the Unified Development Code that references the building code that's adopted by the State of Arkansas. If that's a concern, then you may want to include that in our codes, rather than just referencing existing adopted state codes.

Mary McGetrick: That would be a larger code change, than this reference.

Council Member Scroggin: I would hate for every 15th word in our code to say, we reference the State code and we reference the International Code.

Council Member Hertzberg: Jonathan, would you recommend striking the definition?

Jonathan Curth: I'm agnostic towards the issue. I don't disagree with the customer service aspect of providing that up front for people to understand. Conversely, when we work with a more professional element of development community, we have some references, like the building height that defer to building code. We haven't transferred that into our code. As the building code

changes over time, we don't have to keep changing our definition of a building height. If the Council is amenable to it, we could include something like that in a one sheet informational document like Mary referenced earlier. That may be an opportunity to not amend the ordinance if the Council preferred not too.

Council Member Scroggin: I would much rather have this on the website. When you start defining stuff, it's incredibly cumbersome to go through. Just leaving it with the International and State code is what we should do.

Council Member Turk: The reason why bedroom is so important is because that's how we define our occupancy limits. We have to have some way for the public to understand what a bedroom is and comply.

Council Member Hertzberg: I would like to change my motion to move that we strike the definition, but we add some educational elements to the website to reference what this definition would be.

Council Member Hertzberg made a motion to amend the ordinance to strike the definition but add some educational elements to the website to reference what this definition would be. Council Member Jones seconded the motion. Upon roll call the motion passed 6-1. Council Members Bunch, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Turk voting no. Council Member Kinion was absent during the vote.

Council Member Turk: At the beginning of this conversation, Mary brought up the occupancy duration or requirements for six or nine months. I don't believe we voted on those. I would make a motion to require a nine month residency for a Type 1 rental in the State of Arkansas, along with the other requirements that have already been adopted into our proposed regulation.

Council Member Gutierrez stated she would second that.

Mary McGetrick: You mean that the owner or long term leaseholder would be required to live in their residence, nine months out of the year?

Council Member Turk: I thought it was just for the owner.

Mary McGetrick: It can be just for the owner. Do you want to apply it to long term lease holders or would you like to just apply it to the owner?

Council Member Turk: We should apply it to both.

Mary McGetrick: This is specifically for Type 1?

Council Member Turk: Correct.

Mary McGetrick: A permanent resident in the State of Arkansas is 180 days.

Council Member Bunch: And 270 is being proposed.

Council Member Gutierrez: You're trying to include whoever is the person that is operating, that's doing a Type 1, has some sort of minimum and you propose, nine months. Correct?

Council Member Turk: Correct.

Council Member Bunch: Type 1 is the person that owns the house. It's a full time resident.

Mary McGetrick: It's a full time resident, but it could be a long term lease holder or the person that owns the house.

Council Member Turk made a motion to amend the ordinance to require a nine month residency for a Type 1 rental. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

The City Council received 3 public comments regarding this ordinance.

Mary McGetrick: I have one cleanup item. In Section 163.18(2) of General Standards, the Short Term Rentals may be permitted in all zoning districts where hotel, motel uses are permitted by right. The amended language for the grace period, I believe we required persons to operate a Type 2 Short Term Rental would be required to get a Conditional Use Permit. There may be a small conflict and we might need to clarify that.

City Attorney Kit Williams: We could clarify, except when they are permitted use.

Council Member Petty made a motion to amend the ordinance to clean up language as described by Mary McGetrick. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: The Council has done good work recently. They have improved this ordinance, especially putting the Sunset Clause on and trying to make it more equal between the people that have been operating illegally and all others. Despite that, I still can't as City Attorney recommend this. There's still the issue that a Short Term Rental, Type 2 can have 8, 10 or even more, because I think we removed the cap, when a long term renter could only have three or possibly four. That is another issue we could not get resolved. Because of that and also because there are some other internal inconsistencies within this ordinance, I can't recommend it. I do think it has been improved dramatically. I appreciate the Council doing that, especially the Sunset Clause.

Council Member Scroggin: Thank you, Mary for working on this. As the Chair of the Ordinance Review, it's been really nice working with her. Not everything is going to be perfect. We have a Sunset Clause and let's push this forward with voting. There are things we are going to learn once it goes out and we can adjust things. If something is drastic, I trust my fellow Council Members and Mayor's Administration to make changes quickly.

Mayor Jordan: We have been working on this ordinance for a very long time. Thank you to Mary, City Council and the Ordinance Review Committee for their work. This ordinance is not perfect and it's not going to make everybody happy, but these businesses have been operating outside of the law. It can be uncomfortable to adjust to being regulated, but that's exactly what needs to happen. We must regulate these types of rentals. Right now, they're illegal and unregulated, which is bad for residents, visitors, and this city. This ordinance is a good first step to bringing fair and logical regulations to Short Term Rentals in Fayetteville.

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

Ordinance 6427 as Recorded in the office of the City Clerk

RZN-2021-033 (797 S. Cherry Ln./A&B Enterprises, Inc.): An ordinance to rezone that property described in rezoning petition RZN 21-033 located at 797 West Cherry Lane for approximately 1.02 acres from RSF-4, Residential Single Family, 4 units per acre to RI-U, Residential Intermediate-Urban. *At the April 6th, 2021 City Council meeting this item was left on the First Reading.*

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 6-0. Council Members Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Members Bunch and Kinion were absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services gave a brief description of the City Council tour. He stated despite it being a 45 foot right of way, it is quite narrow. He stated it ranges from about 14 to 18 feet from edge to edge. He stated there was a decent amount of standing water in the southwest corner of the property. He stated the site tends to slope that direction, towards Dockery Lane and there's some concern that developing this site may have negative impacts on the neighboring homes to the West. He stated there was a question if the property was on a septic system and he was not able to verify that information between yesterday and today. He stated the sewer line and Cherry Lane did go in at the 1970's. He stated it is highly likely this property is connected to it today. He stated he was not able to verify if there was a septic system on site. He stated if the septic tank is still on site and the property is developed, the developer would be required to either fill it in or remove it.

Michael Andrews, Applicant gave a brief description of the area. He stated if there is a septic tank, it would be removed and it's not difficult to do that. He stated the house would not stay there. He stated it would be razed and replaced within the design of whatever the city, architects and engineers agree on.

Council Member Turk thanked the applicant and Jonathan for the tour.

Council Member Gutierrez: I apologize that I wasn't able to make it to the tour. Were there any neighbors that were able to attend or voice any concerns?

Mayor Jordan: Nobody was there. Council Member Turk and I were there, but that was it.

The City Council received 3 public comments regarding this ordinance.

Council Member Petty 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 7-0. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Kinion was absent during the vote.

City Attorney Kit Williams read the ordinance.

Council Member Turk: Jonathan, could you describe what the RI-U zoning requires, in terms of drainage?

Jonathan Curth: The city's drainage standards are based more on the type of building being built, rather than the zoning district. In this instance, the RI-U zoning district allows single family, two family, three family and four family housing. The city's drainage standards kick in once you put more than two units on a lot. I've heard anecdotally from the applicant that they want to potentially put a couple quad plexes, but there's nothing tying them to that. If they were to build to that standard, they would be subject to the city's drainage standards, but not if they built a one or two family dwelling.

Council Member Gutierrez: In RI-U, are they allowed to do up to three stories?

Jonathan Curth: Yes. The same as the surrounding RSF-4 zoning district.

Council Member Gutierrez: I hope there could be some conversations between the applicant and Mr. Ayala about any issues with the land ownership. Hopefully they can discuss drainage problems and be able to resolve it. This is on Huntsville Road and it seems like a great place to add a little bit of density, but I don't want to exacerbate drainage issues.

Council Member Scroggin: There are two issues at a play on a lot of rezoning's that we look at. We have a lack of housing stock. Any house under \$300,000 if it's priced right, you might get 30 or 40 offers on it. Those are 40 families that are trying to find a way to either come to Fayetteville or stay here. We have to look at drainage, but the rezone is not where you look at that. It's at Large Scale Development and it is other steps. We need to revisit our storm water prevention measures. I hope this conversation can continue and we can start looking at making it that people that are downhill of new development, aren't scared. This is reasonable and we need houses. The United States are 4 million houses short. We've got to develop, and we have got to develop right.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Council Members Bunch, Turk, Hertzberg, Jones, Petty, and Scroggin voting yes. Council Member Gutierrez voting no. Council Member Kinion was absent during the vote.

Ordinance 6428 as Recorded in the office of the City Clerk

VAC-2021-015 (215 S. Vale Ave./Rock Creek Holdings): An ordinance to approve VAC 21-015 for property located at 2015 South Vale Avenue to vacate a portion of public right-of-way between South Razorback Road and South Vale Avenue, as well as a portion of a 10-foot wide alley right-of-way. *At the April 6th, 2021 City Council meeting this item was left on the First Reading.*

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 7-0. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Kinion was absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director stated he had no updates on the ordinance and was available for questions.

Kael Bowling, Applicant stated he did not have anything additional to add from the last meeting and was available for questions.

Council Member Scroggin: Can you remind me why we held this?

Jonathan Curth: It was atypical for a right of way vacation in that there were some conditions included by the Planning Commission where they recommended re-dedication of right of way on the south end of the property and also requiring any development along that new right of way, which was intended for a trail to meet the city standards, as though that trail were a street. Staff's position is still recommending denial of their request. We had concerns about connectivity.

Council Member Scroggin: It was denial of the applicant's request or the Planning Commission's changes?

Jonathan Curth: I don't remember exactly how I put it at the last meeting, but I think the Planning Commission's amendments made it a more palatable request. Staff's position is still recommending denial. We don't feel there's strong enough public street connectivity in the area. There are some private streets to the north that create the appearance of connectivity.

Council Member Scroggin: We are a growing city and we definitely want to be able to keep connectivity.

Council Member Hertzberg: Do you have any information on the volume of traffic that is accessing Vale Avenue?

Jonathan Curth: I do not. We don't often have traffic counts on roads of Vale's size. It's generally more of an access road. A lot of people mistake it for a private road. It's kind of a frontage road for the railway line.

Mayor Jordan: There's not much traffic going down there.

Council Member Hertzberg: I would be in favor of this because it's more of an access road. I don't know that we need that much of a connection to it. I know that's important, but I did drive by and there's two private roads. They have the roads to those homes, so those people can access it. Is there one or two other access points?

Jonathan Curth: Do you mean access points to this property or between Vale and Razorback?

Council Member Hertzberg: Between Vale and Razorback.

Jonathan Curth: Sligo is the only public street, but Junction Street off of Sligo and Netherland Way to the north of Sligo are private streets between Razorback and Vale.

Council Member Gutierrez: Is there any plans right now to increase or work on Vale to make it less of an access road? What are the plans for that road?

Jonathan Curth: I do not see it on any of the short term improvement list for street improvements.

Council Member Petty: Isn't it the case that we would be unlikely to see improvements to Vale until that big industrial land to the right or some of the frontage to the left of Vale were developed? Even then, maybe only for the frontage in question.

Jonathan Curth: That would be the typical requirement. A lot of that comes down to the scale of what is proposed. The applicant did share some conceptual drawings, for what appeared to be a pretty sizable multifamily building there. Depending on its scale and how it distributed its traffic, staff may have the authority through the Planning Commission to require much more substantive improvements. The typical requirement would be yes, just for the property's frontage.

Council Member Petty: What is the extent to which the Fayette Junction Master Plan anticipates this area being developed?

Jonathan Curth: The Fayette Junction plan was largely hinging on the idea that the railway spurred to the East and would develop and turn into a significant transportation hub. With or without that transportation hub, this property represents an area that could benefit the city from very intense development. It's located along Razorback Road with easy access to I-49 and several parks. The Fayette Junction plan did imagine it being intensely developed as well, but a lot of what occurred in this part of the Fayette Junction plan was intended to be tied into that rail head there.

Mayor Jordan: That's right. I remember that plan and that was not included.

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 6-0. Council Members Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Members Bunch and Kinion were absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth described the illustrated map of Fayette Junction.

Council Member Petty stated his view of these maps is they are not meant to be set in stone but meant to communicate the concept and to get us thinking about the relative impacts and the kinds of things we need to do to make sure the general intent can be accomplished. He stated if more intense development occurred in this area, it would be rightful for the city for it to happen in this location. He stated he takes the recommendation to preserve the connectivity from the staff seriously against that future. He stated against what's there today, he could go with just about any proposal about the right of way but considering what we intend for the broader area in the future, the connectivity is especially important to plan for.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 2-5. Council Members Hertzberg and Jones voting yes. Council Members Bunch, Turk, Gutierrez, Petty, and Scroggin voting no. Council Member Kinion was absent during the vote.

This ordinance failed.

New Business:

RPZD-2021-003: (2390 S. Dead Horse Mtn. Rd./Meadows at Stonebridge Sd): An ordinance to approve a Residential Planned Zoning District entitled R-PZD 21-003 for approximately 51.33 acres located at 2390 South Dead Horse Mountain Road to allow the development of 168 residential lots and 1 mixed use lot.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated considering the whole balance of issues, we felt that the applicant's proposals will take what is already permitted and create a foundation for a complete neighborhood in an area that is right now completely devoid of services and fully auto dependent. He stated staff is recommending approval of the request with conditions. He stated the Planning Commission forwarded the item recommending approval with a vote of 5 to 3. He stated public comment has been received from at least one neighbor, who is opposed to this request and would prefer to see the property developed under its existing zoning district with a Bill of Assurance. He stated the golf course expressed concern at the Planning Commission about trespassing and the Council was forwarded an item from their representative with comments about the existing infrastructure and the appropriateness of the existing entitlement. He stated they have asked that the item be left on this reading for further consideration.

Bradley Bridges, Applicant gave a brief description of the property. He stated many of the things he has worked through are with the goals of the City Plan 2040. He stated he is trying to create a community that's walkable and reduce trips by adding some mixed use. He stated there is water and sewer right along Dead Horse Mountain Road. He stated since this is strictly a zoning, we are not bringing through a concurrent development at this time. He stated he will provide drainage that will meet or exceed the drainage criteria manual. He stated he will address any of those concerns at time of development once he brings a preliminary plat back through to the Planning Commission. He stated he is okay with the conditions. He spoke about the architectural renderings. He stated if Council sees fit, he would like to see a vote in favor of his request.

Council Member Scroggin: In the 2009 PZD, what was the number of units allowed? What is the density on Peaceful Road, the subdivision right to the west?

Jonathan Curth: The Riverwalk subdivision is developed at approximately between 2 and 2.5 units per acre, which is the first phase of the subdivision. I'm not as familiar with the subsequent phases.

Council Member Scroggin: How many places of access are there to this subdivision? Is it just that one?

Jonathan Curth: The Riverwalk subdivision has access at three existing points on Dead Horse Mountain. There is a future phase that will connect further south east along Dead Horse Mountain, as well.

Council Member Scroggin: Right now, the houses that are proposed have three access points?

Jonathan Curth: Are you talking about the existing Riverwalk subdivision?

Council Member Scroggin: No, the new one.

Jonathan Curth: One on the northern end of the property and the sliver of land that comes out to Dead Horse.

Council Member Scroggin: Does that sliver of land include that bridge?

Jonathan Curth: I believe that's all level surface.

Bradley Bridges: There is not a bridge along our frontage.

Jonathan Curth: The previous PZD was approved with an allowance for 350 dwelling units, 45,000 square feet of non-residential space and parking. The first phase was intended to be single family lots and that was 91 units.

Council Member Scroggin: It was significantly larger in 2009 than the 2018 attempt and then, this one?

Jonathan Curth: Correct. The preliminary plat in 2018 was about 140 lots. This one is 168.

Council Member Scroggin: These are comparable to what was allowed almost more than a decade ago. We got an email that was talking about density. There was a Bill of Assurance that actually limited this a little bit more, but the building climate five years ago is significantly different than we are now. We are way shorter on houses now than we were then. I have a lot of mixed feelings about this one. I hope we table this.

Council Member Turk: The sewer line will have to have additional piping to the lift station. Who pays for that?

Jonathan Curth: This is based on the Engineering staff review of the 2016 plat, which would presumably have somewhat comparable comments, given the moderate unit count increase. Generally, what would be required with this is the addition of a gravity main to the north. There's a series of lift stations in the Stonebridge Meadows Golf Club property and into that subdivision. That main construction itself would be roughly almost 2,000 feet. To do that, it would have to be laid right next to a force main, which would necessitate acquiring additional easement from the golf course to cross their property. The developer would pay for those improvements, but ultimately it would be the city's responsibility to maintain them. Lift stations are often a concern for the city. They don't work on gravity. They have mechanical functions to them.

Council Member Turk: The developer would pay for all of those costs. The right of way purchase or easement if it was needed from the golf course, the pipe and all the labor. It would just be the city that would have to maintain the Lift Station. Would there be a requirement to upgrade or increase the capacity of the Lift Station?

Jonathan Curth: I don't believe so. From my understanding of the 2016 review of the project, Crafton Tull also worked on that subdivision.

Bradley Bridges: We did do a sewer study. If requested during development, we could update that. There is already recorded easement for the additional line to go to the Lift Station that is located there.

The City Council received 2 public comments regarding this ordinance.

Council Member Scroggin: The easements that are having to go across the golf course, is that easements they already have or easements they have to purchase?

Jonathan Curth: When I advised Council Member Turk that they would need additional easement, it sounded like Mr Bridges disagreed. My comments are based on the 2016 Preliminary Plat, which did show the need to acquire more easement. There's already a force main running from the lift station through the existing easement and having to put a gravity main right next to that does have minimum separation requirements. Looking at that 2016 plat, it looked like they were looking for a 37 foot easement. I don't know if the size of that would've changed at this point. The existing easement is about 20 feet. The documentation suggests that more is maybe needed.

Council Member Scroggin: Can we approve PZD's that are open ended and be able to be successful or not?

City Attorney Kit Williams: It's something you can consider, whether or not they would be able to serve their development with sewer. They don't have condemnation powers to do that, so they would have to work out some sort of agreement with their neighbor to do that. The golf course did not sound too positive about that. This is certainly an issue the City Council needs to consider.

Council Member Scroggin: I definitely want that handled. It's frustrating when private entities put themselves in a situation where they think the city or other municipalities are going to come in and use condemnation to fix their problem. I don't know if we need to almost write the PZD as conditional on them being able to get these things. How long do they have to develop on a PZD before it lapses?

Jonathan Curth: Planned Zoning Districts don't lapse. Staff has brought them back before the Council, just in batches when they do seem to be several of them. Because of the highly prescriptive nature of PZD's, it means that once you get an approval for it, it's very unlikely that it can develop under a different circumstance. If a development was concurrently proposed with this, that would be subject to a one year approval, but the PZD itself does not have a defined expiration.

This ordinance was left on the First Reading.

ADM-2021-028: (3275 N. Oakland Zion Rd./Piepenbrok): A resolution to amend the Master Street Plan by removing a section of a planned Neighborhood Link Connection along North Oakland Zion Road and upgrading a section of East Bridgewater Lane from a Residential Link Street to a Neighborhood Link Street.

Jonathan Curth, Development Services Director gave a brief description of the resolution. He stated staff recommends approval. He stated the Planning Commission agreed to forward in favor. He stated the Transportation Committee recommended forwarding the item to Council with a vote of 3 to 0.

Kim Piepenbrok, Applicant gave a brief description of her item.

Council Member Turk: Who started the proposal to realign the road? How did it get on the Master Street Plan? What process did it go through to get on there?

Jonathan Curth: It predates my time with the city. I went back a couple decades of Master Street Plans and it has been on there for a while. It's a product of trying to create much longer range, longer vision circulation goals in the city. As we've matured in our thinking, we have established that instances in the planning area where we are improving streets may not be as valuable as we once thought when the city was growing rapidly and outwardly. I don't know how that one specifically got on there. I think every time the Master Street Plan came back; staff evaluated it and did not see a strong cause to remove it and it was left on there.

Mayor Jordan stated that went back to the 80's and had been on there for a while.

City Attorney Kit Williams: In the past, there were some strange roads I saw on the east of town going over bluffs. I asked our Public Works Director as to why we do that. He said, they're just lines on a map. We take a much more careful attitude to that now.

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

Resolution 121-21 as recorded in the office of the City Clerk

Announcements: None

City Council Agenda Session Presentations: None

Adjournment: 10:00 p.m.

Lioneld Jordan, Mayor

Kara Paxton, City Clerk Treasurer

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 Meeting
April 20, 2021**

A meeting of the Fayetteville City Council was held on April 20, 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, Mark Kinion, Matthew Petty, Sarah Bunch, 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 Sloan Scroggin, Council Member Holly Hertzberg, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Chief of Staff Susan Norton, Chief Financial Officer Paul Becker, Chief of Police Mike Reynolds, Deputy Chief of Police Jamie Fields, Fire Chief Brad Hardin, staff members from the IT Department, and members of the press were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: We have Council Members, city staff, and the public participating in this meeting, virtually and in-person. Participation remains of the utmost importance to the City of Fayetteville. We have provided many ways to participate in the meeting, which includes joining in-person at City Hall, joining virtually through Zoom, viewing through Fayetteville's government channel online or the city's YouTube channel. If you are joining through Zoom, you must raise your virtual hand to request to speak during the public comment period. You can do this by clicking the raised hand option in Zoom online or by pressing *9 on your phone. When it's 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. If you're attending the meeting in-person, you must sign up to speak by completing a public comment form. Forms can be found on the table outside of Chambers. I will take public comments from virtual attendees first, in order to give in-person attendees enough time to line up to speak. Public comments will be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they may wish to address being open 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:

Presentation of the Mayor's Environmental Stewardship Award to Selected Award Recipients

Mayor Jordan: This week is earth week and April 22, 2021 is the 51st celebration of Earth Day. In honor of Earth Day, the Fayetteville Environmental Action Committee has developed the inaugural Environmental Stewardship Award Program. This award recognizes excellence in environmental stewardship demonstrated through sustainable practices, programs or projects undertaken by Fayetteville community members, nonprofits, businesses and educators. The Environmental Action Committee received nine applications and were impressed by the quality and diversity of the entities and individuals that were nominated. This made the selection process very difficult. Each of the three winners will receive a trophy. In the spirit of Earth Day and sustainability, the three trophies are old trophies that have been recycled for this new award. The only thing new on each trophy is the new plaque, which we have engraved with the name of the award winner.

Susan Norton, Chief of Staff presented the trophies to the three award winners. She thanked the individuals, businesses and industries that embrace and accelerate sustainable practices and environmental stewardship. She stated our community is made more resilient by individuals and organizations that institute sustainable practices, set high standards, and lead by example. She thanked the Environmental Action Committee for developing the award.

The 2021 Environmental Stewardship Award for an individual was presented to Pattie Erwin.

The 2021 Environmental Stewardship Award for business was presented to Pack Rat.

The 2021 Environmental Stewardship Award for Industry was presented to Arkansas Myriad.

Mayor Jordan: Congratulations to all the award winners. Thank you all very much.

Monthly Financial Report

Paul Becker, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated sales tax was up very strong for January and February. He stated sales tax was up 11.8%, compared to budget. He stated he budgeted for the city to have a slight decline this year, which happily hasn't happened. He stated the total revenue for the General Fund was up 5% compared to budget because of the strong showing of sales tax and was driven primarily by internet sales. He stated the Street Fund was up about 5% compared to the budget. He stated Parking revenue was down about 26% for the period compared to budget, however when we constructed the budget for this year for the Parking Fund, we reduced capital expenditures. He stated we are in line with expenses and down about 1% of expenses over revenue at this point in time. He stated HMR taxes are down 14% compared to last year, however they're up 13% over budget. He stated Water and Sewer is up about 2%. He stated Recycling and Trash is 10% down below budget. He stated the Airport fuel sales are 60% of budget.

Agenda Additions: None

Consent:

Council Member Gutierrez requested for A.3, Gulf Coast High Intensity Drug Trafficking Area (HIDTA) to be pulled from the Consent Agenda. She stated a citizen requested to speak on the topic.

Approval of the April 6, 2021 City Council meeting minutes.

APPROVED

Officer Stephen Carr Memorial: A resolution to approve a sculpture commission agreement with Brodin Studios, Inc. in the amount of \$51,483.55 for the Officer Stephen Carr Memorial bronze statue, to approve a cost share agreement with Fraternal Order of Police Lodge #10 with an amount not to exceed \$35,000.00 to be paid by the City of Fayetteville toward the cost of the sculpture, and to approve a project contingency in the amount of \$5,000.00.

Resolution 119-21 as recorded in the office of the City Clerk

Gulf Coast High Intensity Drug Trafficking Area (HIDTA): A resolution to approve a Memorandum of Agreement with Washington County regarding funding from the Gulf Coast High Intensity Drug Trafficking Area in the amount of \$66,108.00 for the Police Department.

This resolution was pulled from the Consent Agenda for discussion.

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

Gulf Coast High Intensity Drug Trafficking Area (HIDTA): A resolution to approve a Memorandum of Agreement with Washington County regarding funding from the Gulf Coast High Intensity Drug Trafficking Area in the amount of \$66,108.00 for the Police Department.

Council Member Gutierrez stated she received communication from Sarah Moore requesting the topic to be removed from Consent for discussion.

Sarah Moore, Ward 2 citizen spoke briefly about the resolution. She spoke about metrics. She spoke about recidivism.

Mike Reynolds, Chief of Police gave a brief description of the resolution. He gave a historical synopsis about the Drug Task Force, funding, and the JAG Grants. He stated Washington County is the fiduciary. He stated this is a grant with the allocation being for overtime expenditures, purchase of evidence, and purchase of information. He spoke about the the main focus being the disruption of drug trafficking organizations. He gave an overview of metrics and a drug threat assessment. He spoke about treatment and prevention programs.

Council Member Gutierrez stated we have a new person on the team that is working on the social side with the Fayetteville Police with our social worker. She stated she wondered how there might be opportunities for that person to be part of helping with the prevention.

Mike Reynolds, Chief of Police stated part of the social work internship program is embedding our social worker into primary response and we are moving in that direction. He stated our intern worked with the Drug Task Force detectives. He stated they encountered an individual that was battling substance and mental illness issues and they were able to work together to get that individual into the crisis stabilization unit. He spoke about collecting data over the next year to bring back to Council.

Council Member Jones: Besides the Police Department, there are other nonprofits who can apply for these grants as it relates to prevention. Is anybody having a conversation with these other nonprofits about applying for these grants or is the burden being placed on the Police Department? It sounds like your Social Worker is doing a lot of other things. I know there are several nonprofits who would be willing to apply for those grants to help the Police Department and to help Fayetteville.

Mike Reynolds, Chief of Police stated he would be happy to work with those partnerships. He stated we are just one prong of this issue, which is the enforcement arm of it. He stated we can't arrest our way out of this problem alone. He stated that doesn't mean we need to do away with the Drug Task Force and enforcement, but we need to partner with our community in treatment and prevention. He encouraged citizens and organizations to reach out with help in applying for grants for treatment and prevention.

Council Member Jones: I would like to see if we could have a community conversation as it relates to collaboration in getting some of these nonprofits to partner with the Police Department. We have several organizations in Fayetteville and Northwest Arkansas who would be willing to partner with you. I'm hoping we can disseminate that information as it relates to the grant, so they

can be involved in the conversation and work with you, so that burden won't be placed on the Police Department.

Mike Reynolds, Chief of Police Thank you. I often worry about having the capacity to deal with all of that. Right now, we're just trying to keep our heads above water. I would certainly embrace anybody that wants to partner with us in any way.

Council Member Jones: We appreciate your openness to do that. You are right in that we can't arrest ourselves out of this problem. We have to look at it from a community perspective. We have many nonprofits who would be more than willing to support you and to work with you.

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

Resolution 120-21 as recorded in the office of the City Clerk

Unfinished Business:

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. At the January 5, 2021 City Council meeting this item was left on the second reading and tabled until the February 16, 2021 City Council meeting. At the February 18, 2021 City Council meeting this item was left on the second reading and tabled until the March 16, 2021 City Council meeting. This item was sent back to the Ordinance Review Committee. At the March 16, 2021 City Council meeting this item was tabled to the 04/06/2021 City Council meeting. This item is currently on the second reading. At the April 6th, 2021 City Council meeting this item was left on the Third Reading and Tabled for Two Weeks.*

Mary McGetrick, Long Range Planning & Special Projects Manager gave a brief description of the ordinance. She stated staff proposes amending the ordinance to strike the requirement for proof of operation for the past three years, allowing for a more level playing field for all operators and potential operators. She stated staff was requested to research various ways to ensure a Type 1 owner is present for the majority of the year should problems arise with guests. She stated the following are the most common ways and best practices to ensure regular residency as found in various peer city code. She stated 180 days, which is the amount of time you must live in Arkansas to be considered a permanent resident and a number of municipalities used some form of this to determine the length of time a Type 1 operator would be required to be present in their home. She stated municipalities such as Kansas City use 270 days, which the time limit equates to roughly nine months requiring the owner to be living in the unit for the majority of the year. She stated this appears to be the standard for Type 1 or owner occupied units across various municipalities. She stated the ordinance currently requires the homestead exemption or copy of a long term lease for

Type 1 rentals, but we may consider adding two or more of the following, which are motor vehicle registration, driver's license, Arkansas state identification card, voter registration, tax documents or utility bill.

The City Council received one public comment regarding this ordinance.

Council Member Scroggin: Is the draft that Mary talked about, is that technically what's in front of us now or do we need to make some motions?

Mary McGetrick: We would need to make an amendment in regard to the six month grace period. That language, we can provide to you as needed. It would be the updated language presented in the presentation as prepared by the City Attorney.

City Attorney Kit Williams requested for Mary to pull up her presentation to make sure the proposed amendment is written correctly.

Mary McGetrick stated she recommends the language provided by City Attorney Williams. She stated he clarified some portions of it.

City Attorney Kit Williams: We talked about this grace period in two different parts of the code. Is that right?

Mary McGetrick: Correct. We would need to amend it in two different places in the code.

City Attorney Kit Williams read the proposed amended ordinance.

Council Member Gutierrez: Did this help to address and clarify the fairness of what you were saying? Would it make sure people who are doing these Short Term Rentals are different from people who are doing Long Term Rentals?

City Attorney Kit Williams: This would grant to any person, whether you've been operating a Short Term Rental or not, the opportunity to get a free Conditional Use and then apply for a business permit. You would have to go through the inspections just as normal. You won't have to pay the \$100. You won't have to go to the Planning Commission. You will automatically get that awarded by this subsection. The downside of this is that no neighbors will ever get a chance to object to any Conditional Use being granted because the City Council is granting Conditional Use themselves. We don't know how many people might want to do that and we have a potential limit on the number of Short Term Rental, Type 2 permits to be allowed. Potentially, it could even exceed that amount, probably not, but those are the downsides. The upside is that we are no longer favoring the illegal operators over citizens who did not break the law.

Council Member Turk: It goes a long way to equalizing things out, by not having preferential treatment to illegal activity or unregulated activity within the city. On the other hand, we need to beef up and have a more robust complaint system than we have. Staff should be prepared to address those kinds of complaints once we implement these regulations. We are short circuiting the

neighbors that have had issues with unregulated Short Term Rentals. We need to provide an easy pathway for them if they have future complaints or concerns to have those addressed.

Susan Norton, Chief of Staff: Mary and Jonathan addressed that last time. It's been discussed.

Mary McGetrick: I can add a little bit of language. Typical nuisance complaints would be handled by the Police Department. Currently, that is how we operate. On the weekends these nuisance complaints might include loud music, large parties or illegally parked cars. All of those types of complaints are handled by the PD. However, staff wouldn't rely on the PD to enforce this ordinance. We would use their reports, in order to enforce the ordinance.

Mike Reynolds, Chief of Police: We commonly respond to those types of quality of life issues. We enforce noise type violations and don't have a problem with that. We can take reports on these kinds of violations and forward those to Code Compliance, as well.

Mayor Jordan: I want it clear that the Police Department is only doing code enforcement when it is loud noises and when stuff is going on that's not legal.

Mike Reynolds, Chief of Police: That is correct.

Council Member Turk: I want to paint a scenario I've heard about that occurred. There's a party at a Short Term Rental and it's New Year's Eve. There are 300 cars blocking traffic and there are noise problems and drunk people all over the place. Glass is being thrown in the road. You all are extremely busy because that's a holiday. Do you have the capacity to be able to handle such an event and how would that work with code enforcement when New Year's Eve is on a Saturday? I want to make sure we don't have any gaps and you have the capacity with city staff and the Police force to be able to deal with these kinds of activities.

Mike Reynolds, Chief of Police: The scenario you gave is a very difficult scenario, with it being New Year's Eve. Certainly, we would be busy, so the types of calls you are referring to is what I refer to as a Priority 3 call. That's the lowest level call that we respond to as law enforcement. It depends on how busy we are handling higher priority calls. Parking violations are something we are regularly responding too. We are not very familiar with over occupancy rates and something we don't respond to on a regular basis. It's usually those types of violations that are co-mingled into the type of violation you are talking about with Short Term Rentals.

Council Member Turk: Would a report be filed and that would be handed off to city staff? I'm trying to find the mechanics because the Short Term Rentals operating illegally, the Police force when this occurred, was not able to do anything about it. Once we make them legal, I'd like to make sure I understand how the whole process will work.

Mike Reynolds, Chief of Police: If that was something we respond to after hours, then we would take a report on that. It would be an informational report on over occupancy and then Code could get that report the following business day and follow up on it. We would not take an enforcement action on something like a code violation. Our stance would be going out and taking a report as time is allocated for officers to do that.

Council Member Turk: In that situation, you would not be able to stop the party or disband it?

Mike Reynolds, Chief of Police: If it's based upon over occupancy, I don't think we would be able to intervene with the current legislation the way it's written. If it's a loud party and falls under the noise ordinance and a host issue, there's very different statutes and ordinances that apply to that situation. You are just merely asking me about over occupancy on what we're talking about here tonight on an Airbnb, Short Term Rental, we would not be able to take enforcement action.

Council Member Turk: If there were parking situations and bottles being thrown, you would be able to do something about that and you would include it in your report?

Mike Reynolds, Chief of Police: Absolutely. Anything ancillary that's a violation and Police would normally handle, we would be able to take immediate enforcement action on something like that.

Council Member Scroggin moved to amend the ordinance to add language in two sections of code as presented by City Attorney Kit Williams. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

Council Member Turk stated she looked into the regulations because she has several long term properties. She stated a lot of residents are very concerned about the occupancy limits that we have in place. She stated she has a Short Term Rental and wants to make sure Council gets this right. She gave a brief summary to clarify and identify several provisions. She stated she is open to sending this back to the Ordinance Review Committee. She stated when she looked in the code, she found a lot of inconsistencies. In Section 118.01, item C, this prohibits minors from being required to have a business license for a Short Term Rental. She stated she thought the intention was to prohibit minors from engaging in Short Term Rentals because as it's written right now, a minor could be engaged in a Short Term Rental if they are a renter. She stated we should change some of the language to make clear what the intent is.

Mary McGetrick: I agree. Most of the platforms require that you be 18 years of age to rent, but not everyone rents through a platform. We have the business license requirement that prevents minors from holding a business license. There could potentially be a situation in which a minor could possibly rent a Short Term Rental. If we want to add that, staff could support an amendment adding that language.

Council Member Kinion: I'm glad Council Member Turk pointed that out and it could be a concern.

Council Member Bunch: I agree we don't want minors subletting their apartments for Short Term Rentals. However, that subletting ability is in a contract between the landlord and the minor. I'm concerned how the city can enforce or jump in on somebody's private business in this way. I don't see how we could enforce that. In my leases, no one can sublet anything.

Council Member Turk: I thought about that too, but we have a very loose language that is not making it clear that the landlord needs to get a business license. They need to have all of these

different things if they allow their lessee to sublet. It's very open ended. If I allowed subletting in one of my Long Term Rentals, I would not have any guidance in how to follow City Code because it's not clear. We don't have a requirement that the business owner or the landlord allow it sublease in the language to the renter.

Council Member Bunch: I don't see any problem with putting some extra language in here dealing with minors, but when you're talking about the language that allows someone to sublet, then you're getting into the city enforcing someone's private business contract. I don't know that's the role of the city. I don't see this as being the straw that broke the camel's back on the Short Term Rental. We put in the time and focus groups to come up with the best possible ordinance to begin with. If we found this was a challenge, later on, we could tighten it up even more.

Council Member Turk: I suggest we tighten the minor part up. I agree with you about not getting into the business of reviewing leases and making sure that a sublease is included. Right now, we don't have an insurance requirement for the landlord. If they're going to allow subleasing and their renter can sublease that out, there's no insurance requirements and it needs to be very clear about what they need to have. The owner is going to have to have a business license. They're going to have to allow a safety inspection. They're going to have to have insurance. They may not know their renter is engaging in a Short Term Rental.

Mary McGetrick: Currently in our business license, Section 118.01 C, minors cannot hold a business license. I'm not sure that is where we would want to put the prohibition of minors operating Short Term Rentals. If we want to add that as an amendment, we may need to add it somewhere else in the ordinance. If a long term lease holder wants to operate a Short Term Rental, they are required in the ordinance as it's written, to provide a copy of their long term lease. They would be responsible for holding the business license, getting the inspection and providing the insurance. If they couldn't do that, then they would not be able to obtain a license. We require that lease, but we also can't enforce a contract between two private parties.

Council Member Turk: You would require the tenant to show you the long term lease that they have with the owner. The owner would still be required to carry the insurance, have the business license, and have the safety inspection?

Mary McGetrick: No. The leaseholder would be responsible for that. That's how it is written now.

Council Member Turk: I don't think that is a very good idea. They don't own the place and it is a gap that we need to discuss.

Mary McGetrick: The insurance requirement overall is in the ordinance that you have. If you are a long term lease holder, you can get renters insurance and then you can get a rider on that to do Short Term Rentals. You can get that as part of your renter's insurance, but it would have to be approved by your lease.

Council Member Turk: As part of that bundle, maybe it could be a joint requirement with the landlord and the long term lease holder, so that all the parties are on board about this. I have a hard

time seeing how this would work. As a landlord, I don't allow subletting and maybe others do, but you want to make sure everybody's informed. I don't know if the Council would entertain requiring both the landlord and the long term lease holder to have the business license.

Council Member Bunch: To have it jointly?

Council Member Turk: Have it jointly. Let's say the long term lease holder has lots of parties and problems, they're going to have compliance issues. Do you want to hold the long term leaseholder responsible, or do you want to have the landlord be responsible for that? It's their property. The renter could move to another area of town, set up a situation over there, and then there's no accountability in residential areas.

Council Member Petty: It sounds like in the scenario you just described, that the long term lease holder is the problem. If they're going to pick up and move to another end of town, we need the business license to follow them, so enforcement actions can follow them. This feels like an edge case that we're not going to see very often, especially the minors, but also tenants, who are subletting. If that's going on right now, they're going to be a lot less likely after the ordinance passes to try and do an unapproved sublet than they might be today because they will have to file documentation with someone. This is unlikely to happen. If it does happen, it seems like the ordinance is capable of handling it.

Council Member Turk: How are you going to be able to collect taxes on this? This is a big loophole that we don't need. If it's not used very much, why don't we close this loophole. Mary, have you found this kind of provision very common in other cities?

Mary McGetrick: For the most part they allow subleases, especially in some of the peer cities where there are college towns. They did require the long term leaseholder to provide the lease. I don't know how much we could enforce that, but if it was clear in providing the lease that subletting was not allowed, then we could not issue a business license. I researched maybe 30 cities, and I saw it in about a little over half with these types of provisions.

Council Member Gutierrez: I'm glad you brought up the college cities. Let's say the landlord is open to subletting. They know they are doing Short Term Rentals and the student may be out doing a summer study abroad. They do a Short Term Rental through their time they are gone and then they come back in August. If the landlord is okay with that, which I don't know very many that are good with subletting, hopefully, they would figure that out with their landlord. If they are okay with that, then it's good for the person who's subletting to be fully responsible with the business license. If they do something wrong, they are at risk of losing their opportunity to do Short Term Rentals.

Council Member Bunch stated what Council Member Gutierrez described might not have been a Short Term Rental. She stated if it's longer than 30 days or more, then it's just a regular rental. She spoke about professors going on sabbaticals. She stated she has no problem with putting some language in, since we are a college town. She stated she doesn't see this as being a giant problem of subletting Short Term Rentals. She stated if there are problems, it's probably going to be something else that's the problem, such as the actual renter.

Council Member Hertzberg: If we were to add language, regarding minors, would we have an exception for emancipated minors?

Council Member Turk: I would be open to that.

Council Member Petty: Are there any motions to be considered? We've discussed this at least three full Council meetings, two Ordinance Review Committee meetings, and so far, we've had consensus to move forward on the basis that we have a grace period and a review with potential amendments in the future. I understand some Council Members may have lingering concerns, but without a motion with specific language to be considered, it seems like we are spinning our wheels.

Council Member Turk: I'm happy to make a motion to table this for two weeks, so we can have some proposed language to come back with in two weeks that is very specific, not just about the minor issue, but about a couple of these other ones. I was hoping we would discuss those and move us forward. I've got several other ones that are important and would like to discuss them openly and with the public. Do you want me to make a motion or can we continue the discussion?

Mayor Jordan: If you're looking at some stuff to bring forward, make a motion and get a second. Then we can vote it up or we vote it down and then go on to the next one.

Council Member Scroggin stated he would like to vote immediately. Council Member Hertzberg stated she would second the motion.

City Attorney Kit Williams: This is one of the most privileged motions and according to the Municipal Leagues requirements, it says a motion to vote immediately is a motion to close debate, shut off subsidiary motion and take a vote at once. The motion to vote immediately is that you can't interrupt the speaker. I don't think a speaker was interrupted, but that would be up to the Mayor to decide. It requires a second. It's not amendable and requires a two thirds majority, which is six affirmative votes to pass. Once it's been done and seconded, we go straight to the vote. It is not debatable.

Council Member Petty: This is a vote, to vote, not a vote on the ordinance. Correct?

Mayor Jordan: It's a vote on the ordinance. Is that correct?

City Attorney Kit Williams: Yes. It would be to vote for the ordinance, either up or down.

Mayor Jordan: It takes six votes. If that vote fails, where do we go from there?

City Attorney Kit Williams: Then we are right back at it again.

Council Member Scroggin made a motion to vote immediately. Council Member Hertzberg seconded the motion. Upon roll call the motion failed 4-4. Council Members Bunch, Hertzberg, Petty, and Scroggin voting yes. Council Members Turk, Gutierrez, Jones, and Kinion voting no.

City Attorney Kit Williams: That fails, and we are right back where we were.

Council Member Turk spoke about tabling the item for two weeks to look at some of the questions she has and to receive more clarity. She spoke about having Mary McGetrick draft some different language for her concerns.

Mayor Jordan: The Ordinance Review has had it twice and we have your recommendations.

Council Member Kinion: Out of respect to Council Member Turk and the concerns she's received and researched, I want to table it to the next City Council meeting. I'm sorry if it seems like we've drag it on and on, but that's no excuse not to have a better piece of legislation.

Mayor Jordan: If we table it, I need some kind of pathway for Mary. Council Member Turk, you sent us a document with about 16 items. Do you want Mary to try and incorporate all of them?

Council Member Turk: Many of them are just trying to clarify the language. They weren't all issues. There were many that were clarifying the language quite a bit. I would love to address each one of them with Council Members. It seems that was not what Council wanted. I can work with Mary on these or we can discuss other ones that are in the list. It would be important to have Council input.

Council Member Bunch stated when she read over the items, a lot of them are covered in other parts of our code. She stated if we want to have a discussion, we need to have the discussion now, so we know what we're talking about. She stated she does not feel comfortable sending this list with Mary and asking her to craft something that she may not agree with.

Mayor Jordan stated he would rather have the discussion out in public and get it over with and then try to have Mary go back and craft something.

Council Member Turk: I'm happy to carry on with the discussion.

Mayor Jordan spoke about Council Member Turk making amendments if she so desired.

Council Member Turk moved to table the ordinance until the May 4, 2021 City Council meeting. Council Member Kinion seconded the motion and then withdrew his second.

Council Member Turk: In Section 118.01 (C), Mary said she would work on some language for that. Do I need to have a motion to request Mary to work on some language? I think she understood what the intent was.

Susan Norton, Chief of Staff: The more guidance we can give Mary with language, the better off we all will be.

Council Member Turk moved to amend Section 118.01 (C) to redraft language that clarifies minors are prohibited from leasing, advertising, managing, or any other activity involved in Short Term Rentals, unless they are an emancipated minor. Council Member Gutierrez

seconded the motion. Upon roll call the motion passed 6-1. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones and Petty voting yes. Council Member Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: In Section 118.01 (E), I recommend we define room better. We need to define bedroom. Our occupancy limits on Short Term Rentals references bedroom. We need a clear definition of what a bedroom is, and that definition can come from the Fire Department or some other kind of real estate defined bedroom.

Mary McGetrick: Currently, as it's written, a room is an enclosed portion of a building designed or intended to be used principally for sleeping purposes. We don't have a definition of bedroom anywhere in our code. We rely on the IBC and the International Fire Code as adopted by the State of Arkansas to provide the definition for us. If we added a definition of bedroom, following either IBC or Fire Code, it would need to apply to the entire development code. It would make sense if we're defining bedroom specifically, it would not necessarily be specific to this section of code. There are a number of things the building code requires.

Jonathan Curth, Development Services Director: There's a lot to be said for deferring to codes that are adopted on a State level. When those codes change, we don't have to go back into our ordinances and find every instance where they already occur. We have found that to be an effective way of making sure our code stays up to date, without having to do an amendment every single time.

Mayor Jordan: Does the State define what a bedroom is?

Jonathan Curth: The State of Arkansas adopts the International Building Code on a semi yearly basis. It's not always the most current one and from there that's where our building codes are established. Every time the State of Arkansas adopts a new one, the City of Fayetteville can adopt it with the potential for amendments that are a higher level of scrutiny or higher requirement. Mary has the information in front of her.

Mary McGetrick stated the information about what constitutes a bedroom was about two and a half pages long.

There was a brief discussion about amending the definition of "room" to "bedroom."

Council Member Turk moved to amend the definition of "room" to "bedroom" in Section 118.01 (E). Council Member Gutierrez seconded the motion. Upon roll call the motion passed 5-2. Council Members Bunch, Turk, Gutierrez, Jones, and Petty voting yes. Council Members Hertzberg and Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: In Section 118.01(E)(5). This provision requires the platform, such as Airbnb or Vrbo to not allow Short Term Rentals to advertise. I don't see how we can enforce that. I have received several emails from those groups, saying that won't work for them. I want to strike that requirement requiring platforms to make sure that STR's are adequately licensed.

Council Member Bunch: Mary is that something covered in some of the other cities we looked at? Is this common language in a city ordinance?

Mary McGetrick: I have not seen it in that many ordinances. It was based on best practice in our research into that. The more I've researched, especially ordinances that have been passed recently, I haven't seen something like that included. Enforcement may be difficult for something like that.

Mayor Jordan: You want to strike 118.01(E)(5). Is that correct?

Council Member Turk: Yes.

Council Member Gutierrez stated she was not completely clear about Section 118.01(E)(5).

Mary McGetrick gave a brief description of Section 118.01(E)(5).

Council Member Turk: I suggested striking and deleting that provision. I don't think we can enforce that.

Council Member Gutierrez: Mary, do you think striking it is okay or do you want to rewrite it?

Mary McGetrick: If we are wanting to deal with it, either keeping it or striking it is probably the best way. I don't think there's a way we can rewrite it that would change the intent or make it more enforceable.

Council Member Petty: I want to be able to support this one. I don't believe the claims of the Short Term Rental booking companies. We heard the same things about how they could never collect the taxes they are required to collect and have always been required to collect, but when we stuck to our guns, we were able to get agreements to get them to start collecting. Implementing a simple document upload check is something they already do for copies of driver's licenses, insurance riders, and it should be simple for them to do it for a copy of a business license. They're just trying to avoid the burden of doing this.

Council Member Turk moved to amend the ordinance by striking Section 118.01 (E)(5). Council Member Gutierrez seconded the motion. Upon roll call the motion passed 4-3. Council Members Bunch, Turk, Gutierrez, and Jones voting yes. Council Members Hertzberg, Petty and Scroggin voting no. Council Member Kinion was absent during the vote.

Council Member Turk: Section 118.01(E)(9), I want to request we clarify the insurance requirements and the amount we require on insurance. I want to specify the amount and the type we are requesting.

Mary McGetrick: I've done a lot of research into this. One room in a 1,000 square foot house is going to have a completely different insurance requirement than a six bedroom 3,000 square foot house. It's a little hard to put a number on what they would require. A private homeowner working with their insurance company, most of these standard riders I saw, they included medical, disaster,

and liability insurance. Most of that is already there. The numbers vary wildly in the amount of coverage. It would be difficult to put a cap on it.

Council Member Gutierrez: It would be helpful to advise them to say a minimum of these three things. You're saying it hasn't been evident that other places haven't put a minimum?

Mary McGetrick: I haven't seen it. The language we use is that the owner of the dwelling unit or operator of the Short Term Rental provides proof of a valid and current homeowner insurance rider policy, which fully covers each unit when operated as a Short Term Rental. I haven't often seen a threshold of any type applied to it.

Council Member Turk made a motion to amend the ordinance to clarify the insurance type and amount. The motion died due to a lack of a second.

Council Member Turk: I want to make a motion that we require whoever the holder is of the business license of the Short Term Rental to be included in the landlord registry. This will be a way to contact them quickly if the need arises.

City Attorney Kit Williams: This would require a small amendment to the landlord registry code section.

Mayor Jordan: It would include Short Term Rental owners into the landlord registry.

Council Member Hertzberg: Does the ordinance that we have, not already do that? It's the ordinance that Mary drafted.

Mayor Jordan: I don't think it covers Short Term Rentals.

Council Member Bunch: Short Term Rentals aren't legal in lots of places.

Council Member Hertzberg: My question was more about the contact information. Is the contact information not already addressed in the ordinance that we have right now?

Mary McGetrick: It is.

Council Member Gutierrez: It's not public and there is no directory to be able to look it up. Correct?

Council Member Turk: That is correct. You want to make it accessible to the public.

Mayor Jordan: Which would be in the landlord registry, if it passes. Correct?

Council Member Turk: Correct.

Council Member Gutierrez stated she would second the motion.

Susan Norton, Chief of Staff: I thought I understood Kit to say that would require a change to the landlord registry ordinance, not this ordinance. I want to be clear that Mary doesn't have anything to do on this, if that's the case.

City Attorney Kit Williams: Right. I think we would need to bring back another ordinance to change that code section, rather than including it in with this.

Mary McGetrick: Correct. That would be my recommendation.

There was a brief conversation that this topic would be for a later discussion and action.

Council Member Turk: I will remove the motion with the understanding that this will come back and we can vote on it with the landlord registry. Vote for inclusion or not with the landlord registry.

Council Member Turk made a motion to amend the ordinance to require whoever the holder is of the business license of the Short Term Rental to be included in the landlord registry. Council Member Gutierrez seconded the motion. After discussion, Council Members Turk and Gutierrez withdrew their motion and second.

Council Member Turk: I would like to move that we prohibit lessees from renting out their Short Term Rentals, even if they have the ability to sublet with the homeowner. It's too loose and we are going to have a very big problem with enforcing that.

Council Member Kinion: I'll second that.

Mayor Jordan: The motion is to prevent lessees from renting out Short Term Rentals. Correct?

Council Member Turk: That's correct.

Council Member Kinion: That's important. If someone wanted to come in and lease some property, but they would make a profit if they did Short Term Rentals in the property they're leasing, then it could become a business deal. It's not earnest and it's kind of getting around the code.

Council Member Scroggin: We are starting to try to restrict businesses here. I understand what you're concerned about and that somehow, they are in cahoots to do this together. If you've got somebody renting your place and they are short on cash and they're going to go back for a month or two to home, they should be able to Airbnb and pay their rent during that time. We just went through a pandemic, where a lot of people went back home and would have been able to Airbnb and pay their bills and not have to get evicted. I don't think this is a good idea.

Council Member Petty: I agree with Council Member Scroggin. It seems as though the animus for this may be low opinions of people who lease units. We've gotten dangerously close tonight in trying to keep very careful language in how we talk about people who rent. I am struggling to understand why we think it's wrong and why it needs to be regulated for renters to sublet a space, with the permission of the property owner. What is so fundamentally different when the property

owner agrees? If a person who rents a space operates a Short Term Rental during Bikes, Blues & Barbecue or the person who owns the space operates a Short Term Rental for Bikes Blues & Barbecue, I'm struggling to understand what is so different.

Council Member Bunch: If a landlord agrees to let someone sublet, then I don't see any challenges with this. If your goal was just to prevent people from subletting their apartments, why you started out talking about minor subletting and now here we are, nobody can sublet. I'm not going to be in support of this.

Council Member Turk: I started out with minor subletting because it was the first item in the regulation. Mary, you have found in this scenario where the lessee is subletting out for a Short Term Rental, that they've been able to acquire insurance?

Mary McGetrick: I can send you some of my research. It will take me a minute to dig through this information, but I can attempt to find some of that.

Council Member Gutierrez: I've held renter's insurance in all of my places and they're more than happy to add anything I want to increase my insurance variety. I haven't tried to get a Short Term Rental rider.

Council Member Petty: If the insurance provider won't give a rider, then it's moot. They can't get the business license and they operate outside of the law. I don't understand why an additional code sentence is necessary.

Council Member Turk: In our requirements, we don't have insurance in there yet, unless Mary has updated that. We need to require them to display and confirm that they do have insurance when they get a business license.

Mary McGetrick: That is in the most recent version. The version you have in front of you now in Section 118.01(E)(3)(C) is where our insurance requirement is. It is in the version you're considering tonight.

There was a brief discussion about the regulations.

Council Member Turk: I'm going to withdraw my motion. I think they are going to have a problem getting insurance. I'm glad you pointed out that the insurance is identified in there.

Council Member Turk made a motion to amend the ordinance to prevent lessees from renting out Short Term Rentals. Council Member Kinion seconded the motion. After discussion, Council Members Turk and Kinion withdrew their motion and second.

Council Member Turk: I would like to move that if you have a Type 1 rental, which is the owner occupied Type 1 rental, that the owner be required to be in the house when you rent it out as a Short Term Rental. I know there's been reluctance to do that, but we've had a lot of problems with parties when the owners are away.

Mayor Jordan: Your motion is that the Type 1 owner has to reside in the house. Correct?

Council Member Turk: They have to be present when they rent it out as a Short Term Rental.

Council Member Bunch: Are you saying if someone rents their house out during Bikes, Blues & Barbeque, they can't rent their house out unless they are in the house with the people? I couldn't rent my house out, go across the street and stay at my neighbor's house? Would I have to be physically in my house to rent it out as a Type 1?

Council Member Turk: I would be okay with you going across the street and staying at your neighbor's house. If you're going away where there's no cell phone coverage, there could be lots of potential problems. I've gotten several complaints about this happening.

Council Member Kinion stated he would second the motion.

Mary McGetrick: We have a requirement that if there is an emergency or an issue with the unit, someone has to be on site within three hours. If you aren't able to do that, you can designate an agent to do that for you when you get your business license. That is how we have covered that issue.

Council Member Bunch: That is adequate. This change would be prohibitive and unreasonable. That they would have to be in the physical house is not appropriate.

Council Member Scroggin: The purpose of Airbnb when it started was the idea of going on vacation and switching houses, so you don't waste resources constructing buildings we don't need. This would take away that entire purpose. I don't want business Airbnb's where somebody has 20. I want an Airbnb when I go to the outer banks and somebody could pay a little bit of money while I'm there.

Mayor Jordan: You want the Type 1 owner to be present in the house when it is rented. Is that correct?

Council Member Turk: That's correct.

Council Member Gutierrez thanked Council Member Turk for spending the time to go through the ordinance. She thanked Mary for her work on the ordinance.

Council Member Turk made a motion to amend the ordinance to have the Type 1 owner to be present in the house when it is rented. Council Member Kinion seconded the motion. Upon roll call the motion failed 2-6. Council Members Turk and Kinion voting yes. Council Members Bunch, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting no.

Council Member Turk: I move that we add a date. In Section 118.01(E)(7), that any change in ownership requires a new or amended license within 30 days after the sale or change in ownership.

Mary McGetrick: In our business license code in Section 118.02 (B), a business license must be obtained within two months of moving or starting a business. We have that language already in the code. If we were going to amend this section, then we would need to either amend both sections or we would need to specify that this particularly applies to Short Term Rentals.

Council Member Turk: If you can reference that or put two months in there, that would be helpful. If we can do that, I'll withdraw that motion.

City Attorney Kit Williams: You can do that. It would be up to Mary or the Council if they want to put something like that in there.

Mary McGetrick: It's already in our ordinance. You may need to vote to amend this section to add it there if we want to add it in this section as well.

Council Member Turk: I move to amend we add a reference or identify that it's 60 days after the sale or change in ownership.

Council Member Gutierrez seconded the motion.

Council Member Petty: Mary, did I hear you explain that's already a requirement in the business license section?

Mary McGetrick: That is correct.

Council Member Petty: I won't be able to support this. I'm against duplicative code sections.

Council Member Kinion: The problem is, people that have looked at it, that have Airbnb's are the ones that have to understand it and they don't. This helps a little bit with some of that understanding. There's nothing wrong with putting a little coaching in there. It's not easy for some people to read code and understand it. I'm going to support it.

Council Member Scroggin: It is hard to read code when it's super long and there's duplicated sections in it. If we make a change, we might miss it and then it's contradictory to what it says in another place. I'm not in favor if this.

Council Member Bunch: More words don't always make it clearer. I don't think I'm going to be in support of this. When you get a business license, you have to fill out the form. It's clear when you fill out a business license what you're required to do. I don't believe in duplicating this.

Council Member Hertzberg: Mary, do you think this would be possible to add to the website to make it clearer, but not necessarily add it to the code?

Mary McGetrick: Absolutely. We could add this to the website. We have had discussions about maybe creating a brochure when people get their business license and we could add it to that as well.

Council Member Gutierrez: I really like it, because of its clarity. If you're wanting to start to operate an Airbnb, you are not going to go read a bunch of other codes. It's helping for customer service. I understand the duplicity thing, but if I was going to try to start to do it, I would just read my ordinance and read other references.

Council Member Bunch: It's not that you have to read all the other code. It's when you go in to fill out the business license application. It's pretty clear.

Council Member Gutierrez: It's just clarity. I wouldn't assume my businesses is the same thing as a what the Short Term Rental requirements are.

Council Member Petty: There have been maybe close to a dozen times where we have had to bring back new ordinances simply because in an ordinance that just got passed in the prior month or six months, we missed a cross reference. It's so common. We've got 350 printed pages of local regulations and they are layer caked. They are ordinances based on new complaints or new opportunities stacked one on top of the other, year over year, decade over decade. It's not best practice for management of the regulation. Most people who operate Short Term Rentals, don't read the code at all. They are far more likely to read the brochure and the website than any code section.

Council Member Turk: The easy solution is to cross reference this. What we want is compliance with our regulations and understandability.

Council Member Turk made a motion to amend the ordinance that any change in ownership requires a new or amended license within 60 days after the sale or change in ownership. Council Member Gutierrez seconded the motion. Upon roll call the motion failed 4-4. Council Members Turk, Gutierrez, Jones, and Kinion voting yes. Council Members Bunch, Hertzberg, Petty, and Scroggin voting no.

Council Member Turk: Section 118.01 (E), item, 15. Right now, it talks about notifying the Police after suspecting a criminal activity, but again there's no time reference. I suggest we put in 12 hours of knowing there's some suspected criminal activity. I move we add that timeframe to 12 hours or something reasonable.

Council Member Kinion stated he would second the motion.

Council Member Gutierrez: Who is getting notified?

Council Member Turk: The way the code reads is that you are required to notify the Police if there's suspected criminal activity, but it is open ended. It doesn't say how long from the suspected activity that you notify the Police.

Mary McGetrick: It says criminal activity, the owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department.

City Attorney Williams: It says, timely?

Mary McGetrick: It does.

Council Member Turk: Putting a number in there would be helpful. Timely can be a lot of different things.

There was a brief discussion about notifying the Police within 12 hours.

Council Member Scroggin: I really want to keep the word timely in there. If you suspect somebody was killed in your place, you've now got 12 hours.

Council Member Turk: It's within 12 hours of knowing or suspecting. If you found a dead body, it's 12 hours from the time you found the unfortunate incident.

Council Member Scroggin: I hope timely is faster than 12 hours on a dead body.

Council Member Bunch: Who's going to find a dead body and not call the Police immediately.

Council Member Kinion: It's turned into some kind of thought that people are not going to call in if there's an urgency. There are those that will not call in until they have too, and 12 hours seems like at least putting a limit on those that don't see the sense of urgency.

Council Member Scroggin: Can we do timely, with a max of 12 hours?

Council Member Turk: I would accept that as a friendly amendment.

Council Member Turk made a motion to amend the ordinance to notify the Police in a timely manner with a max of 12 hours of knowing of suspected criminal activity. Council Member Kinion seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: There are some cleanup amendments since you've made some changes. Chapter 151, Definitions. Mary, has a whole page of them. One of them is a definition of bedroom. Maybe in light of what Jonathan said, we should not define it, but leave it to State Law, which we do in other cases. Is that what you said Johnathan?

Jonathan Curth: Yes, that would be my recommendation.

Mary McGetrick: There was a vote on this. It says room and we've changed it to bedroom.

City Attorney Kit Williams: The definition of bedroom is what I'm talking about. Further on down, where it says Short Term Rental, it's got the same definition that we change room to bedroom, and so it should be changed in this definition too, if you want to keep that definition in. Those are just consistency things. If we don't change anything, then we've got two different definitions of Short Term Rental. One of the definitions chapter says residential dwelling unit, portion of dwelling unit or room within a residential dwelling unit, and you have just changed that in the actual code to say or bedroom. They should say the same thing.

Council Member Kinion made a motion to amend the ordinance to clarify language as read by City Attorney Kit Williams. Council Member Turk seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: The other one where you defined bedroom, Jonathan has suggested we remove it. Right now, it says, a fully enclosed portion of a building designed or intended to be used, principally for sleeping purposes. That sounds nice, but if we define bedroom in this code, then that's the actual definition we will have to use. Nothing about fire safety or anything else like that. We should not have this definition of bedroom in here. Instead we should rely upon the State definitions of bedroom. If we put it in our code, that is the definition of bedroom and that's all it has to be, and we can't require anything else.

Mary McGetrick: I agree.

Council Member Turk: I hope there's a reference so that somebody that's reading the code can find out what a bedroom really is. If there's some way to reference that back to the State, that would be helpful.

Mary McGetrick: They would have the opportunity to learn that when they got their life safety inspection and the Fire Marshal was doing their inspection. They could tell them what qualifies as a bedroom.

Council Member Hertzberg stated she would like to amend the definition to reference State Law.

Council Member Scroggin: Do we have anywhere that is referenced in any other definition in our code?

Mary McGetrick: I don't believe so.

Jonathan Curth: If the concern is about making that apparent and readily available in our ordinance, it is not there explicitly. The International Building Code is hundreds of pages long, similar to our ordinances. We have a section of code within the Unified Development Code that references the building code that's adopted by the State of Arkansas. If that's a concern, then you may want to include that in our codes, rather than just referencing existing adopted state codes.

Mary McGetrick: That would be a larger code change, than this reference.

Council Member Scroggin: I would hate for every 15th word in our code to say, we reference the State code and we reference the International Code.

Council Member Hertzberg: Jonathan, would you recommend striking the definition?

Jonathan Curth: I'm agnostic towards the issue. I don't disagree with the customer service aspect of providing that up front for people to understand. Conversely, when we work with a more professional element of development community, we have some references, like the building height that defer to building code. We haven't transferred that into our code. As the building code

changes over time, we don't have to keep changing our definition of a building height. If the Council is amenable to it, we could include something like that in a one sheet informational document like Mary referenced earlier. That may be an opportunity to not amend the ordinance if the Council preferred not too.

Council Member Scroggin: I would much rather have this on the website. When you start defining stuff, it's incredibly cumbersome to go through. Just leaving it with the International and State code is what we should do.

Council Member Turk: The reason why bedroom is so important is because that's how we define our occupancy limits. We have to have some way for the public to understand what a bedroom is and comply.

Council Member Hertzberg: I would like to change my motion to move that we strike the definition, but we add some educational elements to the website to reference what this definition would be.

Council Member Hertzberg made a motion to amend the ordinance to strike the definition but add some educational elements to the website to reference what this definition would be. Council Member Jones seconded the motion. Upon roll call the motion passed 6-1. Council Members Bunch, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Turk voting no. Council Member Kinion was absent during the vote.

Council Member Turk: At the beginning of this conversation, Mary brought up the occupancy duration or requirements for six or nine months. I don't believe we voted on those. I would make a motion to require a nine month residency for a Type 1 rental in the State of Arkansas, along with the other requirements that have already been adopted into our proposed regulation.

Council Member Gutierrez stated she would second that.

Mary McGetrick: You mean that the owner or long term leaseholder would be required to live in their residence, nine months out of the year?

Council Member Turk: I thought it was just for the owner.

Mary McGetrick: It can be just for the owner. Do you want to apply it to long term lease holders or would you like to just apply it to the owner?

Council Member Turk: We should apply it to both.

Mary McGetrick: This is specifically for Type 1?

Council Member Turk: Correct.

Mary McGetrick: A permanent resident in the State of Arkansas is 180 days.

Council Member Bunch: And 270 is being proposed.

Council Member Gutierrez: You're trying to include whoever is the person that is operating, that's doing a Type 1, has some sort of minimum and you propose, nine months. Correct?

Council Member Turk: Correct.

Council Member Bunch: Type 1 is the person that owns the house. It's a full time resident.

Mary McGetrick: It's a full time resident, but it could be a long term lease holder or the person that owns the house.

Council Member Turk made a motion to amend the ordinance to require a nine month residency for a Type 1 rental. Council Member Gutierrez seconded the motion. Upon roll call the motion passed unanimously.

The City Council received 3 public comments regarding this ordinance.

Mary McGetrick: I have one cleanup item. In Section 163.18(2) of General Standards, the Short Term Rentals may be permitted in all zoning districts where hotel, motel uses are permitted by right. The amended language for the grace period, I believe we required persons to operate a Type 2 Short Term Rental would be required to get a Conditional Use Permit. There may be a small conflict and we might need to clarify that.

City Attorney Kit Williams: We could clarify, except when they are permitted use.

Council Member Petty made a motion to amend the ordinance to clean up language as described by Mary McGetrick. Council Member Scroggin seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: The Council has done good work recently. They have improved this ordinance, especially putting the Sunset Clause on and trying to make it more equal between the people that have been operating illegally and all others. Despite that, I still can't as City Attorney recommend this. There's still the issue that a Short Term Rental, Type 2 can have 8, 10 or even more, because I think we removed the cap, when a long term renter could only have three or possibly four. That is another issue we could not get resolved. Because of that and also because there are some other internal inconsistencies within this ordinance, I can't recommend it. I do think it has been improved dramatically. I appreciate the Council doing that, especially the Sunset Clause.

Council Member Scroggin: Thank you, Mary for working on this. As the Chair of the Ordinance Review, it's been really nice working with her. Not everything is going to be perfect. We have a Sunset Clause and let's push this forward with voting. There are things we are going to learn once it goes out and we can adjust things. If something is drastic, I trust my fellow Council Members and Mayor's Administration to make changes quickly.

Mayor Jordan: We have been working on this ordinance for a very long time. Thank you to Mary, City Council and the Ordinance Review Committee for their work. This ordinance is not perfect and it's not going to make everybody happy, but these businesses have been operating outside of the law. It can be uncomfortable to adjust to being regulated, but that's exactly what needs to happen. We must regulate these types of rentals. Right now, they're illegal and unregulated, which is bad for residents, visitors, and this city. This ordinance is a good first step to bringing fair and logical regulations to Short Term Rentals in Fayetteville.

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

Ordinance 6427 as Recorded in the office of the City Clerk

RZN-2021-033 (797 S. Cherry Ln./A&B Enterprises, Inc.): An ordinance to rezone that property described in rezoning petition RZN 21-033 located at 797 West Cherry Lane for approximately 1.02 acres from RSF-4, Residential Single Family, 4 units per acre to RI-U, Residential Intermediate-Urban. *At the April 6th, 2021 City Council meeting this item was left on the First Reading.*

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 6-0. Council Members Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Members Bunch and Kinion were absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services gave a brief description of the City Council tour. He stated despite it being a 45 foot right of way, it is quite narrow. He stated it ranges from about 14 to 18 feet from edge to edge. He stated there was a decent amount of standing water in the southwest corner of the property. He stated the site tends to slope that direction, towards Dockery Lane and there's some concern that developing this site may have negative impacts on the neighboring homes to the West. He stated there was a question if the property was on a septic system and he was not able to verify that information between yesterday and today. He stated the sewer line and Cherry Lane did go in at the 1970's. He stated it is highly likely this property is connected to it today. He stated he was not able to verify if there was a septic system on site. He stated if the septic tank is still on site and the property is developed, the developer would be required to either fill it in or remove it.

Michael Andrews, Applicant gave a brief description of the area. He stated if there is a septic tank, it would be removed and it's not difficult to do that. He stated the house would not stay there. He stated it would be razed and replaced within the design of whatever the city, architects and engineers agree on.

Council Member Turk thanked the applicant and Jonathan for the tour.

Council Member Gutierrez: I apologize that I wasn't able to make it to the tour. Were there any neighbors that were able to attend or voice any concerns?

Mayor Jordan: Nobody was there. Council Member Turk and I were there, but that was it.

The City Council received 3 public comments regarding this ordinance.

Council Member Petty 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 7-0. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Kinion was absent during the vote.

City Attorney Kit Williams read the ordinance.

Council Member Turk: Jonathan, could you describe what the RI-U zoning requires, in terms of drainage?

Jonathan Curth: The city's drainage standards are based more on the type of building being built, rather than the zoning district. In this instance, the RI-U zoning district allows single family, two family, three family and four family housing. The city's drainage standards kick in once you put more than two units on a lot. I've heard anecdotally from the applicant that they want to potentially put a couple quad plexes, but there's nothing tying them to that. If they were to build to that standard, they would be subject to the city's drainage standards, but not if they built a one or two family dwelling.

Council Member Gutierrez: In RI-U, are they allowed to do up to three stories?

Jonathan Curth: Yes. The same as the surrounding RSF-4 zoning district.

Council Member Gutierrez: I hope there could be some conversations between the applicant and Mr. Ayala about any issues with the land ownership. Hopefully they can discuss drainage problems and be able to resolve it. This is on Huntsville Road and it seems like a great place to add a little bit of density, but I don't want to exacerbate drainage issues.

Council Member Scroggin: There are two issues at a play on a lot of rezoning's that we look at. We have a lack of housing stock. Any house under \$300,000 if it's priced right, you might get 30 or 40 offers on it. Those are 40 families that are trying to find a way to either come to Fayetteville or stay here. We have to look at drainage, but the rezone is not where you look at that. It's at Large Scale Development and it is other steps. We need to revisit our storm water prevention measures. I hope this conversation can continue and we can start looking at making it that people that are downhill of new development, aren't scared. This is reasonable and we need houses. The United States are 4 million houses short. We've got to develop, and we have got to develop right.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Council Members Bunch, Turk, Hertzberg, Jones, Petty, and Scroggin voting yes. Council Member Gutierrez voting no. Council Member Kinion was absent during the vote.

Ordinance 6428 as Recorded in the office of the City Clerk

VAC-2021-015 (215 S. Vale Ave./Rock Creek Holdings): An ordinance to approve VAC 21-015 for property located at 2015 South Vale Avenue to vacate a portion of public right-of-way between South Razorback Road and South Vale Avenue, as well as a portion of a 10-foot wide alley right-of-way. *At the April 6th, 2021 City Council meeting this item was left on the First Reading.*

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 7-0. Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Member Kinion was absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director stated he had no updates on the ordinance and was available for questions.

Kael Bowling, Applicant stated he did not have anything additional to add from the last meeting and was available for questions.

Council Member Scroggin: Can you remind me why we held this?

Jonathan Curth: It was atypical for a right of way vacation in that there were some conditions included by the Planning Commission where they recommended re-dedication of right of way on the south end of the property and also requiring any development along that new right of way, which was intended for a trail to meet the city standards, as though that trail were a street. Staff's position is still recommending denial of their request. We had concerns about connectivity.

Council Member Scroggin: It was denial of the applicant's request or the Planning Commission's changes?

Jonathan Curth: I don't remember exactly how I put it at the last meeting, but I think the Planning Commission's amendments made it a more palatable request. Staff's position is still recommending denial. We don't feel there's strong enough public street connectivity in the area. There are some private streets to the north that create the appearance of connectivity.

Council Member Scroggin: We are a growing city and we definitely want to be able to keep connectivity.

Council Member Hertzberg: Do you have any information on the volume of traffic that is accessing Vale Avenue?

Jonathan Curth: I do not. We don't often have traffic counts on roads of Vale's size. It's generally more of an access road. A lot of people mistake it for a private road. It's kind of a frontage road for the railway line.

Mayor Jordan: There's not much traffic going down there.

Council Member Hertzberg: I would be in favor of this because it's more of an access road. I don't know that we need that much of a connection to it. I know that's important, but I did drive by and there's two private roads. They have the roads to those homes, so those people can access it. Is there one or two other access points?

Jonathan Curth: Do you mean access points to this property or between Vale and Razorback?

Council Member Hertzberg: Between Vale and Razorback.

Jonathan Curth: Sligo is the only public street, but Junction Street off of Sligo and Netherland Way to the north of Sligo are private streets between Razorback and Vale.

Council Member Gutierrez: Is there any plans right now to increase or work on Vale to make it less of an access road? What are the plans for that road?

Jonathan Curth: I do not see it on any of the short term improvement list for street improvements.

Council Member Petty: Isn't it the case that we would be unlikely to see improvements to Vale until that big industrial land to the right or some of the frontage to the left of Vale were developed? Even then, maybe only for the frontage in question.

Jonathan Curth: That would be the typical requirement. A lot of that comes down to the scale of what is proposed. The applicant did share some conceptual drawings, for what appeared to be a pretty sizable multifamily building there. Depending on its scale and how it distributed its traffic, staff may have the authority through the Planning Commission to require much more substantive improvements. The typical requirement would be yes, just for the property's frontage.

Council Member Petty: What is the extent to which the Fayette Junction Master Plan anticipates this area being developed?

Jonathan Curth: The Fayette Junction plan was largely hinging on the idea that the railway spurred to the East and would develop and turn into a significant transportation hub. With or without that transportation hub, this property represents an area that could benefit the city from very intense development. It's located along Razorback Road with easy access to I-49 and several parks. The Fayette Junction plan did imagine it being intensely developed as well, but a lot of what occurred in this part of the Fayette Junction plan was intended to be tied into that rail head there.

Mayor Jordan: That's right. I remember that plan and that was not included.

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 6-0. Council Members Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin voting yes. Council Members Bunch and Kinion were absent during the vote.

City Attorney Kit Williams read the ordinance.

Jonathan Curth described the illustrated map of Fayette Junction.

Council Member Petty stated his view of these maps is they are not meant to be set in stone but meant to communicate the concept and to get us thinking about the relative impacts and the kinds of things we need to do to make sure the general intent can be accomplished. He stated if more intense development occurred in this area, it would be rightful for the city for it to happen in this location. He stated he takes the recommendation to preserve the connectivity from the staff seriously against that future. He stated against what's there today, he could go with just about any proposal about the right of way but considering what we intend for the broader area in the future, the connectivity is especially important to plan for.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 2-5. Council Members Hertzberg and Jones voting yes. Council Members Bunch, Turk, Gutierrez, Petty, and Scroggin voting no. Council Member Kinion was absent during the vote.

This ordinance failed.

New Business:

RPZD-2021-003: (2390 S. Dead Horse Mtn. Rd./Meadows at Stonebridge Sd): An ordinance to approve a Residential Planned Zoning District entitled R-PZD 21-003 for approximately 51.33 acres located at 2390 South Dead Horse Mountain Road to allow the development of 168 residential lots and 1 mixed use lot.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated considering the whole balance of issues, we felt that the applicant's proposals will take what is already permitted and create a foundation for a complete neighborhood in an area that is right now completely devoid of services and fully auto dependent. He stated staff is recommending approval of the request with conditions. He stated the Planning Commission forwarded the item recommending approval with a vote of 5 to 3. He stated public comment has been received from at least one neighbor, who is opposed to this request and would prefer to see the property developed under its existing zoning district with a Bill of Assurance. He stated the golf course expressed concern at the Planning Commission about trespassing and the Council was forwarded an item from their representative with comments about the existing infrastructure and the appropriateness of the existing entitlement. He stated they have asked that the item be left on this reading for further consideration.

Bradley Bridges, Applicant gave a brief description of the property. He stated many of the things he has worked through are with the goals of the City Plan 2040. He stated he is trying to create a community that's walkable and reduce trips by adding some mixed use. He stated there is water and sewer right along Dead Horse Mountain Road. He stated since this is strictly a zoning, we are not bringing through a concurrent development at this time. He stated he will provide drainage that will meet or exceed the drainage criteria manual. He stated he will address any of those concerns at time of development once he brings a preliminary plat back through to the Planning Commission. He stated he is okay with the conditions. He spoke about the architectural renderings. He stated if Council sees fit, he would like to see a vote in favor of his request.

Council Member Scroggin: In the 2009 PZD, what was the number of units allowed? What is the density on Peaceful Road, the subdivision right to the west?

Jonathan Curth: The Riverwalk subdivision is developed at approximately between 2 and 2.5 units per acre, which is the first phase of the subdivision. I'm not as familiar with the subsequent phases.

Council Member Scroggin: How many places of access are there to this subdivision? Is it just that one?

Jonathan Curth: The Riverwalk subdivision has access at three existing points on Dead Horse Mountain. There is a future phase that will connect further south east along Dead Horse Mountain, as well.

Council Member Scroggin: Right now, the houses that are proposed have three access points?

Jonathan Curth: Are you talking about the existing Riverwalk subdivision?

Council Member Scroggin: No, the new one.

Jonathan Curth: One on the northern end of the property and the sliver of land that comes out to Dead Horse.

Council Member Scroggin: Does that sliver of land include that bridge?

Jonathan Curth: I believe that's all level surface.

Bradley Bridges: There is not a bridge along our frontage.

Jonathan Curth: The previous PZD was approved with an allowance for 350 dwelling units, 45,000 square feet of non-residential space and parking. The first phase was intended to be single family lots and that was 91 units.

Council Member Scroggin: It was significantly larger in 2009 than the 2018 attempt and then, this one?

Jonathan Curth: Correct. The preliminary plat in 2018 was about 140 lots. This one is 168.

Council Member Scroggin: These are comparable to what was allowed almost more than a decade ago. We got an email that was talking about density. There was a Bill of Assurance that actually limited this a little bit more, but the building climate five years ago is significantly different than we are now. We are way shorter on houses now than we were then. I have a lot of mixed feelings about this one. I hope we table this.

Council Member Turk: The sewer line will have to have additional piping to the lift station. Who pays for that?

Jonathan Curth: This is based on the Engineering staff review of the 2016 plat, which would presumably have somewhat comparable comments, given the moderate unit count increase. Generally, what would be required with this is the addition of a gravity main to the north. There's a series of lift stations in the Stonebridge Meadows Golf Club property and into that subdivision. That main construction itself would be roughly almost 2,000 feet. To do that, it would have to be laid right next to a force main, which would necessitate acquiring additional easement from the golf course to cross their property. The developer would pay for those improvements, but ultimately it would be the city's responsibility to maintain them. Lift stations are often a concern for the city. They don't work on gravity. They have mechanical functions to them.

Council Member Turk: The developer would pay for all of those costs. The right of way purchase or easement if it was needed from the golf course, the pipe and all the labor. It would just be the city that would have to maintain the Lift Station. Would there be a requirement to upgrade or increase the capacity of the Lift Station?

Jonathan Curth: I don't believe so. From my understanding of the 2016 review of the project, Crafton Tull also worked on that subdivision.

Bradley Bridges: We did do a sewer study. If requested during development, we could update that. There is already recorded easement for the additional line to go to the Lift Station that is located there.

The City Council received 2 public comments regarding this ordinance.

Council Member Scroggin: The easements that are having to go across the golf course, is that easements they already have or easements they have to purchase?

Jonathan Curth: When I advised Council Member Turk that they would need additional easement, it sounded like Mr Bridges disagreed. My comments are based on the 2016 Preliminary Plat, which did show the need to acquire more easement. There's already a force main running from the lift station through the existing easement and having to put a gravity main right next to that does have minimum separation requirements. Looking at that 2016 plat, it looked like they were looking for a 37 foot easement. I don't know if the size of that would've changed at this point. The existing easement is about 20 feet. The documentation suggests that more is maybe needed.

Council Member Scroggin: Can we approve PZD's that are open ended and be able to be successful or not?

City Attorney Kit Williams: It's something you can consider, whether or not they would be able to serve their development with sewer. They don't have condemnation powers to do that, so they would have to work out some sort of agreement with their neighbor to do that. The golf course did not sound too positive about that. This is certainly an issue the City Council needs to consider.

Council Member Scroggin: I definitely want that handled. It's frustrating when private entities put themselves in a situation where they think the city or other municipalities are going to come in and use condemnation to fix their problem. I don't know if we need to almost write the PZD as conditional on them being able to get these things. How long do they have to develop on a PZD before it lapses?

Jonathan Curth: Planned Zoning Districts don't lapse. Staff has brought them back before the Council, just in batches when they do seem to be several of them. Because of the highly prescriptive nature of PZD's, it means that once you get an approval for it, it's very unlikely that it can develop under a different circumstance. If a development was concurrently proposed with this, that would be subject to a one year approval, but the PZD itself does not have a defined expiration.

This ordinance was left on the First Reading.

ADM-2021-028: (3275 N. Oakland Zion Rd./Piepenbrok): A resolution to amend the Master Street Plan by removing a section of a planned Neighborhood Link Connection along North Oakland Zion Road and upgrading a section of East Bridgewater Lane from a Residential Link Street to a Neighborhood Link Street.

Jonathan Curth, Development Services Director gave a brief description of the resolution. He stated staff recommends approval. He stated the Planning Commission agreed to forward in favor. He stated the Transportation Committee recommended forwarding the item to Council with a vote of 3 to 0.

Kim Piepenbrok, Applicant gave a brief description of her item.

Council Member Turk: Who started the proposal to realign the road? How did it get on the Master Street Plan? What process did it go through to get on there?

Jonathan Curth: It predates my time with the city. I went back a couple decades of Master Street Plans and it has been on there for a while. It's a product of trying to create much longer range, longer vision circulation goals in the city. As we've matured in our thinking, we have established that instances in the planning area where we are improving streets may not be as valuable as we once thought when the city was growing rapidly and outwardly. I don't know how that one specifically got on there. I think every time the Master Street Plan came back; staff evaluated it and did not see a strong cause to remove it and it was left on there.

Mayor Jordan stated that went back to the 80's and had been on there for a while.

City Attorney Kit Williams: In the past, there were some strange roads I saw on the east of town going over bluffs. I asked our Public Works Director as to why we do that. He said, they're just lines on a map. We take a much more careful attitude to that now.

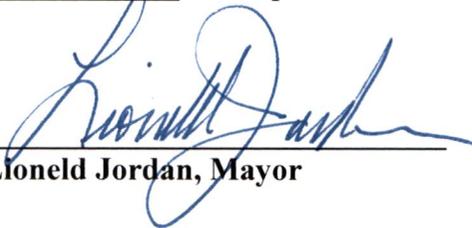
Council Member Gutierrez moved to approve the resolution. **Council Member Scroggin** seconded the motion. Upon roll call the resolution passed 7-0. **Council Members Bunch, Turk, Hertzberg, Gutierrez, Jones, Petty, and Scroggin** voting yes. **Council Member Kinion** was absent during the vote.

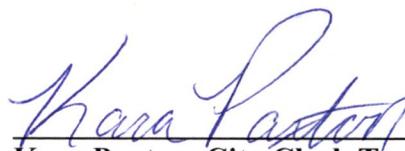
Resolution 121-21 as recorded in the office of the City Clerk

Announcements: None

City Council Agenda Session Presentations: None

Adjournment: 10:00 p.m.


Lioneld Jordan, Mayor


Kara Paxton, City Clerk Treasurer

