

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
September 7, 2021**

A meeting of the Fayetteville City Council was held on September 7, 2021 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

Council Members Petty and Jones were absent during Roll Call.

Mayor Lioneld Jordan, 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, Fire Chief Brad Hardin, and staff members from the IT Department were present in City Council Chambers while demonstrating recommended social distancing.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports, and Discussion Items:

Monthly Financial Report

Paul Becker, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated General Fund Sales Tax is up 17.6% compared to the budget. He spoke briefly about the other city funds.

Agenda Additions:

Federal Aviation Administration Grant: A resolution to authorize the acceptance of a Federal Aviation Administration grant in the amount of \$6,135,840.00 to fund the design and construction of the Runway Pavement and Lighting Rehabilitation Project at Drake Field Airport, and to authorize the acceptance of any additional grant funds awarded for this project.

Council Member Hertzberg moved to add the item to the agenda. Council Member Bunch seconded the motion. Upon roll call the motion passed unanimously.

Paul Becker, Chief Financial Officer stated there is a deadline to file the application to accept the award by the Federal Aviation. He stated the money will be used to resurface the runway at the Airport and do lighting. He spoke about the timeline. He stated since it is an extremely large grant, he might have to partially cashflow it with loans in case the expenditures are higher than balances that he has in the Airport Fund.

Summer Fallen, Airport Services Manager gave a brief description of the resolution.

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

Resolution 212-21 as recorded in the office of the City Clerk

Consent:

Approval of the August 6, 2021 Special City Council Meeting Minutes and the August 17, 2021 City Council Meeting Minutes.

APPROVED

Bid #21-47 Rogers Iron and Metal Corporation: A resolution to award Bid #21-47 to Rogers Iron and Metal Corporation for the removal and recycling of scrap metal items from the City of Fayetteville Recycling and Trash Collection Division in the amount of \$200.00 per ton for a term of one year with automatic renewals for up to four additional one year terms.

Resolution 213-21 as recorded in the office of the City Clerk

RFQ 20-01 FTN Associates, LTD Amendment No. 1: A resolution to approve Amendment No. 1 to the Professional Services Design Contract with FTN Associates, LTD., pursuant to RFQ 20-01, in the amount of \$9,600.00 for drainage improvement analysis of Linda Jo Place and Skyler Place to help alleviate flooding associated with the Middle Fork of the Hamestrung Creek.

Resolution 214-21 as recorded in the office of the City Clerk

Arkansas Historic Preservation Program: A resolution to authorize a contract with the Arkansas Historic Preservation Program for acceptance of a Certified Local Government Grant in the amount of \$9,990.00 for the restoration of the Woolsey Cemetery, and to approve a budget adjustment.

Resolution 215-21 as recorded in the office of the City Clerk

Aurora Aviation, LC d/b/a Elite Aircraft Services: A resolution to approve a three year lease agreement with Aurora Aviation, LC d/b/a Elite Aircraft Services for office space in the Airport Terminal Building in the amount of \$300.00 per month.

Resolution 216-21 as recorded in the office of the City Clerk

Bid #21-65 Southern Tire Mart, LLC: A resolution to award Bid #21-65 and authorize the purchase and installation of four tire and wheel assemblies from Southern Tire Mart, LLC in the amount of \$31,115.20 plus applicable taxes.

Resolution 217-21 as recorded in the office of the City Clerk

Jack Tyler Engineering, Inc.: A resolution to accept a quote in the amount of \$21,409.37 plus applicable taxes and freight charges from Jack Tyler Engineering, Inc. for the repair of a pump at the Broyles Avenue Sewer Lift Station.

Resolution 218-21 as recorded in the office of the City Clerk

Olsson, Inc. Amendment No. 5: A resolution to approve Amendment No. 5 to the Professional Engineering Services Agreement with Olsson, Inc. in an amount not to exceed \$312,000.00 for engineering services related to the East Fayetteville Water System Improvements Project.

Resolution 219-21 as recorded in the office of the City Clerk

City of Elkins Sanitary Sewer Service: A resolution to approve a 15 year contract for Sanitary Sewer Service between the cities of Elkins and Fayetteville in which Fayetteville will accept and treat sewerage from Elkins in Fayetteville's Wastewater Treatment Facility.

Resolution 220-21 as recorded in the office of the City Clerk

CH2M Hill Engineers, Inc.: A resolution to authorize a payment to CH2M Hill Engineers, Inc. in the amount of \$362,544.00 to reconcile the actual costs of wastewater treatment operations and maintenance in 2020 to the contract estimate, and to approve a budget adjustment.

Resolution 221-21 as recorded in the office of the City Clerk

Bid #21-60 Caldwell Tanks, Inc.: A resolution to award Bid #21-60 and authorize a contract with Caldwell Tanks, Inc. in the amount of \$2,325,000.00 for the construction of a new elevated water storage tank on Township Street and demolition of the existing tank, to approve a project contingency in the amount of \$232,500.00, and to approve a budget adjustment.

Resolution 222-21 as recorded in the office of the City Clerk

Rubbish Removal and Roll-Off Rentals, LLC D/B/A Arkansas Waste Solutions: A resolution to approve an agreement with rubbish removal and Roll-off rentals, LLC D/B/A Arkansas Waste Solutions for the Hauling and disposal of solid waste and recyclable material in the City of Fayetteville.

Resolution 223-21 as recorded in the office of the City Clerk

Ozark Compost & Swap, LLC: A resolution to approve an agreement with Ozark Compost & Swap, LLC for the hauling of organic compostable and recyclable Material in the City of Fayetteville.

Resolution 224-21 as recorded in the office of the City Clerk

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

Unfinished Business:

Amend Chapter 173 Building Regulations: An ordinance to amend Chapter 173 **Building Regulations** of the Fayetteville Unified Development Code to align the city's building regulations with building codes adopted by the State of Arkansas; to authorize prosecution of violations of §173.08 **Unsafe Buildings and Property Nuisances**; and to adopt the International Property Maintenance Code. *At the July 20, 2021 City Council meeting, this ordinance was left on the first reading. At the August 3, 2021 City Council meeting this item passed. At the August 17, 2021 City Council meeting this item was voted on to reconsider and will be placed on the September 7, 2021 City Council meeting.*

City Attorney Kit Williams: The only thing changed are some additions to the Exhibits that have been provided to the public and available at the City Clerk's office for a number of weeks. The only recognition we need to have from the City Council is to recognize the Exhibits have been filled in or slightly modified. The ordinance itself is exactly the same as it was, which you initially

passed. There will have to be another vote on the ordinance with the understanding that the Exhibits have been slightly modified.

Dennis Sanders, Building Safety Director: These are amendments to the Property Maintenance Code to clear up any confusions that may have come about.

Robert Williams, 3949 West Mountain View Drive spoke briefly about the ordinance.

City Attorney Kit Williams thanked Robert Williams for finding some of the errors and omissions the city had. He stated there is a rule in interpretation of any kind of law or code that it must be a reasonable interpretation. He spoke briefly about the interpretation of the code. He stated all of the provisions, even if they say, *shall*, you always have to read them with a condition of reasonableness.

Dennis Sanders stated this is for major erosion and not minor. He stated when a home is built, we do all of our inspections, per the building code the year the home was built in. He stated the Property Maintenance Code would not override and we would not go back through the house again and make you redo. He stated if it passed during the framing stages, when the home was built under the code it was adopted under, then that's what they would go back and look at. He stated when a tenant comes in and cuts a door and messes up the framing, then that's something completely different.

Council Member Turk: Mr. Robert Williams cited 302.3, all private sidewalks shall be kept in good repair. Does that exclude the city sidewalks?

Dennis Sanders: The reason why it was put in there like that, is that it matches our City Code. That's word for word what it says, right now. The way we do our public streets and sidewalks is those are all complaint driven. The city is always being proactive and trying to repair sidewalks as they find them. They repair any that we get complaints on throughout the year also.

Council Member Turk: That gives the city the ability to repair private sidewalks or to deal with a complaint about a private sidewalk. Is that correct?

Dennis Sanders: Correct.

Council Member Turk: The city sidewalks match the same requirement?

Dennis Sanders: Yes

Council Member Scroggin: I know there's some concern we are going to have inspectors going to go rogue. They already can kind of do that. You've got City Code, State Code, and International Code. If that was a real concern, I think it already would have happened. I usually tell anybody that's a developer or builder to talk to the city if you've got any questions before you do something. They'll let you know and are pretty reasonable.

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

Ordinance 6471 as Recorded in the office of the City Clerk

There was a brief conversation about enforcement of the masks ordinance.

New Business:

Mayor Jordan to Require All City Employees to Submit Weekly Tests or Proof of Vaccination: A resolution to request that Mayor Jordan require all City Employees to submit weekly rapid PCR or Antigen COVID-19 Virus Tests to Human Resources unless they have submitted proof of complete vaccination.

Council Member Petty gave a brief description of the resolution. He stated this is to establish our consensus among the Council that this is a policy we believe should be implemented. He stated the details for its implementation would be up to the Mayor and his staff. He stated the motivation for this is that we're still in the middle of an emergency and we need to take steps to break the surge and to end the pandemic. He stated this is one of the things we can do as a city to show leadership for other institutions, companies and organizations for policies they might be able to implement themselves for their own workers. He stated this is to protect Fayetteville workers and their families who are unable to become vaccinated, for whatever reason, or who may inadvertently expose someone, even though they themselves might be vaccinated if they were to come in contact and have an asymptomatic breakthrough case. He stated this is about taking an easy step to do everything we can that science tells us we need to do. He stated we believe this resolution as policy would be legal and technically there's no step the City Council has to take, because this could be an administrative policy, but this will establish our consensus. He stated the policy requires testing and not to require vaccinations. He stated this would require testing for all workers and give a waiver to those who have been vaccinated.

Dr. Marti Sharkey: This administrative policy goal is to keep city staff and citizens as healthy and safe as possible. The one thing that's imperative in the logistics of this, is making sure we are using the correct testing instruments, in the correct situations. That's going to be where the Board of Health and my expertise is going to come into play.

City Attorney Kit Williams: There was an earlier conversation where a chiropractor said that it was dangerous to wear a mask. Is that medically correct?

Dr. Marti Sharkey: That is incorrect. Masks have been shown to be safe. While they are not 100% effective in preventing COVID and we don't have anything that's 100%, they do reduce the risk.

Tim Nyander, Utilities Director: I have talked to about 50 of our 77 employees to see what their thoughts were. Employees want to know if there is going to be any exemptions applied to this policy. Being a fact that vaccinated individuals can carry and spread the virus, would it be logical

to have everybody test for COVID once a week, rather than just the unvaccinated employees? Is there going to be a standardized course of action if an employee refuses to get COVID? Is this going to impact the employees' health care costs? In the Utilities Department, will this policy be applied to the roughly 50 contracted employees that operate the Wastewater Treatment Facilities? One concern is the possibility of increasing the vacancy rate of our employees. It is a fact that during this pandemic, we don't have anybody applying for open positions. In the Utilities Division, we are currently two crews short to repair our system. That is 10 to 20 leaks a day that are not getting repaired because of our shortage. It causes our existing employees to work long hours, which attributes to not only employee burnout and when we use the heavy equipment that could be a safety issue. We have to prioritize our leaks and fix the biggest ones first, which means that some of our leaks may go days without getting fixed. This does increase the amount of non-revenue water that's leaking into the ground, rather than flowing through meter and get some revenue for.

The City Council received five public comments regarding this resolution.

Council Member Scroggin stated he is going to vote against the resolution. He stated it's a logistics issue. He stated since school has started, he has had four COVID tests between his family. He stated we had symptoms, but I think my kids actually had the flu. He stated we just got the bill and we have good insurance, but they are charging \$75 every time we go. He stated there has been times we wanted to go, because of a fever and can't go, because nobody has tests, at least a place that can get it back in any reasonable time. He spoke about vaccine misinformation. He stated masks work and the vaccine is safe. He thanked Council Member Petty for bringing the item forward because something has got to be figured out. He stated unfortunately the reason a lot of people and staff are not getting the vaccine is misinformation. He stated he doesn't know how the logistics of this will work because sometimes it takes two or three days to get a test back. He stated does that mean those people can't work those two or three days. He stated we're going to pay for these test or insurance is going to pay for it and if insurance pays for it, then we're going to get a call pretty soon because we're spending hundreds of thousands of dollars a month on tests. He stated this could cost somewhere between \$200,000 and \$300,000 a month if implemented. He stated that money would be so much more useful to our citizens than this.

Council Member Hertzberg: Do you have a number for the actual cost to the city, per week?

Mayor Jordan: I don't have the actual cost, but I have a preliminary cost of about \$164,000 a month. That's a rough number. If this is passed by the Council, then we would have to work out the logistics of how this all would be put together and then you all would have to look at some sort of budget adjustment. In visiting with the Finance Director, he did say it could be taken out of the American Rescue Act Plan.

Paul Becker, Chief Financial Officer: I would say that it could be taken out of Rescue Funds. However, that's like any other fund available to the city. It could be used on other projects, but it could come out of the Rescue Fund.

Mayor Jordan: If the Council decides to go this route, then I would have to be the one implementing it and making the final decisions. It's not going to be done tomorrow morning. I am going to have to look at what you all do pass tonight or not pass.

Council Member Hertzberg: Do you know if there would be a policy end date or would we work that out later?

Mayor Jordan: That's another reason I wanted Council to decide how long they wanted to do this, and then we can estimate the cost better. I'll probably go through the Board of Health and get their opinion on it.

Council Member Hertzberg: Chief Reynolds, I had a question last week about whether or not we would have on site testing for night Police Officers. I know that might be a hindrance to them. Do you believe a policy like this, if it were to be implemented, would this affect recruitment retention of Police Officers?

Mike Reynolds, Chief of Police: The Council has heard me talk about the challenges and the evolving crisis, not only recruitment, but with retention. My personal opinion, based on what I've heard from my rank and file, is yes, I certainly believe this would hurt us. Not only with recruitment, but my most concern is about retention. As of today, we've lost 16 officers this year. One more officer and that will be the most officers we've lost or tied the most we've lost since the year 2000. We are in a pinch. We currently don't have the capacity to deal with the call volume we have and the increased population that's come into Fayetteville based upon our census being the second largest city. I'm very concerned.

Council Member Hertzberg: I'd like to propose that the city conduct a survey of every Fayetteville employee who wants to participate, to determine if they're in favor or against mandatory COVID testing for the unvaccinated. I want the Mayor's office to consider the results of the survey before implementing any new HR policy concerning mandatory COVID testing and the results of the survey be made available to all city employees.

Council Member Hertzberg moved to conduct a City of Fayetteville employee COVID testing survey to see if employees are in favor or against of mandatory testing for the unvaccinated. The motion died due to a lack of a second.

Council Member Petty: I would like to respond to the questions of Tim Nyander. The first question was if there would be any exemptions for the testing protocol. I don't have any in mind for the testing protocol, but I would imagine there are some exemptions implemented for vaccine requirements if we ever get to that point, although that's not what this is about. I don't feel qualified to make these decisions. That is the purpose of the Board of Health and I would expect the Mayor and his team to seek advice from them. The second question was what about breakthrough cases and should vaccinated people also be required for testing. This comes down to a money thing for me. I would prefer to test everybody, given the status of breakthrough cases. Given that this is a request for an administrative policy, I would hope the policy is flexible and can be amended, without having to come back to Council over time. This might be an instance where the policy should be different than what we are talking about tonight. I would expect the Mayor and his team would seek out the advice of the Board of Health in crafting that policy. The third question was, would there be a standard action if an employee refuses testing. We've all anticipated there may be some employees who refuse vaccination, despite the incentive and despite potentially having a testing requirement. I hadn't anticipated what we should do if an employee refuses to become

tested. We are at near crisis standards and this has become very important. I would expect that if an employee refuses to be tested and there's not an acceptable exemption, that we would pursue those the same as we would any other disciplinary action for any other refusal to act. I don't think this should be treated any differently. There was a question about contracted employees. This is an administrative policy and it should be answered by the administration. If they're working in close proximity to me that feels like it's a standard. If they are not working in close proximity to our employees and are working from home, perhaps they don't need to submit the weekly testing. The concern about this potentially increasing the vacancy rate is a concern. This is one of the reasons why the suggestion for this policy is crafted as a testing requirement and not a vaccine requirement. I wanted to do everything we could in making a public health policy that was going to do good for the community and our workers, but not be so heavy handed we have some unintended consequences, including resignations. In industries across the country, there are mass resignations across all sectors happening right now. The latest polling shows that almost 50% of office workers right now are considering resigning. There are just as many employees that are worried about coming into work and spreading the cases, as we have that are worried about needing to submit to testing. This is a question we need to consider carefully. There was a question about what type of test. I had originally suggested this policy requests be limited to PCR tests, because of their increased accuracy, but on the advice of our City Health Officer Dr. Sharkey, she suggested that due to the timing of the test results and other factors that we also allow over the counter antigen tests. Dr. Sharkey, could you give us some information about what the status is of logistics for test access and how antigen test could be used to eliminate some of the logistical challenges associated with the policy.

Dr. Marti Sharkey: I recommended not over the counter antigen test, but just antigen test. There is a difference. Because of timing, most of the PCR tests are taking anywhere from one to three days to get results. What would the fallout be if we had an employee that had a PCR test and it came back positive three days later, but it didn't work. So, that kind of goes against the spirit of this. For somebody who is asymptomatic, an antigen test would be sufficient. If you had an employee that is symptomatic, you would need to do a PCR. Then you would have to do some follow up testing. We really have to look at doing the right test for the right employee or patient at the time, given the symptoms. It also takes into consideration the percentage of Delta and how prevalent it is at that moment. We could use antigen testing and that would be financially better for the city, however, the over the counter test's sensitivity is too low. We get a lot of false negatives with that in asymptomatic individuals. The medically performed in office antigen test are superior. That's what I would recommend as a starting point for testing.

Mayor Jordan: You are saying the antigen test would work if you don't have symptoms?

Dr. Marti Sharkey: That's correct. I do not recommend the at home test. If somebody is symptomatic, they should have a PCR test. If somebody is asymptomatic and has a positive antigen test, they should have a follow up PCR test to confirm that.

Council Member Hertzberg: Someone from the public commented that the PCR is not as reliable. Can you speak to that?

Dr. Marti Sharkey: The PCR is the gold standard for testing. It detects the RNA of the virus being present.

Mayor Jordan: How quickly can you get the test back from a PCR?

Dr. Marti Sharkey: Ideally, it's back in 24 hours. Our capacity is up right now. The standard is 24 hours, but sometimes it is longer.

Mayor Jordan: The antigen is fast?

Dr. Marti Sharkey: Depending on the situation, it's as quickly as 15 minutes, but the same day.

Council Member Petty stated we did anticipate some logistical issues with implementing this, but it seems they're solvable and the money is worth spending. He stated he would expect that the Mayor and his team would consult with the Board of Health on when to end this. He stated he would expect it is sometime in early 2022 based on the modeling. He stated no matter what we vote tonight and no matter what the text is of this resolution, it's still just a request on the Mayor. He spoke about the Delta Variant. He spoke about the vaccine working. He stated we've had plenty of time to think about whether or not we should implement policies like this. He stated it's time and hopes they will do it.

Council Member Gutierrez thanked the Board of Health and Dr. Sharkey for answering the medical related questions. She stated she is definitely going to be supporting this. She stated this is about people's lives and you can't put a price tag on that. She stated when you have people who have taken the responsibility to get their vaccine and then they are in a situation at work that causes them health and safety issues for their potential family that cannot get vaccinated, that's when it becomes our business. She stated people's private decisions that affect the health and safety of our employees, is our business. She stated she is for economy and the city has had great sales tax numbers. She stated we are leaving it up to the businesses to decide how they want to implement their mask policy. She stated she stands behind people who can't get vaccinated because of medical reasons. She stated the data shows 90% of the people that are in the hospitals right now, are people who are not vaccinated. She stated if we reach herd immunity and vaccinate more people, then everyone's going to be healthier. She stated breakthrough infections are going to happen, but it's a tiny percentage. She thanked Council Member Petty for bringing the item forward.

Council Member Bunch thanked Council Member Petty for bringing the item forward. She stated she feels like we should be doing something more but isn't sure this is the thing we should be doing. She stated there are some challenges with this and has concerns. She stated she would love for everybody to get vaccinated, but our elected officials at a national and state level should have done a better job 18 months ago when they were telling people this was fake. She stated the people that are going to get vaccinated are already vaccinated and the people that aren't vaccinated, just probably aren't. She stated she doesn't know what to do other than give encouragement to get people vaccinated. She stated with the testing possibility, she doesn't know if this is the thing to do. She stated she appreciated Tim Nyander's questions on behalf of his department. She stated she has concerns about what the Chief of Police has said about already being short staffed. She

stated on one hand, we could be short staffed, but on the other hand, do you want people walking around with COVID exposing their co-workers.

Council Member Turk: Thank you Council Member Petty for bringing this forward and making us all think about the challenges of implementing something like this. I am a bit on the fence because of the logistics. I don't want to lose critical city employees. I'm wondering if we couldn't modify this proposal you have before us. I would like to ask the Mayor to investigate with the Board of Health and to come back to us with a way to implement this or a policy, instead of dictating exactly what we would like him to do through this resolution. I would like to give the Mayor, maybe the HR people and the Board of Health more time to find a solution, rather than what we have before us tonight. Are you open to an amendment like that?

Council Member Petty: Yes, I'm open to an amendment like that. At the end of the day, this resolution is a suggestion, no matter what it reads. Council Member Turk, the only thing I might disagree with that you said, was I would hope that if we amend the resolution in the manner of you suggested, that the Mayor wouldn't come back to the Council for approval to implement the policy but he would go forward with what he worked out with the Board of Health and report to us.

Council Member Turk: I kind of misspoke, but yes, I agree with that.

Council Member Kinion stated he was with Smith Kline Biologicals in the vaccine division for 23 years and retired as a Senior Executive. He stated the scientific data he supports has to be based on scientific method. He stated it needs to be replicated and have a double blind study. He stated a lot of what was passed through emails was not valid scientific studies. He stated we must implement with our city employees a program that protects other employees. He stated anyone who is immunocompromised is walking around right now with a great deal of fear. He stated we have to be empathetic with what they need for protection. He stated we need to offer support during a resolution that some type of program is implemented to protect the safety of those that for some reason are more likely to have consequences of being infected and impacted by COVID. He stated we need to take our medical professionals and Board of Health opinions seriously. He stated he wants to respect a person's right to choose, but also has to look at the protection of co-workers. He spoke about enforcing masks wearing and social distancing. He stated data shows that vaccines are safe. He spoke about allergic reactions. He stated the data that was passed to him regarding deaths associated with a vaccine, is not validated. He stated the efficacy has been established through scientific method. He stated 90% of the individuals will have some type of response to offer protection with the vaccines, but some people won't. He stated the people who won't be protected are very miniscule compared to those that have an immune response that offer some protection. He stated with our hospitalization data, those that are in the ICU and have the most severe cases of COVID, are not vaccinated. He spoke about scientific methodology. He stated it is a responsibility of an employer to offer protections the best they can without totally impacting an opportunity for choice with some of the employees. He stated the Mayor and his staff have the capacity to evaluate further information looking at other municipalities, corporations and doing research and allowing our Board of Health to have input that we can come up with a solution. He stated we have to move forward with some type of plan, offer protection, but at the same time we do have to worry about keeping our positions staffed, especially public safety. He stated we must

take a responsible action and have some type of resolution to offer a meaningful way to help protect the employees.

There was a brief conversation about the wording for a proposed amendment.

Council Member Turk: I would like to seek legal workforce Council to ensure we're within Arkansas law.

City Attorney Kit Williams: We are going to look at it very closely. We can analyze what Council Member Petty had suggested in the original resolution. I believe that is within our rights under Arkansas law, just like the mask mandate was once the Arkansas law that prohibits them was enjoined by the Court in Pulaski County and as long as it remains enjoined, then the mask mandate the City Council passed is effective and is not in violation of the law. A city policy for employees is going to be something that will be finally decided by Mayor Jordan. You can make recommendations to the Mayor and he welcomes that. I explained that to Council Member Petty on why it needed to say, this was a recommendation to the Mayor. The Mayor does have many policies for the employees. He's a Chief Executive Officer and the employees are his responsibility and he will be the one to make the final decision.

Mayor Jordan: That is what is going to occur.

Council Member Petty: For a language suggestion, I would like to change the resolution title where it now reads to request that Mayor Jordan require all city employees, it would instead read, to request that Mayor Jordan investigate a requirement for all city employees. For a second change in Section 1, at the end of the second line it says, Mayor Jordan establish a city policy, instead it would say, Mayor Jordan explore establishing a city policy.

Council Member Turk: I would support that. Those are good changes.

City Attorney Kit Williams clarified the wording of the proposed amendment.

Mayor Jordan: Once I'm done exploring, I am going to implement a policy, unless somebody wants to see that. I would go to the Board of Health, talk to legal services and involve the HR Department. I have been working with Missy Cole on this, but we haven't got it all pulled together. I'll leave it up to you whether you want to see the policy again or not.

Council Member Hertzberg: I would like to see the policy once you come up with the final policy.

Council Member Petty: Mayor, I want a report, but I don't want you to come back and ask for permission from the Council. If that's something you need to get a vote on, let's take a vote on it, but this is your policy.

Mayor Jordan: Everybody keep in mind that the Mayor's in charge of the staff. That is the State law. I want you all to be comfortable, but at the end of the day, I'm going to make the call here. I will get plenty of input from the Finance Director on the funding and that sort of thing.

Council Member Petty: State law and that being the right thing and the way we should do it; this is also a state of emergency and a pandemic. Cases are announced in Washington County every single day. We shouldn't wait another two weeks to come back to Council for another round of permission.

Mayor Jordan: I agree with you. I will move on this quickly.

There was a brief discussion about the proposed amendment.

Council Member Petty moved to have the Mayor investigate and explore with all parties and figure out a solution for city policy. Council Member Turk seconded the motion. Upon roll call the motion passed 7-1. Council Members Gutierrez, Jones, Kinion, Petty, Scroggin, Bunch, and Turk voting yes. Council Member Hertzberg voting no.

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

Resolution 225-21 as recorded in the office of the City Clerk

Enact Article XXXII Commission to Preserve Historical Black Structures and Cemeteries and to Create Black Historical Markers: An ordinance to enact **Article XXXII Commission to Preserve Historical Black Structures and Cemeteries and to Create Black Historical Markers.**

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Council Member Jones stated he appreciated Kit's work on the ordinance. He stated he is looking forward to this Commission passing and doing some amazing work to continue to move Fayetteville forward.

City Attorney Kit Williams: I have a typo in this under Terms, (B)(2). It should read that all other Commissioners will have three year terms, except two At Large Commissioners will initially serve for two years and two At Large Members will initially serve for a one year term. This is basically how we do the Planning Commission. Every three years you'll have a couple of members up. I put one there and it should be two Members At Large will initially serve a one year term.

Mayor Jordan: I pick one of them?

City Attorney Kit Williams: Yes. You will pick the Council Member and the Council Member will serve along with your term. A new Mayor might select someone else, but if you're reelected, then you can appoint the same Council Member or another Council Member.

Mayor Jordan: The Nominating Committee picks the other six?

City Attorney Kit Williams: Right. They will pick six and the member that is very familiar with the historic black church in Fayetteville will serve three years and another At Large three years. Two of them two years. Two of them one year.

Council Member Jones: I spoke with Kara Paxton's office concerning moving forward and getting individuals to apply. I would like to move forward as quickly as we can to get this Commission up and moving. What are the Nominating Committee's thoughts on this?

Kara Paxton, City Clerk Treasurer: I appreciate Council Member Jones reaching out to our office to find out how that would affect the application and the process, since we just ended applications on people applying on the third. As I've mentioned in a previous email to everyone, Deputy City Clerk Lisa Branson and I have gone back for several years to find out circumstances where we have advertised outside of the normal period. There has been only one other circumstance, and it was in a time period where that aligned extremely closely with that term. It was within a two week period, so that is the circumstance we're in right now. We're prepared as long as Council would like us to move forward, votes this in and to go ahead and open up that application process for this board.

Mayor Jordan: Council Member Jones, does that answer your question?

Council Member Jones: Yes. Thank you so much Kara.

Council Member Bunch: Kara, you're talking about opening it up for the next term? Is that correct?

Kara Paxton, City Clerk Treasurer: It would actually be a special opening. It would only be in the circumstance that this aligns with the current one. Depending on how long the advertisement goes, it would just depend if it aligns with the current applications you all have already received or how you decide to go forward on voting with that. There's only been one other circumstance it's been done, and it's been within a two week period. Lisa and I let Council Member Jones know that's something we can take on now. When it's something like we've had in the past where members leave and come back on, where it's months and months out, that is extremely hard for office. We only have two people that can run the new applications. We're in the process of training additional individuals.

Council Member Bunch: You're saying that we would run it and try to coincide it as closely as possible to our regular Nominating Committee meeting. I would have no problem with doing that. I do not want to get in the habit of always having a Special Nominating Committee meeting because it throws everything out of balance for the Clerk's Office, and also the members of the Nominating Committee. In very rare instances, I would be in favor of that. We just got our packet

of the existing applicants for this upcoming Nominating Committee and there's always a good possibility there might be some well suited people that might not get the position they're asking for, because sometimes there's only one opening and we have five applicants. We might look at it that way too.

Council Member Kinion: I've been on the Nominating Committee ever since I have been on City Council. Is there an urgency that would require us to make some changes since we already have our applications in. We're already looking at them and we already know what we're doing. Can it not wait till the next quarter? It isn't easy for those of us that are on the Nominating Committee to look at all the applications that come in, validate them, put them in perspective of the current members and who's leaving. I need someone to help me understand what the urgency is.

Council Member Jones: There's no urgency. Initially, there was an original black resident native Fayetteville reunion that was going to be held on September 4th, but due to COVID that was cancelled. Since that's happened, there's no urgency. If we have to wait until the next go around, I'm completely open to that.

Council Member Kinion: Thank you.

Council Member Bunch: I'm in support of that since there's no great sense of urgency. Council Member Jones, the longer you have to advertise this, the more time you have to drum up the best people to be on this. Once we get it established, we can all try and encourage people to apply that would be the best people possible.

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I will assume unless the City Council indicates otherwise that the scrivener's error I made on the ordinance right now, will be corrected, without the need of a formal amendment. If that's not correct, I need a Council Member to tell me they want to make a formal amendment.

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

Council Member Kinion: I was wanting a little more time because it's so broad and encompassing with many different sections, but I voted yes, because I certainly support the intent.

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez: Thank you Council Member Jones for bringing this forward. It's incredibly important for us to take the effort and energy to acknowledge and honor the past and celebrate where we're going. It communicates a lot to our community what we value, especially the black community.

Council Member Jones: Thank you very much. I've been meeting with a group of African American residents who have lived here forever. They've been very vocal about feeling as if our history has been left out. There's a lot of rich history that I knew nothing about. As a Council Member, I'm standing on the shoulders of a lot of African Americans who've made some amazing accomplishments here in Fayetteville. They are thrilled that their history is now being told in a manner of accuracy and is going to move Fayetteville forward.

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

Ordinance 6472 as Recorded in the office of the City Clerk

Pinnacle Ozone Solutions, LLC: An ordinance to waive competitive bidding and approve a quote from Pinnacle Ozone Solutions, LLC for refurbishment of the Ozone Disinfection System at the Noland Water Resource Recovery Facility in the amount of \$19,224.75 plus applicable taxes and freight charges.

City Attorney Kit Williams read the ordinance.

Tim Nyander, Utilities Director gave a brief description of the ordinance. He stated staff recommends approval. He stated the item was presented to the Water & Sewer Committee with a 4 to 0 vote to forward it to Council for consideration of approval.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 6473 as Recorded in the office of the City Clerk

RZN-2021-056 (2699 W. MLK Blvd./Abailat, 558): An ordinance to rezone that property described in rezoning petition RZN 21-056 located at 2699 West Martin Luther Junior King Boulevard for approximately 0.43 acres from C-2, Thoroughfare Commercial and R-A, Residential Agricultural to C-2 Thoroughfare Commercial.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated given the land use compatibility and the general land use plan inconsistency, staff recommends denial of the request. He stated the Planning Commission unanimously forwarded the request recommending approval. He stated staff has not received any public comment. He stated the applicant was not in attendance. He stated the applicant requested if the Council did not have a favorable consideration of the request, the applicant would like for it to be left on a reading so they could attend another meeting.

Council Member Turk: It concerns me that this is in a floodway. Are there any existing restrictions or prohibitions, such as impervious surfaces we have in our code right now that would take the sensitive area into consideration?

Jonathan Curth: I'm not familiar with any that speaks specifically to impervious surfaces. Most standards, either in our ordinance or federal ordinances are about water displacement. FEMA has standards in the floodplain, which is that 100 year flood area, where properties have to be above a certain base flood elevation to be constructed and projects being developed in a floodway have to demonstrate they're not displacing water in such a way that adversely affects development downstream. Within our ordinances we have a municipal no rise certificate, and that would apply to the larger floodplain areas. The property owner would have to demonstrate they're not having an adverse impact displacing water, whether it's a result of fill or perhaps due to impervious surfaces.

Council Member Turk: The applicant hires the engineer to do the drainage study under our current code. Is that accurate?

Jonathan Curth: Correct. Our ordinances require them to be a licensed engineer with the State of Arkansas.

Council Member Turk: But not a disinterested third party. Only a licensed engineer?

Jonathan Curth: That is not enforced by ordinance. The state licenses engineers have a board of ethics that's responsible for addressing any concerns about whether an engineer maybe interested or disinterested in a project.

Council Member Gutierrez: I would like to table this so the applicant can be here.

Mayor Jordan: You can leave it on the first reading if you'd like. We can hold it for two weeks and then it will be on the second reading.

This ordinance was left on the First Reading.

VAC-2021-022 (1548 N. Leverett Ave./Brittenuum Properties): An ordinance to approve VAC 21-0022 for property located at 1548 North Leverett Avenue to vacate a portion of a General Utility Easement.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff does not have any issues with the request. He stated the applicant has provided all the necessary franchise utility sign offs and we are recommending approval. He spoke about the two conditions. He stated there was no public comment.

Blake Jorgensen, Applicant stated he was available for questions.

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

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez moved to suspend the rules and go to the third and final reading. Council Member Turk seconded the motion. Upon roll call the motion passed 7-1. Council Members Gutierrez, Jones, Kinion, Petty, Scroggin, Turk and Hertzberg voting yes. Council Member Bunch was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 6474 as Recorded in the office of the City Clerk

Amend Chapter 72 Parking Regulations: An ordinance to amend Chapter 72 **Parking Regulations** of the Fayetteville City Code to increase certain parking rates to reflect the operational costs of updated parking equipment and technology, and to create a residential parking permit program and employee discount program for the Downtown Business District Parking Zone.

City Attorney Kit Williams read the ordinance.

Justin Clay, Parking Manger gave a brief description of the ordinance. He stated the proposal is to upgrade approximately 250 on-street meters to smart meters and to replace the approximately 275 single space meters throughout those five surface parking lots with pay stations. He stated this will create a residential permit program and an employee discount program similar to what we have in the Entertainment District for this Downtown business district and to implement mobile APP and payment and wayfinding abilities within this district. He spoke about the proposed rate change. He stated we're not recommending any changes to the free parking around the square. He stated we're not recommending any changes to the dates and times that these regulations are enforced. He spoke about permitting options. He stated the specific code changes that we're looking at allow for additional types of payment on-street. He stated our current code restricts it to coin only and it allows for different types of equipment to be used, such as pay stations. He stated

our current code is restrictive and it only calls for single space meters. He stated the Transportation Committee unanimously approved this for consideration to the City Council. He stated at the Transportation Committee there was conversation about the rate structure and moving away from codifying specific rates within the code, which is what we're proposing and move towards some flexibility for staff to administratively set pricing based on desired utilization levels. He stated that's how we set up the Wilson Park Neighborhood back in 2019 with variable pricing and that's worked without issue, but that's not what's being proposed for you. He stated staff is calling for a specific rate of 50 cents and 25 cents. He stated the Town Center Parking Deck entry rate is set at \$4 per entry and that is set in the code and they've asked for the flexibility to set their own rates in a separate contract that we have with them for services.

Council Member Turk: There's a huge amount of changes that are wrapped in this ordinance. The meter you showed on your slide would be the new meter that would replace the old coin operated ones. Correct?

Justin Clay: Correct. All we're really replacing is the meter head. The pole and the base would stay the same. This would remain at each on-street parking space where they currently exist.

Council Member Turk: You can still pay by coins and you've got a huge amount of options on your payment method?

Justin Clay: Exactly. We're not trying to take any options away. We're trying to expand options.

Council Member Turk: In the text, it would be nice if you could say, expanding options or adding payment options, rather than just say, replacing the 250 coin operated mechanical meters. I want to be very clear to the citizens, because I know many of them like the coin operated. The way the text reads, it looks like you're getting rid of that option. I read in the paper it would cost about \$166,000 to make this upgrade and that's why the rates are going up. Do I have that correct?

Justin Clay: The ongoing operational costs for the technology associated with the new equipment is estimated at around \$60,000 annually. That's what's justifying the rate change.

Council Member Turk: So, it's not really going to the Parking Fund. Parking can be quite a controversial issue and changing the rates might impact a few things.

The City Council received one public comment regarding this ordinance.

Council Member Turk: I would like to hold this. There's a lot of things in this ordinance that should be thought about and the public better aware of to make sure they're notified and don't have any hesitation. I'd like for us to think about allowing the administrative ability to change the parking amounts per hour.

Council Member Bunch: I've read over this enough. I am ready to vote on this issue. Justin, when were the last raises we had on the parking?

Justin Clay: I believe in the 90's it went to a quarter and that was the last rate change that took place.

Council Member Bunch: I'm in favor of the changes. It gives us a pretty good solution to upgrading our parking. People can still use coins if they want too. They can use their phones. The smart meters tell you where there are parking spaces. That alleviates a lot of problems that people may be having. Do we have to have the suggestion of the Chair of the Transportation Committee in here or was that just a suggestion?

Justin Clay: That was only mentioned because there was conversation in the Transportation Committee about that approach to a rate structure. That is not what's being proposed in the ordinance. The ordinance sets the rate hard and fast.

Mayor Jordan: This went through the Transportation Committee. Is that correct?

Council Member Petty: Correct. We voted on it.

Justin Clay: It was unanimously forwarded to the City Council for your consideration.

Council Member Gutierrez stated if we double the rate, then we probably should be able to bring that back to Council to talk about it and vote on it.

There was a brief discussion about holding it on a reading or going forward.

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

City Attorney Kit Williams read the ordinance.

Council Member Gutierrez: Justin, can you recap the \$4 on the other deck piece?

Justin Clay: The Town Center Parking Deck is a gated deck. The \$4 entry rate is set in code. It was set by ordinance and the Town Center has requested some flexibility in setting the pricing for their deck. Outside of having to bring an ordinance before you to consider anytime they might want to do that, we have a separate contract for services with Experience Fayetteville. That rate structure would be outlined in that contract, as opposed to the City Code. This ordinance takes the set rate out of the code and allows it to be put in that other net contract.

Council Member Gutierrez: Does the deck belong to the city or to Experience Fayetteville? What's that relationship?

Justin Clay: Technically owned by the city and leased to Experience Fayetteville. They receive the revenues off of it. We manage and clean the deck for them. We get 50 parking spaces to be able to park city employees. It's in a separate contract.

Council Member Gutierrez: What do our other decks run?

Justin Clay: They are similarly priced. The Meadow Street Deck behind the Graduate Hotel is \$3 per entry on the first level and \$4 per entry on the top level. It is \$50 permit parking on the second level. That's the only other deck that has a per entry rate associated with it.

Council Member Gutierrez: The one on Spring is by the hour?

Justin Clay: Right. It's just like any other Entertainment District parking.

Council Member Bunch: In this relationship with Experience Fayetteville, you mentioned cleaning the deck. Does Experience Fayetteville pay for anything else in the upkeep of the deck?

Justin Clay: In exchange for those services that are provided by the city, Experience Fayetteville gives the city access to 55 parking spaces, at no cost.

Council Member Bunch: We take care of everything else, such as the lights, painting and machinery?

Justin Clay: Right.

Council Member Gutierrez: I would like to propose an amendment if we have a 100% rate increase, we bring that back to Council on the on-street parking.

Susan Norton, Chief of Staff: The way Justin has proposed the code changes, it locks in the rate already. What was discussed is possibly having flexibility, is not before you tonight.

Council Member Gutierrez: Okay, that sounds good.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 6475 as Recorded in the office of the City Clerk

Amend §111.07 Outdoor Refreshment Area: An ordinance to amend §111.07 **Outdoor Refreshment Area** by adopting a revised Downtown Outdoor Refreshment Area Boundary Map and removing the expiration provision.

City Attorney Kit Williams read the ordinance.

Devin Howland, Director of Economic Vitality gave a brief description of the ordinance.

The City Council received six public comments regarding this ordinance.

Council Member Gutierrez: I want to commend Devin and his team for bringing such a great thing to the city. It's helped us go to the next level. It is helping us prepare for the Cultural Arts Corridor and the Ramble. As we grow as a city and expand our offerings for the creative economy expansion, this is exactly in line with what we need to be doing. COVID made it all speed up and prove the concept. If there becomes an issue, I hope the staff and Police will bring it back to us. Safety is very important to me, but so far, the program has proven to work. I'm definitely going to be supporting this.

Council Member Turk stated we are growing, and we haven't completed the Ramble. She questions we are at pre-pandemic levels. She stated she doesn't think we have seen what ORA will be. She commended everybody for the implementation of ORA and that it has been successful and a safety line for businesses in town. She stated we should still continue to go slow. She stated all these businesses can function under ORA until 2024. She stated by 2024, the Ramble will be completed, and we will see what that's actually looking like. She stated a 96% participation rate is extremely high and doesn't see the Sunset Clause is reducing or limiting participation. She stated it sounds like it's been a great success and doesn't see the urgency of eliminating the Sunset Clause. She stated if we do start to have problems, we can make those modifications and it's not permanent. She stated if it becomes permanent, then that could be used as a taking and we can have some challenges. She cautioned to go slowly.

Council Member Bunch stated she feels comfortable with the proposal, the way it is. She spoke about businesses investing in ORA and how they would feel with a Sunset Clause. She stated this has been a lifeline for so many businesses. She stated we have the ability to monitor this and would prefer to have it in place and have the Sunset Clause removed as the Ramble gets up and running. She stated this has given businesses an option they didn't have before. She spoke in favor of the ordinance.

Council Member Scroggin stated he was ready to move this forward. He stated he understands the taking issue and what if this falls apart. He doesn't see every bar all of a sudden overnight becoming a problem. He stated I see individual bars becoming a problem, but there are things the city and the ABC can do. He spoke about removing the Sunset Clause.

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

City Attorney Kit Williams read the ordinance.

Council Member Scroggin moved to suspend the rules and go to the third and final reading. Council Member Bunch seconded the motion. Upon roll call the motion passed 7-1. Council

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

City Attorney Kit Williams read the ordinance.

Council Member Turk: I want to make it clear I support the ORA. This has been a wonderful thing the city has done for the past year and a half. It's been implemented really well. My concerns are that removal of the Sunset Clause is premature because we don't have the level of participation from citizens we will post pandemic. Also, the Ramble is not built out and Southyard is not done.

Mayor Jordan: One thing I hear from businesses over and over is they need more predictability. This ORA has been a lifeline for businesses in the city. This will give them a great deal of predictability on what we are going to do in the future. I hope you all will support this.

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

Ordinance 6476 as Recorded in the office of the City Clerk

Appeal Million Miracles Surveying, P.L.L.C: A resolution to grant the appeal of a Million Miracles Surveying, P.L.L.C., for variance application VAR 21-0034 and allow a third driveway for the development at 203, 205, and 207 South West Avenue.

Jonathan Curth, Development Services Director gave a brief description of the resolution. He stated the developer has requested that this be considered, based on the facts present today, not the decisions the applicant or developer made between 2018 and 2020. He stated while he does not advise that the Council disregard the developer's choices made to this point, staff feels even taking a short term consideration elicits a negative recommendation on our part. He stated the city is currently investing significant amounts of public money in this area to promote walkability explicitly. He stated staff is recommending denial of the request. He stated the Planning Commission did hear the item twice and Commissioners initially tabled the item at the first hearing to afford the developer time to bring forward a proposal that better interacted with West Avenue. He stated some of the elements proposed by the Commissioners interested in seeing an alternative, included narrow driveways and the inclusion of permeable pavers or permeable concrete system to mitigate the large areas of imperviousness between the buildings and the street. He stated while the applicant did respond to the site plan showing three, 14 foot driveways, it did not appear to respond to many of the other Commissioners requests. He stated at the August 9th meeting the request was unanimously denied. He stated the consensus among the Commissioners was this was a self-imposed hardship. He stated public comment includes some opposition from a member of the Cultural Arts Corridors design team. He stated public comment was also received in favor of the request from one of the current townhouse owners on the property.

Peter Nierengarten, Environmental Director who is the Project Manager for the Cultural Arts Corridor. He stated the Ramble Corridor is directly adjacent to this variance request. He stated the

Ramble is a \$32 million Fayetteville bond project that was approved by the citizens of Fayetteville in April 2019. He spoke briefly about the elements of the Ramble project. He spoke about streetscape improvements. He stated as part of the property owner outreach that the project team did, they worked to try and coordinate for two years with this developer on the driveway locations. He stated instead of working with our design team on our streetscape design and driveway locations, the developer sought a driveway separation variance. He stated one of the things we have been working on and offering to the developer, is use of a portion of the backside of the right-of-way for extension of the driveway to allow for greater ease of ingress and egress out to the southern unit in the middle duplex. He stated the remainder of the right-of-way is proposed to be landscaping to screen the garage doors and large driveways from the sidewalk.

Bob Honey, Applicant's Representative stated the source of the problem we're dealing with is that the middle building was built and after it was built to a 25 foot build to line, the right-of-way of West Avenue was moved. He stated the metal building is now 17 feet from the right-of-way and we've got a shared driveway for two of these units and we don't have enough space to make that work. He spoke about his client's solution for the driveways. He spoke about pedestrian vehicle interaction. He showed a brief video presentation. He stated in his client's view, the way to deal with it is to have three driveways, one for each unit, 14 feet wide with drivers backing in and out, instead of trying to maneuver in tight quarters, which takes driver attention away from potential pedestrian interaction.

The City Council received two public comments regarding this resolution.

Eric Heller, Applicant spoke about the driveways. He stated if we only have the one driveway, everybody is going to be forced to back out into the road, which is less safe. He stated if we get two driveways, they can do a three point turn and exit from either driveway going forward.

Council Member Scroggin: Was there any lot line or anything changed by the city, from 2017 to now that has caused his difficulty?

Jonathan Curth: The only actions that have occurred on these properties were at the applicant's requests when they split the existing duplex into two townhomes. That's when the right-of-way dedication was triggered last year.

Council Member Scroggin: There's errors insurance for surveyors and engineers if they missed stuff that causes them trouble. That is not the city's job. A lot of people in the city don't like developments in general. I don't think we should bend over backwards when they ignore the rules. Buy stuff that works for you the way it's zoned with the rules you have now and then maybe if you can get something else, do that. You do that before you start building. I feel like this is an issue between the builder and the engineer that drew up the plans. He is supposed to understand code. The city has incredible plans for the Arts Corridor and Ramble. Having more curb cuts is more dangerous for bikers and walkers. We don't need to set a precedent that if you don't like what staff is telling you, just do whatever you want. Staff does an excellent job.

City Attorney Kit Williams: A no vote will defeat the appeal.

Mayor Jordan: A yes vote supports it.

Council Member Hertzberg moved to approve the resolution. Council Member Gutierrez seconded the motion. Upon roll call the resolution failed unanimously.

This resolution failed.

Appeal ADM-2021-045 (1236 S. School Ave./Vaughn Recycling): A resolution to grant the appeal of Council Members Sarah Bunch, Holly Hertzberg, and D'Andre Jones and approve an amendment to conditional use Permit Cup 08-2908 to authorize Vaughn Recycling to legally expand its recycling activities to 1236 South School Avenue.

Jonathan Curth, Development Services Director gave a brief description of the resolution. He stated with more than 10 years of aerial photography, it's apparent that the business exceeded the scope of its permit within years of it being granted. He stated as a result, staff is not able to support the request, without first seeing an establishment that the business can function within the scope that it was granted about 13 years ago. He stated at the July 26th Planning Commission meeting, a motion was made to approve the request, but granting it only a one year period, initially. He stated this vote failed by a split vote of 4 to 4. He stated the Planning Commission requires five affirmative votes to approve a Conditional Use Permit. He stated he has not received any public comments. He stated the applicant provided pictures of the northern parcel. He stated it looks like a substantial amount of what was on that property has been removed and to the applicant's credit, they are making efforts to bring their scope of the business back into line with the Conditional Use Permit granted in 2013.

Tripp Halbert, Representing Vaughn Recycling gave a brief history of the company. He stated in March of 2020, Vaughn Recycling received the unexpected influx of recycled goods connected to the COVID-19 pandemic. He stated this influx was connected to the fact that over the last 18 months, prices of recycled metals have nearly gone up 300%. He stated during this period, these prices drove massive amounts of recycled goods to his client's doorstep, with no means to process or transport them due to the lack of commercial drivers, connected directly with the COVID-19 pandemic. He stated Vaughn Recycling was forced to utilize the neighboring property to the north, to store this massive influx of inventory. He spoke about the Planning Commission meetings. He spoke about the mud and dirt trackage on the public-right-of-way. He spoke about fencing to obstruct the materials from public view.

Council Member Hertzberg: I brought this forward because it was a 4 to 4 split at Planning Commission and I wanted Council to hear the applicant. It's a reasonable request, considering that this was due to an influx of recycling from COVID-19. I will be in support of this

Council Member Bunch: I felt like since it was a split with the Planning Commission, that was one of my reasons I was going to support bringing it forward. However, I always reserve the right to listen to both sides if I do allow something to appeal and make my decision based on what I hear.

Council Member Jones: I feel the same way. I wanted to be fair and give them the opportunity to be heard. After hearing them tonight, I reserve my right to vote. I didn't make this decision in order to vote for them, but I wanted to hear what they had to say, particularly due to the tie.

Council Member Scroggin: If we were to table this, what would happen to them in the meantime?

Jonathan Curth: I believe there is an exception in the Unified Development Code that allows a business to continue in operation, if it does not represent a hazard or danger to health and safety while it's under deliberation. I'll have to double check that language.

Council Member Scroggin: I hope we table this. Conditional Use Permits have a lot of power. We should look at this a little better if they're having violations. I would like to drive by before we vote on this and make sure it looks better. If it doesn't affect their business, then we should table and look at this closer.

City Attorney Kit Williams: Eventually the City Council will have to make a decision on this. They certainly have made a lot of big improvements. If you want to give a little more time, you can table this to a definite time for the City Council to review and then determine what you want to do. They would be able to remain in operation, as this appeal is pending.

Council Member Scroggin: I'm looking at two weeks. This will give more time to look at the code and look at the Conditional Use Permit.

Council Member Bunch: I would be willing to table it for two weeks. This will give time for us to go by and look at it. Teresa, are you going to request a tour?

Council Member Turk: I usually do, but I'm very familiar with Vaughn Recycling. I take a lot of metal recycling down there.

Council Member Bunch: It looks like they've cleaned the site up, but the applicant referred to it as a logistical nightmare in getting things distributed and hauled off. If it was such a nightmare, how were you able to clean it up so quickly and where did the products go that were there?

Tripp Halbert: They did it with hard work and dedication, but mostly cleverness. They found other ways to move metal and to find other avenues to store it. It was a logistical nightmare and in about six to eight weeks they were able to get it cleared up. They were turning away numerous orders and hindering their business. They were trying to be compliant with this violation or getting compliance.

Council Member Turk: I'm stuck on this thing about the CUP that was approved in 2008. Am I understanding it correctly that it was clearly explained as part of the CUP that the applicant had to come back and request use of the north side of the property?

Jonathan Curth: That is correct. It was laid out as a condition of approval. The site improvement plan that was submitted initially, in line with that CUP, only included the southern parcel.

Council Member Turk: I feel they provide a good asset to our community and that we don't have usable recyclable metal going into the landfill. However, I'm concerned they have violated that term. Do we ever fine businesses for violations? It seems kind of egregious they were using that a lot sooner than when the pandemic happened, judging from aerial photographs.

City Attorney Kit Williams: The remedy for that is you revoke their Conditional Use so they can no longer operate if they have violated a Conditional Use. That's a civil action, rather than a criminal problem. It's possible they might have violated some criminal law, but I doubt it. It's probably still a civil action and your remedy would be to revoke or change the Conditional Use, which I guarantee you is a much stronger weapon than a \$250 fine.

Council Member Turk: I'm fine with tabling it for two weeks. I drive by there all the time, so I don't have to take a tour. Maybe it would be great for the other Council Members to go down there.

Mayor Jordan: I'm very familiar with it.

Council Member Bunch: I've been down there before. When this came up on our agenda, I drove by there. People were backed out on the street to unload things. I know it's used a lot.

Council Member Petty: Jonathan, did I read correctly that you didn't find the expansion incompatible? You found that it could be compatible in theory?

Jonathan Curth: Correct.

Council Member Petty: I heard the representative of the applicant say they did this expansion because of increased volume during the pandemic, but I saw in your aerial imagery that it looked like the expansion had taken place in 2012.

Jonathan Curth: That is correct. That's why staff was unable to support this. If this was truly a recent event that remedial action could be easily taken, we may have been more amenable to supporting it as staff. The business violated its Conditional Use Permit within a handful of years of being granted and continued to do so over the intervening decade. It gave us significant pause and demonstrated to us there was a fairly lengthy pattern of non-compliance.

Council Member Petty: I see your point. I want to ask you about the site improvement plan review or the condition that they needed to submit a site improvement plan of the original 2008 permit. Let's say it hadn't happened this way and they had filed to expand the permit through the normal way of doing things and everything was in order. What are the things you would expect to review in that site improvement plan that could result in development components that would be for the public interest we usually review with other site improvement plans?

Jonathan Curth: As far as a typical development review and be subject to any tree preservation standards if they removed any trees when they expanded, any imperviousness they put down, which I heard the applicant say they replaced large areas of dirt and compacting gravel can have a comparable impact to impervious surfaces like asphalt or concrete. There are stormwater considerations and tree preservation considerations. There's a lot of atypical traffic and it sounds

like the business doesn't have any control over that. It's a concern when traffic spills out into a street. It's a concern when 18-wheelers are parked on top of sidewalks. It's very visible from Walker Park and a lot of people consider that a nuisance. It may be appropriate to have a height standard for screening.

Council Member Petty stated he doesn't feel they've been reminded enough that this parcel abuts Walker Park to the West and abuts one of our important creek systems, which makes the drainage and tree preservation review all the more important. He stated we issued a permit in 2008 and it was flouted and ignored. He stated let's say it was an honest mistake, but we are now eight years later since our first evidence of aerial imagery shows they expanded it without a permit. He stated the applicant today is telling us they only expanded it in 2020 because of COVID. He stated he feels like they are being lied too. He stated the actions that have been taken in the last couple of weeks are a scramble to generate goodwill with this Council to get this expansion to be run through. He stated maybe this business would be more at home in an industrial area where these kinds of concerns wouldn't be such high concern. He stated this Conditional Use Permit we talk about revoking and hurting the business, but the Conditional Use Permit is about the land and this is important land. He stated we try to protect our ecosystem services when we have very important land. He stated his cause for concern is with the way this item has been presented by the applicant and in the history going back almost a decade. He stated if it were me, I'd be looking for another place to locate in our Industrial Park.

Mayor Jordan: Do we have motion?

City Attorney Kit Williams: There would need to be a motion to table if that's what the City Council wants to do.

Council Member Petty: I move to revoke the Conditional Use Permit at the end of the calendar year. This will give them plenty of time to find a new site.

City Attorney Kit Williams: You are doing a motion to approve the appeal and then change it so that the Conditional Use is good for one year? Is that what your motion is?

Council Member Petty: However, you need to rephrase it, as a parliamentarian is fine with me.

Council Member Scroggin: Is that at the end of the year or a year?

Council Member Petty: I'll take advice.

Council Member Petty moved to revoke the Conditional Use Permit at end of year. The motion died due to a lack of a second

Council Member Hertzberg moved to table the resolution until the September 21, 2021 City Council meeting. Council Member Turk seconded the motion. Upon roll call the motion passed 7-1. Council Members Gutierrez, Jones, Kinion, Scroggin, Bunch, Turk and Hertzberg voting yes. Council Member Petty voting no.

This resolution was tabled until the September 21, 2021 City Council meeting.

Announcements:

Susan Norton, Chief of Staff: The Fayetteville Vaccination Incentive Program was launched last week. The Vaccination Incentive Program offers a one-time payment for individuals living or working in Fayetteville who become fully vaccinated against COVID-19, beginning August 17th through October 15th. Fully vaccinated persons must have received a second dose of Pfizer or Moderna or one dose of Johnson & Johnson within the eligibility period. The last day to apply for the \$100 incentive is November 1, 2021. All the details are on the website, thank you.

City Council Agenda Session Presentations:

Sales Tax Report by Paul Becker

Energy Report by Peter Nierengarten

Centennial Park Update – Experience Fayetteville and Trailblazers

Adjournment: 10:23 PM


Lionel Jordan, Mayor


Kara Paxton, City Clerk Treasurer

