

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 21, 2021**

A meeting of the Fayetteville City Council was held on September 21, 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 D'Andre Jones, Mark Kinion, Sloan Scroggin, Sarah Bunch and Teresa Turk joined the meeting via online using a video conferencing service called Zoom.

Mayor Lioneld Jordan, Council Member Holly Hertzberg, City Attorney Kit Williams, City Clerk Treasurer Kara Paxton, Communications & Marketing Director Lisa Thurber, 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.

Absent: Council Member Sonia Gutierrez and Council Member Matthew Petty.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

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

Agenda Additions: None

Consent:

Approval of the August 24, 2021 Special City Council Meeting Minutes and the September 7, 2021 City Council Meeting Minutes.

APPROVED

Additional Jet Fuel Purchase: A resolution to approve a budget adjustment in the amount of \$413,169.00 to appropriate additional funding for the purchase of jet fuel through the end of 2021.

Resolution 227-21 as recorded in the office of the City Clerk

Federal Aviation Administration (FAA) Grant: A resolution to authorize the Mayor to sign a construction contract with Emery Sapp & Sons, Inc. in the amount of \$5,565,491.44 for the Runway Pavement and Lighting Rehabilitation Project at Drake Field, to authorize the Mayor to execute Task Order #3 with Garver, LLC in the amount of \$235,000.00 for construction phase services, to approve a project contingency in the amount of \$613,585.44, and to approve a budget adjustment.

Resolution 228-21 as recorded in the office of the City Clerk

80/20 Arkansas Department of Aeronautics Grant: A resolution to authorize the application for an 80/20 Arkansas Department of Aeronautics grant in the amount of \$352,181.75 to fund the rehabilitation of the fuel farm.

Resolution 229-21 as recorded in the office of the City Clerk

State Drug Crime Enforcement and Prosecution Grant: A resolution to authorize acceptance of a State Drug Crime Enforcement and Prosecution Grant for state funding of the Fourth Judicial District Drug Task Force in the amount of \$91,319.00, and to authorize Mayor Jordan to sign all necessary documents to receive the grant funds.

Resolution 230-21 as recorded in the office of the City Clerk

Ozarks Electric Cooperative Corporation and Ozarks Go, LLC: A resolution to authorize Mayor Jordan to convey a 2,494 square foot general underground utility easement to Ozarks Electric Cooperative Corporation and Ozarks Go, LLC to provide electrical and data service across the western side of Centennial Park.

Resolution 231-21 as recorded in the office of the City Clerk

Purchase of New Vehicles: A resolution to authorize the use of existing cooperative purchasing agreements or bids through the Arkansas Office of State Procurement, City of Fayetteville

Purchasing Division, or Sourcewell, as well as local dealer matched pricing, for the purchase of new vehicles and options on an as needed basis, and to approve a budget adjustment.

Resolution 232-21 as recorded in the office of the City Clerk

Council Member Kinion moved to accept the Consent Agenda as read. Council Member Bunch seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Unfinished Business:

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 King, Jr. 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 stated at the previous meeting, the Council left it on a reading because the applicant was not able to attend the meeting. He stated staff is recommending denial of the request. He stated the Planning Commission forwarded it recommending approval.

Mayor Jordan: Staff does not recommend the rezoning?

Jonathan Curth: Yes.

Jellian Aponte, Applicant gave a brief description of her rezoning request.

Mayor Jordan: Jonathan, could you explain why the staff did not support this?

Jonathan Curth: What it came down to was that the property that's being proposed to be rezoned is fully encumbered by floodplain. Despite the fact that Fayetteville does indeed have some fairly robust standards for floodplain development, we did not feel it was appropriate to even set the land use entitlement stage to allow development there, even under our existing standards. It's at the headwaters of a protected stream and it's in FEMA floodplain. We did not feel it was appropriate and perhaps cannot even be developed sensitively with those standards in place.

Council Member Turk: At some point, we've got to say no more development within the flood zone. This is at the headwaters of a stream. Climate change is among us. We're seeing it every single day with huge storm events and with larger hurricanes than we've ever seen. I will not be supporting this. As Jonathan said, we have some robust standards. I don't think those standards are strong enough. We have to start planning more diligently for the climate change that's going to be upon us before we know it.

Council Member Scroggin: I'm against this. If we are going to be putting high density, which we need in the city, in floodplains, then we need a plan. This would need to be a PZD for me if we're going to put it in the floodplain.

Council Member Kinion: I cannot support this. Being at the headwaters of the White River is important to protect that stream, the best we can. This is some important property that helps protect that. At some point we have to recognize that if it's in a floodplain, it might be more hazardous now than it was in the past, due to climate change and we're seeing it. I support what the city staff put forward.

Council Member Turk 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 Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 0-6. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting no. Council Members Petty and Gutierrez were absent.

This item 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. *At the September 7, 2021 City Council meeting this item was tabled for two weeks.*

Jonathan Curth, Development Services Director gave a brief description of the resolution. He informed the Council that the applicant has asked for this item to be tabled for the next two weeks.

Council Member Scroggin: I've been driving in the area. There was some discussion about how this looks. Most of that road looks about the same. I don't know if we want to discuss the whole road in general, because there's dump trucks across the street. The whole area looks pretty rough. There was a Council Member at the last meeting who mentioned possibly talking about them going to the industrial area. That whole street looks about like that. I'm wondering if we can have that part of the conversation if we are going to table it. I don't want to punish them if they look kind of rough and the whole street looks pretty close to the same.

Council Member Bunch: Someone said looking at the entire street, this seemed to be an appropriate use for this area because there were a lot of other uses down there like with the dump trucks and a tire repair shop. As far as the look of it, it looked like it fit with the neighborhood.

Jonathan Curth: I believe Council Member Petty asked if it was staff's assertion that it was compatible or not. We feel it is compatible with the way South School currently looks in the area. Staff was not able to support expanding the Conditional Use Permit because the business had been operating outside of its allowances for almost a decade. We felt it was appropriate for them to demonstrate they could operate within the allowances of their Conditional Use Permit, first.

Council Member Scroggin moved to table the resolution to the October 5, 2021 City Council meeting. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

This resolution was tabled to the October 5, 2021 City Council meeting.

New Business:

Brycer, LLC: An ordinance to waive competitive bidding and authorize Mayor Jordan to sign a three-year contract with Brycer, LLC to provide third party reporting services for fire protection systems in the City of Fayetteville, pursuant to §94.06 of the Fayetteville City Code.

City Attorney Kit Williams read the ordinance.

Brad Hardin, Fire Chief gave a brief description of the ordinance. He stated there is no cost to the city. He stated this fee is already charged by most of our safety vendors that do the inspections. He stated we are wanting to enter into an exclusive contract with Brycer, which offers the best program.

Council Member Turk moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Turk moved to suspend the rules and go to the third and final reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6477 as Recorded in the office of the City Clerk

RZN-2021-059 (740 W. Stone St./Apogee Properties): An ordinance to rezone that property described in rezoning petition RZN 21-059 located at 740 West Stone Street for approximately 0.24 acres from RMF-40, Residential Multi Family, 40 units per acre to RI-U, Residential Intermediate-Urban.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff supports the request. He stated the Planning Commission recommended approval unanimously to forward to City Council. He stated staff has not received any public comments.

Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

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 Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6478 as Recorded in the office of the City Clerk

RZN-2021-060 (699 W. Whillock St./Foster): An ordinance to rezone that property described in rezoning petition RZN 21-060 located at 699 West Whillock Street for approximately 1.43 acres from RSF-4, Residential Single Family, 4 units per acre to RSF-8, Residential Single Family, 8 units per acre.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff supports the request. He stated the Planning Commission voted 8 to 0 to forward it to City Council. He stated staff has not received any public comments.

Council Member Hertzberg moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council

Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Hertzberg moved to suspend the rules and go to the third and final reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6479 as Recorded in the office of the City Clerk

RZN-2021-061 (1428 E. Huntsville Rd./Lasey): An ordinance to rezone that property described in rezoning petition RZN 21-061 located at 1428 East Huntsville Road for approximately 1.85 acres from RSF-4, Residential Single Family, 4 units per acre to RI-U, Residential Intermediate-Urban.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff supports the request. He stated the Planning Commission voted 8 to 0 to forward it to City Council. He stated staff received some public comments, but the statements were not in opposition or support.

Chris Bakunas, McClelland Consulting Engineers stated he was available for questions.

There was a brief discussion about the City Council meeting being a limited public forum and that citizens can only speak to the Agenda item that is before the Council and not on something that's not before the Council.

Council Member Hertzberg moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Jones moved to suspend the rules and go to the third and final reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0.

Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6480 as Recorded in the office of the City Clerk

RZN-2021-062 (West of 1000 Block S. Hollywood Ave./Fayetteville Associates, LTD.): An ordinance to rezone that property described in rezoning petition RZN 21-062 located west of the 1000 Block South Hollywood Avenue for approximately 0.83 acres from C-2, Thoroughfare Commercial to RI-U, Residential Intermediate-Urban.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff supports the request. He stated the Planning Commission voted 7 to 0 to forward it to City Council. He stated staff has not received any public comments.

Chris Bakunas, McClelland Consulting Engineers stated he was available for questions.

Council Member Turk: This is such an unusual shaped property. To the south, you have the bike trail. To the north, there is a road that comes in there, but this is such a long slender piece of property. How would that be developed? We don't have a trail overlay plan. Jonathan, would access be given onto the trail to cross the trail potentially, if we rezone this?

Jonathan Curth: Legally, the property has some right to access any adjoining street and that does include Best Way Street across the trail, unless there was some agreement as a part of right-of-way dedication for the trail, which I'm not aware of and could not find when I was looking into that exact question. That's the only instance where we can really restrict those crossings of trails. Otherwise, the alternative would be to go north to Parnell Drive.

Council Member Hertzberg moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Hertzberg moved to suspend the rules and go to the third and final reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council

Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Turk: I bike through there all the time. That's a nice stretch of the trail and is not broken up with cars accessing the trail on the north side. We are going to have more issues like this, where you're going to have potential breaks and access issues that may cause safety hazards. We are putting a lot of money into our trail system. I would encourage staff to work on a trail overlay plan, so we have some clear rules and guidance about issues that are going to come up more frequently than they have in the past.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6481 as Recorded in the office of the City Clerk

VAC-2021-023 (793 W. Dickson St./Whiteside St. R-O-W): An ordinance to approve VAC 21-023 for property located at 793 West Dickson Street to vacate portions of alley right-of-way and street right-of-way.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff has received all the necessary consent documents from the franchise utilities and our city departments to consent to the right-of-way being vacated. He stated staff supports the request. He stated the Planning Commission recommended in favor to forward it to City Council.

Jay Young, Applicant for DCI stated he was available for questions.

Council Member Hertzberg moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Hertzberg moved to suspend the rules and go to the third and final reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6482 as Recorded in the office of the City Clerk

VAC-2021-024 (959 E. Dogwood Ln./Mosley): An ordinance to approve VAC 21-024 for property located at 959 East Dogwood Lane 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 all the relevant utilities have signed off. He stated the one condition of approval is if any damage or relocation of existing utilities in the easement are at the property owner's expense. He stated staff supports the request.

Alan Reid, Applicant stated he concurred with staff reports and was available for questions.

Council Member Hertzberg: Do we need to add anything, so the conditions are applied, or does it automatically apply if we pass it?

City Attorney Kit Williams: This is a standard condition of approval. If there's any problems that come about because of this vacation, the developer or owner is asked that it will be the developers or owner's responsibility to pay for any damage, rather than someone else, like the city.

Mayor Jordan: I assume the owner understands that?

City Attorney Kit Williams: Oh, yeah, I'm sure.

Council Member Hertzberg moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Hertzberg moved to suspend the rules and go to the third and final reading. Council Member Jones seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6483 as Recorded in the office of the City Clerk

VAC-2021-025 (South of 240 E. Rock St./Flowers-Davis): An ordinance to approve VAC 21-025 for property located south of 240 East Rock Street to vacate a portion of a water/sewer right of way grant.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated it's a water and sewer easement, so the consent of the utility department was the only one necessary and they have provided that. He stated staff is recommending approval of the request with the standard easement vacation condition of approval that any damage and relocation will be at the developer's expense.

Tommy Flowers-Davis, Applicant stated she was available for questions.

Council Member Jones moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Jones moved to suspend the rules and go to the third and final reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6484 as Recorded in the office of the City Clerk

ANX-2021-002 (1287 N. 54th St./Northstar Construction): An ordinance to annex that property described in annexation petition ANX 21-002 submitted by Kutak Rock, LLC on behalf of Northstar Construction for property located at 1287 North 54th Street containing approximately 10.25 acres.

City Attorney Kit Williams read the ordinance.

Jonathan Curth, Development Services Director gave a brief description of the ordinance. He stated staff did find the annexation to be in the city's interests and is recommending approval. He stated the Planning Commission unanimously agreed, focusing primarily on the annexation will create a much more logical boundary for the city to serve.

J.R. Carroll, Applicant stated this is a peninsula of county property that is halfway between the city limits to the west and 49. He stated it has approximately 20 acres of RU that abuts to the east and 40 acres of RI-12 that abuts to the west. He stated it streamlines the city limits by annexing the property and prevents a peninsula, which the city does not have any control. He stated there was no public criticism or comments regarding the annexation.

Council Member Hertzberg: It's very practical and makes a lot of sense. It's in my Ward, so I will be supporting this.

Council Member Jones moved to suspend the rules and go to the second reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Council Member Jones moved to suspend the rules and go to the third and final reading. Council Member Hertzberg seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Scroggin, Bunch, Turk, Hertzberg, and Jones voting yes. Council Members Petty and Gutierrez were absent.

Ordinance 6485 as Recorded in the office of the City Clerk

2021 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2021 fixing the rate thereof at 2.3 mills for General Fund Operations, 0.4 Mills for the Firemen's Pension and Relief Fund, 0.4 Mills for the Policemen's Pension and Relief Fund, 2.5 mills for Fayetteville Public Library Operations and 1.2 mills for the Fayetteville Public Library Expansion; and certifying the same to the County Clerk of Washington County, Arkansas.

City Attorney Kit Williams read the ordinance.

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

Mayor Jordan: This is merely the extension of the present tax that exists right now. Correct?

Paul Becker: That's correct.

Mayor Jordan: The decision before the Council is whether they want to increase the tax or leave it the same. Correct?

Paul Becker: This is not an increase in taxes. It's the same taxes we had last year.

Council Member Turk: I haven't seen much press about this item. It's a tax issue and involves money for everybody within the city. I would like to leave this on the first reading, so citizens have enough information to know it's on our agenda, even though it's keeping the tax at the same rate.

Mayor Jordan: You would like to hold it for two weeks?

Council Member Hertzberg: I would support that.

Mayor Jordan: We have to have something decided on the tax by the second meeting of October. Paul, is that correct?

Paul Becker: That is correct. The law reads that we have to have it to Washington County by the end of our final meeting in October. We can delay it for two weeks.

Mayor Jordan: We have to make a decision before the end of October. If we don't do it the next meeting, then I would have to probably call a Special City Council meeting.

This ordinance was left on the First Reading.

Amend §71.065 General Speed Restrictions: An ordinance to amend §71.065 **General Speed Restrictions** of the Fayetteville City Code to establish a default speed limit of 20 miles per hour in residential and business districts.

City Attorney Kit Williams read the ordinance.

Chris Brown, Public Works Director gave a brief description of the ordinance. He stated the Transportation Committee vote 4 to 0 to recommend approval of the ordinance. He spoke about the costs associated with the item.

Council Member Turk: Like the previous item we discussed, this affects everybody in Fayetteville. Most of the complaints I get are about people speeding. I feel certain that most people would support lowering the speed limit. However, we should give the public an opportunity to weigh in on this a little bit more than we have. We didn't have anybody speak up tonight. I'd like to hold this for more public notification and input.

Mayor Jordan: This went through the Transportation Committee?

Council Member Hertzberg: Yes, Mayor. It went through the Transportation Committee and we recommended it to go to the City Council.

Mayor Jordan: Could I ask some of the other Council Members on the Transportation Committee what was the discussion?

Council Member Bunch: I believe it was unanimous.

Council Member Hertzberg: It was unanimous.

Mayor Jordan: The Transportation Committee, as a whole, did not have any issues with this?

Council Member Bunch: No, we didn't have any issues with it.

Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion failed 4-2. Council Members Scroggin, Bunch, Hertzberg, and Jones voting yes. Council Members Kinion and Turk voting no. Council Members Petty and Gutierrez were absent.

This ordinance was left on the First Reading.

3V Development, LLC ADM 21-0057 Appeal: A resolution to grant the appeal of 3V Development, LLC for ADM 21-0057 and determine that requiring the construction of a sidewalk that conforms to §171.13 of the Unified Development Code along the properties located at 743, 755, and 769 South Washington Avenue exceeds the rough proportionality of the impact of the development.

Jonathan Ely, Development & Construction Manager gave a brief description of the resolution. He stated staff is recommending denial of this appeal. He stated the Planning Commission voted to deny it. He stated there was a little bit of public comment in support of city requirements for sidewalks, but no other comment has been received.

Z. Niederman, Applicant briefly spoke about projects he has done in the neighborhood. He spoke about attainable housing. He spoke about City Plan 2040. He stated great streets, not sidewalks build community. He spoke about the city never providing any sort of individualized impact. He spoke about a tiered impact fee system.

Council Member Hertzberg: How would you address the concern about not meeting ADA guidelines or standards? How will you remedy that?

Z. Niederman: None of the other sidewalks section is ADA accessible. There's a new house proposed to be built directly next to it. It's a single family house. That sidewalk is not going to change the plan. It's true we could build it, but none of the other section would be handicapped

accessible. Given there's already a sidewalk on that street, there's no capital plan to build the rest of the street. The city has so many connections it needs to build, and it has not shown that whole section is a priority because there's already an existing sidewalk there.

Council Member Scroggin: Do we know how much we've spent building new sidewalks in the last two years?

Chris Brown, Public Works Director: It's around several hundred thousand dollars, just for materials. We've also allocated about \$4 million in the bond program, specifically for sidewalks in the Downtown and other areas. It's several hundred thousand dollars per year, which adds up into millions of dollars over the past several years.

Tommy Flowers-Davis, 106 North Willow: If we're spending all these dollars on sidewalks in the city, how are they allocated according to where the money is being spent? A lot of development is going on in South Fayetteville, but I'm not seeing the infrastructure with sidewalks happening in that area. Is there a plan or budget to determine how those monies are spent for sidewalks?

Mayor Jordan: It goes to the Transportation Committee, where a lot of these sidewalks are determined where they are going to be located.

Chris Brown: Yes, Mayor. We have a master list of requests and staff generated locations where we'd like to install sidewalks. We have a scoring system we developed as part of the Mobility Plan. It looks at things like density of people and jobs, proximity to schools and a whole list of things we look at. We aggregate those scores and then develop priorities based on the scoring system. Since we've started that system, we've seen more projects in more of the densely populated areas, the Downtown areas and maybe less in some of the outer areas of town. That system has been working well. We have many miles of streets and sometimes it may not look like we're putting many sidewalks in, compared to the number of streets we have, that don't have sidewalks, but we do have a significant program and are continuing to work on that every year. If there's a location anybody's looking for, we put that on the list, we score it and then we develop our work plan each year. It goes to the Transportation Committee and ultimately to the City Council to be approved as a work plan each year.

City Attorney Kit Williams: I want to make sure the City Council realizes what the sole issue is today. It is whether or not the requirement that is in the City Code, passed by the City Council, and also incorporating the Master Street Plan and its requirement for sidewalks. That is what the city staff has to follow, whether that is more than the rough proportionality of the impact of Mr. Niederman's development, which does have six residential structures, where there was one. It has many more bedrooms. The test the City Council must look for is a very general test. The Supreme Court was very clear when they first came forward with this, to put restrictions on the cities. The Dolan vs City of Tigard, which was a fundamental case set forth by the Supreme Court, there was an argument the court should have a very strong and rigid standard, like the State of Illinois had. That was a standard if the local government cannot demonstrate that its requirement is directly proportional to the property, to a specifically created need, the exaction becomes a confiscation of private property. The court looked at that, and they specifically rejected that. They said, we do not think the Federal Constitution requires such exacting scrutiny. Then it came up with its test, which

no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and the extent of the impact of the proposed development. This individualized determination means the Planning Commission and now the City Council need to look at the actual development that's under consideration. They must look at what has happened on this site. This site had a single family home, and now it has two single family homes, two ADU's that are basically almost the same size and a duplex. It has six units, where there was one before. Does that mean we have to have people stand outside and see people walking back and forth using the sidewalk? Obviously that kind of strict scrutiny is not needed and would be impossible because this is generally applied before anybody moves in. You look at historical situations and use your common sense. If it has that many more residents at this site, many of those residents are probably going to use the sidewalk. It'll be an impact on the city's sidewalk infrastructure needs. Therefore, if you have that large of increase of the density of a particular project with more housing and more bedrooms, then I don't think you have to be more individualized in that. You have to look at the particular development. That's what they meant by individualized determination. The city couldn't just say every time you have a project, you have got to do this without looking at what the project does. You have to look at the project, especially when it has been challenged and evaluate whether or not what the city is asking for is too much, which is more than the rough proportionality of the impact of that particular development on the infrastructure under consideration and this time it is sidewalks. The City Council has made the determination in passing the Unified Development Code and in passing the 2040 Plan that they want a sidewalk that is away from the street, as opposed to the old ways, where we built them right on the curb. The City Council decided they did not want it on the curb and instead they wanted an ADA compliant sidewalk built away from the street, for more traffic safety and pedestrian safety. That is what staff and the Council must continue to evaluate until you change the rules. If you want to eliminate the requirement to have sidewalks, the City Council can do that. Regarding State Law, we are in compliance with the Arkansas statutes. We have great powers over the sidewalks. When we quote the Supreme Court, it is correct. You might find quotes from other states, like Connecticut, but they're interpreting their own State law, not the United States constitution. Even if a state is interpreting the United States constitution, the test does not change until the U.S. Supreme Court changes the test and they have not done that. You will need to examine your development rules if you believe this particular development has been asked to do too much in this case.

Mayor Jordan: You will either vote for the appeal or against it.

There was a brief conversation about the voting process of an appeal.

Council Member Scroggin: I'll be against the appeal. We need sidewalks in the city. This is a reasonable place to put sidewalks. The city has shown they're spending money to put sidewalks here and in other places. This meets the rough proportionality. This is around his projects and we're not asking him to sidewalk to his projects or to a school or anything of that nature. I hope we continue to keep the requirement. This is a small cost. We've probably spent more money preparing the documents for this discussion than the sidewalk is going to cost.

Council Member Bunch stated she appreciated Mr. Niederman's concerns and his evaluation of the situation. She spoke about a citizen who attended a Transportation Committee meeting in the

past who describe how unsafe the street was because someone was using a wheelchair on the street because there were no sidewalks to use. She stated she was not in favor of the appeal.

Council Member Turk: This sets a bad precedent. Mr. Ely showed us all the other developments that had put in sidewalks recently. If we make an exception to this, then how do those developers that complied with our code and our Master Plan feel. I will be voting against this.

Council Member Bunch moved to approve the resolution. Council Member Scroggin seconded the motion. Upon roll call the resolution failed 1-5. Council Member Jones voting yes. Council Members Kinion, Scroggin, Bunch, Turk, and Hertzberg voting no. Council Members Petty and Gutierrez were absent.

The resolution failed.

Announcements:

Lisa Thurber, Communications & Marketing Director spoke about the city's Bulky Waste Cleanup dates. She spoke about the Vaccine Incentive Program.

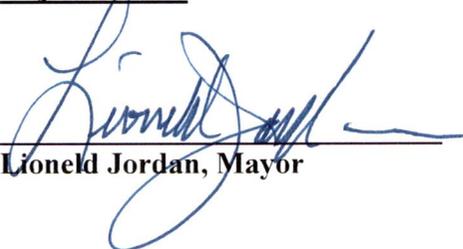
Kara Paxton, City Clerk Treasurer: I'm proud to announce that two of the City Clerk team members have been selected to receive scholarships to attend this year's training through the Arkansas Municipal Clerks Institute. These scholarships are \$200 apiece, which is a phenomenal scholarship to be able to receive through our state. By attending this annual training, they increase their knowledge regarding records retention, the Freedom of Information Act and many other topics concerning public service. I am grateful for my entire team and their eagerness to attend trainings that increase their skills in order to better assist the City of Fayetteville.

Mayor Jordan: Thank you and Congratulations.

City Council Agenda Session Presentations:

2020 Tax Levy Recommendation and 2021 General Fund Budget Discussion

Adjournment: 8:10 PM


Lioneld Jordan, Mayor


Kara Paxton, City Clerk Treasurer

