

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  
October 5, 2021**

**A meeting of the Fayetteville City Council was held on October 5, 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.**

**PRESENT: Council Members Matthew Petty, Sloan Scroggin, Sarah Bunch, Teresa Turk, Holly Hertzberg, D'Andre Jones, Mark Kinion, Mayor Lioneld Jordan, 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.**

**Council Member Petty arrived after Roll Call.**

**Absent: Council Member Sonia Gutierrez**

**Pledge of Allegiance**

**Mayor's Announcements, Proclamations and Recognitions: None**

**City Council Meeting Presentations, Reports, and Discussion Items:**

**Nominating Committee Report**

**Council Member Bunch** presented the Nominating Committee report and recommended the appointments as submitted.

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

### **Monthly Financial Report**

**Paul Becker**, Chief Financial Officer gave a summary of the Monthly Financial Report. He stated the city had a very good revenue month. He stated the General Fund was up 11% compared to budget. He stated all in all, we're seeing some pretty strong revenue for the year.

### **Agenda Additions:**

**Amend Rules of Order and Procedure:** A resolution to amend Rule A. 10. **Special Procedures During Pandemic Emergency of *The Rules of Order and Procedure of the Fayetteville City Council*** to authorize City Council Members to attend, speak and vote during City Council meetings by electronic means without being physically present.

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

***City Attorney Kit Williams read the resolution.***

**City Attorney Kit Williams:** This was brought forward by Council Member Jones.

**Council Member Jones:** Kit, thank you for working on this and for reminding us we could make recommendations to make these changes.

**Council Member Scroggin:** I hope we continue to allow citizens and residents to speak. I know that's not what we're voting on now, but we've heard voices in the last two years that we've never heard before. People call them outsiders and they're not outsiders, they just haven't had the ability to speak before.

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

***Resolution 233-21 as recorded in the office of the City Clerk***

**Amend the Sunset Clause of Ordinance 6465:** An ordinance to amend the Sunset Clause of Ordinance 6465 to extend the mask mandate.

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

*City Attorney Kit Williams read the ordinance*

**City Attorney Kit Williams:** This was sponsored by Council Member Petty.

**Council Member Petty** stated the purpose of this ordinance is to meet the intention of the original ordinance, which was to make sure this stayed top of mind for the Council and that we reconsider it when appropriate. He stated we don't want to have a mask mandate forever, so that's why the original ordinance was written the way it was to require us to review it at this time. He stated it's written to acknowledge and rely on the expertise of the City Board of Health. He stated we're close, but we haven't quite passed the threshold that City Board of Health recommends we pass in order to lift the mandate more completely, but it seems we're really close. He stated this removes the link to the Governor's Emergency Order and continues to rely upon the advice of the Board of Health.

**Council Member Scroggin:** If we pass this, does the Board of Health remove the mask mandate?

**City Attorney Kit Williams:** No, they give you advice, though. That's the way this particular ordinance was originally done. You would rely upon their advice and they'll be watching the situation. They'll also be considering advice from the CDC about when a mask mandate needs to be lifted. The jurisdiction still remains with the City Council to accept their advice or to use your own discretion if the CDC itself request the lifting of a mask mandate. We are relying upon the City Board of Health and their expertise.

**Council Member Scroggin:** I'm not happy about removing the Sunset Clause, without putting in something else, other than we remove it when we feel like removing it.

**Council Member Hertzberg:** Could we add a date for review, like a termination date of some sort?

**Mayor Jordan:** As the Council, you can add whatever amendment, you care to do.

**Council Member Hertzberg:** I would like to add a termination date or review date.

**Council Member Turk:** A friendly suggestion is that we review it every month, at the start of each month or the closest Council meeting to the first day of each month.

**Mayor Jordan:** I'm on the Health Board. They review it every week about the numbers and what the percentages are. A termination date does not rattle me one way or the other.

**Council Member Hertzberg:** I would like to suggest that we could extend it every month and vote on it again.

**Council Member Scroggin:** I was thinking more like six months, so people have a date and don't think we're doing this forever. This way people know and then we can remove it early if need be.

**Mayor Jordan:** When the Board of Health thinks it's okay to lift the mask mandate, I or somebody will bring something back to you all that says the Board of Health has decided that it's time to end the mask mandate.

**City Attorney Kit Williams:** Every Council Member by themselves can bring an ordinance to the City Council. Anytime you want to bring an ordinance to the City Council at a regular meeting, you can do that. The ordinance can say, ending the mask mandate. You don't need to put in a review thing every time. You can if you want too, but you have that power right now.

**Mayor Jordan:** If in two weeks the numbers are where the Board of Health feel comfortable, I will bring it to Council and say, it's time.

**Council Member Bunch:** With that in mind, do you want to continue with a review monthly?

**Council Member Turk:** It would be very helpful, if we don't get those numbers down, but at least we have a check in time. That way we can get an update. It would be nice from the Board of Health and decide at that point. If they come back earlier and say, let's terminate the mask mandate, then we can do that earlier.

**Council Member Hertzberg:** I would be in support of that.

**Council Member Petty** stated it's appropriate to get a report from the Board of Health with some frequency. He stated he is reluctant to put this particular action and law back on the agenda on a regular basis. He stated there has been so much politics be made out of public health issues for the last year and a half. He stated the whole point of the Board of Health writing the law to rely on their advice, is to take our politics out of it. He spoke about making it strictly about the science. He stated the Board of Health is reviewing this every single week. He stated there's going to be immediate legislation, as soon as they say we've crossed the threshold and we will be ready to modify it. He stated we need to rely on the Board of Health's advice and wait to have a discussion with a vote, until we get their advice back.

**Council Member Kinion** stated he agrees with Council Member Petty. He stated we don't need to discuss this to death, we just need to be responsible as we move forward to review it and we do have the Board of Health, which effectively can give us information we need anytime. He stated we already have the authority to amend it at any time or to get rid of it. He stated it would allow us to consider the facts as they're presented to us along the way, without opening a can of worms every month or week. He stated the way the ordinance is crafted right now is that we have the opportunity to manage it without escalating the emotions behind it.

**Council Member Turk:** I have a request that at each Council meeting we have the Board of Health give us an update. Would that be available?

**Council Member Petty:** I certainly support that. I would leave it to the Mayor and staff to work out the details of that report, whether that's better at the Agenda Session or full Council meeting.

**Mayor Jordan:** The Agenda Session would be a more proper place to do that.

**Council Member Turk:** That would be very helpful, and it shows our citizens we're staying on top of this. We would like to end the mask mandate and have our numbers down.

**Mayor Jordan:** We can have the Board of Health officer come in every week at the Agenda Session to give you a report.

**Council Member Hertzberg:** If we don't review this every month, I would like to suggest we hold this until the 12<sup>th</sup>, since it doesn't expire until the 14<sup>th</sup>. I would like to call a Special Council meeting.

**Council Member Scroggin:** I don't think we need a Special Council meeting. I'm good with it being at the Agenda Session for the Board of Health to come. I trust the Mayor's office to make that happen.

**Mayor Jordan:** We'll make it happen. I will get you a report from the Health Board Officer every week if that is what you all want. Those meetings are open to the public.

**Council Member Bunch:** I'm very comfortable with that and it's appropriate.

**Council Member Kinion:** I've been contacted by people that think if we do it this way or similar to this, that we're not allowing public input. Anyone can contact any of us, at any time through our email or call us. There would be an opportunity to come in front of the City Council if you needed too and if your Council Member would be so kind to bring something forward, so it could be discussed. That is a way for representation from the people. I am available to talk to anyone about it.

**Council Member Bunch:** In addition to our City Council emails, phones, a form they can fill out online and they can call the Mayor's office or Clerk's office. They will give us an email showing what someone said. What is that form called that people can do?

**Kara Paxton, City Clerk Treasurer:** That can be located on the city's website. If you navigate to the main Fayetteville website and you go to, how do I, it's labeled as, give public comment for an upcoming agenda item. It's a limited comment form. It's only one way, which means when you provide your comment, it goes directly to the Mayor, Clerk's Office, City Attorney and the Council Members.

**Council Member Bunch:** Thank you. So, there's all sorts of ways that people can contact us and have their voices heard.

**Council Member Hertzberg:** Last time we held the speed limit ordinance so we could get public comment on that. I feel like this is even more important than that. I really would appreciate if we would be able to hold this for public comment.

**City Attorney Kit Williams:** The Council needs to be aware and I did put it in my memo that the current mask mandate ordinance will automatically terminate unless an ordinance is passed by the City Council within 14 days of the date that the Governor's proclamation expired. I think it was September 27th, which means if an ordinance is not passed by Monday, the mask mandate ordinance will expire.

**Council Member Hertzberg moved to table the item and schedule a Special City Council meeting on October 11, 2021. The motion died due to a lack of a second.**

**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 passed 6-1. Council Members Petty, Scroggin, Bunch, Turk, Jones and Kinion voting yes. Council Member Hertzberg voting no. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Mayor Jordan:** Council Member Hertzberg, I will be back Monday and the ordinance does not expire until Tuesday. Is that correct, Kit?

**City Attorney Kit Williams:** The way I count it, that is correct Mayor. It always makes me nervous if we're trying to do something the very last day and someone might disagree with how I counted the dates.

**Council Member Kinion:** I really am struggling that we walked this on. We're not having open public discussion on it, because no one knows about it. We should consider having a Special Council meeting to let people have time to give us input. Otherwise, we just walked it on, and no one saw it. I don't feel comfortable with that. I would support having a Special meeting on Monday. That would be a responsible way to allow individuals to voice their opinion.

There was a brief discussion about when people would be available for a Special City Council meeting.

**Council Member Petty:** How many votes does it take to table this and move it to the Special meeting?

**City Attorney Kit Williams:** I think a motion to table an item is always appropriate and can be made. This is an appropriate procedure at this point.

**Council Member Petty:** How many of us would it take to pass this ordinance?

**City Attorney Kit Williams:** It takes five affirmative votes to pass an ordinance. It takes six affirmative votes to suspend the rules and go to the final reading.

**Council Member Petty:** Are you recommending the passage of an Emergency Clause due to the timing with the Governor's order and its expiration?

**City Attorney Kit Williams:** It does not need to have an Emergency Clause, because the way I wrote the Sunset Clause, it just said the ordinance had to be passed. It took a while for this ordinance to go into effect, because it had a penalty provision. It then has to be published. All this one has to do is be passed.

**Council Member Petty** stated it's not my intention to call the intentions of the motion into question. He stated he believes in public input. He stated pushing this to a Special meeting, given potential absences, endangers the consensus of the vote, which is not democratic. He stated there comes a point when we've had enough public input. He stated when we talk about how to make good decisions, whether it's in business or organizing or in politics, if we have a philosophy that we have to get all of the input every last bit of it, it's often too late to make the best decision and to have the best outcome. He stated the careful part is trying to figure out when we've got enough input to make a good decision. He stated they have had enough input and can't imagine there is going to be a new argument that compels him to change his mind. He stated he won't support going to another meeting.

**Council Member Scroggin:** If there was something so groundbreaking between now and then that we didn't know about mask before today, I would trust that the Mayor would have an emergency meeting anyway. We've been in this for two years. We know what mask do, we know what vaccines do, and we know what the virus does. There's nothing to learn other than obstruction.

**Council Member Jones** stated we don't know what Friday will could hold and we run the risk of not being able to pass the ordinance. He stated it's not good to wait and they need to decide tonight. He stated the public have plenty of opportunity to express their concerns, and it makes sense to move forward.

**Council Member Hertzberg:** I want to mention that this was not the first Special meeting on a Friday regarding this topic.

**Council Member Kinion:** I was going to mention that, too. I was elected to represent an opinion, but I always have to have an open mind until I've heard what people have to say in the community. I've always made that commitment to the community and to the neighborhoods. Even though I have a lot of information and I have an opinion, I would rather have input from our community. There might be some compelling argument out there that we don't know. We haven't given our community the opportunity to present a compelling argument. It's necessary to have a Special meeting.

**Council Member Jones:** I'm very engaged with my constituents, regardless the matter, but if we're going to have a conversation on Friday and we're going to include someone, then we need to include the Board of Health. Do we have time to include all of these groups and what happens on Friday if we have a meeting, and then don't have a quorum? I don't want to miss the opportunity to protect the health and safety of Fayetteville. We have a duty to make the decision tonight.

**Council Member Turk** stated we're good about listening to all of our folks and making sure their voices are heard. She stated she is uncomfortable not hearing from the public about extending the mask mandate, but we've got logistical concerns. She stated if there's ever a time to not hear from the public, although we've heard from them in previous meetings, she'd rather be cautious than a little reckless. She stated she is going to go against the way she usually conducts herself and support the mask mandate tonight.

**Council Member Kinion** moved to table the item and schedule a Special City Council meeting on October 8, 2021. **Council Member Hertzberg** seconded the motion. Upon roll call the motion failed 2-5. **Council Members Hertzberg and Kinion** voting yes. **Council Members Petty, Scroggin, Bunch, Turk, and Jones** voting no. **Council Member Gutierrez** was absent.

**Council Member Scroggin:** If we do not suspend the rules and vote for this tonight, the mask mandate dies, unless we have a meeting between now and Tuesday?

**City Attorney Kit Williams:** That is correct. We can't wait for a regular meeting and there would have to be a Special meeting. I would rather have it before Monday to make sure it would be within time.

**Council Member Scroggin** 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 6-2. **Council Members Petty, Scroggin, Bunch, Turk, and Jones** voting yes. **Mayor Jordan** voting yes. **Council Members Hertzberg and Kinion** voting no. **Council Member Gutierrez** was absent.

*City Attorney Kit Williams read the ordinance.*

**Council Member Kinion:** I am going to support this because it's necessary from a public health point of view, but I am doing it with resistance. We should have had more conversation with the community, but we don't have that opportunity. I don't want people to think I'm somehow waffling on a concept, because it's important to move forward while we have the opportunity, without the expiration of the ordinance.

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

*Ordinance 6486 as Recorded in the office of the City Clerk*

**Consent:**

**Approval of the September 14, 2021 Special City Council Meeting Minutes and September 21, 2021 City Council Meeting Minutes.**

***APPROVED***



**RFQ #20-01 Olsson Inc. Amendment:** A resolution to approve Amendment No. 1 to the Professional Engineering Services contract with Olsson, Inc. in the amount of \$5,519.00 for additional materials testing related to the construction of the new Police Headquarters.

***Resolution 234-21 as recorded in the office of the City Clerk***

**Flintco, LLC Change Order No. 5:** A resolution to approve Change Order No. 5 to the Construction Manager at Risk Contract with Flintco, LLC for the Police Headquarters project in the amount of \$3,320,439.00, and to approve a budget adjustment - 2019 Police Headquarters Bond Project.

***Resolution 235-21 as recorded in the office of the City Clerk***

**Nabholz Construction Corporation Change Order No. 7:** A resolution to approve Change Order No. 7 to the contract with Nabholz Construction Corporation in the amount of \$109,156.32 for water and sewer relocations along Gregg Avenue and in the Fay Jones Woods, and to approve a budget adjustment - 2019 Cultural Arts Corridor Bond Project.

***Resolution 236-21 as recorded in the office of the City Clerk***

**RFQ #21-01 Selection #8, McClelland Consulting Engineers, Inc.:** A resolution to approve a Professional Engineering Services agreement with McClelland Consulting Engineers, Inc., pursuant to RFQ #21-01 Selection 8, in an amount not to exceed \$85,160.00 for the design of a waterline upgrade along South School Avenue.

***Resolution 237-21 as recorded in the office of the City Clerk***

**RFQ #21-01 Selection #7, Olsson, Inc.:** A resolution to approve a Professional Engineering Services agreement with Olsson, Inc., pursuant to RFQ #21-01 Selection #7, in an amount not to exceed \$31,420.00 for the design of water service line replacements in Skyler Place Subdivision.

***Resolution 238-21 as recorded in the office of the City Clerk***

**Bid #21-63 Jack Tyler Engineering, Inc.:** A resolution to award Bid #21-63 and authorize the purchase of six (6) submersible mixers from Jack Tyler Engineering, Inc. in the total amount of \$220,384.02, plus applicable taxes and freight charges, for use at the Noland Water Resource Recovery Facility.

***Resolution 239-21 as recorded in the office of the City Clerk***

**Bid #21-69 Williams Tractor:** A resolution to award Bid #21-69 and authorize the purchase of an auto-loading hay trailer from Williams Tractor in the amount of \$66,980.00 plus applicable taxes

***Resolution 240-21 as recorded in the office of the City Clerk***

**2022 Selective Traffic Enforcement Program Grant:** A resolution to authorize acceptance of a 2022 Selective Traffic Enforcement Program grant in the amount of \$131,000.00, and to approve a budget adjustment.

***Resolution 241-21 as recorded in the office of the City Clerk***

**Big Bear Shredding:** A resolution to authorize the destruction of certain records shown on the attached affidavits pursuant to relevant sections of the Arkansas Code related to maintenance and destruction of accounting and other city records.

***Resolution 242-21 as recorded in the office of the City Clerk***

**Data Communications Products:** A resolution to authorize the purchase of data communications products and services through authorized resellers, pursuant to State of Arkansas and National Association of Procurement Officials cooperative purchasing agreements, on an as needed basis through May 31, 2024 and any future renewal periods.

***Resolution 243-21 as recorded in the office of the City Clerk***

**TheatreSquared, Inc. Lease Agreement Amendment:** A resolution to approve an amendment to the lease agreement with TheatreSquared, Inc. to remove 91 square feet of property from the legal description, and to allow the residential facilities to be used as short term rentals when not needed for performances.

***Resolution 244-21 as recorded in the office of the City Clerk***

**Stream Restoration Project at Wilson Park:** A resolution to approve a budget adjustment in the amount of \$25,000.00 recognizing park land dedication fees from the Southwest Park Quadrant to be used for the purchase of rock sculptures and surveying services associated with a stream restoration project at Wilson Park.

***Resolution 245-21 as recorded in the office of the City Clerk***

**Crossland Heavy Contractors, Inc. Change Order No. 2:** A resolution to approve Change Order No. 2 with Crossland Heavy Contractors, Inc. in the amount of \$1,236,430.00 to repair slope failures and strengthen other slope areas at Kessler Mountain Regional Park, and to approve a budget adjustment.

***Resolution 246-21 as recorded in the office of the City Clerk***

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

**Unfinished Business:**

**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. At the September 21, 2021 City Council meeting this item was tabled for two weeks.*

**Jonathan Curth**, Development Services Director gave a brief description of the resolution. He stated staff recommends denial of the request to expand the use to the northern parcel. He stated we do not feel that it's appropriate to allow an expansion of it while the business has demonstrated that it can't comply with the Conditional Use Permit it has in hand. He stated the Planning Commission failed to approve a motion to approve that expansion by a vote of 4 to 4, which meant it could not advance. He stated there are 15 conditions staff recommends that Council put in place with this permit, if Council elects to approve it tonight. He spoke briefly about the conditions.

**Tripp Halbert**, Representing Vaughn Recycling gave a brief description of the Vaughn Recycling business and what they provide by not filling landfills. He stated this is a business that the community needs as it grows. He stated Vaughn is willing to grow with it and are willing to do whatever they need too, in order to move forward in a progressive manner. He spoke about a plan for the traffic issue. He spoke about raising the privacy fence and adding additional trees. He stated we understand this got out of hand and we apologize for that. He stated we are willing to comply with any regulations the Council sees fit to move forward with.

**Council Member Petty:** I didn't hear you address stormwater runoff, which is one of the reasons the Conditional Use Permit was drafted the way it was originally. Have you considered that?

**Tripp Halbert:** We have. Five years ago, or so we worked with the EPA regulations to be sure there are no contaminants.

**Council Member Petty:** You expanded the impervious area nine years ago and meeting the EPA regulations is one thing, but you didn't meet our regulations. You didn't comply with regulations that are in place for RMS-4 stormwater permit. What are you going to do to reconcile that?

**Tripp Halbert:** When you say impervious area, the lot on 1236 is not impervious. It is gravel, just like the rest of the lot.

**Council Member Petty:** Everyone knows when you drive semi-trucks over gravel every day, it's not pervious anymore. It is packed down and any engineer will back that up. You told us tonight that the company recognized that this had got out of hand and you apologized on their behalf, but I'm still wondering what your answer is for coming here and telling us the expansion under the North parcel didn't happen until COVID in 2020 when we have aerial photos from 2009. It seems like bad faith, and telling us you recycle all this stuff, so we should just let you do it. Are you saying you can't do that without violating the law?

**Tripp Halbert:** No. There was some confusion. At the last Council meeting, I think you addressed there may have been some gross negligence on expanding to that property. In 2008 the city came down and asked my client to expand the fence on 1236. At that point, there was metal on the ground and they had seen that. Maybe it was gross negligence that my client thought once he expanded the fence on 1236, which he didn't have a Conditional Use at the time, but he thought at that point he could expand his practice onto 1236.

**Council Member Petty:** He makes a mistake 10 years ago, but then you come here and tell us the expansion didn't occur until 2020. We've got the aerial photos and it doesn't match up with the report we are being given. Are we not being told the truth or is there something we don't understand?

**Tripp Halbert:** No and I hope it was not misleading to say the expansion only occurred in 2021. My hope was to say that 2021 was an exceptional year.

**Council Member Petty:** No, you came here four weeks ago, and you said, the expansion didn't occur until COVID started. You wrote that in the report that our Development Services Director has presented to us and presented to the Planning Commission from the beginning. I know you're doing this on behalf of the client, but it seems like a lie.

**Tripp Halbert:** The expansion occurred before 2021.

**Council Member Petty** stated he can't support this resolution. He spoke about bad faith negotiations. He stated if this is an essential business, we're presuming they can't be replaced. He stated we are presuming they can't be sold, that they can't be relocated, and can't even do this essential service without violating the laws. He stated there's no due process and pretending to be too big to fail. He spoke about the water quality of the region and the creek. He stated this isn't where we want an industrial process to happen in the city. He stated the CUP would not be granted if this was a brand new deal today.

**Council Member Jones:** I was there yesterday, and I got a chance to see the business for myself. Thank you for being a business here in Fayetteville. The recommendations that were made, what's your strategy as it relates to moving forward and correcting some of those challenges?

**Tripp Halbert:** We anticipate having a strong relationship with staff, whether that be weekly or bi-weekly check-ins on progress being made moving forward and to be sure we're compliant with all recommendations made by staff. We are open to any and all suggestions here. Be glad to work with anyone on the Council or staff moving forward.

**Council Member Jones:** When you say staff, that is city staff?

**Tripp Halbert:** Yes.

**Council Member Jones:** Have you fixed any of those problems since you were first notified of them?

**Tripp Halbert:** Yes, several. Back in July was when the problem all occurred. The city was notified of trackage being on South School Avenue. We poured tons of gravel in the back of 1246 and 1236 lots. We have cleared out debris on 1236 and it's a clean lot now. The only thing on 1236 are trailers that will be loaded and processed with these metals as they come in and then hauled out. We understand logistics has been a problem over the past. My client has talked about hiring drivers and buying trailers to be able to transport metals out, as they are filled up in the backlots. That way there's no placing blame on a third party. It's our fault if it backs up.

**Council Member Jones:** How has COVID impacted your business?

**Tripp Halbert:** If you look on the chart, it looks like it's been great, but unfortunately finding work has been hard. Moving metal has been impossible. We have struggled. Moving forward throughout this year we've changed for the better and we can continue to do that with Council's permission.

**Council Member Hertzberg:** This is in Ward 1. Were you able to meet with Council Member Gutierrez?

**Tripp Halbert:** I was. She's not able to be here due to her pregnancy, but she was in support of this appeal. She mentioned she would like to be here to cast her support. She was very adamant on placing the park first, which is our intention in moving forward as well.

**Council Member Jones:** Yesterday when we talked, you mentioned that prior, you've had conversations with individuals from the city. You felt there was a lack of communication. Please explain that to the Council.

**Tripp Halbert:** The lack of accountability on our part, is on us, but this has been going on for quite some time. No one has taken note of it until now. When it was brought to my client's attention, we have taken all steps to remedy this and progress forward. Had it been made known to my client in 2009 through 2019 and so on that he needed to make an initiative to expand the CUP, he would have done so, but it was never brought to his attention. We're not all attorneys and we're not all familiar with CUP's, and I don't expect everybody to be, but that is where my client's position is right now. He is sorry and it was a mistake.

**Council Member Jones:** It sounds like there was a lack of communication. I remember you telling me that whoever was representing the city at the time told you everything was okay, and no changes needed to be made. Is that correct?

**Tripp Halbert:** Yes, that's correct. In 2008 when he was asked to expand the privacy fence to the front of the property and there have been times that they check back in on screening of the property to be sure it was not visible from the public right-of-way. We think there were some lack of communication on both ends.

**Mayor Jordan:** Did you say one of the staff told you everything is okay in 2010?

**Tripp Halbert:** 2008.

**Council Member Petty:** Did staff tell you that you should come back when the complaint was noticed and lie to us about what year the expansion occurred?

**Tripp Halbert:** The screen occurred later after 2008 when staff checked back in and asked his clients to put screening up on the fences on the public right-of-way West side.

**Mayor Jordan:** They gave you an area to do your business in. Right?

**Tripp Halbert:** Yes, that is right.

**Mayor Jordan:** In 2008. Correct?

**Tripp Halbert:** That's correct.

**Mayor Jordan:** You got outside the boundary, but that was your call to make. Correct?

**Tripp Halbert:** Yes, correct.

**Council Member Turk:** Council Member Petty referenced stormwater runoff problems. Is there any evidence of that recently? Has anybody been out there to look and see if that's still occurring?

**Jonathan Curth:** I don't have any records of an explicit stormwater complaint, which is not unusual given there's no private property downhill from this site. It runs directly into Walker Park before going into Tanglewood. The Planner who did visit the property at the initial outset of this complaint reported that the bioswale on the east end of the property did not appear to be in good shape. That's one of the conditions of approval we've recommended and it's an active condition of approval of the CUP that will need to be addressed. Bioswales and other drainage features like that do need some degree of ongoing maintenance to be cleaned and to make sure they're still functioning and filtering water as it passes through the site. One of the biggest concerns is the amount of gravel that's been put on the property. Compacted gravel often has the exact same impact as asphalt or concrete on a site. With the amount of that has been put down, which we don't know an exact number, it is quite likely that the amount of storm water coming off the property is fully unaccounted for as it is functioning today.

**Council Member Turk:** I've been down there, but I have not been to the back part of the property. Has anybody been back there to look and see if that bioswale is not functioning, if there's active stormwater runoff or if everything is grown up and is not allowing any runoff to occur?

**Jonathan Curth:** That was the perspective of one of our planners, who I don't think they have the proficiency to say that it's functioning or not. That was just an observation on the property. One of the issues as a part of this violation is to evaluate that. I don't think a qualified staff member has been there to make that evaluation.

**Council Member Scroggin:** Is Vaughn Recycling currently using the North lot, day-to-day?

**Tripp Halbert:** Yes.

**Council Member Scroggin:** If tomorrow you couldn't use it, would it cease to be able to operate?

**Tripp Halbert:** Yes, moving forward it would be difficult to operate due to the scale that it's become.

**Council Member Scroggin:** Are there other recycling centers that cater to the same type of materials?

**Jonathan Curth:** I do not know.

**Council Member Scroggin** spoke about luxury apartments moving South from the University. He spoke about gentrification. He stated he doesn't want to see this expand in this area because there's better uses for this that are moving South. He spoke about traffic being an issue. He stated most he would look at is maybe expanding that North part six months, while they try to figure out how to not use it or move somewhere else. He stated he is concerned that, just like they've done with the time they've had now, they haven't figured out how to do it without it.

**Council Member Bunch:** In the aerial views, we see how this has grown over time. Did it always start out with things that would be more recycling of an industrial nature or did it start out as a smaller scale and advance into things that required people bringing big semi-trailers in there?

**Tripp Halbert:** It has grown since its conception. Customers continue to come back. Initially, I don't think they thought there was that big of a need for commercial types of recycling and apparently there is.

**Council Member Bunch:** When we talk about commercial types of recycling, what are products that would fall under that category?

**Tripp Halbert:** I know they do a lot of business with plumbers and electricians. As far as their recyclable goods go, I don't know if it is recycled steel or copper and aluminum.

**Council Member Bunch:** I'm thinking more along the lines of machinery and automotive parts that might leak oil into the ground and over the course of a long period of time contaminate the ground and runoff into the creek eventually.

**Tripp Halbert:** After our conversation we had yesterday, if there's any liquid and recycled goods, it is all drained off site. Vaughn doesn't accept any liquid in its recycled goods, such as car motors. Yearly they're required to send off test to a lab and they're runoff in Springdale. They have done that and complied over the past 13 years that they have been there.

**Council Member Bunch:** How is it they were compliant with that for 13 years, but they were not compliant with the CUP during that same time frame? If they can keep up with the testing of the ground every year, I don't know how they can't keep up with our Conditional Use Permit.

**Tripp Halbert:** I can't speak to that.

**Council Member Turk:** The testing that was done at the lab in Springdale, was that required by Department of Environmental Quality or was it some other federal entity?

**Tripp Halbert:** I'm not sure what lab, but if that's information the Council would like us to provide, we will be glad too.

**Council Member Jones:** If the expansion is not granted, what are your plans?

**Tripp Halbert:** We would be forced to move. Without that North parcel, we wouldn't be able to keep up with business and the demand of customers.

**Council Member Jones:** That could be a challenge for Fayetteville concerning small businesses.

**Tripp Halbert:** Yes.

**Council Member Kinion:** Looking at the aerial photographs of the property over the last many years, it wasn't until 2021 that there was this vast explosion into the North area. The reason there probably wasn't complaints in the past is because the difference between the aerial photography in 2020 and 2021 is incredibly different. If you go out there now, it's halfway in between of what it was, between 2020 and 2021. I don't see how in a year that someone at the business did not say, we have a stockpile of junk on that North end and we should move it on. They were able to clean it up in the last several months, so there was a place to take it. There was a business model that missed the opportunity to keep up with their Conditional Use Permit.

**Tripp Halbert:** In 2021 was an exceptional year for numerous reasons, but one being that we struggled to get trucks in and out. Over the last three months, Vaughn Recycling has almost shut down their business. There might be some smaller residential to come in and drop off some goods, but for the most part they turned away a lot of business going to other recycling centers so they could get it cleaned up. As far as the logistics go, they had to hire private drivers.

**Council Member Kinion:** I wish I had the confidence in the future that they would be attentive to their Conditional Use Permit and comply. There is an emotional side of me that wants to support someone that's been in the community for a long time. They are a business that does good, it's just the way the business was ran that seems to be irresponsible.

**Tripp Halbert:** We would love the opportunity to show the Council we can comply moving forward. We would like to like to show with that Northern parcel there will be no metal goods on the ground. As goods come in, it will be processed in a trailer and hauled off accordingly.

**Council Member Scroggin:** If we didn't grant the appeal on the North end, how long would they have to return that to whatever state that it needs to be? Is that a week or a month? If we deny the appeal, how much time do they have to clean that up? Not the whole thing, because there's a Conditional Use Permit that's for the South side.



**Jonathan Curth:** As soon as it appears that no progress is being made or all avenues have been explored, we typically give 30 days before an item is forwarded to the Prosecuting Attorney of the city, at which point it's in their office to take to court.

**Council Member Bunch:** If this is approved, the bioswale needs to be reevaluated. Is that correct?

**Jonathan Curth:** Regardless of whether this expansion to the Conditional Use Permit is approved, that needs to be evaluated. That was a part of the original Conditional Use Permit for the Southern parcel. Any additional improvements for stormwater would be tied to them using the Northern parcel.

**City Attorney Kit Williams:** Jonathan, you supplied the City Council with a list of several conditions. When we drafted the resolution, it says at Section 1 that if this appeal is granted and the Conditional Use continued, it will be with the following conditions. Is it your recommendation to the Council that before they would vote one way or another, they would add the 15 conditions you have submitted to them? It is also including it would only last for one year, and they would have to return to the Planning Commission to see if the Planning Commission would agree to extend it. Are those the conditions you submitted to the Council for their consideration?

**Jonathan Curth:** Yes, sir.

**City Attorney Kit Williams:** Before the vote on the resolution, we would need a motion to amend the resolution to add those conditions.

**Council Member Kinion:** It's imperative that we add those conditions. It gives a little more guidance on what kind of business operation that needs to be happening on this property.

**Mayor Jordan:** The 15 conditions are for one year?

**City Attorney Kit Williams:** Yes, as stated by Jonathan Curth in his email to the City Council.

**Council Member Bunch:** This is conditions of approval for the North lot or both of them?

**Jonathan Curth:** One of the conditions is that all of the conditions of the existing Conditional Use Permit would remain in place. The other 14 are in addition too, with the last one from the Planning Commission being to only extend it for one additional year, if approved.

**Council Member Bunch:** At the end of the year, what would happen?

**Jonathan Curth:** It goes back to the Planning Commission. They evaluate issues such as compliance, whether the conditions of approval have been met, which includes retroactively submitting the property for the necessary development approvals.

**Council Member Turk:** Of the 15 items, is part of that a monthly inspection that can be conducted by the city? That way there is an ongoing communication included in those conditions.

**Jonathan Curth:** That is not in there, right now.

**Council Member Turk:** Could I add that as a friendly amendment?

**Council Member Kinion:** I think so. As their representative said, they felt like there was a communication problem. If they had to communicate with the city every month as a requirement, then that might open up some good communication channels, where everyone would get a good result. It's a responsible thing to do.

There was a brief discussion about amendment rules.

**Mayor Jordan:** We have an amendment on the amendment?

**City Attorney Kit Williams:** If the original motioner says that's a friendly amendment, there does not need to be a vote unless someone objects.

**Mayor Jordan:** We will just plug that in there. Correct?

**Council Member Kinion:** Yes.

**City Attorney Kit Williams:** That will be included.

**Susan Norton,** Chief of Staff requested clarification of what would be included.

**Mayor Jordan:** They need to communicate to the staff.

**Susan Norton:** Thank you.

**Council Member Turk:** My suggestion was that somebody from the city go out there and inspect so they could communicate right there on the spot and say this corrective action needs to happen.

**Council Member Kinion:** I would anticipate that also. If you're not on the spot, it's not as effective. I know this is additional tasks for staff, but in this case, it might be an important task. It is a big issue with the creek right behind it. We must handle the runoff and that has to be part of what's looked at when someone goes out there. Someone should go out there once a month. That is the intended motion.

**Mayor Jordan:** We will do the best we can.

**Kara Paxton,** City Clerk Treasurer confirmed Council Member Scroggin was the seconder of the proposed motion.

**Council Member Scroggin:** I'm good with the changes and still second it.

**Council Member Kinion** moved to amend the ordinance to include all the conditions as discussed and described. Council Member Scroggin seconded the motion. Upon roll call the

**motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

**Council Member Petty** spoke about what he has heard doesn't pass the test for him. He spoke about Vaughn Recycling having poor excuses. He stated he doesn't understand how it's possibly the city's fault. He stated he is voting against the resolution.

**Mayor Jordan** requested for the aerial photos to be displayed again. He looked at the illustration of how it looked in 2008 and how it now looks in 2021. He stated he takes offense when someone says that his staff does not communicate, after Vaughn started with what they know they should have done but didn't do it. He stated Vaughn broke the ordinance and this is what we ended up with in 2021. He stated if this passes, staff will be communicating with Vaughn and keeping a close eye on them. He apologized to city staff for that kind of remark because he has a good staff that works very hard to keep up with all this stuff. He stated he has had several complaints about this piece of property because of all the stuff piled up in front of it, trailers being parked on the sidewalk, and chunks of mud being slung all over College Avenue. He stated then we find out Vaughn has not stepped up to their part of the bargain. He stated these amendments that have been approved makes him feel a little better. He stated he drives by the property every day on his way to work and has seen what's been going on. He stated the reason we do these Conditional Uses is because you have an agreement with the city to do certain things, and when you don't do that, you have broken your word to the city.

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

**City Attorney Kit Williams:** The appeal is granted, and the Conditional Use continues, but with the new conditions as stated by the City Council.

**Council Member Kinion:** The approval expires after one year and the permit is subject to revocation, which is condition number 16 on the memo.

**City Attorney Kit Williams:** Okay. There will actually be 17 because it's everything that Jonathan Curth gave you, plus that one more.

**Council Member Kinion:** I want that to be on the record because it needs to be accurate.

***Resolution 247-21 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. *At the September 21, 2021 City Council meeting this item was left on the first reading.*

**Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Jones seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Paul Becker**, Chief Financial Officer gave a brief description of the ordinance. He stated this is the same tax we've had in place since 2015, which was extended in 2016. He stated there are no property tax increase. He stated this is not an appropriation and it's not an expenditure request. He stated this is setting the levy for the 2022 budget.

**Council Member Scroggin moved to suspend the rules and go to the third and final reading. Council Member Turk seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*Ordinance 6487 as Recorded in the office of the City Clerk*

**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. *At the September 21, 2021 City Council meeting this item was left on the first reading.*

**Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Turk seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Chris Brown**, Public Works Director gave a brief description of the ordinance. He stated this was reviewed by the Transportation Committee and they unanimously voted to recommend approval. He stated regarding cost, we do have about 1,200 to 1,500 of these 25 miles per hour signs. He stated not all of them would be replaced immediately and they could be replaced over time, as

needed, but that represents about a \$25,000 cost to the budget if we did replace all the signs at once.

**Council Member Scroggin:** If we vote for this, will all of them change or is there some discretion by staff?

**Chris Brown:** Technically, if we don't change them out, they will remain at 25 miles per hour. I expect we will get some neighborhoods that will want us to do that, immediately. As part of our yearly signage inventory, we would replace those as we go. If we get specific request or other problem areas, that will be a tool we can use, but it's not something we're going to go out immediately and begin replacing every single one of these signs.

**Council Member Scroggin:** My concern is that maybe there's places we don't need to go 20 and it should stay at 25. Is their discretion to stay at 25 if it made sense and who would make that decision? I don't want to go out and make that decision.

**Chris Brown:** There certainly are some areas that are signed. One that springs to mind is Shiloh Drive in front of the Target and Kohl's area. It is signed at 25 miles per hour. That doesn't really make sense to be reduced to 20. We just wouldn't take that sign down, replace it or remove it. There are two ways we can set speed limits by code. One is as a statutory default limit, as this ordinance would do. The other is based on the actual traffic speeds. There's a method for determining what the appropriate speed limit is, based on actual traffic flow.

**Council Member Scroggin:** I'm glad you brought that street up because I've always thought that was too low, at least until you hit that corner. It should be almost 40. I am glad to see you all would have some discretion.

**Council Member Kinion** stated he also had the same concern. He stated several people in Ward 2 have been ticketed in front of Target. He spoke about the perception of a speed trap. He stated there needs to be some kind of matrix that's understandable and in place when you're going from 25 to 20. He requested to know what the difference is statistically, going from 25 to 20. He stated he wants to know how it's implemented and have some sort of support to be able to tell people why it went from 25 to 20.

**Council Member Turk:** I'm wondering how lowering this from 25 to 20 will impact the traffic load on Police Officers, in terms of speeding. We will have to get a lot of publicity out there and education about this change to get compliance.

**Mike Reynolds, Chief of Police:** One of the main complaints we get at the Police Department is speeding and I'm sure that's one of the main complaints you get as well from your constituents. I'm sure we will see an increase in those complaints because it's difficult to go 20 miles an hour in a 25 mile an hour zone. You've heard me talk about the lack of capacity the Police Department has and the things we're dealing with and the increase in violent crimes. We would do our best to prioritize that with the capacity we have and address those complaints as they come in. We will work with the Transportation Division and traffic calming measures that we can use. The STEP grant has a speed display sign in there that we can purchase. We can put those out at various

locations. They are in all of our school zones. We can also use the two motorcycle units we have and directed enforcement. Typically, when we change the speed limit in areas, we usually have a 30 day grace period before we do anything as far as enforcement action with a citation. We utilize warnings. The Police Department has tried to show a lot of grace through the pandemic. We are warning drivers at twice the rate than we do issuing citations. Today we have approximately 4,800 warnings and 2,400 citations for moving violations.

**Council Member Turk:** Even though this will amount to more citations or warnings and more workload for your officers, you will be able to handle that even though you've got less staff than you've had in the past?

**Mike Reynolds, Chief of Police:** As the population and demands grow, we'll do the best we can as a Police Department to meet those demands for services. We'll prioritize based upon the calls for service we are dealing with. I can give a report back to the Council on how we're doing, but it's hard for me to speculate what impact that would have. I can only say it would increase the demand for the services that we are already experiencing. We have had a 10% increase in calls for service over the last 18 months. This is going to continue more demands on our Police Department.

**Council Member Petty** spoke about the statistics that were presented at the Transportation Committee. He spoke about the statistical review of the severity of injury as it relates to speed. He stated the difference between 25 miles an hour and 20 miles an hour when a pedestrian gets hit, the chances of them dying of it resulting in a fatality, dropped by half. He stated that is the main motivation for doing this. He spoke about city streets not signed with a speed limit. He spoke about educational efforts. He stated emergency responses to severe injuries are usually a lot more research intensive than emergency responses that only require a report.

**Council Member Scroggin:** I'd be glad to see some speed changes. Signs don't change it all and we've got to do some other stuff. In the last 13 years I've seen a significant increase in the amount of people that walk. We've also seen a significant increase in the amount of people on small motorized things. As those increase, we have got to start slowing down the speed of the vehicles, so collisions don't happen as much in the future. I'm seeing exponential growth in the people that are using alternative methods to get around, which is a good thing.

**Mayor Jordan:** Did this go to the Transportation Committee?

**Council Member Petty:** Yes.

**Mayor Jordan:** It was a unanimous vote. Correct?

**Council Member Petty:** Yes.

The City Council received one public comment regarding this 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 7-0. Council**

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

***City Attorney Kit Williams read the ordinance.***

**Council Member Turk:** Is there information on the fatalities that were in Fayetteville over the last five or 10 years and if so, were those in speed zones around 25 miles an hour? Was any of that information presented?

**Mike Reynolds, Chief of Police:** I can't give you the last 10 years, but I can give you the last couple of years. I'm happy to report, year to date, when you compare 2021 to 2020, our fatality accidents are down 77%. Our personal injury accidents are down 25%. Unfortunately, our accidents are up, probably as a result of COVID. It's an increase in property damage accident, not personal injury or not fatality accidents. We are up about 12% on accidents. I'm not aware over the last two years of any of those 11 fatalities that occurred in a 25 mile an hour zone.

**Council Member Turk:** Were they in a different traffic zone, such as 40 miles an hour or something like that?

**Mike Reynolds, Chief of Police:** I'm not aware of that.

**Council Member Turk:** I'm going to support this, but we have talked about survivability. I am wondering where those accidents have occurred in the past. Going slower is always better, but it's important to identify if we're going to be able to save lives or have less injuries when we take this kind of action.

**Council Member Kinion:** We talked a lot about signs, but this is 20 miles an hour where there's not signage. That's where the education has to come in, because if there's no signage and you're going over 20, you're breaking the law. Signage is important and some of it will need to be changed to 20 from 25, but it's the default that is kind of curious because I don't know a lot of people going 20 in default areas. There's a concern they're not going to slow down anyway, and they are breaking the law. This is the default and not a signed street that has a sign on it.

**Council Member Turk:** This is going to affect areas where there is no signage and we're going to need to have a PR educational push to ensure our citizens understand this change. I hope everybody's prepared for that so we're not catching people off guard. Slower is better, but we need to make sure they're informed about that.

**Susan Norton, Chief of Staff:** We will make sure.

**Council Member Scroggin:** The education is important. You'll have people complaining about the speed other people are going. Then they send out a cop and sometimes the cop catches the person that complained because they don't know what 25 or 30 miles per hour actually is.

**Council Member Bunch:** Since we've discussed this at Transportation, I started trying to be a little more conscientious about my own driving. It is possible to drive through a neighborhood at 20 miles an hour.

**Mayor Jordan** asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.

*Ordinance 6488 as Recorded in the office of the City Clerk*

**New Business:**

**1776 North Fox Hunter Road Extension of the City's Sewerage System:** A resolution to approve an extension of the city's sewerage system beyond the city limits to property located at 1776 North Fox Hunter Road.

**Mayor Jordan:** This was introduced by Council Member Gutierrez and Council Member Jones. I would appreciate it if we would send it to the Water and Sewer Committee because I would like to hear what you all say about it.

**Council Member Jones.** I recommend we table the discussion for two weeks and send it to the Water and Sewer Committee.

**Council Member Jones** moved to send the item to the Water & Sewer Committee and table it until the October 19, 2021 City Council meeting. Council Member Scroggin seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.

*This resolution was tabled to the October 19, 2021 City Council meeting.*

**Appeal RZN-2021-043: (2828 N. Crossover Rd./Grace Church):** An ordinance to rezone that property described in rezoning petition RZN 21-043 located at 2828 North Crossover Road for approximately 3.58 acres from R-A, Residential Agricultural to P-1, Institutional.

*City Attorney Kit Williams read the ordinance.*

**Jonathan Curth,** Development Services Director gave a brief description of the ordinance. He stated staff did hear some public concerns. He stated staff does recommend approval of the request. He stated we lean fairly significantly on the historic use of the property, without having any documented complaints in association with the church, it's childcare and the school after that, and what has become a school used today. He stated at the August 23, 2021 Planning Commission meeting, the applicant was not present to speak or to questions that arose from public comment and the Commissioners' site visit. He stated without answers to the Planning Commission's questions, they moved to deny the request, which was a vote of 7 to 1.



**Allen Mazzanti,** Applicant stated the property was developed for a school or a church. He stated it's very unlikely the property can be used for almost anything else. He spoke briefly about public comment concerns.

**Council Member Scroggin:** What else could be built here under P-1? How big of a building can be built back there? What uses are allowed?

**Jonathan Curth:** Starting with the uses, it is mostly educational and religious institutions. That includes elementary school, junior high school, and high school. It could be a daycare, fitness club, church, synagogue or mosque. It could be used for a cemetery. A hospital would probably be the most intense that someone could imagine or a Community Center. The standards on what can be developed there, the P-1 zoning district has setbacks that are fairly similar to the R-A zoning district. The building as it sits today, largely reflects those, which is likely how the parking was built in front of the church instead of to the side or rear like the city would generally like to see these days. There's a 50 foot set back to the front. There are 25 foot setbacks when it's adjacent or residential property. There's a 25 rear setback, which are basically the overall standards of where on the site a building could be set. This has to be with consideration for the creek on the eastern side of the property. The P-1 zoning district also has a building area maximum of 60%, which does not include things like ground mounted solar and is one exception to that.

**Council Member Scroggin:** Can we rezone the building and keep the same zoning for the backside? I assume the current zoning would allow a wooded area where kids can play.

**Jonathan Curth:** A property can be split zoned. The Council has sometimes seen this particularly on properties with floodplains. We've used our R-A zoning as something of a holding district or an open space district in places where it's not likely to become an agricultural use. That would require a legal description from the applicant for us to make sure it's done properly. Moving the school use to that portion of the property, I think that gets a little bit more nebulous in the answer. When you have uses accessory to another use, typically the whole area being used for it needs to be zoned similar to permit it and the agricultural zoning district does not currently allow things like schools and playgrounds.

**Allen Mazzanti:** If you were to walk to the back of the property, there's about a 30 or 40 foot drop off right on the backside of the property that is in the floodplain and undevelopable. I can't imagine how many loads of dirt it would take to try to raise that up, but it would probably be more than 10,000. I don't believe any aspect of that could ever be developed.

**Mayor Jordan:** You can't develop anything there. It is too steep. I saw that yesterday.

**Council Member Turk** gave a brief description of the tour of the site. She stated where they would like to use that as a playground area is full of trees, it's rocky and relatively flat, but it drops off significantly before it hits the creek. She stated it is a very steep decline and it's not usable for any other kind of development. She stated there is invasive in there and is very densely full of vegetation right now.

**Dennis Nelms, 2870 North Crossover:** I made the public comments to staff, but since then we've pretty much resolved most of the issues that I personally had. I never intended or tried in any way to oppose the zoning. It seems to make the most sense to me.

**Council Member Hertzberg:** Thank you for being here. I appreciate the comment.

**Council Member Scroggin:** I also appreciate somebody sitting through this entire meeting to tell us that. I do have concerns what's going to be built in the back if they decide too, but listening to my fellow Council Members, they seem to believe that's not an issue.

**Council Member Scroggin moved to suspend the rules and go to the second reading. Council Member Turk seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was 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 Turk seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*Ordinance 6489 as Recorded in the office of the City Clerk*

**RZN-2021-063 (820 W. Kelley St./Richland Creek Enterprises):** An ordinance to rezone that property described in rezoning petition RZN 21-063 located at 820 West Kelley Street for approximately 0.55 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 did hear some public comments. He stated staff recommends approval of the request. He stated the Planning Commission unanimously agreed to forward it to Council with the recommendation of approval.

**Council Member Turk:** I need to disclose I own a rental house about a block and a half away from this property.

**Council Member Scroggin:** This makes sense to increase density here. Somebody living here could easily ride one of those scooters all the way up to the university and not add to traffic. There's a lot of services in this area. This makes sense and is appropriate infill. We are not talking about a massive multi story.

**Council Member Turk:** That neighborhood is very stable. I could see why there would be opposition. It does seem that the RI-U is a transitional zoning between the high density on the east side and stable family neighborhood on the west side.

**Council Member Petty** moved to suspend the rules and go to the second reading. **Council Member Scroggin** seconded the motion. Upon roll call the motion passed 7-0. **Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion** voting yes. **Council Member Gutierrez** was 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 Jones** seconded the motion. Upon roll call the motion passed 7-0. **Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion** voting yes. **Council Member Gutierrez** was absent.

*City Attorney Kit Williams read the ordinance.*

**Mayor Jordan** asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion** voting yes. **Council Member Gutierrez** was absent.

*Ordinance 6490 as Recorded in the office of the City Clerk*

**Bid Waiver For Fleet Vehicles:** An ordinance to waive competitive bidding and authorize the purchase of new vehicles through various manufacturers' authorized dealer networks, but to require informal quotes or bids for similar vehicles, and to authorize the Mayor to execute any agreements necessary to participate in government fleet programs.

*City Attorney Kit Williams read the ordinance.*

**Sara Combs**, Fleet Operations Superintendent gave a brief description of the ordinance.

**Mayor Jordan:** Did this go through the Equipment Committee?

**Sara Combs:** We spoke about it at the Equipment Committee, but we didn't go into great detail. We did not ask for a vote at that time.

**Mayor Jordan:** It was just an informational item for the Equipment Committee?

**Sara Combs:** Correct.

**Council Member Scroggin:** We've got some discussion about trying to act quickly and giving time to review stuff. With the pandemic the windows have changed. I will be supporting this. Sarah has done an excellent job in Fleet. This is needed, but I hope we get to undo this at some point. We should have a longer process to discuss what we are purchasing, but right now we need vehicles to run the city. Do we need an Emergency Clause?

**City Attorney Kit Williams:** No. A bid waiver is not a general ordinance. It's more of a specific ordinance and therefore it is effective immediately without an Emergency Clause.

**Council Member Scroggin:** I plan on supporting this. Hopefully, in a year to 18 months, we will get to undo this and go back to where we have these longer windows.

**Sara Combs:** Some of this is basically vendor or manufacturer by manufacturer. We have experienced finding out more about our industry. We found out Toyota has a window each month for various items, whereas a lot of manufacturers open there's, just all at once. So far, we're still on track and can purchase what's needed, but I have items I will be emailing to our Equipment Committee that we hope to move forward with purchasing tomorrow, based on if this is passed or not. There are windows closing every day.

**Council Member Turk moved to suspend the rules and go to the second reading. Council Member Scroggin seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was 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 Scroggin seconded the motion. Upon roll call the motion passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

*City Attorney Kit Williams read the ordinance.*

**Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Council Members Petty, Scroggin, Bunch, Turk, Hertzberg, Jones and Kinion voting yes. Council Member Gutierrez was absent.**

***Ordinance 6491 as Recorded in the office of the City Clerk***

#### **Announcements:**

**Susan Norton,** Chief of Staff congratulated Council Member Gutierrez on the birth of her daughter. She stated we have extended a public input opportunity on South Fayetteville and Martin

Luther King Jr. Boulevard walkability improvements. She spoke about volunteer cleanups at area lakes. She spoke about Bulky Waste cleanups. She stated information can be viewed on the City of Fayetteville website.

**City Council Agenda Session Presentations:**

Fayetteville Housing Authority Update, Melissa Terry.

Sales Tax Report by Paul Becker Energy Report by Peter Nierengarten

**City Council Tour:**

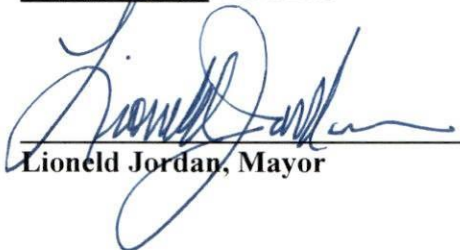
**October 4, 2021**


**4:30-5:00 PM**

**2828 N. Crossover Rd.**

**Parking is available off-street in the spaces nearest to Crossover. Please note, some activities at the property or neighboring dance school may be underway.**

**Adjournment: 8:38 PM**

  
Lioneld Jordan, Mayor

  
Kara Paxton, City Clerk Treasurer

