

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

**City of Fayetteville Arkansas
City Council Meeting Minutes
November 18, 2008**

A meeting of the Fayetteville City Council was held on November 18, 2008 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Allen, Rhoads, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Ferrell and Alderman Lucas

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Presentation of Final Check from the Fayetteville Natural Heritage Association:

Bob Caulk and Pete Heinzelmenn presented the City with two checks from the Fayetteville Natural Heritage Association. One check was the final payment in the amount of \$11,500 for their commitment regarding the Brooks Hummel property. The second check in the amount of \$20,000 was for their final commitment to the Mount Sequoyah Woods property.

Robert Runyan, the builder of the Underwood Lindsey Pavilion in Mount Sequoyah Woods thanked the Natural Heritage Association for having the patience and confidence in him to allow him to do the project.

Quarterly Report of Financial Condition of the City:

City Clerk/Treasurer Sondra Smith presented the City with the Quarterly Financial Reports of the City dated September 30, 2008.

Paul Becker, Finance and Internal Services Director gave a brief description of the report through September. He also discussed the Water and Sewer Fund and stated they will probably see an operating loss for the end of the year.

General Fund revenues are exceeding expenditures by approximately \$250,000 through September. I expect that we will end the year between \$100,000 and \$150,000 revenues over expenditures.

Mayor Coody announced that all agenda additions would be placed under the following section from this point forward.

Agenda Additions:

Alderman Thiel: I would like to make a motion to reconsider the Bridgedale Plaza project. They changed the portion that was objectionable by the neighborhood.

R-PZD 08-3071 (Bridgedale Plaza): An ordinance establishing a Residential Planned Zoning District titled R-PZD 08-3071 Bridgedale Plaza, located at the southeast corner of Highway 16 East and River Meadows Drive, containing approximately 15.95 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated Master Development Plan. *This ordinance failed at the November 6, 2008 City Council meeting. This ordinance was reconsidered at the November 18, 2008 City Council meeting. This ordinance was left on the third reading at the November 18, 2008 City Council meeting and then tabled to the December 2, 2008 City Council meeting.*

Alderman Thiel moved to reconsider R-PZD 08-3071 (Bridgedale Plaza). **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Lucas** were absent.

Alderman Thiel: I will let Jeremy go over the changes that have been made.

Jeremy Pate: Director of Current Planning gave a description of the changes that have been made. He stated the biggest change is that the entire area of multi-family has been removed and in its place single family dwellings are proposed. He stated if you choose to adopt this ordinance the language does not have to change, it would simply reflect the new conditions of approval and the new booklets and plats that you have in front of you.

Dave Jorgensen, the developer gave a brief description on the reduction of density for the project.

Alderman Thiel: I don't know whether or not the people got the message. I feel like they will be okay with this and I support it because it does have some mixed use. I feel like they will be supportive of it.

Alderman Gray: I agree we should make sure that we hear from the neighborhood.

Dave Jorgensen: I appreciate your reconsideration of the project and I understand that.

City Attorney Kit Williams: Probably before you table it you should amend the conditions of approval and the booklets and plat that has been submitted to this one so we know what we are talking about at the next meeting.

Alderman Thiel moved to amend the Conditions of Approval. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Lucas** were absent.

Alderman Thiel moved to table the ordinance to the December 2, 2008 City Council meeting. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Lucas** were absent.

This ordinance was left on the Third Reading and Tabled to the December 2, 2008 City Council meeting.

Consent:

Approval of the October 28, 2008 Special City Council meeting minutes.

Approved

Cherokee Nation: A resolution approving a budget adjustment in the amount of \$175,000.00 to the solid waste fund and recognizing like revenue from the Cherokee Nation for reimbursement of costs associated with operation of the transfer station through the end of FY2008.

Resolution 214-08 as Recorded in the office of the City Clerk

Fayetteville Police Department Donations: A resolution approving a budget adjustment in the amount of \$3,950.00 recognizing donation revenue to the Fayetteville Police Department from various sources.

Resolution 215-08 as Recorded in the office of the City Clerk

2007 & 2008 Gulf Coast High Intensity Drug Trafficking Area Grant: A resolution authorizing the Fayetteville Police Department to accept the sub-recipient portion of the 2007 and 2008 Gulf Coast High Intensity Drug Trafficking Area Grants in the respective amounts of

\$4,000.00 and \$10,000.00 for overtime reimbursement; and approving a budget adjustment recognizing these grant revenues.

Resolution 216-08 as Recorded in the office of the City Clerk

Alderman Cook moved to approve the Consent Agenda as read. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: **None**

New Business:

Amend Chapter 164, ADM 08-3094 (UDC Chapter 164.04 Animals & Fowl): An ordinance amending the Unified Development Code by repealing and replacing Chapter 164.04: Animals and Fowl, to permit a property owner to keep a maximum of four chickens (hens) within residential districts of the city, subject to the restrictions herein.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated this particular ordinance is to allow a certain number of chickens within the City. Planning Commission voted 6-2 and staff is in favor of this ordinance.

Alderman Thiel: I am glad he pointed out that currently there are ordinances that do not allow people to have chickens. I received some calls about the raised coops and not necessarily specifying a minimum pen size requirement so I definitely plan to make amendments to this based on their input.

Joe Alexander, a resident spoke in favor of the ordinance and stated this proposal is a small step in the right direction. I would like to see it go forward. I support expanded rights to raise animals. He stated that anything reasonable and constructive that anyone wants to do on their property should not be prohibited by law. I think the law should allow it as much as possible and not restrict it. Don't be in a hurry to pass this which is still restrictive but give more consideration to a more expanded bill.

Laura Kelly, a citizen spoke in favor of the ordinance. She stated this is very educational for the neighbors and the kids and all the people involved. The animals are much healthier and it is a safer source of food for all of us.

Kelly Roark, resident of 631 West Skelton Street spoke on the positive benefits that chickens have for communities. She gave some facts about chickens. She stated one of the things I would like to see is an amendment for the distance allowance. She stated 25 feet is what is most common in other municipal codes. She stated that entirely raised structures for chickens are

inappropriate and not good for the health of the birds. She passed out pictures of some of the coops that are being used in a city she was previously living in.

Jesse Roseban, a citizen stated the proposal is a great idea but there are some things he would like to see amended in Chapter 92 of the Animal Code. It should be made more specific to deal with the changes that are being made or proposed. What has Code Compliance's input been on the issue and what kind of input has there been from Animal Control? He expressed his concerns with Chapter 92 and stated I would like to see it updated and amended.

Eva Madison, a member of the Humane Society of the Ozarks Board expressed the concerns of the board members. She stated we should leave the R-A zoning the way it is and allow the new ordinance to take effect for the other zoning areas to which it might apply. We are concerned about the confinement requirements and what is going to happen with those who currently have chickens that will be restricted after this ordinance.

Alderman Thiel: They are not lawfully allowed. It is complaint driven and the neighbors have just not complained about it.

Eva Madison: I understand in R-A they were allowed.

Alderman Thiel: In R-A they will still be allowed. This doesn't change that.

Eva Madison: I think our concern is that if someone is currently violating the law there should be no issue of grandfathering. It is the areas in the city where zoning currently allows chickens that we are going to now impose restrictions.

City Attorney Kit Williams: I don't think that was the intent. The exhibit where it talks about grandfathering in, if you would just add in non R-A zones, that was always the intent of this not to affect residential agricultural zones.

Alderman Thiel: Section "B" specifies it clearly that with the exception of R-A.

Jeremy Pate: That sentence is also in Section "D".

Alderman Thiel: So it's actually already in there twice.

Eva Madison: I don't have that in front of me but the second paragraph seemed to suggest that we are changing some historical perspective on things. I came into this late.

Alderman Thiel: I don't think we are going to start hunting around the City.

Eva Madison: I think that addresses one of the concerns and the other one would be requiring them to be off the ground.

Alderman Thiel: This has to the Council, back to Ordinance Review, and then back here. So this has been discussed now for about two or three months. I am sorry that you all weren't aware of that sooner.

Dr. Brandon Doss, representing the Arkansas Livestock and Poultry Commission discussed poultry health and disease. We would like to suggest an amendment to the ordinance to include a requirement for individuals who are going to house these birds to register their premises. They would fill out this form and mail it to us which would enable us, if we did have an outbreak of a serious disease, to be able to locate the birds and have them tested within 48 hours.

Alderman Thiel: Are you requiring this in Rogers?

Dr. Brandon Doss: I have no knowledge of that.

Alderman Thiel: I guess they just passed theirs and no one noticed it?

Dr. Brandon Doss: I just found out about it this afternoon.

City Attorney Kit Williams: Can I have a copy of your form?

Dr. Brandon Doss: Certainly.

Alderman Thiel: Our Animal Shelter Director is getting ready to speak to that. The Animal Services division was involved in drafting this.

Jill Hatfield, Animal Services Director: We deal with all kinds of livestock and wildlife right now. This is something that we would look at. We will continue to address that as we get calls or if we have complaints and there are people that feel that they are not being cared for properly.

Mayor Coody: Kit do you have a way that we can process this form?

City Attorney Kit Williams: Yes, you could just add a subsection 11 and say that the owners wishing to have hens kept in a residential zone shall file the Arkansas Premises Identification Form with our Animal Services Division.

Joe Alexander: If a person registers their premises that puts them into the National Animal I.D. System. This requires them to put a radio frequency identification device in their animal at their own expense and then report to the state on every movement on or off of the premises of the animal. This will cause a lot of expense and a lot of time and trouble to report all their movements to the database.

Dr. Brandon Doss: That is our suggestion for you all so that in the event of a disease outbreak we can find the animals quickly. If you all would like to develop a local way of registering the premises so we would have someone to contact that would be to your ability to devise.

James Barton, a resident stated the animal I.D. system does not require that poultry be individually identified nor is a chip involved in any animal. The National Animal I.D. program is probably the best way for the City of Fayetteville to comply with finding animals in a timely manner during a disease outbreak.

Evan Nehouse, a citizen referenced the issue regarding 40 feet away from a neighboring structure. He pointed out that there were a lot of lots that would definitely restrict a lot of the people who might have a poor income and might really be able to use this type of a thing.

Alderman Thiel: We can make these amendments whenever we get finished.

Mandy Cox, a citizen asked if you have to do paperwork if you give your eggs to your neighbors. I would like to know what all is involved in the Animal I.D. System. She referenced a petition with 300 signatures in support of having chickens in Fayetteville and she stated the petition had been turned into the City Clerk's office.

Mayor Coody: My impression of the Animal I.D. isn't that each chicken would be identified with a radio chip but that they might know where these farms are so that if there were an outbreak they could check where the disease originated.

Todd Jacobs, a citizen: I support the chicken ordinance. I have never heard any complaints. The only item that causes me some concerns is the 40 foot distance that you have to keep from the residential house. I would like to see the possibility of having that reduced down from 40 to 30 or 20 which would have a little more flexibility.

Alderman Thiel: I asked Mandy to do the petition and there was a lot of support for this and I appreciate that. I don't think we need to pass this tonight but I would like to make a couple of amendments that have been suggested. I think we should wait on the registration and get a clearer picture of that. We need to add secure enclosure and then eliminate constructed at least two feet above the surface of the ground in Section #5. I would also like to change it to 25 feet like it was originally.

Alderman Rhoads: Are we going to find out what the minimum is?

Alderman Thiel: I definitely want to eliminate the above surface part.

Jill Hatfield: We looked at the ordinances for back yard flocks and it's usually two to four square feet in the coop per chicken. We had talked about 10 X 10 for the pen itself.

Alderman Thiel: If the person does not have a fenced yard.

Jill Hatfield: Right.

Alderman Thiel: You know we took this to Ordinance Review and if we would have had some of these comments we could have fine tuned this then. I would like to make amendments and then if someone has comments before the next meeting we can hear that. The suggestion would be a minimum of 4 square feet per chicken for the coop.

Jeremy Pate read Section #5 as it would be amended.

Alderman Allen: Is there a maximum size of the pen. Someone could say that their entire back yard as long as it is fenced in is a pen.

Alderman Thiel: As long as it is 25 feet from someone else's property then yes.

Alderman Allen: Jeremy when you researched other cities what was the rational for the off the ground pen? What are your reasons for recommending that the pen be off the ground?

Jeremy Pate: One was some of the pens are made for when they are cleaned out they have a solid bottom and their tray can slide out. The more popular reason was for predatory reasons.

Alderman Allen: Do we feel like this is something that Code Compliance can even keep up with?

Alderman Thiel: It is not Code Compliance it is going to be in Animal Services.

Alderman Allen: Do we have enough man power because sometimes we end up with rules that can't be enforced.

Mayor Coody: We will put our best people on it.

Alderman Thiel: I would like to pass the amendments. She briefly went over the amendments again and asked Jeremy to read the section again.

Jeremy Pate read the section as it would be amended.

James Barton: I think it is appropriate to legislate setbacks and the ability to possess or not possess a certain type of animal but to start proscribing a particular husbandry practice is outside the scope of a City and should probably be left up to the USDA or a national organization.

Alderman Rhoads: What part is the husbandry practice?

James Barton: The size of the pen, what it should look like, and whether it should be raised off the ground.

Alderman Rhoads: I think that is all the more reason to leave it on this reading and see.

Alderman Thiel: I don't think we are trying to tell anyone how to raise chickens. We are just trying to enable people to have chickens in such a way that it is humane for the chickens and that is safe for the neighbors.

James Barton: It would be much simpler ordinance if the husbandry practices were deleted because there is a number of ways to raise chickens.

Alderman Thiel: I think there would be a lot of neighbors concerned if we just allowed four chickens in the back yard regardless of any conditions at all. I think we do need to have some.

James Barton: The humaneness could be forced through the animal shelter correct?

Mayor Coody: I believe so yes.

Jesse Roseban: He mentioned humaneness and I don't see any mention of the existing proposal humane methods of killing. I am assuming the animals are for food purposes and it does not mention how or when they should be killed except that they have to be killed inside. I would again like to mention the revision of Chapter 92 if the animal shelter has been working on this with you guys, Chapter 92 needs to be looked at. In Chapter 92 there is nothing to prevent the slaughter of dogs and cats let alone chickens.

Mandy Cox: The part where the chickens have to be in the coop when the owners are not at home, the only problem with that is it is like raising chickens in a chicken house. It kind of makes the whole idea of having chickens in your back yard very attractive. They need space to get out and should not be confined so much of the time.

Alderman Allen asked to hear the amendments again. After hearing the amendments she stated I do not feel like I have enough information. I am going to presume that your amendment is fair.

Alderman Thiel: They can still run in the back yard.

Alderman Thiel moved to add Section C. #5 stating that all hens must be kept in an enclosed structure and to amend Section #6 to state 25 feet from any residential structures. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

Alderman Thiel: I want people to send us emails about any changes that they want. We will also be considering the registration of the premises and how that should be worded.

This ordinance was left on the First Reading

Residential Trash Service: An ordinance waiving the automatic annual price increase for residential trash service for fiscal year 2009.

City Attorney Kit Williams read the ordinance.

Mayor Coody: Our Solid Waste Division has been running very efficiently and we do not feel the need to increase the fees even though we have allowed it every year.

Alderman Cook moved to suspend the rules and go to the second reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Ferrell and Alderman Lucas were absent.

Ordinance 5196 as Recorded in the office of the City Clerk

Proposed 2009 Annual Budget & Work Program: A resolution adopting the 2009 Annual Budget and Work Program as amended and approved.

Paul Becker gave a description of the 2009 Budget. He stated this is to introduce the proposed 2009 operating budget of \$119.4 million which is up 2% from the previous year's budget of \$117 million and includes operating expenditures and capital expenditures. It does not include depreciation for the enterprise funds or the balances for the capital project bond funds that will be carried over in the first quarter of 2009. He went on to give a breakdown of the budget. He stated we have a meeting scheduled for December 1st at 4:30 PM which is open to the public.

Alderman Gray moved to table the resolution to the December 2, 2008 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Alderman Lucas were absent.

This resolution was Tabled to the December 2, 2008 City Council meeting.

Southpass Development Company, LLC: A resolution to approve approximately \$744,880.00 as a 50/50 cost share with Southpass Development Company, LLC for the sewer installation costs for the Regional Park and Southpass PZD.

Ron Petrie, City Engineer stated city staff has reviewed several options in getting sewer to the regional park and we are bringing forward the least expensive item that we could find. The cities portion of this cost is \$745,000. He went on to discuss the options involved in installing the lift station on the Southpass property. He also listed how much revenue this project would bring in through water and sewer impact fees. This item will not obligate funds today. It will reinforce the commitment we already have with the contract and secondly it will allow us to begin the engineering design and give real costs that we can bring back for a full cost share agreement for you to approve.

Alderman Cook: This went before the Water and Sewer Committee and it did pass. We discussed what Ron said and we chose Option "A" out of all those.

Alderman Rhoads confirmed who was on the Water and Sewer Committee.

Alderman Cook: It was not unanimous. Bobby did not support the agreement.

Alderman Jordan: Bobby would like to be able to weigh in on this discussion. Shirley is out of town and this is in our Ward. I would prefer for her to be here as well.

Mayor Coody: So you want to table this until the next meeting?

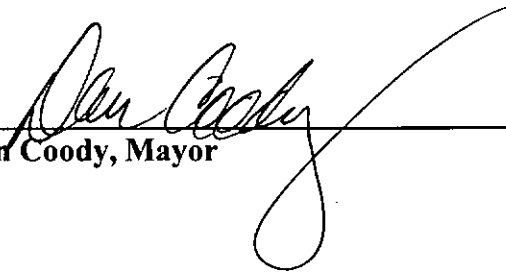
Alderman Jordan: Just until the next meeting.

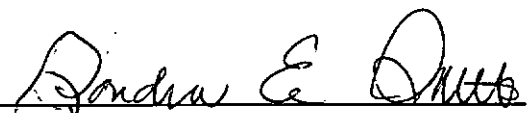
Alderman Jordan moved to table the resolution to the December 2, 2008 City Council meeting. Alderman Allen seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Alderman Lucas were absent.

This resolution was Tabled to the December 2, 2008 City Council meeting.

Announcements:

Adjournment: 7:35 PM



Dan Coody, Mayor

Sondra E. Smith, City Clerk/Treasurer