

Aldermen

Ward 1 Position 1 -- Adella Gray
Ward 1 Position 2 -- Brenda Thiel
Ward 2 Position 1 -- Kyle B. Cook
Ward 2 Position 2 -- Matthew Petty
Ward 3 Position 1 -- Robert K. Rhoads
Ward 3 Position 2 -- Robert Ferrell
Ward 4 Position 1 -- Shirley Lucas
Ward 4 Position 2 -- Sarah E. Lewis

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
September 7, 2010**

A meeting of the Fayetteville City Council was held on September 7, 2010 at 6:00 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: Alderman Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan presented three Bronze awards from the 31st Annual Telly Awards to the Fayetteville Government Channel and recognized Fritz Gisler, Neil Bible, Frou Gallagher, Steve Odom, and Tyron Rogers.

Fritz Gisler expressed his appreciation for the support of the Mayor, Director of Communications, Lindsley Smith, and the City Council.

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the August 17, 2010 City Council meeting minutes.

Approved

National Wildlife Federation Community Wildlife Habitat: A resolution authorizing an application for the City to be certified as a National Wildlife Federation Community Wildlife Habitat.

Resolution 155-10 as recorded in the office of the City Clerk.

Watershed Conservation Resource Center Grant (White River): A resolution authorizing application and acceptance, in partnership with the Watershed Conservation Resource Center, of an Arkansas Natural Resources Commission matching grant in the amount of \$200,000.00 for restoration of a portion of the White River near the Noland Wastewater Treatment Facility, and approving a budget adjustment in the amount of \$77,000.00 representing the City's match.

Resolution 156-10 as recorded in the office of the City Clerk.

2010 Washington County Inter-Local Agreement (Animal Sheltering): A resolution approving an inter-local agreement between the City of Fayetteville, Arkansas and Washington County, Arkansas to provide animal sheltering services to Washington County, Arkansas for calendar year 2010.

Resolution 157-10 as recorded in the office of the City Clerk.

RFP #10-11 Plante & Moran, PLLC: A resolution awarding RFP #10-11 and approving a contract with Plante & Moran, PLLC in an amount not to exceed \$60,000.00 for the performance of a city-wide information technology assessment.

Resolution 158-10 as recorded in the office of the City Clerk.

2010 Justice Assistance Grant Local Solicitation Award: A resolution authorizing acceptance of a 2010 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Grant in the amount of \$108,419.00 to the Fayetteville Police Department as a lead agency, and approving a budget adjustment.

Resolution 159-10 as recorded in the office of the City Clerk.

Access Management Plan Agreement Amendment (State Highway 265): A resolution approving an amendment to the Access Management Plan Agreement, as prepared by the Arkansas Highway and Transportation Department, for State Highway 265.

Resolution 160-10 as recorded in the office of the City Clerk.

Amend Resolution No. 131-10: A resolution amending Resolution No. 131-10 to change all references from "Today in America" to "U.S. Media Television, Inc."

Resolution 161-10 as recorded in the office of the City Clerk.

Alderman Cook moved to approve the Consent Agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

ADM 09-3273 (Business Registry and License Program): An ordinance to amend the Fayetteville code by enacting a chapter to create a business registry and to require annual business licenses for all businesses and non-profits with locations within Fayetteville. *This ordinance was left on the Second Reading at the June 15, 2010 City Council meeting. This ordinance was left on the Third Reading at the July 6, 2010 City Council meeting and Tabled to the September 7, 2010 City Council meeting.*

City Attorney Kit Williams: I have redrafted the ordinance to have a later effective date. It should not be effective until November 1, 2011.

Alderman Thiel moved to amend the effective date of the ordinance. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Aaron Stahl, local business owner spoke in opposition of the ordinance. He stated he did not think a business license was needed.

Jeff Dickey, Candidate for Ward 4 stated while on the campaign trail he has talked to a lot of business owners and the sense he is getting from business owners is that Fayetteville is not business friendly. He asked that the ordinance be tabled so that we can better address and embrace our businesses. To restrict businesses further would further give this City the notion that it is business unfriendly

Alderman Lucas: You say our business license would be indicating that we are business unfriendly, yet the cities that have a business license make a tremendous amount of money from it. Are they business unfriendly by doing that?

Jeff Dickey: No, I'm not saying a business license is a bad idea but during these economic times when businesses are trying to thrive it is a wrong idea. We are already losing businesses to Bentonville and Rogers.

Chun Tan with the Fayetteville Chamber of Commerce and Economic Development Manager stated the Economic Development Team fully supports the approval of a business registry. Right now we are faced with the challenge of collecting the information. This information is important if the City of Fayetteville or any non-profit organization would like to move forward in getting or applying for Federal funds. For us to get information to do economic development to attract businesses to Fayetteville we need information that is particular to the needs of the City of Fayetteville to move Fayetteville forward. The business registry will help us greatly in that endeavor.

Alderman Lewis: I have heard people discuss the ability to use this as a tool for attracting new business. How does that work?

Chun Tan: Last week we had a ground breaking for Delta Electronics. They have five plants throughout the United States. They were interested in coming to Fayetteville because they believe Fayetteville will be a place for them to grow and because Fayetteville is for sustainable growth.

We are working with the Arkansas Economic Development Commission out of Little Rock. When they try to attract a company to come here we want to show them this is where your customers are, this is where you can get your raw materials, and this is where you can get your workers. We can show them that by having statistical information.

Alderman Lewis: So we are competing with other cities. Do those other cities have the data?

Chug Tan: Yes, it is more common than not to have a business registry. One of our tasks in economic development is business retention and expansion. So we need to know what is happening in the community. This is a cost recovery program it does not generate revenue for the City.

Alderman Gray: Fayetteville's paper application is \$35 and electronic is how much?

Karen Minkel, Director of Strategic Planning and Internal Consulting: Electronic is \$32. Home based businesses would pay \$22 for a paper application and \$10 for electronic. The annual renewal fee will be \$15.

Alderman Gray: Is there an additional amount because of additional workers?

Karen Minkel: We were looking at the actual cost it would take to run the program. With the paper application there was more data entry involved. So there is more staff time involved which is why it is a bit more expensive than completing the electronic application.

Don Marr, Chief of Staff: Some cities charge the fee based on the number of employees. That is not incorporated into this fee. This is a standard fee that applies to all businesses across the board. Businesses today should be paying a \$25 fee for zoning compliance which would be incorporated into this new \$35 fee. It will be a \$10 difference between what is done today and what the new fee would be. There was business involvement in the crafting of this ordinance.

He reviewed all the items that were considered in developing the ordinance. He stated this is not a revenue generating program it is a cost recovery program.

Alderman Gray: Do we know what Bentonville's fee is?

Karen Minkel: Bentonville does not have a business license. Rogers, Lowell, and Springdale all have a license. Rogers and Lowell charge \$50 as a base fee. Springdale charges \$20 as a

base fee but all three cities add on based on the number of employees or number of chairs in a restaurant. That is not uncommon.

Alderman Petty: What is the difference in the penalties and enforcement policies between this ordinance and the certificate of zoning compliance?

Karen Minkel: In the business registry model if the Director of Development Services finds that the business is not in compliance with one of the aspects of review, which could include fire, safety, zoning, then the Director of Development Services could recommend suspension or revocation of the license. The business would have a public hearing with the Chief of Staff and could appeal that decision to the City Council.

Alderman Petty: For non compliance in this ordinance the fee is \$250 per day of operating a business in non compliance. How is that different from the previous ordinance?

Jeremy Pate, Internal Services and Development Director: The certificate of zoning compliance would fall under the general violation of the UDC.

City Attorney Kit Williams: I don't do the prosecution. I think it is also \$250 a day. That was the state limit and the state has doubled the limit but we haven't changed our ordinances to match the increase allowance by the state.

Alderman Thiel: Where is a person going to apply for a business license?

Karen Minkel: The license will be handled through the Department of Development Services.

Alderman Thiel: Will there be a renewal reminder once a person applies?

Karen Minkel: Yes, businesses would receive notification every year. The renewal period, now that the ordinance has been amended, is September 1st and October 31st. They will have the option to complete a paper application or apply on line.

Don Marr: The rational for selecting the Planning Department was because current permitting is done in that office.

Alderman Thiel: Do you think you are going to be able to handle the amount of businesses in Fayetteville?

Don Marr: We are hoping that the majority of businesses will use the online application process. We originally had staff assigned to this but, because of where we are today with the amount of development, we believe we have staff to apply to it. If development returns we will have a discussion with you about whether we need to have staff.

Alderman Thiel: My concern is with the home based businesses. I am concerned about the fines associated with this for all the people that will not know about it. They will not know to apply.

Don Marr: Our expectations are that most businesses when they do know that they have a requirement they tend to comply. Our goal is to work with people, get the data, and get the registry built. We believe most businesses will comply.

Karen Minkel: If it came to the attention of the Planning Office that a business was in non compliance they would receive notification and they would have time to comply.

Alderman Ferrell: Is the triggering effect for a home based business of a LLC or Corporation that requires a license patterned after the surrounding communities?

Karen Minkel: A lot of communities are a bit more vague and broad in their statements. She gave examples.

Alderman Ferrell: Kit your memo talks about the super majority of six votes to comply with state law when you are voting on a tax.

City Attorney Kit Williams: It's either a business license or a tax. That is based upon state statute 26-77-102. He read the statute. That statute seems to control this.

Alderman Lucas: A lot of citizens and business people had input into this. Wouldn't it be smart to use technology to know who is operating businesses in our City and to ensure health and safety compliance for our citizens and staff in a more efficient way. This came from the summit for economic development and we have hired the Chamber to do economic development. Change is difficult and there will be those opposed but this is something Fayetteville needs. I support it.

Alderman Lewis stated she supported the ordinance. This is data that can help us attract new businesses and help us compete.

Alderman Thiel: We have discussed this for months and the public has had ample time to consider this and come forward and make a statement.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. **Alderman Cook and Ferrell** voting no.

Ordinance 5347 as Recorded in the office of the City Clerk

ADM 09-3466 (UDC Chapters 151 & 164 Vehicle Related Businesses): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, Chapters 151: Definitions and 164: Supplementary Zoning Regulations, in order to include additional definitions and requirements for vehicle related businesses. *This ordinance was left on the Second Reading at the August 17, 2010 City Council meeting.*

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Internal Services and Development Director gave a brief description of the ordinance.

Alderman Lewis: The way it is written now a person can appeal your decision, right? Would the exception clause be redundant within our code?

Jeremy Pate: You can appeal an interpretation of a code so if something is gray in the code it is my job to make that black or white and make a determination. Yes, that could be appealed to the Board of Adjustments.

City Attorney Kit Williams: His interpretation would probably not be challenged. It would be whether or not more time is needed.

Alderman Ferrell: Jeremy, from what I understand you are saying staff would rather wait and see if a problem occurs and if it does deal with it then? If there were cases that would require action do you think staff will be supportive at that time?

Jeremy Pate: I think so. We picked 45 days and we want to try that time period out. Any time we draft an ordinance and have a time frame we have to weigh that after it is adopted to make sure that's the right time frame before we pursue any type of enforcement or prosecution action.

Alderman Thiel moved to amend three sections of the ordinance 164.05 Subsection C, 164.14 Subsection B and add Subsection D to 164.14. Alderman Lucas seconded the motion.

Jeff Dickey stated he is in agreement with having cars parked longer than 45 days. One issue that may not be clear is, are we isolating out auto repairs places and other business such as auto body then we are becoming discriminatory against businesses. I would caution against that.

Upon roll call the motion passed unanimously.

James Laubler, Ward 4 resident: I canvassed some businesses today that have been around and they had not heard there was an ordinance. Are you all going out and talking to businesses to see what their problems are with it?

Alderman Ferrell: When you were talking to the businesses did you advise them to contact their Alderman?

James Laubler: No, you would think that would be common sense to stay engaged.

Alderman Ferrell: If they found out about it did you advise them to go ahead and contact their aldermen?

James Laubler: This was this afternoon and there was no reaction time for them.

Alderman Lucas: Did they have a problem with this after you talked with them?

James Laubler: Yes.

Alderman Lucas: What was their problem?

James Laubler: You add this ordinance and another ordinance and it is a patch work of many things that you need to have done. When you keep adding, these people feel they are too busy to keep in contact with the Council.

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

Ordinance 5348 as Recorded in the office of the City Clerk

New Business:

RZN 10-3625 (Cedar Crest Academy): An ordinance rezoning that property described in rezoning petition RZN 10-3625, for approximately 2.25 acres, located on the south side of Persimmon Street, northwest of Owl Creek Elementary School from RSF-4, Residential Single-Family, 4 units per acre, to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. Planning Commission voted to forward this with a recommendation of 6-0. Staff is also recommending approval.

A discussion followed on the location of the project.

James Laubler: Has someone applied to build something there? I saw the word institutional.

Mayor Jordan: It's my understanding they have not.

James Laubler: So this is general zoning. This is two corners that are covered where our youngest children are. We don't need a halfway house. That is my only concern.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion.

Alderman Lewis: This is a rezoning and we are not allowed to consider what they would put on that site at this point. We can only consider the zoning.

Alderman Lucas: What would be allowed in this zoning?

Jeremy Pate: The primary use within the institutional zone is Use Unit 4 which is called cultural and recreational facilities. That is the zone that most of our churches and schools are typically zoned.

Alderman Lucas: Thank you.

Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: I have not heard from any of the residents about this.

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

Ordinance 5349 as Recorded in the office of the City Clerk

RZN 10-3626 (Mathias Shopping Centers): An ordinance rezoning that property described in rezoning petition RZN 10-3626, for approximately 1.2 acres, located at the northwest corner of Hwy 45 East and Box Avenue from R-O, Residential Office, to CS, Community Services.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff recommended approval and Planning Commission voted 7-0 in favor of the zoning request.

Alderman Ferrell: Jeremy, I hope we can keep looking to the future for perhaps a back door on 265.

Alderman Lucas: I couldn't agree more. I've even been contacted about that. It would come from the school also down to 265 which would put traffic through the neighborhoods.

Alderman Lewis: I'm very supportive of the form based community services codes, thank you for working on that.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5350 as Recorded in the office of the City Clerk

Repeal and Replace §34.26 (Authority of City Employees to Contract with the City): An ordinance to repeal §34.26 Authority of City Employees to Contract with the City and to enact a replacement §34.26 Limited Authority of City Employees to Provide Services to the City.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams gave a brief description of the ordinance and stated why he brought the ordinance forward.

Alderman Ferrell moved to amend Subsection E. of the ordinance. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Don Marr: There are certain staff that have asked questions about seasonal or part time employees, An employee that works at the pool or as a camp counselor who ends that assignment is no longer an employee of the City at that point, and would eligible and to be considered for these particular positions. It doesn't prohibit that in any way. City park employees who would like to work in those environments would still be allowed to have that opportunity. They would be paid at their regular hourly rate or overtime.

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

Ordinance 5351 as Recorded in the office of the City Clerk

Amend Chapters 151 & 162: (ADM 10-3630 Recycling and Collection Centers): An ordinance amending the Unified Development Code Chapter 151: Definitions and Chapter 162: Use Conditions to create definitions for community recycling drop-off facilities and centers for collecting recyclable materials and to allow such uses in appropriate zoning districts.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. Staff is recommending in favor of this ordinance.

Alderman Thiel: I think this is a good thing and is a good opportunity for the City to feel a bit more proactive about recycling. I think a lot of people will take advantage of this more than they do the curb recycling.

Alderman Ferrell: This is a good time for a green alert for volunteers.

Alderman Lucas: Can other people besides the City set up recycling things? Would they have to come for a conditional use?

Jeremy Pate: Yes, the only one I'm aware of currently is the Vaughn Recycling Center on South School.

Alderman Petty: Would this cover construction waste recycling facilities such as the Habitat for Humanity ReStore?

Jeremy Pate: That's primarily a retail facility. We would probably classify that as a use of retail facility more so than a recycling facility.

Alderman Petty: Thank you.

Alderman Gray moved to suspend the rules and go to the second reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third reading. **Alderman Petty** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5352 as Recorded in the office of the City Clerk

Amend Chapter 161: Zoning Regulations (Use Unit 43 Animal Boarding & Training): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, Chapter 161: Zoning Regulations to permit use unit 43, Animal Boarding and Training, in certain situations in commercial, industrial, mixed use, and residential-agricultural zoning districts.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. Staff is recommending approval of the amendment.

City Attorney Kit Williams: I noticed in the title it talks about residential agricultural zoning districts and it's not mentioned in the body. Is that because it was not repealed from that particular zoning district or do we need to add that to Section 2?

Jeremy Pate: It was not repealed.

City Attorney Kit Williams: So it is still allowed there it was not repealed.

Jeremy Pate: That's correct.

James Laubler: I'm unclear with what you are doing. Are you allowing people to do boarding in neighborhoods?

Jeremy Pate: The request is to add a conditional use permit option for animal boarding and training to our C-2 which is Thoroughfare Commercial, Urban Thoroughfare, which is a Commercial District, our Heavy Commercial and Light Industrial Districts.

Alderman Thiel moved to suspend the rules and go to the second reading. **Alderman Lewis** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. **Alderman Lewis** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5353 as Recorded in the office of the City Clerk

Amend Resolution No. 76-06 Lierly Lane Subdivision: A resolution to amend Resolution No. 76-06 to amend the site plan to replace five duplex lots with single family lots and change the lot once designated for the decentralized community septic system to single family lots and a developed park of about 2.5 acres.

Jeremy Pate gave a brief description of the resolution and stated staff recommends approval.

Alderman Lewis: I was willing to bring this forward. I haven't reviewed it very closely and I want to hear from the public. I appreciate Jeremy's help because there is a lot of history to this site that came before my time.

James Laubler spoke in favor of the resolution. He also stated he didn't see a posting to let the neighborhood know what was going on.

Jeremy Pate: We post for development items and things that go before Planning Commission but because this came straight to the Council as an Alderman sponsored item it simply went on the agenda and was discussed at Agenda Session. That was the first time it was discussed.

James Laubler: I think it's a great idea but it aggravates me that as a member of the community I didn't know a change of zoning was going on.

Alderman Lucas: This was developed with the County. It wasn't developed with us, was it?

Jeremy Pate: Yes, it was developed to County standards and it was before the County had zoning. There were no land use controls at that time.

Alderman Lucas: That's why it is mixed like that.

James Laubler: This is in the city. Are you saying this was built before the City annexed it?

City Attorney Kit Williams: Yes.

A discussion followed on the tandem lots.

Alderman Lewis: I am concerned where it says about 2.5 acres in the resolution.

Jeremy Pate explained why it says about 2.5 acres.

Alderman Lewis: Is the design of the park decided? Is that something we need to talk about now? My concern is with the lawn.

City Attorney Kit Williams: This is not designed to be a city park. This is a property owners' association requirement and that is why they have to pay park fees.

Todd Jacobs: This will be a city park basically taking what was the drip field and trying to make an amenity within this neighborhood. The POA will be responsible for the maintenance of it.

A discussion followed on Subsection C.

Alderman Lewis moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 162-10 as recorded in the office of the City Clerk.

There was a scrivener's error in the following ordinance number that was being amended. The amended ordinance should read 5341.

Amend Ordinance No. 5344 (Watershed Conservation Resource Center): An ordinance amending Ordinance No. 5344 to approve an amendment to the memorandum of understanding with the Watershed Conservation Resource Center (WCRC) to allow for projects on public lands owned by the City of Fayetteville.

City Attorney Kit Williams read the ordinance.

John Coleman gave a brief description of the amendment to Ordinance No. 5344.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5354 as Recorded in the office of the City Clerk

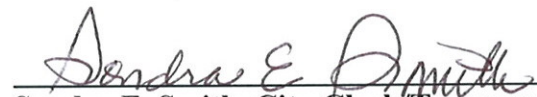
Announcements:

Alderman Lucas: September 18, 2010 is the Ward 4 Clean Up at Shaver Foods and Owl Creek School.

Alderman Lewis: The Environmental Action Committee thanks you for supporting the Community Habitat Project. If you are interested in being a part of that you can go to the National Wildlife Federation website or contact Alderman Lewis or Terri Lane.

Meeting adjourned at 8:05 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

