

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
February 3, 2011**

A meeting of the Fayetteville City Council was held on February 3, 2011 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Meeting was rescheduled from February 01, 2011 to February 03, 2011 due to inclement weather.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Kinion, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Matthew Petty

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the January 18, 2011 City Council meeting minutes.

Approved

Community Development Block Grant (CDBG): A resolution authorizing the Mayor to execute the Community Development Block Grant (CDBG) agreement for 2011 when received in the estimated amount of \$700,000.00.

Resolution 21-11 as recorded in the office of the City Clerk.

Ranger's Pantry Pet Food Bank: A resolution approving a budget adjustment in the amount of \$1,361.55 for donation revenue received from citizens for the Ranger's Pantry Pet Food Bank and in the amount of \$500.00 for donation revenue from the Fraternal Order of Police for the Senior Giving Tree event.

Resolution 22-11 as recorded in the office of the City Clerk.

Joe Perme Construction Inc. Change Order: A resolution approving a change order to the contract with Joe Perme Construction Inc. in the amount of \$2,700.00 for Community Development Block Grant rehabilitation at 1932 South Garland.

Resolution 23-11 as recorded in the office of the City Clerk.

Pinkley Sales Company and Smith Two-Way Radio, Inc. Donation Revenue: A resolution approving a budget adjustment in the amount of \$300.00 representing donation revenue received for the Fire Department's annual employee service awards events.

Resolution 24-11 as recorded in the office of the City Clerk.

Civil Service Trials Legal Representation: A resolution to approve contracts with law firms selected by the Police and Fire Chiefs to represent them during any civil service trials in 2011 with options to renew.

Resolution 25-11 as recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent.

Unfinished Business: None

New Business:

VAC 10-3707 (Kum & Go): An ordinance approving VAC 10-3707 submitted by CEI Engineering Associates, Inc. for property located at 2396 North College Avenue, to vacate an existing sewer easement on the property, as described herein.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated the Planning Commission forwarded this request to City Council with a recommendation for approval and staff also recommended approval.

Alderman Ferrell moved to suspend the rules and go to the second reading. **Alderman Gray** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Petty** was absent.

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 7-0. **Alderman Petty** was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Petty** was absent.

Ordinance 5383 as Recorded in the office of the City Clerk

RZN 10-3724 (Boudreaux/Thiel, 120 & 124 Sycamore Street): An ordinance rezoning that property described in rezoning petition RZN 10-3724, for approximately 1.28 acres, located at 120 and 124 Sycamore Street from R-O, Residential Office, to C-S, Community Services.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated the Planning Commission recommended in favor of this and staff supported it as well finding that it is consistent with our City Plan 2025.

Alderman Thiel: I will have to recuse from this because it is my property. Adella is going to bring up something I just noticed.

Alderman Gray: The original presentation of the acreage and the exhibit do not match. One says 1.2 and the other says 1.61.

Jeremy Pate: We will double check that. Whatever is in the exhibit is the legal description that we would utilize so that is the most accurate.

Alderman Gray: So 1.61.

Alderman Gray moved to amend the ordinance to state 1.61 acre tract. **Alderman Tennant** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Petty** was absent. **Alderman Thiel** recused.

Alderman Ferrell: Where appropriate I enjoy seeing an upzoning and I certainly think this is appropriate for this property.

Alderman Ferrell moved to suspend the rules and go to the second reading. **Alderman Lewis** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Petty** was absent. **Alderman Thiel** recused.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Petty** was absent. **Alderman Thiel** recused.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. **Alderman Petty** was absent. **Alderman Thiel** recused.

Ordinance 5384 as Recorded in the office of the City Clerk

Amend §71.170 Restriction of Type of Vehicles Allowed on City Trails: An ordinance to amend §71.170 Restriction of Type of Vehicles Allowed on City Trails of the Fayetteville Code to allow some pedicab use and use of gas powered vehicles on limited segments of trails when necessary.

City Attorney Kit Williams read the ordinance.

Matt Mihalivich, Trails Coordinator gave a brief description of the ordinance.

City Attorney Kit Williams explained why the pedicab section was in the ordinance. He stated this does not control pedicabs on the city trails, another section of the code does.

Jim Laubler, resident of Ward 4 stated I think this sets a bad precedence and I think we should keep the original intention of the trails which is to serve the public for recreation and exercise. He spoke against the ordinance.

Valerie Biendara, resident of Fieldstone Avenue: The problem I foresee with the pedicabs and gas powered vehicles is the speeds at which they will be going. So if you are going to allow them then maybe you can limit how fast they are going and also enforce the speeds in which they are going.

Alderman Thiel: There are some pedicab ordinances that will be coming forward from the Ordinance Review Committee that directly relate to them on the trails. This ordinance will not allow golf carts.

City Attorney Kit Williams: This just refers to the pedicab ordinance itself which might be debated here in the next meeting.

Alderman Thiel: Right, so the people that are concerned about pedicabs on the trails need to be sure and come to the meeting when that actually is the topic.

Alderman Ferrell: Wouldn't a pedestrian always have the right-of-way over a bicycle or a pedicab?

City Attorney Kit Williams: Yes, whoever is in front has the right-of-way on the trails. We have speed limits and other rules of the road for the trails. Hopefully we can get good enforcement. If people have problems you should let our Police Department know.

Alderman Lewis: So this allows an exception on the fair grounds trail.

City Attorney Kit Williams: Pedicabs aren't on the Washington County Fair Grounds. Regular vehicles are during a very limited period of time. Pedicabs would be pursuant to whatever the pedicab ordinance says.

Alderman Lewis: Mostly what we are deciding here is whether or not to allow these exceptions on this one space to link the trails system.

City Attorney Kit Williams: Right, that's correct.

Alderman Gray: Matt, can you tell us exactly how much of the trails we are talking about?

Matt Mihalevich: It is approximately 1,000 to 1,500 feet up the trail.

Alderman Gray: And Washington County will only be three days per year.

Matt Mihalevich: That is all they use it now. It is an overflow way to get out to Porter Road. Otherwise there are gates and it is always closed off. We plan to make the trails 16 feet wide there so if you did encounter a vehicle during that time there would be extra room as well as signage to make it a safe shared use facility there.

Alderman Gray: So for this action we are talking about 1,500 feet?

Matt Mihalevich: Yes, right around 1,500 feet. We have a situation similar to this on Maple Street where it is shared with four houses and very little conflict has occurred.

Alderman Gray: Otherwise they would not be allowed until we have further action.

Matt Mihalevich: Yes.

Rhonda Adams: I would just like to say thank you for making this work. I think it's great that we have three groups working together to allow a way to use a trail that may be less expensive than otherwise and trying to get right-of-ways for property also. I applaud you for your work on this.

Matt Mihalevich: Sometimes it is challenging to find something that will work for everybody so that is what this compromise is.

Don Marr: The key part of this is in order for us to have trail connectivity for this University trail, if we don't allow this use we will not be able to use this connection and therefore would require land acquisition or replacement of the trail. This is an area to accommodate three days out of 365 and still have trail connectivity that gets us across I-540. If it is declined we will have to go back and renegotiate trail connectivity with the University as well as the property owners.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third reading. Alderman Adams seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I am very happy about connecting Ward 4 to the trail system.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Petty was absent.

Ordinance 5385 as Recorded in the office of the City Clerk

Amend Title XV: ADM 09-3480 (Streamside Protection): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual.

City Attorney Kit Williams read the ordinance.

Karen Minkel explained where the idea originated from and gave a brief presentation on Streamside Protection. She stated the Planning Commission forwarded this ordinance to the Council with a recommendation for approval by a vote of 7-2.

Dr. Bob Morgan, Manager of Environmental Quality with Beaver Water District stated we are the provider of the water for the City of Fayetteville. He explained the history of their agreements with the City. He spoke on the science behind stream buffers and explained why they are looking at this proposal.

Alderman Ferrell: How would you compare the cleanliness of the water in Beaver Lake with lakes around the state?

Dr. Bob Morgan: It depends on what part of Beaver Lake you look at.

Alderman Ferrell: The center of it.

Dr. Bob Morgan: The center of it is getting pretty clean. The upper end of it is more murky which is a natural process of lakes because it settles down. The lower end down by the Dam is excellent and probably some of the best water in Arkansas. In general we are pretty well comparable with a lot of lakes.

Alderman Ferrell: What about Lake Tenkiller?

Dr. Bob Morgan: I think they have a much worse situation than we do.

Alderman Ferrell: Could you briefly explain to me what Beaver Water Districts role was on Fayetteville getting their permit for their new sewage treatment plant.

Dr. Bob Morgan explained the steps taken to obtain the permit.

Alderman Lewis: You mentioned the erosion from the banks and the nutrient uptake. One thing I hear pretty often is the algae. I am wondering if you can make a link between the nutrient and the algae for people.

Dr. Bob Morgan: Yes, in late summer when other conditions become just right the algae community converts over to blue/greens. When the lake turns over in the fall and those start dying is when we get the taste and odor. It's an esthetic problem but the nutrient load is one element of keeping that algae population under control.

Alderman Ferrell: Karen, do you foresee the other cities that are in the Beaver Lake Watershed coming up with similar ordinances?

Karen Minkel: I don't know that they are working on an ordinance. I haven't spoken with their staff.

Dr. Bob Morgan: If the other cities are interested we will help them out. Until Springdale grows to the east Fayetteville is the only city that has a lot of impact on our intake because Rogers is downstream from us and Springdale is primarily in the Illinois River Watershed. So we are not working with them directly right now but when they request the help we will help them.

Alderman Lewis: I would like to ask Karen if she would talk a little bit about the Best Management Practices Manual that was brought up. You mentioned it but I know there was a lot of work and that is a new product that came in tandem with the development of this proposal.

Karen Minkel: I think a lot of credit goes to the staff particularly Sarah Wrede and Jesse Fulcher who worked on putting this manual together. When we originally started the project and we were developing the ordinance, it became clear that we needed a Best Management Practices Manual to go with the ordinance and to really provide some of the education that is related to this issue.

Alderman Tennant: Karen, in one of your first slides you talked about 85% of phosphorous. Was that study done inclusive of residential and commercial? Are there any studies broken out with the percentage of purely residential areas and purely commercial?

Karen Minkel: Not that I have seen. This was looking at non-point sources within the Illinois River Watershed and I believe they sampled at a particular point within the creek. I will say though that within the buffer only 17 of the 200 existing structures are commercial structures.

David Jurgens, Utilities Director stated that study did not break down specific sources. What it did do was identify sources compared to the different Wastewater Treatment Plants in the Illinois River and it monitored at the state line and in several locations on both sides of the state line. In the Illinois River basin there is a total maximum daily load study underway right now by EPA Region 6. That will identify allocations of phosphorous and other nutrients within the Illinois River basin.

Karen Minkel: The Geo Syntec Study identified some of the key sources of pollutants as being manicured lawns and pet waste which are primarily coming from residences versus commercial properties.

Michael Landry, Board of the Washington County Tea Party voiced his concerns. A lot of this is about being good neighbors. There are some issues regarding property rights that concern us. Property owners should be the ones to make decisions about vegetation on their property. We are concerned about the prohibition of cultivation near water. We are also concerned about the application of the ordinance. We are concerned about the abuse of eminent domain. I hope the Council will take our concerns into consideration as you look at the ordinance.

Bob Caulk, Chairman of the Fayetteville Natural Heritage Association spoke on green infrastructure and stated the FNHA Board supports the ordinance and strongly encourages the Council to pass the ordinance.

Alderman Lewis: I have a question about the survey that indicated the water resources. Can you talk about that a little more?

Bob Caulk: The people that attended the various public meetings we had during the course of the study, there were probably 200 to 300 people in total. During the course of the study we conducted a poll with 400 random registered voters in the City of Fayetteville, 100 in each ward and we asked them questions about what were their conservation priorities. Even the people, that were against additional taxes for a sustainable funding source, thought that they might be willing to spend some additional money to protect their water source.

Mayor Jordan: What percentage did you say was in favor of it?

Bob Caulk: The only one I remember was the small tax for green space and 60% of the total population was in favor of it. If you looked at the people that would probably vote in a special election 70% of them support it with almost 50% of them strongly supporting it.

Alderman Lewis: That's on your website?

Bob Caulk: I think it is, if it isn't we will see that it gets there.

Jim Laubler stated this information has been tested before and has been defeated. I believe it was up north in one of the cities and in Fort Smith. I am just passing that along and have not had time to verify it. He stated this is about eminent domain and doing it right. I am worried about the environmental activism on this. He asked the Council to leave it on the first reading.

Mayor Jordan assured Jim that this probably would be read at three meetings which would give him plenty of time to verify his information.

Kevin Babin, resident of Ward 2 gave his observations from a homeowner's point of view. He spoke on the current erosion problems near his property. This seems that you are trying to take my property away from me. He spoke against the ordinance.

John Garland, resident of Farmington asked what other methods of reducing the phosphate load other than this riparian buffer zone have been looked at. What additional burden does this place on the City of Fayetteville's infrastructure? How do you police this? I am curious about the forecast in increase phosphate loads and at what point are we looking at expanding the treatment facility. What portion of south Fayetteville is in the Beaver watershed?

Michael Ollie: I am a property owner within the effected watershed. I think the ordinance is very accommodating and I support you.

Joe Maynard, Fayetteville resident asked several questions about a study that was attached to the ordinance. He asked questions about Table 4 of the study. He voiced his concern about the study. He voiced his concerns about regulating someone's property. He stated if someone causes a problem it should be dealt with on an individual basis.

Mayor Jordan: So you are saying that we need to enact a law on each individual to correct the situation?

Joe Maynard: We need to enact a law on each abuse. If there is an oil slick coming from your yard and we trace it back to you then you need to be responsible for that.

Mayor Jordan: I totally agree.

Joe Maynard: It is kind of an assumed guilty for everybody. Let's find the guilty and deal with them. That would be the fair way to do this. He spoke against the ordinance.

Debbie Beckerdite, landowner from east Fayetteville stated I want quality water for my family but I cannot support this ordinance as it stands. She voiced her concerns about taking people's property. She stated to implement this it will be costly. Everyone wants good water and to be proud of their City but this is the wrong way to do it. She spoke against the ordinance.

Tom McKinney with the Arkansas Chapter of the Sierra Club handed out photos to the Council of a creek during a flood in 2004 that almost reached the Greenland School. He explained the various projects they have worked on with the City. He thanked the Council for taking up the

streamside protection ordinance and urged that it be passed. He asked if this ordinance only applied to City of Fayetteville residents within the city limits.

Mayor Jordan: That is correct.

Tom McKinney: Having this streamside ordinance in place will take care of the silt and trash in the creeks.

Alderman Ferrell: You said this ordinance will also protect landowner's property rights. I disagree with that. It may in aggregate for the city but individually I think you could have a consequence for it. I think you are talking about aggregate when you say it will be a cleaner community but it can affect individual property rights. My question is it says here "reducing pollution, flooding and blight." What are you referring to as blight?

Tom McKinney: Blight meaning the trash that I see along the creeks. It protects individual property rights because very few of us don't live downstream from somebody else. I politely disagree with you on that because it does protect individual's property rights in that way.

Alderman Ferrell: Not all of them because it is taking some away.

Steve Harris, resident of 15th Street. The Town Branch joins my property on both sides. He voiced his concerns about the trash accumulation along the creek. He stated if it is not cleaned up it will cause the water to back up. He also spoke on the current erosion problems that can not be controlled because of drainage. I would like you to consider this ordinance very carefully before you pass it.

Pete Heinzelmann, resident of Ward 1: We all have to have water and we need to keep that water available and clean. This will help prevent storm water damage and pollution. It does things for the entire community. This ordinance is taking a stand and doing something. I applaud the staff and all of you for stepping forward and preserving our water supply.

Peter Njuguna, Fayetteville resident: Fayetteville residents want clean water. The vast majority of property owners love their property, value their land and want to do the best for it. I ask you not to pass the ordinance but to educate property owners. Property owners may feel that their property rights have been violated. To my knowledge the property owners along the stream were sent a letter informing them of this in late October, 2010. I would ask you to slow the process down and to not pass an ordinance that might have unintended consequence.

Alderman Thiel: The misinformation that the city spent approximately \$1,000,000 over the last few years to study and develop this ordinance where is that coming from.

Peter Njuguna: Since my email I contacted Karen and she has explained that this was a \$200,000 commitment to do the studies regarding the water and a part of that resulted in the ordinance. In my email I did not have the proper information. It is my understanding the City has spent \$200,000 a year since 1996 to study the situation, not specifically this ordinance.

Alderman Ferrell: There are a lot of people that feel like they want to protect the water and runoff. What would you think about a modification to the ordinance that allowed an adjacent property owner to opt out?

Peter Njuguna: An adjacent?

Alderman Ferrell: If you are one of the 300 property owners.

Peter Njuguna: I think its 1,300.

Karen Minkel: Letters were sent to 1,300 property owners, 300 principal structures.

Alderman Ferrell: What would you think about that?

Peter Njuguna: There might be some unattended consequences from people who might have had the opportunity to opt out and didn't. My question has been how many of the 1,300 property owners have been able to participate?

Valerie Biendara a citizen of Fayetteville explained the reasons why she didn't support the ordinance. She voiced her concerns about passing the ordinance and it not working. She voiced her concerns about this being about control.

Gladys Tiffany stated we need to be organized and we need to be prepared to protect our water resources. I see this ordinance as a good step forward.

Joyce Hale, President of the League of Women Voters of Washington County: We have many years of experience at looking at water issues and the complexity they have and the responsibility that individuals and communities have in trying to add to that protection. Our position on ground water and surface water management states that we wish to stand to maintain water quality by authorizing controls to prevent harmful contamination of aquifers and surface water supplies. We support the protection of private property rights balanced with consideration of public health, environmental protection and long range planning in Washington County.

Richard Heckmann, a resident just outside the city limits pointed out the differences between partnership and control. I have more than a causal interest in the ordinance. I am concerned that the ordinance is not constitutional. As I read this ordinance it is about power and not brotherhood, it is about coercion and not community and it is about punishment and not persuasion.

David Orr, resident of 1564 West Cedar Street stated people have become callus towards the need to protect the values that science is telling us that we need to ensure for water quality protection purposes. Prevention is a lot cheaper than doing the clean up afterwards. I think this ordinance is permissive. He commended the City staff for their hard work in drafting this ordinance.

Judy Stevens, resident of Cato Springs Road stated I am concerned as a property owner. This will be the fourth time the City has come to us wanting control of our property. We previously

donated land to the City for various projects and we have not seen the projects completed. I am reluctant to see this ordinance pass.

Alderman Ferrell: How long ago was it that you gave property to the City that they wanted to build a bridge on?

Judy Stevens: It was when they were building the Road Department.

Alderman Ferrell: Mayor, would you ask staff to find out about this?

Mayor Jordan: I will.

Richard Tiffany, a resident of Willow Street near Spring Branch: I am supportive of the intent of this. The quality of water is one of the most important things that we have. There are a number of questions that I have about the way the ordinance was written. I wonder how this will affect me personally. The diagram that was given showed a stream that had banks of equal heights on both sides and it seemed fairly clear. My side of the stream comes up steep for 30 feet where the other side of the stream is 5 feet high before it goes out into a flood plain. Is the top of the 30 feet the top of the bank on my side or what?

Karen Minkel: I would say that is probably correct. The reason we used the top of the bank was so that it would be easier for a property owner to go out and find a top of a bank and measure rather than saying the center of the stream.

Richard Tiffany: Another question I had was it said that gardening was permissible but cultivation is not. The original notes for the October meeting said mechanical cultivation and now in the current notes it says just cultivation. How does that restrict gardening in the riparian zone?

Karen Minkel: Our intent was to allow a typical garden you would have in your back yard and cultivation is more implying large crops which there are very few in the city if any at all.

Alderman Thiel: I think at some point we may discuss that cultivation definition and try to strengthen that a little bit.

Richard Tiffany stated mechanical cultivation makes it clearer which is the way it was stated originally. The other question I had was how is this going to be enforced? I am just wondering if there is a better way to deal with the situation than to restrict everybody. It seems that ninety eight percent of the people take good care of their stream banks and to put restrictions on everybody to catch the two percent of the people that are the problem I am wondering if there is a better way to deal with the situation.

Jeff Olland, a resident of Farmington questioned the cost associated with the project and also spoke on current erosion problems. Erosion is a natural occurrence who is to determine if this is a natural or unnatural occurrence? It appears the intent of this is to manage nature. I like everyone else want clean water. If you pass this ordinance it is not going to prevent abuse.

Left on the First Reading

Huntingdon Heights Appeal: An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr.

Mayor Jordan: I understand this may be tabled?

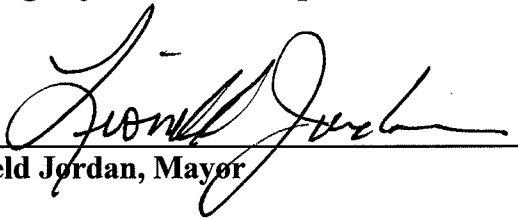
City Attorney Kit Williams: We received an email from the person that requested the appeal asking that it be postponed to the next meeting because he could not make the meeting.

Alderman Ferrell moved to table the appeal to the February 15, 2011 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent.

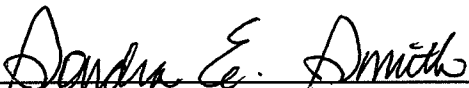
This item was tabled to the February 15, 2011 City Council Meeting.

Announcements:

Meeting adjourned at 9:10 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer

