

Mayor Lioneld Jordan
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 – 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

**City of Fayetteville Arkansas
City Council Meeting Minutes
September 1, 2009**

A meeting of the Fayetteville City Council will be held on September 1, 2009 at 6:00 PM 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 Lewis, Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Rhoads arrived at 6:50 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Consent:

Approval of the August 18, 2009 City Council meeting minutes.

Approved

2009 Community Development Block Grant: A resolution approving a budget adjustment in the amount of \$13,891.00 to recognize the revenue of an increase in the 2009 Community Development Block Grant.

Resolution 183-09 as Recorded in the office of the City Clerk.

2009 American Recovery and Reinvestment Act: A resolution authorizing the Mayor to execute the funding approval/agreement with the U.S. Department of Housing and Urban Development to accept 2009 American Recovery and Reinvestment Act funding of Community Development Block Grant-R (CDBG-R) in the amount of \$172,702.00; and approving a budget adjustment recognizing the grant revenue.

Resolution 184-09 as Recorded in the office of the City Clerk.

Bid # 09-53 Refuse Roll-Off Truck: A resolution awarding Bid # 09-53 and approving the purchase of one (1) Peterbilt Cab and Chassis from Downing Sales & Service in the amount of \$124,750.00 for use by the Solid Waste Division; approving \$20,000.00 to mount the salvaged roll-off body to the chassis; and approving a budget adjustment in the amount of \$144,750.00.

Resolution 185-09 as Recorded in the office of the City Clerk.

Enforcing Underage Drinking Laws Mini-Grant: A resolution accepting the Enforcing the Underage Drinking Laws Mini-Grant from the Arkansas Department of Finance & Administration in the amount of \$7,000.00; and approving a budget adjustment recognizing the Grant Revenue.

Resolution 186-09 as Recorded in the office of the City Clerk.

2009 Recovery Act Justice Assistance Grant (JAG): A resolution authorizing the Fayetteville Police Department to accept a 2009 non-matching Recovery Act Justice Assistance Grant in the amount of \$456,807.00, \$207,129.00 of which will be used by the Fayetteville Police Department for the purchase of equipment with \$106,765.00 to be disbursed to the City of Springdale and \$88,913.00 to Washington County; and approving a budget adjustment recognizing the Grant Revenue.

Resolution 187-09 as Recorded in the office of the City Clerk.

Clear Creek Riparian Management Education & Demonstration Project: A resolution approving the City of Fayetteville's participation in the Clear Creek Riparian Management Education & Demonstration Project in association with the University of Arkansas Cooperative Extension Service.

Resolution 188-09 as Recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda as read. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Unfinished Business: None.

Public Hearing:

Blast From The Past Carriages: A resolution granting a Certificate of Public Convenience and Necessity to Blast from the Past Carriages for the operation of one (1) horse-drawn carriage within the City of Fayetteville, Arkansas.

Mayor Jordan opened the public hearing.

Police Chief Greg Tabor gave a brief description of the item. He stated they have provided all the necessary documentation.

Alderman Thiel: Are you and the traffic consultant okay with this plan?

Police Chief Greg Tabor: I personally like the alternate route better.

City Attorney Kit Williams: Do you have the hours and days that this is going to be allowed?

Angela Dritler, Owner of the Company: It would be Friday and Saturday night. She explained the packages that they are offering.

Alderman Lewis: You are going to be picking people up in front of Theo's. Are you going to be waiting on Campbell Street because that is pretty tight?

Angela Dritler: Around the back side of Theo's on Ralston is the road that we will actually pick them up. She explained the route.

Alderman Lewis: So you will just be circling clockwise around that block?

Angela Dritler: Yes.

Alderman Ferrell: Where have you used the carriages?

Angela Dritler: I moved here last September from Colorado and that is where I was doing most of my training and carriage business.

Alderman Gray: I think this will be a neat amenity for the City of Fayetteville and I would like to see us pass this tonight.

Marilyn Heifner with the Advertising and Promotion Commission asked how this would operate during special events on the Square. She asked if they could find alternate routes during those weekends.

Angela Dritler: My vehicle is going to be just like any car going through the square. It will go the same speed as the cars. It will not stop traffic. It will be flowing with the traffic.

Alderman Ferrell: You don't see any problem with the other carriages being up there around Christmas season?

Angela Dritler: The one thing it is going to do for the other carriages is draw attention to the carriage rides.

William Dritler: This is by private reservation only so only a patron of Theo's would even be executing the route.

Marilyn Heifner: We block off East Street between Mountain and Center so the traffic goes back to College.

Ray Dotson, owner of Ozark Mountain Carriages voiced his concerns regarding traffic issues during the Lights of the Ozarks.

Alderman Lewis: Do you block East Avenue entirely or just the one lane?

Ray Dotson: It is blocked off.

City Attorney Kit Williams: Even though the street is closed off to motorized vehicles I don't think it would be fair to one carriage company to close off the street and not allow another carriage company to use it. I don't think that is a problem.

Alderman Thiel: I agree with the City Attorney and I feel like this carriage company is not in direct competition. They are not going to stop.

Alderman Gray: It is my understanding that it would not stop. I don't see any conflict.

Alderman Lucas: The thing that concerns me about the alternative route is the corner of School and Dickson. It is a real congested corner.

Jeff Coles, Assistant Transportation Manager: Our concern was over the original proposed route and reducing the amount of time on Dickson Street.

Alderman Lucas: You are right there, but the other part of Dickson Street is not as congestive because it does not have as many venues. If it does cause a problem I guess we can change it.

Alderman Petty: I think it is fantastic that we have a business coming to Fayetteville like this. I think Ward 2 and our downtown patrons would welcome something like this and I am happy for it.

Mayor Jordan closed the public hearing.

Alderman Ferrell: I am going to view this as a form of economic development and I move for approval of the resolution.

Alderman Lucas: Are there going to be taxes collected off of the fares?

Don Marr: If it qualifies under the State guidelines we will be collecting taxes.

Alderman Lewis: Is the route flexible?

City Attorney Kit Williams: The ordinance designates the traffic superintendent to describe and accept the route.

Alderman Ferrell moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 189-09 as recorded in the office of the City Clerk.

New Business:

Budget Adjustment For Operations: A resolution approving a budget adjustment transferring \$600,000.00 from the Sales Tax Capital Fund to the General Fund for operations in order to offset revenue decline for FY2009.

Paul Becker, Finance Director gave a brief description of the budget adjustment.

Alderman Cook: I don't like it but I believe it is a necessity. Typically we roll that money forward every budget year if we have any surplus and it does not look like we are going to have any surplus to roll forward. We are stuck where we are at.

Alderman Ferrell: We have already taken some steps and we know our revenue is not going to be like it has. There is going to be some hard reckoning with this budget. We have to do this but we are going to have to make some decisions that we have never had to make before. We can't neglect the capital needs.

Mayor Jordan: Both comments were good. I just have so much coming in and so much going out. We are going to have to make some tough decisions in the next budget. It's going to be tight.

Alderman Lewis: Thank you for looking at efficiencies and trying to cut costs as much as possible. I hope those kinds of practices are for the long term and not just an emergency way of thinking.

Paul Becker: We certainly tried to factor that into our thought process.

Alderman Lewis: Thank you for working to identify this type of budgeted money.

Alderman Thiel: I want Administration to be very careful about filling positions that are really needed for the services of people and that we don't get to a point to where we cannot fill positions that are vital.

Mayor Jordan: We look at most positions when they leave now to make sure that they are positions that we need. So far we have been able to fill those but I cannot guarantee that we are going to be able to continue to do that. It is pretty tough but we will get through it.

Jim Lobler, a citizen: I have a problem with shifting funds that are dedicated to something. How is that money going to get back in there?

Mayor Jordan: I could take it out of reserves right now but I have tried to save as much of the reserves as I can because we may need it next year. I don't know if we can get that back. This is money that probably will not be spent because most of the road crews were picking up debris for three or four months and that is where this money came from.

Jim Lobler: So it is not matching funds?

Mayor Jordan: No.

Paul Becker: No it is not. This is what it costs for us to program the fund per year and next year we will be back right on schedule. This happened to delay us because of the shift in personnel to the debris removal we had this year. He described other attempts to address the issue so the entire burden did not have to be on any particular area.

Don Marr: If we weren't moving this money today for our budget short fall there is only so much work that can be done with the existing staff that you have even if we had rolled this project forward. So we don't have the revenues to support additional overtime or additional hiring to make this up. So what we lost in moving this money really was lost as a result of an ice storm and diverted work that couldn't be done because we had to handle a \$5 million cleanup. While the ice storm was terrible and delayed projects it is providing us a savings that is not necessarily affecting an additional cut.

Alderman Lewis: We budgeted that money and that work did not happen. So the money is there and the year is going to run out before that work gets finished. You are requesting to move that money to the General Fund since it did not get used.

Don Marr: Correct, and we actually could have done the work in 2010 but it will require extra head count and overtime which we don't have nor do we anticipate being able to afford.

Alderman Ferrell: The gentleman's comment was you go to reserves for emergencies but at the same time we need to be fiscally sound. When times get better we need to build our emergency fund back up. We did respond to emergencies with our emergency fund and would go to the General Fund if we had to.

Mayor Jordan: Even when we get through the hard times and things begin to recover that does not necessarily mean we can go on a spending spree. We are going to have to build back what we lost.

Alderman Cook moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 190-09 as recorded in the office of the City Clerk.

EPA Region 6 Wetland Program Development Grant: A resolution authorizing acceptance of an EPA Region 6 Wetland Program Development Grant in the amount of \$234,000.00 for a stream restoration demonstration on Niokaska Creek through Sweetbriar Park and other properties; and approving a budget adjustment recognizing the grant revenue.

Carole Jones, Park Planner II told the Council that she would be happy to address any questions.

Alderman Lewis: What was the history on choosing this reach for this grant?

Carole Jones: This grant is a wetlands grant and one of the things that Sweetbriar has to offer is it allows it to qualify for that grant because it has the potential of creating a wetland. That is one of the things that you have to show that you can achieve with that grant money. There is a small area that is trying to form a wetland and I believe it is on the east side of the bank in the park area.

Alderman Lewis: Where is the funding coming from for the match?

Carole Jones: The City's match is \$78,000 because it is a 25/75 matching grant. The City's Engineering Division and the Parks and Recreation Division are splitting the match and that is based on the percentage of link in the park area and outside of the park area. The Engineering fund is coming from the drainage studies and Phase II Stormwater Improvements Fund and then the Parks and Recreation's share is coming from the Gordon Long Red Oak Improvements Fund which is what the budget adjustment in the packet is asking for.

Alderman Ferrell: Do you think this demonstrates to others the willingness of Northwest Arkansas communities to try and help the Illinois River?

Carole Jones: I certainly do. This just further improves the water quality from the whole reach going to mud creek which is a tributary to the Illinois River. The amount of reduction in sediment and phosphorous is very high on what you can achieve by doing these types of projects.

Alderman Ferrell: It is kind of a critical thing right now.

Carole Jones: Yes sir.

Alderman Cook: So if we take this money out of the Red Oak Park project where does it leave that park? Do we have any idea of what that will potentially cost?

Carole Jones: We don't have any idea what it will potentially cost but we do have funding left in the Red Oak Project. Some of it is park land dedication funds and some of it is parks development fund and then some of it is the remaining sales tax fund.

Paul Becker: After this there would remain approximately \$56,000 in sales tax capital funds for Red Oak Park plus in excess of \$39,000 in the Park Development Fund for that. There would be approximately \$96,000 for that program remaining after this.

Carole Jones: We did not plan to move any money from Red Oak but this grant opportunity came along and we did not have any other place to take the money from.

Alderman Cook: What was the estimated cost of the original Red Oak Project?

Carole Jones: It was right under \$100,000.

Alderman Lucas: It was \$140,000 wasn't it?

Carole Jones: No ma'am, it was between \$95,000 and \$100,000. Now we had that much money in those two projects.

Alderman Cook: So this potential revision we are looking at do we think it is going to be cheaper or the same cost?

Carole Jones: It is probably going to cost a little bit more but Chris Brown in Engineering has agreed to fund portions of that which is not on our property from his drainage improvements fund.

Alderman Cook: Obviously we want to take grants when we can get them but we made a promise to the people at Red Oak and I don't want to back out on that. I want to be reassured that we can provide for them what we originally promised them.

Chris Brown, City Engineer stated we do have funding available and there is a section downstream of Red Oak Park that we have committed to the property owner that we will make some improvements there. Staff understands the commitment that the Council made and we are committed to see the project through. We are really trying to find a good fit that meets everybody's needs that we can get permitted.

Alderman Cook: The bottom line is we have more drainage problems than we have money to throw at.

Alderman Thiel: There was a real outcry with the second plan that there was going to be so many trees lost and it sounds like that even though it is going to take longer it is going to be a much better plan. Engineering still has \$452,000 left in their drainage fund and I feel like there

will be funding to finish this project once you get the plans and it goes before the people that live there again. I feel like this is a good project and I will support it.

Alderman Lucas: Chris, the problem below Red Oak Park goes into Clabber Creek does it not?

Chris Brown: It goes into Hamestring Creek.

Alderman Lucas: I mean Hamestring which goes into the Illinois River.

Chris Brown: Yes.

Mayor Jordan: To give the Council a little bit of background, in April we voted to go after this grant. It was something that we were instructed to go after and we did and here we are. The question is we either do or don't.

Alderman Lewis: I would like to comment that there is a common theme here and I hope that Engineering and Parks staff will think about this. The reason there is a problem in Red Oak Park is because there is cement on the ground and water is running fast off of it and the roofs. There was no ditch before there were developments around it. That caused a gulley. Now we are having to pay lots of money to fix that. If we would approach it at a watershed scale and slow the water down and let it soak into the ground this would be cheaper in the long run and a lot less work. I will work on helping the staff find funding to fix Gulley Park and I want it to be watershed base not just piping it.

Alderman Lucas: I want to make sure that everyone understands that Red Oak Park is in a terrible condition. It has been neglected over the years and has progressively gotten worse. It should be a priority. I can't support taking money from it.

Alderman Ferrell: Chris, can you see a way to get storm control money to use or are we prohibited to use that in Red Oak?

Chris Brown: I don't think we would be prohibited. It is a drainage project that could certainly be used in the park.

Alderman Ferrell: We are talking about \$100,000.

Chris Brown: We have this fund and another drainage project fund for upper Scull Creek drainage which is a fund we are using to do some improvements there. We do have funds available for drainage. We have a lot of needs and we are evaluating those priorities.

Alderman Ferrell: There is interest in doing both but I would be willing to wait and have you take a look and come back and see if we can take advantage of both of these if there is not a time point pushing us on the grant.

Carole Jones: There are deadlines and we do need to respond back and accept the grant.

Sandi Formica with the Watershed Conservation Resource Center stated they are wanting everything to be submitted by November 1st but it should be submitted as soon as possible. October 1st would give us a November 1st start date.

Alderman Ferrell: The question is would two more weeks give you time.

Sandi Formica: Two more weeks is fine for the grant application. We would like to submit it as soon as possible but I don't think that is going to keep us from getting the grant.

Alderman Thiel: I don't understand why we need two weeks to make a decision on this. It sounds to me like we have the funding.

Alderman Ferrell: If we get the commitment that we can do both then we don't. We can do it tonight.

Don Marr stated per your direction from Agenda Session the \$42,000 was directed to be dedicated out of that \$400,000 to replace the money. We are setting aside the same amount of money that we are asking to be moved today to replace what we are talking about moving to get this grant. They both are going to be funded. He went on to explain the funding.

Mayor Jordan asked the City Attorney if he had the authority to direct Chris to put the money back into Red Oak or if that required Council's approval.

City Attorney Kit Williams: It depends on how it was budgeted. You can't make budget adjustments yourself only the Council can do it. I think the Council is unanimous that both these projects are going to be done and there is money to do both projects so I don't think that will be a problem.

Mayor Jordan: I am going to commit to the Council that I will see that the money come out of the drainage fund and back into Red Oak.

Alderman Lucas: Since we have that commitment I can support this.

Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 191-09 as recorded in the office of the City Clerk.

Watershed Conservation Resource Center: An ordinance waiving the requirements of formal competitive bidding and approving a Memorandum of Understanding with the Watershed Conservation Resource Center (WCRC) in the amount of \$188,000.00 for a Stream Restoration Demonstration Project on Niokaska Creek through Sweetbriar Park.

City Attorney Kit Williams read the ordinance.

Carole Jones: This is related to the last subject. Does anyone have any questions for us?

Alderman Lucas: Could you explain why you are waiving the requirements of formal competitive bidding?

Carole Jones: One of the reasons is they have submitted their statement of qualifications to Purchasing so what we are really asking the Council to do is waive the Selection Committee process which is normally formed in house so that we can move forward with the grant and submit the application to stay on the EPA's timeline.

Alderman Lewis: Isn't it true that the Watershed Conservation Resource Center helped write the grant or found the grant?

Carole Jones: They found the grant and they did help us with the grant proposal and were also listed as a sub awardee. They were able to fill out additional paperwork to submit to the EPA as a partner of the City for this project.

Alderman Cook 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 and final reading. Alderman Cook 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 5268 as Recorded in the office of the City Clerk.

VAC 09-3375 (Teresa Al-Ansari): An ordinance approving VAC 09-3375 submitted by Alan Reid for property located at 2831 North Sherwood Lane to vacate a portion of a utility easement containing approximately 497 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the item. He stated staff and Planning Commission are recommending approval.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. **Alderman Gray** 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 5269 as Recorded in the office of the City Clerk.

ADM 09-3256 (Fayetteville Alternative Transportation and Trails Master Plan Update): A resolution amending the Master Trail Plan Map to illustrate completed trails and to update future trail corridors and on-street bicycle facilities.

Matt Mihalevich, Trails Coordinator gave the history of the Trails Master Plan. He stated we want to upgrade the plan to show the built trails and also look at connectivity. The three items here are linked together. There is an amendment to the City Plan and also to the Unified Development Codes. The goal there is to help the developers that come forward with a project. We can tell them where the trails will be which helps them know what to expect.

Alderman Lewis: I think it's a great idea. I am wondering if there would be other types of transportation added to it because it's an alternative transportation and trails.

Matt Mihalevich: This covers bicycle and pedestrian and that type of transportation. We are changing the Master Street Plan to be Master Transportation Plan so there could be other aspects within the Master Transportation Plan for bus stops and things but not specifically this plan.

Alderman Lucas: Where does the east west go?

Matt Mihalevich: We are looking at a Hamstring Creek Trail and we are looking at going underneath the highway at I-540 but there is an existing culvert under there and we are hoping we can use that and then bring it back into Scull Creek. Another good place is under Porter Road and then possibly across the Agri Farm which would get us right to Scull Creek.

Alderman Cook: Sidewalk and Trails, Parks and Recreation Board, and Planning Commission looked at it and everyone was on board with it. We are trying to make this a little more efficient and we are trying to be fair to the development community as to what we are going to ask from them.

Alderman Lewis: What are the plans for bike lanes on Mount Comfort Road?

Matt Mihalevich: A 14 foot wide outside lane will be built with the sharrow symbol which is a new symbol that is a bike symbol with two chevrons which directs the direction in which the

bikes are traveling. It helps align them in the lane. It is considered a shared lane but it is wide enough to accommodate both.

Alderman Ferrell: If we had a human powered vehicle and they wanted to do it for profit would they be prohibited from running on the public trails?

City Attorney Kit Williams: They are really not a bicycle but that is something for you all to finally decide and you can determine what kind of vehicles you want to allow on the trail.

Jim Lobler inquired about an electric bike for someone with a disability.

City Attorney Kit Williams: The City Council did authorize the use of electric bicycles on the trails for exactly people that are yours and my age that might need a little assistance.

Alderman Cook moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 192-09 as recorded in the office of the City Clerk.

ADM 09-3256 (Amend City Plan 2025): A resolution amending the Master Street Plan in City Plan 2025 to add trails as a transportation component.

Karen Minkel, Director of Strategic Planning and Internal Consulting gave a brief description of the amendments.

Alderman Cook: I like this shift because now it's the Transportation Plan. I have always felt there were many more pieces to that puzzle than what we have shown before. This finally puts it into our City Plan 2025.

Alderman Lewis thanked them for putting thought into this. She stated you can tell there is revitalization along those areas and I think it is really good.

Alderman Cook moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 193-09 as recorded in the office of the City Clerk.

ADM 09-3256 (Amend Chapter 166 & 171): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 166: Development and Chapter 171: Streets and Sidewalks in order to codify trail easement acquisition policy and to adopt trail construction standards.

City Attorney Kit Williams read the ordinance.

Karen Minkel gave a brief description of the amendments. She stated this item codifies the trail easement acquisition and trail development standards.

Alderman Cook: I wish we could have made stronger language but I think this was appropriate. It's a good step and it will certainly help in the construction of our trail systems as we move forward. I appreciate all the effort staff put into it.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan thanked **Alderman Cook** for all his work on this.

Alderman Ferrell: Karen the amendments to the UDC have the force of an ordinance but the 2025 Plan is a planning tool is that correct?

Karen Minkel: That is correct. It is guiding.

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

Ordinance 5270 as Recorded in the office of the City Clerk.

ADM 09-3345 (UDC Amendments): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapters 163: Use Conditions, 164: Supplementary Zoning Regulations, and 166: Development in order to resolve inaccurate cross references, eliminate unnecessary repeated information, and improve overall clarity and readability of the code.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Cook: I appreciate staff's continued efforts to clean up the code.

Alderman Ferrell: In reading through the part about the surveying it looks to me like it is just codifying reasonable expectations. Was that the intent there? Professional surveyors are charged with doing things according to state laws anyway.

Jeremy Pate: Exactly right, they have to abide by state laws anyway. Our codes were written many years ago so the codes are outdated and don't even apply any longer so we simply reference the state codes, so as those are updated our code will refer to those.

Alderman Lewis: On one of the setbacks in the parking garage part it said that they had to be set back from an easement 25 feet and you have landscaping in there. Can that include store front in the 25 feet or does the store have to be back 25 feet also?

Jeremy Pate: In Section 13, that is #2 and there are three options for those. One is to include a store front. The second is to include a green or vegetative wall along with roof gardens and things of that nature. The third option is to set back the parking garage that required 25 feet and landscape that 25 feet until such time as they are ready to add the retail phase or whatever it happens to be. It allows for that flexibility in the future.

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

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Thiel 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 5271 as Recorded in the office of the City Clerk.

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: Sarah and I brought this forward because of the residents in Ward 4. There was a red dirt farm and now they are blasting for rocks and limestone. It is quite a nuisance and it is a safety issue too. I have had numerous calls and complaints about rock falling off of trucks and hitting vehicles. She went on to list the complaints she has received. She stated we thought it was something we could bring forward and see if we could give them some relief.

Alderman Lewis: Back in May we attended a meeting with the Neighborhood Association out there and that discussion led to this. This also addresses any and all of these kinds of operations, not just the operations on the west side of town. As Fayetteville grows it may come in contact with other situations such as this and we are trying to address those nuisances so that the

individual property owners are protected as well as a balance between that and the businesses. It is intended to give some relief to Fayetteville residents.

Billy Sweetser, Co-owner of Big Red Dirt Farm spoke in opposition of the ordinance. He stated we would certainly like some input because we have never been invited to any meetings. This ordinance could have a massive financial impact on our business. I would like the opportunity to visit with Alderman Lucas and Lewis and in the future I would like for you to send it to the Ordinance Review Committee. We respectfully request that you send this back for further evaluation and input on the rules.

Alderman Ferrell: No one from the City has ever contacted you about proposing this ordinance?

Billy Sweetser: No sir. We have not been notified.

Alderman Ferrell: There are citizens outside and inside the county, but neither one of those groups have contacted you about this ordinance coming up?

Billy Sweetser: No sir.

City Attorney Kit Williams: As I wrote in my memo I certainly don't think this ordinance should be passed tonight. We would like to get input from the developers. It has been on the front page of the NWA Times as far back as February 17th which is the first time we went and met with some of the residents there. There have been some stories in the press but they have not been specifically invited. I am glad they are here tonight and I would invite them to give us their input. I would recommend that it go back to Ordinance Review and specifically request that Mr. Sweetser and his partner and anyone else would come and present your concerns and proposals. That would be helpful to the City Council.

Billy Sweetser: I am not here to represent any other quarries or red mines but we certainly have some input.

Alderman Lucas: Have you met with the residents that have been having problems with this?

Billy Sweetser: With this issue?

Alderman Lucas: This problem with the red dirt farm.

Billy Sweetser: We probably get 20 calls a day.

Alderman Lucas: Have you met with them?

Billy Sweetser: From time to time yes, individuals, not as a group.

Alderman Rhoads: I am on the Ordinance Review Committee and I either thought that the owners had been contacted or was just mistaken. I certainly believe that we should not pass this.

I don't know if it needs to go back to the Ordinance Review Committee or if it just needs to be discussed in some meetings and have the full Council vote on the potential changes. I certainly want your input. You said there is another quarry as well?

Billy Sweetser: Yes, there is one that is our next door neighbor.

Alderman Rhoads: I certainly want their input.

Alderman Lewis: The intent of this has been a slow process. I don't feel like this has been a secret. I have a little trouble with the fact that the residents have been contacting you or your company and neighboring operations complaining about these nuisances and yet not very many efforts have been made to make any improvements.

Billy Sweetser: You have been misinformed.

Alderman Lewis: I am open to hearing about that but I find it hard to believe that these kinds of things are still happening after many months of difficulty between the two parties.

Billy Sweetser: We get a call that says your blast shook our house when we didn't blast. We respond and say that we did not blast and that is not satisfactory because they think we did. I don't know where you go with that. I don't want to debate that.

Alderman Lewis: I understand and that is why we have tried to make it a slow process. I am willing to go back to Ordinance Review but I just want to make sure that it's open. This ordinance is an attempt to balance both sides.

Alderman Thiel referenced the race track issue. She stated that issue took about six months.

City Attorney Kit Williams: I don't think it took that long once we brought it to the City Council.

Alderman Thiel: We can take this back to Ordinance Review and have the public be at those meetings again and all of the representatives need to be there. It also could be something the City Attorney could discuss.

City Attorney Kit Williams: I do think it would be good to go to the Ordinance Review Committee because it is a more informal setting and you can discuss easier. I would be happy to speak with them and their attorneys about any proposed changes they have before the Ordinance Review Committee meets. I am going to remain guided by you all. I will only do what you have told me to do.

Alderman Lucas: It bothers me to send it back to Ordinance Review. I have no problems with Mr. Sweetser reviewing the Ordinance and talking with you about the things that he thinks should be changed and bringing it back to the Council. We are talking about a safety issue here. She went on to express her concerns. She stated I don't want this to be a long process if

possible. Could you review the ordinance, talk to Kit and then come back to the Council and explain your suggestions?

Billy Sweetser: Sure.

Alderman Lucas: I think we could take it to the second reading and then if we want to hold it the next time we can.

Alderman Thiel: I would be more in favor of leaving it on this reading and take this through three full readings. Why don't we just wait and see what they come up with and what discussion the City Attorney and them have between now and the next meeting.

Alderman Ferrell confirmed what was previously discussed. He asked the City Attorney if he was comfortable meeting with them. We can try to go to Ordinance Review next time but that is going to make it longer.

City Attorney Kit Williams: I would not think that you would table it you would just leave it on the first reading and whether it goes to Ordinance Review is up to them. He went on to explain the options.

Alderman Ferrell: If the Council recommended that it go to Ordinance Review Committee then it would go.

Alderman Thiel: I tend to agree with Shirley. We have not heard what they oppose and this is just one representative. It would be nice if we could get clear direction.

Alderman Rhoads: I would want whatever you and the other folks that think they are impacted by this to in writing give me what changes you would make in the ordinance and then give us a chance to study those before we have a sit down conversation.

Alderman Petty: As long as we see something from Mr. Sweetser and a representative from the other mine and Kit gets to review that before it comes to the Council or the Committee I don't care as long as that happens.

Alderman Lewis: Having an Ordinance Review Committee meeting does not change the next time that we discuss this at the Council level.

A discussion followed on whether or not to send it to Ordinance Review Committee.

Marian Bolin, a resident of Hamestring Road spoke in favor of this ordinance. She stated that many neighbors would also like to be able to give some input and I am in agreement with more discussion from all sides.

William Henson, a dump truck operator spoke in opposition of the ordinance and pointed out that some of the proposed regulations would also affect City dump trucks since they do not meet the criteria currently.

This ordinance was left on the First Reading.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances.

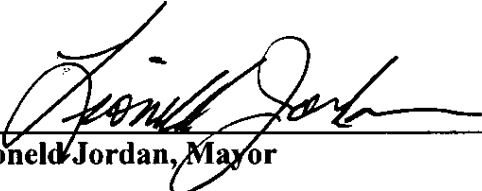
City Attorney Kit Williams read the ordinance.

Mayor Jordan: I assume we will leave this on the first reading.

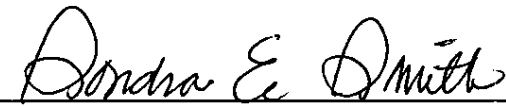
This ordinance was left on the First Reading.

Agenda Additions: None

Meeting adjourned at 8:20 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer