

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
November 3, 2009**

A meeting of the Fayetteville City Council was held on November 3, 2009 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.

Alderman Rhoads arrived at 6:05 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan announced that the City of Fayetteville was honored to receive two of twelve awards distributed at the 8th Annual Fayetteville Chamber of Commerce Construction and Developers Committee Banquet. He stated Waste Water System Improvement Project was a recipient of the Infrastructure Award. The City Trails System and the refurbished Fayetteville Square received the Legacy of Fayetteville Award. Mayor Jordan thanked City staff for their work on those projects and the City Council for providing the funding and approving the projects. He also thanked the people of Fayetteville for their dedication to making Fayetteville one of the best places to live or play in America.

Mayor Jordan honored Boy Scout Troop #142. He asked them to stand and be recognized. He thanked them for visiting his office and stated I was honored to be able to visit with 21 troop members and their scout masters today. They asked excellent and insightful questions. You all do a wonderful job and we thank you for all that you do for our community.

Mayor Jordan recognized three news reporting classes from the Walter J. Lempke Department of Journalism headed up by Gerald Jordan. He asked them to stand and be recognized.

Exchange Club Officer of the Year Award - Cory Roberts

Police Chief Greg Tabor: Every year the Exchange Club gives an officer of the year award. It is not unusual for a Fayetteville Police Officer to win that award and this year is no exception. Officer Cory Roberts received the award for the work he has done over the past year. Chief Tabor summarized Cory's work history with the Fayetteville Police Department. He asked Cory to come forward and be recognized.

Mayor Jordan presented Cory Roberts with a certificate expressing the City's appreciation.

Presentations, Reports and Discussion Items: None

Consent:

Approval of the October 20, 2009 City Council meeting minutes.

Approved

2009 Bulletproof Vest Partnership Program: A resolution authorizing the Mayor to accept a Bulletproof Vest Partnership (BVP) Grant in the amount of \$19,600.00 from the U.S. Department of Justice for replacement of bulletproof vests for police officers; and approving a budget adjustment recognizing the grant revenue.

Resolution 218-09 as recorded in the office of the City Clerk.

Arkansas Democrat-Gazette, Inc.: A resolution to approve a contract with Arkansas Democrat-Gazette, Inc. for retail and classified advertising.

Resolution 219-09 as recorded in the office of the City Clerk.

Ozark Regional Transit: A resolution to approve an agreement with Ozark Regional Transit to use \$387,500.00 for sidewalk, transit shelter and bench concrete pad construction and to approve a budget adjustment recognizing this revenue.

Resolution 220-09 as recorded in the office of the City Clerk.

Fayetteville Animal Shelter Donation: A resolution approving a 2009 budget adjustment in the donation revenue balance of the Fayetteville Animal Shelter in the amount of \$13,707.00.

Resolution 221-09 as recorded in the office of the City Clerk.

Amend Police Department's Policies, Procedures & Rules Manual: A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual. *This resolution was tabled at the October 6, 2009 City Council meeting to the October*

20, 2009 City Council meeting. This resolution was tabled at the October 20, 2009 City Council meeting to the November 3, 2009 City Council meeting. This item was moved from Unfinished Business to the Consent Agenda at the October 27, 2009 Agenda Session.

Resolution 222-09 as recorded in the office of the City Clerk.

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

Alderman Cook announced the upcoming Board and Committee vacancies.

Agenda Additions: None

Unfinished Business:

Old Wire Annexation Appeal: An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres. *This ordinance was left on the First Reading at the October 6, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 20, 2009 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director: The applicant is not able to be present tonight and has requested that this item be tabled for two weeks. I spoke with some of the neighbors and several of them are present to discuss their concerns. I would ask that we have public comment tonight.

Jeff Dangeau, resident at 3284 Rom Orchard Rd. just outside the city limits spoke in opposition to the ordinance. He asked the Council to focus their attention to the report submitted by the Planning Commission staff which concluded that annexation was not a good for this area.

Peggy Hart, resident of 521 E. Ash spoke on behalf of her parents Lyle and Charlene Smith who live at 3119 Rom Orchard Rd. outside the city limits. She expressed her concerns with the traffic in that area. She stated this will add more congestion to the area. She spoke in opposition to the ordinance.

Cindy Knox, a citizen stated the proposed subdivision is not a good fit for the area. She also expressed her concerns with the traffic. She spoke in opposition to the ordinance.

Colleen Gaston, resident of 3270 Rom Orchard Rd. just outside the city limits voiced her concerns with the density and zoning. She stated there is no rush to annex this into the city at this point. She spoke in opposition to the ordinance.

Larry Floyd, resident of 3162 Rom Orchard Rd. expressed his concerns with the traffic safety in that area. If this is annexed does that mean that sewer, sidewalks, and bike paths would be put in all the way to Highway 265?

Jeremy Pate: It is not likely that all the improvements would go all the way to Highway 265 but we would look at the development and usually those types of improvements occur along the property frontage. The City only has ability to require so much in any development.

Larry Floyd: In front of there that would be the only place there would be a sidewalk but it would go no where except to a pasture. It has been denied for annexation in the past. I just wanted to bring that to your attention.

Terry Payton, resident of 3845 Bridgewater expressed his concerns with the annexation. He stated my idea of how that should be developed and Mr. Broyles ideas are different.

Roy Rom, resident of 3098 Rom Orchard Rd. spoke in opposition to the ordinance. He stated there is no compelling reason to annex this land.

Alderman Petty: Jeremy, exactly what kind of power are we given over land that is in our planning area?

Jeremy Pate: We are given subdivision authority which allows the city to review a project anytime there is a subdivision of land. We are not given power over land use or the zoning in the County. That is entirely within the jurisdiction of Washington County.

Alderman Ferrell: Were there any other public comments that came from citizens inside the city limits?

No one came forward for public comment.

Alderman Cook moved to table the ordinance to the November 17, 2009 City Council meeting. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was Tabled to the November 17, 2009 City Council meeting.

Public Hearing:

Raze and Removal at 369 E. Center Street: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Bobby E. York and located at 369 E. Center Street in the City of Fayetteville, Arkansas, and approving a budget adjustment.

Yolanda Fields, Community Services Director gave a brief description of the item. She referenced the pictures of the property and pointed out that the structure was in fact a safety hazard.

Alderman Lewis: Did you find anything out about reusing the materials?

Yolanda Fields: We did get the information from the Purchasing office on the company that did work with the Airport and we will add them to our bid list. As you can see in some of the pictures I do not believe that there would be anything reusable from this structure but we will be including them on the bid list from now on.

Alderman Petty: I am looking at the picture and there are reusable pieces, especially the rocks and things that make up the foundation. I am going to support this but I would really encourage that we do a little extra homework and contact some of the non-profits here.

Yolanda Fields: I will research with the City Attorney but we would be moving to do the raze and removal. As far as the City being able to give any of this to other agencies, it belongs to the property owner and I don't know what position that would put us in.

City Attorney Kit Williams: That is correct. Assuming that you all determine that this is an appropriate structure, that meets the requirements for raze and removal, then our only power is to raze and remove that not to provide materials to other groups. It is our hope that the owner normally steps forward and actually does this. Most of the cases that have come before us in the last decade the owners finally stepped in and did the right thing by getting rid of the structure. If that does not happen we will bid it out to be razed and removed. It is not in our power to give away materials because this is not a structure that we are trying to buy and then give to someone else. We are getting rid of a safety hazard.

Alderman Petty: So are you telling me that if it comes through and the owner doesn't step forward then we have the power to tear it down and put it in a landfill but we don't have the power to tear it down and give it to somebody who can use it?

City Attorney Kit Williams: That is probably correct. We have the power to raze and remove. That is what the statute gives us the right to do. We hire a contractor to do that. He explained the contractor's responsibilities. He stated if we do not follow the state law we are not going to be entitled to that lien and we are not going to be able to get our cost back.

Alderman Petty: That is disappointing that it is so restrictive. I would hope we could structure the bid in such a way that the appropriate use of the materials was required from the beginning. If the state does not allow that then we have to follow the law.

Alderman Lucas: It seems strange that we can tear something down and take it to a landfill but we could not utilize the things. We can look at that in the future.

City Attorney Kit Williams: The Legislature may want to take a look at that state law because we follow it exactly when it comes to this procedure.

Alderman Lewis: On something like this what is the point of view of the property owner?

City Attorney Kit Williams referenced page 7 in the packet and stated they have been notified.

Yolanda Fields: We have been working with the property owners since June and if you look at the picture we have posted signs in front of the property. They also received notification of this public hearing.

Alderman Ferrell: Kit would you seek an Attorney General's opinion on this? When we are ready to impose regulations we will just jump way out there but when we are trying to do something that seems to make sense we are stepping back. I agree with Matthew. If we are going to tear this to the ground it might be worth getting an Attorney General's opinion on this and then allow us to pass local legislation. It just doesn't sound logical to me.

City Attorney Kit Williams: We base everything on the state law. That is why we have done what we have in the past. I will be happy to ask the Attorney General for you.

Alderman Ferrell: If that doesn't work then maybe we can go to our legislative delegation. It is worth doing right.

Alderman Thiel: So you are not suggesting we hold this?

Alderman Ferrell: No.

Alderman Thiel: I don't know how much salvageable material you would find in an old wooden structure. I think it is problematic and I can see a lot of issues here.

City Attorney Kit Williams reminded the Council the purpose of a public hearing.

Alderman Gray: We are asking our attorney to find out if we can give it away. What is it that we are asking him to ask the Attorney General?

Alderman Ferrell: We have had incidents like this in the past and I think we will have some more in the future. If we are going to hold a public hearing and then pass legislation authorizing the City to raze and remove it would be logical and make sense to me that we could reuse material.

Alderman Gray: I agree completely. So we are asking for permission to reuse it in some way.

Alderman Ferrell: Yes.

Alderman Gray: That makes a lot of sense to me.

Mayor Jordan opened the Public Hearing

Paula Marinoni, a citizen spoke on the demolition process and sorting materials safely. She expressed her concerns on lead based paint materials being reused and asbestos issues.

Alderman Lewis: We bid this out to companies and that is their profession. They work with permitting.

City Attorney Kit Williams: I think that is correct and the bid would be all inclusive so that they would be responsible for razing it, demolishing the building, and removing the property safely which would include any recycling they want to do. Also removal of hazardous materials would all be a part of their contract.

Yolanda Fields: That's correct.

Alderman Petty: Could we write the bid such that companies are required to disclose what they plan to do with the materials?

Yolanda Fields: I don't see why not.

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

Resolution 223-09 as recorded in the office of the City Clerk.

Mayor Jordan closed the Public Hearing

New Business:

Waste Management Contract, Bid #09-61: A resolution awarding Bid #09-61 and approving a contract with Waste Management of Arkansas for hauling and disposal of municipal waste.

David Jurgens, Utilities Director gave a brief description of the bid process.

Alderman Ferrell: I certainly think it is a good idea to use a local business when we can but I have a question. The length of the contract that I am looking at is five years with a contingency to lengthen that if we need to. Are you aware of the possible development of some local technology that might help make this less expensive?

David Jurgens: Yes sir I am. We work with those organizations that are trying to experiment and find better ways to do business. They all have to be approved by ADEQ for that experimental process. It is rare that one of those can get approved in less than three years and that is only after they have started pilot programs. So the likelihood of being completed and ready to be permitted prior to this five year period is pretty slim. Given the price that we have on this contract compared to the #2 bidder we are getting a good deal right now. We will continue to try any other method that we can find in order to find alternative methods of getting rid of our trash.

Alderman Ferrell: We can proceed after five years?

David Jurgens: After this contract unless the City Council would decide that it is worth not following this contract and then we would talk to Waste Management at that time if such things come forward.

Alderman Ferrell: In your opinion how much would it be if we tried to make it four years instead of five? Could we keep the same price and they would go along with that?

David Jurgens: No sir. Waste Management has contacted me a couple of times trying to change the terms of the contract and I refused in every case because they saw how much money they left on the table. I do not want to change a word. I don't want to take any chance of losing this price.

City Attorney Kit Williams: I would like to warn the City Council that if we take action against the Cherokee Nation that we are under duty to mitigate our losses. If we did not accept the lowest contract price that we had then we would not be mitigating our losses and so the losses that would be above that would not be recoverable by the City.

Alderman Ferrell: Did you say if we take action against Cherokee Nation?

City Attorney Kit Williams: Yes, if we involve litigation with them.

Alderman Ferrell: What is our expectation now?

City Attorney Kit Williams: Sometimes before you file suit you can actually resolve issues and that is always our first effort to resolve it before you go to court.

Alderman Ferrell: So we are still in the possible resolution area which could lead to litigation.

City Attorney Kit Williams: Right now we are still trying to determine what our damages will be. This is a big part of our damages right here. Of course until this is approved we don't have any idea what our damages will be.

David Jurgens: We just got our first months operating costs in. We wanted to get that month completed before we continue those estimates for actual damages. One of the reasons you go to a five year contract is because this requires a fleet of seven tractors and trailers and you are talking about a million dollar expense or more. So in order to purchase the fleet in order to do the hauling for the trash takes a pretty high capital expense. So the term of contract on a case like this is normally set on a reasonable pay back of the capital expense that is expected in order to meet the mission.

Don Marr, Chief of Staff added if we are unable to work out a settlement with Cherokee Nation it is our intention to recover any loss to the City as a result of breach of contract.

Alderman Ferrell: Thank you. I was aware that we were trying to work things out before we go to litigation.

Alderman Rhoads: My law firm represents Cherokee Nation therefore I need to recuse myself from discussion and voting on this.

Alderman Lewis: The \$32.50 per ton is estimated to be \$1.7 million per year.

David Jurgens: Yes ma'am.

Alderman Lewis: Is that comparable to what other cities in the region pay?

David Jurgens: Yes ma'am. When we calculated the expenses and through the temporary solution that we are working right now this price is \$.15 higher than what we are paying through our temporary solution. It is in line with the best we were expecting to receive.

Alderman Lewis: So that \$1.7 million could change because if the amount of tonnage changes that could go down or up.

David Jurgens: Yes ma'am. That estimate was based on approximately 53,600 tons which is what we actually hauled in 2008. It is an estimate based off the tonnage.

Alderman Lewis: So we are buying trucks for this?

David Jurgens: No ma'am, we are doing this under contract so the contractor is buying the trucks.

Alderman Lewis: If people move to Fayetteville and there are more tons of trash then this will not go up. The rate stays the same over the five years but the total amount could increase.

David Jurgens: The rate stays the same and actually in the contract it stays fixed for three years and then there is a CPI based negotiation for the next two years for a change. The contract fix is not the total dollar amount.

Alderman Lewis: So on an annual basis there is an incentive to reduce the tonnage.

David Jurgens: Yes ma'am.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads recused.

Resolution 224-09 as recorded in the office of the City Clerk.

2010 Annual Budget & Work Program: A resolution adopting the 2010 Annual Budget and Work Program.

Paul Becker, Finance Director encouraged the public to view the previous budget discussion on the Government Channel. He gave a brief overview of this year's budget.

Alderman Cook: I think the video is on our website too.

Don Marr: Yes it is and they can watch it at their convenience through Granicus on our website.

Alderman Ferrell: I would say we had a good meeting. We are headed in the right direction and I don't see any problems.

Alderman Ferrell moved to table the resolution to the November 17, 2009 City Council meeting. Alderman Cook seconded the motion. Upon roll call the resolution passed unanimously.

This resolution was Tabled to the November 17, 2009 City Council meeting.

Community Access Television, Inc.: A resolution approving a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2010.

Lindsley Smith, Communications, Marketing, & Volunteer Services Department Director gave a brief description of the resolution. I think we have come out with a superior contract. It went before the Telecommunications Board and it was approved unanimously.

Alderman Lewis: I want to say I appreciate the relative ease with which this was put together and all the work that was put in.

Lindsley Smith: Thank you, we tried to do a lot of work on the front end to make your jobs easier.

Alderman Ferrell: I appreciate the prompt response that I got for my questions about the number of local productions. Thank you.

Alderman Lewis: If you would please mention the access points where people can see government action. There is a website and channel and tell people publicly what the contract states as far as where people can view their government.

Lindsley Smith: We have a television center in which we have two entities. One would be the Government Channel and then one would be Community Access Television. So we have Channel 16 and 18. You can also go to the website and view the Community Access Television which has the capability to have 24 hour streaming. The Government Channel primarily it is a City entity and the large focus on it is gavel to gavel; meaning we cover all the meetings and we also do public service announcements working to make sure that the people have 100% informed

information about their government. Community Access Television is not a government entity. It is a contractor of the City.

Don Marr: You might speak to the education channel.

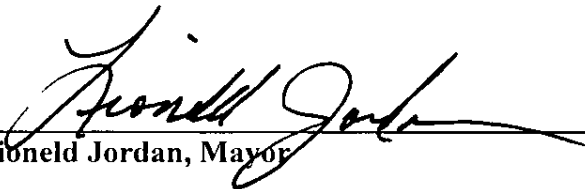
Lindsley Smith: With the Education Channel we have the School District involved and also UATV. So you have the Public, Education, and the Government Channel. We are all out there to inform. It is the citizen's government and we all work for them. We make sure they know as much as possible about their government.

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

Resolution 225-09 as recorded in the office of the City Clerk.

Announcements:

Meeting adjourned at 7:05 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer