

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

**Final Agenda
City of Fayetteville, Arkansas
City Council Meeting
November 3, 2009**

A meeting of the Fayetteville City Council will be held on November 3, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

1. Exchange Club Officer of the Year Award - Cory Roberts

Presentations, Reports and Discussion Items:

A. Consent:

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

APPROVED

2. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 218-09

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

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 219-09

4. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 220-09

5. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 221-09

6. **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.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 222-09

Agenda Additions:

B. Unfinished Business:

1. **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.*

THIS ORDINANCE WAS TABLED TO THE NOVEMBER 17, 2009 CITY COUNCIL MEETING.

C. Public Hearing:

1. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 223-09

D. New Business:

1. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 224-09

2. **2010 Annual Budget & Work Program:** A resolution adopting the 2010 Annual Budget and Work Program.

THIS RESOLUTION WAS TABLED TO THE NOVEMBER 17, 2009 CITY COUNCIL MEETING.

3. **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.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 225-09

Announcements:

1. **City Council Tour:** None

Adjournment: 7:05 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

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City Council Meeting:

November 3, 2009

Adjourn: 7:05 PM.

Subject:	Roll				
Alderman Rhoads Arrived at 6:05 pm.	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Consent				
Motion To:					
Motion By:		Approve			
Seconded:		Cook			
		Petty			
<u>Passed</u> Minutes <u>Approved</u> 218-09-222-09	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Old Wire Annexation Appeal				
Motion To:		3rd Read	Table to November 17, 2009		
Motion By:			Cook		
Seconded:			Ferrell		
B. 1 Unfinished Business <i>Tabled</i> <i>to</i> <i>November</i> <i>17, 2009</i>	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Jordan				

8-0

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:		Raze and Removal at 369 E. Center Street			
Motion To:					
Motion By:		<i>Approve</i>			
Seconded:		<i>Thiel</i>			
		<i>Lewis</i>			
C. 1 Public Hearing	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Waste Management Contract, Bid #09-61				
Motion To:		Approve			
Motion By:		Ferrell			
Seconded:		Lucas			
D. 1 New Business <u>Passed</u> 224-09	Petty	✓			
	Rhoads	Recuse			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

7-0

Subject:	2010 Annual Budget & Work Program				
Motion To:		Table to Nov. 17, 2009			
Motion By:		Ferrell			
Seconded:		Cook			
D. 2 New Business <u>Tabled to Nov. 17, 2009</u>	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:	Community Access Television, Inc.				
Motion To:		<i>Approve</i>			
Motion By:		<i>Cook</i>			
Seconded:		<i>Thiel</i>			
D. 3 New Business <i>passed</i> <i>225-09</i>	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: **November 4, 2009**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of November 3, 2009**

1. **2009 Bulletproof Vest Partnership Program:** A resolution authorizing the Mayor to accept a Bulletproof Vest Partnership 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;
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Left on the Second Reading

C. Public Hearing:

1. **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.

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Announcements:

1. **City Council Tour:** None

Adjournment:

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Added at
Agenda Session
10/27/09

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

A. 6
Amend Police Department's Policies,
Procedures & Rules Manual
Page 1 of 12

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 1.3.4
Subject Less-Lethal Weapons/Defensive Tactics		
Reference 1.3.1	Special Instructions	
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -12-

I. PURPOSE

The purpose of this directive is to establish specific guidelines for the use of authorized less than lethal weapons and defensive tactics.[Calea 1.3.4]

II. DISCUSSION

All Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

III. POLICY

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with the guidelines set forth here.

A. Defensive Tactics

The *Use of Force Continuum* is included as a guide in the appropriate use of force. It is recognized that it cannot be rigidly applied in rapidly unfolding and fluid situations. Officers

should generally use the level of force that can reasonably be expected to succeed in controlling the situation. Officers are not required to move in a hierarchical fashion through all the levels of control, but instead, should use that level of force that is appropriate and reasonable under existing circumstances. The Force Continuum contains areas of control, which will be used by an officer, and the levels of resistance, which are used by the offender.

1. Levels of Control:

a. Officer Presence

The professional appearance and uniform of a police officer.

b. Verbal Direction

The appropriate verbal response and commands used to attempt to direct the action of a suspect.

c. Empty Hand

Soft empty hand techniques are designed to control Passive or Defensive Resistance. They are used when verbal direction/commands are not effective and there is non-compliance with lawful orders. Pressure Point Control Tactics (PPCT) is the department approved defensive tactics system. Soft empty hand control techniques include strength techniques, joint locks, pressure points or distraction techniques, which are hand and leg strikes to specific motor nerve points.

Hard Empty Hand Control techniques are designed to control Active Aggression, but can be used to control Defensive Resistance when lower forms of control have failed or when the officer believes lower forms of control will fail.

d. Intermediate Weapons

An intermediate weapon is any tool used when empty hand control has been, or will likely be, ineffective or dangerous for the officers to attempt, and deadly force is not justified.

Comment: Changed some wording on intermediate weapons and then classified the baton, OC spray and CEN as intermediate weapons

The department issued impact weapon is the expandable baton. Officers have discretion to use the expandable baton as a defensive tactics tool to counter resistance and assaultive behavior. The OC aerosol spray and Conducted Energy Weapon are also classified as intermediate weapons.

The OC aerosol spray and Conducted Energy Weapon provides officers with additional use-of-force options against aggressive animals or for gaining compliance of resistant or aggressive individuals during arrest, detention and other enforcement situations that occur in the line of duty.

Usage criteria for intermediate weapons is as follows:

Comment: Created a "usage criteria" for all intermediate weapons and placed it here rather than having a usage criteria listed separately for all three intermediate weapons.

(1) The use of any intermediate weapon is considered a use of force and shall be deployed in a manner consistent with this agency's use of force policy and in accordance with guidelines set forth herein.

(2) An intermediate weapon may be used when:

(a) verbal dialogue has failed to bring about the subject's compliance, and

(b) the subject has signaled an intention to actively resist the officer's efforts to make the arrest, and

(c) the use of empty hand techniques has been, or will likely be, ineffective or not reasonable under the circumstances.

(d) when confronted with an aggressive animal.

(3) Whenever practical and reasonable, officers should issue a verbal warning prior the use of an intermediate weapon.

(4) An officer may use deadly force to protect himself or others from the use, or threatened use, of an intermediate weapon when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) An intermediate weapon is not designed, nor expected, to be used in place of deadly force when deadly force is justified. The intermediate weapon is another tool in the use of force continuum to assist in preventing injury to officers or others.

(6) Once a suspect is compliant, the use of an intermediate weapon is no longer justified.

e. Deadly/lethal force

Force likely to cause death or serious physical injury.

2. Levels of Resistance:

a. Psychological Intimidation

The suspect attempts to intimidate the officers psychologically. These are non-verbal cues such as suspect attitude or physical appearance or physical readiness.

b. Passive Resistance

Comment: Passive resistance was moved up on this list

The suspect makes no attempt to fight the officer or even pull away. He simply forces the officer to do all the work. An example would be the protestor who causes the officer to pick him up and carry him from the scene or the drunk driver who will not step from the car but must be physically pulled out.

c. Verbal Non-Compliance

This includes verbal threats from the suspect towards the officers. A suspect may not be resisting just by threatening the officer but may simply refuse to comply with orders, be unwilling to comply or ignore the officer completely

d. Defensive Resistance

The suspect performs actions that attempt to prevent officers from controlling him, such as pulling away when handcuffing is attempted. He may simply move away from the officer or push the officer's hands away. The suspect makes no attempt to harm the officer, just tries to defeat the arrest.

e. Active Aggression.

The suspect attempts to harm the officer by physical actions such as striking or kicking him.

f. Aggravated Aggression

The suspect is attempting to harm the officer by use of a weapon or empty handed at a deadly force level.

3. De-escalation of Force:

Officers must immediately de-escalate down to empty hands or verbal commands after gaining compliance through the use of an intermediate weapon.

Officers, for their own protection, should understand and comply with the force continuum.

4. Training:

Officers must be certified in the use of the Conducted Energy Weapon (CEW), Pepper Spray and Pressure Point Control Tactics before authorization to use such defensive tactics.

Officers are required to attend refresher training on handgun retention and PPCT Tactics as scheduled by the Training Division.

B. Less-lethal Weapons

All Police Officers of the Fayetteville Police Department are directed to obtain certification to carry and use less lethal weapons as authorized by the Chief of Police. Less lethal weapons provide officers with additional use-of-force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty. It is the policy of this department that officers use less lethal weapons when warranted, but only in accordance with the guidelines of this policy set forth here. Less lethal weapons are not designed to be used in place of deadly force when deadly force is justified. Less lethal weapons are other tools in the use-of-force continuum to assist in preventing injury to officers and others.

Officers will receive in-service refresher training on the use of less lethal weapons on an annual basis. A certified weapons or tactics instructor will conduct refresher training. The training division will maintain documentation of refresher training. Remedial training, if necessary, will be given to any officer who is unable to demonstrate knowledge and proficiency of less lethal weapons prior to resuming official duties.[Calea 1.3.11]

1. Police Baton

a. Authorization

(1) Only certified officers who have successfully completed the PPCT certified Defensive Tactics Course are authorized to carry the police baton.

b. Usage Procedures

(1) Impact weapon strikes to the nerve motor points in the legs and arms are considered to be at the Intermediate Weapon level on the force continuum.

(2) Any impact weapon strikes to the head, throat or clavicle are considered to be deadly force.

(3) The two target areas on the arms for blocking points are:

(a) The Radial nerve motor point on the outside of the upper forearm.

(b) Median nerve motor point on the inside of the forearm.

(4) The three target areas for striking on the legs are:

(a) The Common Peroneal nerve motor point on the outside of the leg.

(b) The Femoral nerve motor point on the inside of the leg.

(c) The Tibial nerve motor point on the top of the calf muscle.

(5) Strikes should be delivered with maximum power in an effort to eliminate the need for multiple strikes, decrease the need to escalate in levels of control, and shorten the time span of the confrontation.

(6) After striking a subject, officers should employ other methods of follow-up control and ensure that the subject receives medical attention. [Calea 1.3.5]

2. Pepper Aerosol Restraint Spray

Oleoresin capsicum (OC) spray is the authorized pepper aerosol restraint spray.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry departmentally authorized OC while on duty. Plain-clothes officers whose normal duties/assignments may require them to make arrests or supervise detainees shall have available departmentally authorized OC spray.

(3) Uniformed officers shall carry only departmentally authorized OC canisters. Non-uniformed officers may carry OC in alternative devices authorized by the agency.

b. Usage Procedures

- (1) Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.
- (2) An officer should maintain a safe distance from the suspect of between two and ten feet.
- (3) A single spray burst of one second should be directed at the suspect's eyes, nose, and mouth.
- (4) Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.

d. Effects of OC and Officer Response

- (1) Within several seconds of being sprayed by OC, a suspect will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought process.
- (2) The effects of OC spray vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect - to include, if necessary, other force options consistent with agency policy-if he does not respond sufficiently to the spray and cannot otherwise be subdued.
- (3) Immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness. Upon observing these or other medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid or transport to a local medical facility.[Calea 1.3.5]
- (4) Suspects who have been sprayed shall be monitored continuously for the ill effects of the OC spray. It shall be the responsibility of the officer affecting the arrest to either monitor the suspect or alert detention center personnel the suspect has been sprayed. In the event the officer was injured during the arrest, the supervisor will assign another officer to monitor the suspect.
- (5) Officers shall provide assurance to suspects who have been sprayed that the effects are temporary and encourage them to relax.

(6) Air will normally begin reducing the effects of OC spray within fifteen minutes of exposure. However, once the suspect has been restrained, officers shall assist him by rinsing and drying the exposed area to the extent possible.

(7) Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent. All such incidents shall be reported as soon as possible including the recording of the bystanders name, date of birth, and address to the immediate supervisor.

f. Replacement

(1) Each officer assigned an OC spray device shall be responsible for maintaining it in an operational and charged state. If an OC device becomes damaged, inoperable, or empty, the assigned officer shall report to their immediate supervisor in writing and request a replacement device.

(2) Replacements of OC spray canisters shall occur when the unit is less than half full, as determined by weighing the canister.

(3) OC canisters shall be inspected and weighed biannually by shift sergeants who will maintain a record of this fact.

(4) Unexplained depletion of OC canisters shall require an investigation and written report by the officer's supervisor to the Chief of Police.

3. Conducted Energy Weapon

The Conducted Energy Weapon (CEW) will be used as an intermediate weapon on the same level in the use-of-force continuum as Pepper Aerosol Restraint Spray or the police baton. It will be the officer's discretion as to which device is used.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of the CEW are authorized to carry or use the device. Officers must demonstrate proficiency in the use of the CEW during the prescribed course of instruction. [Calea 1.3.10] Officers must receive in-service training on the CEW and demonstrate proficiency with the CEW on an annual basis after receiving the initial prescribed course of instruction. [Calea 1.3.11]

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry authorized CEW units on their duty belts while on duty.

(3) Uniformed officers shall carry only department authorized CEWs in the prescribed manner on their duty belts. Non-uniformed officers may carry the CEW in alternative forms authorized by the agency.

b. Usage Procedures

(1) At the beginning of each shift, a function test will be completed on each unit. This will be accomplished by turning the safety to the ON position, checking the battery level on the Central Information Display, verifying the laser sight system is operational, and by performing an arc display for a five second cycle. On any occasion where malfunctions are found, the unit shall be removed from service and forwarded to a CEW instructor for servicing and troubleshooting.

Comment: Changed from one second cycle at recommendation from manufacturer.

(2) The CEW operates much like a handgun. It is equipped with standard sights and a laser sight system. The laser dot will be the point of impact for the top probe. The CEW must be held level on vertical targets. The exception to this rule is on an angled or prone target where the CEW should be tilted to allow the probes to strike the target properly. An example of this would be if the target were lying on the ground or behind some type of barrier. Target position for the CEW should be:

(a) the lower torso and legs of the front of an individual to reach larger muscle groups,

Comment: Target zone amended based on recommendation of manufacturer.

(b) below the neck of the back of an individual targeting the larger muscle groups,

(c) Do not aim at the head, throat or genitals of an individual,

d) The CEW may also be applied as a Drive Stun as a distracting or breaking maneuver to gain control and effect compliance of a suspect. It is recommended the CEW cartridge remain attached when a Drive Stun is applied. The Drive Stun can be delivered whether the probes have been deployed from the cartridge or are still intact.

(3) Officers may utilize an arc display for visual effect in order to gain compliance. The CEW cartridge must be removed prior to an arc display. An arc display must be documented with a use of force report.

(4) Officers should maintain a safe distance from the suspect.

The optimum shot range is seven to fifteen feet. If the suspect is running, the officer must keep pace with the suspect to prevent the CEW wires from breaking.

(5) When the CEW is deployed it should complete the full five-second cycle without interruption. Typically the initial deployment changes the behavior of the suspect. After the CEW is deployed, the officer should assess and evaluate the suspect while giving verbal commands. If the suspect continues to be non-compliant, additional applications may be given. The suspect should be handcuffed as soon as practical while disabled by the CEW to minimize the number of deployment cycles.

(6) The CEW is prohibited from being used:

(a) In a punitive or coercive manner.

(b) On a handcuffed or secured prisoner absent assaultive behavior that cannot be reasonably dealt with.

(c) On any suspect who does not demonstrate his or her overt intention to use violence or force against the officer or another person(s).

(d) In an environment where an officer knows that a potentially flammable, volatile or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, propane or a clandestine laboratory.

(e) In any environment where the subject's fall could reasonably result in death or serious injury (e.g. on an elevated structure or in a location with sharp objects).

(f) On the operator of a moving vehicle.

(7) As soon after deployment as possible, CDC should be notified that the CEW has been deployed.

(8) Deployed cartridges must be submitted to evidence and handled with caution as explained and instructed in the CEW users course. Deployed cartridges are considered to be a biohazard and must be handled with extreme caution.

(9) CEWs equipped with cameras will automatically record a video recording each time the CEW is activated in the field:

(a) After a CEW is deployed, officers are required to provide the CEW to a patrol supervisor in order to preserve the video.

(b) Patrol supervisors, provided with the required passwords, are to create a folder within the network drive and upload the CEW

Comment: discussion was held to include wording about not using the CEW on a "passively resistant" subject, but this was already in the policy and I think it should suffice for that point.

camera video in a space designated by the IT Manager. After the upload, supervisors are restricted by the IT Manager from any actions other than viewing the video.

d. Effects of the CEW

(1) The CEW is a Conducted Energy Weapon that uses propelled wires to conduct energy that affects the sensory and motor functions of the central nervous system resulting in incapacitation and do not rely on pain compliance. The CEW creates Electro-Muscular Disruption and causes the contraction of the muscles and overrides the central nervous system.

(2) After deployment the suspect may fall immediately to the ground, which is the greatest risk of injury to the suspect.

(3) The CEW will cause slight signature marks that resemble surface burns, appear red or may blister.

(4) The CEW does not damage nerve tissue, does not cause serious burns and does not cause electrocution in a wet environment.

f. Probe Removal [Calea 1.3.5]

(1) CEW probes should be removed from an individual as soon as possible after the person has been handcuffed or properly restrained.

(2) As soon as possible after the CEW has been deployed on an individual, dispatch will be contacted and request medical services personnel to respond to the scene for probe removal. [Calea 1.3.5]

(3) If any of the probes are located in the head, neck, breast(females only) or the groin area of an individual and medical services personnel are not able to remove the probes; the individual will be transported to WRMC for probe removal.

(4) After the probes have been removed, the probes and spent cartridge will be turned over to the officer who deployed the cartridge for submission to evidence.

C. Reporting Procedures

The use of police baton, PPCT, defensive tactics or an intermediate weapon will be documented in a Use of Force Report. [Calea 1.3.6]

1. OC Aerosol Spray:

(a) Accidental discharges as well as intentional uses of OC spray against an individual in an enforcement capacity

Comment: This is an added section to cover reporting procedures of PPCT, defensive tactics or an intermediate weapon. Previously, each intermediate weapon had a "reporting procedure" section.

shall be reported to the officer's immediate supervisor as soon as possible.

(b) A written report of an accidental discharge, which does not affect an individual, must be completed and turned into the officer's immediate supervisor before the end of shift when accidental discharge occurred.[Calea 1.3.6]

(c) A use-of-force report shall be completed following all discharges of OC spray except during testing, malfunction or accidental discharge and turned into the officer's immediate supervisor before the end of shift in which the spray was used.[Calea 1.3.6]

(d) Off-duty officers discharging OC spray are subject to the same reporting requirements as on-duty officers. The immediate supervisor shall be the shift supervisor at the time of the discharge.[Calea 1.3.6]

2. Conducted Energy Weapon:

(a) Every deployment of the CEW will require the officer to complete a use of force report. The only exception to this will be during training classes (and/or inspections). A supplemental page for the CEW must be attached to the use of force report. This page will document the location on a person's body where the CEW probes made contact.[Calea 1.3.6]

(b) The use of force report must indicate if multiple deployments occurred and the justification for multiple deployments.[Calea 1.3.6]

(c) If an officer performs an "Arc Display" to gain control of a suspect or crowd, a use of force form must be completed explaining the reason for the display.

(d) If an accidental discharge occurs a use of force report must be completed explaining the circumstances of the discharge.

(e) A photograph of the individual and the area or areas where probes penetrated the skin of the individual must be taken of each person on whom a CEW is used. The photos will be submitted to evidence with the used air cartridge and probes.

(f) The CEW has a built in microprocessor that records the date, time, duration of cycle and the battery status of each pull of the trigger for the last 2000 trigger pulls. The supervisor in charge of CEW procedures shall maintain a data download logbook on each CEW. The logbook shall be maintained for quality control purposes.

Added at
Agenda Session
10/27/09

City of Fayetteville Staff Review Form

D. 3
Community Access Television, Inc.
Page 1 of 14

City Council Agenda Items
and
Contracts, Leases or Agreements

11/3/2009

City Council Meeting Date
Agenda Items Only

Lindsley Smith

Submitted By

Communication

Division

General Government

Department

Action Required:

A Resolution to approve a contract with Community Access Television, Inc. to operate the Public Access Channel throughout 2010 for \$93,000.

\$93,000

Cost of this request

\$93,000.00

Category / Project Budget

Services & Charges

Program Category / Project Name

1010.6600.5713.00

Account Number

\$

-

Funds Used to Date

Miscellaneous

Program / Project Category Name

\$

93,000.00

Remaining Balance

General

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City
Clerk's Office



10/22/09

Chief of Staff

Date

Received in
Mayor's Office



Mayor

Date

Comments:

TO: Mayor Lioneld Jordan and City Council

FROM: Lindsley Smith, Communication Director 

DATE: October 21, 2009

SUBJECT: Community Access Television Contract Renewal

RECOMMENDATION

Approval of the attached contract between the City of Fayetteville and Community Access Television, Inc. (CAT) in the amount of \$93,000 to operate the Public Access Channel from January 1, 2010, through December 31, 2010.

BACKGROUND

The Public Access Channel is one of the three channels provided by Cox Communications as a part of the franchise fee agreement between the City of Fayetteville and Cox Communications. CAT was selected to be the City's public access provider and was awarded a five-year contract with required annual renewals. This request is a request for an annual renewal within that five-year period.

DISCUSSION

The Telecommunications Board unanimously approved the attached contract during their meeting on October 15, 2009, and requested that the contract be forwarded to the City Council for approval. Prior to it going to the full Telecommunications Board, the contract was reviewed and recommendations were put into the contract in two City staff and CAT meetings and five meetings of the Telecommunications Board Contract Review Committee prior to it being approved by the Subcommittee to go to the full Telecommunications Board.

BUDGET IMPACT

The total cost of this contract is \$93,000. This amount is included in the proposed 2010 Budget to be approved by the City Council.

RESOLUTION NO. _____

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.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby
approves a contract in the amount of \$93,000.00 with Community Access Television, Inc.
to operate the public access television channel throughout 2010. A copy of the contract,
marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 3rd day of November, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

**CONTRACT BETWEEN CITY OF FAYETTEVILLE, ARKANSAS
AND
COMMUNITY ACCESS TELEVISION (CAT)
A 501-C-3 NONPROFIT ORGANIZATION**

AGREEMENT

This Agreement is made this 16th day of December, 2009, by and between the City of Fayetteville, a municipal corporation ("City"), and Community Access Television, a nonprofit corporation ("CAT"), who agree as follows:

PURPOSE AND INTENT

1. The City desires to provide support for the use of television public, educational, and government ("PEG") access channels provided pursuant to federal law.
2. The purpose of the public access television is to provide training for the public for public access television productions and to ensure "first-come, first-served, non-discriminatory" programming, in accordance with the First Amendment, as a limited public forum for citizens.
3. This contract for the public access television station is contingent upon the City retaining a franchise contract with a television services operator, such as it is at present.
4. The franchise agreement with Cox Communications provides that certain channel capacity be provided for PEG access for non-commercial programming.
5. The City's Telecommunications Board Ordinance #4504 provides for a standing body to advise the City Council on telecommunications issues and to coordinate and oversee use of the public rights of way designated for public, educational, and governmental use on any telecommunication system serving the City of Fayetteville.
6. The City has determined that it will provide support for PEG access and that it will provide physical space and equipment located at the City of Fayetteville Television Center, located at 101 W. Rock Street, Fayetteville, Arkansas.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the City to CAT, pursuant to this Agreement, CAT shall provide the following services and report progress in each area to the Telecommunications Board and the City on a quarterly basis:

- A. **OPERATE PUBLIC ACCESS CHANNEL(S).** Operate the public access channel(s) for non-commercial, public/community access programming purposes in a manner that is consistent with the principals set forth in this contract and the Telecommunications Board Ordinance. CAT will:

1. Devise and monitor equipment check-in, check-out procedures and provide reports quantifying the amount of usage; and
2. Schedule and monitor editing facilities and studio, maintaining scheduling records and coverage documents, should any request for review be required; and
3. Provide the services herein described for a minimum of 40 hours per week, easily accessible to the citizens of Fayetteville and the surrounding area; and
4. Have at least one qualified staff member present during the required customer service hours to assist citizens with their productions.

B. PROVIDE EQUAL ACCESS. CAT will honor the First Amendment rights of members of the community who wish to use the services of CAT. . CAT will provide access to the use of the equipment, facilities, channel(s), and services provided hereunder to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first-served non-discriminatory basis pursuant to operating rules promulgated by CAT which are in compliance with the City's operating rules for the Television Center (Addendum A).

C. OPERATING POLICIES AND PROCEDURES. CAT policies for the use and operation of the public access channel(s) shall be in compliance with the City's operating rules of the Television Center. CAT will file such policies with the Telecommunications Board and the City, and any changes in CAT policies will be posted on CAT's Web site and presented to the Telecommunications Board and the City as an informational item 15 days prior to implementation. CAT will:

1. Devise and maintain administrative policies; and
2. All communication between the City and CAT with regard to contractual matters will be directed through the , Television Center Manager, or any other such representative as may be appointed by the City, and CAT's duly appointed representative. In the event of a disagreement over the administration of this agreement, either party may appeal to the Telecommunications Board who shall make recommendations to the Mayor or City Council, as may be required.

D. DEVELOP FUNDING. CAT will develop a plan for generating revenue at a minimum of 25% of the amount provided by the City in order to subsidize additional growth.

1. CAT will develop a general underwriting policy; and
2. CAT will telecast two CAT specific fundraising events per year; and
3. CAT shall not telecast more than 4 fundraising events per year for other 501c(3) non-profit organizations that provide service in the telecast area; and
4. CAT will seek and devise a timely procedure for solicitation and collection of donations and other contributions to be recorded on a monthly budget process. These procedures could include, but not be limited to, telethons, web-based donation collections, etc.

E. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. CAT will administer the public access channel(s) in compliance with the Telecommunications Board Ordinance; with

applicable laws, rules and regulations,, and with the franchise agreement between the City and Cox Communications and/or other television services providers. All business information maintained by CAT or the CAT Board of Directors is subject to the terms of the Arkansas Freedom of Information Act (FOIA).

F. TRAINING AND PROMOTION. CAT will provide services to residents in the service area of Washington, Madison, Benton and Carroll counties in the techniques of video production and provide technical advice in the production of programming. CAT will:

1. Create and provide training curriculum to emphasize video proficiency and production quality in public access programming; and
2. Certify a minimum of 20 individuals in the service area described above through CAT certification training. Completion of certification training is necessary to use Television Center equipment and facilities. These individuals are "Certified Producers"; and
3. Promote CAT as a telecast facility such that a minimum of 10 new individuals in the service area described above request the telecast of programs they have produced without using Television Center equipment or facilities. Individuals in this service area who produce programming without the use of Television Center facilities or equipment are "Local Producers"; and
4. Include a public service requirement as part of the certification process that results in at least one telecast quality program per certified producer per year. This is a requirement for maintaining certification; and
5. Promote the use of the public access channel(s) to the extent that 400 new programs produced by local or certified producers are telecast per year. These programs may not include those produced by the Fayetteville Government Channel. These programs may include those produced for telecast by CAT; and
6. Encourage the use of the digital video editing capabilities and assist producers to stay abreast of emerging technologies; and
7. Create a monthly schedule of relevant workshops to publish on the public access television channel's bulletin board and its web site.

G. PLAYBACK/TELECASTING. CAT will provide for telecasting of programs on the public access channel(s). CAT shall telecast a minimum of 80 combined total hours of local, original, replayed and imported programming per week. This excludes the community message board. CAT will:

1. Develop a policy and method for the scheduling and telecasting of public access programs on the public access channel(s); and
2. Maintain a library of all programs produced by local or certified producers or CAT staff to be available for review and use at the Television Center; and
3. Individuals requesting programs to be telecast by CAT must reside within the city limits of Fayetteville. This does not apply to local or certified producers requesting new programs to be telecast by CAT; and CAT shall require requestors to sign an agreement warranting that the program they are requesting to be telecast does not contain:
 - a. any violation of any state or federal law relating to obscenity; and

- b. any material that is libelous, slanderous, or other defamation of character, or an unlawful invasion of privacy; and
- c. any advertising or material which promotes any commercial product or service; and
- d. any use of material which violates copyright law; or any material contrary to local, state or federal laws, regulations, procedures and policy.

H. INFORMATION. CAT shall submit quarterly and annual reports, as defined by the Telecommunications Board or the City, on the operations of the public access channel(s) to the Telecommunications Board and the City. These reports shall contain, but not be limited to, the following information:

- 1. Itemization of programs telecast
- 2. Itemization of program requestors
- 3. Number of new certified producers
- 4. Number of new local producers
- 5. Number of new requestors
- 6. Type and number of programs telecast, including:
 - a) New and repeat programs produced by certified producer
 - b) New and repeat programs produced by local producer
 - c) New and repeat import programs
 - d) New and repeat programs produced by CAT
 - e) CAT promotional programs
 - f) Fundraising programs

In addition to the standard reports, the following special reports shall be submitted:

- 1. Reports of stolen or damaged equipment within one working day of learning of each occurrence; and
- 2. Requests for changes in any procedures or rules pertaining to protection or preservation of City owned equipment and facilities; and
- 3. All corporate documents, including but not limited to CAT's by-laws, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members; and
- 4. At any reasonable time and as often as the Telecommunications Board or the City may deem necessary, CAT shall make available to them, or any of its authorized representatives, all of CAT's records related to all matters covered by this Agreement and shall permit the Telecommunications Board or the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract; and
- 5. During the term of this Contract, CAT shall cause to be delivered to the Telecommunications Board and the City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered in a timely manner to give adequate notice and shall also include an agenda; and

6. Minutes of all meetings, if taken, and materials distributed in meetings of CAT's Board of Directors, or committees thereof, shall be submitted to the Telecommunications Board and the City; and
7. At such times and in such form as the Telecommunications Board or the City may require, CAT shall furnish such statements, records, reports, data and information deemed pertinent to matters covered by this Agreement.

I. PROMOTION. CAT will actively promote the use and benefit of the public access channel(s) and Television Center facilities to television services subscribers, the public, and television services providers. CAT also will:

1. Maintain web site for publication of all reports and scheduled events; and
2. Create a quarterly newsletter and distribute it to members, producers and associates, including members of the City Council, the Office of the Mayor, members of the Telecommunications Board, the Director of Communication and the Television Center Manager; and
3. Provide promotional spots/bulletin boards on the station that promote the use and benefits of the public access television station and facilities to television services subscribers and the general public.

SECTION 2. PERFORMANCE. CAT will be evaluated through quarterly evaluations, and an annual performance review.

- A. Quarterly evaluations will be performed in accordance with the criteria set by the Telecommunications Board, consistent with the process for oversight as specified in the Telecommunications Ordinance.
- B. A Performance Review shall be conducted by CAT and presented to the October meeting of the Telecommunications Board in order to ensure timely delivery of information to the City Council during annual budget review.
 1. This review shall include an opportunity for CAT public access users and television services subscribers to provide input. In turn, the Telecommunications Board will evaluate the CAT Performance Review, basing the evaluation on the terms of this contract and citizen input. The Telecommunications Board will present its performance assessment and recommendations to the City Council in November and begin the process of negotiation for the following contractual year that begins January 1.
 2. All Telecommunication Board findings and recommendations regarding the Performance Review will be provided as feedback to CAT. In the event that the Board recommendation is for non-renewal of the CAT contract, an exit interview will be conducted to discuss all relevant facts.

SECTION 3. USE OF CITY PROPERTY/OWNERSHIP. CAT recognizes that it is performing services for the City on City-owned property and that while on such property, CAT shall not

engage in any activity that is not directly related to the services provided pursuant to this Agreement. Ownership title to all capital acquisition, supplies, material or any other property purchased with funds received under this Contract is vested with the City, and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City in writing. Any equipment secured through fund-raising efforts to benefit the public access television station shall remain the property of the City's Television Center. Ownership of the library of programs collected during the performance of this contract shall, upon termination of this contract, revert to the city.

- A. All changes to the facility and equipment array shall be approved by the City before being undertaken.
- B. The City shall make at least two telephone lines available for CAT's business use. CAT shall be responsible for reimbursing the City, on a quarterly basis, for this expense at a rate of \$20 per line per month.
- C. CAT shall be responsible for its own long distance telephone calls.
- D. CAT shall be responsible for paying the costs of their listing in the telephone directory.
- E. The City shall furnish one time in this 2010 contract renewal, 3 computers for the office use of CAT. This is in addition to those computers that are part of the video systems and the public internet work station. These computers will be configured as closely as possible to the "standard build" for similarly provided computers & software provided to other City offices. CAT will be responsible for all hardware and software maintenance and repair of these computers, and purchase of any other software CAT would like to have installed on the computers used in their operations. Any replacement of these computers will be subject to the normal equipment request procedure and be weighed with all other Capital Improvement requests under the Television Center CIP program.
- F. The City is not required to provide hardware and/or software for the establishment or maintenance of systems for the purpose of public internet access.
- G. The City shall provide access to the Internet for CAT at the same level provided to the Television Center. CAT will be responsible for any access requirements above the level provided to the Television Center.
- H. There shall be no charge to citizens of Fayetteville for the use of telecasting time on the public access channel, nor for the use of the facilities or equipment. However, CAT's fees and charges may apply for such services as, but not limited to, instructions on video production and internet use, blank media, media duplication, annual producer's fees and contracts for video productions.

MAINTENANCE

- I. The City shall be responsible for the payment of the Television Center utilities, routine building and grounds maintenance and maintenance of the structure.
- J. CAT may use the City's current copier at the Television Center for a charge of \$.039 per copy. Additionally, CAT may use the copier located at the City Administration Building for the standard charge as is allocated per copy to the City Departments and Divisions. If the City upgrades the copier located in the Television Center, CAT shall pay an adjusted charge per copy, up to, but not to exceed the standard City rate charged to City Departments and Divisions as determined annually.

K. Copy machine maintenance costs will be paid by the City.

VIDEO EQUIPMENT

- L. CAT Staff and Producers will have direct input in the decisions regarding the acquisition, maintenance and repair of equipment used primarily by CAT Staff and Producers. The City will accommodate the equipment needs of CAT Staff and Producers to the extent that considerations of budget, compatibility and integration in the system will allow.
- M. The City shall repair and maintain the video production and telecasting equipment except as otherwise noted. CAT shall make minor, routine repairs to equipment used for public access production which shall be mutually agreed upon by the City and CAT.
- N. The City shall operate a system for equipment and facility repair and maintenance. All requests will be recorded and forwarded to the , Television Center Manager, or designee. The system will be designed to keep all Television Center personnel informed of the status of repairs.
- O. CAT shall make minor repairs to equipment designated for public use or use by CAT Staff.
- P. Certain equipment, to be designated by the City, shall not be available for public access checkout.
- Q. Use of the Television Center video equipment and facilities designated for public use will be coordinated by CAT using a reservation system readily available at all times.
- R. CAT will notify the City immediately of any problems with the equipment.
- S. All video production equipment owned by the City and used for public, educational and/or government access productions shall be covered under the City's insurance policy.

SECTION 4. CONTRACT PERIOD. Initial contract period will be from January 1, 2010 until December 31, 2010. Either party may cancel this contract at any time with a thirty (30) day written notice.

SECTION 5. FUNDING. The City hereby agrees to pay CAT the monthly sum of \$7,750 for services performed under the terms of this contract. Each monthly payment will be remitted on or before the 15th day of each month, beginning January 15, 2010.

CAT agrees to provide the City with a monthly financial report, prepared by an independent certified public accountant, based on a modified accrual or cash basis method, summarizing activity during the preceding month and year to date. Said report shall include income and balance sheet statements.

SECTION 6. LEGAL AUTHORITY. CAT assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Agreement on behalf of CAT have been fully authorized by CAT to execute this Agreement. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind CAT to all the terms, performances, and provisions here set forth. A copy of such resolution shall be provided upon execution of this Agreement. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the

legal authority of CAT or the person signing the Agreement. The City shall not be obligated to pay CAT for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

SECTION 7. PERSONNEL. CAT shall adequately staff the public access operation to meet the services and duties outlined in this agreement. Staff for public, educational, and government channels will be expected to work together in a cooperative manner with all groups using the facility. Personnel policies shall be established by CAT and shall be available for examination by the City.

Upon termination of an employee by the Television Center Manager, and in the event that CAT's manager wishes to hire the employee over the objections of the Television Center Manager, an appeal of the action may be brought by the Television Center Manager to CAT's Board of Directors. Similarly, upon termination of an employee by CAT, and in the event that the Television Center Manager wishes to hire the employee over the objections of CAT's manager, an appeal of the action may be brought by CAT's manager to the Telecommunications Board.

SECTION 8. EQUAL OPPORTUNITY. CAT shall comply with all applicable equal opportunity, affirmative action, and ADA laws or regulations, including those of the City of Fayetteville.

SECTION 9. INSURANCE. CAT shall obtain and keep in force during the term of this agreement a policy of public liability and property damage insurance. The coverage, at a minimum, shall be in the following amounts:

General Liability

a. General Aggregate	\$1,000,000
b. Products/Completed Oper. Aggr.	\$1,000,000
c. Each Occurrence	\$100,000
d. Fire Damage (any one fire)	\$50,000
e. Medical Expense (any one person)	\$5,000

Worker's Compensation for all employees as required by Arkansas Statute.

Bonding: CAT shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this agreement, within 10 days of the contract execution. The fidelity bond shall be in an amount equal to 10% of the city grant award or \$5,000, whichever is less. CAT shall furnish the city proof of an adequate fidelity bond prior to the first payment of funds under this agreement.

SECTION 10. POLITICAL/SECTARIAN ACTIVITY. CAT management shall not initiate or sponsor political or religious programming. The staff shall work on a content neutral basis and shall not determine programming content except for programs produced for the purpose of promoting the use of the channel. Staff produced programs shall be open to participation by all citizens on a first-come, first-served, non-discriminatory basis. Though the facility can be used for legitimate First Amendment purposes, no portion of the funds received by CAT shall be used

to directly produce any programs nor participate in any CAT-sponsored activities that establish any religion or prohibit the free exercise thereof.

SECTION 11. PUBLICITY. In any news release, sign, brochure, or other medium disseminating information prepared or distributed by or for CAT, mention shall be made of the City of Fayetteville having made the project possible, i.e. "Community Access Television' is a project partially funded by the City of Fayetteville."

SECTION 12. HOLD HARMLESS. It is expressed, understood and agreed by both parties that the City is contracting with CAT as an independent contractor and that as such, CAT shall save and hold the City, its officers, agents and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of CAT. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

SECTION 13. CONFLICT OF INTEREST. CAT covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CAT further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

CAT further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others particularly, those with which they have family, business, or other ties.

No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

CONTRACT ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto, and any prior agreement, whether written or oral, shall have no force or effect. Any subsequent agreements will have no effect unless properly executed in writing and recorded as an addendum to this Agreement.

SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed as a separate, distinct and independent provision, and such holding will not effect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION

By: Colleen M. C. Panache

Title: CAT Board President

ATTEST:

By: 

Title: CAT Manager

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Lioneld Jordan, Mayor

ATTEST:

By: _____

Sondra Smith, City Clerk

Addendum A
CAT Contract
The City of Fayetteville Television Center
Rules of Use

1. Per City of Fayetteville Policy, the use of alcohol, tobacco products and/or illegal drugs on the premises is strictly prohibited. Per Policy SH-01, tobacco use is allowed at designated areas outside the Television Center.
2. Staff members shall not park in spaces in the parking lot in front of the Center except for purposes of loading or unloading.
3. Food and/or beverages shall not be taken into any areas containing production equipment such as editing rooms, the master control room or the studio control room. Food and/or beverages may be taken into the studio. Caution should be used and the use of closed-top containers for beverages should be encouraged.
4. Public users of the Television Center may not use the Center to store personal items or personal items utilized for production (i.e. props, tapes, etc.). Temporary exceptions may be granted by the Television Center Manager.
5. Public users of the Television Center and producers are responsible for the clean up and returning of all property and/or equipment used at the end of a production. Failure to do so may result in the loss of producer privileges.
6. Staff and public users of the Television Center are expected to conduct themselves at all times in an orderly, respectful and courteous manner. Loud talking, yelling, shouting and/or raucous behavior is disruptive to others attempting to work.

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
October 20, 2009**

A meeting of the Fayetteville City Council was held on October 20, 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 Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Gray, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

American in Bloom Award:

Mayor Jordan thanked Cynthia Cope, Chair of the Fayetteville in Bloom Committee, for her dedication to Fayetteville America in Bloom, the beautification of our wonderful city and all that she does for the community.

Cynthia Cope gave a brief description of America in Bloom, the projects that have been completed in Fayetteville, the volunteers that have helped with projects and the donations that have been received. She presented the Mayor with plaques for Fayetteville for winning four Blooms in the competition and for the Environmental Awareness Award.

Mayor Jordan: On behalf of the City Council, the citizens and volunteers I want to thank you for your hard work. I want to honor all the businesses as well that participated in this.

2009 Volunteer Community of the Year Award:

Mayor Jordan stated Fayetteville will be awarded the 2009 Volunteer Community of the Year award. He thanked the many volunteers in Fayetteville who do so much to make our community

great, to improve the quality of life for so many, and provide service above self. It makes our community and government work in ways that would never be possible without you.

Presentations, Reports and Discussion Items: None

Consent:

Approval of the October 6, 2009 City Council meeting minutes.

Approved

Safe Routes To School Program: A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes to Schools Program.

Resolution 214-09 as recorded in the office of the City Clerk.

2009 COPS Technology Grant: A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue.

Resolution 215-09 as recorded in the office of the City Clerk.

Baird, Kurtz & Dobson (BKD), LLP: A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00.

Resolution 216-09 as recorded in the office of the City Clerk.

Energy Efficiency Rehabilitation Project: A resolution to approve Bid in the amount of \$64,210.00 from Joe Perme Construction for rehabilitation and increased Energy Efficiency of a city owned building at 1932 S. Garland Avenue.

Resolution 217-09 as recorded in the office of the City Clerk.

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

Agenda Additions: None

Unfinished Business:

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.

Chief Greg Tabor asked that this item be tabled to the next meeting due to making a few minor changes.

Alderman Ferrell moved to table the resolution to the November 3, 2009 City Council meeting. Alderman Lewis seconded the motion. Upon roll call the motion to table passed unanimously.

This resolution was tabled to the November 3, 2009 City Council meeting.

2009 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas. *This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Petty stated it seems like Fayetteville does the budget backwards. We make revenue decisions before we've surveyed all our needs. He stated that he is not going to purpose an amendment to raise the levy.

Alderman Lewis stated it is worth thinking about how we're going to address the budget and should we do a levy. This is a good rate at this point.

Alderman Thiel stated that we have a deadline on the millage levy and it takes a great deal of time for all the departments to purpose their budgets and for staff to work on them. There's just no way to have time to get this to us in time for us to adopt this. She stated the Mayor presented a basic proposal of a budget outline and that's really the best they can do this early in the process. She stated it is difficult to vote on this early in the process because of the deadline for the County.

Mayor Jordan stated that is why I give monthly updates on sales tax dollars and where we are on the budget.

Alderman Gray stated she would like to challenge the staff if there is anyway possible that we could start in the middle of summer.

Don Marr, Chief of Staff stated the earlier you start the budget process the greater prediction skills you need. As you go through this process you are predicting what revenue and what expenses are going to be in a future time period. If we start pulling together information from the staff, setting priorities, reviewing, and going through levels of screening that we are doing which is Budget, Accounting, Chief of Staff, and the Mayor. To get it completed you would have to start it in April, we would be starting in the first or second quarter of actually getting results and then we would be predicting not only what we anticipate 2010 to be but where we expect 2009 to finish.

Mayor Jordan stated what he has tried to do is let you know every three months what the state of this City is. We are now making decisions on 2010.

Paul Becker stated you would have to start the budget process in order to meet June in about February. We would be just into the new year, to try to forecast that far ahead would be almost impossible. We would be constantly adjusting the budget for conditions. The statutes are constructed so that we do have to deal with the millage by the end of October and statutorily the budget doesn't have to be presented by the Mayor until December.

Don Marr stated we did cut about a month of review time. He stated he was fairly aggressive with the staff asking them to shorten their review periods and to reduce what they had historically had in there. I didn't do it to get the budget to you earlier I did it to get the last possible time so that we could look at numbers to get you the most accurate number.

Alderman Ferrell stated in previous years we've taken a great deal of time to figure the budget when we were having four, six, to eight percent growth in revenue, when we had positive good growth. He stated he has been here since 2004 and this year is the most proactive year I have seen. We spent a great deal of time when we had positive, good growth.

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

Ordinance 5279 as Recorded in the office of the City Clerk.

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.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated this was heard at the regular Planning Commission meeting and voted on 5-4 in favor of a motion to deny this request. Staff did not support this application for annexation.

Alderman Petty: When this came forward before it was coupled with a rezoning request right?

Jeremy Pate: That's correct.

Alderman Petty: Now that's not here?

Jeremy Pate: That's correct.

Alderman Petty: It's identified as a rural area but also as an intended growth sector. Does that seem dichotomist to you?

Jeremy Pate: We have had a lot of discussions about what that growth sector map means. The growth sector was created as part of the charrette process, looking at areas where residents potentially wanted to look at locating people within the City in the context of where the City might grow within the next twenty years. The map was refined into what we now have as a Future Land Use Plan. Ultimately what the City adopted was the City plan 2025 Future Land Use Map.

Alderman Petty: The land remaining reserved for agricultural use, how does that affect your opinion on the annexation now that the rezoning request has been removed?

Jeremy Pate: We were asked that question by the applicants, if you look at what our Future Land Use Plan discusses which is leap frog growth where areas of the city are left undeveloped and other areas are developed further away from city services, that would still remain a concern and you have seen that in our staff report all three times.

Alderman Lewis stated she had a question about the fire response. It says the response time of four minutes and then on a letter it talks about there's not a water main near the property of sufficient size for fire fighting.

Jeremy Pate stated there is an old house on the property that hasn't been occupied for a number of years. This is within our water service area. There's not adequate flow to fight a fire. The lines are not large enough to support a development of any size.

Alderman Lewis asked if the police chief could talk about the response time changing because of annexation.

Greg Tabor, Chief of Police: On priority one calls which are life threatening calls we have a goal of five minutes. Anything that makes the city bigger we still have the same amount of officers so it's more area that each officer has to cover and it could affect response time.

Alderman Lucas stated she is always concerned about fire protection. If this is developed it will have to have fire protection before you will approve any sort of development on this land.

Jeremy Pate: That's correct.

Alderman Thiel: Does the sewer run out there?

Jeremy Pate: It does not. The closest sewer is around Crossover and Old Wire Road.

A discussion followed regarding the city limits.

Alderman Ferrell: Is this similar to other annexations and the fact that when it was annexed the developer ran infrastructure to the property?

Jeremy Pate: If it were to be developed it would be their entire responsibility.

Alderman Ferrell: Anytime you annex something new into the city limits for awhile perhaps it's going to have a little impact on the Police and Fire.

Jeremy Pate: There certainly is always an impact.

Alderman Thiel: If sewer is not within 100 feet or whatever the rule is and it is in the city limits then they could build these on a step system?

Jeremy Pate: I believe they would have to extend sewer to this property. We do have an ordinance regarding septic systems and decentralized systems within the city limits but I believe those are not allowed unless they were already permitted when they were annexed.

Alderman Thiel: If it was a development they would be required to. If someone lived out there they wouldn't be.

Jeremy Pate: Right.

Todd Jacobs with Appian Centre for Design gave a brief presentation about this item.

Alderman Lewis stated you are requesting the annexation and your plan is to?

Todd Jacobs: If the property is annexed in that will give us the freedom of continuance of doing our environmental diligence and begin to see what kind of housing connection can happen out there. It allows us to start neighborhood meetings and see what the neighbors want or don't want. It allows us to start preliminary talks with the staff to see what they feel comfortable with bringing; water, sewer, traffic and all the issues that we typically go through with the development; and then evidentially if it was a PZD it would come back before this council for you all to decide on what is appropriate and not appropriate.

Colene Gaston resident of 3270 Rom Orchard Road asked that this item be left on the First Reading. She stated a number of her neighbors were unable to be here tonight and they would like to have an opportunity to give their comments either in person or by letter.

This ordinance was left on the Second Reading

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. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel stated the Ordinance Review Committee made several recommendations to clarify and fine tune the where as clauses and to include rock breaking and dump truck tailgate banging as noise problems.

Mayor Jordan asked Brenda if she wanted to start with the first one and make that amendment or wait.

Alderman Thiel stated lets try to combine them.

Alderman Lucas: Why don't you just read them all?

Alderman Thiel: I will read them all and then we can decide if there are some we have consensus on and kind of combine them. The second issue we discussed was the number of explosions. We limited that to 24 times per year that they can blast rather than 12 per year once per month. We also considered a variance to allow blasting after the normal period of 10:00 a.m. to 3:00 p.m. to be granted by the City for safety reasons. If we make these other amendments this should be made so that if they have a blast ready to go off and weather or something occurs they can go ahead and get a variance to go ahead and set it off.

Notification, the rock quarry operator must notify by telephone the City and any neighbor within a mile who has requested notification prior to any blast. The operational hours have been expanded from 7:00 a.m. until 6:00 p.m. on weekdays and 7:00 a.m. until 12:00 p.m. on Saturday. The time limitation for the major noise producing activities is limited to weekdays between 8:30 a.m. until 4:30 p.m. Tailgate dump truck banging was proposed to be prohibited at all times at a rock quarry or red dirt mining facility. Definitions of major noise generating activity and dump truck tailgate banging have been added. There were minor changes in Section

113.06 (D) and 113.07 as requested by the quarry operator and those were based on the ability to file lawsuits.

These recommended changes from Ordinance Review Committee can be considered at one time or a whole and the City Attorney has gone through the ordinance and made those changes.

Alderman Lewis stated these recommendations seem like it's a combination of both ordinances because Red Dirt Mining was mentioned.

Kit Williams stated right now we are just talking about the Rock Quarry ordinance but when I was drafting the Red Dirt Mining Facility ordinance I also tried to incorporate what the Ordinance Review Committee had recommended into that ordinance. Not everything was directly applicable because there is a slightly different operation.

Alderman Lewis: Are we going to discuss all of these recommendations together and then hear from the public or are we going to go one at a time?

Mayor Jordan stated we will have to go one at time.

Kit Williams stated several will not be controversial for example the where as clause, variance, notification, definitions, and the minor changes could be decided as a group. If there are disagreements with the number of explosions, operational hours, time limitations for major noise producing activities those might be controversial and those should be handled one at a time.

Alderman Lucas: Don't you make a report that this is your recommendations and then you present it as your recommendations and then it's discussed?

Alderman Thiel: I agree with Kit on some of the simple ones. I was going to make a motion to amend the where as clauses, variance, notification, definitions, and the minor changes which are not controversial. We could then discuss them and then each one of the additional ones we can discuss.

Alderman Thiel moved to amend the ordinance to approve changes 1, 3, 4, 8, and 9 as proposed by the Ordinance Review Committee. Alderman Petty seconded the motion.

Alderman Gray stated it seems like you all have done an excellent job of addressing most of the things that we talked about.

Don Marr suggested that the changes be read for the public who do not have a copy of the memo.

Kit Williams: The suggestion from the Ordinance Review Committee added rock breaking, rock crushing, and dump truck banging as part of the noise problems that would be a nuisance to inhabitation. Those were the major things that we did on that. We did not change the where as clauses dramatically we just added those other factors for major noise producing problems that would be the basis for making a decision that it would be a nuisance if you didn't regulate those.

Alderman Thiel: The variance was to add *the Director of Development Services or designee is empowered to grant a variance of time limitations for rock blasting if inclement weather or other conditions beyond the reasonable control of the operator has caused a safety issue that requires the rock blasting outside the 10:00 a.m. until 3:00 p.m. permitted period.* That's what the variance would do.

The notification is that the rock quarry operator must notify by telephone the City and any neighbor within a mile who has requested notification prior to any blast.

Alderman Lucas: Are you just reading the ones that we're going to consider right now?

Alderman Thiel: Yes. Under definitions we added major noise generating activity. Major noise producing activities means blasting, rock breaking, rock crushing, dump truck tailgate banging and the use by the quarry operator of non static back up warning devices on its loader, breaker, or other equipment. Definition E Dump Truck Tailgate Banging means the avoidable and loud banging of a dump truck tailgate used to vibrate the bed to loosen material in the bed sought to be dumped. The relatively quick bang that might be unavoidable when a dump truck load is dumped and truck moves away from the pile without applying the trucks brakes is not regulated by this ordinance.

The minor changes under 113.06 Penalty (D) each violation of the operational hour limitations or the number of rock blasting events allowed by this ordinance. That was just a clarification.

Alderman Thiel: Under 113.07 we added nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a rock quarry if a court of competent jurisdiction finds that such facility constitutes a private or public nuisance to that property owner. Those are the things I am covering this motion to amend.

Roma Gray stated regarding the notification for the blasting she wondered if there could be a stipulation on the time frame. She stated she rides horses and she can not make appropriate arrangements for safety so that she will not be on her horse when they blast. She stated other people may have similar issues and wondered if we could stay within a one or two hour time frame of when the blasting would occur not just that it will happen that day.

Alderman Thiel stated it reads right now that such notification at least two hours prior to the rock blasting. You say you need more time than that?

Roma Gray: I would like for them to let us know within a time frame when the blast is going to occur so that we can plan on that for safety purposes with animals and live stock.

Kit Williams: It can't occur under this ordinance unless its 10:00 a.m. to 3:00 p.m. that's already the limited window that they have unless there would be a safety variance granted by the Director of Development Services. There is only a five hour window at this point.

Roma Gray: Do you all feel that's appropriate for them to have the whole five hours for the blast to occur?

Mayor Jordan: That's why we are having this discussion.

Alderman Lucas: Right now it is 10:00 a.m. to 3:00 p.m. so what are you saying? You would like to be notified at least two to three hours before the blast occurs. What would be safety for your animals?

Roma Gray: For me in particular having notification the day before would be ideal so that I can make those kinds of plans for my animals. However when they say they're going to blast that it occurs within that particular timeframe. In the past we have been told that they are going to blast at 10:00 a.m. and a blast didn't occur until 2:30 p.m. I had plans to secure the animals and not be riding at the time and that time had already elapsed and then they blasted later in the afternoon.

Alderman Thiel: That was the only one that apparently anyone had any concern about.

Kit Williams: I noticed that we have rock quarry operators in the room and I would like to get their impressions on what the citizen said about notification. If they have any opposition to this current proposed notification required or any change we might make.

Gary Webb, Rogers Group: We are currently calling everybody that is on the list the day before we shoot and an hour before we shoot.

Alderman Lucas: You say a day before and an hour before. Could it be two hours before?

Gary Webb: Sure, it's a guess anyway. It's not going to be exactly two hours for one thing it takes a half hour to make those phone calls. We get as close as we can. Generally we try to shoot around noon and we start calling people about 11:00 a.m. We can call them at 10:00 a.m.

Alderman Thiel: I was going to suggest since there might be some discussion on that item I could pull that from my motion.

Alderman Lucas: We have already had that discussion.

Alderman Thiel: You don't want to change that?

Alderman Lucas: I would like to add that you notify the day before and two hours prior. I am making an amendment to the amendment.

Kit Williams: The Big Red Dirt Farm individuals are here and I would like to know whether or not that's going to be some sort of operational problem. I would like to get your comments on that and let us know before we pass an ordinance.

Chuck Nestrud, outside counsel for Big Red Dirt Farm: In the blasting situation the professionals who load the shots have a lot of things that they have to consider before they determine exactly what time they're going to set the blast off. Weather conditions may delay a shot in making sure they get everything set right. They do the best job they can in providing

notice but if you start restricting that they have to provide notice a certain time period you're impacting their ability to make safety decisions and I don't think that is a good idea. They're going to do the best job they can. You have heard about the policies of trying to give notice an hour before and the day before and they do that the best they can but if for safety reasons a blast needs to be delayed then the blast needs to be delayed. An arbitrary deadline should not change that.

Kit Williams: Have you seen a copy of the proposed amendments that the Ordinance Review Committee has presented?

Chuck Nestrud: What we would like to do is reserve our comments until we see what the ordinance looks like at the end of all your deliberations. Our comments are more of a generic fashion and not piece by piece and it's hard for us to piece mill our comments to the ordinance. It's the whole picture that we have to look at before we can tell you what we think about it.

Kit Williams: I appreciate that, I wondered if you had seen the proposed changes that the Ordinance Review has presented.

Chuck Nestrud: I have not.

Alderman Lewis: Did you say your operations notify the day before?

Chuck Nestrud: Yes, Big Red Dirt Farm has a conditional use permit and it has notification requirements but that's the policy of all blasters anyway is to notify.

Alderman Petty: What we've got is mostly okay I would support requiring notification a day before even though that's already policy that's good to have that written out. For the blasting already being restricted to a five hour window that takes care of requiring them to notify what the window of blasting will be because we've said that already in the requirements.

Alderman Thiel: Can I make that change to my motion?

Kit Williams: Let me make sure I understand it, are we just moving it up to the day before or are you requiring two notifications?

Alderman Lucas: They are doing two now.

Alderman Thiel: They say they're doing two so why not one day prior and then two hours prior.

Kit Williams: That's fine.

Alderman Gray: It seems like the big difference is Matthew is saying a five hour window where I heard the lady saying that she would like to have a two hour window, right?

Alderman Thiel: No.

Stephen Giles, outside Counsel for Rogers Group: The Rogers Group policy is to notify. The problem with putting that in the ordinance is if we have a situation where a blast has to be delayed and someone does not get the phone call then the license can be revoked because it is one of the causes for penalty under the ordinance. When you set something like that in stone that is going to be a fundamental problem with adherence to that if this is passed and this license is issued. We do not want to be blamed for something that is outside our control.

That is the reason Mr. Williams and I talked about the variance and we agreed to have a variance provision for blasting in the event something happened that is beyond our control but to have that hard and fast and set in the ordinance is really going to cause problems.

City Attorney Kit Williams: I think the way I would interpret this ordinance is that variance would cover this problem. If you had given your notices out and then something happened beyond your operators control, with inclement weather or something, and the blast had to be delayed and a variance was granted then that would not be any violation of this ordinance or your rock quarry license.

Alderman Ferrell: Kit, if there was a delay and they got a variance would that kick in a renotification requirement?

City Attorney Kit Williams: It would not. The variance would be varying that particular time that had been previously allowed for it. If we have problems in the future we can come back and add another requirement if we see that is a problem.

Upon roll call the motion to amend the ordinance items 1, 3, 4, 8, and 9 as proposed by the Ordinance Review Committee but also include a change to the notification section to read *who has requested such notification at least 24 hours and two hours prior to rock blasting.* Upon roll call the motion passed unanimously.

Alderman Thiel moved to amend the ordinance to limit the number of days that blasting can occur to 24 days. Alderman Lucas seconded the motion. There was no vote on this amendment. The motion was withdrawn by Alderman Thiel.

City Attorney Kit Williams read the ordinance as suggestion by the amendment.

This motion was withdrawn by Alderman Thiel.

Alderman Petty: I would like to suggest instead of saying 24 per year we designate which days this could happen. A citizen suggested the first and third Wednesday of each month. That is something I would support as long as we had a variance procedure in there for inclement weather.

Alderman Petty moved to amend the ordinance to allow blasting on the 1st and 3rd Wednesday of the month. Alderman Gray seconded the motion.

Donald Johnson, a citizen: As a citizen I have made some adjustments and am trying to be neighborly with these quarries. I think this would be a great idea. This would give us some understanding of when these blasts would occur. We could plan our family activities around these dates.

Stephen Giles: Rogers Group can not agree to that. We have explained over and over again that this company is in the business of crushing stone and to do that in the most efficient way and the quietest way is to do our blast at half the State limit and conduct blasts when Rogers Group needs to do it to get the stone on the ground so that it can be crushed in and an adequate supply kept on site for the trucks to come and get it. They do not know when they are going to have to blast until sometimes the day before. Rogers Group which is in the business solely to crush and blast can not plan or be affected by an ordinance that says you can only blast on certain days of the month. They just can't do that. What if no one is home but we can't do a blast because it is not one of the days. No one is affected.

Alderman Petty: You do know that the original ordinance limits the quarries to 12 days per year? Are you in support of the amendment which grants your business more freedom?

Stephen Giles: We are not in support of 24 days a year.

Chuck Nestrud, on behalf of Big Red Dirt Farm: We already have a condition that limits our blasts to 24 times per year. We think that is an adequate restriction. Farther limiting that to specific days of the week I do not understand. Your authority is to abate a nuisance. A nuisance does not occur on a specific day of the week. For the life of me I don't understand how this has gotten to something that requires us to be a nuisance, to something that we want regulations that does this because it would make our life easier. That is not what this is all about. You have a very narrow window of authority to regulate and that is an existing nuisance. You can only deal with what is necessary to abate that nuisance. Your authority is not to regulate whatever you feel like regulating.

Roma Gray: Part of the nuisance with the quarries is the wondering when the blasts are going to occur. Yes, you have said we will get the 24 hour notice but having some built in predictability as to the scheduling would make a world of difference, for me in particular to deal with horses and livestock and scheduling riding lessons. In most types of businesses you do planning on how much supply and demand there is going to be.

Darin Matson, Rogers Group: The neighbors can call us any time and ask if we are going to shoot and we would be glad to tell them. That may be a solution.

Alderman Lucas: How far ahead do you schedule?

Darin Matson: Usually the afternoon before.

Alderman Lucas: You don't do it a week before or three days before?

Darin Matson: We try to plan it but we usually call the blasting company the afternoon before.

Alderman Lucas: They can accommodate you that quickly? They don't have any other areas that they have to blast?

Darin Matson: They generally have enough crews working in the area that they will accommodate us. Mr. Maston handed out a list of all the blasts they have done since April of this year. There have been some comments in the media that we doctored our blast for your visits and you will clearly see that one of the visits was the largest blast we ever put off, the other two were similar size blasts. I just wanted to share that with you just to put that to bed. We don't doctor our blasts at any time. We design them all the same.

Alderman Ferrell: Thank you for that. I took strong exception when someone said they felt like we had been doctoring them when we were out there.

Darin Matson: We don't play that game.

Alderman Lewis: You have said that you blast at one half inch per second. You have some wiggle room you can go all the way to one inch per second?

Darin Matson: That's correct. On this list there is a couple that is over point five. That's to the closest structure. We blast to these vibration measurements, we measure closer than that, we measure between 700 and 900 feet from our blast. There are only a couple that hit point six but we have the ability to go to one. Limiting us to 24 blasts per year all bets are off that I can hit the point five and I can hit the 123 decibels. I am going to have to put up larger shots. I have so many sales and less days of shooting. I can not hold my people accountable and the blasting companies accountable to our internal standards if I have to double the size of the shots.

Mayor Jordan: You are saying if you go to 24 blasts they will be larger blasts and have more implication.

Darin Matson: Absolutely. No doubt about it. I just can't physically put that much down in 24 blasts and this has been a slow year. By being honest with you in the amount we are going to shoot by restricting us I can not shoot smaller blasts. I am not going to have the days to do it. With combining it with the red dirt operators, if they shoot a boulder on their pit that counts against one of my days. One boulder of two or three hundred pounds is going to take away my 20,000 tons of rock that I can shoot.

City Attorney Kit Williams: Not if you are shooting on the same day.

Darin Matson: Regardless if it is on the day or not it is one of my blast days that is gone.

City Attorney Kit Williams: I think you misunderstand this. In fact you both shoot on the same day that is one day.

Darin Matson: But, we are not going to shoot on the same day. I don't know what they do, I do not run their operation, we are two different companies, totally different businesses.

Alderman Cook: What would this chart have looked like nine years ago when you guys were in full run? When the boom was going on and people needed rock all the time.

Darin Matson: We have been in business here since 2008.

Alderman Cook: For instance, this is based on a slow time period.

Darin Matson: The size of the shots is the same. It would be the frequency that may increase. We just got started last year so you are not going to see much difference from last year to this year.

Alderman Cook: Correct. We are talking about limiting this to 24 shots and you said that would restrict you on the amount of supply that you could have. When construction is rocking and rolling people need rock so how many shots would you have to have per year to keep your supply. I know you would be guessing.

Darin Matson: I would say we would probably have to shoot upwards to three times per week. If this quarry was growing the way we would love to see it grow and some of our other business we would like to have that flexibility to be able to shoot three times per week. Typically it would probably be more like two times per week.

Alderman Cook: If you were shooting at that frequency as far as the vibration numbers are they going to be similar to what we are seeing on this chart?

Darin Matson: If we have the flexibility I can guarantee you that we will stick to our internal limits. That is why we designed them that way.

Alderman Thiel: Legally they can't blast a whole lot more as far as the volume of the blast.

City Attorney Kit Williams: They can increase it to some extent.

Alderman Thiel: He is saying the blast would have to be a lot larger if they had to do it less frequent.

City Attorney Kit Williams: They are shooting at about half the strength that they are allowed to shoot under State and Federal law.

Dana Gallagher reminded the Council that the purpose of the ordinance was the abatement of a perceived nuisance, something that is disturbing. She stated one of the ways we can control something that is disturbing is by planning. She stated the neighbors never raised an issue until this became overbearing, they tried to be good neighbors. She voiced her concern about not being able to plan her life. She stated the neighbors came here to cooperate.

Debbie Johnson: I agree on the first and third Wednesdays.

City Attorney Kit Williams: A couple of things that need to be a part of the amendment if you are going to do it. We need to say if the first and third Wednesday happens on a holiday that automatically the next day or Thursday or whatever you want to say. Plus there probably needs to be a variance in here in case it is a day that would not be appropriate for blasting because of inclement weather or something like that. We would then need to give the Director of Developmental Services the right to postpone the blasting. I think we need those two provisions within it if we are going to try to limit it to specifically the first and third Wednesday.

Alderman Petty: I am on board with that.

Alderman Gray: Yes. I agree.

Upon roll call the motion to amend the ordinance to allow blasting on the 1st and 3rd Wednesday of the month passed 5-3. Alderman Petty, Lucas, Lewis, Gray, and Thiel voting yes. Alderman Cook, Rhoads, and Ferrell voting no.

Mayor Jordan: Operational hours and days the operational hours have been expanded to 7:00 a.m. until 6:00 p.m. on weekdays and 7:00 a.m. until noon on Saturday.

Alderman Lewis: Part of the discussion is the safety for kids and the dump trucks in the mornings. It states *the major noise producing activities are later in the weekdays between 8:30 a.m. and 4:30 p.m.* That is inside the operational hours which are 6:00 a.m. to 7:00 a.m. I am proposing the operational hours be 8:30 a.m. to 6:00p.m. They are not starting until later.

Mayor Jordan: So you want to change the times on what we have. What do you want the times to be?

Alderman Lewis: Mostly operational hours are the only thing we are talking about so I would like them to not be operational until later.

Mayor Jordan: What time?

Alderman Lewis: 8:30 a.m. until 6:00 p.m.

Mayor Jordan: That's on weekday's right?

Alderman Lewis: Correct.

Mayor Jordan: Are you changing Saturdays?

Alderman Lewis: No.

Alderman Ferrell: Sarah, are you talking about the whole year or during the school year?

Alderman Lewis: It's because of the kids so I guess only during the school year.

Alderman Lewis moved to amend the hours of operation to 8:30 to 6:00 during the school season and from 7:00 to 6:00 during the summer. Alderman Lucas seconded the motion.

Alderman Gray: I understand that would create a problem for some people that their workers go to work at 7:00 a.m. if they can't go pick up a load of rock until 8:30 a.m. That is kind of a problem.

Alderman Ferrell: Some of the principals here at one time had offered to construct some bus shelters along the side of the road in an attempt of good faith to try to help shelter and protect any of the school children along side the road.

Alderman Thiel: At one point some of the operators suggested they would build shelter but we can not require that in the ordinance.

Alderman Petty: I appreciate what you are suggesting it is something I struggle with too but I support what we came up with at the Ordinance Review. I do not think I can support anything that is more restrictive than what we have already came up with.

Dave Bolin, Hamestring Road: I think what we need to remember with the difference in hours, 8:30 a.m. gets everybody pass the school kids on the road, buses on the road and traffic on the road and quiet at least in the springtime and maybe in the fall. It makes it easier if you say 8:30 a.m. to 6:00 p.m. because then you have far less to deal with about the noise issue. What we are doing is abating the nuisance for the pits that are within a mile of the city limits. We think that 8:30 a.m. to 6:00 p.m. would be more appropriate. We are trying to keep the dump trucks and everybody else from mingling in the dark, in the morning, with the noise in a high density residential, agricultural area. We think this is a good compromise.

Hugh Jarrett, attorney for Stephens Red Dirt Pit: We did offer to help with those bus shelters for the school kids and we still are more than happy to do that.

Mack McCandless, West Wedington Drive: My house is 900 feet from the edge of the pit. My concern is not just with the traffic on Hamestring Road or the bus shelters that are going to be put there. My concern is with the entire length of Wedington Drive. He voiced his concerns about the conflict with traffic. I hope you can see the point on shortening these hours.

Darin Matson, Rogers Group: We can't support more restrictive hours. We can't run a successful business where the first load shows up to paving or construction crew at 9:30 a.m. or 10:00 a.m. in the morning. Extending the hours is not an equal compromise from the morning to the afternoon.

Alderman Lewis: I guess what I am struggling with are the kids along the road in the morning. That really is what the point of this recommendation is. What is your recommendation on addressing that?

Darin Matson: Other than creating the shelters we defiantly would participate in that. We will accommodate them any way we can. The trucks have been traveling these roads for a number of

years and I don't know of any instances with school buses. It would help to know what we need to address. It is almost like placing an ordinance in place where there is not a problem. There hasn't been a problem. Truck drivers have kids and families. They are not out there to run people over.

Chuck Nestrud: We would have to agree with what the Rogers people said. It is almost impossible to run a business if you can't run your business at the time and period that the people are use to working. If you are supposed to give two hours notice before a blast that starts at 10:00 a.m. and you can't open your facility until 8:30 a.m. when does this two hour window to give notice start? We are not going to have people there when they can't do any work to start making phone calls. You are just placing restriction on top of restriction that is almost impossible to deal with.

City Attorney Kit Williams: Operating a facility does not mean that you can't be there. It means that you can't have major pieces of equipment working rather than not being able to be there yourself.

Chuck Nestrud: You can't do any work so why would you do that.

Mary Crumley, Hamestring Road, voiced her concern about the trucks on Hamestring Road. It is the safety aspect of the people hauling their children in and out. That road is dangerous.

Alderman Thiel: What time do your grandchildren come down to your house?

Mary Crumley: About 7:00 a.m. and 7:15 a.m. Their parents bring them.

Alderman Thiel: So they are not out there walking on Hamestring?

Mary Crumley: No.

Alderman Thiel: Does any one have a quantity of school children? Do we even know how many school age children catch a bus between Wedington and the quarries?

Debbie Johnson: I do not know the answer to that question. There are three buses that travel that road. The hours of operation on Saturday is that limited to sales only? Will the dump trucks be loading and unloading on Saturdays?

Mayor Jordan: It is just like a regular work day.

City Attorney Kit Williams: And there is no major noise producing activities allowed.

Debbie Johnson: I would like to see no noise at all coming out on Saturday. What time can they start on Saturday?

Alderman Lucas: 7:00 a.m.

Alderman Lewis: Right now it states from 7:00 a.m. to noon on Saturday with limitations on the noise making activity.

Debbie Johnson: No tailgate banging and no backup beeping?

Alderman Lewis: Right.

Debbie Johnson: How are we going to enforce that?

Alderman Lucas: They will just abide by it.

Debbie Johnson: What if they don't?

Mayor Jordan: They would be in violation of the ordinance and we would send someone out to enforce the ordinance.

Debbie Johnson: I would like my Saturdays free of quarry noise. I would like complete silence on Saturday mornings if at all possible.

Billy Sweetser: If you are going to limit dump trucks you are going to need to limit somebody hauling hay, feed, chickens or whatever it is you haul on the highway. They are all trucks. What's the difference? What is the difference in a gravel truck and a truck hauling equipment? How do you regulate that? No trucks?

Don Johnson: We have had our fourth windshield broken from gravel. We have to pay for these ourselves. I don't think I have had any windshields broken from hay hauling. I appreciate the ordinance that you are working on. With these time limits I know it is going to be difficult to run a rock quarry but the citizens are trying to adjust or whatever it takes so that we can work with them neighbors. I appreciate the fact that they are willing to make bus shelters for these children. How thick is the concrete going to be on these bus shelters? Is it going to be dump truck proof? We are zoned agricultural and residential not commercial.

Alderman Thiel: I am going to continue to support the recommendation that came from the Ordinance Review Committee. I will not be supporting Sarah's amendment.

Alderman Lewis: It is a hard decision. I understand they need operating hours but also it is a safety issue. I don't know that I have the perfect answer but it seems like pushing it back a little bit is one way to address it because I am not sure everyone can come together and build bus stops in all the right places and so on.

City Attorney Kit Williams: Remember that your power as the City Council is to abate a nuisance. It is not really a safety issue. You have to determine, using your legislative discretion and understanding, is this a nuisance. If the rock quarry would be a nuisance the way it is operating right now, what kind of reasonable regulations could you place on that rock quarry so that it stops being a nuisance. There can be some consideration of the traffic that it generates and it generates a lot of dump truck traffic. I think that the safety issue here should not be overstated

because I think that is a much weaker read to support this ordinance than the other kinds of reasons that you have heard from the citizens about noise and the other disruptions to their lives. I think that is what you should primarily consider when you are thinking about trying to abate a nuisance.

Alderman Rhoads: Kit, I am glad you said that. It seems to be as we think through this, not just this issue about hours, but the other issues that will come before us that are on the memo that we have already talked about. I think our natural inclination is to reach out to these people because we don't particularly care to be disrupted Saturday morning. However, if we go too far as a Council I think we will end up seeing some operators that will determine that if they can't stay in business with the conditions we put on them, then all of that will be for naught because we will find ourselves in litigation which we may not be able to prevail. In that case the good folks may end up with something that is worse because of our efforts to over help. I just would caution you all about that. I don't think it is a bright line. I think it is a pretty hazy line.

The reason we pushed it back to the Ordinance Review Committee is so we could have a full fledged discussion with both sides and my sense is that there was some give and take in that room. I don't know if the operators are in total agreement but my sense is that the recommendations of the Ordinance Review Committee got pretty fair acceptance by the operators.

Alderman Ferrell: I think Kit hit on the key word which is reasonable. I think that the citizens came and asked for help and I think that what happened is we have had an over reaction. I think the industry has tried to be flexible to a certain extent. I won't support the ordinance, I view it as unreasonable. This Administration and this Council have all agreed that economic development is very important and the primary aspect of economic development is retention of existing industry. I think that is something we need to keep in mind. We need to come to common ground and agreement where we can but I think there are some things involved in these ordinances that are unreasonable to expect from the developers.

Alderman Lewis: The City has the right to protect the safety and general welfare of its people. That includes their property values and their quality of life. That is part of this in looking at and trying to abate the nuisances that may come from an operation like this it's an effort to do that. I agree at the Ordinance Review Committee meeting I felt very good about those and I thought there was a lot of workability's in those meetings. I think it has been a good effort.

Mayor Jordan: At the Ordinance Review Committee do you all vote on every one of these?

Alderman Thiel: Yes.

Alderman Petty: That was the first meeting and I believe we were all in support.

Mayor Jordan: We are voting on the amendment to the Ordinance Review Committee recommendation from 8:30 a.m. to 6:00 p.m. on weekdays during the school year and 7:00 a.m. to 12:00 p.m. on Saturdays.

Upon roll call the motion to amend the ordinance hours of operation to 8:30 a.m. to 6:00 p.m. on weekdays during the school year and 7:00 a.m. to 12:00 p.m. on Saturdays failed 2-6. Alderman Lucas and Lewis voting yes.

Alderman Thiel read the recommendation by the Ordinance Review Committee.

Alderman Thiel moved to amend the hours of operation from 7:00 to 6:00 Monday thru Friday and 7:00 to 12:00 on Saturday as recommended by the Ordinance Review Committee. Alderman Petty seconded the motion.

Stephen Giles: We had agreed in the Ordinance Review Committee to all of that with the exception of having to turn rock crushing and major noise producing activity. The company has to be able to crush stone early in the morning to have it ready for the trucks. I might also remind the Council that our quarry is a half mile from the residents of the City of Fayetteville for whom this ordinance is designed to protect. They can not hear our crusher so it does not make any difference if it is crushing at 7:00 a.m. We appreciate your consideration.

Alderman Thiel: That was the recommendation from the committee. We kind of discussed what was just brought out but we didn't really come up with an amendment. I am still open to that.

Alderman Lucas: I want to remind everyone that this is not just with these operations. This is for the City of Fayetteville, whether this operation is three quarter of a mile or a mile from the City. This is within a mile from the City. It is not aimed at this one quarry.

Upon roll call the motion to amend the hours of operation from 7:00 to 6:00 Monday thru Friday and 7:00 to 12:00 on Saturday as recommended by the Ordinance Review Committee passed unanimously.

Alderman Rhoads: Kit came up with some language that I would like to propose as an amendment. Under D: Major Noise Producing Activities this is the additional language *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*. If it is beyond a half mile then it is not considered a major noise producing activity.

Alderman Thiel: The rock crushing has been removed from major noise producing activities and then it is added back in that regard.

Alderman Rhoads moved to amend the ordinance as follows: *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*. Alderman Ferrell seconded the motion.

Chuck Nestrud: I appreciate your interest in trying to deal with the rock crushing issue. I would like to mention that all rock crushers are not the same. The real issue what is the noise level at the city limits. Our rock crusher on a relative scale is very small and doesn't produce any noise of any concern. In fact it meets your noise ordinance levels at the city limits. It is not the

distance because all rock crushers are not the same. It is the noise level that those rock crushers generate. We believe that if we operate our rock crusher at a level that meets your noise ordinance it should not be an issue because you have already determined that is an acceptable level for your city residents.

Alderman Rhoads: I appreciate your comments. We discussed it at the Ordinance Review Committee that using noise meters and things of that nature would be incredibly difficult to do. This is an effort to make this as simple as possible.

Chuck Nestrud: Sometimes simple is not the best solution.

City Attorney Kit Williams: We also heard from the neighbors concerning the rock crushing machine that they heard. So even though it might be at a certain level it does not mean it would not be a nuisance if it is operating for extended periods of time. I think that was the decision of the Ordinance Review Committee to make it a major noise producing activity because it could in fact disturb neighbors that are close by it.

Alderman Thiel: It is my understanding that one of the rock crushers was very quiet. The one that was so quiet that was within a half a mile?

City Attorney Kit Williams: The Rogers Group and the Stephens Red Dirt Farm are farther away than the Big Red Dirt Farm which is the closest quarry and red dirt farm.

Alderman Thiel: So the one you are representing is closer than a half a mile to a residence?

Chuck Nestrud: Yes.

Alderman Lucas: I question the half mile to a house, building, or structure. Would it not be easier to say from the city limits?

City Attorney Kit Williams: Since we are trying to protect our citizens, especially in their homes, that is an appropriate distance rather than to a yard if you are protecting a citizen from this constant noise that is generated. A home is often looked at in the law as something that deserves special protection.

Mack McCandless: I don't know how far the rock crushers are from my house but I hear them. They are loud enough to be a nuisance.

Dana Gallagher stated noise can be a nuisance in two forms. The loud blasts are definitely a concern for all of us. She discussed other noises that are a nuisance. I would appreciate that nuisance being abated.

Mayor Jordan: We have an amendment; *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*

Upon roll call the motion to amend the ordinance to state: *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity* passed unanimously.

City Attorney Kit Williams read amendment # 7 regarding tailgate banging.

Alderman Rhoads moved to amend the ordinance to not allow dump truck tailgate banging. Alderman Lucas seconded the motion.

City Attorney Kit Williams: At our Ordinance Review Committee meeting they indicated that this was something they felt like they could do. It was not a real need for the dump truck operators to do that and they would assist the dump truck drivers from emptying their loads if need be. I just wanted to make sure that was still the case with both the Rogers Group and the Big Red Dirt Farm. If they could help in making sure the dump trucks would not bang their tailgates.

Chuck Nestrud: I think that what we said was we would give it our best efforts to advise our truck drivers that is not an acceptable practice. There are a number of trucks in the facility and there is not a clear line between what is dump truck tail bashing and some other activity. When a noise occurs, to pinpoint whether or not this is on one side of the line or the other, is a difficult call. To have a license that the City purports to issue to this facility in jeopardy is not an acceptable practice. Most of our objections to this ordinance go to this licensing provision. It is really the enforcement mechanism that you have set up that puts our ability to stay in operation in jeopardy that we object to. We are going to give it our best efforts to comply with this provision but we object to the enforcement mechanism that you have put in place.

Steve Giles, outside counsel Rogers Group: We have looked at this and discussed it at the Ordinance Review Committee. Rogers Group doesn't own any trucks that haul in and out of their quarry. That severely limits their ability to tell these drivers what to do. We did agree that we could prohibit them from doing the tailgate banging.

City Attorney Kit Williams: It just means that if a dump truck violated your directions not to bang their tailgate your operator would not fill that dump truck for a day.

Steve Giles: We agree that we could go along with that.

Upon roll call the motion to amend the ordinance to not allow dump truck tailgate banging passed 7-1. Alderman Ferrell voting no.

City Attorney Kit Williams: I drafted some language for something you have already pretty much passed but since ordinances must be read let me read that. This is for the number of explosions allowed which would be on page two. *All rock blasting within the permitted quarry shall only be allowed on the first and third Wednesday of each month unless such Wednesday is a Federal or City holiday. If such Wednesday is a holiday the permitted blasting day will be moved to the next day, Thursday. If the permitted blasting day would be unsafe or not feasible or practicable because of inclement weather or other conditions beyond the reasonable control of*

the quarry operator the Director of Developmental Services may designate another weekday during the next five weekdays as a permitted blast day.

Alderman Cook: That basically still spells out 24 blasts a year.

Alderman Thiel moved to amend the ordinance as follows: *All rock blasting within the permitted quarry shall only be allowed on the first and third Wednesday of each month unless such Wednesday is a Federal or City holiday. If such Wednesday is a holiday the permitted blasting day will be moved to the next day, Thursday. If the permitted blasting day would be unsafe or not feasible or practicable because of inclement weather or other condition beyond the reasonable control of the quarry operator the Director of Developmental Services may designate another weekday during the next five weekdays as a permitted blast day.* **Alderman Lucas** seconded the motion. Upon roll call the motion passed 6-2. **Alderman Cook** and **Ferrell** voting no.

Alderman Cook: I think we made some good changes in this but I am still worried about the number of explosions. I think we are going to create more of a problem. While we are trying to do some good there I think ultimately we are going to create a bigger problem by limiting that because they are just going to raise the limit. They are going to use stronger blasts that are going to create more of a nuisance is what I am afraid of. To me that is the sticking point the number of blasts but some of the other changes we made I thought were good changes that it seems like the operators are willing to live with. I struggle with that one.

Alderman Petty: I would like to hear from citizens on whether you would rather have limits on blasting or limits on the number of days. It sounds like this is going to have a significant affect either way we go.

City Attorney Kit Williams: Please keep in mind that we are not allowed to regulate the power of explosions. That is regulated by the State and Federal government. We can probably regulate the number but I don't think we can regulate the power of these explosions.

Alderman Lewis: I am concerned about that too. As I understand the Rogers Group chooses to keep the power of their explosives lower because that benefits all parties involved because it reduces the damage to surrounding buildings.

City Attorney Kit Williams: Even though we can't regulate the power of explosions, I guess it would be within the City Councils power, if they so choose, to say that if an operator is willing to kept his explosions at a certain level that he would be allowed bonus days of explosions. The problem there is that would be extremely difficult to monitor and I would be more nervous doing that then simply limiting the number of days because that does seem to be getting into the State and Federal power.

Alderman Ferrell: I would like to hear from the people in the business what their take is on the idea of bonus days.

Dave Bolin: The days versus the strength of the blast personally we would like to stick with the days. We would prefer that the blast not be large. If you know when the blast is coming it does not feel or sound as big as if you didn't know when it is coming.

Jim Gallagher: We really appreciate your hard work. We too would like to keep the control on the number of days as opposed to the size of the blast. The nuisance aspect is this is not limited to loud noises. It is interfering with our ability for our entire family to enjoy our home.

Chuck Nestrud with Big Red Dirt Farm: Our operation is located in the County. It is not in the city limits. We are highly regulated by the County through a conditional use permit. We agreed to go through the conditional use permit process when we did not believe that we were required to go through that process just because the County wanted to impose some restrictions similar to the types of restriction you are imposing, hours of operation, number of blasts, and things that we negotiated in good faith with the County to impose upon ourselves to be good neighbors.

During that conditional use process the County went to the effort of contacting the City and asking the City what input it wanted to have on the conditional use permit process and you responded. Your only response was if they do any damage to our roads we want them fixed. The County put that condition in our permit. The County looked at the safety issues and the noise issues. The County looked at all those issues and they looked at what your regulatory people said they wanted in that permit and they accommodated you. We believe we are regulated by the appropriate body that did the right thing. At the end of the day it's their land and their jurisdictional area. The authority of the City to deal with this issue is limited to the abatement of a nuisance. What is a nuisance is up to the courts to decide. Whether what we are doing today is a reasonable interference with the use of an adjoining property and if it is you can take such actions that are appropriate to abate that nuisance. Nobody has said that our operation today constitutes a nuisance. The concerns that have been raised are about noise, we have negotiated in good faith to deal with that issue. There were concerns about the number of blasts and we have negotiated in good faith to deal with the number of blasts. This concept of licensing is unheard of in Arkansas for a City, any municipality, to start issuing licenses to facilities that are located outside their jurisdiction. I don't think you will find any other city that has done that because you can't regulate facilities that are outside your borders, by starting a regulatory program, issuing licenses, taking away licenses, taking away that facilities ability to be in business and conduct operations. That regulatory program is a taking and we can't live with that. We did not choose to be in the City, we chose to be in the County. You have not annexed this area. You annexed the areas that you want to regulate now. We were in business at the time that you annexed these houses, these neighbors, who are now talking about the problem that they have. You chose to bring the city limits up to our boundaries we did not choose to have the city limits at those areas. You made that decision after we were in operation. Your decision to impose regulations on a facility that is currently legally operating outside your jurisdictional boundaries is unprecedented in Arkansas and we can't live with that.

Steve Giles, Rogers Group: I echo some of the comments that Chuck just made to you. We have always objected to the jurisdiction of the City to go outside particularly for our quarry that is one half mile outside your city limits and say it could be a nuisance. We are trying to keep it

from not being a nuisance. The law does not permit you to do that. We are still open to negotiation as long as this ordinance is not passed. We can not accept a licensing requirement for the same reason there is no jurisdiction to do that in the City. The restriction on the company's operations and mandatory restrictions with criminal penalties we can not agree to that. We have given a lot of negotiation to the City and voluntarily agreed to go along with some of these provisions but the bottom line is if this goes forward in its current form we are going to have to file a lawsuit to challenge it. I hope for everybody's sake particularly yours and the companies that it is resolved very quickly in a motion to dismiss on a jurisdictional question. If it is not we are all in for a very long and bitter lawsuit. I appreciate your consideration in not passing this ordinance.

Chief Greg Tabor asked about the penalty phase of the ordinance.

Dana Gallagher stated there has been compromise on both sides and I think we both would like something more. She voiced her concern about the quarry being a nuisance.

Alderman Rhoads: Kit, could you respond to Mr. Hester's comments specifically about licensing outside our city limits?

City Attorney Kit Williams: As some of you will remember when we did the motor vehicle racing facility which was also partly and mainly outside the city limits I exhaustively researched and tried to find cases that would have interpreted the City's power to abate a nuisance beyond the city limits which is in the statute, but that particular statute has been very infrequently litigated and taken to the Supreme Court. I could only find one case and that was the case of the braying mule. They did uphold a conviction of a person that had kept a braying mule within a mile of the city limits as a nuisance and said that the little town's City Council had the right to prohibit someone keeping a braying mule within a mile of the city limits. That case was in about 1911. There is a dearth of case history and any kind of support for exactly how this State Statute should be interpreted. It is true when their attorneys said this hasn't happened before. I have not seen a case in which it has happened. That doesn't mean it is improper that in order to abate a nuisance that you provide regulations and you enforce them with a licensing procedure. Maybe the courts will think that the licensing procedure is something we should not have but we do have a severability clause within our code that says if that part doesn't work it will be severed out and the rest of the ordinance will still be effective. I will disagree with my friend Steven Giles when he said there would be a long and bitter lawsuit. It could very well be long, I hope not but they always seem like they are long. It won't be bitter at least not on the City's point of view. We will be happy to work with them and present the facts to the court and let the court decide whether or not the City Council had reasonable grounds and had the authority of the law to pass this ordinance. Certainly I think there will be litigation on this and I don't look forward to that. We have a limited staff. We don't really have a whole bunch of outside counsels that can come in and handle the litigation, I have to do it. I work for you all and the citizens. If it is your decision to pass this ordinance then that is what you should do and we will let the courts decide what they will do.

Alderman Ferrell: Is it your opinion Kit that this ordinance would be better passed with the licensing? What is your opinion? Do you think that what is being attempted will succeed or can

be done without the licensing procedure, or do you think the licensing procedure is part in parcel of the whole thing?

City Attorney Kit Williams: I think the licensing procedure will actually make it more enforceable and it will be better administered that way. I have always hoped and I know this has been the goal of the Ordinance Review Committee and the two aldermen from Ward 4 that compromise could be worked out so that these businesses could continue to operate and prosper and yet their nuisance activities be reduced on their neighbors. I think that a licensing procedure that works with them is probably the best way to do that.

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

Ordinance 5280 as Recorded in the office of the City Clerk.

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. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel: We just dealt with the rock quarry licensing.

City Attorney Kit Williams: Most of the changes that the Ordinance Review Committee adopted for the rock quarry ordinance could be applied for the red dirt mining facility ordinance; the tailgate banging, the changes to the whereas clauses, the changes to the final two sections about it still can be a private nuisance, the definitions of major noise producing activities, and the hours of operation. I have placed all of those into the red dirt mining facility just as you had suggested for the rock quarry ordinance. Certainly you have made changes on those since I have done that and there might be some more changes.

Alderman Rhoads: Was there anything different in the red dirt? You pointed out all the things that were the same, is there anything different that we need to hone in on? Was it rock crushing?

City Attorney Kit Williams: Well, obviously the rock crushing probably wouldn't apply to it but I left those definitions within it. I don't think they are crushing rock at a red dirt facility.

Alderman Thiel: I would recommend that we just make a motion to make all the amendments that we just made to the rock quarry. Can we do it like that?

City Attorney Kit Williams: Including all the ones from Ordinance Review Committee as well as the ones you passed tonight.

Alderman Thiel moved to amend the ordinance with the same amendments that were placed on the Rock Quarries Facilities. Alderman Lucas seconded the motion.

Mayor Jordan: We are basically voting on all the amendments in one batch.

Dave Bowen, a resident of Hamestring Road reminded the Council that the red dirt pits are allowed by the ADEQ and everybody else to blast and crush rock. The blasting has to be exactly the same.

City Attorney Kit Williams: The rock crushing, the blasting, everything is in there.

Dave Bowen: Good, then I am happy.

Hugh Jarrett, Attorney for Stephens Dirt Farm: This is just a procedural question really; the hours of operation are basically the only thing I am going to talk about. Do we need to talk about that now or would you all rather wait until the ordinance as a whole comes through?

Mayor Jordan: I understand Hugh that you can talk about it now if you want to because all the amendments we passed before we are passing right now as a whole.

Hugh Jarrett: But we will have a chance to address the ordinance as a whole in a few minutes.

Alderman Thiel: You are addressing it now.

Hugh Jarrett: The ordinance as a whole?

Mayor Jordan: Yes, well I am wrong about that we are addressing the amendments.

City Attorney Kit Williams: It includes the hours of operations, the amendments do.

Hugh Jarrett: I will come back when we are on the whole.

Mayor Jordan: Alright.

Upon roll call the motion to amend the ordinance with the same amendments that were placed on the Rock Quarries Facilities passed 6-2. Alderman Cook and Ferrell voting no.

Mayor Jordan: Now we are going to be talking about the ordinance as a whole.

Hugh Jarrett: Thank you, we have talked about a lot of different aspects of red dirt mining and quarrying. It's hard to keep track of all of it but I am just going to go through a list of facts that pertain to the situation. There has not been a real estate transaction in the area of the dirt pits

since they opened that has been for a loss that is a fact. There have been no accidents involving a dump truck that was caused by a dump truck since those pits have been in operation. That is a fact. There have been 53 days so far this year that we have lost to rain. That is a fact. That information is included in the letter that I sent to you. The noise generated by the pits when they are operating is in compliance with the noise ordinance. I know we can't extend the noise ordinance outside the city limits but the reason I bring that up is the language of the noise ordinance indicates that a continued noise level is unreasonable if it exceeds a certain level.

This morning I knew there would be questions about my honesty. I had a Fayetteville Police officer come out to the city limits on Hamestring and we did a noise measurement, it wasn't me it was a Fayetteville Police officer when the operations were running. Stephens Dirt Farm was operating, Rogers Group was operating, as was Big Red so that is as much activity as you are going to get out there. When a truck goes by it is going to spike but that is handled in the ordinance. When the operations are going at a normal level you are operating at a level of about 63 to 64 decibels. 60 decibels is the limit set for residential activity in the city limits of Fayetteville. 70 decibels is for commercial activity and I think 80 decibels is for industrial activity. So we don't even come close to the levels set for commercial and industrial activity. When you talk about decibels I didn't understand exactly what we were talking about. I live in Ward 2 up above Root Elementary School and when you have just a general drone of traffic that you can hear in the background on Mission and you can hear a little bit from Crossover. That is approximately the same level of noise at the city limit sign as 63 or 64 decibels. I have a map. These are the operations in question. Down here in the corner you have Big Red, then Rogers Group is the gray, that is the quarry and they are really at half a mile from the City and then Stephens you can see in the very top, that is our red dirt operation. We are a long ways from the city limits. The way a dump truck is loaded is a trackhoe scoops up dirt and dumps it into a dump truck. It is not a loud bang, there is no rock involved, it is dirt, and it's a low rumble. You cannot hear a dump truck being loaded by a trackhoe at the city limit line or anywhere close to there. Where I went is Fayetteville's city limits and where the city limits crosses Hamestring. There is a sign on the side of the road that says city limits and that is where the officer took the test. The noise level coming off of Wedington Drive is much louder than the noise level coming from those dirt pits. You cannot hear from anywhere in there, you cannot hear a dump truck being loaded. The noise level at 63 or 64 decibels you cannot hear.

So when you talk about the hours of operation, probably the closest scenario that we have in Fayetteville would be and this is several years ago but when people were complaining about the noise level coming off of Dickson Street. On Dickson Street you have a bunch of different businesses that were creating a problem for some of the neighbors. They were complaining about the music at night. So the way the noise ordinance is written is from 7 a.m. to 11 p.m. there is a certain amount of noise that can be made. After 11 p.m. there is a different amount of noise that can be made. The City did not come in and say every bar on Dickson Street has to shut down at 11:00 p.m. because you might have a band outside playing. That wasn't the course of action that was taken. They said there was a problem, let's address the problem, and take care of that issue. That is what was done. In this case basically what you have heard from the public is the rock crushers and the blasting are what is causing the issues. There hasn't been anybody say that a trackhoe putting dirt in the dump truck is keeping me up at night. That has not been said. They might come up here and say it now to rebut me but that has not been said yet. So to

limit us from putting dirt into a dump truck more than a half mile from the city limits is not reasonable. We will do anything we can to try to be reasonable with the City. We will put numbers on our dump trucks. We will help build those shelters. We will prevent them from banging their tailgates. We can ask them not to bang their tailgates and if it happens accidentally the ordinance takes care of that. We will try to do our best on that. We will do everything we can. But the simple fact of the matter is that imposing a ban on any of our operations after a certain time limit is overbroad and really does not deal with the perceived problem. All it does is stop us from working when the activities of loading a truck are not being complained about. What I would ask is that you take into consideration that all these people are differently situated but we need to address what the issues are. If we can operate in a manner that is not causing an affect on the neighbors then I don't think you need to curtail our hours of operation. That is really the crux of my argument there. A couple of more issues that I have, Mr. Bowen who lives probably the closest to the pits, he bought his house after we were already in operation, that is a fact. The Gallagher's here who probably made the most sensational arguments against our pits, they do not live in the city limits of Fayetteville. They live on Martin Drive which is outside the city limits of Fayetteville according to the ordinance anything that they say really can't be taken into consideration by the Council. I know that is hard to do but that is how the law reads.

When the race track issue came up, they had one business, to race cars. So every time they raced a car it was loud. That is why curtailing their hours of operation was necessary, they had one business. The dirt pits, the quarries, everybody there have various different activities that take place at these institutions and the parts of the business that do not affect the neighbors should be allowed to operate. The parts of the business that do affect the neighbors I think we could curtail those hours. If Thunder Valley had a concession stand I don't really think you would have had a problem with the concession stand staying open longer than the race tracks going on because the concession stand didn't bother anybody, just the racing. What is really an issue here or if these businesses here that are subject to this ordinance were a monopoly and you could not get dirt or rock anywhere else I don't think you would see the pushback from the businesses because they would have to get the dirt from us, they would have to get the stone from us and it is a done deal. That is not the case here. There are two pits in Johnson that are closer than us to the City of Fayetteville. There is a pit in Lowell, Sonora, and Goshen that are not subject to these ordinances. So we are simply asking to be able to stay as competitive as we can subject to this ordinance. If we can operate and not disturb the neighbors then we would appreciate being able to operate under those activities that don't bother the neighbors. I defy anyone to go stand at those city limits and identify when we are loading a truck. You cannot hear it. I would just appreciate your consideration from removing the hours of operation restrictions. Right now we have agreed with the County from going from 6:00 a.m. to 9:00 p.m. The number of times we have operated until 9:00 p.m. at night are few and far between. We are not going to be out there at 9:00 p.m. very often. All we are asking is these days when things are slow, when we do have the chance to get some work done, we would just like to get our work done in a manner that is compatible with the neighbors. Loading those trucks with dirt is compatible with the neighbors, you can't hear it. The tailgate banging I understand that is basically a part of our haul off business. The tailgate banging is the loudest thing we do and I can totally understand restricting that. We can live with that but being able to load those trucks is the life blood of the business and it does not affect the neighbors. We would appreciate your consideration in allowing that to go on.

Alderman Thiel: So you are talking about loading the trucks after 6:00 p.m., that is what you want to do or prior to 7:00 a.m.

Hugh Jarrett: Yes ma'am.

Alderman Thiel: And of course that means the dump trucks are then on the road.

Hugh Jarrett: Yes ma'am.

Alderman Thiel: Alright. You are representing Stephens Red Dirt Farm so your competition is just the red dirt business that you referred to. That is not the rock quarry.

Hugh Jarrett: Actually Rogers Group, they lease from us but we don't compete with them. We don't blast.

Alderman Thiel: There are not a lot of rock quarries in the area but there are a lot of red dirt farms is that what you are saying?

Hugh Jarrett: Honestly, I don't know. I was referring to red dirt pits, yes ma'am. I am not sure about the quarries.

Alderman Thiel: You do understand that the noise producing activities, you were talking about loading the trucks, of course that is allowed between 7:00 a.m. to 6:00 p.m. because that's not a noise producing activity but you want it beyond that 7:00 a.m. to 6:00 p.m.

Hugh Jarrett: If we can load those trucks in a manner that is not intrusive on the neighbors then let us load the trucks. That is all we are asking.

Alderman Thiel: Past 6:00 p.m.

Hugh Jarrett: Right now our agreement with the County is from 6:00 a.m. to 9:00 p.m. The number of times we will operate up to 9:00 p.m. are few and far between. We would just like the option, if a big job was there and we need to get it done, to be able to get it done.

Alderman Petty: When you might operate until 9:00 pm at night is that usually the case that the job is big enough that you are running them as much bumper to bumper as you can?

Hugh Jarrett: It is my understanding that the few times that you go until 9:00 p.m. is you have a job and either weather is coming or your client is saying we have a deadline and we need to get this filled as fast as possible, can you do that. Those are the few times that that happens.

Alderman Lewis: You were saying you don't do that very often. Is that something that basically depends on the market?

Hugh Jarrett: It would.

Debbie Johnson, a resident within the city limits stated this is about nuisance. The noise is a nuisance. Any noise that comes from a quarry is a nuisance. She stated it is a constant noise.

City Attorney Kit Williams: Do you believe that you can hear the Stephens Red Dirt Farm when they are operating, not counting the banging of the tailgate, but if they are operating by loading their dump trucks with red dirt do you feel like you can hear that?

Debbie Johnson: Yes.

City Attorney Kit Williams: How can you distinguish that between the closer red dirt farm?

Debbie Johnson: I live next to the red dirt farm. The noise that we hear is 7:00 a.m. with constant rock crushing.

City Attorney Kit Williams: Let's not talk about rock crushing. I am only interested in the red dirt farm.

Debbie Johnson: They do run rock crushers I do believe.

City Attorney Kit Williams: Let's talk only on what Stephens Red Dirt Farm would do and only the filling of the dump trucks with the loader. Do you think you ever hear that and if you do how can you distinguish between that and the close red dirt farm?

Debbie Johnson: I am not sure but I know there is constant noise coming out from the red dirt farm when they are in operations and it is a nuisance.

Dave Bolin, a resident of Hamestring Road stated guys remember it is not only loading trucks, it's the number of dump trucks going up and down Hamestring and every place else.

J.T. Baker with Stephens Red Dirt Farm gave a brief history of the farm.

One of the things that seems to be a big issue is the safety on Wedington and the safety on Hamestring Road. In 15 years there has not been a dump truck accident. From 2003 to the beginning of 2009 Stephens Red Dirt had six complaints with the ADEQ. Four of those complaints there was no problem. The other two were small erosion control issues that were outside the ADEQ which was actually just an oversight by the ADEQ and the storm water permits that were fixed easily. Since this process started we have had tons of complaints. What I have a hard time with in that is that we are operating right now about 20% of our capacity from the height of our business which was 2004-2005 and we are getting five or six times as many complaints. I feel like they want to put us out of business and they are going to stop at nothing to do that. I don't think that is fair. If we can't run out of our own pit with our own trucks we are going to go out of business. Safety out there has done nothing but improve. I think that limiting hours of operation is really not going to do a lot of good as far as safety for school children. If we start loading trucks at 6:00 the safety aspect for the kids is going to be a moot point. I do understand the dump truck noise but one thing you have to keep in mind is if they don't come

out of our dirt pit they are going to come out of somewhere. They are still going to be traveling the streets of Fayetteville.

One of the comments that was made was if we are not open early they can get materials from another quarry and then come by and get it from us later. That is not practical because the material has to be uniform or it will not meet the compaction test. If they do that they are going to buy all their material from another quarry in essence again putting us out of business. The noise of the tailgates I have no problem doing whatever I need to do to limit that to the best of my ability. I would like to point out though that 300 yards to the west of our dirt pit there was a dump site from material coming from a City of Fayetteville job that for the last two years has been being dumped there from 6:00 a.m. in the morning until 6:00 p.m. at night. I spoke with Mr. Rich who lives at the end of that road this morning and he confirmed that. I think it is tough to get penalized from tailgate banging that is not ours.

He stated working past 6:00 p.m. does not occur very often. He gave examples of when this could occur. He stated the City of Fayetteville dump trucks operated mostly from 6:00 a.m. to 2:00 p.m. and they are going to have to change that also. When we have an opportunity to work we have to work. It is seasonal and if we can't do it then the people that work for us are not going to be able to make a living. When you look at the Lindsey Company, Rogers Group, and Sweetser it's easy to say they have a lot of different things going on and if we close this down or if it goes out of business they still have a lot of things going on. In closing I want you to think about that if you do hinder this to the point that we go out of business it is really not going to be as much of an attack on them as it is on the blue collar workers. We have just in our company 70 of them that are not going to have a job. Thank you for your time.

Dana Gallagher, resident of 12279 Martin Road stated I know the Bolin's bought their house in 1999. I also know for a fact that there have been accidents involving dump trucks. I only say this because I was in the accident. She went on to describe the accident. She stated I want you to support this ordinance.

Alderman Ferrell: Did the accident happen on Hamestring Road?

Dana Gallagher: No, it happened on Wedington and 54th Street?

City Attorney Kit Williams: Ma'am, you are a Fayetteville citizen, a resident of Fayetteville?

Dana Gallagher: My property is on the Fayetteville city line. I am just on the edge of Fayetteville. I am not inside the Fayetteville city limits. I don't think that should be a determining factor.

City Attorney Kit Williams: I will say you all can take measures to abate a nuisance to Fayetteville residents. I don't think you can take measure to abate nuisances to non Fayetteville county residents.

Mack McCandless, a citizen stated I would have to agree with the young man who stated some things are not fair. They are going to have a problem because they are going to be caught in this

ordinance also. You have to break eggs to make an omelet and somebody has to get hurt. We have given quite a lot into this. You all have worked real hard to make it fair and honest and we thank you for that. I hope this thing can get ironed out.

Lanny Samples, resident of Wedington Drive just south of the red dirt farm stated if you considered days per week J.T. has lost a lot of time this year and yet he has not had to work past 6:00 p.m. anytime this year. So there is a lot of leeway in that time frame. I would think the one hour between 6:00 p.m. and 7:00 p.m. that he has asked for would not be a big burden. I don't think anyone is going to go out of business. I think to be fair as in the mining operation what is fair for one is fair for all. If they are within the one mile limit of the City of Fayetteville I think they all should abide by the same rule. I appreciate everyone for the consideration of this ordinance and Sarah and Shirley for representing us in Ward 4. We appreciate you all very much.

Don Johnson, a Fayetteville resident stated basically I appreciate all the work you have done for this ordinance and we hope it passes with all the provisions that have been made with it. I did have a comment about dump truck wrecks of course there were dump truck wrecks. What I was curious about is the red dirt farm was asking about the number of days they are working or the hours. What they might consider is the number of days that we have that they are compromising their work days. If there is 365 days in a year how many days do the residents have just to have their lives, maybe 60 to 65?

Alderman Petty: I support the restricted hours of operation that we have already come up with. With all do respect to Mr. Jarrett, dump trucks lining up and using the road has been a concern that has been brought up several times. What it comes down to for me is two things. I think these people have the right to peaceful evenings and I don't think that restricted hours are as deep of a burden as they are being made out to be, given how little you have taken advantage of what would be expanded hours in the past year. I think that when the economy picks up you are going to have plenty of jobs to fill the hours. While they have rights to a peaceful evening I don't think you have a right to take every job that is offered. I think you will be able to fill the hours once the economy picks back up.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Aldermen Petty, Rhoads, Lucas, Lewis, Gray and Thiel voting yes. Aldermen Cook and Ferrell voting no.

Alderman Ferrell: I appreciate the fact that Brenda and the Ordinance Review Committee took this twice and met on it on a pretty quick notice. I thank you for that.

Ordinance 5281 as Recorded in the office of the City Clerk.

New Business:

Justice Assistance Grant (JAG): An ordinance to waive competitive bidding and to purchase 45 X-26 Tasers and Taser-Cams for \$69,967.25 from TEECO Safety, Inc.

City Attorney Kit Williams read the ordinance.

Alderman Cook 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 Thiel** was absent during the vote.

Mayor Jordan: I had a few contacts on why we are doing competitive bidding. If you would just explain that I think that would go a long way.

Police Chief Greg Tabor: Taser International is the only company that makes tasers and Taser has protected areas. For this area TEECO Safety, Inc. is the only distributor that can sell tasers in the State of Arkansas. There was only one company to get them from so that is why we did not do competitive bidding.

City Attorney Kit Williams read the ordinance.

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 7-0. **Alderman Thiel** was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5282 as Recorded in the office of the City Clerk.

Amend Chapter 35: Taxation: An ordinance to amend Chapter 35: Taxation of the Fayetteville Code to incorporate amendments of State Law affecting the Hotel, Motel and Restaurant Tax.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Mr. Mayor you asked me when the issue came up before the Advertising and Promotion Commission about whether or not they could advance or loan some money to the Botanical Garden Society. My opinion is they can do that because the broad terms used in the State Law that says that these funds may be used for this sort of purpose. That is why I looked at this issue and felt like it probably would be appropriate for us to bring our code up to date with State Law. That is why I drafted this proposed change.

Alderman Ferrell: On the amendment to the State law that dealt with this, was it just enabling or what exactly did the State law amendment do?

City Attorney Kit Williams: The State law has changed through the years and added more and more allowable purposes that the A & P Commission could use their funds for. So I just want that brought up to date so that we are in tune with State law.

Alderman Ferrell: Before the State law changed if there had been any changes would it have had to go back before the voters?

City Attorney Kit Williams: No, I don't think that would be required.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5283 as Recorded in the office of the City Clerk.

Announcements:

Meeting adjourned at 10:10 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

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

**Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
November 3, 2009**

A meeting of the Fayetteville City Council will be held on November 3, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations:

1. **Sales Tax Report** – Paul Becker, Finance Director

Mayor's Announcements, Proclamations and Recognitions:

1. **Exchange Club Officer of the Year Award - Cory Roberts**

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the October 20, 2009 City Council meeting minutes.
2. **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.

3. **Arkansas Democrat-Gazette, Inc.:** A resolution to approve a contract with Arkansas Democrat-Gazette, Inc. for retail and classified advertising.
4. **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.
5. **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.

Agenda Additions:

B. Unfinished Business:

1. **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.*
2. **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.*

Left on the Second Reading

C. Public Hearing:

1. **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.

D. New Business:

1. **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.
2. **2010 Annual Budget & Work Program:** A resolution adopting the 2010 Annual Budget and Work Program.

Announcements:

1. City Council Tour: November 2, 2009

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City of Fayetteville Staff Review Form

A. 2
 2009 Bulletproof Vest Partnership Program
 Page 1 of 6

City Council Agenda Items
 and
 Contracts, Leases or Agreements

November 3, 2009
 City Council Meeting Date
 Agenda Items Only

G. Tabor
 Submitted By

Patrol
 Division

Police
 Department

Action Required:

Approval of a grant award by the 2009 Bulletproof Vest Partnership Program for the replacement of fifty-four (54) body armor vests for our police officers and a budget adjustment in the amount of \$19,600.

\$ 19,600.00
 Cost of this request

\$ 19,600.00
 Category / Project Budget

Bulletproof Vest Partnership Program
 Program Category / Project Name

1010-2920-5302.00
 Account Number

\$ -
 Funds Used to Date

Grant
 Program / Project Category Name

07042-2009
 Project Number

\$ 19,600.00
 Remaining Balance

General
 Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☒

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

Date

Original Contract Number:

Finance and Internal Services Director

Date

Received in City
 Clerk's Office



Chief of Staff

Date

Received in
 Mayor's Office

Mayor

Date



Comments:



Departmental Correspondence

To: Lioneld Jordan, Mayor
Members of the City Council

From: Greg Tabor, Police Chief 

Date: October 16, 2009

Re: Acceptance of the 2009 Bulletproof Vest Partnership Grant Award

Recommendation

Staff recommends approval of a 50% matching grant award by the 2009 Bulletproof Vest Partnership (BVP) Program for the replacement of fifty-four (54) body armor vests for our police officers, and approval of a budget adjustment in the amount of \$19,600.

Background

The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998, is a unique U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement. Since 1998, the Fayetteville Police Department has obtained grant funding in excess of \$60,000 for the purchase of body armor vests through this partnership. The BVP program provides an important component to the continuing health and welfare of our Police Officers.

Discussion

There are 101 body armor vests scheduled for replacement within the Police Department by December 2010. Each body armor vest has a guaranteed life of five years. All state-of-the-art body armor is custom made to the exact specifications of the wearer to ensure all officers have our required level of protection and can take up to ten weeks for delivery.

This funding by BVP will provide reimbursement of 50% (or \$19,600) of the City's expenses for the replacement of fifty-four (54) body armor vests for our police officers. The grant amount of \$19,600 is the maximum amount awarded to a city of our size. All Fayetteville Police Officers have state-of-the-art body armor provided to them through grant and City funding.

Budget Impact

The City must match 50% (or \$19,600) of the total project cost of \$39,200. Currently, matching funds are budgeted in the Specialized Police Equipment project to meet this matching requirement.

RESOLUTION NO. _____

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.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. The City Council of the City of Fayetteville, Arkansas hereby authorizes 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.

Section 2. The City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the grant revenue.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 2
2009 Bulletproof Vest Partnership Program
Page 4 of 6

Budget Year 2009	Department: Police Division: Police Program: Police/Animal Projects	Date Requested 11/3/2009	Adjustment Number
----------------------------	---	------------------------------------	-------------------

Project or Item Added/Increased:
Bulletproof Vest Partnership Program grant award

Project or Item Deleted/Reduced:
Federal Grant Operational

Justification of this Increase:

In 2010, 101 bulletproof vests will be out of warranty and must be replaced. The 2009 grant will cover 50% of the cost of 54 of these vests. To receive this grant funding, the City will use currently budgeted funds in the Specialized Police Equipment project.

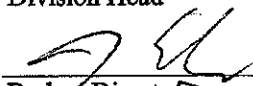
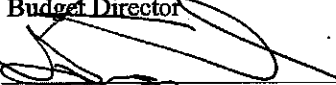
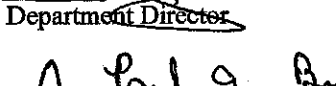
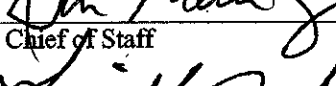
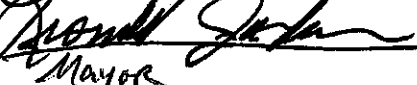
Justification of this Decrease:

Grant funds for the 2009 Bulletproof Vest Partnership Program grant award.

Increase Budget		Account Number		Amount		Project Number	
Account Name							
Uniforms/Personal Equipment	1010	2920	5302	00	19,600	07042	2009

Decrease Budget		Account Number		Amount		Project Number	
Account Name							
Federal Grants - Operational	1010	0001	4309	01	19,600	07042	2009

V.090403

Division Head	Date
	11/13/09
Budget Director	Date
	10-13-09
Department Director	Date
	
Finance Director	Date
	10-14-09
Chief of Staff	Date
	10/14/09
Mayor	Date
	

Budget & Research Use Only

Type: A B C D E

Requested By _____

General Ledger Date _____

Posted to General Ledger

Initial Date



Section Status > Application History

 OMB #1121-0235
 (Expires: 10/31/2006)
1. Registration1.1 [Contact Information](#)1.2 [Change Password](#)**Previous Applications****2. Application**2.1 [Pre Application](#)2.2 [Manage Application](#)2.3 [Review Application](#)2.4 [Submit Application](#)

Program	Date Approved	Amount Approved	Funds Available	Deobligation Date	Action
2009 Regular Solicitation	08/31/2009	19,599.91	19,599.91	09/30/2011	View Details
2008 Regular Solicitation	10/28/2008	16,033.56	13,248.15	09/30/2010	View Details
2007 Regular Solicitation	09/13/2007	4,200.00	0.00	09/30/2011	View Details
2005 Regular Solicitation	08/24/2005	7,700.00	0.00	09/30/2009	View Details
2002 Regular Solicitation	05/21/2002	48,925.00	0.00	09/30/2006	View Details

3. Receipts3.1 [Manage Receipts](#)3.2 [Receipt Reports](#)
Totals: \$96,458.47 \$32,848.06
4. Payment4.1 [Bank Information](#)4.2 [Print Bank Form](#)4.3 [Request Payment](#)4.4 [Payment History](#)**5. Status**5.1 [Current Status](#)5.2 [LEA Status](#)5.3 [Application History](#)
 BVP HELP DESK
 (Toll-Free 1-877-758-3787)
 (Toll 1-301-595-4595)



Section Status > Current Status > Application Details

OMB #1121-0235
(Expires: 10/31/2006)**1. Registration**1.1 [Contact Information](#)1.2 [Change Password](#)**Application Profile**Jurisdiction's Vest Replacement Cycle: 5 YearsUnspent BVP Funds Obligated for Vest Purchases: \$22,678.61Emergency Replacement Needs: 0**2. Application**2.1 [Pre Application](#)2.2 [Manage Application](#)2.3 [Review Application](#)2.4 [Submit Application](#)**Application Details**

NIJ#	Quantity	Unit Price	Extended Cost	Tax Shipping and Handling	Total Cost
XHP-IIIA.0	54	\$664.46	\$35,880.84	\$3,318.98	\$39,199.82
Grand Totals	54		\$35,880.84	\$3,318.98	\$39,199.82

3. Receipts3.1 [Manage Receipts](#)3.2 [Receipt Reports](#)**Award Summary for FY2009 Regular Fund****4. Payment**4.1 [Bank Information](#)4.2 [Print Bank Form](#)4.3 [Request Payment](#)4.4 [Payment History](#)

Funds Type	Eligible Amount	Award	Date Approved	Status
Regular Fund	\$39,199.82	\$19,599.91	08/31/09	Approved By BVP
Grand Totals:	\$39,199.82	\$19,599.91		

[Return](#)**5. Status**5.1 [Current Status](#)5.2 [LEA Status](#)5.3 [Application History](#)BVP HELP DESK
(Toll-Free 1-877-758-3787)
(Toll 1-301-595-4595)

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 3
Arkansas Democrat-Gazette, Inc.
Page 1 of 6

November 3, 2009
City Council Meeting Date

Peggy Vice
Submitted By

Purchasing
Division

Finance & Internal Services
Department

Action Required:

Council approval of contract with Arkansas Democrat Gazette for retail and classified advertising to decrease cost of legal advertising.

N/A
Cost of this request

\$ 107,755.00
Category / Project Budget

Public Notification
Program Category / Project Name

Various Departments- 5301.00
Account Number

\$ 34,792.00
Funds Used to Date

Public Notification
Program / Project Category Name

Project Number

\$ 72,963.00
Remaining Balance

Various Funds
Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Paul A. Beck
Department Director

10-12-2009
Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney - Asst.

10-12-09
Date

Original Contract Number:

Paul A. Beck
Finance and Internal Service Director

10-12-2009
Date

Received in City Clerk's Office

ENTERED
10-12-09
King

CHIEF OF STAFF -

10-12-09
DATE

Received in Mayor's Office

ENTERED
10/12/09
P.H.

Mayor

12/12/09
Date

Comments:

To: Mayor and City Council

Thru: Paul Becker, Finance & Internal Services Director

From: Peggy Vice, Purchasing Manager *PVice*

Date: Oct. 12th, 2009

Subj: Newspaper Legal & Display Advertisements

Recommendation: Staff recommends City Council approve contracts for legal and display ads with Arkansas Democrat Gazette for the following public notifications:

Legal Notices in Classified Section – Monday-Sunday

- Public Meetings
- Bid Ads
- Agendas
- Ordinances
- Bond Issues

Display Advertising – Monday-Sunday

- Planning Commission Agenda Items
- Holiday Schedules for Solid Waste
- Human Resource Ads

Discussion:

The City's website has given the City the ability to provide quality public notification to citizens, but ordinances, bond issues, bid advertisements, job openings, etc. are required by code to be published in the newspaper.

The City currently budgets over \$100,000 for public notification. The contract price for retail display advertising is \$11.41/column inch. The contract price for classified or legal ads has a tiered rate. The Monday through Thursday tier is \$10.50/column inch, Friday through Saturday is \$10.90/column inch and Sunday is \$14.17/column inch. Without the contract the rates would be approximately 32 percent over the contracted price. These rates are slightly higher than last year's rates because the City did not publish it's contracted amount of inches. Arkansas Democrat Gazette will not bill the City for the shortfall on the contract.

These contracts offer the City the best opportunity to insure cost containment of advertising expenditures while reaching the majority of citizens and potential bidders in a cost effective manner.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE A CONTRACT WITH ARKANSAS
DEMOCRAT-GAZETTE, INC. FOR RETAIL AND CLASSIFIED
ADVERTISING**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1: The City Council of the City of Fayetteville, Arkansas, hereby approves a contract with Arkansas Democrat-Gazette, Inc. for the provision of retail display advertising in an amount of \$11.41 per column inch with a maximum of 2,250 column inches annually, and for classified display advertising in an amount of \$10.50 per column inch Monday through Thursday, \$10.90 per column inch Friday through Saturday, and \$14.17 per column inch Sunday with a range of 39 to 75 total column inches monthly. A copy of the contract, marked Exhibit "A," is attached.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Published Monday Through Sunday • P.O. Box 1607, Fayetteville, AR 72701 • 479-442-1700

Retail Display Advertising Agreement

Arkansas Democrat-Gazette, Inc./Northwest Arkansas Edition, Fayetteville, Arkansas September 28 20 09

In consideration of your agreeing to furnish us local display advertising space in the Northwest Arkansas Democrat-Gazette at the rate of:

\$ 11.41 per column inch Monday-Thursday \$ 11.41 per column inch Friday-Saturday \$ 11.41 per column inch Sunday.

Net per inch for each insertion, we hereby agree to use minimum space in that paper during the period of

one year from the 1st day of November, 20 09.

As follows.

Northwest Arkansas Times Contract

2,250 - inches annually

We, in addition to the terms and conditions as hereinafter set forth, agree to pay monthly, as used, for such advertising on or before the 10th of the month following advertising, without discount. In the event scheduled payments are not received, advertisements may be withheld until past due balances are brought current.

If for any reason the minimum space contracted for should not be used by us within the contract period, we agree to pay the difference between the rate stated herein and the rate actually earned as per rates printed in the published rate cards.

We agree that the Arkansas Democrat-Gazette, Inc./Northwest Arkansas Edition, shall have the right to revise the rates mentioned herein upon thirty days notice of us, but if such revision of the rate is not agreed to by us, either party shall have the right to terminate the contract without penalty at the end of thirty days notice.

This contract covers only advertising classified as local display advertising, and its privileges cannot be transferred, in whole or in part, to another party. It is further agreed that there are no terms or agreements not set forth herein and that the rates and regulations or conditions contained in the published rate card are a part of this contract as fully as if they appeared on its face.

This contract shall become effective on its acceptance by the publisher, general manager, or director of marketing of the Arkansas Democrat-Gazette/Northwest Arkansas Edition and shall run for a period of 12 months as set out above and shall automatically renew itself for like periods of 12 months, unless one of the parties hereto shall furnish the other written notice 30 days in advance of the expiration of any such 12 month period of intention to cancel the agreement.

**Arkansas Democrat-Gazette, Inc./
Northwest Arkansas Edition**

By _____
Advertising Representative

Accepted for the Arkansas Democrat-Gazette,
Inc./Northwest Arkansas Edition

By _____
Director of Sales & Marketing

City of Fayetteville
Name of Company/Advertiser

By _____

Address _____

Billing Address 113 W. Mountain

Fayetteville, AR 72701

Acct.# 1512599, 1510957, 1559194

Arkansas Democrat-Gazette

NORTHWEST ARKANSAS EDITION

Published Monday Through Sunday • P.O. Box 1607, Fayetteville, AR 72701 • 479-442-1700

Classified Display Advertising Agreement

Arkansas Democrat-Gazette, Inc./Northwest Arkansas Edition, Fayetteville, Arkansas September 28 20 09

In consideration of your agreeing to furnish us local display advertising space in the Northwest Arkansas Democrat-Gazette at the rate of:

\$ 10.50 per column inch Monday-Thursday \$ 10.90 per column inch Friday-Saturday \$ 14.17 per column inch Sunday.

Net per inch for each insertion, we hereby agree to use minimum space in that paper during the period of

one year from the 1st day of November, 20 08.

As follows. 39-75 inches monthly

We, in addition to the terms and conditions as hereinafter set forth, agree to pay monthly, as used, for such advertising on or before the 10th of the month following advertising, without discount. In the event scheduled payments are not received, advertisements may be withheld until past due balances are brought current.

If for any reason the minimum space contracted for should not be used by us within the contract period, we agree to pay the difference between the rate stated herein and the rate actually earned as per rates printed in the published rate cards.

We agree that the Arkansas Democrat-Gazette, Inc./Northwest Arkansas Edition, shall have the right to revise the rates mentioned herein upon thirty days notice of us, but if such revision of the rate is not agreed to by us, either party shall have the right to terminate the contract without penalty at the end of thirty days notice.

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**Arkansas Democrat-Gazette, Inc./
Northwest Arkansas Edition**

By _____
Advertising Representative

Accepted for the Arkansas Democrat-Gazette,
Inc./Northwest Arkansas Edition

By _____
Director of Sales & Marketing

City of Fayetteville
Name of Company/Advertiser

By _____

Address _____

Billing Address 113 W. Mountain

Fayetteville, AR 72701

Acct.# L4998373, 5338652, 5182985, 5233671

City of Fayetteville Staff Review Form

A. 4
Ozark Regional Transit
Page 1 of 10City Council Agenda Items
and
Contracts, Leases or Agreements

11/3/2009

City Council Meeting Date
Agenda Items Only

Karen Minkel

Submitted By

Division

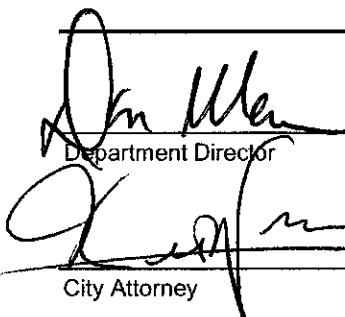
Strategic Planning and Int. Consult.

Department

Action Required:

Strategic Planning Staff recommends approval of a budget adjustment and memorandum of understanding with Ozark Regional Transit (ORT) to serve as a sub-grantee for a Federal Transit Administration grant in the amount of \$387,500 to provide funds for sidewalk construction and transit shelter and bench pads.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
2100.5530.5216	\$ -	Funds Used to Date	Construction Materials
Account Number		Program / Project Category Name	
09030.1	\$ -	Remaining Balance	Street
Project Number			Fund Name

Budgeted Item ☐Budget Adjustment Attached ☒

 Department Director
10-16-09
Date

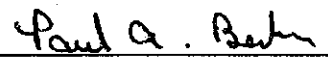
Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

10-20-09
Date

Original Contract Number:


 Finance and Internal Services Director
10-21-2009
DateReceived in City
Clerk's Office

Chief of Staff

Date

Received in
Mayor's Office

 Mayor
10/20/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Transportation Director

From: Karen Minkel, Strategic Planning and Internal Consulting Director *K.M.*

Date: October 13, 2009

Subject: Ozark Regional Transit Memorandum of Understanding and Budget Adjustment

RECOMMENDATION

Strategic Planning Staff recommends approval of a budget adjustment and memorandum of understanding with Ozark Regional Transit (ORT) to serve as a sub-grantee for a Federal Transit Administration grant in the amount of \$387,500 to provide funds for sidewalk construction and transit shelter and bench pads.

BACKGROUND

ORT received Federal Transit funds from the Arkansas Highway and Transportation Department to implement New Freedom projects, which benefit individuals with disabilities. New Freedom funds are not part of the federal stimulus program. Phil Pumphrey, ORT Executive Director, is encouraging Northwest Arkansas cities to leverage planned transit shelter and bus bench installations by using the New Freedom funds to pay for the labor and materials used to install the shelter and bus bench pads as well as associated sidewalk construction.

ORT was awarded shelters and benches through an American Recovery and Reinvestment Act program. City staff is currently working with ORT to permit seven transit shelters and seven bus benches, the greatest number of shelters and benches given to a municipality in the region. The New Freedom funds will enable the City to install the necessary concrete pads and construct sidewalks. Staff will determine which sidewalks to construct using the following criteria: 1) destinations that people with disabilities access by public transit; 2) proximity to bus stops, particularly bus stops shared by ORT and Razorback Transit; and 3) the Sidewalk and Trails Taskforce priorities. These ORT projects help build public transit infrastructure that contribute to a livable transportation system.

DISCUSSION

The grant requires a 20% match or \$77,500 worth of labor, engineering or administrative services and must be spent by September 1, 2012. The City Attorney, City Finance Director, Transportation Director and Strategic Planning staff have discussed the terms of the memorandum of understanding with ORT.

BUDGET IMPACT

This grant project would increase the Street Fund by \$387,500.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney

DATE: **October 21, 2009**

RE: **Agreement of Understanding with Ozark Regional Transit**

Ozark Regional Transit did make a few of the changes in their proposed Agreement that Paul Becker and I suggested. Specifically we are no longer required to indemnify ORT although we still must indemnify the Arkansas Highway and Transportation Department (despite its own sovereign immunity). The entity with the money makes the rules so if we want this grant, the City must agree to indemnify AHTD even though it endangers our statutory sovereign immunity.

There are some other provisions that appear pretty one-sided against our interests, but if we want to assist in constructing concrete pads for bus stop shelters and benches and improve related sidewalks, we must agree to this contract.

RESOLUTION NO. _____

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 ADJUSTMNET RECOGNIZING THIS REVENUE

WHEREAS, the City of Fayetteville is a potential sub-recipient of a Federal Transit Administration grant through the Arkansas Highway and Transportation Department and Ozark Regional Transit to be authorized to receive \$387,500.00 which would be matched with a 20% investment of labor, engineering and administrative services form the City to construct sidewalk, transit shelter and bench pads; and

WHEREAS, it is in the best interests of the citizens of Fayetteville to accept this grant, agree to the proposed Agreement, and furnish the 20% matching share through personnel services.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement of Understanding and authorizes Mayor Jordan to execute this agreement to utilize city personnel for the equivalent 20% match.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached budget adjustment recognizing the \$387,500.00 in grant funding.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AGREEMENT OF UNDERSTANDING

BETWEEN

CITY OF FAYETTEVILLE

AND

OZARK REGIONAL TRANSIT

In Cooperation with the
U.S. Department of Transportation

RELATIVE TO

Implementation of Federal Transit Administration (FTA) "New Freedom" Program, (hereinafter called "the Project").

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users provides Federal Transit funds for New Freedom projects through the Arkansas State Highway and Transportation Department and,

WHEREAS, the City of Fayetteville (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for an eligible project that benefits persons with disabilities, and

WHEREAS, the Sponsor knows of no legal impediments to the completion of the Project, and

WHEREAS, it is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any member thereof a third party beneficiary hereunder or to authorize anyone not a party to this agreement to maintain a suit or action for injuries or damage of any nature pursuant to the terms or provisions of this agreement.

WHEREAS, it is understood that the Sponsor and the Ozark Regional Transit (hereinafter called "ORT") will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged Business Enterprises (DBEs) and that, as part of these requirements, ORT desires to set a goal for DBE participation in the project at 4.75% and related to the potential availability of DBEs desired areas of expertise.

IT IS HEREBY AGREED that the Sponsor and ORT will participate in a cooperative program for implementation of the project and will accept the responsibilities and assigned duties as described hereinafter.

THE SPONSOR WILL:

1. Indemnify and hold harmless the Arkansas State Highway Commission, its officers and employees from any and all claims, lawsuits, judgments, damages, costs, expenses and losses, including those arising from claims before the or lawsuits brought in any other legal forum, sustained on account of the operations or actions for the City, including any act of omission, neglect or misconduct of said City. This obligation of indemnification shall survive the termination or expiration of this Agreement.
2. Assure that its policies and practices with regard to its employees, any part of whose compensation is reimbursed from federal funds, will be without regard to race, color, religion, sex, disability, or national origin in compliance with the Civil Rights Act of 1964 and 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs under the US DOT.
3. Ensure that all projects comply with Federal environmental policies and regulations including the determination of a Categorical Exclusion (CE), Finding of No significant Impact (FONSI) or Environmental Impact Statement (EIS).
4. Provide a copy of the registered deed or an appropriate certification stating the Sponsor's clear and unencumbered title to any right-of-way to be used for the project (See Attachment B).
5. Advertise for bids in accordance with federal procedures. \$1-3,000 verbal/written quotes; \$3,001-\$25,000 – Three Verbal/Written Quotes, over \$25,000 – Competitive Sealed Bids.] Any Costs incurred by the Sponsor prior to receiving Notice to Proceed from the ORT are not eligible for reimbursement. (Or Fayetteville's procedures if stricter)
6. After bids are opened and reviewed, submit a certification, including all items noted, to the ORT and request concurrence in award of the contract.
7. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of pay items, and certification of all work in accordance with the plans and specifications for the project and for monitoring the Contractor and subcontractor(s) for compliance with the provisions of US DOT regulations.
8. Make payments to the contractor for work accomplished in accordance with the plans and specifications and then request reimbursement from the ORT.
9. "In-Kind" donation by the Sponsor may consist of appropriate salary rates for labor, engineering or administrative services, for the 20% local match requirement.
10. Upon completion of the project, provide proof of expenditures to the ORT for reimbursement.

11. Submit change orders to the contract to the ORT and Arkansas Highway and Transportation Department for review and approval for program eligibility prior to execution.
12. Be responsible for the inspection and certification of all work in accordance with the plans and specifications for the Project and to retain all records relating to such inspections, certifications, and billing statements, and any other files necessary to document the performance and completion of the work. Such records shall be retained in accordance with the requirements of 49 CFR, Subtitle A, Part 18, Subpart C, Section 18.42 – Retention and access requirements for records.
13. Grant the right of access to Sponsor's records pertinent to this project and the right to audit by the ORT, AHTD and FTA officials.
14. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
15. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
16. Repay to the ORT the federal share of the cost of any portion of this project if the AHTD or FTA removes federal participation due to actions of the Sponsor, its agents, its employees, or its assigns, or the Sponsor's consultants or their agents. Such actions shall include, but are not limited to, federal non-participation arising from problems with design plans, construction, change orders, construction inspection, or contractor payment procedures.
17. Retain total, direct control over the project (For 15 years after completion of the project) throughout the life of the improvements and not, without prior approval from the ORT:
 - sell, transfer, or otherwise abandon any portion of the project;
 - change the intended use of the project as stated in the approved project application;
 - make significant alterations to any improvements constructed with Federal funds;
 - or cease maintenance or operation of the project due to the project's obsolescence.
18. Be responsible for satisfactory maintenance (including reasonable snow removal efforts) and operation of all improvements and for adopting regulations, ordinances and procedures as necessary to ensure this. Failure to adequately maintain and operate the project in accordance with Federal-aid requirements may result in the Sponsor's repayment of federal funds.
19. Promptly notify the ORT if the project is rendered unfit for continued use.
20. After the ORT issues a Notice to Proceed, advertise for bids in accordance with federal procedures. (Or Fayetteville's procedures if stricter)

21. Notify the ORT and AHTD of any project adjacent to a State Highway. Obtain a clearance of project construction from the AHTD if project is adjacent to State Highway.

THE ORT WILL:

1. Be responsible for administering Federal funds.
2. Sponsor and provide environmental documentation for the project.
3. Sponsor and provide plans and specifications and bidding documentation for the project.
4. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
5. Issue Notice to Proceed to the Sponsor when to proceed with advertisement of the project for construction bids.
6. Review bid tabulations and concur in award of the construction contract for the project.
7. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
8. Review and approve any necessary change orders for project/program eligibility.
9. Reimburse the Sponsor for all eligible construction costs.

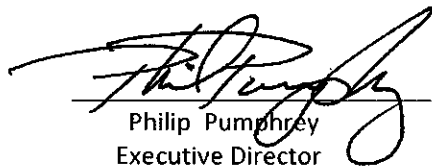
IT IS FURTHER AGREED that should the Sponsor fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure will disqualify the Sponsor from receiving future Federal-aid funds administered by the ORT.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on the

_____ day of _____ 20 09.

OZARK REGIONAL TRANSIT

City of Fayetteville


Philip Pumphrey
Executive Director

Sponsor's Attorney

NOTICE OF NONDISCRIMINATION

The ORT complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color age, national origin, religion or disability, in admission or access to and treatment in Department programs and activities, as well as ORT nondiscrimination policies may be directed to James B. Moore, Jr., Section Head = EEO/DBE (ADA/504/Title VI Coordinator), P.O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: james.moore@arkansashighways.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 4
Ozark Regional Transit
Page 1 of 10

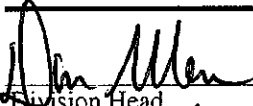
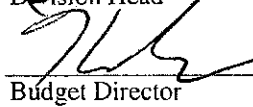
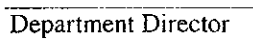
Budget Year 2009	Department: Operations Division: Transportation Program: Sidewalks	Date Requested 10/13/2009	Adjustment Number
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Project or Item Added/Increased: \$387,500 is requested in construction materials.	Project or Item Deleted/Reduced: \$387,500 in federal grants - capital account.
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Justification of this Increase: The city will be a sub-recipient of a grant from Ozarks Regional Transit (ORT). The Transportation Division will construct sidewalks and pads. There is a 20% in kind match required by the City. This will be provided with labor, motor pool and fuel from the current budgeted expenses.	Justification of this Decrease: ORT received a stimulus grant and the City is a grant sub-recipient award.
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Increase Budget							
Account Name	Account Number				Amount	Project Number	
Construction Materials	2100	5530	5216	00	387,500	09030	1

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Federal Grants - Capital	2100	0910	4309	00	387,500	09030	1

 Division Head  Budget Director  Department Director  Finance Director  Chief of Staff  Mayor	10-16-09 Date 10-13-09 Date 10-21-2009 Date 10-29-09 Date	V.090403 Budget & Research Use Only Type: A B C <u>D</u> E Requested By _____ General Ledger Date _____ Posted to General Ledger _____ Posted to Project Accounting _____
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City of Fayetteville Staff Review Form

A. 5
 Fayetteville Animal Shelter Donation
 Page 1 of 6

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

November 3 2009

City Council Meeting Date
 Agenda Items Only

Yolanda Fields

Submitted By

Community Services

Division

Development Services

Department

Action Required:

Approval of a Budget Adjustment budgeting the Donation Revenue Balance to date for the Animal Shelter in the amount of \$13,707.00

\$ -

Cost of this request

\$ -

Category / Project Budget

Program Category / Project Name

See Attached

Account Number

\$ -

Funds Used to Date

Program / Project Category Name

See Attached

Project Number

\$ -

Remaining Balance

General

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Department Director

10-14-2009
 Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

10-19-09
 Date

Original Contract Number:

Finance and Internal Services Director

10-19-2009
 Date

Received in City
 Clerk's Office



Chief of Staff

Date

Mayor

10/21/09
 Date

Received in
 Mayor's Office



Comments: Staff recommends approval of this budget adjustment.

CITY COUNCIL AGENDA MEMO

To: Mayor and Council

Thru: Jeremy Pate, Director of Development Services 

From: Yolanda Fields, CS Director 

Date: October 14, 2009

Subject: Approval of a Budget Adjustment for Animal Services Donations

RECOMMENDATION

Staff recommends approval of a budget adjustment to budget the Animal Services Donation Revenue to date in the amount of \$13,707.00

BACKGROUND

Donations for the shelter are given through out the year. A donations program has been establish for the utilization of the funds. Currently two donation revenue accounts have been establish within the city's accounting system 1) Donations – Animal Shelter 2) Donations – Animal Shelter Spay/Nueter. A project number has been establish for 1) Donations – Animal Shelter 2) Donations – Animal Shelter Spay/Neuter. The project number enables the ease of tracking for revenue collected and expenditure made for each project.

DISCUSSION

The donations provide assistance in bring needed sheltering services to the community.

BUDGET IMPACT

Increase Animal Shelter Donations Program budget by \$13,707.00

RESOLUTION NO. _____

**A RESOLUTION APPROVING A 2009 BUDGET ADJUSTMENT IN THE
DONATION REVENUE BALANCE OF THE FAYETTEVILLE ANIMAL
SHELTER IN THE AMOUNT OF \$13,707.00**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. The City Council of the City of Fayetteville, Arkansas hereby approves a 2009 budget adjustment of \$13,707.00 in the Donation Revenue Balance for the Fayetteville Animal Shelter.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 5
Fayetteville Animal Shelter Donation
Page 4 of 6
Adjustment Number

Budget Year 2009	Department: Police Division: Animal Services Program: Veterinarian/Clinic	Date Requested 10/14/2009
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Project or Item Added/Increased: Increase Med Supplies by \$2729. Increase Vet Supplies by \$8978. Increase Dog Food account by \$2000.	Project or Item Deleted/Reduced: Recognize donations to the shelter.
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Justification of this Increase: Recognize miscellaneous donations for expense accounts Medical Supplies and Vet Supplies.	Justification of this Decrease: These funds are miscellaneous donations given by private citizens and organizations for the health and welfare of the animals that are cared for by the shelter.
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Account Name	Increase Budget Account Number	Amount	Project Number
	<i>see attached</i>		

Account Name	Decrease Budget Account Number	Amount	Project Number
	<i>see attached</i>		

V.090403

Division Head	Date
<i>[Signature]</i>	<i>10/14/09</i>
Budget Director	Date
<i>M. C. Pate</i>	<i>10/14/09</i>
Department Director	Date
<i>Paul A. Burch</i>	<i>10-19-2009</i>
Finance Director	Date
<i>[Signature]</i>	<i>10/20/09</i>
Chief of Staff	Date
<i>[Signature]</i>	
Chief of Staff	Date
<i>[Signature]</i>	

Budget & Research Use Only				
Type:	A	B	C	<u>D</u> E
Requested By	<i>Rachel Fields</i>			
General Ledger Date				
Posted to General Ledger				
	Initial	Date		

Budget Adjustment Detail Backup

Account Name	Account Number	Increase Budget	Decrease Budget	Project#	Sub#	Project Description
Dog Food And Supplies	1010.2740.5205.00	2,000		03048	1	R Animal Services Miscellaneous Donations
Veterinary Supplies	1010.2740.5200.03	5,978		03048	1	R Animal Services Miscellaneous Donations
Medical Supplies	1010.2740.5200.02	2,729		03049	1	R Animal Low Cost Spay/Neuter Donations
Veterinary Supplies	1010.2740.5200.03	3,000		03049	1	R Animal Low Cost Spay/Neuter Donations
Donations - Animal Shelter	1010.0001.4808.00		7,978	03048	1	R Animal Services Miscellaneous Donations
Use of Fund Balance	1010.0001.4999.99		5,729	03049	1	R Animal Low Cost Spay/Neuter Donations
		<u>13,707</u>	<u>13,707</u>			

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

B. 1
Amend Police Department's Policies,
Procedures & Rules Manual
Page 1 of 44

10/6/2009

City Council Meeting Date

Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

Council approve a resolution amending the attached Fayetteville Police Department Policies

\$0

Cost of this request

Category / Project Budget

Program Category / Project Name

Account Number

Funds Used to Date

Program / Project Category Name

Project Number

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

Date

Original Contract Number:

Finance and Internal Service Director

Date

Received in City Clerk's Office

ENTERED
9-15-09 KJ

Mayor

Date

Received in Mayor's Office

ENTERED
9/18/09
JH

Comments:

Tabled to 11/3/09 CC mtg. & 10/20/09 CC mtg.
Tabled to 10/20/09 CC mtg. & 10/6/09 CC mtg.

TO: Mayor Lioneld Jordan and Members of the City Council

FROM: Greg Tabor, Chief of Police

DATE: October 7, 2009

SUBJECT: Policy Amendments

Recommendation: Council approves a resolution amending the following Fayetteville Police Department Policies

- (1) 46.2.1 – “Emergency Response Team”
- (2) 1.3.1 - “Use of Force”
- (3) 1.3.4 - “Less-Lethal Weapons/Defensive Tactics”
- (4) 26.1.1 - “Disciplinary Matters and Award Procedures”
- (5) 26.1.2 - “Harassment and Discrimination in the Workplace”

Background: The current Fayetteville Police Department Policies were approved by council resolution #3-99 on January 5th, 1999.

Discussion: The department is currently in the process of reviewing all policies and updating as necessary to comply with Commission on Accreditation for Law Enforcement Agencies (CALEA) standards, to conform to changes in Federal, State and local law and to match current Fayetteville Police Department practices.

Budget Impact: None

RESOLUTION NO. _____

A RESOLUTION APPROVING AND ADOPTING AMENDMENTS TO
THE FAYETTEVILLE POLICE DEPARTMENT'S POLICIES,
PROCEDURES & RULES MANUAL.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby
approves and adopts the following amended sections of the Fayetteville Police
Department's Policies, Procedures & Rules Manual:

- 1.3.1 - "Use of Force"
- 1.3.4 - "Less-Lethal Weapons/Defensive Tactics"
- 26.1.1 - "Disciplinary Matter and Award Procedures"
- 26.1.2 - "Harassment and Discrimination in the Workplace"
- 46.2.1 - "Emergency Response Team"

A copy of these amendments, marked Exhibit "A," is attached hereto and made a
part hereof.

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 1.3.1
Subject USE OF FORCE		
Reference 1.3.4, 41.3.5		Special Instructions
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -9-

Comment: References are new, they refer to the "Less than Lethal" policy (1.3.4) and Uniforms/Equipment (41.3.5)

I. PURPOSE

The purpose of this directive is to state the Fayetteville Police Department policy regarding the use of force, including deadly force, less lethal force and defensive tactics.

II. DISCUSSION

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection must at all times be secondary to the protection of life. The officer's responsibility for protecting life must include his own.

III. DEFINITION

"Deadly Force", as used in this policy is defined as that force which may cause death or grave injury or which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.

"Physical force", as used in this policy, is defined as any bodily impact, restraint, confinement or the threat thereof.

"Reasonable belief", as used in this policy, is defined as the facts or circumstances the officer knows, or should know, are such

(1.3.1) Page 1

as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

"Serious physical injury", as used in this policy, is defined as a bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

Comment: Definitions have been moved from another portion of old policy

IV. POLICY

It shall be the policy of the Fayetteville Police Department that its officers shall not use more force in any situation than is reasonably necessary under the circumstances. [Calea 1.3.1]

Comment: CALEA standard requires a policy statement on Use of Force

A. Use of Deadly Force

1. An officer may use deadly force to protect him or others if he has reasonable belief of immediate threat of death or serious physical injury. [Calea 1.3.2]

2. The use of deadly force should be prohibited in the apprehension of misdemeanants, since the value of human life far outweighs the gravity of a misdemeanor offense.

Comment: "flatly" omitted

3. Deadly force shall never be used on mere suspicion that a crime, no matter how serious, was committed or that the person being pursued committed the crime. An officer shall either have witnessed the crime or have sufficient information to know, as a virtual certainty, that the suspect committed an offense for which the use of deadly force is permissible.

4. Officers shall not be permitted to fire at felony suspects when the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force or when there is substantial danger to innocent bystanders. Although the requirement of using lesser force, when possible, is a legal rule, the other limitations are based on sound public policy. To risk the life of innocent persons for the purpose of apprehending a felon cannot be justified.

5. Officers shall not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another person.

6. Officers shall not fire their weapons to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger

to innocent bystanders, the officer should shoot at "center body mass."

7. An officer may use deadly force to effect the capture or prevent the escape if the officer reasonably believes that the suspect has committed a felony involving the use or threatened use of deadly force and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

8. In order to protect the community's interest when officers may have exceeded the scope of their authority in the use of deadly force and to shield officers who have not exceeded the scope of their authority from possible confrontations with the community, officers whose use of force results in death or serious physical injury shall be relieved from line-duty assignment pending administrative review.[Calea 1.3.8]

9. The killing of an animal is justified by the following conditions:

- a. For self-defense,
- b. To prevent substantial harm to the officer or another, or
- c. When the animal is so badly injured that humanity requires its relief from further suffering.

A seriously wounded or injured animal may be destroyed upon approval from a supervisor.

The destruction of vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others.

Comment: language omitted
regarding assistance from
other agencies

B. Use of Physical Force and Less-lethal Weapons

All commissioned Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Officers will be issued copies of 1.3.1 and will be instructed in this policy.[Calea 1.3.12] Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when

warranted, but only in accordance with the guidelines set forth here.

All departmentally approved less lethal devices are deployed as additional police tools and are not intended to replace firearms or self-defense techniques. Officers choosing to use these devices should not compromise their safety.

Further reference may be made to section 1.3.4 regarding Less Lethal Weapons and Defensive Tactics.

Comment: language taken from previous document and added

C. Firearms

1. Issuance of "Use of Force" Policy:

All officers of the Fayetteville Police Department shall be issued individual copies of and receive instruction on the department's policy regarding use of deadly force prior to being issued a firearm.[Calea 1.3.12] Officers will receive in-service training on the department's use of force policy on an annual basis.[Calea 1.3.11]

2. Proficiency in Use of Agency-authorized Firearms:

Qualification with the issued service weapon is an essential job function of a police officer with the City of Fayetteville. Failure to qualify may result in the imposition of discipline, up to and including termination of employment. Additionally, failure to qualify with any other department-approved weapon would prohibit that person from being allowed to carry that particular weapon.

Comment: language added

[Calea 1.3.10] A certified weapons instructor shall conduct training and qualification. [Calea 1.3.11 a.]

a. Officers shall qualify with the issued service weapon four times each year, at least one of which will meet the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. [Calea 1.3.11]

b. On all other qualification relays, Officers shall qualify with a score equal to or better than the established standard set by the Chief of Police in consultation with the Firearms Instructors.

c. Officers certified on the department-approved shotgun or rifle shall qualify annually.

d. All firearms training and qualifications scores, including remedial training if necessary, will be documented and maintained

by the firearms division until an officer separates from the department.[Calea 1.3.11 b.]

(1) An officer who fails to qualify with his/her issued service weapon after two consecutive attempts shall be referred for immediate remedial training by a certified firearms instructor.

(2) The firearms instructor providing the remedial training shall notify the officer's immediate supervisor and Chief of Police in the event the officer is still unable to qualify at the conclusion of the extra training session. Upon such notification, the supervisor shall immediately relieve the unqualified officer of the issued service weapon and patrol duty, with pay. The unqualified officer will be directed to report to the training division the next working day for additional remedial training. The officer's authority to carry a firearm shall remain revoked until such time as the officer qualifies or that the determination is made that the officer is not responding to further training.
[Calea 1.3.11.c]

(3) Any officer who fails to qualify and receives remedial training more than twice during a calendar year shall be subject to disciplinary action. If an unqualified officer does not respond satisfactorily to remedial training and remains unqualified, the Chief of Police shall be notified in writing. At such time, the officer will be referred for termination.

Comment: language added to reflect current practice and CALEA standards

d. Officers shall attain and demonstrate knowledge of the laws concerning the use of firearms and be familiar with recognized safe-handling procedures for the use of these weapons.

e. Any officer returning to duty after an absence exceeding three months shall report to the training division for remedial training and requalification prior to being permitted to return to full duty.

3. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearm unless circumstances create strong reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.

4. Warning Shots:

Officers are not justified in using a firearm to fire a warning shot and shall never use warning shots for any purpose. Warning shots endanger the lives of innocent bystanders and may also prompt a suspect to return fire.[Calea 1.3.3]

5. Off-Duty Possession of Weapons:

It shall be the policy of the Fayetteville Police Department to permit full-time sworn members of the department to possess and carry a concealed weapon while off-duty within the corporate limits of Fayetteville. Officers of the Fayetteville Police Department should also be aware that Federal Law known as the Law Enforcement Officers Safety Act of 2004 provides certified law enforcement officers with the right to carry a concealed firearm in any jurisdiction in the United States.

Comment: language added

a. Officers are not required to carry a weapon while off-duty, but may do so at their option.

b. Officers exercising the option to carry a weapon while off-duty are authorized to carry their issued weapon.

c. Authorization for officers to carry weapons while off-duty shall be subject to the following conditions:

(1) Officers will be required to have in their possession the department-issued badge and official identification card.

(2) Officers in plain clothes wearing their firearms exposed to the public view shall display their department badge near the firearm in a manner that is clearly visible to the public unless special circumstances exist.

(3) Officers who choose to carry a weapon other than one issued by the police department, shall qualify to demonstrate proficiency in the use of that weapon on an annual basis at their own expense.

6. Department-issued Weapons and Ammunition:

Reference may be made to Fayetteville Police Department Policy 41.3.5 for department-issued weapons and ammunition.

A. All department-issued firearms will be inspected on an annual basis by a certified armorer and must be approved by the armorer before being issued and/or carried. [Calea 1.3.9 c., d., e.]

(1) The firearms division will maintain weapons inspections reports.

(2) Weapons deemed irreparable will be removed from service with a report indicating such status.

(3) The firearms division will maintain a record on all weapons in service to include inspection date(s) and maintenance.

Comment: language added to reflect current practice and CALEA standards

B. Officer Responsibility for Department-issued Firearm.

(1) Officers must take reasonable and adequate care of any firearm issued to them.

(2) In the event a firearm is lost, damaged, destroyed, or stolen, the officer may be subject to financial liability and/or dismissed if a preponderance of evidence establishes negligence or willful destruction or damage of the firearm by the officer.

(3) In the event of the loss of a department-issued firearm, the officer will immediately notify the shift supervisor who will in turn notify the Chief of Police. The supervisor will also notify local law enforcement authorities of the firearm loss and ensure that the loss is reported through the department's ACIC/NCIC terminal.

(4) Officers may choose to leave their issued weapons in their locked lockers at the department. If officers choose to remove their issued weapon from the department while off duty, it is recommended they be stored in a locked box, separate from the ammunition. [Calea 1.3.9 f.]

Comment: language added

7. Discharge of Weapon:

If an officer, on or off duty, fires a department-issued weapon (except training purposes such as range qualifications) or in the event of an accidental discharge the officer shall comply with the following:

a. The officer who fired the weapon shall notify the shift supervisor as soon as practicable after the firing has taken place.

b. The supervisor shall make a preliminary investigation each time an officer under his command fires a weapon.

c. The supervisor shall cause a report to be filed immediately with the Chief of Police regarding the firing of any weapon by police personnel. [Calea 1.3.6]

d. If during the performance of duty or on any occasion an officer of the Fayetteville Police Department fires a weapon and in doing so wounds or kills a suspect or perpetrator of a crime, the following procedure is to be followed immediately:

(1) Medical aid, to the extent possible, should be given to anyone injured. [Calea 1.3.5]

(2) The shift supervisor is to be notified immediately.

(3) The shift supervisor will notify the Chief of Police immediately.

(4) A shooting team, the members of which will be designated by the Chief of Police, will be called to the scene immediately.

Comment: language added

(5) This shooting team will be responsible for conducting a thorough investigation into the circumstances surrounding the shooting. The shooting team will, at the conclusion of the investigation, submit a report to the Chief of Police including the relevant facts and circumstances surrounding the incident and a conclusion as to whether the discharge violates departmental policy.

(6) This shooting team will be functioning with the full authority of the Chief of Police. This team will be in complete control of the internal investigation. All officers including shift supervisors shall give this team their full cooperation. No one shall interfere with such an investigation.

Comment: language changed
from "entire" to "internal"

(7) If the facts of the incident support a conclusion that the shot was the result of negligence, the officer shall be required to undergo firearms certification training again.

D. Use of Force Reports

The purpose of this section is to establish specific guidelines that define the situations when the Use of Force Report must be completed. Not every touching by an officer requires a report; circumstances that require a report are outlined elsewhere in this order.[Calea 1.3.6]

All commissioned Police Officers of the Fayetteville Police Department are directed to complete the "Use of Force" report when the following criteria is met and turn it in to his supervisor before the end of his shift.

1. Situations that require Supervisor notification and completion of the Use of Force Report:[Calea 1.3.6]

a. An officer exercising police authority uses force which causes any visible or apparent physical injury, or which results in the subject saying that he or she was injured.

b. An officer exercising police authority uses any object, including, but not limited to, a baton, flashlight, hand, fist, or foot to strike a blow to a subject.

c. An officer exercising police authority bodily removes or drags a struggling subject from one place to another, or forcibly places or keeps a person in a prone position.

d. An officer exercising police authority uses force during or after which a subject loses consciousness.

e. An officer uses any aerosol irritant or inflammatory agent (see 1.3.4).

f. An officer uses a Conducted Energy Weapon (see 1.3.4).

g. An officer discharges his or her firearm; regardless of duty status and regardless of whether the discharge was accidental or intentional. (Exceptions: lawful hunting activity, range activity, and other lawful and safe target practice).

h. An officer points a gun at anyone.

2. Use of Force Reports will be submitted by the division supervisor to the department's administration:[Calea 1.3.6]

a. Each Use of Force Report will be reviewed by the division's respective captain and by the Chief's designated head of Office of Professional Standards (OPS).[Calea 1.3.7]

b. The designated head of OPS will conduct an annual review and analysis of all Use of Force Reports and report the analysis to the Chief.[Calea 1.3.13]

Comment: language from Use of Force Reports general order streamlined into this policy

FAYETTEVILLE POLICE DEPARTMENT
 FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 1.3.4
Subject Less-Lethal Weapons/Defensive Tactics		
Reference 1.3.1	Special Instructions	
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -13-

Comment: This policy draft streamlined the old "Non Lethal Defensive Tactics" policy with general orders regarding the use of pepper spray and tasers.

I. PURPOSE

The purpose of this directive is to establish specific guidelines for the use of authorized less-lethal weapons and defensive tactics.[Calea 1.3.4]

II. DISCUSSION

All Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

III. POLICY

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with the guidelines set forth here.

Comment: Language is a combination of text from the above referenced documents, now streamlined into one.

A. Defensive Tactics

The *Use of Force Continuum* is included as a guide in the appropriate use of force. It is recognized that it cannot be rigidly applied in rapidly unfolding and fluid situations. Officers should generally use the level of force that can reasonably be expected to succeed in controlling the situation. Officers are not required to move in a hierarchical fashion through all the levels

of control, but instead, should use that level of force that is appropriate and reasonable under existing circumstances. The Force Continuum contains areas of control, which will be used by an officer, and the levels of resistance, which are used by the offender.

1. Levels of Control:

a. Officer Presence

The professional appearance and uniform of a police officer.

b. Verbal Direction

The appropriate verbal response and commands used to attempt to direct the action of a suspect.

c. Pepper Aerosol Restraint Spray/Conducted Energy Weapon

The OC aerosol spray and Conducted Energy Weapon provides officers with additional use-of-force options against aggressive animals or for gaining compliance of resistant or aggressive individuals during arrest, detention and other enforcement situations that occur in the line of duty.

d. Empty Hand

Soft empty hand techniques are designed to control Passive or Defensive Resistance. They are used when verbal direction/commands are not effective and there is non-compliance with lawful orders. Pressure Point Control Tactics (PPCT) is the department approved defensive tactics system. Soft empty hand control techniques include strength techniques, joint locks, pressure points or distraction techniques, which are hand and leg strikes to specific motor nerve points.

Hard Empty Hand Control techniques are designed to control Active Aggression, but can be used to control Defensive Resistance when lower forms of control have failed or when the officer believes lower forms of control will fail.

e. Intermediate Weapons

An intermediate weapon is any tool used when empty hand control is not enough or would be dangerous for the officers to attempt, and deadly force is not justified. The department issued intermediate weapon, or impact weapon, is the expandable baton. Officers have discretion to use the expandable baton as a defensive tactics tool

to counter resistance and assaultive behavior.

f. Deadly/lethal force

Force likely to cause death or serious physical injury.

2. Levels of Resistance:

a. Psychological Intimidation

The suspect attempts to intimidate the officers psychologically. These are non-verbal cues such as suspect attitude or physical appearance or physical readiness.

b. Verbal Non-Compliance

This includes verbal threats from the suspect towards the officers. A suspect may not be resisting just by threatening the officer but may simply refuse to comply with orders, be unwilling to comply or ignore the officer completely.

c. Passive Resistance

The suspect makes no attempt to fight the officer or even pull away. He simply forces the officer to do all the work. An example would be the protestor who causes the officer to pick him up and carry him from the scene or the drunk driver who will not step from the car but must be physically pulled out.

d. Defensive Resistance

The suspect performs actions that attempt to prevent officers from controlling him, such as pulling away when handcuffing is attempted. He may simply move away from the officer or push the officer's hands away. The suspect makes no attempt to harm the officer, just tries to defeat the arrest.

e. Active Aggression.

The suspect attempts to harm the officer by physical actions such as striking or kicking him.

f. Aggravated Aggression

The suspect is attempting to harm the officer by use of a weapon or empty handed at a deadly force level.

3. De-escalation of Force:

Officers must immediately de-escalate down to empty hands or verbal commands after gaining compliance through the use of an intermediate weapon.

Officers, for their own protection, should understand and comply with the force continuum.

4. Training:

Officers must be certified in the use of the Conducted Energy Weapon (CEW), Pepper Spray and Pressure Point Control Tactics before authorization to use such defensive tactics.

Officers are required to attend refresher training on handgun retention and PPCT Tactics as scheduled by the Training Division.

B. Less-lethal Weapons

All Police Officers of the Fayetteville Police Department are directed to obtain certification to carry and use less lethal weapons as authorized by the Chief of Police. Less lethal weapons provide officers with additional use-of-force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty. It is the policy of this department that officers use less lethal weapons when warranted, but only in accordance with the guidelines of this policy set forth here. Less lethal weapons are not designed to be used in place of deadly force when deadly force is justified. Less lethal weapons are other tools in the use-of-force continuum to assist in preventing injury to officers and others.

Officers will receive in-service refresher training on the use of less lethal weapons on an annual basis. A certified weapons or tactics instructor will conduct refresher training. The training division will maintain documentation of refresher training. Remedial training, if necessary, will be given to any officer who is unable to demonstrate knowledge and proficiency of less lethal weapons prior to resuming official duties.[Calea 1.3.11]

1. Police Baton

a. Authorization

(1) Only certified officers who have successfully completed the PPCT certified Defensive Tactics Course are authorized to carry the police baton.

b. Usage Criteria

(1) The police baton may be used when empty hand control has failed, or the officer believes that empty hand control will be insufficient to establish control.

(2) The use of deadly force is not justified during the normal use of baton; however, during extreme circumstances when a suspect raises his aggression to a deadly force level, officers engaging a suspect with a baton would be permitted to use deadly force.

c. Usage Procedures

(1) Impact weapon strikes to the nerve motor points in the legs and arms are considered to be at the Intermediate Weapon level on the force continuum.

(2) Any impact weapon strikes to the head, throat or clavicle are considered to be deadly force.

(3) The two target areas on the arms for blocking points are:

(a) The Radial nerve motor point on the outside of the upper forearm.

(b) Median nerve motor point on the inside of the forearm.

(4) The three target areas for striking on the legs are:

(a) The Common Peroneal nerve motor point on the outside of the leg.

(b) The Femoral nerve motor point on the inside of the leg.

(c) The Tibial nerve motor point on the top of the calf muscle.

(5) Strikes should be delivered with maximum power in an effort to eliminate the need for multiple strikes, decrease the need to escalate in levels of control, and shorten the time span of the confrontation.

(6) After striking a subject, officers should employ other methods of follow-up control and ensure that the subject receives medical attention. [Calea 1.3.5]

2. Pepper Aerosol Restraint Spray

Oleoresin capsicum (OC) spray is the authorized pepper aerosol restraint spray.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry departmentally authorized OC while on duty. Plain-clothes officers whose normal duties/assignments may require them to make arrests or supervise detainees shall have available departmentally authorized OC spray.

(3) Uniformed officers shall carry only departmentally authorized OC canisters. Non-uniformed officers may carry OC in alternative devices authorized by the agency.

b. Usage Criteria

(1) OC spray is considered a use of force and shall be employed in a manner consistent with this agency's use-of-force policy. OC is a force option following verbal compliance tactics on the use of force continuum.

(2) OC may be used when:

(a) verbal dialogue has failed to bring about the subject's compliance, and

(b) the subject has signaled his intention to actively resist the officer's efforts to make the arrest.

(c) when confronted with an aggressive animal.

(3) Whenever practical and reasonable, officers should issue a verbal warning prior to using OC against a suspect.

(4) An officer may use deadly force to protect himself from the use or threatened use of OC when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) Once a suspect is compliant, the use of OC spray is no longer justified.

c. Usage Procedures

- (1) Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.
- (2) An officer should maintain a safe distance from the suspect of between two and ten feet.
- (3) A single spray burst of one second should be directed at the suspect's eyes, nose, and mouth.
- (4) Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.

d. Effects of OC and Officer Response

- (1) Within several seconds of being sprayed by OC, a suspect will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought process.
- (2) The effects of OC spray vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect - to include, if necessary, other force options consistent with agency policy-if he does not respond sufficiently to the spray and cannot otherwise be subdued.
- (3) Immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness. Upon observing these or other medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid or transport to a local medical facility.[Calea 1.3.5]
- (4) Suspects who have been sprayed shall be monitored continuously for the ill effects of the OC spray. It shall be the responsibility of the officer affecting the arrest to either monitor the suspect or alert detention center personnel the suspect has been sprayed. In the event the officer was injured during the arrest, the supervisor will assign another officer to monitor the suspect.
- (5) Officers shall provide assurance to suspects who have been sprayed that the effects are temporary and encourage them to relax.

(6) Air will normally begin reducing the effects of OC spray within fifteen minutes of exposure. However, once the suspect has been restrained, officers shall assist him by rinsing and drying the exposed area to the extent possible.

(7) Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent. All such incidents shall be reported as soon as possible including the recording of the bystanders name, date of birth, and address to the immediate supervisor.

e. Reporting Procedures

(1) Accidental discharges as well as intentional uses of OC spray against an individual in an enforcement capacity shall be reported to the officer's immediate supervisor as soon as possible.

(2) A written report of an accidental discharge, which does not affect an individual, must be completed and turned into the officer's immediate supervisor before the end of shift when accidental discharge occurred.[Calea 1.3.6]

(3) A use-of-force report shall be completed following all discharges of OC spray except during testing, malfunction or accidental discharge and turned into the officer's immediate supervisor before the end of shift in which the spray was used.[Calea 1.3.6]

(4) Off-duty officers discharging OC spray are subject to the same reporting requirements as on-duty officers. The immediate supervisor shall be the shift supervisor at the time of the discharge.[Calea 1.3.6]

f. Replacement

(1) Each officer assigned an OC spray device shall be responsible for maintaining it in an operational and charged state. If an OC device becomes damaged, inoperable, or empty, the assigned officer shall report to their immediate supervisor in writing and request a replacement device.

(2) Replacements of OC spray canisters shall occur when the unit is less than half full, as determined by weighing the canister.

(3) OC canisters shall be inspected and weighed biannually by shift sergeants and maintain a record of this fact.

(4) Unexplained depletion of OC canisters shall require an investigation and written report by the officer's supervisor to the Chief of Police.

3. Conducted Energy Weapon

The Conducted Energy Weapon (CEW) will be used at the same level in the use-of-force continuum as Pepper Aerosol Restraint Spray. It will be the officer's discretion as to which device is used.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of the CEW are authorized to carry or use the device. Officers must demonstrate proficiency in the use of the CEW during the prescribed course of instruction. [Calea 1.3.10] Officers must receive in-service training on the CEW and demonstrate proficiency with the CEW on an annual basis after receiving the initial prescribed course of instruction. [Calea 1.3.11]

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry authorized CEW units on their duty belts while on duty.

(3) Uniformed officers shall carry only department authorized CEWs in the prescribed manner on their duty belts. Non-uniformed officers may carry the CEW in alternative forms authorized by the agency.

b. Usage Criteria

(1) At the beginning of each shift, before an officer places the CEW on the duty belt, a function test will be completed on each unit. This will be accomplished by turning the safety to the ON position, checking the battery level on the Central Information Display, verifying the laser sight system is operational, and by performing an arc display for a minimum of one second. On any occasion where malfunctions are found, the unit shall be removed from service and forwarded to a CEW instructor for servicing and troubleshooting.

(2) Use of the CEW is considered a use of force and shall be deployed in a manner consistent with this agency's use-of-force policy. The CEW is a force option following verbal direction on the use-of-force continuum.

(3) Whenever practical and reasonable officers should issue a verbal warning prior to using the CEW against a suspect. The CEW will not be used in a punitive or coercive manner. Officers should consider the suspect's age and physical ability to resist arrest in making the decision to use the CEW.

(4) An officer may use deadly force to protect himself or others from the use or threatened use of a CEW when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) The CEW is not designed, nor expected, to be used in place of deadly force when deadly force is justified. The CEW is another tool in the use-of-force continuum to assist in preventing injury to officers and others.

(6) Once a suspect is compliant the use of the CEW is no longer justified.

c. Usage Procedures

(1) The CEW operates much like a handgun. It is equipped with standard sights and a laser sight system. The laser dot will be the point of impact for the top probe. The CEW fires probes in line with an eight-degree probe spread. The CEW must be held level on vertical targets. The exception to this rule is on an angled or prone target where the CEW should be tilted to allow the probes to strike the target properly. An example of this would be if the target were lying on the ground or behind some type of barrier. The CEW should be aimed at center mass or the legs. Do not aim at the head or throat of an individual. The CEW may also be applied as a Drive Stun as a distracting or breaking maneuver to gain control and effect compliance of a suspect. In addition, the CEW may be applied as a Drive Stun after the probes have been deployed or a non-deployed cartridge has been removed.

(2) Officers should maintain a safe distance from the suspect. The optimum shot range is seven to fifteen feet. If the suspect is running, the officer must keep pace with the suspect to prevent the CEW wires from breaking.

(3) When the CEW is deployed it should complete the full five-second cycle without interruption. Typically the initial deployment changes the behavior of the suspect. After the CEW is deployed, the officer should assess and evaluate the suspect while giving verbal commands. If the suspect continues to be non-compliant, additional applications may be given. The suspect should be handcuffed as soon as practical while disabled by the CEW to minimize the number of deployment cycles.

(4) The CEW is prohibited from being used:

(a) In a punitive or coercive manner.

(b) On a handcuffed or secured prisoner absent assaultive behavior that cannot be reasonably dealt with.

(c) On any suspect who does not demonstrate his or her overt intention to use violence or force against the officer or another person(s).

(d) In an environment where an officer knows that a potentially flammable, volatile or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, propane or a clandestine laboratory.

(e) In any environment where the subject's fall could reasonably result in death or serious injury (e.g. on an elevated structure or in a location with sharp objects).

(f) On the operator of a moving vehicle.

(5) As soon after deployment as possible, CDC should be notified that the CEW has been deployed.

(6) Deployed cartridges must be submitted to evidence and handled with caution as explained and instructed in the CEW users course. Deployed cartridges are considered to be a biohazard and must be handled with extreme caution.

(7) CEWs equipped with cameras will automatically record a video recording each time the CEW is activated in the field:

(a) After a CEW is deployed, officers are required to provide the CEW to a patrol supervisor in order to preserve the video.

(b) Patrol supervisors, provided with the required passwords, are to create a folder within the network drive and upload the CEW camera video in a space designated by the IT Manager. After the upload, supervisors are restricted by the IT Manager from any actions other than viewing the video.

d. Effects of the CEW

(1) The CEW is a Conducted Energy Weapon that uses propelled wires to conduct energy that affects the sensory and motor functions of the central nervous system resulting in incapacitation and do not rely on pain compliance. The CEW creates Electro-Muscular Disruption and causes the contraction of the muscles and overrides the central nervous system.

(2) After deployment the suspect may fall immediately to the ground, which is the greatest risk of injury to the suspect.

(3) The CEW will cause slight signature marks that resemble surface burns, appear red or may blister.

(4) The CEW does not damage nerve tissue, does not cause serious burns and does not cause electrocution in a wet environment.

e. Reporting Procedures

(1) Every deployment of the CEW will require the officer to complete a use of force report. The only exception to this will be during training classes (and/or inspections). A supplemental page for the CEW must be attached to the use of force report. This page will be for documenting the location on a person's body where the CEW probes made contact.[Calea 1.3.6]

(2) The use of force report must indicate if multiple deployments occurred and the justification for multiple deployments.[Calea 1.3.6]

(3) If an officer performs an "Arc Display" to gain control of a suspect or crowd, a use of force form must be completed explaining the reason for the display.

(4) If an accidental discharge occurs a use of force report must be completed explaining the circumstances of the discharge.

(5) A photograph of the individual and the area or areas where probes penetrated the skin of the individual must be taken of each person on whom a CEW is used. The photos will be submitted to evidence with the used air cartridge and probes.

(6) The CEW has a built in microprocessor that records the date, time, duration of cycle and the battery status of each pull of the trigger for the last 2000 trigger pulls. The supervisor in charge of CEW procedures shall maintain a data download logbook on each CEW. The logbook shall be maintained for quality control purposes.

f. Probe Removal [Calea 1.3.5]

(1) CEW probes should be removed from an individual as soon as possible after the person has been handcuffed or properly restrained.

(2) As soon as possible after the CEW has been deployed on an individual, dispatch will be contacted and request medical services personnel to respond to the scene for probe removal.

[Calea 1.3.5]

(3) If any of the probes are located in the head, neck, breast(females only) or the groin area of an individual and medical services personnel is not able to remove the probes; the individual will be transported to WRMC for probe removal.

(4) After the probes have been removed, the probes and spent cartridge will be turned over to the officer who deployed the cartridge for submission to evidence.

Comment: This section is the combination of the separate general orders on the usage of pepper spray, taser and old policy regarding the police baton.

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 26.1.1
Subject DISCIPLINARY MATTERS & AWARD PROCEDURES		
Reference: See 52.1.1, 1.3.1, 41.1.1, 26.1.2		Special Instructions
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -8-

I. PURPOSE

Effective discipline is a positive process when its perceived purpose is to train or develop by instruction. Among the programs having an impact on discipline in a law enforcement agency are selection, training, direction, supervision, and accountability. These elements are inter-dependent, and a weakness in any one is damaging to effective discipline. Many standards bearing on a disciplinary system are included in other chapters relating to selection, training, and direction. Therefore, the purpose of this directive is to focus on the accountability component of a disciplinary system.

II. DISCUSSION

It shall be the policy of the Fayetteville Police Department to follow and abide by the disciplinary policies and procedures in effect and addressed in the rules and regulations of the Civil Service Commission of the City of Fayetteville. An employee whose work becomes unsatisfactory should immediately be notified by his/her supervisor in what way the work is deficient and what must be done if work performance is to be judged satisfactory. [Calea 26.1.5] An employee who is suspended or dismissed for unsatisfactory performance of duties should normally have received three warnings:

Supervisor Counseling - an oral warning from the employee's supervisor. The supervisor must record the dates of the discussions with the employee, the performance deficiencies discussed and the corrective actions required. [Calea 26.1.5]

The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Record of an Oral Reprimand - an oral warning with a follow-up letter to the employee that sets forth the points covered in their discussion. The Chief of Police shall have authorized a written record of an oral reprimand. The supervisor shall keep a record of a written record of an oral reprimand. The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Reprimand - a written warning from the Department Chief serving notice upon the employee that noted deficiencies must be corrected immediately in order to avoid disciplinary action up to and including dismissal. A written reprimand shall be placed in the employee's personnel file.[Calea 26.1.8]

Comment: Language amended to reflect long standing practices within the department

An employee who is suspended without pay or dismissed for unsatisfactory performance of duties or violations of policy shall receive a letter from the Department Chief outlining the noted performance deficiencies or policy violations, effective date of suspension or dismissal and a statement of the status of the employee's benefits during the suspension or dismissal. A copy of this letter shall be placed in the employee's personnel record. [Calea 26.1.7]

An employee so discharged, reduced in rank, or suspended for three days or more shall have the right, within ten calendar days from the date of such written notice, to request a trial through the Civil Service Commission. Reference should be made to the Civil Service Rules and Regulations. [Calea 26.1.6]

The Administrative Captain should maintain the departmental employee administrative file. It should contain any letters of commendation or appreciation, administrative letters and replies, results of any sustained punitive disciplinary action, as well as other pertinent information. Information in this file will be maintained indefinitely. [Calea 26.1.8]

It is suggested immediate supervisors maintain an employee performance/counseling file for each person under their supervision. This file might contain oral reprimands during the current evaluation period, letters of job related counseling sessions, copies of correspondence between the employee and supervisor, complementary correspondence, and other similar information regarding the performance of the employee. It is suggested this material be kept in a secured location by the immediate supervisor. This information should be purged after one year and after being noted on the employee's performance evaluation. [Calea 26.1.8]

Comment: Language added to reflect long standing practices within the department as well as CALEA standards.

Nothing in this policy shall prohibit the Chief of Police from exercising all authority granted under Civil Service Commission Rules and the Arkansas Code.

A. Compliance With Department Directives

Supervisors are expected to set a proper example to their subordinates in the matter of due respect and regard for the policies, procedures, and rules in all matters pertaining to proper discipline.

1. The primary function of a supervisor is to maintain the day-to-day activities of police operations. Compliance with department directives is an integral part of those operations. Supervisors are authorized to take action when department directives are not being followed. [Calea 26.1.5]

(a) A supervisor may elect to counsel an officer whose performance has been found to be deficient.

(b) A supervisor may refer an officer to the training division to correct deficient performance.

(c) A supervisor may document deficient performance and refer it to the Chief of Police in the form of an official complaint.

(d) In cases of a major infraction of policy or department directive, a supervisor may relieve an officer of patrol duties, with pay, and refer the matter to the Chief of Police.

Comment: Language added to
comply with CALEA standards.

2. In case of alleged unjust treatment in violation of these policies, procedures, and rules, any officer may prefer charges against a superior to the proper authorities. When any member suspects a violation of these policies, procedures, and rules has occurred, they are to notify the Chief of Police for investigation, and may request results of the findings. Reporting a suspected violation confidentially is not a violation of the policies, procedures, and rules.

3. The following acts, infractions, or violations of the policies, procedures, and rules shall be deemed sufficient cause for separation from the department:

(a) Willful disobedience of lawful orders.

(b) Disrespect or insolence toward a superior officer.

(c) Being under the influence of intoxicants or drugs while on duty.

(d) Absence without leave.

Absence without leave is defined as any time a department member is scheduled for work and fails to report for duty without first notifying a supervisor prior to the start of the scheduled shift.

(e) Incompetence.

(f) Driving any machine or apparatus of the department carelessly or maliciously, in such a manner as to collide with, cause personal injury, damage a vehicle or other property, or any other wanton or malicious conduct, which causes injury or damage to a citizen or property.

(g) Neglect or refusal to pay just debts.

(h) Agitating or creating dissension in the department or attempting in any manner to cause ill feeling against any member of the department including civilian personnel working within our facility.

(i) Making any false or unwarranted report, either publicly or otherwise, about a member of this department.

(j) Dishonesty at any time when representing this department.

(k) Lack of Candor under direct questioning, either by any department supervisor or any investigator of the Office of Professional Standards.

4. It shall be the policy of the Fayetteville Police Department that all personnel maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Personnel shall perform their duties in a manner, which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by:

(a) A lack of knowledge of the application of laws and ordinances required to be enforced.

(b) An unwillingness or inability to perform assigned tasks.

(c) The failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.

(e) Absence without leave.

(d) Written record of repeated infractions of policies, procedures, rules, directives, or general orders of the department.

B. Unbecoming Conduct

Officers shall be held responsible at all times for conduct unbecoming an officer of the department, which tends to lower the law enforcement service in the estimation of the public. Officers

should be governed by ordinary rules of good behavior observed by law abiding and self-respecting citizens.

1. Any idle, indiscreet, disrespectful or discriminatory remark(s) or rudeness to citizens or any greeting(s), conversation(s), or remark(s) tending to show undue familiarity with members of the opposite sex while on duty shall subject a member to disciplinary action. (See Harassment and Discrimination Policy 26.1.2)

2. Officers are cautioned that the use of obscene, immoral, profane or disrespectful language, agitating and tending to create dissension in the department or attempts to cause undue or unfavorable reflection(s) upon any member of the department, will not be tolerated. Officers shall not engage in altercations between themselves under any circumstances.

3. All officers when reporting for duty shall be completely attired in the regulation uniform as prescribed by the Chief of Police. (Refer to 41.1.1 for Grooming Requirements) Failure to do so may subject the member to reprimand or suspension.

C. Use of Alcohol & Drugs

1. No employee of the police department shall consume alcoholic beverages while on duty. No officer of the department shall have or allow anyone else to have at any time, wine, beer, liquor or any other intoxicating drinks in or around the police station, except as directly related to a case or as evidence item(s). Officers shall not at any time while on duty be under the influence of any wine, beer, liquor, or other intoxicants of any kind, or under sickness caused or produced by the use of such intoxicants. Any officer absenting themselves from scheduled duty because of intoxicating drink, or reporting to duty under its influence, or in any unfit condition due to intoxicants or drugs will be subject to reprimand, suspension or discharge.

2. When deemed operationally necessary, officers in undercover assignments may consume alcoholic beverages and/or simulate the use of drugs. In doing so, officers shall submit a memo to their supervisor documenting the consumption of alcohol or simulation of the use of drugs.

Comment: Language added.

D. Abuse of Authority

1. No officer (except when assigned desk duties inside the police facility) shall receive or collect any fine or fines for parking tickets, other traffic violations, or any other offenses whatsoever. Members shall courteously advise citizens that all fines are payable at the Fayetteville Police Department.

Comment: This section is a combination of two sections from the previous policy as a means to streamline the document.

2. No officer shall directly or indirectly, except by permission of the Chief of Police, sell tickets, solicit any money, circulate any petitions, subscriptions, or allow the use of the department's name for any fair, exhibition, benefit, or similar project. In deciding whether to grant such permission, the Chief of Police shall not discriminate against any officer of the department. Such permission may be granted if the activity will not adversely affect the administration or management of the department, or decrease the trust or confidence of the public.

3. No officer shall take, solicit, retain, receive, or extort any fee, property, reward, gift, compensation, or thing of value or free service in any form from any person, firm, or corporation for any services rendered in the conduct or performance of the duties as a police officer.

4. It shall be the policy of the Fayetteville Police Department that its officers shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, towing firm, bail bondsman, mortician, etc.).

F. Use of Force

1. Refer to Chapter 1.3.1.

G. Proper Care & Maintenance of Equipment

1. Officers positively shall not loan any department equipment or tools, except on permission of the Chief of Police or other supervisor.

2. Officers are required to care for equipment in their possession. Any departmental equipment damaged due to either carelessness or an intentional act on the part of the employee may result in disciplinary action.

H. Employee Awards/Commendations [Calea 26.1.2]

1. It shall be the policy of this department to recognize heroic actions, meritorious service and significant achievements under the provisions of this policy. Facilitation of awards will be made through an Awards Committee. The Awards Committee will be comprised of departmental Captains, as permanent members, and departmental employees as appointed by the Chief of Police. Members of the Awards Committee will serve a period of two years. Nominations to the Awards Committee will be received by way of the departmental award application form. The Awards Committee will review all applications and make recommendations to the Chief of Police

Comment: Employee Awards/Commendations section was not in the old policy. It has been completely added anew.

who has final authority on awards. Awards will be presented at a time designated by the Chief of Police.

2. Classification of Awards

- A. Chief's Award of Valor: Nominated by the Chief of Police, awarded for an act of extraordinary bravery or heroism by an employee who has demonstrated in great degree the characteristics of selflessness, personal courage and devotion to duty.
- B. Exceptional Duty Award: Nominated by departmental supervisors, awarded for exceptional performance, which, in the opinion of the supervisor, is deserving of recognition.
- C. Life Saving Award: Nominated by any employee of the department, awarded for a successful effort in saving a human life which involved exceptional courage or performance.
- D. Unit Meritorious Performance Award: Nominated by any employee, awarded to any individual or unit (sworn or civilian) who has exhibited exceptional professional skill and conduct during a coordinated action.
- E. Fayetteville Police Department Commendation: Nominated by any employee, awarded to any employee for an outstanding act or achievement, which brings great credit to the department and involves performance above and beyond that required by the individual's basic assignment.
- F. Community Service Award: Nominated by any employee, awarded to any employee for involvement both on and off duty in youth activities, work with non-profit organizations, working with the police department on special projects or other activities for the public good.
- G. Outstanding Citizen Award: Nominated by any employee, awarded to a citizen/member of the community who helps the department in apprehension of criminals or any other significant manner.
- H. Police Blue Star Award: Nominated by the Awards Committee, awarded to any sworn employee who has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those incidents resulting from attack by an assailant, personal combat or the performance of an act of valor.
- I. Police Blue Shield Award: Nominated by the Awards Committee, awarded to any sworn employee who, as a result of accidental cause, has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those cases resulting from an accident.

J. Letters of Commendation: A letter of commendation may be written by the Chief of Police to any employee for job performance that might not meet the criteria for the above listed awards, but merits recognition nonetheless. Any person may recommend an employee of this department receive a letter of commendation by submitting a memorandum to the Chief of Police. A letter of commendation may be given:

- 1) To commend an employee for completing a job task in an exemplary manner.
- 2) To commend an employee for submitting a recommendation which directly contributes to increased department productivity or efficiency.
- 3) For any other reason deemed appropriate by the Chief of Police.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 26.1.2
Subject HARASSMENT AND DISCRIMINATION IN THE WORKPLACE		
Reference See 26.1.1		Special Instructions
Distribution All Personnel	Reevaluation Date 1 Year	No. Pages -4-

I. PURPOSE

The purpose of this policy is to maintain a healthy work environment in which all individuals are treated with respect and dignity and to provide procedures for reporting, investigating and resolving complaints of harassment and discrimination. Federal law provides for protection of classes of persons based on race, color, sex, religion, age, disability and national origin. [Calea 26.1.3]

II. DISCUSSION

It is the policy of this department that all employees have the right to work in an environment free of **harassment or discrimination**. This department will not tolerate, condone or allow harassment or discrimination by employees, whether sworn, civilian, or other non-employees who conduct business with this agency. This department considers harassment and discrimination of others a form of serious employee misconduct. Therefore, this department shall take direct and immediate action to remedy all reported instances of harassment and discrimination.

Comment: Review/revision of policy revealed the specific mention of prohibiting "discrimination" was not made. This draft includes discrimination, as well as harassment, in the work place as being prohibited.

III. POLICY

A. Prohibited Activity

1. No employee will be given or denied any assignment based only upon age, sex, race, religion, politics, or physical handicap, unless such action would create a hazardous condition for the individual or others.

Comment: Language added upon advice from HR Division.

2. No employee shall harass another employee.

3. Employees shall not make offensive or derogatory comments to any person, either directly or indirectly, based on race, color, sex, religion age, disability, or national origin. Such harassment is a prohibited form of discrimination under state and federal employment law and is misconduct subject to disciplinary action by the department.

4. ~~Sexual harassment is prohibited.~~ Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Comment: Language added upon advice from HR Division.

a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

b. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee;

c. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

5. Individuals covered under this policy include department members defined as employees.

B. Management Responsibilities

1. Each supervisor shall be responsible for preventing acts of harassment and discrimination. This responsibility includes:

a. Monitoring the work environment on a daily basis for signs that harassment or discrimination may be occurring;

b. Counseling all employees on the types of behavior prohibited, and the department's procedures for reporting and resolving complaints of harassment and discrimination;

c. Stopping any observed acts that may be considered harassment or discrimination, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision; and

d. Taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment or discrimination, pending investigation:

- If a situation requires separation of the parties, care should be taken to avoid actions that appear to punish the complainant.
- Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should be temporary pending the outcome of the investigation.

e. Failure to carry out these responsibilities will be considered in any evaluation or promotional decision and may be grounds for discipline.

2. Each supervisor has the responsibility to assist any employee of this agency who comes to that supervisor with a complaint of harassment or discrimination in documenting and filing a complaint with the Chief of Police.

3. Each employee is responsible for assisting in the prevention of harassment through refraining from participation in, or encouragement of, actions that could be perceived as harassment or discrimination.

C. Complaint Procedures

1. Any employee encountering harassment or discrimination is encouraged to inform the person that his or her actions are unwelcome and offensive. The employee is encouraged to document all incidents of this nature in order to provide the fullest basis for investigation.

2. Any employee who believes that he or she is being harassed or discriminated against shall report the incident(s) as soon as possible to an immediate supervisor so that steps may be taken to protect the employee, and so that appropriate investigative and disciplinary measures may be initiated. **Where doing so is not practical, the employee may instead file a complaint with another supervisor, the Chief of Police or the Human Resources Division.**

Comment: Language amended
upon advice from HR
Division.

a. The supervisor or other person to whom a complaint is given shall meet with the employee and document the incident(s) complained of, the person(s) performing or participating in the alleged act, any witnesses to the incident(s) and the date(s) on which it occurred.

b. The department employee taking the complaint shall promptly submit a confidential memorandum documenting the complaint to the Chief of Police. The Chief of Police will assign the complaint for investigation.

3. The Office of Professional Standards shall be responsible for investigating any complaint alleging harassment or discrimination.
4. There shall be no retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint.
5. The complaining party's confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.
6. This policy does not preclude any employee from filing a complaint or grievance with an outside agency.

D. Retaliation

1. Retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint, is illegal and is prohibited by this agency and by federal statutes.
2. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for harassment and discrimination complaints.
3. Monitoring to ensure that retaliation does not occur is the responsibility of the Chief of Police or any supervisor within the department.
4. Any employee experiencing retaliation for having brought forth a complaint should report it immediately to his/her supervisor, supervisor's supervisor, the Chief of Police or the Human Resources Division.

Comment: Language added upon
advice from HR Division1.

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 46.2.1
Subject EMERGENCY RESPONSE TEAM		
Reference		Special Instructions
Distribution All Personnel	Reevaluation Date 1 Year	No. Pages -7-

I. PURPOSE

To establish policies relating to the organization, administration and operation of the Emergency Response Team (E.R.T.). The primary responsibility of the E.R.T. will be the resolution of difficult police situations through the use of special skills and tactics.

II. POLICY

A. ORGANIZATION AND ADMINISTRATION

The number of E.R.T. members will be decided by the Chief of Police. The Chief of Police shall appoint the following:

1. A unit commander (Sergeant or Lieutenant) and;
2. A team leader(s);
3. All team members.

The remaining team assignments will be made within the team with the approval of the Chief of Police. The E.R.T. will be under the supervision of a Captain as designated by the Chief of Police.

The Fayetteville Police Department will supply its Emergency Response Team members with the equipment deemed necessary to complete the training and assignments of the team. [Calea 46.2.3]

Comment: Plurality added for future use.

Comment: Language added to comply with CALEA standard.

B. PERSONNEL SELECTION

Recognizing the nature of Emergency Response Team operations requires disciplined, physically fit, experienced, calm, capable and well trained professionals, team selection will be conducted through a fair, non-discriminatory process that measures the factors deemed to be important to the performance of the team. [Calea 46.2.2]

When opening(s) on the Emergency Response Team occur, tests/tryouts will be conducted to determine, from among the eligible applicants, who will be appointed to the team.

1. Applicant requirements:

An applicant for the Emergency Response Team must meet the following criteria:

- a. Be a full time, sworn member of the department
- b. Have at least 12 months of uniform field experience
- c. Be recommended for the Emergency Response Team by a supervisor
- d. Past disciplinary actions will be taken into consideration.

2. Applicant Testing:

The selection process will consist of the following:

- a. Physical Conditioning Test: Each applicant must successfully pass a conditioning test consisting of the Fayetteville Police Department physical fitness standards for the Emergency Response Team. This standard is set at 20% above required departmental standards plus seven (7) pull-ups.
- b. Firearms Test: Each applicant must successfully pass the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. Marksmanship standards for handgun qualification set for the team is 90%. In addition, the applicants will be put through a minimum of one (1) combat-style shoot course administered by a certified firearms instructor.
- c. Written recommendation: Each applicant must receive a written letter of recommendation from his supervisor. This letter will be forwarded to the Chief of Police.
- d. Oral Interview: Each applicant will be asked to participate in an oral interview in which a series of pre-developed questions will be asked. The Chief of Police or his designee will assign the interview panel.
- e. The Emergency Response Team utilizes alternate team members to cover shortages or loss due to attrition. Alternate team members undergo the same applicant and testing process as listed

above. The Chief of Police chooses alternates. Alternates train with the ERT during scheduled training periods but are not subject to call out unless specifically needed. In addition, alternate team members should be given specialized training outside regularly scheduled ERT training.

Once testing is completed, the interview panel will compile the results with a recommendation to the Chief of Police. Applicants will be appointed to the E.R.T. at the discretion of the Chief of Police.

3. Removal from Team:

Once selected for an opening on the E.R.T., an applicant is placed on probationary status for a period of one (1) year.

All E.R.T. members must maintain their level of individual and team skills. Failure to maintain skill levels and/or stay physically fit is grounds for removal from the team.

The Chief of Police, upon the consensus of the team leadership, may remove any member in the best interests of the team.

- a. Failure to maintain minimum physical fitness and/or skill levels will be dealt with by immediate remedial instruction and re-testing. Failure to reach minimum levels during re-testing will result in the team member being placed in a non-deployable status for a period of thirty (30) days, during which the team member will be required to bring skill levels back up to minimum. Failure to do so will result in removal from the team.
- b. If skill level or physical fitness failure is due to the existence of a valid injury, the team member will begin a rehabilitative process and excused from ERT duties. Once released from medical care, the team member shall pass the skill level or physical fitness test.

A team member may request to be voluntarily withdrawn from assignment to the E.R.T. at any time. The team member must submit a letter of resignation to the Chief of Police, who may grant or deny the request after a review of the circumstances.

C. DUTIES AND RESPONSIBILITIES

1. TEAM COMMANDER

The team commander is directly responsible for the following areas:

- a. Direct supervision of the team members;
- b. Training;
- c. Maintaining an inventory of all team equipment, which includes assignment to individual team members or storage location [Calea 46.2.3];
- d. Maintaining training and call-out files for the team [Calea 33.6.2];
- e. Reporting all training and equipment needs to the designated Captain supervising the Emergency Response Team.

Comment: Some team commander duties were deleted as they related to personnel selection and physical fitness requirements which are covered elsewhere.

2. TEAM LEADER

In the absence of the Team Commander, the team leader assumes responsibility for the Team Commander's duties.

3. TEAM MEMBERS

Team members are required to comply with the following:

- a. Maintain minimum physical fitness conditioning requirements as established by the Chief of Police;
- b. Maintain familiarity with all equipment used by the E.R.T.;
- c. Maintain minimum marksmanship standards set for the team.
- d. Must be available for call-outs by having their paging device with them at all times;
(* **Exception** - When members are sick or on scheduled leave)
- e. The timely response and completion of all tasks, as well as, demonstration of high standards of performance;
- f. Attend all scheduled training operations unless excused by the Team Commander or Team Leader prior to the assigned training date.
- g. Maintain all assigned equipment in good condition;
- h. Wear approved and appropriate E.R.T. attire on all call-outs and training days;

- i. Use departmentally issued or authorized E.R.T. equipment;
- j. Familiarization with basic first aid. (A first aid kit will be maintained and kept with the team during call-outs and training exercises).

D. TRAINING

1. The Emergency Response Team shall train at least one day per month as set forth by the team commander and team leader.
2. The counter sniper/observer team shall have a training day of at least one day per month aside from the team-training day.
3. The team leadership will delineate the individual, squad and team level skills required for the team to successfully conduct operations. Those skills will create the basis for specific training exercises of the E.R.T. Training exercises will be created by the team leadership. Joint training exercises between the Emergency Operations Team and the Crisis Negotiation Team should be conducted periodically. Any training exercise shall be documented to include the type of training, date, attendance and scores, if applicable. [Calea 33.6.2]
4. Due to the required physical fitness standards for E.R.T. members, they are allotted two (2) hours per week while on duty for physical fitness training. It is the responsibility of the team members to schedule their physical fitness training time with their immediate supervisor. Fitness training hours must be used during the current work period and cannot be carried over to the next work period. The fitness training hours must be used during the scheduled workday. No overtime or compensatory time can be accrued as a result of the use of the fitness training hours.

Comment: Training section was revised/amended to reflect long standing practices and to comply with CALEA standards.

E. CHEMICAL AGENTS/DISTRACTION DEVICES

Chemical agents and distraction devices require proper training for effective use and shall be used only upon authorization of the team leader or team commander by personnel trained in their use.

F. CALL-OUT NOTIFICATION/DEPLOYMENT

1. In the event of an incident in which the Emergency Response Team might be activated, initial responding patrol officers have an integral role of support. [Calea 46.2.1]
 - a. Patrol officers should contain/secure the scene of an event to the extent possible.
 - b. Officers should locate and interview witnesses if possible.

- c. Officers should attempt to secure information as to the lay out of the scene of the incident.
- d. Officers should relay any intelligence information regarding the incident to be forwarded to the E.R.T. team leadership.

Comment: Language added to comply with CALEA standards.

2. Any Fayetteville Police Department supervisor may request assistance from the E.R.T. However, a Fayetteville Police Department Captain or personnel of higher rank must authorize all Emergency Response Team call-outs.

Comment: Language was streamlined on authorization.

3. Following authorization for a call-out, the supervisor requesting E.R.T. assistance shall notify the Team Commander or Team Leader of the situation. It is the responsibility of the Team Commander/Leader to see that all team members are contacted and advised of the call-out.

4. In the event of situation requiring immediate activation of the E.R.T., team members can be activated by using the "all-page" function of the pagers.

5. Emergency Response Team members are not to be used in their capacity as tactical officers while on normal patrol duty except under the direct supervision of the team commander or team leader.

6. In the event a team member has consumed any alcoholic beverage or taken prescribed medication it shall be the responsibility of that member to notify either the Team Commander or the Team Leader of their incapacitation. Team members shall not be under the influence of intoxicants or drugs while on duty.

Comment: Language revised to conform with other policy references.

G. PRE-RAID BRIEFING

1. Team members will assemble in a pre-determined location for a briefing of the assignment in question. A member of Central Dispatch and a patrol shift supervisor will be included in the briefing. [Calea 46.2.1]

2. The Team Leader will be responsible for seeing that the following topics are covered during the briefing process:

a. A pre-raid survey (drive-by) of the location in question will be made if time permits and the drive-by will not compromise the mission.

b. The Team Leader will make team assignments and determine what equipment is necessary for the situation.

c. A team member(s) will be assigned the task of completing a pre-raid form, a post-raid diagram of the target location and a post-raid report regarding the E.R.T.'s activities.

d. Other emergency operation teams, i.e. Emergency Medical Services (E.M.S.) or Crisis Negotiation Team (C.N.T.), will be put on stand-by in a location near the target location immediately prior to the mission, when possible. [Calea 46.2.1]

Comment: Language modified to add other special units and comply with CALEA standard.



September 17, 2009

Jeremy Pate
Development Services Director
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Old Wire Annexation - Appeal of Planning Commission denial

Mr. Pate:

On behalf of our client, we wish to appeal the September 14, 2009 City of Fayetteville Planning Commissions decision to deny ANX 09-3409 - Broyles/ 3231 N. Old Wire Road.
We request that this item be place on the next available City Council meeting.

Respectfully,

A handwritten signature in black ink that reads "Todd Jacobs". The signature is written in a cursive, flowing style.

Todd Jacobs
Director of Design
Appian Centre for Design
509 West Sprint Street, Suite 420
Fayetteville, Arkansas 72701
Office: 479-442-1444

Left on 2nd Reading @ 10/20/09 CC mtg.
Left on First Reading @ 10/6/09 CC mtg.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy C. Pate, Development Services Director

From: Andrew Garner, Senior Planner

Date: September 16, 2009

Subject: Annexation for Broyles (ANX 09-3409)

RECOMMENDATION

Staff and the Planning Commission recommend denial of annexing the subject 39.33-acre property, located at the northwest corner of Old Wire Road and Rom Orchard Road. The applicant has appealed the Planning Commission decision to deny this request to the City Council.

BACKGROUND

Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006, expressing concern about the extension of the city in this area, development patterns, density, and compatibility, and the resulting extension of the boundary. The meeting minutes from these previous Planning Commission meetings are attached to the staff report.

The applicant proposes to annex the subject 39.33 acres into the City. The applicant has stated an intent to propose a 200-acre master plan for a traditional neighborhood development, including the subject property.

DISCUSSION

This item was heard at the regular Planning Commission meeting on September 16, 2009. The Planning Commission voted 5-4-0 (commissioners Winston, Graves, Kennedy, and Trumbo voting "no") to deny this rezoning request. Several neighbors in the area spoke against rezoning the subject property to RSF-4, however, the applicant has withdrawn the rezoning application. Written comments from the neighbors are attached to the staff report.

BUDGET IMPACT

None.

ORDINANCE NO.

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.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, as shown in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

Section 2: That the official map of the City of Fayetteville, Arkansas, is hereby amended to reflect the change provided in Section 1 above.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of R-A, Residential Agricultural to the subject property.

Section 4: That the above-described property is hereby assigned to Ward No. Three.

PASSED and **APPROVED** this of , 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk

EXHIBIT "A"

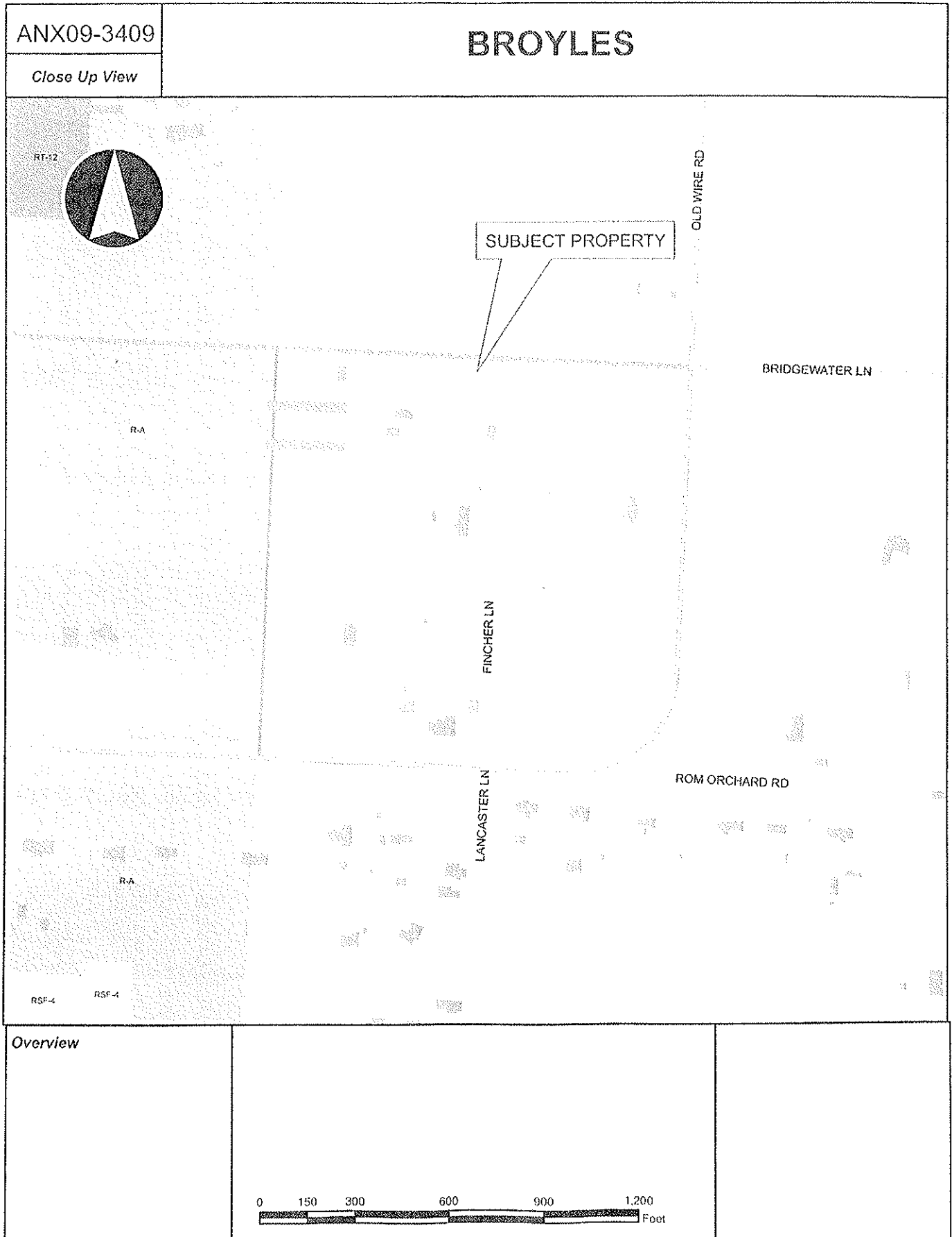


EXHIBIT "B"
ANX 09-3409

DESCRIPTION (PARCEL NOS. 001-15604-000, 001-15605-000, 001-15606-000, 001-15608-000, 001-15608-001, 001-15609-000, AND 001-15610-000)

ALL OF THE LAND DESCRIBED IN THE DEEDS RECORDED AS FILE NUMBERS 93-3908, 2005-18120, 2005-18121, 2005-18122, 2005-18123, 2006-22924, AND 2009-9274 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS RESIDING IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 17 NORTH, RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N02°26'06"E, ALONG THE WEST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1315.03 FEET TO THE NORTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S87°16'13"E, ALONG THE NORTH LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1319.96 FEET TO THE NORTHEAST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S02°29'32"W, ALONG THE EAST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1016.73 FEET; THENCE S18°21'47"W, LEAVING THE ABOVE SAID EAST LINE, A DISTANCE OF 116.92 FEET; THENCE S34°39'26"W, A DISTANCE OF 96.67 FEET; THENCE S52°01'42"W, A DISTANCE OF 94.13 FEET; THENCE S69°02'13"W, A DISTANCE OF 95.91 FEET; THENCE S86°30'36"W, A DISTANCE OF 46.95 FEET TO A POINT ON THE SOUTH LINE OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N87°11'42"W, ALONG THE ABOVE SAID SOUTH LINE, A DISTANCE OF 1028.91 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,713,107 SQUARE FEET OR 39.33 ACRES, MORE OR LESS.



PC Meeting of September 14, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~September 8, 2009~~ *Updated September 16, 2009*

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

Background: Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006. The meeting minutes from these previous Planning Commission meetings are attached to the staff report for the associated rezoning (RZN 09-3410 Broyles) also being heard at this planning commission meeting.

Property: The property is located northwest of the intersection of Old Wire Road and Rom Orchard Road. As depicted in *Table 1*, the site is surrounded by rural residential and undeveloped pasture, with unincorporated Washington County to the north, east, and south, and property zoned Residential Agricultural (R-A) in the City of Fayetteville to the west.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Rural residential; pasture	Planning Area
South	Rural residential; pasture	Planning Area
East	Rural residential; pasture	Planning Area
West	Rural residential; pasture	R-A, Residential Agricultural; Planning Area

The nearest developed subdivision is Paradise Valley Estates in the Planning Area, located approximately 1,600 feet east of the subject property and developed for single-family use with a density of approximately 1 unit per two acres.

Proposal: The applicant intends to annex and rezone this property and stated intent to develop a traditional neighborhood. If the annexation for this property is approved, the request is to rezone the property from R-A, Residential Agricultural to RSF-4, Residential Single-family, 4 units per acre. However, the applicant stated intent to propose a 200-acre master plan for a traditional neighborhood

development, including the subject property.

Request: The request is to annex the property into the City of Fayetteville

Public Comment: Staff has received several phone calls, emails, and letters in opposition to the proposed rezoning. The opposition cites concern that a density of four units per acre is not compatible with the surrounding rural residential character and would result in adverse impacts to traffic safety and property values.

INFRASTRUCTURE:

Streets: Currently the site has access to Old Wire Road. With development, road improvements and dedication per the Master Street Plan would be required. Surrounding Master Street Plan Streets are shown on *Table 2*.

Table 2
Surrounding Master Street Plan Streets

Direction from Site	Street Name	Master Street Plan Classification
South	Old Wire Road	Collector Street
East	Old Wire Road	Collector Street
Southeast	Rom Orchard Road	Local Street

Water: Public water is adjacent to the site. There is a four-inch waterline along the south side of Old Wire Road. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sewer: Sanitary sewer is not adjacent to the site. The nearest sewer main an 18-inch public main about 2,500 feet west of the site at the intersection of Old Wire Road/Crossover Road. Public sewer mains may need to be extended to the property to serve any proposed development, depending on the nature and density of the development.

Fire: The subject property is located 1.5 miles from the Fire Station No. 5 at 2979 North Crossover Road. Projected response time at full development of this property is projected at 4 minutes to the beginning of this development.

Police: The Fayetteville Police Department stated concern that this application may cause substantial call volume increase and will effect traffic congestion in the area. The Police Department also commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.

RECOMMENDATION:

Staff recommends denial of the requested annexation based on the findings included in this report.

PLANNING COMMISSION ACTION:	Required <u>YES</u> ☐ Forwarded ☒ Denied Date: September 14, 2009 Motion: <u>Myres</u> Second: <u>Zant</u> Vote: <u>5-4-0</u> (Graves, Winston, Kennedy, Trumbo voting "no")
CITY COUNCIL ACTION:	Required <u>YES</u> ☐ Approved ☐ Denied Date: <u>October 6, 2009 (1st reading if recommended)</u>

CITY PLAN 2025 FUTURE LAND USE PLAN: City Plan 2025 Future Land Use Plan designates this site as **Rural Area**. Rural Areas consist of land in an open or cultivated state or sparsely settled. These areas only have infrastructure and public services to support low-density zoning. They do not have adequate transportation or public services to support urban development patterns at this time. This area encourages conservation and preservation in any development pattern. The Guiding Policies for Rural Areas also discuss that if developed, these areas should encourage alternative development patterns to achieve compatibility with surrounding rural areas.

This property is also identified as an **Intended Growth Sector** in City Plan 2025. Growth sector areas were initially identified during the City Plan 2025 charrette process by citizens as areas with potential for population growth in the future. After the initial data was compiled and growth sectors were identified, additional input and analysis was completed in order to prepare the future land use map. This involved analysis of the actual development potential and public meetings where desired development patterns were analyzed and discussed. The growth sector map was an aid in preparation of the future land use map, which was ultimately adopted by the City Council. This area was identified as a Rural Area.

FINDINGS:

12.3.4 POTENTIAL ANNEXATION AREAS

The potential annexation areas should be identified by the City using the following criteria:

1. Areas that are already urban in character.

Finding: The subject property is surrounded on all sides by sparsely populated rural residential land uses. This area is not considered urban in character, and has not previously been identified by the City for annexation. The property is within the City's Planning Area.

2. Areas that can be developed at urban densities.

Finding: The subject property cannot be developed at urban densities at this time. The roads accessing the property are two-lane unimproved roads and sewer is not in the immediate vicinity (approximately 2,500 feet to the west). Unless significant improvements occur, the property and surrounding area will likely remain in a relatively low density state for some time, until and unless development occurs along

Crossover Road and moves in an eastern direction.

3. Immediate areas are those that are peninsulas or islands, where municipal services have already been extended.

Finding:

Municipal services that would accommodate future development have not been extended to this area. The proposed annexation would extend a peninsula of property approximately 1,300 feet into the county that is not served by city municipal services. The subject property and surrounding areas do not have adequate water or sewer service. There is an existing four-inch water line available to the subject site on the south side of Old Wire Road, however, the water line would have to be upgraded to provide domestic and fire flow for future development. Sewer service is not available and is located approximately 2,500 feet to the west and would have to be extended to serve development on the site. City police and fire service are provided to areas to the west.

4. Vacant lands that are subject to development pressure.

Finding: This site has been proposed to be annexed approximately three times since 2005 and a conceptual subdivision layout was proposed then withdrawn in that timeframe. These applications and the developer's communication with staff indicate that this area is under development pressure, though this is certainly questionable at this time, given the reduction in building permits and development projects, and vacant subdivisions in the region. The site is less than one mile from Crossover Road (State Highway 265), which is the major north-south transportation corridor on the east side of Fayetteville, also providing connection to Springdale. The site is relatively cleared of vegetation and flat, and is not in a floodplain, without natural constraints to development.

5. Areas where urban services are already provided.

Finding: Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities that could support an urban development at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City. Also see Finding 12.3.5.a, and the attached comments from the Police Department expressing concerns with emergency service provision.

6. Areas where urban services are needed.

Finding: As discussed above in Finding No. 5, water, fire, and police service are provided adjacent to the west, however sewer service is unavailable to the subject property and surrounding areas. Sewer service would be needed to serve development on the

subject property. The subject property and surrounding area are largely undeveloped or rural residential, and do not currently need urban service for existing land uses.

12.3.5 ANNEXATION GUIDING POLICIES

BOUNDARIES

12.3.5.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.

Finding: Annexation of the property will not create an island of unincorporated property. However, it will extend a peninsula of incorporated City approximately 1,300 feet. Creating a peninsula will extend the area of city property to which utilities and emergency response personnel must travel to benefit the future residents of the City. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. Development in this area would also require the extension of sewer service to an area that is undeveloped or developed at low densities on septic systems. Extending sewer service would encourage leap-frog development of this site and the surrounding areas. Staff finds that this proposal is in direct conflict to the annexation policy direction of the City Council, and can therefore not recommend approval of this annexation.

Further, this application is in conflict with two of the primary goals of City Plan 2025 including Goal 1, “*We will make appropriate infill and revitalization our highest priorities.*”, and Goal 2, “*We will discourage suburban sprawl.*” The proposed annexation on the periphery of the City is not infill and would encourage sprawl, by spreading development across the natural landscape, and if this property is developed, making people solely dependent on the automobile, in conflict with these two goals.

12.3.5.b Proposed annexation area must be adjacent, or contiguous, to city limits.

Finding: The proposed annexation area is adjacent to the City Limits to the west.

12.3.5.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: The subject property is not a part of a platted subdivision.

12.3.5.d Boundaries for annexed areas should follow natural corridors.

Finding: Proposed boundaries follow property lines of the existing parcels and right-of-way.

12.3.5.e The provisions of services should be concurrent with development.

Finding: Public services will be required to be provided concurrent with development in accordance with Fayetteville Unified Development Code requirements. Currently adequate public services are not available to support an urban or suburban development.

ENVIRONMENTALLY SENSITIVE AREAS

12.3.5. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Finding: There are no known environmentally sensitive areas that could be impacted by development, however, this site has been designated as a Rural Area on the City's Future Land Use Plan. The guiding policies for Rural Areas encourage conservation and preservation that would allow historical agricultural and related uses to continue to occur.

EMERGENCY AND PUBLIC SERVICES

12.3.5.g Public services must be able to be provided efficiently in newly annexed areas.

Finding: Public services are not able to be provided efficiently in the proposed annexation area. The four-inch water line would be required to be upgraded at the time of development and extension of the nearest sewer service is located approximately 2,500 feet west of the property. Response time to this location for emergency personnel is anticipated at four minutes. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.

12.3.5.h Annexed areas should receive the same level of service of areas already in the city limits.

Finding: Fire and police service will be required to be provided to this area with the same level of response and service as other properties in this area, if annexed in the City of Fayetteville. This property is adjacent to rural residential areas to the west already being served by the city.

12.3.5.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Finding: These factors were taken into consideration in the responses and recommendations included in this report.

INFRASTRUCTURE AND UTILITIES

12.3.5.j Areas currently served by utilities and other public services should be annexed.

Finding: Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City.

12.3.5.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.

Finding: Annexation and future development of this property will result in an increased demand on the existing infrastructure systems. Improvements to sewer and street systems and installation of fire hydrants would be made necessary by the annexation should additional development occur on the subject property.

12.3.5.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Finding: The proposed annexation is not part of a phased annexation initiated by the City.

INTERGOVERNMENTAL RELATIONS

12.3.5.m Promote long-range planning with adjacent jurisdictions.

Finding: N/A

12.3.5.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Finding: N/A

ADMINISTRATION OF ANNEXATIONS

12.3.5.o Develop a land use plan for annexation initiated by the city.

Finding: N/A

12.3.5.p Designate zoning districts for the property during the annexation process.

Finding: Annexations are automatically zoned R-A, Residential Agricultural. The property owners request annexation and rezoning of this property to RSF-4, Residential single family - 4 units/acre. Increased density on this property will increase the load on public infrastructure in this area and is significantly

different than the surrounding density. The timing of development to urban densities in inconsistent with City policies in this area at this time.

12.3.5.q An annexation study should be completed on all annexation proposals.

Finding: Planning staff has asked the Engineering Division, Fire Department and Police Department to study this annexation request to determine if facilities and services are available to serve this property. Comments from each department have been provided herein.

12.3.5.r Development proposals require a separate review from the annexation proposals.

Finding: Development of this property was proposed within the past few years for a single family residential subdivision in the Planning Area, however that application was withdrawn.

12.3.5.s Residents should be fully informed of annexation activities.

Finding: Adjoining neighbors have been notified of the annexation request and a public notice sign has been placed on the property advertising that this request will be heard at the Planning Commission meeting.

12.3.5.t Encourage larger annexations to create acceptable boundaries.

Finding: Extending the city boundary to the east as proposed will create a peninsula of incorporated land. This is not consistent with the Annexation Policy and may create future problems at the time of development by requiring water, sewer, and street infrastructure upgrades. These upgrades would encourage leap-frog development in an area not suitable for urban or suburban development patterns. Staff does not recommend increasing the size of the proposed annexation by one or two adjacent parcels, but might be supportive of a much larger annexation that would create a more acceptable City boundary.

12.3.5.u Conduct a fiscal impact assessments on large annexations.

Finding: No fiscal impact assessment was conducted for this annexation of 39.33 acres.



The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

To: Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher
From: Mark Stevens
Date: August 26, 2009
Re: ANX 09-3409 and RZN 09-3410 (Broyles / 3231 N. Old Wire Rd, 217)

This development will be protected by Engine 5 located at 2979 North Crossover Road. It is 1.5 miles from the station with an anticipated response time of 4 minutes to the beginning of the development.

The Fire Department anticipates 34 (22 EMS - 12 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 - 18 months, after the development is started, before maximum build-out and the service impact to occur.

The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

At this time there is not a water main near this property of sufficient size for firefighting. The closest fire hydrant is located next to Fire Station 5. Old Wire Road has a 4" PVC main providing water East to Rom Orchard; it is reduced to a 2" PVC line providing water North next to Fincher Lane. A minimum 6" to 8" water main will be required to provide water to fire hydrants for firefighting purposes. Refer to the GIS water system map.

If you have any questions please feel free to contact me.

Captain Mark Stevens
Fayetteville Fire Department

Date 9/01/09

Jeremy Pate
Development Services Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request comments on the proposed ANX 09-3409 and RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD.

This rezoning, when built out, may cause any substantial call volume increase and will definitely have an effect on the traffic congestion in the area. The road is narrow and could be Improvements to the road

I also have some concern about the peninsula this annexation will cause. One side of the road inside the city while the other side of the road is outside the city may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. There is a similar situation off Skillern Road almost immediately to the south. This small peninsula extends to Rom Orchard road and places one side of the road in the city and one side outside the city.

Sincerely,

Captain William Brown
Fayetteville Police Department

City Engineering Division Comments

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by TODD JACOBS for property located at 3231 N. OLD WIRE ROAD, NW CORNER OLD WIRE ROAD AND ROM ORCHARD ROAD. The property contains approximately 39.33 acres. The request is to rezone the subject property to RSF-4, RESIDENTIAL SINGLE FAMILY 4 UNITS PER ACRE.

Planner: Andrew Garner

Public water is available to the property. There is a 4" main at on the south side of Old Wire Rd. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sanitary sewer is not available to the site. There is a 18" public main at the intersection of Old Wire Rd. and Crossover about 2500' to the southwest of this property.. Public mains may need to be extended to the property to serve any proposed development.

The site has access to Old Wire Rd. Old Wire Rd. is a two lane paved city street in this location. Street improvements will be evaluated with development submittal.

Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain.



August 3, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Written Statement - Rezoning of 39.33 acres along Old Wire Road

- a. The subject property is located in Intended Growth Sector area by the City Plan 2025. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development (TND) is to be centered." The development team has created a master plan framework in conjunction with the proposed Cambridge traditional neighborhood development that is consistent with land use planning, principles and policies of the 2025 plan. We believe the master plan for the Old Wire area and the TND form of Cambridge match the goals of the City Plan 2025.
- b. The property is currently being annexed. Rezoning the property to RSF-4 would be in line with the City of Fayetteville land use policies for an intended growth sector area.
- c. Old Wire Road is currently a two-way asphalt paved road with approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. The primary flow of traffic from this development is expected to take Old Wire Road either north to Joyce Boulevard or south to Crossover Road, which is scheduled to be widened to a four-lane boulevard in the near future. At the intersection of Old Wire Road and Crossover Road, Old Wire is currently a three lane road with a turning lane, curb and gutter and shows an efficient level of service for traffic. The intersection of Joyce Boulevard and Old Wire Road to the north is currently a two lane stop sign intersection. There is a low volume of traffic at the intersection of Joyce and Old Wire and it should not prove to be problematic or affect a delay on travel times.
- d. The proposed rezoning to RSF-4 will not dramatically increase population density. The widening of Hwy 265 to a four-lane boulevard, the subject property and the neighboring properties to the east will see additional homes and businesses in the near future. The master plan shown in conjunction with this neighborhood will provide a structure of planned growth that will include short blocks, ample parkland, trails, sidewalks, and a mix of uses that will inherently provide amenities for the project – all ideals intended through the City's Plan 2025. There is a recently built sewer pump station to the east very near the proposed connection of water and sewer lines that the development will utilize. A newly remodeled elementary school and a recently-built middle school are located very close to the proposed development. There is also a proposed school site in the 200-acre master plan shown in conjunction with this development.
- e. A traditional neighborhood development would not be allowed to occur with a zoning of R-A. Additionally, the subject property has been designated by the City Plan 2025 as an Intended Growth Sector. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." R-A zoning is intended for use by one-acre homes, estate lots, or farmland. The property will be entirely single family to not change the land use in close proximity to the existing neighbors.

Respectfully,

Todd Jacobs

Director of Design



August 5, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Rezoning Application - Written Description - 39.33 acres Old Wire Road

Appian Centre for Design is requesting the rezoning of approximately 39.33 acres located on along Old Wire Road to RSF-4.

- a. Currents owners of the property are Hank Broyles (Old Wire Road LLC) and Thomas C. Lee and his wife Barbara Lee.
- b. The subject property is located in the City of Fayetteville planned growth area. It will be proposed as a Traditional Neighborhood Development designed in conjunction with a 200-acre Master Plan that will create a framework to accommodate long term growth in northeast Fayetteville. This framework is designed to preserve open space, tree canopy, stream corridors, create trail corridors, and link neighborhoods on the East side of town. The subject property is located in what the City Plan 2025 refers to as an Intended Growth Sector. City Plan 2025 describes them as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." The development team is dedicated to creating a framework for an Old Wire Neighborhood that matches the city's goals.
- c. The property will be design as a Traditional Neighborhood Development. The surrounding properties are currently R-A with several single family homes to the south, however, a few hundred feet to the west all properties are RSF-4, with a large parcel to the northwest zoned as RT-12. The proposed development will be entirely single family with large green spaces or fields and small parks to blend in with surrounding pasture. Most lots at the proposed subdivision will be larger than typical TND neighborhood lots at seventy to eighty feet in width to better fit in with the surrounding homes. Architectural style will similar to surrounding homes as future elevations will show.

Traffic from the proposed subdivision will initially utilize Old Wire Road to the south and east. The subdivision, however, will build the first extension of Bridgewater Lane, which will eventually connect west to Crossover Road. In the associated master plan this extension is proposed as a boulevard section and should connect well with the existing Crossover Road, slated to be widened to a four lane boulevard in 2011, forming a strong street axis for this section of northeast Fayetteville. Old Wire Road is currently a two-way asphalt paved road with no curb and gutter and approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. Traffic from the subdivision is expected to be split north to Joyce Street and south to Crossover Road and not overburden the current system.
- d. Water and sewer lines are each located at the intersection of Old Wire Road and Skillern Road. The lines will be extended to the property where sewer and water will service homes in accordance with Fayetteville UDC.

Respectfully,

Todd Jacobs
Director of Design

Correspondence Received (Letters of Opposition)

Colene Gaston and Roger Montgomery
3270 Rom Orchard Road
Fayetteville, Arkansas 72703

September 9, 2009

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commissioners:

We live one house back from the eastern boundary of the Old Wire Road property proposed simultaneously for annexation into the City of Fayetteville and for rezoning to Residential Single-Family, Four Units per Acre (RSF-4). We opposed previous requests to rezone and annex the property that were denied by the City. We also opposed the request for a Conditional Use that was denied by Washington County. Nothing has changed since those previous requests to alter our opposition to the proposal currently before the Planning Commission. If anything, we believe that there is now more reason to deny the requested rezoning as there clearly is no need for an RSF-4 subdivision in this area. There already are several subdivisions on Crossover Road and another on Skillern Road that have completed infrastructure but that remain all or mostly vacant lots.

The proposed rezoning would result in an isolated zone of RSF-4 that is surrounded by property zoned for agricultural or residential development with a maximum density of either one-half or one house per acre. In fact, the single family homes in the area generally are on lots of three to ten acres. Several of the properties have livestock or agricultural uses. Some of the acreage is protected from development in perpetuity by conservation easements held by the Ozark Regional Land Trust. Rezoning the subject property to RSF-4 would be incompatible with the surrounding area.

We recognize that Fayetteville will continue to grow and develop. We support infill in the City core and City policies that discourage sprawl. While some may argue that keeping this area rural supports sprawl, we think that's more the case if an RSF-4 development is permitted in the middle of stable, rural properties. We have lived in our house for fourteen years. In that time very few new homes have been built in the area. Most of our neighbors are committed to maintaining the rural character of the neighborhood. It is very unlikely that their properties would be densely developed, even if zoning restrictions were relaxed. In addition to benefitting our neighborhood (and we do think of it as a neighborhood even though it's rural), we believe that it benefits the entire community if some neighborhoods with a more rural character and open space are preserved. This also is in keeping with the City Plan 2025 for the subject property.

As a practical matter, the roads in the area are not adequate to handle development as intensive as four houses per acre. Old Wire Road has a blind curve just to the west of the development when traveling in either direction. There is a second dangerous curve that borders the subject property to the east. Numerous cars have failed to navigate this curve. Traffic

Comment to Fayetteville Planning Commission
Re: Rezoning and Annexation Request for 3231 N. Old Wire Road
September 9, 2009
Page 2

congestion already is significant at the intersections of Old Wire with Skillern Road and with Crossover Road.

We do not feel as strongly about the proposed annexation as we do about the proposed rezoning, so our inclination is to take into account the recommendation of the City's Planning Division before taking a firm position. The report of Planning Division is not yet publicly available. We note, however, that the proposed annexation would create a peninsula of land in the City that juts out into the County. And we do oppose any action that would facilitate or result in higher density development of the subject property.

Thank you for your consideration of these comments.

Sincerely,


Colene Gaston


Roger Montgomery

September 1, 2009

TO: Fayetteville Boards of Annexation and Rezoning
RE: Property at Old Wire and Rom Orchard Rd
Request for Annexation and Rezoning

To Whom it May Concern,

As 23 year residents of 3162 Rom Orchard Rd, Washington Co, Arkansas, we would like to publicly express strong disapproval for the proposed zoning and annexation requests for the above-mentioned property. This letter may be read at the September 14 public input meeting as well as copies given to each relevant board member in our absence. We will be out of state during the time of this hearing.

The following list gives some of the reasons that need to be seriously considered before this annexation and rezoning would ever be approved.

1. The character of this area is primarily rural and agricultural. Most landowners have property of three or more acres. The basic integrity of the area should not be altered to include multi-family use of the density requested.
2. The land is a peninsula jutting out into Old Wire Road for a large portion of its total size. Considering only the Old Wire Road lines of vision, either direction is dangerously blind around this peninsula. The entrance into or from Rom Orchard is a similar hazard. The traffic speed is too fast for safe entry and exit with the addition of the high number of vehicles involved in a large subdivision.
3. At the intersection of Skillern and Old Wire Roads, traffic from the west toward Hwy 265 has the right of way at this time. That is yet another very blind corner for those of us traveling toward that intersection. Traffic speed down Skillern is significantly more than would allow for ample yield time.
4. The morning commuting hours already present a difficult traffic issue with the number of cars continually going toward the light at Old Wire and Crossover Roads. It requires significant time to enter that stream of cars when traveling from the areas going north from the stop sign into Old Wire. A traffic count might be feasible to show how the problem we already face would be compounded many times over by adding ANY extra traffic each morning. It could only be dangerous as well as difficult.
5. To avoid the problem just mentioned, traffic from a new development would almost certainly go down Rom Orchard to get to Skillern to go with the unhindered route. Rom Orchard is quiet, SMALL and constructed of the chip and seal material not meant to withstand heavy traffic. Our road would be ruined.

6. The water treatment facility at the Old Wire/Crossover intersection has resulted in many days of unpleasant odors coming all the way to Rom Orchard and beyond. The area has homes serviced with septic tanks and the additional burden on the city sewer system would provide us with even more foul smelling air.

7. Most of us who oppose this high-density project would not object to housing that fits the area's use. Homes no less than one per acre would still be responsible for a traffic burden as well as difficulties in the previously-mentioned areas. It would be far better than the 3 home per acre ideas presented thus far.

Please add our names to the large number of rural residents of the Rom Orchard area who oppose the development of a small house-large population neighborhood in rural Washington County.

Sincerely,

Larry and Tanya Floyd
3162 Rom Orchard Rd
Fayetteville 72703

From: "Shelley Cassar" <shelley@blisscupcakecafe.com>
To: <agarner@ci.fayetteville.ar.us>
CC: "Stephen Cassar" <stephenc@ticketsage.com>, "Shelley Cassar" <shelley@bl...
Date: 9/9/2009 3:58 PM
Subject: Rezoning and annexation at 3231 N. Old Wire Rd

To Whom it May Concern:

We live at 2990 N. Rom Orchard Rd. We moved in to this house last year because of the quiet, country feel of the street and area. We were disturbed to hear talk of a subdivision being placed on the corner of our street. The roads in our neighborhood are very narrow and windy and not at all conducive to heavy traffic flow. Not to mention my children currently use these roads to ride bikes on and walk the dogs. The additional traffic would cause our kids to not be able to enjoy the country atmosphere we moved here for.

We are opposed to the rezoning and annexation at 3231 N. Old Wire Rd. The additional traffic and noise that a subdivision would create would no longer make our current residence desirable. Most of the homes, including ours are on 2plus acres, most being 4plus acres. A subdivision does not fit into this type environment. Please leave some of Fayetteville untouched by yet another subdivision.

Please consider this seriously as it would effect the lives of many families.

Kind Regards,
Shelley and Stephen Cassar

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Susan Brisiel

Address 3150 N. Rom Orchard Rd

Printed Name Susan Brisiel

Fayetteville AR 72703

The proposed rezoning is so totally opposite the current community of homes.

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature

Sharon Payton

Address

3845 Bridgewater

Printed Name

Sharon Payton

Fay. Ar. 72703

Mr. Garner, I strongly oppose this plan. I feel it will be very detrimental to our neighborhood.

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers,

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Paul H. Pannell

Printed Name PAUL H. PANSELL

Address 3287 ROM ORCHARD RD FAYETTEVILLE

72703

ON 3 ACRE w/1-RESIDENCE

MY INPUT: I'd agree to is one(1)

RESIDENCE PER 1 1/2 ACRE, RHP

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature

Terry Payton
Terry Payton

Printed Name

Address

3845 Bridgewater Lane
Fayetteville, Ar
72703

From: Susan Brisiel <susan.brisiel@fayar.net>
To: <agarner@ci.fayetteville.ar.us>
Date: 9/9/2009 2:47 PM
Subject: Opposition to proposed rezoning on Old Wire Rd

Mr. Garner,

Please allow me to go on record as strongly opposing the proposed rezoning of property located on Old Wire Rd.

I live on Rom Orchard Rd, a nice quiet rural area with all the homes occupying at least 3 acres. The proposed 4 houses per acre is just totally at odds with the existing setting.

Letters in opposition have been faxed from Susan Brisiel and Sharon Payton.

Thank you for considering these letters in your discussion of the area.
Susan Brisiel

--

Please note email change: susan.brisiel@fayar.net
Susan Brisiel
Admin Asst
Vandergriff Elementary
479.527.3600 office
479.527.3603 fax

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is our understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4). We own 10 acres located at 3284 Rom Orchard Rd., which is adjacent to the subject property to the east, across Old Wire Rd.. Our property is adjacent to the subject property for 895 feet. We have lived at this location since 2000.

We oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

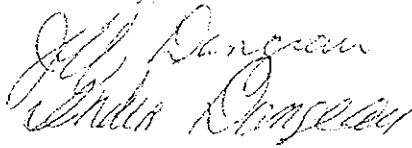
1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, we respectfully request that the proposed action be denied.

Sincerely,

Handwritten signatures of Jeff and India Dangeau in cursive script.

Jeff & India Dangeau
3284 Rom Orchard Rd.
Fayetteville, AR 72702
(479) 521-7416

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
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The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers.

RECEIVED

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CITY OF FAYETTEVILLE
PLANNING DIVISION

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Roy C Rom

Printed Name ROY C. ROM

Address 3098 ROM ORCHARD RD 72103
FAYETTEVILLE

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
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The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers.

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Larry Floyd Tanya Floyd
Printed Name Larry Floyd Tanya Floyd
Address 3162 Rom Orchard Rd

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers,

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Valerie E. Fletcher

Printed Name VALERIE E. FLETCHER

Address 3281 Rom ORCHARD RD, FAYETTEVILLE, AR 72703

Planning Commission Minutes

October 10, 2005 (ANX Denied)

May 08, 2006 (ANX Denied)

September 14, 2009 (ANX Denied)

Planning Commission

October 10, 2005

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ANX 05-1626: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at THE NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is in the Planning Area and contains approximately 29.70 acres. The request is to annex the subject property into the City of Fayetteville. Planner:

ANDREW GARNER

RZN 05-1627: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 34.51 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

Ostner: Our next item is another annexation for Old Wire Investors, ANX 05-1626.

Garner: These items, fifteen and sixteen on the agenda are also tandem items for an annexation and a rezoning. The property contains four parcels consisting of approximately 30 acres to be annexed and the applicant is also seeking to rezone approximately 35 acres which includes 5 acres located in the city currently and zoned R-A. The site is located northwest of the intersection of Old Wire Road and Rom Orchard Road. It is surrounded by rural residential and undeveloped pasture with unincorporated Washington County to the north, east and south and property that is zoned R-A and the City of Fayetteville to the west. There is also unincorporated areas of Washington County to the west of some of the property line. Staff has received public comment from adjacent property owners objecting to this annexation and rezoning and has discussed this with the applicant. The applicant has indicated that they have discussed this request with the surrounding property owners and haven't been able to gain support for the annexation and rezoning. Staff finds that annexation of the property will not create an island of unincorporated property but it will extend a peninsula with irregular property lines that contain some out parcels between the proposed annexation area and the city limits. We find that expanding the city limits in this configuration is not in compliance with the policies for annexation and would create undesirable boundaries and problems with creating a peninsula in this manner with regard to extending public services across county and into city boundaries and will create gaps of unincorporated property almost entirely surrounded by city limits. The site is currently utilized for rural residential uses and undeveloped pasture and the applicant anticipates subdividing the property for single family use and proposing a density of four units per acre. Staff finds that this proposed zoning is not compatible with adjacent and nearby agricultural and rural residential uses. The General Plan does designate this area for residential

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land uses. However, this designation doesn't specify the density levels. Staff and the Planning Commission and City Council is charged with evaluating the surrounding land uses and this proposal's compatibility with these units. Staff finds that the proposed density is not consistent with density and surrounding zonings and existing land uses currently in this area. Engineering, Fire and Police Departments analyzed this proposed annexation and rezoning request and the Police Department found that the proposed annexation and rezoning would not substantially increase the load on police services. The Fire Department noted an adequate response time of seven minutes as well. The Engineering Division found that public water is adjacent to the site and sanitary sewer is not adjacent to the site with the nearest sewer main being approximately 2,500 feet to the west of this property and an off site sewer main extension would be required to serve the development. In summary, we find that the proposed configuration of this annexation would create an undesirable boundary and would create an undesirable peninsula and we find that rezoning is not compatible with the surrounding area. With that, we are recommending denial of both items.

Earnest: I'm Hugh Earnest representing Old Wire Investors. We find ourselves on the horns of a dilemma tonight. About a month ago after careful consideration of this annexation request with staff we pulled the item from the agenda and have attempted to contact a large number of people generally bounded by Rom Orchard Road. There is a hatched area where we sent out letters to 28 different individuals asking for their support of annexation, the request was not for the land that Old Wire Investors owns but rather, for the property adjacent. What we attempted to do to meet what I believe is a legitimate concern of staff is to bring in something that is larger. However, we were unable to secure unanimous support from those individuals so we have gone back and are now bringing forward to you the original annexation request that we had earlier voluntarily pulled from the agenda in order to try to meet the objections of staff and bring forward a larger piece. Let me also make the point, five acres of the area is already inside the city. This is adjacent, it is a peninsula, the developer is willing to install the 2,500 foot sewer line to the property and the water line also to the property in response to the information that we just received from Colleen Gaston, in the many conversations that I have had with David Jurgens there has never been concern about capacity short fall in this particular part of town with respect to the capacity of the plant. Such is not the case, as you well know, in west Fayetteville. In this particular case there has never been any concern expressed on that. As recently as this morning I had a conversation with Mr. Jurgens because he is a good planner and he was talking about how he would need to wrap the 4" line down Rom Orchard Road to get water pressure into the area. Mr. Jurgens, from his perspective, is certainly thinking about the necessary infrastructure improvements that the area would require for adequate

water in that particular area. The bottom line, and the developers should be commended, Mr. Spradling, as a developer of record, is here with me tonight, the density that is proposed is slightly in excess of two units per acre. That has already been turned into the city. That discussion has already occurred with city staff. The questions that Mrs. Allen continues to ask are valid questions about fire stations. In my time with the city we certainly were aware of the issues in that area. I commend the city for moving forward aggressively and deciding to put Fire Station #5 at the corner of Old Wire Road and Crossover is their first priority. I suspect that since the city has a template for building fire stations that the station will be done well in advance of the development of this area and I think that probably occurs for the other developers in this area because the template that was used in west Fayetteville I'm sure will be essentially the one that is used in this area. I doubt that there is going to be significant changes in the design. I think that pretty much covers the points that we wanted to make and we are certainly respectful to answer any concerns that you may have with respect to this joint request for annexation and rezoning.

Ostner: At this point I will open it up for public comment if anyone would like to speak to this request please introduce yourself and give us your comments.

Parnell: I'm Paul Parnell, I seem to be the one right in the middle of this proposition. I don't necessarily object to the proposition. However, I feel that whoever is gaining from this transaction should defray any costs that we may have in connecting our residences to the sewer that may be established. We presently have perfectly good septic tanks and lateral fields that is not costing us anything to operate and we feel that we should be compensated by whomever is gaining from this endeavor because we don't consider ourselves gaining from this activity. We are very happy with what we have got. However, we are not opposed to developments and appreciate those things. However, fire protection, as just mentioned, is something that should be addressed at this time because we, at this particular month of October are to reconsider our contract with Goshen who has been providing us fire protection for many years. We need to have that addressed. In the event that we are annexed into the city, when does the city assume responsibility for fire protection for this area? Those are things that we feel are very important. Thank you very much. I live at 3287 Rom Orchard Road.

Floyd: My name is Larry Floyd, my wife and I live at 3162 Rom Orchard Road and I didn't get a letter about it but I saw the sign in the field and fixed it up there so everybody could see it and proceeded to see what was going on. The letter that you mentioned earlier is the letter from Colleen Gaston but she really said what we are saying in the neighborhood. I have a number of people here who are opposed to this and who agree with staff

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on the recommendation that they made. She was unable to attend but she wrote this letter and she basically says that she is opposed to both annexation and rezoning. They are my neighbors on Rom Orchard Road. She talks about the wastewater treatment plant down at Old Wire and Crossover and the smell is unbelievable. Even when you are in your car with the windows up when you guy by there you can smell what is taking place down there. She says that there have been a number of actions to attempt to address this but it still persists. While there may be a need for additional housing in Fayetteville the question of adequate capacity may apply to development within the existing city limits and it does not seem prudent at this time to expand the land area to which the city must provide sewer service. The proposed rezoning is out of character with our neighborhood. If you have been out on Rom Orchard Road it is the greatest area in Washington County. It is agricultural. There are four of the neighbors that have large horses. I have a miniature horse farm on that road. There is an apple orchard, people stroll up and down it like you are back in the 50's and pick an apple and eat it on the way home. It is unbelievable, it is like going to the Apple Festival every day. It is just a wonderful area. There are people walking their dogs and their horses and everything else along there. Traffic is a big concern for us as well. The character of our neighborhood is 3-10 acre lots and a lot of it is livestock and agricultural use. The other thing, I mentioned the traffic, the blind curves at Old Wire Road, there are a couple of them. People frequently go off of that curve right by this development into the neighbor's fence. Their fence is being fixed all the time because of the traffic there. It is very dangerous. I'm concerned with the stop sign that was placed at Old Wire Road.

?: The tax base unless you are farming it forces you to do something or sell out and you need to take those things into consideration. I happen to farm my five acres and I'm making enough money that it is considered a farm by USDA standards. If I'm taken into the city I plan to try to stay agricultural because I plan to continue farming. I grow vegetables, my wife sells at farmers market. We are pleased with that and we are pleased with where we live. I don't have a great concern about this particular proposal here tonight but I do think that we are sticking our head in the sand when we oppose development because it is going to increase traffic. The main traffic on Old Wire Road is about 200 gravel trucks a day now. We are in between the gravel pit off of 412 and the asphalt pit in Springdale. You people have a difficult job and I appreciate your time. I didn't plan to talk tonight but I wanted you to know that not everybody is opposed to this annexation across the street from me.

Ostner: Is there any further public comment? We will come back to the applicant.

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Dangio: My name is Jeff Dangio, I live at 3284 Rom Orchard Road. I am the guy with the cars going through the fence. We own a 10 acre tract directly east of the subject property and have a wood rail fence around it. There is a sharp curve to the north at the intersection of Rom Orchard Road and Old Wire. I guess more than once a year we have a vehicle come crashing through that fence. If we add a high density development in there you automatically increase the traffic. There is a safety concern that is kind of unique to our property. A lower density development would be better but if you do go with this proposal we would ask that you do something to improve the safety of that curve in some way. The good thing about the cars crashing through the fence is I may never have to pay to replace that fence. The insurance companies pay for a significant portion of it every year. The down side is if there are kids around and they happen to be at the wrong place at the wrong time we could have a bad situation. Thank you for your time.

Payton: My name is Terry Payton and I live on Bridgewater Lane about 600 yards east of the development. I just want to address the traffic concerns and make a couple of points that have not been made. In that section of Fayetteville the traffic from the east funnels to Crossover Road, you either go to Old Wire and Crossover or the Joyce and Crossover intersection. My main concern is the density that is being proposed. Tonight you approved the five acre subdivision that will be on Skillern Road from 11 up to 20. Bridgewater Estates has 22 or 24 lots and all of those lots have sold. There are only three houses there now. That is going to increase the traffic load and then if this subdivision goes in it will further increase by however many homes will end up there. The next time that you are out there and you see the Joyce Street Crossover intersection and the Old Wire Crossover intersection, both of those are backed up in the morning. That is my main point.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater, just east of this development. I don't know much about zoning law. I don't care whether this area is annexed to the city or not, I don't have an objection to it being annexed to the city because I understand that that would give the city more authority to regulate it. I do have a big problem with the zoning. It is totally inconsistent with the lots in that area. The land that Terry and I live on and some of the other people, that started out as a 40 acre tract, and Mr. Stevenson sold it off and in the covenants, private covenants, there can't be any lots sold that are less than five acres. I live on 7 ½ and Terry lives on 8, there are a couple of 10 acre tracts and a 5 acre tract. These are all totally inconsistent with allowing four houses per acre. That is not just true of that land, it is also true of the other houses in there, I would guess that they are all one to five acre lots. To allow four houses on one acre is totally inconsistent with what is out there now. I don't care about the annexing but I do have a big problem with the zoning change. Thank you.

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- Ostner: If there is no further comment from the public I will close the public comment session and bring it back to the Commission.
- Spradling: My name is Marcus Spradling, I am the developer. A couple of things that I ran into on the annexation was the majority of the people I talked to did not want to annex until they saw the sewer and water improvements, which is the same issue you get into with building a fire station or a Wal-Mart Super center where nobody lives, you don't do it. The people come and you bring the infrastructure to them. What we are trying to do is provide infrastructure to the area for water and sewer which eventually will lead to better fire protection for the people out there. You've got Fire Station #5 which is basically ready to go and should be built before we ever get there. The zoning, you have got one unit per acre or you've got four units per acre. There is no middle ground, there is no in between. We have handed in all of the Preliminary Plat information showing that we are just a little bit over two units per acre because we felt like that is what best fit in the neighborhood. We weren't going in there trying to put 65' wide lots with little houses in there and drop it in the middle of that market. It is an upscale subdivision and the houses that will be built in there are in the same area and the same price ranges as what is built out there now so the property values should increase. Our intent is not to devalue the property, it is to increase the value of the property. We are providing the water and sewer extension which will in turn allow people to tie into it. I don't know what other questions you may have. Anything we haven't covered?
- Pate: I just want to call your attention to page 13, the citizens that did speak, numbers five, six, 13, 14 and 15 did speak tonight, just so you have an idea of where they were coming from.
- Vaught: I guess my problem is as we were speaking of earlier, where the other one was a logical shape and extension, this one seems illogical to me with the chunks missing, the spur out and this one creates more of a peninsula hanging out there by itself. I know Mr. Earnest spoke to bringing a larger tract forward, can you repeat what you said?
- Earnest: What we attempted to do at the request of staff, was to bring forward a larger more together area, if you will. There is a map in there that shows a hatched area bounded by Rom Orchard Road going back to the city limits. The hatched area shows the 28 property owners that we sent letters to. The majority of those individuals are in favor of annexation, but not all. One of the burdens that we have is unanimity is required for annexation. I understand that and support it, but that is an effort that we made to accommodate the criticisms that this does not cover a larger area.

Vaught: It just makes it hard for us and staff to support something like this.

Spradling: It is not that we have singled out a piece of property out in the middle of nowhere. 25% of this property is already in the city. We are trying to extend what we have in the city. We are already in the city, we are just trying to incorporate the balance of the property into the city. With us putting in the infrastructure the majority of the people that I talked to will come in but they are not going to allow their taxes to be raised and not get any benefits. They aren't buying in to raise my taxes and when you get ready to bring me sewer. They can't get it unless we bring it in there, and they are not willing to do something without seeing that they can tie onto it first. That is where the consumer is today.

Vaught: My concern is looking at the guiding policies, I counted six out of fifteen that this directly conflicts with. There is a peninsula issue, areas that exclude entire subdivision or neighborhoods or divide areas up, boundaries for annexation follow natural corridors. It doesn't follow natural corridors because there are bits and pieces here and there. You've got a couple of pieces of county that are kind of stuck out there in the middle of the city. It doesn't create islands but it comes close. Areas that are currently served by public services should be annexed. This is a 2,500 foot extension of sewer main, that is a pretty good chunk of sewer main to extend.

Spradling: That is because it follows the road. As a crow flies we are 1,320 feet from RSF-4.

Vaught: As for the engineering, I don't know if any additional lift stations would have to be constructed. I assume the one at the corner of Crossover and Old Wire would suffice?

O'Neal: That one is a substantial lift station, I believe it is a 24" forced main. There is not a capacity issue at that station at this time.

Vaught: While we are on it, can you address the smell of that lift station?

O'Neal: Due to the time that the sewer is retained in the station it smells bad. There are a lot of other items that can be done with lift stations, that is something that we can look at.

Pate: A lot of times when a lift station is large and a forced main is large and is not 50% or closer to capacity it sits there for a longer amount of time so that is why the smell is produced.

Vaught: So more development would help it. My main issue is about the annexation. I know that we are stuck in that spot where it is really

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difficult but it is leaving a lot of gaps and holes in there and it is an area with a lot of development. Typically something like this I would be in support of but this one I'm having a hard time with those boundaries and how you are tying together. I know you are having a hard time with the neighbors and it is a chicken and egg kind of situation, but even if you run the sewer main down that line, they are not automatically connected, they are going to have a substantial expense to connect to it. We are not guaranteeing those people will even connect to it.

Spradling: No, but they will have the ability to connect to it and it increases their property values because now they have access to sewer that they didn't have before.

Vaught: Correct. You think that those people are going to come in and increase this area. That is what I am having trouble with.

Spradling: The consumer is just not willing to bet on the come. They want to see the baby.

Graves: I have the same concerns. If it was one of the guiding policies or two of the guiding policies it would be one thing because they are guiding policies and they are things, that as I said earlier, we use our common sense on. This one conflicts with a number of the guiding policies and just as I said the first one I didn't think was a peninsula, this looks like a peninsula to me. It looks much like the tail that is on the one mile map which is in the city, but I didn't vote for anything like that. This is a peninsula without question, it is long and oddly shaped and doesn't create nice boundaries for the city, it doesn't follow natural corridors and is not an area that is easily serviced in any way and these are some longer response times than what we saw with earlier items as well and I cannot support annexing this property the way it looks right now.

Spradling: I think the long response time was an issue and that is why the city is building a brand new fire station right next to it. Obviously, they know something that we may not know. They have headed off that problem and they are planning on the expansion being on the east side of town.

Graves: I'm not looking to argue with the applicant, I'm discussing with my fellow commissioners this item. If the chair recognizes the applicant, that is fine. I'm not looking to have an argument back and forth, I'm just making my comments to my fellow commissioners.

Spradling: I respect that, thank you.

Clark: The only reason I would be in favor of annexation is we can control how it develops. I'm not in favor of rezoning at all. If we annex it I will vote to

let it sit just like it is. Step systems scare me. Development within the county close to our borders scares me. That puts us on a horn, what do we do? I don't think it is bad to annex it but I think it would be very, very bad to rezone it. I am seeing a very eager developer so I'm more inclined to annex it.

Ostner: Just as a procedural issue, most developers withdraw their annexation requests if their rezonings are denied since they simply don't want to pay more taxes on land that they can't develop. Are there any motions?

Myres: I will make a motion that we deny ANX 05-1626 as recommended by staff.

Graves: I will second.

Ostner: Is there further discussion?

Vaught: My issue is mainly the boundaries and the way that this is drawn up and the gaps that it creates. I agree with staff's findings that we need a more logical boundary to create this annexation. It is an area of development, typically I would like to see this property annexed, because, like you said, there is a fire station coming in here. The way that this is coming in to me is not correct. We don't know when the stuff around it is going to come in. I would like to see a bigger picture in this and that is why I will be voting against it. Not because I don't think this is a right piece, but it just causes too many conflicts.

Ostner: Is there further discussion? Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to deny ANX 05-1626 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Ostner: Mr. Williams, is the same procedure in place to appeal our recommendation?

Williams: That is correct. At this point the petitioner would need to decide whether they want to withdraw the rezoning petition at this point in time or have that acted upon tonight also? You could ask to table the rezoning if you wanted to think about it or you could go ahead and ask for action to go forward.

Earnest: I think it is obvious that we will ask for it to be tabled.

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Ostner: The applicant has requested the next item to be tabled. That is RZN 05-1627.

Clark: So moved.

Myres: Second.

Ostner: Would the applicant like to share anything before we vote? Would anyone from the public like to share anything on the rezoning request before we table it? I will close the public comment session and bring it back to the Commission. Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to table RZN 05-1627 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Announcements

Subdivision Committee Appointment: Commissioner Trumbo to take Commissioner Graves' seat.

Meeting adjourned: 8:45 p.m.

ANX 06-2046: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 30.70 acres. The request is to annex the subject property into the City of Fayetteville.

RZN 06-2047: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 35.51 acres. The request is to rezone the subject property to RSF-4, Residential Single-Family, 4 units per acre.

Garner: This property is located at the northwest intersection of Old Wire and Rom Orchard Road east of Fayetteville. I will summarize both the annexation and rezoning together and we can answer any specific questions you might have. Subject annexation property was included in an annexation request that came before the Planning Commission on October 2005. Staff recommended denial of the request at that time and annexation was denied unanimously. The applicants included an additional property owner and one acre parcel on the north side of Old Wire Road in the current request for annexation and rezoning. Additional background, in March 2006 the applicant submitted a preliminary plat to the City of Fayetteville for a subdivision with 77 residential single-family lots. This subdivision has been tabled until the type of sewer service can be determined. The property that can be annexed contains five parcels consisting of 31 acres. The rezoning application contains approximately 5 acre parcel as well as that within the city limits. There is a difference in the acres between the annexation and rezoning. The applicant proposes annexation of 31.00 acres into the city and rezone the property if it were annexed from Residential-Agricultural to RSF-4, Residential Single-Family, 4 units per acre. The current site has access to Old Wire Road. The site has water available and sanitary sewer is not adjacent to the site. The nearest sewer main is approximately 2,500' west of the site on Old Wire Road. The fire and police department responded, and did not have any adverse effects on their services noted. Other than that they did acknowledge that it would be a change in the population density in this area. Staff finds annexation of this property would be in contrast to the city's policy not to annex islands or peninsulas. Finding that the configuration of these parcels would create a peninsula that would be undesirable and would have potential to have city services extended to areas where it would provide some potential service problems. Staff has discussed with the applicant that we would be more in support of this request if they were able to get the support of some of the adjacent property owners and provide a more continuous parcel to be annexed in and rezoned. As far as response, they have been unsuccessful in obtaining support from neighbors. Staff finds that this annexation and rezoning in general would not be compatible with

this area. It is largely agricultural, rural residential at this time. The density proposed, 4 units per acre, would not be compatible with these land uses. The closest subdivision is west of Crossover Road or south of Skillern Road. Those are the main reasons why we recommend denial and we would be happy to answer any questions you might have.

Anthes: Would any member of the public would like to address either the annexation or rezoning for Old Wire Investors.

Gaston: Hello, my name is Colleen Gaston at 3270 Rom Orchard Road, which is one of the connector streets to this proposed subdivision. I definitely oppose the proposed rezoning. If you have looked at any of the attached maps to the staff report, you will see surrounding on all sides of this proposed annexation and rezoning land, the houses are on tracts of minimum 2 acres. More often, 3,4,5,6, and 10 acres. This falls completely out of character with this surrounding area. I'm not clear on the staff report on the traffic issue, exactly on what is being said. I guess there is a letter from the police department from Captain William Brown. It stated that the proposal would have negligible impact on the cost from police services and traffic congestion for the area. Elsewhere in the report, it talked about increasing the density of traffic from approximately 170 vehicles per day to 1,380 vehicle trips per day. To me this is not just a negligible increase, particularly at certain times of the day. The intersection of Old Wire and Crossover, at morning rush hour and evening, has traffic backed up at least a mile on Crossover. This will clearly add to that traffic problem, not to mention the fact that there are several blind curves associated with this project. I do, however, have mixed feelings about the annexation. Some of my neighbors share those same concerns. If there is going to be development in this area, and we all know there is going to be more development, we would like to see it on a sewer system. We think that it would be better for the city and those of us in the area. If this was developed with sewer as opposed to septic, if you're looking at 80 houses on 35 acres. Its sort of a catch twenty-two, I understand the staff recommendation for why they oppose the annexation. At the same time, I think there is some value to the city having property come in with sewer. Although, not as densely as proposed. The idea about this would be if this was annexed in as R-A, but allowed to have sewer. I think those are the main points. This did come up before the Planning Commission in October and I know that many of you were here at that time and heard a number of the neighbors talk about how this proposal was not in keeping with the area. This is an area that is going to be developed with a lot of subdivisions. The surrounding properties are pretty stable and are going to stay with very low density housing on it. This would be an island of very dense development and for that reason, I think I support the staff's recommendation that this not be rezoned RSF-4.

Anthes: Thank you Mrs. Gaston, would any other member of the public like to address this item? Seeing none, I will close the public comment section. Oh, in the back.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater and I've spoken here once before, so I don't really want to repeat what I've already said. But I would like to join in with Mrs. Gaston said. The report from the senior planner states, this use is not compatible with adjacent land use or density in the surrounding area. We had to sell a 40 acre tract that had its own covenants and no lots less than 5 acres. That's the 40 acres just across the street, just east of this land. While there are closer houses nearby that are less than 5 acres, they are not even close to this dense. I don't know if you have looked at the traffic, but I've talked with Perry Franklin about this, who I think does a great job. If you are traveling west on Old Wire Road at Crossover, you will sit thru three lights minimum between 7:30am to 8:15 in the morning. Coming back, going east on Old Wire Road and Crossover, I was just there last week sitting there at 6'oclock sitting thru three lights. I don't know how much you look at the traffic, but the traffic at that intersection at those times of day, going those directions, is horrendous. I don't see what you would do, you would have to change the road out there. If you put in 77 units and expect them to get to work on time and get home at a decent hour. Anyway, this project is just not compatible in that area.

Anthes: Anyone else would like to speak on this item? Seeing none, I'll go ahead and close the public comment section and ask for the applicant's presentation.

Sloan: I'm Charlie Sloan, representing the applicant. I'm a developer in Fayetteville, as you know. I do not have any investment or interest in this project. This project came through back in October at a time that I brought a project through. There were three of us, Mark Spradlin, Tim Estes, and myself. The first project that came through was Skillern Drive behind Savanna. It created a peninsula; it stuck out. It wasn't as big as this one. But, then again, it did get passed. My project, second, I was surrounded on three sides by the City of Fayetteville, I was annexed in. Sitting outside, talking to my engineer afterwards, we found out that this project was denied on the annexation. Later on, I read in the paper where this had gone to the county and had taken a conceptual plat only, to the county. It was not a plat to be approved, but it had gone to the county. They did seem to like it, it was in the paper. They acted like they would develop this property. The problem is to me as a private citizen on this, is if there is a project going to happen out there, sewer is available to this property. I've contacted the developers, I didn't know them, but said why not run sewer out there. They said that they would be willing to go back

and run sewer, at least a couple 1000 feet of sewer. We are out the same amount of money whether we put this on the step system or we put it on a sewer system in the City of Fayetteville. That's the issue that got me involved. One of these days, this area will be annexed in out there and the citizens of Fayetteville will be paying for sewer out there. My problem is, why not let private dollars pay for something that will be a public utility, plus they will have to upgrade the sewer water system, if they put the subdivision in. There is a 4 inch water line going out there, they will be putting in an 8, the City will probably want to upgrade that. It will cost-share you to 12. So, those are the issues that got me involved in this, it's strictly not knowing the issues about the compatibility, the rezoning, or the lay out of the subdivision. Five acres of their property is already in the City. The rest of it, they are asking to come in. The big issue, I saw, was whether this comes into the city as an annexation or not, or if this plan is approved on the rezoning. Tell these people what the process is to go forward, to let them spend private dollars to take sewer out to this area, that I've felt like would eventually benefit everybody in that area. Some of the homes though developed on 5 acre lots, have covenants that will not allow them to ever break it down and develop smaller lots out there. Do you have a need for sewer? I don't know. Obviously, if there is a septic system working fine, it's working fine. I just hate to see a subdivision put on a step system that could be put on City sewer, even though it is a big expense to these people. This is a chance for us to let private dollars pay for it. That's the reason I ask to bring this forward, and try one more time. Ask if that is possible or maybe this is not the mechanism to go with it. Maybe they will get approved by the County and then come back in and request to be put on the City sewer system, which is fine with them. 122 lots, I believe is what the calculations are for 4 units per acre. They were proposing around 82-83 lots on their latest thing. We did talk with one of the neighbors for them, that I happen to know. They agreed to sale the one acre lot that was carved out of this, so it really made this an odd shape piece of property. It still creates a peninsula. We talked with the two other land owners, and they request not to come in. Cooper runs a business, landscaping business and he wishes at this time not to be in. He had a letter signed for me and his wife said he lost it. He didn't have it with him the other day when I chased him down. He did say that he did not wish, at this time, to come into the City of Fayetteville, because he is running a landscaping business. That is my two cents.

Clark:

I have been told millions of times that not creating a peninsula is just a guideline. So, I'm asking for more clarification. If it's just a guideline, and 5 acres is already in the City, what is staff's rationale that the rest of the utilities are not available? What's unique about this one?

Pate: With any annexation request, we look at all those guidelines and policies. If we feel it does not create a dangerous situation or there is some reason that, for instance, a request creates an island and we recommend it, the applicant has gone through every possible means to acquire that property or have that property come in. It's something we will evaluate each and every one of them on their own merit with every single request. The City Council has obviously gone against our recommendation, even recently with an annexation request in northwest Fayetteville. This particular request came before us 6-8 months ago, with very little difference. With the exception of the one acre lot, as Mr. Sloan mentioned. We made a recommendation last summer for the applicant to look at properties, look at page 16 and 20, south of this down to Skillern Road. The property owner, that you mention - Mr. Lee, of course did not what to come in, which is a large notch of his property, in an effort to support this application. That has not been able to be done, for whatever reason. Those property owners do not wish to come into the city limits and staff does not feel this particular request was warranted or meet our guiding policies at this time. With regard to the other utilities as part of our finding, are utilities readily available? No. A sewer line is 2500 feet away. The development of this property would be unique with the surrounding properties. As staff mentioned earlier, the closest property developed as RSF-4 is west of Crossover, as you can see on the same page, or south of Skillern. Those properties are developed more around 2 or 2 ½ units per acre. They are rather large lots in the area, even though you can see that they are much smaller than what's surrounding in the County. It was our rationale that it did not meet guiding policies for City Council and annexation.

Graves: I have a question for staff as well. I'm testing my memory, I remember as Mr. Sloan does, that we saw several of these on one night and that I can see the Skillern Road on our one mile map here. I remember that we approved that one that night and didn't approve the other one. Partly based on staff recommendations, I believe, that staff recommended the one on Skillern Road for some reason. I don't remember what that was at this point.

Pate: The one on Skillern Road was contiguous to an existing adjacent single family residential subdivision. If you look at that property, which those that were not here don't have the benefit of knowing, if you were on Skillern Road and how Natchez Trace curves around, it's directly to the east of that. It is a small portion of property, about 5 acres, I believe. It is much less and does not extend the city limits any further east of those properties surround that. There is an obvious peninsula zoned R-A [to the north] and within a conservation easement and that is not to be developed. That was annexed a number of years ago. The rest of the property is there,

you see, with the addition of the property just east of Township, which was just annexed in as well. This particular case, the city limit line from Skillern goes directly north without variation until you get quite a ways north and we felt it would not meet our guiding policies for this particular recommendation. As you mentioned, Planning Commission at that time, voted against the request to annex that property. We have found that nothing has changed since that particular request to warrant a recommendation.

Anthes: Any further discussion on the annexation request? A motion?

Clark: I'm kind of at a crossroads because I respect staff recommendations but I also know that with annexation comes development rights for the city. In other words, if somebody's going to develop this and put on a step system, since there is no zoning in the County, they can do that. I'd like some input from my fellow commissioners regarding annexing something that would go ahead and develop and not with a RSF-4 rezoning request. If you think it's too dense, there is no transition... I think it's totally out of the norm for this area, but I'm not so sure that annexation is not a wise choice. Opposed to high density and septic system, so I'm interested on the feed back from the commissioners.

Graves: I tend to agree; I don't see anything that's changed from when we saw this in October. We did vote it down last time. By the same token, I understand and appreciate that this could develop that similar density to what's proposed on a step system, if it stays in the county. So, from that stand point, I can see its justification for annexing as requested. I know the density proposed is not appropriate against what's already out there. So, I would not be in favor of RSF-4 on the rezoning request.

Anthes: It seems we have this conversation every time we're looking at one of these rezoning and that is, sort of the threat of development without city streets sections, sewer systems, water sewer, etc... What I have never quite been clear about is whether this body is actually suppose to weigh the threat of what we do as a substandard infrastructure, when we are evaluating an annexation request.

Pate: Really, you should look at it as findings, and part of that are infrastructure and utilities. The findings that are listed there, areas currently served by utilities and other public services should be annexed. Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services. One of those is in the paper right now. I don't believe those services are currently

in this location. The threat of development is before us with every single annexation request we have anymore. There is always a potential to develop something that does not meet these standards. I think that's something that Commission and Council, ultimately the policy making body, has to take in consideration every time they vote on an annexation request.

Graves: I don't believe that this applicant has made a quote threat. I think we've heard some covert comments along those lines from other applicants before. This applicant would prefer be in the City or they wouldn't be here a second time asking to come into the City. They could have gone before us with a step system or whatever, before now, if they wanted to do that. My comment, I used the word threat, but I didn't mean threat by the applicant. I just meant along the lines of the City attaching some more rights on development oversight when it comes in. It's true on all annexations. This one is within shouting distance of existing city boundaries.

Williams: I certainly agree with Jeremy Pate on his analysis of annexation, but I would like to say that annexation is one of those issues where you have - especially City Council - has administrative discretion. The basic question is; do you want this property inside the city? I sure the guide lines will help you make the decision but it no small decision that you make on that level. You can recommend to the City Council an annexation even if maybe wouldn't meet all of the guidelines that we have for the 2020 or 2025 Plan. This is one place where you have tremendous amount of discretion. I just wanted to tell you that, because sometime you don't have any discretion, so this time you have a lot of discretion.

Anthes: Any further discussion?

Ostner: This is complicated and I'm glad I don't have to make the decision. I'm just going to recommend something to the others to make the discussion. The part two that Jeremy read us, 11.6.k: Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. To me, that is a one of the statements that I can use. The property that we are considering is a long distance from sewer. 2,500 feet is a long way to go. Sewer mains are expensive and I think that is important. That changes things, the area adjacent to this is in the City, but is not served by sewer to that extent. I'm not sure I'm in favor of this annexation. I'm certainly against the RSF-4, I would see RSF-1 or even R.5 to be possible zoning district if the Council saw to annex this area. I'm not sure either, but I'll be inclined to be against the annexation.

- Clark: The sewer was 500 ft?
- Anthes: It is showing 2,500 ft.
- Clark: Where is the sewer?
- Sloan: Somewhere out there....laughter...He is not asking the City for the money, the developer is spending that money himself. They are willing to do that, to bring the sewer to them. They will be paying for that 2,500 ft to have the sewer come to them. It's not something the City would deliver to them, nor would water lines would be on them. All those expenses would be on them. I'm just saying, it's more than a wash for them. They probably will spend more money bringing sewer to them, than they would be putting a step system in. That's all I'm saying, I had a problem to see this go to a step system. Let the developers spend the money. He will bring the public utility out to that part of town. Let him spend the money to do it, he is willing to do that. That's the only reason I got involved with it, was over that issue that one of these days, that area is going to have to have service out there. Why not have private dollars pay for it now, rather than have the City pay for it later? That's the only reason why I got involved in this project, period.
- Ostner: Madam Chair, I did not mean to insinuate that the City would have to pay for the 2,500 feet. My point was simply to consider that this piece of property is including in its proposal to extend that as Mr. Sloan stated. I think it changes things; that simply means this piece of property is not only willing to apply for rezoning but is willing to go the long distance. It just makes it clear to me that it's a stretch. That's all I'm saying, I'm not casting judgment, not that it's bad. I'm not trying to say that the City is going to be holding the bag, I'm just saying it's a stretch. Part of our charge is to keep development contiguous I believe. That is why we are only allowed to annex adjacent to the City limits, under the logic of continuity. We are contiguous to the City limits, but not contiguous to the development. It's fairly undeveloped or sparsely developed as evidence by the 2,500 ft link. That's what I'm trying to say, it's a stretch.
- Anthes: Question for Mr. Williams, for as I can see here, the extension of the sewer line is a policy issue that an annexation, if we agree to accept property into the City, then we also agree to serve it with city services. What I'm wondering is, if this body recommended an annexation request, would we be requiring that the City would deliver City services to that site? Whereas, if the City Council chose to do so, they can negotiate with the applicant about extending those services...

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- Williams: In reality, there are number of places within Fayetteville that do not have sewer service. You get sewer service if you have a sewer main close enough to your property to access it. If they wanted sewer service inside the City, they would have to extend the main 2,500 ft at the developer's cost, not at the City's cost. The same thing even with the water. We have number of City residences, which I found out at recent City Council meetings, that don't have City water because they are not close enough to a water main and chose not to extend the water main, so they can get City water. So, the city makes available these services but you have to develop or the developer has to extend the sewer main to the corner of your property and you put your own service line to it. So, this would not be guaranteeing them the sewer service, even if they were annexed.
- Harris: I did have a question for the applicant, Charlie, sorry. If we in fact, were to vote to approve the annexation but change the rezoning to a much less dense zone, would the applicant be amendable?
- Sloan: Well, I guess zone it the way you want it and then I'll have to check with them. I will give you my permission. They have numbers they have to run to a certain point on the property. We will have to discuss it with the land owners around there. It would be nice if you could keep everything 5 acres. That's not going to be the reality of it. I don't know if they might not come back with a PZD. The problem of the zoning is the minimums on the widths and stuff like that when you are trying to work a property around. It's almost like you can throw these things away and just say we approve the project or not based on the layout, we like it. Because that gets into a tough situation to make things fit, because you have certain minimums. For instance, my project out there by my house, we did 1 acre estate lots. I asked for RSF-2 and got RSF-1. Ya'll gave me RSF-4, but we did the one acre, because a couple of those lots don't quite make that 50-foot frontage, and didn't have the space to put it in there. So, we asked for RSF-2, still ended up going a little bit deeper, making our lots an acre depth. I can't speak for them; I'm not involved in that part of it. I was just trying to see if we could eliminate a step system out there, that's what I was trying to do with this. Compatibility is still yet another issue. I not sure if they would love to stay where they're at or somewhere in that range. All they can do is take your recommendation, maybe come back and switch it to a PZD. Something to allow them to guarantee to the neighbors what they are going be able to do to get some assurance. You know I'm a big fan of PZD's.
- Anthes: It seems to me that a lot of the discussion seems to be leaning towards possibility recommending annexation, but at a lower density zoning. I'm just looking at refact that this body made a unanimous recommendation awhile back and as staff has reported very little has actually changed in the

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application between that time and now. In the interest of consistency and findings of the staff that the configuration is not in compliance with the policies for annexation, I make a motion to deny annexation request 06-2046.

Trumbo: Second.

Anthes: A motion by Commissioner Anthes and a second by Commissioner Trumbo. Is there further discussion? Will you call the roll?

Pate: What was the motion for?

Anthes: To deny.

Roll Call: The motion to deny 06-2046 carries with a vote of 6-3-0.

Anthes: As far as the rezoning request, it drops right? But do we still need to state our opinions?

Williams: In the past, you have gone ahead and recommended, if the City Council disagrees with you on the zoning. You would recommend what it would be.

Anthes: Well, we have had several Commissioners state that they thought the RSF-4 zoning district is too dense for the area. We have had one Commissioner state that he thought a RSF 0.5 or RSF-1 would be more in keeping in the area. Do we have any others thoughts on that?

Pate: RSF-.5, Residential Single-Family, ½ unit per acre, has a minimum size of two acres, basically 1 unit for every two acres. It just doesn't allow agricultural uses. We have RSF-1, Residential Single-Family, 1 unit per acre which has an 1 acre minimum. RSF-2, Residential Single-Family, 2 units per acre, and then RSF-4 and RSF-7.

Anthes: Mr. Williams, do we need to just state our preference? Or do you want a motion?

Williams: I think in the past, you voted on it. If I'm not mistaken.

Anthes: I'm thinking we did as well.

Williams: Why don't you go ahead? A conditional recommendation, if the City Council disagrees with you, assuming it is appealed, your recommendation would be...

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Ostner: I will start with a motion of approving the same piece of property, forwarding it to the City Council as RSF-.05, ½ a unit per acre or 1 unit sitting on 2 acres.

Anthes: I'll second

Trumbo: It seems to me, we will rezone RSF-4, which is pretty much standard in a residential neighborhood. The thing that concerns me is this is pretty close to being in the center of town. It has access to Hwy 265 and Old Wire. Just purely planning, standing back and taking a look at it, it appears to me that RSF-4 would be a more appropriate zone. Just where it's based in the City. Not considering what's already there, but the neighbors to the north and to the south. Everything else is just raw land. I'm not really stuck on RSF-4, but it doesn't seem way on the outskirts; a denser zoning would be appropriate right here, at some point in time. That's my only comments.

Harris: I would agree, and echo Commissioner Trumbo's comments. The applicant may wish that they don't get annexed with this zoning. I'm not entirely sure which one, I'm not married to RSF-4 either, but I would like to think of more dense on what we are currently discussing.

Anthes: Any further discussion? We have a motion by Commissioner Ostner and second by Commissioner Anthes for RSF-.5 as a conditional recommendation to City Council. Will you call roll.

Roll Call: The motion for RSF-.5 as a conditional recommendation to City Council for 06-2047 carries with a vote of 5-4-0.

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Andrew Garner, Senior Planner, gave the staff report giving the background for the previous annexation requests for this property. Garner summarized the annexation findings, discussing that this property and the vicinity is not urban in character or able to be developed at urban densities, and would extend a peninsula of City property approximately 1,300 feet into the County. He discussed the public service challenges of this site as it is located approximately 2,500 feet from the nearest sewer line, approximately the same distance for water lines to ensure adequate fire flow for any development, and the configuration of the property line may cause confusion among emergency responders as one side of the road would be in the City and one side would be in the County. He also discussed that this application is in conflict with the two primary goals of City Plan 2025 to make infill and revitalization our highest priorities, and to discourage suburban sprawl. Staff recommends denial of the application.

Hank Broyles, applicant, stated that they are a new applicant. They have taken steps to smooth out the borders of the proposed annexation boundary and added additional property owners to the annexation. He discussed that if this annexation is approved they will propose an R-PZD for development, including a master plan extending all the way to Highway 265. Highway 265 is the major north-south transportation corridor on the east side of Fayetteville. State Highway 265 is only three blocks to the west, the City is investing 7.7 million dollars on State Highway 265 in this vicinity, and we can't expect there not to be any development in this area. Most of the new development in recent years has taken place west of I-540. However, many people work on Joyce, and other major commercial zones are in close proximity. We should have additional housing on the east side of town to have people be able to live closer to where they work. We need additional housing on this side of town. Infill is very difficult to make work. He discussed that City Plan 2025 encourages infill but that according to a search by Bassett-Mix Realty of this area of town, from Joyce to Lafayette, east of College to Highway 265, there were only four listings of two or more acres. Prices ranged from \$110,000 per acre to \$900,000 per acre. This is a piece of property, partially in the City limits, not on a mountain, few adjacent property owners, three blocks from the major north-south transportation corridor on the east side of Fayetteville.

Todd Jacobs, applicant, gave a PowerPoint presentation. He discussed the land use setting, that the areas east of Hwy 265 are rural in nature, but the site is only three blocks from Crossover Road. He discussed the lack of opportunity for infill development in this area, due to existing development patterns and slopes to the west of Hwy 265. He went over historical growth patterns in this area, showing areas of single and multi-family development. Historical development patterns follow transportation corridors. The area east of Hwy 265 has development potential because of lack of slopes and streams, floodplains. This is an opportunity to master plan this area for development. He discussed developable land on this side of town and discussed that the east side of Crossover is more developable than the west side, which has hills, creeks, and existing development. He discussed that this site was identified by citizens as a Growth Sector as part of the City Plan 2025 charettes by citizens. Joyce has started to become a financial center. Development will fill in along the east side of Crossover over time. He showed and discussed various exhibits of developable area including slopes, existing development, and floodplains in the area. This site does not have those constraints. He reviewed the existing City limits and how they feel the area around this site will fill in over time. This area is prime for a City neighborhood area in a traditional town form. He discussed that our vision is a master plan for this area.

Public Comment:

Peggy Hart, representing her parents, Lyle and Charlene Smith who live on Rom Orchard, questioned the rationale behind this. This location is nice because it is out in the country but ten minutes from downtown. Why would you want to add houses on curvy roads with no sidewalks? Houses are generally on three-acre lots. It is already congested in this area at Old Wire/Crossover. We currently have undeveloped subdivisions on Skillern and Township. She is recommending denial.

Colleen Gaston, 3270 Rom Orchard Road, can see the property from her front porch. She is opposed to the rezoning anything less than Residential Agricultural. She thinks the annexation is premature. The comments from the developer about the development along the east side of Crossover are somewhat speculative. The applicant mentioned 200 acres but they are only annexing 40 acres. There is not reason to bring this into the City. There are several subdivisions in the City limits in this area of town that are vacant, very close to this area. Maybe the time will come to master plan for this area; however, this has been a very stable area, stayed rural in nature. From what I know of my neighbors no one is interested in selling or subdividing. I do not see this area being prime for development given the current economy. The annexation seems premature at this time.

Terry Payton, has nine acres, he was concerned with the rezoning application. But he agrees with Colleen's comments on the annexation. We are concerned with what the plans for the area are. He discussed congestion at the intersection of Old Wire Road/Crossover Road. He is opposed to a density of four units per acre.

Jeff Dangeau, 3284 Rom Orchard Road, adjacent neighbor to the east across Old Wire Road. Our main concern was with the rezoning. If this is annexed it would allow one house per two acres, which eases my concerns somewhat. He would feel better if a development plan were shown first.

Public Comment Closed

Commissioner Myres discussed that she agrees with staff's findings to recommend denial.

Commissioner Zant said that in his past experience annexations in other Cities have annex property based on guess of whether or not the annexation would benefit the City. We are fortunate here that the City of Fayetteville has a number of annexation policies and guidelines that are to be analyzed when making a decision. There would be a significant investment to meet the sewer requirement. As discussed by staff this application does not meet the adopted annexation policies and based on those findings he recommends denial.

Commissioner Graves discussed that he was on the planning commission when this application came through in previous years. Things have changed over the past 5-6 years. He looked at the old minutes and would still have concern with RSF-4 zoning today, similar to the past applications. However with the annexation, we previously had concerns with fire response that have been addressed now. The fire department now has a new station with a response time of four minutes to this property. He discussed that he would like to see more acreage involved in this annexation, to clean up the boundary. He mentioned the tail off of Skillern Road, not exactly clear how this came to be. This annexation is perhaps an opportunity to start to even up the eastern City boundary. This would leave a gap between this property and the tail off of Skillern Road. This does create a peninsula, but that is just one guideline, and these are just guidelines. He doesn't have as many qualms with this annexation that he had in previous years, now that the police and fire responses are better as opposed to 2005/2006. Development can make the roads better. I would be supportive of bringing it in and letting it be rezoned R-A, and seeing what the applicant proposes as a later time. He is okay with a Residential/Agricultural zoning on the property at this time.

Commissioner Winston asked about the issue of one side of the road being in the City and one side of the road being in the County.

Jeremy Pate, Development Services Director, discussed the potential problems that may occur if a vehicular accident or other emergency occurred on this road, and issues with which emergency responder should be called, Fayetteville Police versus Washington County Sheriff's, which was cited as a difficulty by the Police Department. He discussed the past annexations when the City annexed islands of unincorporated property that were surrounded by City property to correct this issue.

Commissioner Winston asked about Bridgewater Road, when it would be constructed.

Pate responded that it was just a line on the Master Street Plan map at this point, and would be constructed by the developer at the time of development.

Commissioner Winston asked about the improvements to Crossover Road, and if any improvements would be made to the intersection of Crossover Road/Old Wire Road.

Pate discussed that Crossover is a state highway and the improvements are a state highway project and in our transportation bond program, with the City having committed 7.7 million dollars to the project. However, the costs for the project have risen since the 7.7 million dollars were committed. The project is eminent and right-of-way is being obtained. Pate discussed that he is not sure about detailed of the planned improvements to Crossover Road/Old Wire Road, but anticipates that intersection would be improved.

Commissioner Winston asked about the City's responsibility to this property if it is annexed.

Pate responded that we have to provide emergency response and trash service immediately, and access for connection to City water and sewer. In almost every annexation application, there is some sort of development pressure, and the development would result in the required extensions or improvements to water and sewer.

Commissioner Winston discussed that there is a multi-use trail shown along Skillern Road, although the transportation plans show many trails outside the City. It seems like it may be appropriate now and will be appropriate in the future.

Commissioner Zant normally I wouldn't have any problem with any annexation, but he doesn't see any rationale for the application at this time. Ultimately this property will be annexed. But the findings all lead to a recommendation for denial at this time and I feel strongly that it should be denied at this time.

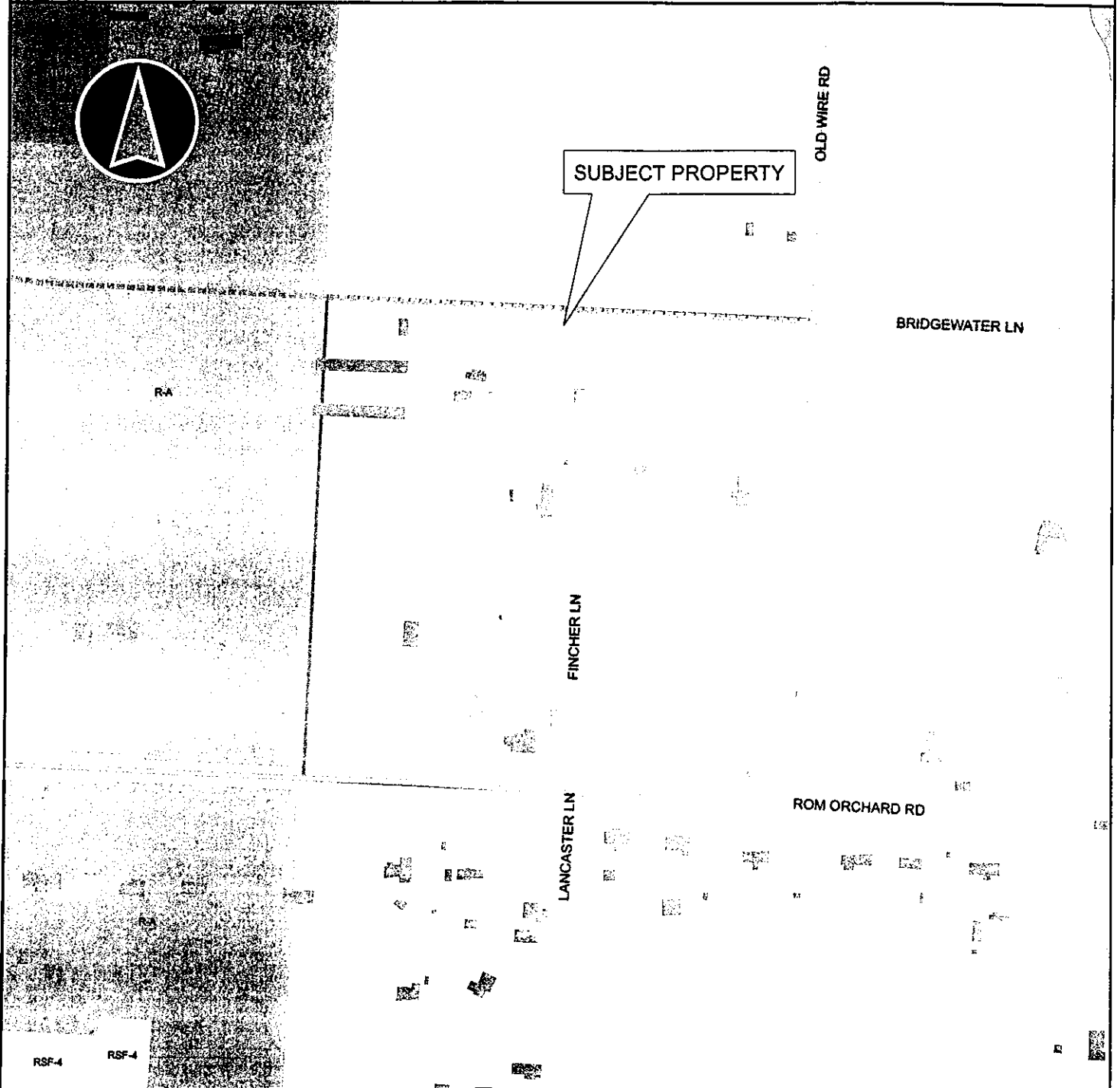
Motion:

Commissioner Myres made a motion to deny the request. **Commissioner Zant** seconded the motion. **Upon roll call the motion to deny passed with a vote of 5-4-0 (commissioners Graves, Winston, Kennedy, and Trumbo voting "no").**

ANX09-3409

Close Up View

BROYLES



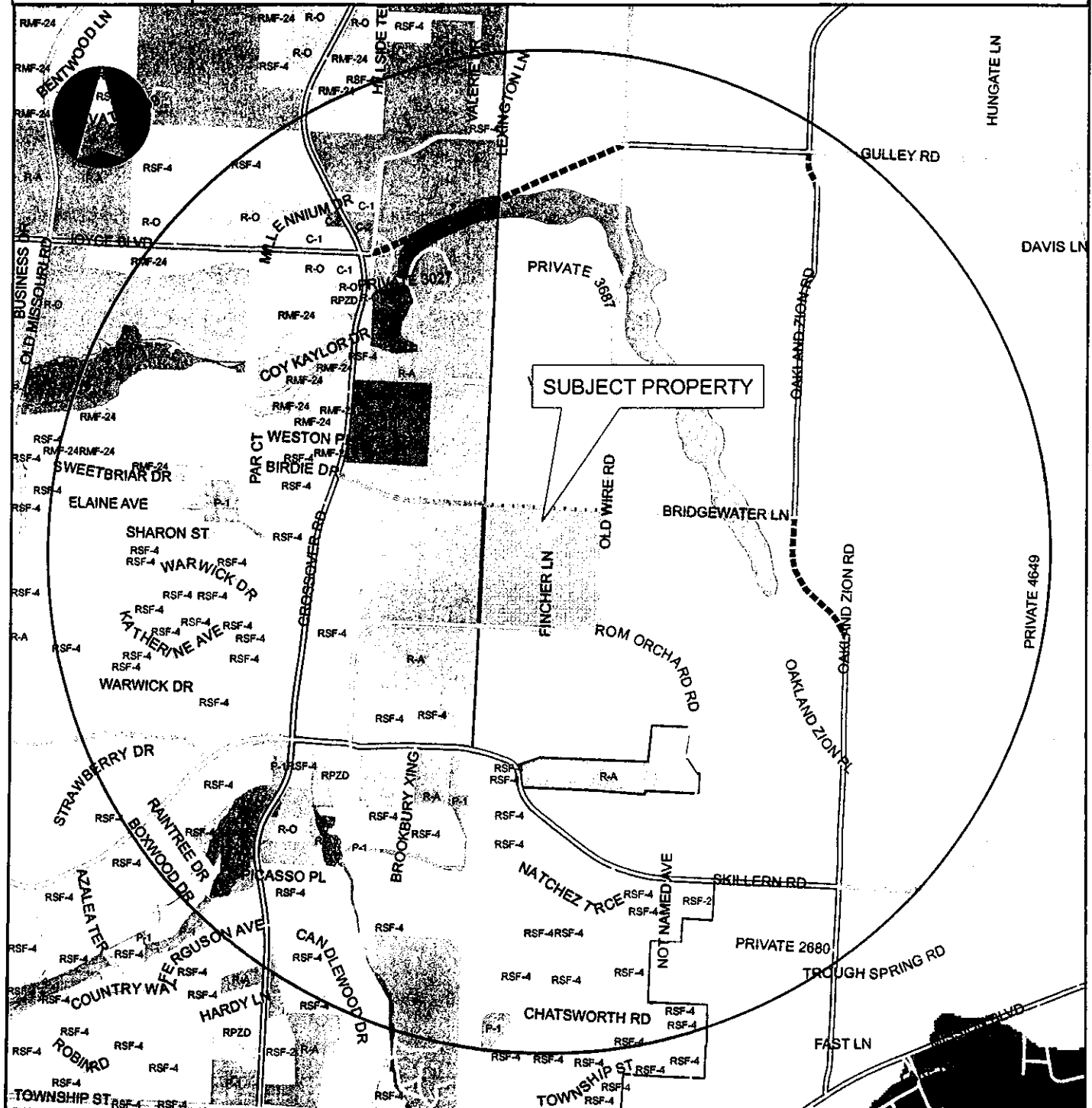
Overview

0 150 300 600 900 1,200
Feet

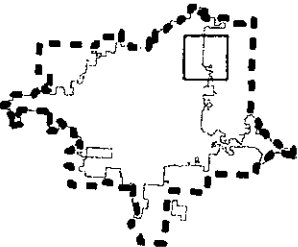
ANX09-3409

One Mile View

BROYLES



Overview



Legend

Subject Property

ANX09-3409

Boundary

0 0.25 0.5 1 Miles

ANX09-3409

BROYLES

Future Land Use

RT-12



SUBJECT PROPERTY

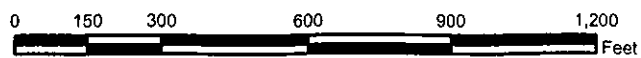
R-A

R-A

RSF-4

RSF-4

Overview



City of Fayetteville Staff Review Form

C. 1

Raze and Removal at 369 E. Center Street
Page 1 of 14City Council Agenda Items
and
Contracts, Leases or Agreements

11/3/2009

City Council Meeting Date
Agenda Items Only

Yolanda Fields

Submitted By

Community Services

Division

Development Services

Department

Action Required:

Public Hearing and Resolution to order the Raze and Removal of the unsafe structure located at 369 E. Center Street (WC Parcel # 765-12733-000) and approval of a Budget Adjustment in the amount of \$5,920.00

\$ 5,920.00

Cost of this request

\$ -

Category / Project Budget

Program Category / Project Name

1010.6420.5315.04

Account Number

\$ -

Funds Used to Date

Raze and Removal

Program / Project Category Name

\$ -

Remaining Balance

General Fund

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City
Clerk's Office

Chief of Staff

Date

Received in
Mayor's Office

Mayor

Date

Comments: Staff recommends the Raze and Removal of the structure and approval of the budget adjustment.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Department Director 

From: Yolanda Fields, Community Services Director 

Date: October 12, 2009

Subject: Raze and Removal of structure on 369 E. Center Street

RECOMMENDATION

Staff recommends approval of the Resolution ordering the Razing and Removal of a dilapidated and unsafe structure located at 369 E. Center Street. Staff also recommends approval of the budget adjustment in the amount of \$5,920.00.

BACKGROUND

Service Request # 84990, Case # 10150: Code Compliance responded to a request concerning the structure located at 369 E. Center Street. The structure appeared to be in violation of Subsection 173.08(A), Unsafe Buildings, of the City Code of Ordinances. The Chief Building Official inspected the property and determined that the structure was in violation of Subsection 173.08(A), Unsafe Buildings, of the City Code of Ordinances. Specifically, the Chief Building Official observed: Roof, Walls and Front Porch rotten and collapsing.

On May 21, 2009, an Unsafe Building Notice of Violation was sent to the property owner, Bobby York. On May 26, 2009, our office received the Certified Mail Receipt signed by the property owner. By ordinance, the property owner was given until June 26, 2009 to acquire a building permit or to raze and remove the structure.

DISCUSSION

This parcel contained a 1,092 square foot, one story wood frame single family dwelling. The structure is secured, but has deteriorated to a point where it is no longer safe. There is not a current building permit on this structure.

BUDGET IMPACT

Raze and Removal of the structure cost \$5,920.00 if the property owner does not comply with the Raze and Removal order.

RESOLUTION NO. _____

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

WHEREAS, Bobby E. York, is the record owner of the real property situated at 369 E. Center Street, City of Fayetteville, Washington County, Arkansas, more particularly described as follows: **WC Parcel Number 765-12733-000**; and,

WHEREAS, the City Council has determined that the structure located on said property is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and,

WHEREAS, Bobby E. York, record owner of the property, having been properly served with a Violation Notice via Certified Mail, Return Receipt Requested, and given thirty (30) days to correct said violation, has refused to repair, or raze and remove said dilapidated, unsightly, and unsafe structure; and,

WHEREAS, a public hearing has been conducted before the City Council pursuant to the requirements of law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: By the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Ordinance No. 3948 of 1996 (§ 173.08 of the Fayetteville City Code), Bobby E. York, record owner of the property, is hereby ordered to raze and remove forthwith, the dilapidated, unsightly, and unsafe structure located on the aforementioned real property. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2: If Bobby E. York, record owner of the property, does not comply with this order, the Mayor is hereby directed to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

Section 3: A budget adjustment in the amount of \$5,920.00 for the project is hereby approved.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

**City of Fayetteville, Arkansas
Budget Adjustment Form**

C. 1
Raze and Removal at 369 E. Center Street
Page 4 of 14
Adjustment Number

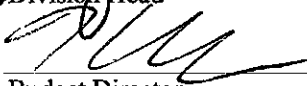
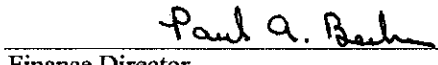
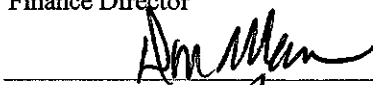
Budget Year 2009	Department: Operations Division: Community Resources Program: Code Compliance	Date Requested 10/6/2009
--------------------------------	---	--

Project or Item Added/Increased: \$5,920 added to the Raze and Removal Account in case of non-compliance to the Raze and Removal request.	Project or Item Deleted/Reduced:
---	---

Justification of this Increase: Funding is needed for the Raze and Removal of a structure located at 369 E. Center.	Justification of this Decrease:
---	--

Increase Budget					Amount	Project Number
Account Name	Account Number					
Raze And Removals	1010	6420	5315	04	5,920	

Decrease Budget					Amount	Project Number
Account Name	Account Number					
Use of Fund Balance	1010	0001	4999	99	5,920	

 Division Head  Budget Director  Department Director  Finance Director  Chief of Staff  Mayor 10-8-09 Date 10-10-09 Date 10-14-2009 Date 10-14-2009 Date 10-15-09 Date 10/6/09 Date	V.090403 Budget & Research Use Only Type: A B C <u>D</u> E Requested By _____ General Ledger Date _____ Posted to General Ledger _____ Posted to Project Accounting _____
	Initial _____ Initial _____ Date _____ Date _____



Code Compliance Program Unsafe Building Violation Determination

Address / Location: 369 E. Center St.
WC Parcel # 765-12733-000

I have determined that the structure above has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

☒ I recommend the raze and removal of the structure.

☐ I recommend securing the structure.

Chief Building Official

Observations: Roof, walls & front porch rotten & collapsing
Structure currently storing misc. items
no intent to repair

I have determined that the structure above is not in violation of Subsection 173.08 (A) of the Fayetteville Code Of Ordinances.

Chief Building Official

PLEASE RETURN THIS FORM TO CODE COMPLIANCE

Date Sent: May 7, 2009

SR# 84990

Date Received: 5/18/09

Case#

Community Services Division Director

City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701



C. 1
Raze and Removal at 369 E. Center Street
Page 6 of 14
Office of Code Compliance
Phone 479-575-8260
Fax 479-444-3445

VIOLATION NOTICE

May 21, 2009

Owner BOBBY ET AL YORK
124 E. MOUNTAIN

FAYETTEVILLE, AR 72701

RE: Property @ 369 E CENTER ST, Fayetteville, AR

WC Parcel # 765-12733-000

Case # 10150

Dear Property Owner:

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. If you need clarification of this notice or advice on how to correct the problem, please call our office at .

Suspected Violation That Needs Correction:

§173.09 Unsafe Buildings. No persons, partnership, corporation or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the City which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

How This Violation Can Be Voluntarily Corrected:

By making repairs as needed or razing the structure and remove all debris from the lot. A building permit may be required, based on review of the Building Safety Director.

Potential Penalties:

If this violation is not corrected within thirty (30) days from the service of this notice, you can be issued a Criminal Citation for the above violation and be summoned to appear in court. Our office can also suggest the structure be razed and removed. The costs shall be charged to the owner(s) of the property and the city shall have a lien against such property for such costs. If you disagree with our conclusion that your property contains a violation of our ordinances, you have the right to appeal to the appropriate City Board, Commission or City Council. Please see Chapter 155 of the Unified Development Code.

If the residence is owner occupied and meets certain income requirements, you may qualify for federal assistance under our Community Development Block Grant. For more information on this program, please call (479) 575-8270 or 575-8240.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", written over a horizontal line.

BRENT JOHNSON
Code Compliance Officer

Cc: file

7009 0080 0001 0607 7711

U.S. Postal ServiceTM	
CERTIFIED MAILTM RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent to	
Street, Apt. No., or PO Box No.	
City, State, Zip+4	
PS Form 3800, August 2006 See Reverse for Instructions	

RECEIVED
MAY 25 2008
CRCC

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☐ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:
1. Article Addressed to: BOBBY YORK 124 E. MOUNTAIN ST. FAYETTEVILLE, AR 72701	3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
2. Article Number (Transfer from service label)	4. Restricted Delivery? (Extra Fee) ☐ Yes

7009 0080 0001 0607 7711

Record 1 of 1 Last Updated 10/12/09

C. 1

Raze and Removal at 369 E. Center Street
Page 8 of 14

Parcel Number: **765-12733-000** Prev. Parcel Number: **145908-000-00** Type: **RI**
 Location: **369 E CENTER ST**
 Owner Name: **YORK, BOBBY ET AL**
 Mailing Address: **124 E Mountain St Fayetteville AR 72701-5328**
 Lot: Block: S-T-R: **15-16-30**
 Addition: **15-16-30 COUNTY COURT PLAT**
 School District: **FAYETTEVILLE SCH, FAY** Tax District: **011**
 City: **FAYETTEVILLE**
 Legal: **LOT 30 NW**
 Current Year A79 Credit Status: **F**
 Last Appraised: **2007**

	Appraised Value	Taxable Value
Land	25,200	3,360
Improvement	56,900	3,250
Total	82,100	6,610

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	6,610	\$340.42	\$0.00	\$0.00	\$0.00	\$340.42	F	\$0.00	\$0.00	PAID
2007	6,610	\$341.08	\$0.00	\$0.00	\$0.00	\$341.08	F	\$0.00	\$0.00	PAID
2006	6,610	\$348.35	\$0.00	\$0.00	\$0.00	\$300.00	F	\$48.35	\$48.35	PAID
2005	6,610	\$348.35	\$0.00	\$0.00	\$0.00	\$300.00	F	\$48.35	\$48.35	PAID
2004	6,610	\$342.79	\$0.00	\$0.00	\$0.00	\$300.00	F	\$42.79	\$42.79	PAID
2003	6,610	\$350.07	\$0.00	\$0.00	\$0.00	\$300.00	F	\$50.07	\$50.07	PAID
2002	6,610	\$343.46	\$0.00	\$0.00	\$0.00	\$300.00	F	\$54.05	\$54.05	PAID
2001	6,610	\$343.46	\$0.00	\$0.00	\$0.00	\$300.00	F	\$43.46	\$43.46	PAID
2000	6,610	\$347.03	\$0.00	\$0.00	\$0.00	\$300.00	O	\$56.46	\$56.46	PAID
1999	6,610	\$338.43	\$0.00	\$0.00	\$0.00	\$0.00		\$338.43	\$338.43	PAID
1998	6,610	\$339.09	\$0.00	\$0.00	\$0.00	\$0.00		\$339.09	\$339.09	PAID
1997	6,610	\$339.09	\$0.00	\$0.00	\$0.00	\$0.00		\$339.09	\$339.09	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2006	109620	10/5/2007	\$48.35	\$0.00	\$0.00	\$0.00	\$0.00	\$48.35
2005	72143	8/21/2006	\$48.35	\$0.00	\$0.00	\$0.00	\$0.00	\$48.35
2004	104711	10/10/2005	\$42.79	\$0.00	\$0.00	\$0.00	\$0.00	\$42.79
2003	55518	8/2/2004	\$50.07	\$0.00	\$0.00	\$0.00	\$0.00	\$50.07
2002	8385	4/16/2004	\$43.46	\$0.00	\$0.00	\$0.00	\$10.59	\$54.05
2001	89978	10/9/2002	\$43.46	\$0.00	\$0.00	\$0.00	\$0.00	\$43.46
2000	16871	12/7/2001	\$47.03	\$0.00	\$0.00	\$0.00	\$0.00	\$56.46
1999	13729	10/11/2000	\$338.43	\$0.00	\$0.00	\$0.00	\$0.00	\$338.43
1998	12614	10/7/1999	\$339.09	\$0.00	\$0.00	\$0.00	\$0.00	\$339.09
1997	10610	10/8/1998	\$339.09	\$0.00	\$0.00	\$0.00	\$0.00	\$339.09

Deed History

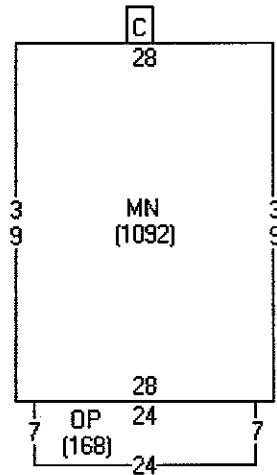
Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
1/1/1985	0000-00000	YORK, BOBBY ETAL (SURVIVING HEIR	OF SMITH, NAOMI)	WD	0	0.00

C. 1
 Raze and Removal at 369 E. Center Street
 Page 9 of 14

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	1092	1638	1915	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	SIDING			82

Sketch:



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Outbuilding,frame	12x16	

[Next Item](#) |
 [Previous Item](#) |
 [Ledger Card](#) |
 [Prev. Ledger Card](#) |
 [GIS Parcel Map](#) |
 [Return to Search Results](#) |
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 [New Search](#)



C. 1
Raze and Removal at 369 E. Center Street
City of Fayetteville 10 of 14
Code Compliance
113 West Mountain Street
Fayetteville, Arkansas 72701
Phone 479-575-8260

September 4, 2009

COPY

Bobby York
124 E. Mountain St.
Fayetteville, AR 72701

RE: Enforcement of Fayetteville Code 173.09
Arkansas Code Ann. 14-56-203

NOTICE TO PROPERTY OWNERS

Pursuant to A.C.A. 14-56-203 at 173.09 of the Fayetteville Code, you are placed upon Notice that the Fayetteville City Council will conduct a public hearing to determine if the dwelling located at 369 E. Center Street (Parcel #765-12733-000), should be Razed and Removed. You are free to appear at this hearing to present any evidence or statements. If you need additional information concerning this process or if you have information that we are not aware of, please call the Code Compliance Office at (479) 575-8260.

The hearing will be part of a regular City Council meeting on November 3, 2009 beginning at 6:00 p.m. at the City Administration Building, 113 W. Mountain St, Fayetteville, AR 72701. The City Council Meetings are advertised in local newspapers and will contain an item concerning this hearing. You may also call the Fayetteville City Clerk's Office (479-575-8323) for information confirming the date of the public hearing.

Sincerely,

Chad Ball
Community Services Coordinator

Cc: file

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, <i>on the front if space permits</i> 1 BOBBY YORK 124 E MOUNTAIN ST FAYETTEVILLE, AR 72701 CRCC		A. Signature X <i>Bobby York</i> ☐ Agent ☒ Addressee B. Received by (Printed Name) <i>BOBBY YORK</i> C. Date of Delivery <i>9/8/09</i> Is different from item 1? ☐ Yes ☒ No Is address below: ☒ No RECEIVED SEP 10 2009 CRCC ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		7009 0080 0001 0607 9241	
PS Form 3811, February 2004		Domestic Return Receipt <i>10150 BS</i> 102595-02-M-1540	

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	<i>10150</i>
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	<i>9.40</i>

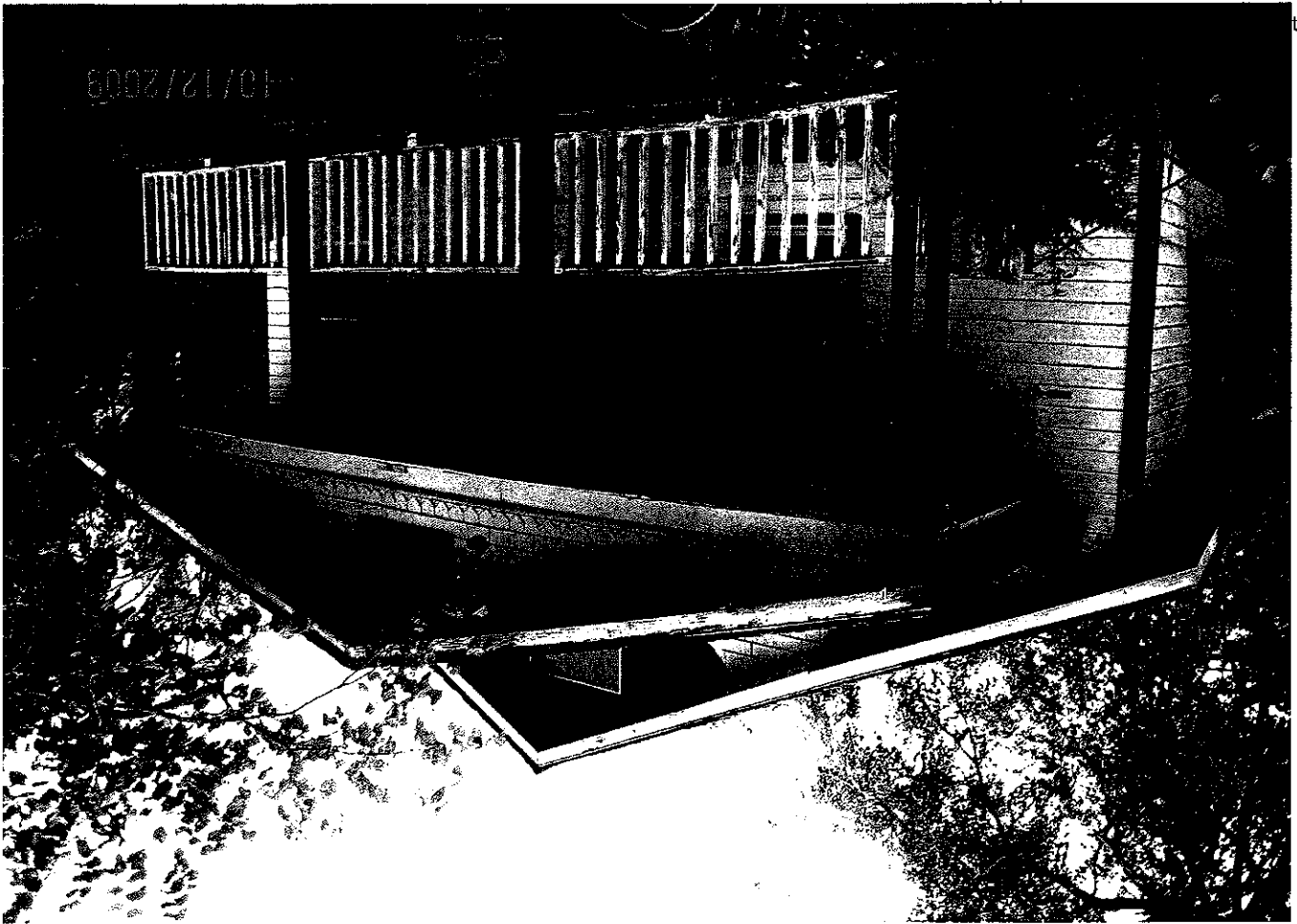
Sent To *JG*
Street, Apt. No.,
or PO Box No. *BS*
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

7009 0080 0001 0607 9241



10/12/2009



10/12/2009





City of Fayetteville Staff Review Form

D. 1
Waste Management Contract,
Bid #09-61
Page 1 of 24

**City Council Agenda Items
and
Contracts, Leases or Agreements**

11/3/2009

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Solid Waste
Division

Utilities
Department

Action Required:

Approval of Bid #09-61 for a contract with Waste Management of Arkansas for hauling and disposal of municipal waste for a rate of \$32.50 per ton.

\$ -
Cost of this request

\$ -
Category / Project Budget

Transfer Station
Program Category / Project Name

5500.5040.5315.00
Account Number

\$ -
Funds Used to Date

Transfer Station
Program / Project Category Name

Project Number

\$ -
Remaining Balance

Solid Waste
Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

[Signature]
Department Director

16 Oct 09
Date

Previous Ordinance or Resolution # N/A

[Signature]
City Attorney

10-19-09
Date

Original Contract Date: N/A

Original Contract Number: N/A

Paul A. Berlin
Finance and Internal Services Director

10-19-2009
Date

Received in City Clerk's Office
ENTERED 10-16-09 *[Signature]*

[Signature]
Chief of Staff

10-19-09
Date

Received in Mayor's Office
ENTERED 10/19/09 *[Signature]*

[Signature]
Mayor

11/3/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
David Jurgens, Utilities Director
Carrol Hill, Solid Waste Director



From: Brian Pugh, Waste Reduction Coordinator

Date: 16 October 2009

Subject: Approval of Bid #09-61 for a contract with Waste Management of Arkansas for hauling and disposal of municipal waste for a rate of \$32.50 per ton.

RECOMMENDATION

Staff recommends approval of Bid #09-61 for a contract with Waste Management of Arkansas for hauling and disposal of municipal waste for a rate of \$32.50 per ton.

BACKGROUND

Cherokee Nation terminated the contract between the Nation and the City for solid waste services including operation of the transfer station and scale house as well as hauling and disposal of the waste on September 30, 2009. The Cherokee Nation provided solid waste services to the City since September 2006. The contracted rate, after an early adjustment to cover mandated fees, was \$24.47 per ton. The City disposed of 53,614.44 tons of waste in 2008; this volume was used in estimating 2009 and 2010 budgets.

DISCUSSION

Due to Cherokee Nation's departure, City staff assumed temporary operation of the Transfer Station on October 1st, 2009 using short term contracts and agreements. Simultaneously, staff developed specifications for the permanent operation.

The City received three responsive bids on September 29, 2009, shown below. The low bidder for hauling and disposal services was Waste Management at \$32.50 per ton, breaking down to \$24.50 per ton for disposal and \$8.00 per ton for the haul to Eco Vista Landfill in Tontitown.

Contractor	Cost per Ton	2010 Estimate
Allied Waste Services	\$ 50.00	\$ 2,700,000.00
Marck Industries	\$ 47.54	\$ 2,567,280.00
Waste Management	\$ 32.50	\$ 1,755,000.00

BUDGET IMPACT

Funds for the acquisition of hauling and disposal services are budgeted in the Transfer Station program, with an estimated 2009 cost of \$145,250 and 2010 cost of \$1,755,000. Sufficient funds are available for 2009 and are included in the proposed 2010 budget.

RESOLUTION NO. _____

**A RESOLUTION AWARDDING BID #09-61 AND APPROVING A
CONTRACT WITH WASTE MANAGEMENT OF ARKANSAS FOR
HAULING AND DISPOSAL OF MUNICIPAL WASTE**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. The City Council of the City of Fayetteville, Arkansas hereby awards Bid #09-61, and approves a contract, a copy of which is attached hereto an exhibit, with Waste Management of Arkansas for hauling and disposal of municipal waste at a rate of \$32.50 per ton.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

City of Fayetteville, Arkansas
Bid 09-61, Solid Waste Transfer and Disposal Services
Contract Final Draft

This Agreement is made and entered into this _____ day of _____, 2009, by and between the City of Fayetteville, Arkansas and _____.

Terms & Conditions

WITNESSETH: In consideration of the terms and conditions set forth below, which constitute good and enforceable consideration, it is agreed:

1. **TERM OF AGREEMENT:** The agreement is to take effect and continue and remain in full force and effect for a period of five (5) years, and such period shall commence on December 1st, 2009 or on the date the contract is approved by the Fayetteville City Council. The parties shall have the option to renew this agreement for two (2) successive five (5) year terms upon mutual written agreement. The option to renew can be made effective by written notification from either party to the other party no later than ninety (90) days prior to the expiration of the contract term. This contract will be subject to the annual appropriation of sufficient funds for this contract in the budget by the Fayetteville City Council.

2. **SCOPE OF SERVICE:** The Contractor shall be responsible for the performance of all services reasonably necessary to provide for the proper disposal of all of the residential and commercial waste generated within the City of Fayetteville. Goods and services to be provided by Contractor under the terms of this agreement shall include but not be limited to the following:

- a) Transporting of all solid waste shall be so contained, tied, or enclosed, that leaking, spilling or blowing of waste is prevented. All solid waste received at the Fayetteville Transfer Station will be transported to a permitted and approved disposal site within twenty-four hours after receipt of said solid waste. The City of Fayetteville, as the Transfer Station operator, shall be responsible to load transport trailers with solid waste payload weights no greater than that required to reach gross vehicle weight limitations set by law. However, in the interest of efficiency, the operator is responsible to load solid waste in such a way that a standard "walking floor" trailer with a capacity of 115 cubic yards will contain a minimum of 20 tons of solid waste.
- b) The Contractor shall provide an adequate number of vehicles, trailers and back up equipment maintained in good physical condition and working order, all labor, supervision, equipment, maintenance, fuel and necessary supplies to insure the daily systematic and orderly performance of all services specified in the contract within the required time frame.
- c) The Contractor will guarantee to the City of Fayetteville that Contractor's transport tractors, trailers and any other equipment used in the transport of accepted solid waste will be maintained in a mechanically sound, clean and uniformly painted manner at all times. There will be sufficient spare equipment available to insure daily loading transport, and disposal of all waste received at said Transfer Station within the allotted time frame. All equipment provided by the Contractor will be properly licensed and permitted by appropriate District, City, County & State authorities as required. Additionally, transport tractors will be marked with the name and telephone number of the contractor on each side of the vehicle.
- d) Preparation of required reports to all government agencies, if applicable, with copies to City of Fayetteville.
- e) Contractor shall provide to the City of Fayetteville documented proof of disposal for each load. Such documentation shall be provided to the City of Fayetteville with each invoice.

3. FEES: The prices and rates bid by the successful bidder shall be firm for the first two (2) years of the contract. After the first 2 years of the contract, adjustments shall be made as follows: The cost per ton rate shall be adjusted beginning December 1, 2011, by using the difference in the United States Department of Labor Index For Goods and Services from September 2010 through August 2011. This adjustment using subsequent annual USDL Index for Goods and Services numbers shall be used in December 2012 and December 2013. This inflationary index or a full renegotiation of rates by the parties may be used for subsequent renewals of the contract beyond the first five year period.

Payment shall be on a cost per ton basis. Measurement shall be from the City of Fayetteville's outbound scale numbers.

4. SECURING FOR PERFORMANCE – BID SECURITY: The Contractor responsible for the transportation and disposal of solid waste received at the Fayetteville Transfer Station will be required to furnish a corporate surety bond as security for the performance of said portion of the Contract. Said surety bond shall be in the amount of twenty five percent (25%) of the total bid price for the first year of the contract. Said surety bond after the first year shall be for twenty five percent (25%) of the previous year contracted volume.

The premium for the bond(s) described above shall be paid by the Contractor. A certificate from the surety showing that the bond premium(s) is/are paid in full shall accompany the bond.

The surety on the bond shall be from corporate surety company duly authorized to do business in the State of Arkansas. Bonds must be written by an "A" rated bonding company.

5. QUANTITIES: The City of Fayetteville makes no warranties as to the quantities of solid waste available for transfer and disposal. The City of Fayetteville during the term of this contract shall deliver to City of Fayetteville's Transfer Station all of the municipal, residential and commercial solid waste streams collected by the City of Fayetteville except recyclable waste recycled as such.

6. DISPOSAL SITES: Contractor shall provide evidence satisfactory to the City of Fayetteville that the Contractor shall at all times have a commitment for adequate landfill air space adequate to exceed the projected needs of the waste to be disposed of hereunder during the term of the contract but in any case not less than 10 years. Disposal site will be in compliance with EPA Regulations, Subtitle "D" and any future subtitles or regulations required of said site. Prior to any change by the contractor of disposal site the Contractor shall provide documentation to the City of Fayetteville that such site meets specifications hereunder.

7. REPRESENTATION OF THE CITY OF FAYETTEVILLE: The City of Fayetteville represents that the City of Fayetteville's Transfer Station is properly and fully permitted as a solid waste transfer station by all applicable governmental authorities.

8. DEFAULT AND TERMINATION: Upon breach by either party to this Contract of any of its material terms and conditions, the non-breaching party shall deliver written notice to the breaching party of said breach. If the breaching party fails to cure the breach within sixty (60) days, the non-breaching party shall be entitled to declare that the breaching party is in default and the contract terminated.

9. GENERAL SPECIFICATIONS: The terms and conditions of this Contract include each and every general specification set forth hereinafter.

10. ADMINISTRATIVE PROVISIONS: This agreement constitutes the entire agreement between the parties and there are no representations, warranties, promises, covenants, agreements or contracts except as set forth herein. This agreement may not be amended except as set forth in writing and signed by authorized representatives for both parties. This agreement shall be construed under the laws of the State of Arkansas, and shall inure to the benefit of the parties hereto, their successors, assigns and representatives. This agreement may be assigned by

either party only with the prior written consent of the other party, which consent shall not be unreasonably withheld. The persons signing on behalf of the respective parties hereto warrant that they have full and proper authority to execute this agreement on behalf of the parties so represented.

11. FREEDOM OF INFORMATION ACT: City of Fayetteville contracts and documents prepared while performing City of Fayetteville contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

12. ATTACHMENTS: Bid documents referencing Bid 09-61, Solid Waste Transfer and Disposal Services and contractors bid submittal in response to Bid 09-61.

13. JURISDICTION AND VENUE: This agreement shall be interpreted and enforced pursuant to Arkansas law. Jurisdiction and venue shall be in Washington County, Arkansas.

IN AGREEMENT with the provisions set out above, we sign our names below on this the _____ day of _____, 2009.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

CONTRACTOR

TRACEY SHADER

Printed Name and Title

ATTEST:

By: _____

Company Secretary

Renee Torres

Printed Name and Title

By: _____

LIONELD JORDAN

Mayor

ATTEST:

By: _____

Sondra Smith, City Clerk



BID: 09-61
9/29/2009
2:00 PM
CITY OF FAYETTEVILLE

Bid 09-61, Solid Waste Transfer and Disposal Services

BIDDER	Total Bid Price Per Year
1 Allied Waste Services	\$2,700,000.00
2 Marck Industries, Inc.	\$2,587,680.00
3 Waste Management of Arkansas, Inc.	\$1,755,000.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

P. Vice
P. VICE, PURCH MGR

Ali
WITNESS

10/05/09
DATE



WASTE MANAGEMENT

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220
TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: BID 09-61, Solid Waste Transfer and Disposal Services

DEADLINE: Tuesday, September 29, 2009 at 2:00 PM, Central Standard Time

DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701

PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220

DATE OF ISSUE AND ADVERTISEMENT: Issued: 09/18/09 – Advertised 09/14/09 & 09/21/09

INVITATION TO BID

BID 09-61 Solid Waste Transfer and Disposal Services

No late bids will be accepted. Bids shall be submitted in sealed envelopes labeled "Bid 09-61, Solid Waste Transfer and Disposal Services" with the name and address of the bidder.

All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

A Pre-Bid Conference for all Bidders will be held at the Solid Waste & Recycling Division, 1560 South Happy Hollow Road, Fayetteville, AR on Wednesday, September 23, 2009, 2:00 p.m.

The City of Fayetteville will answer any questions and update all Bidders.

NOTICE TO ALL BIDDERS:

All bidders should **register as an interested party** by notifying Andrea Foren, City Purchasing Agent via e-mail at aforen@ci.fayetteville.ar.us. When registering as an interested party, bidders shall submit primary contact information including name of bidder, primary contact person, phone number, fax number, and physical address.

Bidder assumes all responsibility for receiving updates and any addenda issued to this project by monitoring www.accessfayetteville.org. Failure to acknowledge addenda issued as instructed could result in rejection of such bid.

City of Fayetteville, Arkansas
Bid 09-61, Solid Waste Transfer and Disposal Services
Bid Form

NOTE: All bids shall include a \$50,000 bid security in the form of a certified cashiers check or bid bond.

Item	Description	Price per ton		Estimated Tons per year		Total Bid Price per year
	Transport & Disposal BOTH					
1	Disposal	\$ 24.50		54,000		
2	Transport	\$ 8.00		54,000		
	Total Bid	\$ 32.50	X	54,000	=	\$ 1,755,000.00

ALL BIDDERS AGREE TO THE FOLLOWING:

- 1.) ITEMS BID SHALL BE INCLUSIVE OF ALL COST (INCLUDING ANY APPLICABLE TAXES, FEES AND SURCHARGES INCURRED BY BIDDER FOR CONDUCTING BUSINESS).
- 2.) Price Increases: The prices and rates by the successful bidder shall be firm for the first three (3) years of the contract. After the first 3 years of the contract, adjustments can be requested as further outlined.
- 3.) Bid security: All Bids shall include a \$50,000 bid security in the form of a certified cashiers check or bid bond.
- 4.) Bids will be evaluated on the total for Items 1 and 2 combined and will be awarded to a single contractor, all or none.
- 5.) Bids shall be accompanied by a letter from a corporate surety satisfactory to the City stating that the Performance Bond(s) will be furnished by it to the person submitting the Bid in the event it is the successful Bidder. Such letter is to be signed by an authorized representative of the surety together with a certified and effectively dated copy of the power of attorney attached thereto.
- 6.) Any subcontractor, sub-hauler, etc. shall meet all contract requirements of contractor.

EXECUTION OF BID - Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated. Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*LOCATION OF DISPOSAL SITE: ECO-VISTA LANDFILL

*METHOD OF DISPOSAL: SANITARY LANDFILLING

*NAME OF FIRM: WASTE MANAGEMENT OF ARKANSAS, INC.

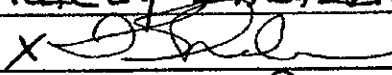
*BUSINESS ADDRESS: 1041 ARBOR ACRES AVENUE

*CITY: SPRINGDALE *STATE: ARKANSAS *ZIP: 72762

*PHONE: 479-361-2069 FAX: 479-361-5085

*E-MAIL ADDRESS: WRATHBUN@WM.COM

*BY : (PRINTED NAME) TRACEY SHRADER

*AUTHORIZED SIGNATURE: X 

*TITLE: MARKET AREA VICE PRESIDENT

Attach all addenda, answers, additions, deletions, modifications, and statements to this specification here. This attachment shall become part of the Bid and Bid Document.

Acknowledge all Addendums below:

Addendum # _____ Dated: _____ Initials: _____

Addendum # _____ Dated: _____ Initials: _____

Addendum # _____ Dated: _____ Initials: _____

Addendum # _____ Dated: _____ Initials: _____

Addendum # _____ Dated: _____ Initials: _____



McGRIFF SEIBELS & WILLIAMS OF TEXAS, INC.

811 Town & Country Lane, Suite 500 • Houston, Texas 77024 • TEL – (713) 877-8975 • Fax – (713) 877-8974

September 22, 2009

Wayne Rathbun
Eco-Vista LLC
18633 Stutts Road WC865
Springdale, AR 72765

RE: Bid Bond – City of Fayetteville
Bid Date: September 29, 2009

Please find enclosed your requested bid bond and/or consent of surety, as captioned. Should you have any questions, please feel free to give us a call. Good luck!

Regards,

Mary Ann Garcia
Senior Account Service Representative

Western Surety Company

September 29, 2009

City of Fayetteville
Purchasing Division
113 W Mountain
Fayetteville, AR 72701

RE: Principal: Eco-Vista LLC
Bid Date: September 29, 2009
Description: Bid 09-61 Solid Waste Transfer and Disposal Services

Consent of Surety

To Whom It May Concern:

It is our understanding that Eco-Vista LLC will submit a bid for the above described job.

We, Western Surety Company, hereby agree that in the event an award is made to Eco-Vista LLC, on the project as captioned, we will execute the necessary Performance and Payment Bonds that will be required.

Sincerely,



Mary Ann Garcia, Attorney-in-Fact
Western Surety Company

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Marc W Boots, Joy Durham, Stephen R Smith, Vickie Lacy, Richard Covington, Mary Ann Garcia, P T Osburn, Maria D Zuniga, Misty Clark, Stephanie Gunderson, Heather Noles, Kristin Hager, Individually

of Houston, TX, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 22nd day of July, 2009.



WESTERN SURETY COMPANY

Paul T. Brufat, Senior Vice President

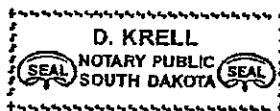
State of South Dakota
County of Minnehaha

} ss

On this 22nd day of July, 2009, before me personally came Paul T. Brufat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29th day of September, 2009.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS that each of the entities listed on Exhibit A attached hereto (individually, the "Corporation"), has constituted and appointed and does hereby constitute and appoint Marc W. Boots, Richard Covington, Mark W. Edwards II, Robert R. Freel, Mary Ann Garcia, Vickie Lacy, P.T. Osburn, Alisa B. Pounders, Stephen R. Smith and Maria D. Zuniga of McGriff, Seibels & Williams of Texas, Inc., each its true and lawful Attorney-in-fact to execute under such designation in its name and to affix its corporate seal to deliver for and on its behalf as surety thereon or otherwise, bonds of any of the following classes, to wit:

1. Surety bonds to the United States of America or any agency thereof; including lease and miscellaneous surety bonds required or permitted under the laws, ordinances or regulations of any State, City, Town, Village, Board or any other body or organization, public or private.
2. Bonds on behalf of contractors in connection with bids, proposals or contracts.

The foregoing powers granted by the Corporation shall be subject to and conditional upon the written direction of any officer (or any designee of any such officer) to execute and deliver any such bonds.

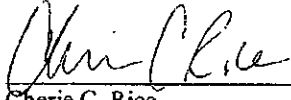
The signatures and attestations of such Attorneys-in-fact and the seal of the Corporation may be affixed to any such bond, policy or to any certificate relating thereto by facsimile and any such bond, policy or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Corporation when so affixed.

IN WITNESS WHEREOF, the Corporation has caused these presents to be signed by its Vice President, Finance and Treasurer, and its corporate seal to be hereto affixed this 27th day of September, 2009.

Witness:

Waste Management, Inc.


Donna L. Meals
Director, Financial Assurance


Cherie C. Rice
Vice President, Finance and Treasurer

BID BOND

Conforms with The American Institute of
Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Eco-Vista LLC

_____ as Principal, hereinafter called the Principal,
and the Western Surety Company

of Sioux Falls, SD, a corporation duly organized under
the laws of the State of South Dakota, as Surety, hereinafter called the Surety, are held and firmly bound unto

City of Fayetteville as Obligee, hereinafter called the Obligee,

in the sum of Fifty Thousand and 00/100

Dollars (\$ 50,000.00), for the payment of which sum well and truly to be made, the said Principal and the said
Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Bid 09-61 Solid Waste Transfer and Disposal Services

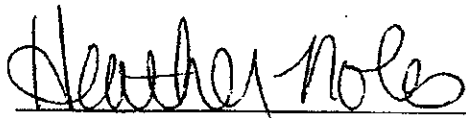
NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee
in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with
good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in
the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the
Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such
larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this
obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 29th day of September, 2009

Eco-Vista LLC

(Seal)

Principal

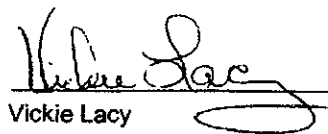


Heather Noles

Witness


Maria D. Zuniga, Attorney-in-fact

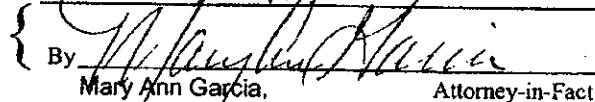
Title



Vickie Lacy

Witness

Western Surety Company

By 
Mary Ann Garcia, Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Marc W Boots, Joy Durham, Stephen R Smith, Vickie Lacy, Richard Covington, Mary Ann Garcia, P T Osburn, Maria D Zuniga, Misty Clark, Stephanie Gunderson, Heather Noles, Kristin Hager, Individually

of Houston, TX, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hercof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 22nd day of July, 2009.



WESTERN SURETY COMPANY

Paul T. Bruffat, Senior Vice President

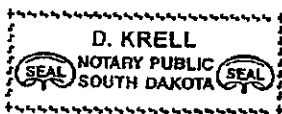
State of South Dakota
County of Minnehaha

ss

On this 22nd day of July, 2009, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



CERTIFICATE

D. Krell, Notary Public

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hercof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29th day of September, 2009



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



September 29, 2009

City of Fayetteville, Arkansas
Purchasing Division
113 W. Mountain
Fayetteville, AR 72701

RE: Bid 09-61, Solid Waste Transfer and Disposal Service

Waste Management would like to take this opportunity to thank you for the invitation to submit a bid for the city of Fayetteville's Solid Waste Transfer and Disposal Services.

As you may be aware, for over a decade Waste Management enjoyed serving the disposal needs for the city of Fayetteville. Although this relationship was interrupted for a few years, Waste Management is appreciative of the renewed interest demonstrated by the city.

As the nation's leading operator of transfer stations and supplier of hauling and disposal services, Waste Management is excited to provide the best value to meet the needs of Fayetteville and its citizens. Please accept this letter, as well as the bid documents that accompany it, as a sign of good faith in renewing a partnership for the decades to come.

Our proposal meets or exceeds all aspects of your Bid Specifications.

Waste Management views the City of Fayetteville as one of the most vibrant and promising areas in our State. We would be honored to continue our partnership with the City and provide a long-term, stable solution to the City's solid waste service needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Rathbun". The signature is fluid and cursive, with a long horizontal line extending to the right.

Wayne Rathbun
Waste Management of Arkansas



September 29, 2009

City of Fayetteville, Arkansas
Bid 09-61, Solid Waste Transfer and Disposal Service
Purchasing Division
113 W. Mountain
Fayetteville, AR 72701

Supporting Data regarding COMPETENCY OF BIDDER qualifications found on page 8:

- (a) Itemized list of equipment available for use: 3-100yd tractor-trailers units for transportation. One each of the following units: 826-Compactor, D8 Dozer, and a D6 Dozer for proper waste handling at Eco-Vista Landfill.
- (b) 2008 Annual Financial Report found in the left jacket pocket of this notebook.
- (c) Certificate of Good standing from the Arkansas Secretary of State found in Section 1.
- (d) Evidence of 5-year existence in Solid Waste found in both our bid letter and our 2008 annual report found in notebook pocket.
- (e) Evidence of landfill capacity found on page 4 of the Annual Engineering Inspection Report. This report will be found in Section 2 of this notebook.
- (f) Copy of WM's Environmental Policy Statement found in Section 3 of this notebook.

Records of past environmental Issues at Eco-Vista found in Section 4. These reports detail events from a NOV in April 2002 through the investigation with letter dated August 30, 2002.

- (g) Waste Management is in good standing with the City of Fayetteville. On October 1, 2009, WM will enter into a temporary arrangement to accept the city's disposal until the bid process is completed..

Response to Item 24, LEGAL ISSUES DISCLOSURE STATEMENT, found in Section 5 of this report:

Eco-Vista's Solid Waste Permit found in Section 6

BUSINESS AND COMMERCIAL (UCC) SERVICES**Search Incorporations, Cooperatives, Banks and Insurance Companies**Printer Friendly VersionFor service of process contact the Secretary of State's office.

Corporation Name	WASTE MANAGEMENT OF ARKANSAS
Fictitious Names	ARKANSAS WASTE DISPOSAL ARKANSAS WASTE SYSTEMS LITTLE ROCK LANDFILL PINE BLUFF DISPOSAL PINE BLUFF DISPOSAL PINE BLUFF LANDFILL TWO PINE LANDFILL WASTE MANAGEMENT RECYCLING & DISPOSAL FACILITY
Filing #	100067636
Filing Type	Foreign For Profit Corporation
Filed under Act	For Bus Corp; 958 of 1987
Status	Good Standing
Principal Address	
Reg. Agent	THE CORPORATION COMPANY
Agent Address	124 WEST CAPITOL AVENUE SUITE 1900 LITTLE ROCK, AR 72201
Date Filed	03/27/1984
Officers	GREG A. ROBERTSON , Controller JAMES E. TREVATHAN Jr, President DON P. CARPENTER , Vice-President LINDA J. SMITH , Secretary CHERIE C. RICE , Treasurer MARK A. LOCKETT/ASST. TREASURER Preparer
Foreign Name	N/A
Foreign Address	100 W. 10TH ST. WILMINGTON, DE 19801
State of Origin	DE
<u>Purchase a Certificate of Good Standing for this Entity</u>	<u>Pay Franchise Tax for this corporation</u>

LLC Member information is now confidential per Act 865 of 2007

Use your browser's back button to return to the Search Results

[Begin New Search](#)



DESIGN COMPANY INCORPORATED

4000 NORTH CLASSEN BLVD., SUITE 110-S
OKLAHOMA CITY, OK 73118
PHONE: (405) 996-5301 T
FAX: (405) 488-0029 F
WWW.SEDCOUSA.NET
JASHEPHERD@SEDCOUSA.NET

March 31, 2009

By Federal Express Only

Arkansas Department of Environmental Quality
Solid Waste Division
8001 National Drive
P.O. Box 8913
Little Rock, AR 72219

AFIN: 72-00144
Pmt #: 0290-S1-R2 S
REC'D
SCAN MAR 31 2009 W
M
D
Doc ID#: 55110
To: MR Zyle

Attention: Mr. Bryan Leamons, P.E.
Engineer Supervisor

RE: Annual Engineering Inspection Report
Eco Vista, LLC
Eco Vista Class I Landfill
AFIN No.: 72-00144 Permit No.: 0290-S1-R2

Dear Mr. Leamons:

On behalf of our client, Waste Management of Arkansas, Inc., please find attached the 2008 Annual Engineering Inspection Report for the above facility as required by ADEQ Solid Waste Regulation 22.423.

This report covers the period from January 1, 2008 to December 31, 2008. If you have any questions, please do not hesitate to call us.

Sincerely,

Shepherd Engineering Design Co., Inc.

Jeff A. Shepherd, P.E.
Senior Engineer/President

Cc: Mr. David Conrad – Market Area Engineer (1 Copy)
Mr. Kirby Thompson – Site Manager (2 Copies)

City of Fayetteville Staff Review Form

D. 2
2010 Annual Budget & Work Program
Page 1 of 4

City Council Agenda Items
and
Contracts, Leases or Agreements

11/3/2009

City Council Meeting Date
Agenda Items Only

Kevin Springer

Submitted By

Budget & Research

Division

Finance & Internal Services

Department

Action Required:

Approve a resolution adopting the Proposed 2010 Annual Budget & Work Program.

N/A

Cost of this request

\$

Category / Project Budget

Program Category / Project Name

\$

Account Number

Funds Used to Date

Program / Project Category Name

\$

Project Number

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Paul A. Behn

Department Director

10-16-2009

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

J. Blalock

City Attorney

10-19-09

Date

Paul A. Behn

Finance and Internal Services Director

10-19-2009

Date

Received in City
Clerk's Office



Don Man

Chief of Staff

10-19-09

Date

Received in
Mayor's Office



Lionel Jordan

Mayor

11/3/09

Comments:

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Jordan and City Council

THRU: Don Marr, Chief of Staff

FROM: Paul A. Becker, Finance Director
Kevin Springer, Budget Director

DATE: October 16, 2009

SUBJECT: **Proposed 2010 Annual Budget & Work Program**

Recommendation:

Consider the Proposed 2010 Annual Budget & Work Program for adoption by the November 3, 2009 City Council meeting.

Discussion:

The Proposed 2010 Annual Budget & Work Program will be distributed to City Council on Tuesday, October 27, 2009. Listed below is a schedule of hearing dates for the Proposed 2010 Annual Budget & Work Program.

Date	Budget Meeting/Location
Tuesday, October 27, 2009	<i>Distribution of the Proposed 2010 Budget</i>
Saturday, October 31, 2009	<i>Budget Discussion Meeting, Room 326</i>
Tuesday, November 3, 2009	<i>City Council Meeting, Room 219</i>
<i>Additional meetings to be scheduled if needed.</i>	

If you have any questions concerning the Proposed 2010 Annual Budget & Work Program, please feel free to contact either Paul A. Becker at 575-8330 or Kevin Springer at 575-8226. Thank you for your attention to this matter.

RESOLUTION NO. _____

**A RESOLUTION ADOPTING THE 2010 ANNUAL BUDGET
AND WORK PROGRAM**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. The City Council of the City of Fayetteville, Arkansas hereby adopts the 2010 Annual Budget & Work Program. A copy of the Budget, marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 3rd day of November, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Agenda Session
10/27/09

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 – 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

**Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
November 3, 2009**

A meeting of the Fayetteville City Council will be held on November 3, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations:

- ✓ **Sales Tax Report** – Paul Becker, Finance Director

Mayor's Announcements, Proclamations and Recognitions:

- ✓ **Exchange Club Officer of the Year Award - Cory Roberts**

Presentations, Reports and Discussion Items:

A. Consent:

- ✓ **1. Approval of the October 20, 2009 City Council meeting minutes.**
- ✓ **2. 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.

13. **Arkansas Democrat-Gazette, Inc.:** A resolution to approve a contract with Arkansas Democrat-Gazette, Inc. for retail and classified advertising.
14. **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.
15. **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.

Agenda Additions:

B. Unfinished Business:

- Consent ① **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.*
- ② **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.*

Left on the Second Reading

C. Public Hearing:

1. **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.

D. New Business:

1. **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.
2. **2010 Annual Budget & Work Program:** A resolution adopting the 2010 Annual Budget and Work Program.

Announcements:

1. City Council Tour: ~~November 2, 2019~~ **NONE**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Add:
NB #3

Community Access Television, Inc.

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

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City of Fayetteville, Arkansas
City Council Meeting
November 3, 2009**

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Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations:

Sales Tax Report – Paul Becker

Mayor's Announcements, Proclamations and Recognitions:

*Exchange Club
Officer of the Year Award*

Presentations, Reports and Discussion Items:

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6. **Animal Shelter:**

Agenda Additions:

B. Unfinished Business:

1. **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.*

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Left on the Second Reading

C. Public Hearing:

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D. New Business:

1. **2010 Annual Budget & Work Program:** A resolution adopting the 2010 Annual Budget and Work Program.

~~2. **Community Access Television (CAT) Contract:** Lindsley Smith place holder~~

Announcements:

1. City Council Tour: November 2, 2009

Adjournment:

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Subject:	Roll				
Alderman Rhoads Arrived at 6:05 pm.	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Consent				
Motion To:		<i>Approve</i>			
Motion By:		<i>Cook</i>			
Seconded:		<i>Petty</i>			
<i>Passed</i> <i>Minutes</i> <i>Approved</i> <i>218-09-222-09</i>	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Old Wire Annexation Appeal				
Motion To:		3rd Read	Table to November 17, 2009		
Motion By:		Cook	Cook		
Seconded:		Ferrell	Ferrell		
B. 1 Unfinished Business Tabled to November 17, 2009	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Jordan				

8-0

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:	Raze and Removal at 369 E. Center Street				
Motion To:		<i>Approve</i>			
Motion By:		<i>Thiel</i>			
Seconded:		<i>Lewis</i>			
C. 1 Public Hearing <i>Passed</i> <i>223-09</i>	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

Subject:		Waste Management Contract, Bid #09-61			
Motion To:		Approve			
Motion By:		Ferrell			
Seconded:		Lucas			
D. 1 New Business <u>Passed</u> <u>224-09</u>	Petty	✓			
	Rhoads	Recuse			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

7-0

Subject:		2010 Annual Budget & Work Program			
Motion To:		Table to Nov. 17, 2009			
Motion By:		Ferrell			
Seconded:		Cook			
D. 2 New Business <u>Tabled</u> <u>to</u> <u>Nov. 17,</u> <u>2009</u>	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:	Community Access Television, Inc.				
Motion To:		<i>Approve</i>			
Motion By:		<i>Cook</i>			
Seconded:		<i>Thiel</i>			
D. 3 New Business <i>passed</i> <i>225-09</i>	Petty	<i>✓</i>			
	Rhoads	<i>✓</i>			
	Ferrell	<i>✓</i>			
	Lucas	<i>✓</i>			
	Lewis	<i>✓</i>			
	Gray	<i>✓</i>			
	Thiel	<i>✓</i>			
	Cook	<i>✓</i>			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				