



FAYETTEVILLE CITY COUNCIL
AGENDA
MARCH 7, 2011
5:00 P.M.
LAFAYETTE ROOM

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 APPROVAL OF AGENDA

4.0 OTHER ITEMS OF BUSINESS

4.1 Fayetteville Advisory Committee on Transit (FACT) Service Enhancement Recommendations

Presented By: Jeff Thompson, FACT, Chairman & Randy Hume, Transit Director

4.2 Residential Recycling Program Update

Presented By: Jerry Dietzn, Environmental Services Director

4.3 Presentation of Recommended Fiscal Year 2012-2016 Capital Improvement Plan and Information Technology Plan

Presented By: Dale Iman, City Manager

4.4 Update on Probationary Rental Occupancy Permit

Presented By: Doug Hewett, Assistant City Manager

4.5 Update on the Murchison Road Redevelopment Plan

Presented By: Victor D. Sharpe, Community Development Director

4.6 Limited English Proficiency (LEP) Policy Update

Presented By: John Kuhls, Human Resource Development Director

4.7 City Attorney Items:

(a) Council Policy Nonprofit Funding

(b) Approval of City Council Minutes

Presented By: Karen McDonald, City Attorney

4.8 City Council Request(s): (In order of receipt date)

(a) Council Member Mohn - City Council Policy 115.11 - Replacing A Vacancy on the City Council

(b) Council Member Arp - Small Business Defense Contract Network Opportunity

5.0 ADJOURNMENT

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Doug Hewett, Assistant City Manager
DATE: March 7, 2011
RE: **Fayetteville Advisory Committee on Transit (FACT) Service Enhancement Recommendations**

THE QUESTION:

Does the work and recommendations of the FACT meet City Council's interests?

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2025: Our City is a Partnership of Citizens

Mission: The City provides service that makes Fayetteville a better place for all

BACKGROUND:

In October 2010, the City Council established the Fayetteville Advisory Committee on Transit (FACT) to address the public transportation needs of the city by providing recommendations to City Council and management to create a transit system that meets the present and future needs of our community. Since being established, FACT has met almost twice monthly to develop a set of recommendations for the City Council's consideration as part of the FY 2012 budget process.

The recommendations, based on the adopted Transportation Development Plan, and on input from FACT members, deals largely with enhancements to the current route structure. FACT also encourages the continued push at partnerships to expand ridership and funding. Similarly, FACT members believe that transit is a vital community service that needs to be supported and marketed as such.

ISSUES:

Given the uncertain budget outlook at the federal, state and local level, many transit systems have struggled to maintain their existing levels of service, with many actually reducing levels of service. In Fayetteville, cuts to transit haven't been contemplated. However, the budget outlook for service enhancements to city services will be a challenge without additional resources.

BUDGET IMPACT:

Unknown at this time. Following the presentation, staff will work to finalize the anticipated costs of the recommended enhancements. The preliminary and draft projections though total approximately \$430,000.

OPTIONS:

This item is being presented for information purposes only.

RECOMMENDED ACTION:

As this item is being presented for information purposes only, there is no recommended action. However, questions and directions from City Council are welcome to provide guidance for the FACT as they continue their efforts.

ATTACHMENTS:

FACT 22 February 2011 Meeting Minutes - Draft
FACT Recommendations for FY2011-12

DRAFT

MINUTES OF 02/22/2011

FOR THE

FAYETTEVILLE ADVISORY COMMITTEE ON TRANSIT

F.A.C.T.

Meeting called to order by Chairperson Jeff Thompson.

- Members Present
 - David Wendelken – Transportation Industry Representative
 - Mike Rutan – FAMPO Designee
 - Jeff Thompson – Within Service Area
 - Lillie Henderson – ADA Rider/Representative
 - Todd Lyden – Outside Service Area/CC Chamber of Commerce
 - Sharon Collins – ADA Rider/Representative
 - Mary Bunny English – Bus Rider
 - Scott Gibson – Outside Service Area
 - Warner Whitehead – F.A.S.T. Bus Operator
- Ex Officio Members Present
 - Doug Hewett – ACM
 - Randy Hume – Transit Director

The meeting opened at 6:02 pm.

Approval of Minutes of Last Meeting

A motion was made to approve the minutes of the last meeting. The motion passed unanimously to approve the minutes.

Public Comment

No public comment.

Old Business

None

New Business

DRAFT

A final discussion was held on the adoption of recommended enhancements for Transit for FY12.

Member David Wendelken made a motion to include the following routes in rank order in the recommended Transit enhancements for FY12: Routes 15, 7, 8, 5

The motion was seconded and passed unanimously.

Member David Wendelken made a motion to include the budget numbers for citywide paratransit be presented to City Council, not with the recommendation to pursue immediately.

The motion was seconded and passed unanimously.

Chairperson Jeff Thompson made a motion to propose to City Council to commit to installing 15 – 25 benches or shelters in the coming fiscal year as determined by FAST.

The motion was seconded and passed unanimously.

Comments or Suggestions

ACM Doug Hewett wanted the Committee to be prepared to answer questions from City Council about fares and revenues. Also, in the near future the committee will be given updates including the background on the Multi-modal Center.

Next Meeting

The next meeting will be held at 6:00 pm on Tuesday, March 8, 2011 at 455 Grove Street.

The meeting adjourned at 7:46 pm.

Fayetteville Advisory Committee on Transit (FACT)

Service Enhancement Recommendations for FY 2011-12

Description	Weekday Hours	Saturday Hours	# week days	# Sat	Annual Hours	Annual Operating Cost
Route 15 - Evening Svc - Weekday	6.0		256		1,536	\$ 96,768
Route 15 - Evening Svc- Saturday		6.0		53	318	\$ 20,034
Route 7 - Evening Svc - Weekday	3.0		256		768	\$ 48,384
Route 7 - Evening Svc- Saturday		3.0		53	159	\$ 10,017
Route 8 - Evening Svc - Weekday	3.0		256		768	\$ 48,384
Route 8 - Evening Svc- Saturday		3.0		53	159	\$ 10,017
Route 5 - Evening Svc - Weekday	3.0		256		768	\$ 48,384
Route 5 - Evening Svc- Saturday		3.0		53	159	\$ 10,017
Extended Paratansit - Weekday Evening	5.5		256		1,408	\$ 88,704
Extended Paratransit - Saturday Evening		5.5		53	292	\$ 18,365
Extend Service to CFV - North Pavilion - weekday	1.5		256		384	\$ 24,192
Extend Service to CFV - North Pavilion - Saturday		1.5		53	80	\$ 5,009
Total						\$ 428,274

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Jerry Dietzen, Environmental Services Director
DATE: March 7, 2011
RE: **Residential Recycling Program Update**

THE QUESTION:

Does City Council wish to accept the recycling update and authorize the City Manager to explore changes to the recycling program as outlined below?

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2025 - The City of Fayetteville is a great place to live....creates a sustainable community
Goals 2015 - More Attractive City - Clean and Beautiful
Mission - City government provides service that makes Fayetteville a better place for all

BACKGROUND:

Fayetteville began the single-family residential curbside recycling program in July 2008 via a 5-year contract with Waste Management using City supplied 35-gallon rollout recycling carts. The program has proven to be very successful with a 20% landfill diversion rate and a 65-70% participation rate by citizens. Even though the program has been successful, two concerns have been raised 1.) lack of recycling collection services on city observed holidays, and 2.) the 35-gallon recycling carts are too small for super recyclers.

To address those concerns, staff proposes the following for Council's consideration:

- Holiday Recycling Collection - Modify the existing contract with Waste Management, for a fee, to provide recycling service on holidays.
- Cart Size for Super Recyclers - Create an exchange program for city residents who wish to turn in their small recycling cart for a larger cart. The home owner would pay the difference and the cart would belong to the City, not the owner. This would be a first come first served program up to an allowable budget amount to be determined.

ISSUES:

There is a budget impact for each of the proposed changes. Additionally, the cart exchange program will represent a change from how super-recyclers obtained larger carts previously. If implemented, there would need to be a public information campaign established to make citizens aware of the changes.

BUDGET IMPACT:

- The budget will be impacted by the cost of Waste Management's proposal to add holiday collection for curbside recycling. Staff believes the cost would be about \$36,000.
- The City's budget will be impacted by the difference in cost of the large recycling cart versus the smaller one for each trade-up. The cost at this point is unknown until the actual program is designed.

OPTIONS:

This item is being provided for information purposes. However, direction from City Council on the options provided would help staff move forward with FY 2012 budget preparation.

RECOMMENDED ACTION:

Provide direction to staff on City Council's interest in the options provided.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Dale Iman, City Manager
DATE: March 7, 2011
RE: **Presentation of Recommended Fiscal Year 2012-2016 Capital Improvement Plan and Information Technology Plan**

THE QUESTION:

Staff requests Council consideration of the recommended Fiscal Year 2012-2016 Capital Improvement Plan (CIP) and Information Technology Plan (ITP).

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: More efficient city government - cost-effective service delivery. Objective 3: Investing in City's future infrastructure, facilities and equipment.

BACKGROUND:

The recommended five-year CIP consists of infrastructure, facility and maintenance projects with an individual cost of \$50,000 or greater. The recommended five-year ITP consists of technology projects with an individual cost of \$25,000 or greater.

The following process was used to develop the recommended CIP and ITP:

- Updated the adopted 2011-2015 CIP with current estimated costs, funding sources and timelines
- Added other project needs identified by departments
- Developed a funding plan for priority projects based on projected available resources
- Placed information technology projects in a separate plan (ITP)

The four documents attached summarize the recommended CIP and ITP:

- The project lists reflecting funding for each fiscal year from FY2012 through FY2016 (See documents with yellow header)
- The project lists reflecting proposed source of funds, for example, funding provided by the General Fund or federal and state grants. (See documents with green header)

Please note that the recommended parks and recreation bond projects and the storm water projects (timing and amount) are subject to further refinement based on the outcome of the financing models being developed with our consultants.

ISSUES:

Does the recommended CIP and ITP meet the Council's interests?

BUDGET IMPACT:

Please see detailed attachments.

OPTIONS:

Discuss item.

RECOMMENDED ACTION:

Provide feedback on the recommended Fiscal Year 2012-2016 CIP and ITP to staff.

ATTACHMENTS:

CIP Project Funding by Fiscal Year
ITP Project Funding by Fiscal Year
CIP Project Funding by Source of Funds
ITP Project Funding by Source of Funds

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project	Project Funding By Fiscal Year						Total Project Funding
	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	
Community Development							
Hope VI (City Share)	5,080,454	638,373	807,173	-	-	-	6,526,000
Military Business Park	666,750	584,000	-	-	-	-	1,250,750
Murchison Road Redevelopment	-	2,750,000	-	180,000	180,000	4,847,067	7,957,067
Total - Community Development	5,747,204	3,972,373	807,173	180,000	180,000	4,847,067	15,733,817
Development Services							
Wayfinding Signage	488,286	150,000	150,000	150,000	150,000	-	1,088,286
Total - Development Services	488,286	150,000	150,000	150,000	150,000	-	1,088,286
Engineering & Infrastructure							
Blanton Road Extension	-	-	-	-	4,500,000	-	4,500,000
City-wide Sidewalk Plan	1,032,447	156,000	158,000	160,000	3,063,847	114,000	4,684,294
Downtown Brick Sidewalk Repair	83,696	166,304	50,000	50,000	50,000	50,000	450,000
Downtown Streetscape	916,009	-	-	-	-	-	916,009
Fort Bragg Railway Connector	250,000	580,000	700,000	2,417,500	2,657,500	2,855,000	9,460,000
Fort Bragg Road Rehabilitation	-	700,000	-	-	-	-	700,000
Intersection Improvements	-	-	-	-	3,285,700	-	3,285,700
Langdon Street Widening	-	-	-	-	750,000	-	750,000
Legend Avenue Relocation	-	-	-	-	2,000,000	-	2,000,000
Louise Street Bridge	-	-	250,000	500,000	-	-	750,000
Parking Lot Resurfacing	156,513	53,000	54,000	55,000	56,000	57,000	431,513
Ramsey St. Transportation Project	350,000	150,000	-	-	-	-	500,000
Russell Street Sidewalk	470,000	-	-	-	-	-	470,000
Soil Street Construction	947,729	-	-	-	-	-	947,729
Street Resurfacing	6,255,392	3,503,201	3,350,000	3,400,000	3,450,000	3,500,000	23,458,593
Transportation Improvements Projects (NCDOT Municipal Agreements)	309,309	1,190,000	-	120,000	-	-	1,619,309
Total - Engineering & Infrastructure	10,771,095	6,498,505	4,562,000	6,702,500	19,813,047	6,576,000	54,923,147
Environmental Services							
ECEBG Formula Grant Building Maintenance Projects	329,000	688,500	212,500	-	-	-	1,230,000
Total - Environmental Services	329,000	688,500	212,500	-	-	-	1,230,000
Fire							
Fire Station 12 - Land for Future Station Relocation	-	125,000	-	-	-	-	125,000

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project	Project Funding By Fiscal Year						Total Project Funding
	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	
Fire Station 19 - North Farmer's Road Area	2,692,000	-	-	-	-	-	2,692,000
Fire Tower Replacement	500,000	-	-	-	-	-	500,000
SCBA Replacement (4 years of 6 year replacement plan)	-	-	184,017	184,017	184,017	184,017	736,068
Total - Fire	3,192,000	125,000	184,017	184,017	184,017	184,017	4,053,068
Information Technology							
A/C Upgrade	65,000	-	-	-	-	-	65,000
Total - IT	65,000	-	-	-	-	-	65,000
Parks & Recreation							
Cape Fear River Trail, Phase II	106,289	2,539,211	-	-	-	-	2,645,500
Freedom Park	473,481	48,641	30,000	-	-	-	552,122
Lighting at Tokay Football Fields	90,000	-	-	-	-	-	90,000
Linear Park	1,596,940	186,341	186,341	186,341	186,341	754,318	3,096,622
MLK Entry Feature	60,000	-	-	-	-	-	60,000
Northern Cumberland Park	-	200,000	-	-	-	-	200,000
Parks & Recreation Master Plan Bond Projects	-	-	2,220,000	17,400,000	17,800,000	19,450,000	56,870,000
Western Area Neighborhood Park	-	550,000	250,000	-	-	-	800,000
Total - Parks & Recreation	2,326,710	3,524,193	2,686,341	17,586,341	17,986,341	20,204,318	64,314,244
Maintenance							
Building Maintenance HVAC Replacement	-	160,000	150,000	30,000	102,000	-	442,000
Building Maintenance Other Projects	188,085	135,000	60,000	-	-	-	383,085
Building Maintenance Roof Repairs	-	478,000	60,000	60,000	112,000	230,000	940,000
Facility Space and Needs Analysis	-	265,000	-	-	-	-	265,000
Grove Street Facility Roof Replacement (GF Share)	60,500	-	-	-	-	-	60,500
Playground Improvements	298,735	150,000	150,000	62,000	-	-	660,735
Total - Maintenance	547,320	1,188,000	420,000	152,000	214,000	230,000	2,751,320
Police							
Precinct Station Needs Assessment Study - Facility funding available in FY16 and beyond	50,000	-	-	-	-	-	50,000
Total - Police	50,000	-	-	-	-	-	50,000
Special Projects							
300 Block of Hay Street Redevelopment	1,857,475	-	-	-	-	-	1,857,475
Franklin Street Parking Deck	1,989,000	3,973,000	-	-	-	-	5,962,000

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project	Project Funding By Fiscal Year						Total Project Funding
	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	
NC State Veterans Park	15,300,000	399,776	-	-	700,000	-	16,399,776
Phase V Sewer Contributions	5,700,993	926,030	2,351,428	2,800,715	3,080,529	3,348,644	18,208,339
Texfi Site Acquisition	527,376	100,000	-	-	-	-	627,376
Total - Special Projects	25,374,844	5,398,806	2,351,428	2,800,715	3,780,529	3,348,644	43,054,966
Stormwater							
Stormwater Improvement Projects	6,805,198	6,439,700	5,956,817	1,490,573	1,473,179	1,454,590	23,620,057
Total - Stormwater	6,805,198	6,439,700	5,956,817	1,490,573	1,473,179	1,454,590	23,620,057
Transit Projects							
Sidewalks for ADA Compliant Pedestrian Access	39,054	219,000	-	-	-	-	258,054
Transit Administrative and Maintenance Facility Renovations - Phase 1	370,000	-	-	-	-	-	370,000
Transit Administrative and Maintenance Facility Renovations - Phase 2	363,681	-	-	-	-	-	363,681
Transit Buildings & Grounds/Shop Rehabilitation	-	412,700	-	-	-	-	412,700
Transit Multimodal Center	2,235,011	561,065	-	16,787,693	-	-	19,583,769
Total - Transit	3,007,746	1,192,765	-	16,787,693	-	-	20,988,204
Airport Projects							
Air Carrier Asphalt / Mill & Overlay	-	749,210	-	-	-	-	749,210
Airline Concrete Slabs & Joints	210,000	4,500,000	-	-	-	-	4,710,000
Airport Improvement Projects-AIP 32	738,420	-	-	-	-	-	738,420
Airport Rescue and Firefighting Facility Rehabilitation	1,736,467	-	-	-	-	-	1,736,467
Fence Replacement at FBO and Taxi Area	-	175,000	-	-	-	-	175,000
Jet Bridge to Replace Fixed Bridge at Gate B4	-	475,000	-	-	-	-	475,000
Land Purchase in Runway 28 Protection Zone	700,000	-	-	-	-	-	700,000
Land Purchase in Runway 4 Protection Zone	-	-	-	-	-	1,684,211	1,684,211
North General Aviation Auto Parking	-	-	165,000	-	-	-	165,000
Paid Parking Lot Rehabilitation	1,542,969	-	-	-	-	-	1,542,969
Perimeter Fencing Replacement	-	-	-	100,000	1,400,000	-	1,500,000
Perimeter Road Rehabilitation	-	-	-	140,000	1,700,000	-	1,840,000
Runway 10/28 Improvements	-	2,000,000	-	-	-	-	2,000,000
Runway 4 RSA Extension Design	-	500,000	-	-	-	-	500,000
Runway 4/22 Paved Shoulders	-	150,000	2,500,000	-	-	-	2,650,000
Runway 4/22 Rehabilitation	7,171,533	-	-	-	-	-	7,171,533

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project	Project Funding By Fiscal Year						Total Project Funding
	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	
Runway Protection Zone Tree Clearing Project	250,000	-	-	-	-	-	250,000
Storm Drain Pipe (North of Paid Parking Lot)	-	115,000	-	-	-	-	115,000
Taxiway A Extension	-	4,500,000	5,500,000	-	-	-	10,000,000
Taxiway A Overlay, Shoulders & Lights	6,042,873	-	-	-	-	-	6,042,873
Taxiway F & G Rehabilitation	-	-	-	-	-	1,320,000	1,320,000
Terminal Renovation Phase IV	100,000	1,000,000	-	-	-	-	1,100,000
Terminal Sink, Counters, Faucets & Flush Valve	-	135,000	-	-	-	-	135,000
Upgrade Electrical Vault/Emergency Generator - AIP 33	2,189,864	-	-	-	-	-	2,189,864
West General Aviation Ramp Rehabilitation	776,454	-	-	-	-	-	776,454
Total - Airport	21,458,580	14,299,210	8,165,000	240,000	3,100,000	3,004,211	50,267,001
Grand Total - Capital Improvement Plan	80,162,983	43,477,052	25,495,276	46,273,839	46,881,113	39,848,847	282,139,110

**City of Fayetteville Information Technology Plan
Fiscal Years 2012 to 2016**

Project Funding By Fiscal Year

Project	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	Total Project Funding
Development Services							
Development Plan Review Software System	-	-	68,500	-	-	-	68,500
Magnet System Modules (Technology Upgrade)	-	-	78,225	52,000	-	-	130,225
Planning Module of Magnet	51,700	-	-	-	-	-	51,700
Total - Development Services	51,700	-	146,725	52,000	-	-	250,425
Environmental Services							
On-Route Software	-	-	-	290,000	-	-	290,000
Total - Environmental Services	-	-	-	290,000	-	-	290,000
Finance							
Integrated Cashiering System	228,200	-	-	-	-	-	228,200
Total - Finance	228,200	-	-	-	-	-	228,200
Human Resources Development							
HR Electronic Forms	50,000	-	-	-	-	-	50,000
Total - HRD	50,000	-	-	-	-	-	50,000
Information Technology							
Avaya Phone System Upgrade	124,008	-	-	-	-	-	124,008
Computer Replacement Plan (Incl. Virtualization)	832,262	292,300	292,300	292,300	292,300	292,300	2,293,762
Customer Service and Work Order Management System	-	50,000	648,000	-	-	-	698,000
HRIS-Financial System Replacement	-	-	-	125,000	4,000,000	-	4,125,000
Network Disaster Recovery	-	-	251,500	93,349	-	-	344,849
Network Survivability/Redundancy Router	93,000	-	-	-	-	-	93,000
Wireless Access Point	-	-	131,863	-	-	-	131,863
Total - Information Technology	1,049,270	342,300	1,323,663	510,649	4,292,300	292,300	7,810,482
Parks, Recreation & Maintenance							
RecTrac Upgrades	25,728	-	-	-	-	-	25,728
Total - Parks, Recreation & Maintenance	25,728	-	-	-	-	-	25,728
Public Safety							
800 MHz Radio System Digital Upgrade (P-25 Interoperability / Viper)	-	-	6,679,767	-	-	-	6,679,767
Computer-Aided Dispatch, Police and Fire Records Management Systems (incl PS AVL)	3,689,236	-	-	-	-	-	3,689,236
Digital Radio Upgrades (Police, Fire and Non-Public Safety Radios)	3,169,869	-	149,100	-	-	-	3,318,969
Mobile Data Computer Project	-	-	-	-	-	769,600	769,600

**City of Fayetteville Information Technology Plan
Fiscal Years 2012 to 2016**

Project Funding By Fiscal Year

Project	Inception Thru FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	Total Project Funding
NetMotion	158,024	-	-	-	-	-	158,024
Police In-Car Cameras	190,740	-	-	-	-	-	190,740
Police Server Upgrades	208,000	-	-	-	-	-	208,000
Positron Phone System Upgrade (E911 Fund)	297,691	-	-	-	-	-	297,691
Total - Public Safety	7,713,560	-	6,828,867	-	-	769,600	15,312,027
Transit Projects							
Transit Automatic Vehicle Locator Systems - Fixed Route	419,012	-	-	-	-	-	419,012
Transit Automatic Vehicle Locator Systems - Demand Response	120,000	-	-	-	-	-	120,000
Trapeze Software	-	175,000	-	-	-	-	175,000
Total - Transit	539,012	175,000	-	-	-	-	714,012
 Grand Total - Information Technology Plan	 9,657,470	 517,300	 8,299,255	 852,649	 4,292,300	 1,061,900	 24,680,874

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project Funding By Source of Funds						
Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Community Development						
Hope VI (City Share)	6,526,000	-	-	-	6,526,000	Project cost does not include expenditures funded through CDBG/HOME, or land donations or fee waivers.
Military Business Park	1,250,750	-	-	-	1,250,750	100% Federal funding.
Murchison Road Redevelopment	-	2,501,067	2,750,000	2,706,000	7,957,067	Proposed \$2.75M HUD Section 108 loan and \$2.256M HOME funding.
Total - Community Development	7,776,750	2,501,067	2,750,000	2,706,000	15,733,817	
Development Services						
Wayfinding Signage	488,286	200,000	-	400,000	1,088,286	\$400,000 in anticipated future grants.
Total - Development Services	488,286	200,000	-	400,000	1,088,286	
Engineering & Infrastructure						
Blanton Road Extension	-	-	900,000	3,600,000	4,500,000	Debt financing through 2015 Infrastructure Bonds, plus state funding
City-wide Sidewalk Plan	1,032,447	750,000	2,901,847	-	4,684,294	Debt financing through 2015 Infrastructure Bonds
Downtown Brick Sidewalk Repair	200,000	-	-	250,000	450,000	\$50,000 per yr from CBTD.
Downtown Streetscape	916,009	-	-	-	916,009	
Fort Bragg Railway Connector	9,460,000	-	-	-	9,460,000	SAFETEA Grant \$7,568,000, \$1,892,000 General Fund match.
Fort Bragg Road Rehabilitation	-	700,000	-	-	700,000	
Intersection Improvements	-	-	3,285,700	-	3,285,700	Debt financing through 2015 Infrastructure Bonds
Langdon Street Widening	-	-	750,000	-	750,000	Debt financing through 2015 Infrastructure Bonds
Legend Avenue Relocation	-	-	2,000,000	-	2,000,000	Debt financing through 2015 Infrastructure Bonds
Louise Street Bridge	-	150,000	-	600,000	750,000	Federal Bridge Replacement funding with local match
Parking Lot Resurfacing	156,513	275,000	-	-	431,513	
Ramsey St. Transportation Project	350,000	150,000	-	-	500,000	
Russell Street Sidewalk	470,000	-	-	-	470,000	
Soil Street Construction	947,729	-	-	-	947,729	
Street Resurfacing	6,458,593	17,000,000	-	-	23,458,593	General Fund contributions (Powell Bill)
Transportation Improvements Projects (NCDOT Municipal Agreements)	309,309	1,310,000	-	-	1,619,309	
Total - Engineering & Infrastructure	20,300,600	20,335,000	9,837,547	4,450,000	54,923,147	
Environmental Services						
EECBG Formula Grant Building Maintenance Projects	1,230,000	-	-	-	1,230,000	Federal ARRA stimulus grant.

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project Funding By Source of Funds

Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Total - Environmental Services	1,230,000	-	-	-	1,230,000	
Fire						
Fire Station 12 - Land for Future Station Relocation	125,000	-	-	-	125,000	
Fire Station 19 - North Farmer's Road Area	-	-	2,692,000	-	2,692,000	Capital lease proceeds.
Fire Tower Replacement	500,000	-	-	-	500,000	
SCBA Replacement (4 years of 6 year replacement plan)	-	736,068	-	-	736,068	
Total - Fire	625,000	736,068	2,692,000	-	4,053,068	
Information Technology						
A/C Upgrade	65,000	-	-	-	65,000	
Total - IT	65,000	-	-	-	65,000	
Parks & Recreation						
Cape Fear River Trail, Phase II	2,645,500	-	-	-	2,645,500	
Freedom Park	482,425	-	-	69,697	552,122	Private Donations
Lighting at Tokay Football Fields	90,000	-	-	-	90,000	
Linear Park	1,711,598	-	-	1,385,024	3,096,622	Private Donations
MLK Entry Feature	-	-	-	60,000	60,000	Grant from FSU
Northern Cumberland Park	-	-	-	200,000	200,000	County Parks District Funding
Parks & Recreation Master Plan Bond Projects	-	-	56,870,000	-	56,870,000	
Western Area Neighborhood Park	800,000	-	-	-	800,000	
Total - Parks & Recreation	5,729,523	-	56,870,000	1,714,721	64,314,244	
Maintenance						
Building Maintenance HVAC Replacement	-	442,000	-	-	442,000	
Building Maintenance Other Projects	202,775	180,310	-	-	383,085	
Building Maintenance Roof Repairs	-	940,000	-	-	940,000	
Facility Space and Needs Analysis	-	265,000	-	-	265,000	
Grove Street Facility Roof Replacement (GF Share)	60,500	-	-	-	60,500	
Playground Improvements	459,000	201,735	-	-	660,735	
Total - Maintenance	722,275	2,029,045	-	-	2,751,320	
Police						
Precinct Station Needs Assessment Study - Facility funding available in FY16 and beyond	50,000	-	-	-	50,000	

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project Funding By Source of Funds

Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Total - Police	50,000	-	-	-	50,000	
Special Projects						
300 Block of Hay Street Redevelopment	1,857,475	-	-	-	1,857,475	
Franklin Street Parking Deck	5,962,000	-	-	-	5,962,000	City Share of Project
NC State Veterans Park	16,399,776	-	-	-	16,399,776	
Phase V Sewer Contributions	5,700,993	12,507,346	-	-	18,208,339	General Fund contribution as specified in PWC transfer agreement.
Texfi Site Acquisition	527,376	50,000	-	50,000	627,376	Anticipated PWC participation
Total - Special Projects	30,447,620	12,557,346	-	50,000	43,054,966	
Stormwater						
Stormwater Improvement Projects	6,805,198	-	8,900,000	7,914,859	23,620,057	
Total - Stormwater	6,805,198	-	8,900,000	7,914,859	23,620,057	
Transit Projects						
Sidewalks for ADA Compliant Pedestrian Access	258,054	-	-	-	258,054	
Transit Administrative and Maintenance Facility Renovations - Phase 1	370,000	-	-	-	370,000	
Transit Administrative and Maintenance Facility Renovations - Phase 2	363,681	-	-	-	363,681	
Transit Buildings & Grounds/Shop Rehabilitation	-	82,540	-	330,160	412,700	80% FTA Funding, 20% Local
Transit Multimodal Center	2,796,076	1,678,769	-	15,108,924	19,583,769	80% FTA Funding, 10% State and 10% Local anticipated for construction funding
Total - Transit	3,787,811	1,761,309	-	15,439,084	20,988,204	
Airport Projects						
Air Carrier Asphalt / Mill & Overlay	-	-	-	749,210	749,210	Airport/Fed & State Funds
Airline Concrete Slabs & Joints	210,000	-	-	4,500,000	4,710,000	Airport/Fed & State Funds
Airport Improvement Projects-AIP 32	738,420	-	-	-	738,420	Airport/Fed & State Funds
Airport Rescue and Firefighting Facility Rehabilitation	1,736,467	-	-	-	1,736,467	Airport/Fed & State Funds
Fence Replacement at FBO and Taxi Area	-	-	-	175,000	175,000	Airport Funds
Jet Bridge to Replace Fixed Bridge at Gate B4	-	-	-	475,000	475,000	Airport Funds
Land Purchase in Runway 28 Protection Zone	700,000	-	-	-	700,000	Airport Funds
Land Purchase in Runway 4 Protection Zone	-	-	-	1,684,211	1,684,211	Airport/Fed & State Funds
North General Aviation Auto Parking	-	-	-	165,000	165,000	Airport/FBO Operator Funding
Paid Parking Lot Rehabilitation	1,542,969	-	-	-	1,542,969	Airport/Fed & State Funds
Perimeter Fencing Replacement	-	-	-	1,500,000	1,500,000	Airport/Fed & State Funds

**City of Fayetteville Capital Improvement Plan
Fiscal Years 2012 to 2016**

Project Funding By Source of Funds

Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Perimeter Road Rehabilitation	-	-	-	1,840,000	1,840,000	Airport/Fed & State Funds
Runway 10/28 Improvements	-	-	-	2,000,000	2,000,000	Airport/Fed & State Funds
Runway 4 RSA Extension Design	-	-	-	500,000	500,000	Airport/Fed & State Funds
Runway 4/22 Paved Shoulders	-	-	-	2,650,000	2,650,000	Airport/Fed & State Funds
Runway 4/22 Rehabilitation	7,171,533	-	-	-	7,171,533	Fed & State Funds
Runway Protection Zone Tree Clearing Project	250,000	-	-	-	250,000	
Storm Drain Pipe (North of Paid Parking Lot)	-	-	-	115,000	115,000	Airport Funds
Taxiway A Extension	-	-	-	10,000,000	10,000,000	Airport/Fed & State Funds
Taxiway A Overlay, Shoulders & Lights	6,042,873	-	-	-	6,042,873	Airport/Fed & State Funds
Taxiway F & G Rehabilitation	-	-	-	1,320,000	1,320,000	Airport/Fed & State Funds
Terminal Renovation Phase IV	-	-	-	1,100,000	1,100,000	Airport Funds
Terminal Sink, Counters, Faucets & Flush Valve	-	-	-	135,000	135,000	Airport Funds
Upgrade Electrical Vault/Emergency Generator - AIP 33	2,189,864	-	-	-	2,189,864	Airport/Fed & State Funds
West General Aviation Ramp Rehabilitation	776,454	-	-	-	776,454	Airport/Fed & State Funds
Total - Airport	21,358,580	-	-	28,908,421	50,267,001	

Grand Total - Capital Improvement Plan 99,386,643 40,119,835 81,049,547 61,583,085 282,139,110

**City of Fayetteville Information Technology Plan
Fiscal Years 2012 to 2016**

Project	Project Funding By Source of Funds					Funding Source Comments
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	
Development Services						
Development Plan Review Software System	-	68,500	-	-	68,500	
Magnet System Modules (Technology Upgrade)	-	130,225	-	-	130,225	
Planning Module of Magnet	51,700	-	-	-	51,700	
Total - Development Services	51,700	198,725	-	-	250,425	
Environmental Services						
On-Route Software	-	290,000	-	-	290,000	
Total - Environmental Services	-	290,000	-	-	290,000	
Finance						
Integrated Cashiering System	228,200	-	-	-	228,200	
Total - Finance	228,200	-	-	-	228,200	
Human Resources Development						
HR Electronic Forms	50,000	-	-	-	50,000	
Total - HRD	50,000	-	-	-	50,000	
Information Technology						
Avaya Phone System Upgrade	124,008	-	-	-	124,008	
Computer Replacement Plan (Incl. Virtualization)	832,262	1,330,000	-	131,500	2,293,762	\$131,500 for replacements in other funds
Customer Service and Work Order Management System	-	698,000	-	-	698,000	
HRIS-Financial System Replacement	-	125,000	4,000,000	-	4,125,000	Capital Lease Proceeds
Network Disaster Recovery	-	344,849	-	-	344,849	
Network Survivability/Redundancy Router	93,000	-	-	-	93,000	
Wireless Access Point	-	131,863	-	-	131,863	
Total - Information Technology	1,049,270	2,629,712	4,000,000	131,500	7,810,482	
Parks, Recreation & Maintenance						
RecTrac Upgrades	25,728	-	-	-	25,728	
Total - Parks, Recreation & Maintenance	25,728	-	-	-	25,728	
Public Safety						
800 MHz Radio System Digital Upgrade (P-25 Interoperability / Viper)	-	-	6,011,790	667,977	6,679,767	Capital Lease Proceeds, 10% PWC Participation
Computer-Aided Dispatch, Police and Fire Records Management Systems (incl PS AVL)	3,689,236	-	-	-	3,689,236	
Digital Radio Upgrades (Police, Fire and Non-Public Safety Radios)	3,169,869	-	149,100	-	3,318,969	Capital Lease Proceeds
Mobile Data Computer Project	-	769,600	-	-	769,600	
NetMotion	158,024	-	-	-	158,024	
Police In-Car Cameras	190,740	-	-	-	190,740	

**City of Fayetteville Information Technology Plan
Fiscal Years 2012 to 2016**

Project Funding By Source of Funds						
Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Police Server Upgrades	208,000	-	-	-	208,000	
Positron Phone System Upgrade (E911 Fund)	297,691	-	-	-	297,691	
Total - Public Safety	7,713,560	769,600	6,160,890	667,977	15,312,027	
Transit Projects						
Transit Automatic Vehicle Locator Systems - Fixed Route	419,012	-	-	-	419,012	
Transit Automatic Vehicle Locator Systems - Demand Response	120,000	-	-	-	120,000	
Trapeze Software	-	35,000	-	140,000	175,000	
Total - Transit	539,012	35,000	-	140,000	714,012	
 Grand Total - Information Technology Plan	 9,657,470	 3,923,037	 10,160,890	 939,477	 24,680,874	

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Doug Hewett, Assistant City Manager
DATE: March 7, 2011
RE: **Update on Probationary Rental Occupancy Permit**

THE QUESTION:

Does the draft ordinance meet City Council's interest with regard to the development of a PROP program?

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2025: The City of Fayetteville is a great place to live with a choice of desirable neighborhoods

Mission Statement: The City provides service that makes Fayetteville a better place for all

Goals 2015: Growing City, Livable Neighborhoods - A great place to live

2010-11 Target for Action: Rental Registration and Probationary Rental Occupancy Permit

BACKGROUND:

The City Council has explored a variety of programs since 2007 to address problem residential rental properties throughout the city. In late 2010, the City Council directed staff to complete work on a Probationary Rental Occupancy Permit (PROP) program modeled after a similar program in Raleigh, NC.

Staff from the City Manager's Office, City Attorney's Office, Police Department, and Development Services have worked through a variety of scenarios to develop the attached draft ordinance for City Council's review. The ordinance addresses repeated problem residential-rental properties that violate city codes or are the site of criminal activities that result in arrests.

ISSUES:

Q: What is the intent of the Probationary Rental Occupancy Permit, PROP, Ordinance?

A: The PROP ordinance is intended to address "problem rental properties" in established neighborhoods, and is targeted toward properties where violations occur, not all rental properties. The goal is that no PROP will ever be issued, because if this is the case it means that rental property owners throughout the city are ensuring that their properties are well-kept, up to City code, are well-monitored and their tenants are respectful of their neighbors.

Q: Does the PROP ordinance require that all rental properties get a permit?

A: No. A permit is only required for INDIVIDUAL UNITS (not an entire apartment house or complex) where a problem has been identified, and that problem has not been resolved within the "grace period", or where a pattern of repeat violations is established. Rental complexes that include more than 20 units are exempt from the PROP, unless a pattern of regular noncompliance is identified by city staff at a unit in such a development, and the City Council agrees to allow a PROP to be required on the entire rental complex. The PROP does not apply to rooming houses, rest homes or hotels.

Q: Does the PROP ordinance apply to owner-occupied dwellings as well?

A: No. The PROP ordinance only applies residential housing units offered for rent.

Q: When is a PROP required?

A: If a violation of any of the City's nuisance or housing regulations is identified a citation is issued and sent to the property owner, and the owner is given time to address the problem. Depending on the violation and the frequency of violations at this address, a PROP may be required for that property. Also, if arrests for criminal activity or repeated noise violations are issued by the Police at a single address in a 24-month period, a PROP may be required for that residential housing unit. Also, if, within a 24-month period, repeated pattern of code violations followed by remediation of the problem within the grace period happens at a single address, a PROP may be required at that address.

Q: What happens when a PROP is required?

A: A letter is issued to the property owner requiring them to complete a form to register for the permit and pay a fee within 10 days of notice, plus notify any tenants of the requirement for a PROP. The permit will "sunset" or become void in two years if no further violations occur at the property. There is also a per year fee due during the permit period.

Q: What happens if there are more violations at the same address during the permit period?

A: The two-year permit will be extended for an additional two years from the date of any violation. Repeated problems may result in permits for ALL of the units owned by that property owner that are subject to a PROP being revoked for two years.

Q: How is a problem identified?

A: Inspectors may identify a problem that is obvious outside the unit just by driving by, such as overgrown vegetation or more than one unlicensed vehicle on the property. In order to enter a unit and inspect for housing code violations, inspectors must be invited inside by the owner/renter, have probable cause evidence, or a search warrant must be issued by the courts. Inspectors will respond to complaints issued by neighbors, but depending on the nature of the problem, there may be no violation of City code, and no citation will be issued in that case. Also, calls to the e911/Police will result in response by uniformed police officers, if the problem is a criminal violation or noise ordinances, as the situation warrants.

Q: Why aren't tenants held responsible?

A: Tenants are responsible if a criminal citation is issued, but ultimately the condition of the property and the activities of the tenants must be closely monitored by the property owner. Property owners are expected to write clear expectations of tenant behavior relative to neighbors into leases, and take action to encourage tenants to comply with these expectations or seek evictions of problem tenants. The PROP ordinance allows staff to apply the ordinance reasonably and to grant extra time to comply or waivers of ordinance requirements to those property owners who are taking every possible measure to deal with problem tenants.

BUDGET IMPACT:

The budget impact depends on how the program is ultimately structured. However, based upon City Council's direction on January 3, 2011, the attached ordinance provides entry into the PROP program for repeated violations of code violations and/or criminal activity at residential rental property. To administer the program staff believes it will take the additional following positions: full-time housing inspector, full-time paralegal, and a 1/2 time office assistant. In addition to the recurring personnel there would also be ongoing operational costs. As an offset to those annual costs, participants would be required to pay entry and annual fees while in the PROP program. However, the revenues generated by participants to this program will not cover the ongoing costs to run the program solely.

Staff will provide what we believe would be the annual expenditures and revenues for the program

at the City Council's work session.

OPTIONS:

As this is an update, no action is required. If there are desired revisions to the ordinance or the program design, staff should be able to make those revisions quickly and present a final ordinance for the Council's consideration at an upcoming meeting. Staff believes that a public hearing would be required to enact this program.

RECOMMENDED ACTION:

Provide direction to staff.

ATTACHMENTS:

PROP Draft Ordinance

Please note the following is not the entire chapter. A new article _____ is being created as follows.

Chapter 14

HOUSING, DWELLINGS AND BUILDINGS

ARTICLE _____. PROBATIONARY RENTAL OCCUPANCY PERMIT * 3-02- 11

Sec. 14-_____. Findings and declaration of necessity.

(a) *Findings.* Housing in the city consists of owner-occupied and tenant-occupied properties and the two types of housing are in general parity. The substantial majority of complaints about and violations of the code provisions adopted to assure minimum adequate housing arise from tenant occupied property. State law and this code impose the responsibility to provide minimally adequate housing for tenants on the property owner. Existing remedial measures in the code are insufficient to achieve prompt code compliance resulting in significant adverse impacts on the public health, safety, and welfare of the city including the quality of life for tenants, affected neighborhoods and the city to expedite compliance with the code at such properties and thereby assure better quality housing for tenants and the neighborhood, the Council finds it necessary to adopt additional remedial measures for more effective compliance with the code at such properties.

(b) *Declaration of necessity.* It is deemed necessary in order to promote public health, welfare, good order and safety of the city and its residents that persons renting residential properties where there exist certain unsafe building, minimum housing, zoning or nuisance code violations should be subject to a permitting system. Permitting will:

- (1) Reduce the likelihood that these residential housing accommodations will become public nuisances in violation of N.C.G.S 19-1(b).
- (2) Promote responsible management of these housing accommodations.
- (3) Assist in providing a safe habitat for residents and neighbors of these facilities.
- (4) Safeguard property values.
- (5) Reduce the likelihood that housing accommodations where such problems most frequently have arisen and which are unfit for human habitation, dangerous, or injurious to the public will exist or be occupied.
- (6) Expedite repair of residential housing accommodations where such problems arise.

Sec. 14-_____ . Definitions.

Unless the context clearly indicates otherwise, the following words and phrases as used in this article shall have the following meanings:

- (a) *Business affiliate.* A person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, the owner of a probationary residential rental dwelling of any property. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent of [or] more.
- (b) *Dwelling.* A dwelling unit used for residential purposes other than a dwelling unit in a bed and breakfast inn, hotel or motel, guest house, rest home, rooming house, boarding house, lodging house, or tourist home.
- (c) *Dwelling unit.* One or more rooms physically arranged as to create an independent housekeeping establishment with separate facilities for cooking, sleeping, and toilet. A dwelling unit can be occupied by only one family. A dwelling unit can also contain a utility apartment or rented rooms in accordance with the Fayetteville City Code.
- (d) *Fifth degree of kinship.* Collateral kin within five degrees of kinship removed from the owner with the degree of kinship to be computed as provided in G.S. § 104A-1.
- (e) *Housing code.* The provisions of the Fayetteville City Code, Chapter 14.
- (f) *Development Services Department.* The Development Services Department of the City of Fayetteville.
- (g) *Licensed rental agency.* A rental agency holding a current privilege license issued by the State of North Carolina pursuant to G.S. §§ 105-41(a)(8) or (9).
- (h) *Notice of violation.* A city issued list of failures to comply with the city code at the dwelling included in the notice sent to the owner(s) pursuant to G.S. §§ 160A-428 and 160A-429 and Chapters 14, 16, 22 and 30 of the Fayetteville City Code.
- (i) *Owner.* Any person who alone, or jointly, or severally with others:
 - (1) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
 - (2) Shall have charge, care, or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such

person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as if the person were the owner; or

- (3) For violations of the housing code, shall be a mortgagee of record.
- (j) *Person.* Associations, corporations, limited liability companies, company, firm, partnerships, joint ventures, public or private institutions, corporations, trusts, estates, utilities, cooperatives, commissions, boards, condominiums, interstate bodies and bodies politic and corporate as well as to individuals or other legal entities.
- (k) *Probationary rental occupancy permit.* A permit issued to the owner of a probationary rental residential dwelling pursuant to this article.
- (l) *Probationary rental residential dwelling.* A dwelling unit, other than a utility apartment, including the premises of the dwelling unit which is the site of:
 - (1) A violation of Fayetteville City Code by re-occupancy of a dwelling previously found unsafe;
 - (2) A violation of Fayetteville City Code by re-occupancy before certification of compliance with the housing code by the Development Services Department;
 - (3) Activities resulting in (a) a third conviction for violation of Chapter 17-7 through 17-16 of the Fayetteville City Code, Noises Ordinances, within the twenty-four (24) month period following notice of the first conviction or (b) a third civil penalty for violation of Chapter 17-7 through 17-16, within the 24-month period following notice from the police department of the first notice of violation;
 - (4) A violation of Chapter 14 of the Fayetteville City Code by the failure to repair, vacate, or demolish within the time provided for compliance with the Code in the order issued by the Development Services Department pursuant to G.S. § 160A-429;
 - (5) A violation of the Fayetteville City Code § 14-31 by housing more inhabitants than permitted in the dwelling;
 - (6) A zoning vehicle violation by the failure to comply in a timely manner with an order issued by Development Services Department due to the unlawful storage of unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled automotive vehicles on the premises;

- (7) A second nuisance abatement pursuant to the Fayetteville City Code within a 24-month period;
 - (8) A second citation for violation of Sections 6-226 through 6-230 or Sections 6-241 through 6-243 of the Fayetteville City Code within a twenty-four (24) month period;
 - (9) A fourth notice of violation within a 24-month period, when the prior notices of violations were resolved by corrective action and without issuance of any order or mandate for corrective action, of any of the following Chapters or sections: Chapter 14, Section 16-311, Sections 16-354 through 16-356, Sections 22-11 through 22-18, and Section 30-107(10) of the Fayetteville City Code.
 - (10) Activities resulting in a third arrest for a criminal activity on the premises of the dwelling following notice from the police department within the twenty-four (24) month period following notice from the first conviction for a criminal activity on the premises of the dwelling.
- (m) *Public nuisance violation.* A determination by a code enforcement official that any of the nuisances listed in _____ exists at a property which determination is included in a notice sent to the property owner pursuant to _____.
 - (n) *Violation.* A determination by a code enforcement official or a judge, after a notice of violation of the city code and an opportunity for response to the noticed alleged failures, that an order or other mandate should issue to the owner or any other person imposing a sanction or requiring further actions to comply with the city code, including without any limitation the payment of civil penalties or administrative fees, implementation of corrective measures, or cessation of activities which are not authorized by the city code, or conviction of a criminal code offense for failure to comply with the code provisions listed in (l) of this section.
 - (o) *Zoning vehicle violation.* A determination that unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled automotive vehicles are present on the premises in violation of the zoning code including the provisions at Sections 16-354 through 16-356.
 - (p) *Criminal Activity.* Means arrest of a tenant or tenant guest for conduct on the premises of the dwelling under any of the following:
 - (1) General Statute 14-204;
 - (2) General Statute 14-71.1 on the premises;
 - (3) General Statute 18B-300;
 - (4) N.C. General Statute 14-409 or N.C. General Statute 14-415.1;

- (5) General Statute 14-292;
- (6) General Statute 14-288.2;
- (7) General Statute 90-95;

Sec. 14-_____ . Permitting of probationary rental residential dwellings.

(a) Unless compliance with this article is deemed pursuant to Section _____, it shall be unlawful for an owner to rent, to receive rental income from, or to offer for rent, any probationary rental residential dwelling required to be permitted under this part without first obtaining a permit for the dwelling under this part or when the permit issued under this part is revoked. The owner of a probationary rental residential dwelling shall hold a permit under this part for each probationary rental residential dwelling and shall abide by the standards in Section _____ in order to be eligible to retain the permit. Each probationary rental residential dwelling is a separate dwelling for fee purposes and for the requirement to be permitted. When an apartment house consisting of multiple dwelling units is required to have a probationary rental occupancy permit as a result of a violation which applies to the building as a whole, a single permit will be required for the building as a whole which permit will be issued to the owner of the building, however each dwelling unit within the building which separately qualifies as a probationary rental residential dwelling shall be subject to separate permit fees and the requirement to be permitted. The Development Services Department shall assign violations in common areas of an apartment complex to the apartment house nearest to the common area where the violation occurred.

(b) Every application for the probationary rental occupancy permit prescribed herein, or a permit amendment to add another probationary rental residential dwelling to the permit, shall be upon a form approved by the director of the Development Services Department or his designee and shall be filed with the Development Services Department. Every application shall be made under oath and shall contain the information required to show the owner is eligible for a permit under this article and sufficient information to enable the Development Services Department to determine that the standards of Section _____ are being, or will be, met at any probationary rental residential dwelling to be permitted. Within 30 days of receipt of a complete application and a non-refundable application fee of \$ _____, the Development Services Department shall review each application and determine whether the application should be approved. The Development Services Department shall deny any application which does not satisfy the minimum requirements of this article and any application submitted by an owner during a period of permit revocation.

(c) The permit fee shall be \$ _____ for the first year of the permit . The annual fee for subsequent years shall be \$ _____. Such fee shall be due and payable when the permit issues with annual fees for subsequent years due and payable annually.

(d) Any person required to have a probationary rental occupancy permit shall be permitted for two years. If a violation of the permit occurs, the permit requirement is extended for the probationary rental residential dwelling covered by the permit for two years following the date of the violation. To be released from the requirement for a probationary rental occupancy permit, the owner must have had no violation of any of the code provisions listed in _____

and the standards in _____ for the two-year period immediately before the permit period ends and the dwelling must be approved as compliant with the code in a final inspection. Final inspections will be conducted only upon the request of the owner. When the owner fails to request an inspection within 90 days after the date the permit requirement was due to expire, the Development Services Department, after written notice to the owner and tenant, shall inspect the permitted dwelling for compliance with the code provisions listed in _____ and the standards in Section _____.

(e) Any person taking title to a permitted probationary rental residential dwelling shall be the holder of the probationary rental occupancy permit. Any person taking title to a probationary rental residential dwelling not previously holding a permit shall apply for a probationary rental occupancy permit. The new owner of the dwelling unit, who is not a prior owner or related by marriage or within the fifth degree of kinship to the seller, may request that the director of the Development Services Department or his designee remove the requirement that the dwelling have a probationary rental occupancy permit. For the request to be eligible for consideration, the new owner must:

- (1) Have paid all outstanding fees and civil penalties for the dwelling;
- (2) Have no violations or pending violations of this article issued to the new owner;
- (3) Obtain from the Development Services Department a determination that the dwelling complies with the standards in Section _____; and
- (4) Submit an affidavit which shows proof of title transfer, that the new owner is not a prior owner, not related by marriage or within the fifth degree of kinship to the seller, is not a business affiliate of the prior owner, and that the lease for the dwelling includes a provision making violations of the city code by the tenant grounds for eviction.

(f) A temporary permit shall be issued by the Development Services Department if the final decision on a complete application is not made at the end of the 30-day review period. The temporary permit will expire 30 days following an inspection which finds the dwelling to be ineligible to hold a permit under this article; upon issuance of the Probationary Rental Occupancy Permit for the dwelling; or upon denial of the application for a Probationary Rental Occupancy Permit. The Development Services Department shall not charge a fee for a temporary permit.

(g) An application shall be accompanied by a notarized statement from a competent person agreeing to appointment as process service agent for receipt of a notice of violation or order from the city for all violations at the dwelling unless each notice of violation or order previously sent from the city to the owner of the dwelling was delivered and no such notices of violation or orders returned to the city. The refusal of service by the process service agent of a notice of violation or order, or a notice of violation or orders returned undelivered, shall be grounds to revoke the permit. When a notice or order under this article is returned undelivered, the Development Services Department may require the appointment of a process service agent as

a condition for continuing to hold the permit. Failure by the owner to maintain a duly appointed process service agent, or to appoint a process service agent within 30 days of being so ordered, shall be grounds to revoke the Probationary Rental Occupancy Permit.

(h) The Development Services Department shall maintain a list of all dwellings and dwelling units which are probationary rental residential dwellings and subject to the permit requirements of this article. The Development Services Department shall send a copy of the list of probationary rental residential dwellings, which shows whether each listed dwelling is permitted, to the office of the city clerk, for public inspection, at least once every 30 days. The Development Services Department shall use other reasonable means to make the list publicly available including the information systems for public access to city information.

(i) Reserved.

The Council, by ordinance, may add the dwelling to the PROP program upon finding that existing remedial provisions have been inadequate to abate the detrimental impact on the tenants, the adjacent properties, the dwelling and the neighborhood.

Sec. 14-_____. Standards.

(a) The permittee shall respond to the department making contact, either in person or by telephone within two business days after being contacted at the telephone number provided in the application, to the police department, the fire department, or the Development Services Department. The permittee shall submit to the department making the contact, within three days of the response, written documentation of the response. The permittee may designate a licensed rental agency as the person responsible for responding to calls for assistance from the police department, the fire department, or the Development Services Department. The designated agency must have at least one agent located in the city or within 50 miles of the city 's planning jurisdiction who is authorized by it to respond to calls. The designation shall be effective only after a notarized statement is submitted to the Development Services Department in which the responsible employee is identified and agrees to accept the duty.

(b) The permittee shall maintain the dwelling so that it does not violate any applicable provision of the zoning code , minimum housing code , or other code provision listed in the definition of probationary rental residential dwelling at Section _____.

(c) The permittee shall maintain a current list of occupants. Upon request, by city inspectors, police, and fire and emergency response personnel investigating violations or potential violations of this article, the permittee shall present the list of occupants to the investigating personnel.

(d) The permittee shall obtain a Section _____ certificate of housing code compliance before a vacant probationary rental residential dwelling with an unresolved notice of violation of the housing code is occupied by another tenant.

(e) The permittee shall comply with the requirements of this article.

(f) The public works commission shall not provide water service to a vacant probationary rental residential dwelling which is in violation of the housing code until a certificate of housing code compliance has been issued for the dwelling pursuant to Section _____, unless the director of the public utilities department determines such service is necessary for public health reasons and will not be used by occupants of the dwelling for residential purposes.

(g) Within 30 days of the designation of a dwelling as probationary residential rental dwelling, the owner shall deliver a written notification, using the form approved by the Development Services Department, to each tenant that the dwelling is a probationary rental residential dwelling. Prior to entering into a rental agreement, whether oral or written, the permittee shall provide written notification, using the form approved by the Development Services Department, to each prospective tenant that the dwelling is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit. The permittee shall provide proof of the delivery to the Development Services Department along with a copy of the notification within ten days of receipt of proof of delivery.

(h) Within 30 days of the designation of a dwelling as probationary residential rental dwelling, the owner of a condominium or a dwelling in a townhouse development, shall deliver a written notification, using the form approved by the Development Services Department, to the association or governing body which controls the property commonly owned and associated with the dwelling, that the dwelling is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit on the common property of the association. The permittee shall provide proof of the delivery to the Development Services Department along with a copy of the notification within ten days of receipt of proof of delivery.

(i) Within 30 days of the designation of an apartment house as probationary residential rental dwelling and when the persons owning the apartment house and the apartment complex are not the same person, the owner of an apartment house shall deliver a written notification, using the form approved by the Development Services Department, to the owner of the apartment project which controls the property commonly owned and associated with the apartment house, that the apartment house is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit on the common property of the apartment complex. The permittee shall provide proof of the delivery to the Development Services Department along with a copy of the notification within ten days of receipt of proof of delivery.

Sec. 14-_____. Compliance with provisions.

(a) Any person required by this article to have a permit for a probationary rental residential dwelling who files a complete application for any required permit within ten days

following notice from the Development Services Department that this article applies to, the dwelling shall be deemed compliant with this article unless and until the application is denied.

(b) It shall be unlawful to rent, to receive rental income from, or to offer for rent a dwelling subject to the permit requirements of this article beginning ten days after service of notice by the Development Services Department that a permit is required under this part unless a complete application for a _____ permit has been submitted for the dwelling.

(c) Any person who holds a G.S. §§ 105-41(a)(8) or (9) privilege license as a rental agency, and is not the record owner of the probationary rental residential dwelling, shall be deemed compliant with this article upon filing with the Development Services Department an affidavit or other notarized statement that the agency relationship has been terminated and that the failure to comply with the noticed violations was caused by the record owner's refusal to comply with the article.

(d) Any person who has been designated as a process service agent and is not the record owner of the probationary rental residential dwelling shall be deemed compliant with this article upon promptly notifying the Development Services Department that the notice or order delivered for service cannot be delivered to the owner and upon filing with the Development Services Department an affidavit or other notarized statement that the agency relationship has been terminated and that all prior notices and orders were delivered to the owner.

(e) If the activities, violations, or abatements which individually or cumulatively could cause a property or dwelling to be deemed a probationary rental residential dwelling are the result of tenant behavior or actions, an owner shall be entitled to relief from any such violation(s) [i.e., the violation(s) shall not be counted as a strike against the owner] by evicting or removing the tenant, so long as the owner can show that the tenant behavior or action is the basis of the eviction or removal of the tenant. No owner may obtain relief for more than two violations in any three-year period per dwelling under this subsection. Any owner who evicted or removed the tenant as a result of the tenant causing such violation(s), whether such removal is the result of a tenant voluntarily vacating the dwelling or as a result of court action, shall be deemed compliant with this article upon filing with the Development Services Department an affidavit or other notarized statement stating that (1) the tenant cited for the violation no longer resides at the dwelling, or (2) the attached complaint was filed to evict the tenant and listing the actions showing diligence in effecting the eviction and attaching a copy of the signed lease with the required right to evict. An owner shall also be entitled to relief from any subsequent violation(s) that occur while the action to evict the tenant is pending upon a similar showing to the Development Services Department.

If the court has denied the owner's diligent pursuit to evict the tenant, it shall be sufficient if the owner does not renew the tenant's lease at the end of the then current term and instead terminates the lease.

When an owner shows an inability to access the dwelling for purposes of effecting remedial activity as ordered by the Development Services Department pursuant to Chapter 14 due to a court order in an eviction proceeding, the failure to complete the required remedial

activity as previously ordered by the Development Services Department is not a violation for purposes of determining whether the dwelling is a probationary rental residential dwelling until 30 days after the expiration of the court order barring access or within such additional time for compliance as is provided by the Development Services Department.

(f) Any mortgagee of record, not otherwise defined as an owner, shall be deemed compliant with this article unless and until the other owners of the probationary rental residential dwelling fail to comply with notices of violations or orders, including for the payment of civil penalties. A mortgagee of record, not otherwise defined as an owner, shall not be liable for civil penalties or administrative fees in excess of the liability of the other owners.

Sec. 14-_____. Enforcement.

Enforcement may be by any one or a combination of the following methods, and the institution of an action under any of these methods shall not relieve any party from any civil proceeding prescribed for violations of this article. When a violation continues from day to day without interruption, a new and separate violation occurs when the violation continues after service of the notice or order of the immediately preceding violation for the unlawful activity.

(a) *Civil penalties.*

(1) Any person who shall rent, or offer for rent, a probationary rental residential dwelling without first applying for and obtaining a permit as required in Section _____ or who shall rent, or offer for rent, a probationary rental residential dwelling permitted under this article in violation of this article shall be subject to a civil penalty as follows:

- a) \$ _____ for a first violation, and each continuing day of noncompliance following written notice thereof shall result in the assessment of an additional civil penalty \$ _____ per day;
- b) \$ _____ for a second violation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$ _____ per day;
- c) \$ _____ for a third violation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$ _____ per day;
- d) \$ _____ for a violation during a period of revocation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$ _____ per day;
- e) \$ _____ against the owner of common property in a condominium or townhouse development for each violation occurring on

the common area of a dwelling subject to this article, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$_____ per day; and

- f) \$_____ against the owner of an apartment project with common property used by an apartment house for each violation occurring on the common area of an apartment house subject to this article, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$_____ per day.
- (2) Any duly appointed licensed rental agency employee who, after receiving written notice of a violation by the city, fails to contact the city as stated in the standards found in Section _____(a) shall be subject to a civil penalty of \$_____. Thereafter, each and every subsequent single violation occurring on the same probationary rental residential dwelling shall be assessed a civil penalty of \$_____ and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$_____ per day.
 - (3) Any duly appointed process service agent who, after receiving written notice of a violation or an order from the city, refuses to accept service of process or delivery of notices of violation or orders from the city in accordance with the agent's notarized statement attached to the application submitted for the dwelling shall be subject to a civil penalty of \$_____. Thereafter, each and every subsequent single violation occurring on the same probationary rental residential dwelling shall be assessed a civil penalty of \$_____ and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$_____ per day.
- (b) *Equitable remedies, including injunctions.* As authorized by the city Council, the city may apply to the courts for any appropriate equitable remedy to enforce the provisions of this article, including mandatory or prohibitory injunctions commanding the party to correct the unlawful condition or cease the unlawful use of the business.
 - (c) *Revocation of permit.*
 - (1) For each dwelling where a second violation of this article occurs within 24 months of the most recent violation of this article, the Development Services Department shall issue an order revoking the residential rental occupancy permit for a period of 2 years, or when no permit had been issued the dwelling, making the probationary residential rental dwelling ineligible for a permit for a period of 2 years.

- (2) For each dwelling where a third violation of this article occurs within 24 months of the most recent violation of this article, the Development Services Department shall issue an order revoking every probationary rental occupancy permit issued to, or held in the name of the owner of the dwelling where the violation occurred, for a period of 2 years, and making the owner ineligible to hold a probationary rental occupancy permit for a period of 2 years.
- (3) Ten days following the service on the permittee of a written recommendation by the director of the Development Services Department or his designee which describes the nature of any violation, the director of the Development Services Department or his designee may revoke a permit issued pursuant to Section _____ if it is determined that the permittee has violated any provision of this article and other means of enforcement have failed to deter the permittee from operating in violation of this article.
- (d) *Probationary status.* Following a determination that a permittee under this article has violated the provisions of this article, the permittee shall be sent a notice that the permit is on a probationary status and will be revoked for a period of 24 months if the permittee commits a second violation during the 24-month period following the first violation. Following a determination that a permittee under this article has violated the provisions of this article a second time within any 24-month period, the permittee shall be sent a notice that the permit is on a probationary status and if the permittee commits a third violation during the 24-month period following the first violation, every probationary rental occupancy permit issued to, or held in the name of the owner where the violation occurred, will be revoked for a period of 24 months.
- (e) *Cancellation of revocation orders.* The director of the Development Services Department or his designee shall cancel an order revoking a probationary rental occupancy permit when the owner requesting cancellation of the revocation order has paid all outstanding fees and civil penalties for the dwelling and the owner has no pending appeals of any notices or orders and:
 - (1) Within five working days of the service of the order, the owner obtains approval from the Development Services Department of a management plan for the dwelling to achieve full compliance with the standards in Section _____ within the time otherwise provided by the Fayetteville City Code, or such time as the Development Services Department finds reasonable and;
 - (2) The owner by power of attorney appoints a licensed rental agency to manage the property for the two-year period following the approval; or

- (3) Within 15 days of the service of the order, the new owner of the dwelling unit, who is not a prior owner, not related by marriage or within the fifth degree of kinship to the seller, is not a business affiliate of the prior owner, submits an affidavit so attesting along with proof of title transfer, pays all outstanding fees and civil penalties, and shows the Development Services Department that the dwelling complies with the standards in Section _____.

Sec. 14-____. Appeal.

Any permittee, owner or other person served with notice or an order under the provisions of this article, including denial of a request pursuant to Section _____, may appeal the notice or order in the following manner:

- (1) An appeal must be filed in writing with the director of the Development Services Department or his designee within 30 days after service of the written notice or order of the director of the Development Services Department or his designee on the petitioner. The written appeal shall identify the application of the article at issue and provide the reasons the petitioner contends that it was wrongly applied and any supporting documentation. An appeal challenging a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to Section _____ may include an appeal of the basis for the citations resulting in the determination that the dwelling is qualified as a "probationary rental residential dwelling" pursuant to Section _____.
- (2) Unless the director of Development Services or his designee decides to allow the requested relief based on the appeal request, the director of the Development Services Department or his designee, which shall send each appeal request to the board of appeals on dwellings and buildings, shall consider both the applicable code provisions and equitable factors in resolving the appeal. If the person who files an appeal of a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to Section _____ shows that the owner did not cause and, with the use of reasonable measures, could not have prevented the actions or activities leading to the citations which qualified the dwelling as a "probationary rental residential dwelling" pursuant to Section _____ the board of appeals on dwellings and buildings may reverse the order.
- (3) An appeal may be taken from any decision of the board of appeals on dwellings and buildings to arbitration by giving notice of appeal to the city council within 30 days after service of the written decision of the board of appeals on dwellings and buildings. Notice of appeal shall be given by delivery of a written statement to the city clerk stating the grounds for the appeal and providing the city clerk with a copy of the written decision of the board of appeals on dwellings and buildings. The written appeal shall identify the application of the article at issue and provide the reasons the petitioner contends that it was wrongly applied. The director of the Development Services Department or his designee and the

appealing party shall select an arbitrator from the Cumberland County district court list of arbitrators. The arbitration shall be conducted, to the extent practicable, in accordance with the supreme court rules for court-ordered arbitration in North Carolina. The arbitrator shall be paid a fee equal to the maximum fee specified in such rules. The arbitrator shall consider both the applicable code provisions and equitable factors in resolving the appeal. If the person who files an appeal of a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to Section _____ shows that the owner did not cause and, with the use of reasonable measures, could not have prevented the actions or activities leading to the citations which qualified the dwelling as a "probationary rental residential dwelling" pursuant to Section _____, the arbitrator may reverse the order.

- (4) All decisions of the director of the Development Services Department or his designee, the board of appeals of housing and dwellings and the arbitrator shall be served on the petitioner.
- (5) The enforcement of an order issued by the Development Services Department which includes the revocation of a residential rental occupancy permit shall be stayed upon the filing of an appeal and until a final order is issued by the director of the Development Services Department or his designee or the arbitrator.

Sec. 14-_____. Administrative fee and arbitration fee.

(a) *Fee for each violation.* Any person who violates this article shall pay an administrative fee of \$ _____ per violation and the costs to the city of service of orders and notices.

(b) *Fee for arbitration.* Any person who files an appeal shall pay an administrative fee of \$ _____ to the city at the time the appeal request is made. Failure to pay the administrative fee shall cause the appeal to be denied. The person who filed the appeal shall be responsible for paying one-half of the costs of the arbitration fee. If the person who appeals is the prevailing party, the administrative fee and the portion of the arbitration fee shall be reimbursed.

Sec. 14-_____. Methods of service.

(a) Unless otherwise provided, notices, orders or other documents issued pursuant to this article shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the notices, orders or other documents may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or whereabouts of persons are unknown and the same cannot be ascertained by the Development Services Department or the PROP Team of the

police department in the exercise of reasonable diligence, or if the owners are known but have refused to accept service by registered or certified mail, and the Development Services Department shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order upon such owners or persons may be made by publication in a newspaper having general circulation in the city at least once no later than time at which personal service would be required under this article. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(c) In order to assist the Development Services Department and the police department with the service of notices, orders and other documents pursuant to this article, an owner who submits an affidavit showing a failure to receive a notice of violation and who affirms in the affidavit submitted to the Development Services Department or the PROP Team of the police department that the address listed in the Cumberland County tax records has been changed to the correct address at which the owner can receive further notices, shall have the prior violation removed from consideration for the Probationary Rental Residential Dwelling determination so long as the owner continues to maintain a correct address with the Cumberland County tax records and does not refuse to accept service of any notice at the address listed with the Cumberland County tax records.

(d) In order to assist owners who desire to better monitor activities at their properties, the police department shall notify an owner as provided in (a) of this Section within ten business days of an activity at the property by a tenant or a guest of a tenant that can or will cause the property to be qualified as a probationary rental residential dwelling. In addition and to the extent practicable, a notice to the owner shall be provided in the most expeditious manner available, including notice sent by electronic mail or facsimile to the locations provided in the Rental Registration. Failure to send or deliver the more expeditious notice shall not impede the enforcement of the PROP program against the owner.

Sec. 14- ____ . Relation to other laws.

Nothing in this article shall authorize or condone any violation of federal, state, and city fair housing laws and state landlord and tenant laws. This article shall not diminish any private right of action of any person.

State law references: State Fair Housing Act, G.S. Ch. 41A; landlord and tenant, G.S. Ch. 42.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Victor D. Sharpe, Community Development Director
DATE: March 7, 2011
RE: **Update on the Murchison Road Redevelopment Plan**

THE QUESTION:

What is the status of the Murchison Road Redevelopment Plan?

RELATIONSHIP TO STRATEGIC PLAN:

Greater Tax Base Diversity – Strong Local Economy and More Attractive City Clean and Beautiful.

BACKGROUND:

- The Murchison Road Redevelopment Plan requires a few more steps in order to be finalized.
- The plan will be submitted to the Fayetteville Redevelopment Commission and Planning Commission.
- The Planning Commission will hold a public hearing and forward a recommendation to City Council for adoption.

ISSUES:

- The initial phase of funding includes applying for a HUD Section 108 Guarantee Loan in the amount of \$2,750,000.

BUDGET IMPACT:

\$7,957,067 - City's contribution.

OPTIONS:

- Once completed, the Murchison Road Redevelopment Plan will come back to City Council for adoption.
- The funding required for implementation will require a separate action by City Council.

RECOMMENDED ACTION:

Receive as information.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: John Kuhls, Human Resource Development Director
DATE: March 7, 2011
RE: **Limited English Proficiency (LEP) Policy Update**

THE QUESTION:

This is an informational item to share a brief overview of the city's Limited English Proficiency (LEP) Policy activities.

RELATIONSHIP TO STRATEGIC PLAN:

Relates to Goal 2 - Growing City, Livable Neighborhoods - A Great Place to Live

BACKGROUND:

The City currently uses a departmental approach to address Limited English Proficiency (LEP) Policy and supporting practices where applicable. For example, in Transit a document has been developed to address LEP implications as part of the Fayetteville Area System of Transit (FAST).

ISSUES:

N/A

BUDGET IMPACT:

Unknown / TBD

OPTIONS:

1. For the City to continue using its current departmental approach on LEP policy and action implementation.
2. For staff to develop a higher level overarching citywide LEP policy, while enabling departments to supplement the policy, as they clarify and implement service specific actions; address related needs; and fulfill applicable requirements when appropriately funded.

RECOMMENDED ACTION:

Simply to receive this information and provide feedback and direction on Council's preference for Option 1 or Option 2.

ATTACHMENTS:

FAST Policy Example



CITY OF FAYETTEVILLE
Fayetteville Area System of Transit

LIMITED ENGLISH PROFICIENCY POLICY

Adopted July 17, 2009

Ron Macaluso, Director

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DEFINITIONS

Bilingual refers to the ability to use two languages proficiently.

Compliance That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

Discrimination refers to any act or inaction, whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity of a Federal aid recipient, subrecipient, or contractor.

Federal Financial Assistance means

- (1) grants and loans of Federal funds;
- (2) the grant or donation of Federal property and interests in property;
- (3) the detail of Federal personnel;
- (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
- (5) any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance.

Interpretation is the act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

Limited English Proficiency designates individuals whose primary language is not English and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (*e.g.*, speaking or understanding), but still be LEP for other purposes (*e.g.*, reading or writing). Similarly, LEP designations are context-specific: an individual may possess sufficient English language skills to function in one setting, but these skills may be insufficient in other situations.

Limited English Proficient (LEP) Persons are persons for whom English is not their primary language and who have a limited ability to speak, understand, read, or write English. It includes people who reported to the U.S. Census that they do not speak English well or do not speak English at all.

Minority Population means any readily identifiable group of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient populations (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy, or activity.

Minority Persons include the following:

- (1) American Indian and Alaska Native, which refers to people having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- (2) Asian, which refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

(3) Black or African American Populations, which refers to peoples having origins in any of the Black racial groups of Africa.

(4) Hispanic or Latino Populations, which includes persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

(5) Native Hawaiian and Other Pacific Islander, which refers to people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

National Origin means the particular nation in which a person was born, or where the person's parents or ancestors were born.

Public Participation An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and express needs and goals.

Primary Language means an individual's native tongue or the language in which an individual most effectively communicates. F.A.S.T. personnel should avoid making assumptions about an individual's primary language. For example, not all individuals from Central America speak Spanish fluently. Instead, some Central Americans may claim an indigenous language as their native tongue. F.A.S.T. personnel should make every effort to ascertain an individual's primary language to ensure effective communication.

Program includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by

others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

Service Area refers to either the geographic area in which a transit agency is authorized by its charter to provide service to the public or to the planning area of a State Department of Transportation or Metropolitan Planning Organization.

Service Standard/Policy means an established policy or service performance measure used by a transit provider or other recipient, or subrecipient as a means to plan or distribute services and benefits within its service area.

Signing language expressed by visible hand gestures.

Translation is the replacement of written text from one language (source language) into an equivalent written text in another language (target language).

STATEMENT OF POLICY:

It is the policy of Fayetteville Area System of Transit (F.A.S.T.) to provide meaningful access to all services to Limited English Proficiency (LEP) persons in a reasonable and timely manner. Should an LEP individual make a request for services, F.A.S.T. personnel will make every effort to accommodate the individual in order to receive the benefits and services of the program. All F.A.S.T. personnel shall make efforts to provide language assistance services to LEP individuals whom they encounter, or whenever an LEP individual requests language assistance services. F.A.S.T. personnel will inform members of the public that language assistance services are available free of charge to LEP persons and that F.A.S.T. personnel will provide these services to them. A Title VI Notice to the Public is posted in both facilities and on the web site: www.ridefast.net.

PURPOSE OF THE POLICY:

F.A.S.T. commits to make efforts to attract riders, who would otherwise be excluded from participating in the service because of language and literacy barriers, and ideally contribute to riders to using the system after they are proficient in English or have other or more transportation options.

BASIS OF AUTHORITY

42 U.S.C. 2000d-1 – Civil Rights Act of 1964

49 Code of Federal Regulations Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation

Presidential Executive Order 13166 - LEP

SCOPE:

F.A.S.T.'s LEP Policy and Plan applies to all employees, sub-recipients, consultants and contractors.

LEP ASSESSMENT

FOUR-FACTOR ANALYSIS 2010

FACTOR 1:

The number and Proportion of LEP Persons Served or Encountered in the Eligible Service Population.

1. Geographical Boundaries of the F.A.S.T. Service Area: F.A.S.T. operates fixed route services in an area that is within the incorporated city limits of Fayetteville, NC. Complementary Para-transit services are provided for qualified disabled persons who reside in areas of up to ¾-mile radius of all fixed routes. **(See Exhibit 1 – F.A.S.T. Map of Service Area;)**
2. Analysis of U.S. Census Data. Data from the U.S. Census Bureau's 2000 Decennial Census was analyzed as part of the process to determine the number or proportions of population groups eligible to be served. **(See Exhibit 2 – 2000 U.S. CENSUS BUREAU TABLE – Ability to Speak English – Fayetteville, NC MSA.)** According to the US Census Bureau, in 2000, the population of the Fayetteville, NC Metropolitan Statistical Area (MSA) was 278,459 persons. Of the persons five-years old and older (278,459), 248,238 of them (89.1%) speak only English. Significant language usage other than English are the populations of Spanish speaking persons (16,536 – 5.9% of Area Population), Other Indo-European language speakers (7,916 – 2.8% of Area Population) and Asian and Pacific Island language (5,040 – 1.8% of Area Population).
3. Concentrations of LEP Persons within the F.A.S.T. Service Area. 14.6% (2,412) of those identified as Spanish speaking individuals indicated they either speak English "not well" or "not at all", and this total represents .9% of the population studied. As for the Other Indo-European or Asian

and Pacific Island language speakers, the number indicating they speak either English "not well" or "not at all" is only 476 (.2% of Area Population) and 720 (.3% of Area Population) persons respectively. Persons identified as who speak "All Other Languages" include 729 persons out of the population study, .3% of Area Population. Combined, 3,661 persons who speak other than English, and identified as either speaking English "not well" or "not at all" comprises 1.3% of the entire Area Population. **(Exhibit 3 – F.A.S.T. Map of Linguistically Isolated Spanish Households; Exhibit 4 – F.A.S.T. Map of Linguistically Isolated Asian Households; Exhibit 5 – F.A.S.T. Map of Linguistically Isolated Indo-European Households; Exhibit 6 – F.A.S.T. Map of Linguistically Isolated "Other" Households)**

4. Also performed were evaluations of persons who have attained educational level of equivalent of 8th grade. **(Exhibit 7 – Fayetteville MPO Educational Attainment Map.)** It is apparent from the maps that certain areas of the city are impacted by individuals with lower levels of functional literacy.

FACTOR 2:

The Frequency with Which LEP Individuals Come into Contact with F.A.S.T. Services.

1. F.A.S.T. Prior experiences with LEP Individuals. During 2009, there have a number of encounters with individuals (Spanish speaking) that sought to use F.A.S.T. services. In each event, F.A.S.T. personnel have been able to communicate with the individuals who have sought assistance. On occasion, there have also been times when hearing-impaired individuals have sought assistance, and again F.A.S.T. personnel, through interpretive American Sign Language, accommodated this. Though these encounters

have not been documented in the past, it is estimated that a Spanish translation may be needed once or twice a month, and the same for interpretation of American Sign Language.

FACTOR 3:

The Importance of F.A.S.T. Services to LEP Persons.

1. Accessing Services. F.A.S.T. provides fixed-route public transportation services, complemented by para-transit services within a ¼-mile radius of all bus routes. Other than F.A.S.T., other options for public transportation are limited to the "medical only" services provided through Cumberland County Community Transportation Program (CCCTP). Several private taxi companies offer services in the area as well. Persons accessing public transportation through F.A.S.T. utilize the services for employment, medical, educational, and social purposes. Many riders do not have any other means of transportation, and are truly transit dependent. As there have been so few encounters with LEP persons to date, it is assumed that individuals identified as LEP persons would have similar reasons for using public transit.

FACTOR 4:

The Resources Available to the Recipient and Costs.

1. Accessing Available Resources. Currently, the manner in which encounters with LEP persons is managed by utilizing F.A.S.T. personnel, within which there are several persons who speak Spanish, and one who can communicate with sign language and Spanish. Also, the City of Fayetteville maintains a list of bilingual staff members and from that list; Transit related material is translated for the public.

2. Additional Services needed to Provide Meaningful Access. Encounters with LEP persons in the future are somewhat difficult to predict, although it is likely that encounters will increase. It is desirable to make every effort to remove any barriers that impede LEP persons from accessing F.A.S.T.'s services. As the primary encounters of note is with Spanish speaking individuals and the hearing impaired, it is within reason to publish Spanish language versions of the most critical literature to make efforts to remove barriers. In addition, a "picture" type of brochure or print literature will follow, in order to accommodate LEP persons who are either limited by other linguistic barriers, or by those who are limited in their literacy ability to read printed English.

3. Accessing Budgetary Adjustments. F.A.S.T. will create the necessary print literature during 2010. Limited copies will be printed, however, as the need is present but very minor in the population of individuals served. Over the next few years, continuous evaluation of the need for Spanish (or other language) printed materials will further identify the need for additional measures assistance for LEP individuals.

TRAINING

F.A.S.T. will provide periodic training to personnel regarding F.A.S.T.'s LEP policies, the need to accommodate meaningful access to service for LEP individuals, and how to respond via telephone and in-person with LEP individuals. Employees will continue to report encounters with LEP persons, and these encounters will be considered as the need for expanding LEP services grow.

DISSEMINATION OF THE F.A.S.T. LEP PLAN

A Title VI Notice to the Public is posted in both facilities, and on the website: www.ridefast.net. Copies of the LEP Policy & Plan will be provided on request to

any person(s) requesting the document via phone, in person, by mail or email.
LEP persons may obtain copies/translations of the plan upon request.

COMPLAINT OR INCIDENT REPORTS

Any questions or comments regarding this plan should be directed to:

Director, Fayetteville Area System of Transit
455 Grove Street
Fayetteville, NC 28301
Phone: 910-433-1743
Fax: 910-433-1064

All service or access complaints will be forwarded to the Human Relations
Director for the City of Fayetteville.

Any person who believes he or she has been denied benefits or excluded from
participation in services of any program or activity administered by the
Department or its sub-recipients, consultants, or contractors on the basis of race,
color, national origin (including LEP), sex, age, or disability may file a complaint
pursuant to Title VI and/or related statutes.

Title VI complaints may be filed with:

- Fayetteville Area System of Transit
Transit Director
455 Grove Street
Fayetteville, NC 28301
- City of Fayetteville
City Manager
433 Hay Street
Fayetteville, NC 28306
- North Carolina Department of Transportation
Office of Civil Rights & Business Opportunity and
Workforce Development Office
Attn: Sharon Title VI/Environmental Justice Manager
1511 Mail Service Center
Raleigh, NC 27699-1511

- Federal Transit Administration
230 Peachtree St., N.W., Ste 800
Atlanta, GA 30303
Attn: Region IV Civil Rights Officer
- The U.S. Department of Transportation
1200 New Jersey Avenue,
SE Washington, DC 20590

Complaints must be filed no later than 180 days after:

- The date of the alleged act of discrimination;
- The date when the person(s) became aware of the alleged discrimination; or
- Where there has been a continuing course of conduct, the date on which the conduct was discontinued.

All Title VI complaints are considered formal. Complaints must be submitted in writing and signed by the complainant. Complaint forms can be obtained by contacting the Director of Transit at (910) 433-1743, or by visiting the F.A.S.T. website at <http://www.rideF.A.S.T..net>). **(See Exhibit 6 - F.A.S.T. Title VI Complaint Form)**

Exhibit 2 - 2000 U.S. CENSUS BUREAU TABLE – Ability to Speak English – Fayetteville, NC MSA

U.S. Census Bureau		
American FactFinder		
		Main Search Feedback FAQs Glossary Site Map Help
Quick Tables		
You are here: Main Data Sets Data Sets with Quick Tables Geography Tables Results		
Use the links above to change your results		Options Print / Download
QT-P17. Ability to Speak English: 2000		
Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data		
Geographic Area: Fayetteville, NC MSA		
NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see http://factfinder.census.gov/home/en/states/nc/sf3.htm		
Subject	Number	Percent
POPULATION 5 YEARS AND OVER BY LANGUAGE SPOKEN AT HOME AND ABILITY TO SPEAK ENGLISH		
Population 5 years and over	278,459	100.0
Speak only English	248,238	89.1
Speak a language other than English	30,221	10.9
Spanish		
Speak English "very well"	16,536	100.0
Speak English "well"	11,063	66.9
Speak English "not well"	3,061	18.5
Speak English "not at all"	2,011	12.2
Speak English "not at all"	401	2.4
Other Indo-European languages		
Speak English "very well"	7,916	100.0
Speak English "well"	6,087	76.9
Speak English "not well"	1,353	17.1
Speak English "not well"	437	5.5
Speak English "not at all"	39	0.5
Asian and Pacific Island languages		
Speak English "very well"	5,040	100.0
Speak English "well"	2,740	54.4
Speak English "well"	1,580	31.3
Speak English "not well"	675	13.4
Speak English "not at all"	45	0.9
All other languages		
Speak English "very well"	729	100.0
Speak English "well"	529	72.6
Speak English "well"	147	20.2
Speak English "not well"	47	6.4
Speak English "not at all"	6	0.8
ABILITY TO SPEAK ENGLISH		
Population 5 years and over	278,459	100.0
Speak a language other than English	30,221	10.9
5 to 17 years	4,647	1.7
18 to 64 years	23,844	8.6
65 years and over	1,730	0.6
Speak English less than "very well"	9,802	3.5
5 to 17 years	1,637	0.6
18 to 64 years	7,571	2.7
65 years and over	594	0.2
ABILITY TO SPEAK ENGLISH IN HOUSEHOLD		
Linguistically isolated households ¹	1,702	(X)
Population 5 years and over in households	259,978	100.0
In linguistically isolated households ¹	3,436	1.3
5 to 17 years	646	0.2
18 to 64 years	2,498	1.0
65 years and over	293	0.1
(X) Not applicable.		
¹ A linguistically isolated household is one in which no member 14 years old and over (1) speaks only English or (2) speaks a non-English language and speaks English "very well." In other words, all members 14 years old and over have at least some difficulty with English.		
Source: U.S. Census Bureau, Census 2000 Summary File 3, Matrices P19, P20, PCT13, and PCT14		

Exhibit 3 – F.A.S.T. Map of Linguistically Isolated Spanish Households

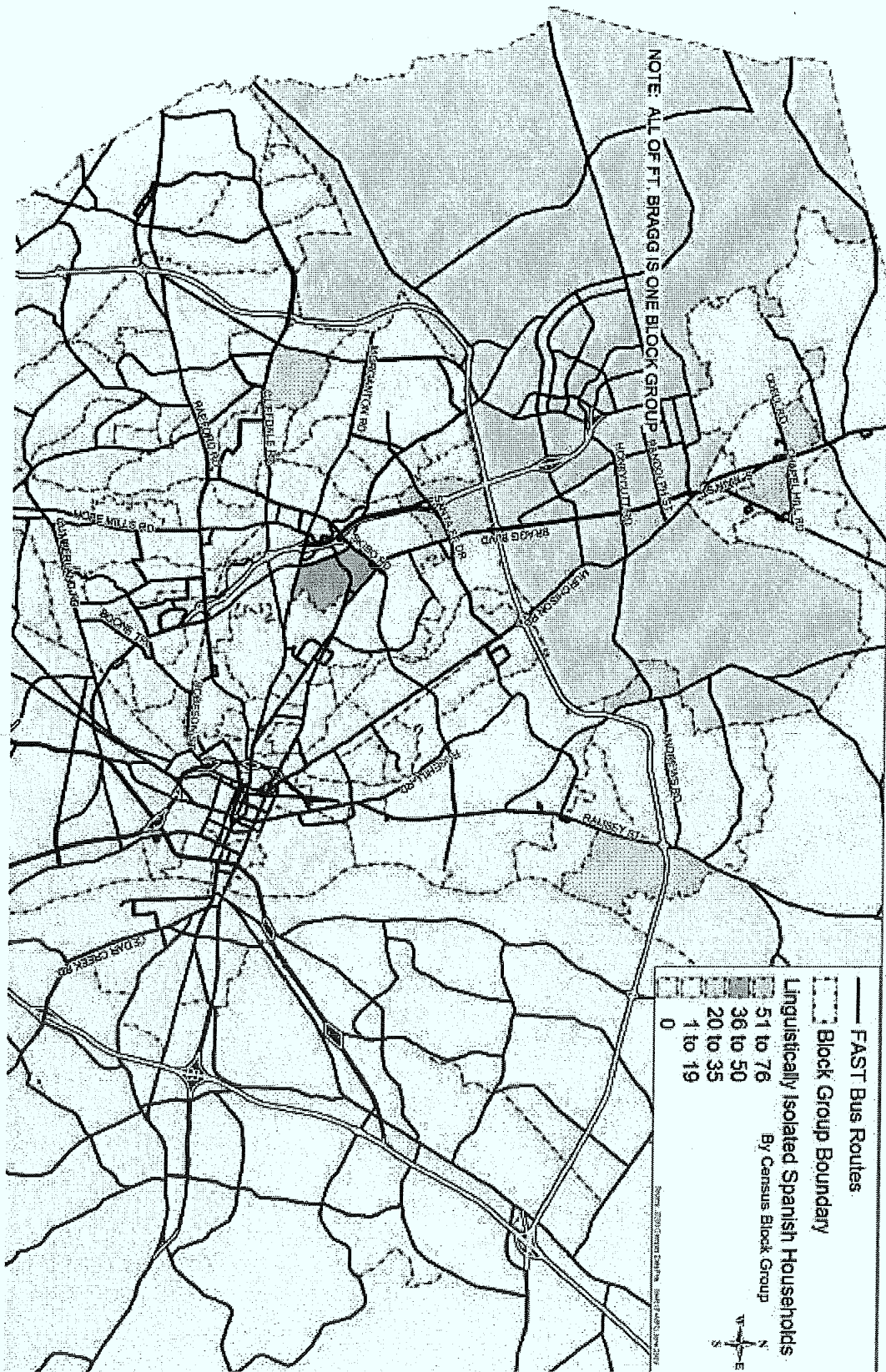


Exhibit 5 – F.A.S.T. Map of Linguistically Isolated Indo-European Households

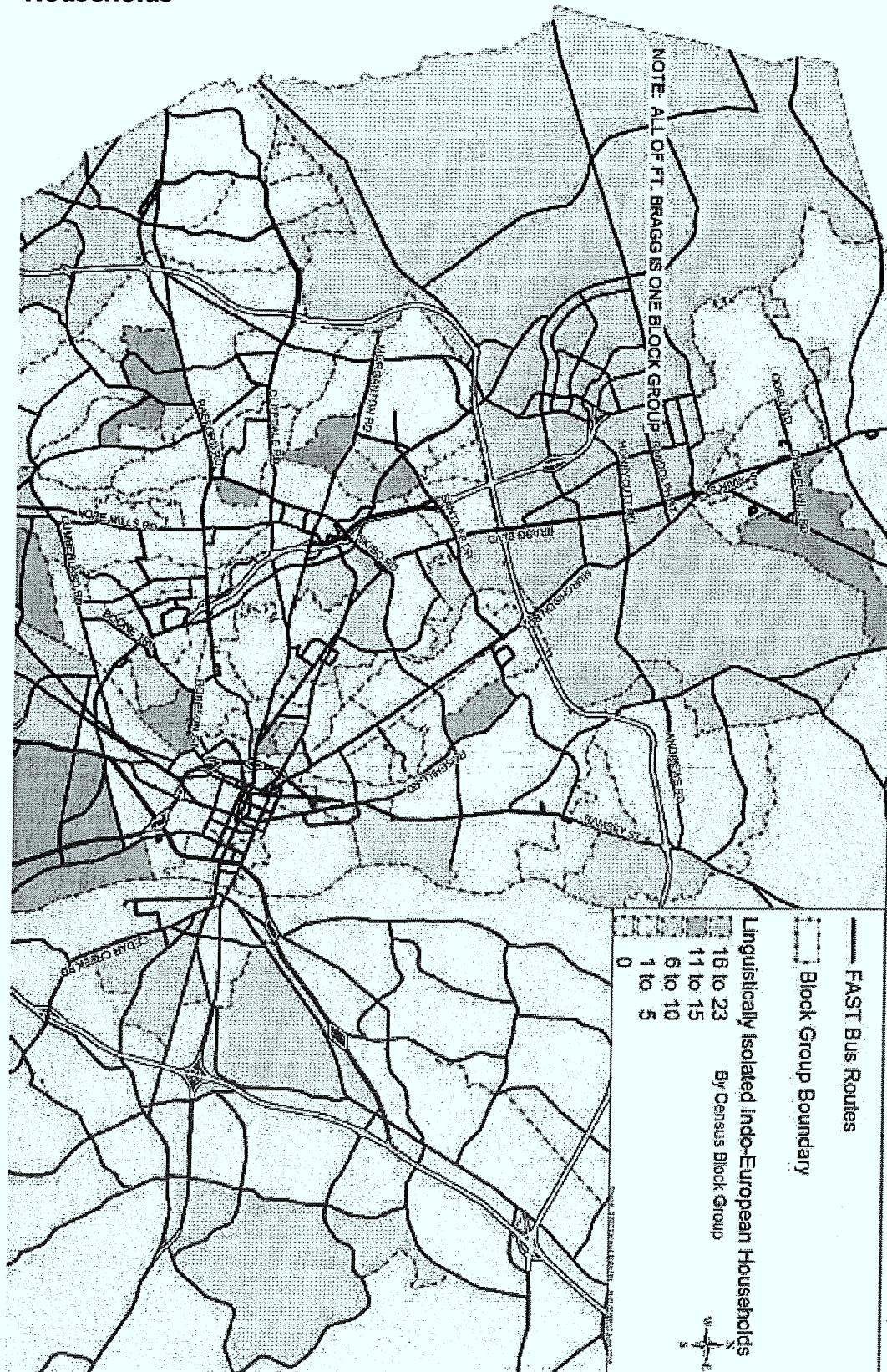


Exhibit 6 – F.A.S.T. Map of Linguistically Isolated “Other” Households

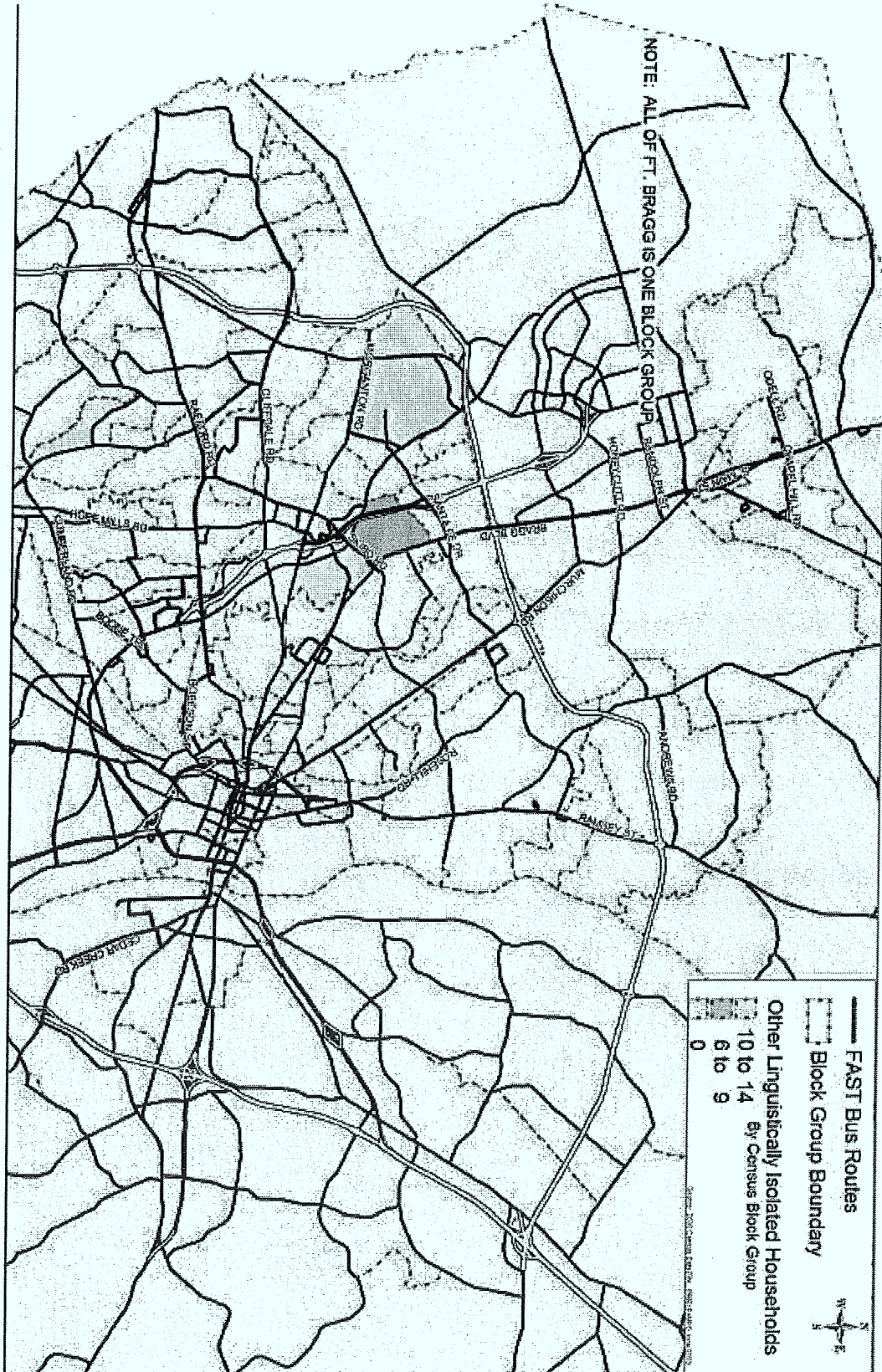


Exhibit 7 – Fayetteville MPO Educational Attainment Block Map



Exhibit 8 – F.A.S.T. Title VI Complaint Form



Fayetteville Area System of Transit
TITLE VI And Related Statutes Discrimination Complaint

FOR OFFICE USE ONLY		
Date: _____	Reviewer Initials: _____	
Name of Complainant: _____	Home Telephone Number: _____	Work Telephone Number: _____
Mailing Address: _____ _____		
What is the most convenient time for us to contact you about this complaint? _____		
Basis of Discriminatory Action(s):		
____ RACE	____ COLOR	____ NATIONAL ORIGIN
____ SEX	____ AGE	____ DISABILITY
Date and place of alleged discriminatory actions. Please include earliest date of discrimination and most recent date of discrimination: _____ _____ _____		
How were you discriminated against? Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status was a factor in the discrimination. Include how other persons were treated differently from you. (Attach additional page(s) if necessary). _____ _____ _____		
Names of individuals responsible for discriminatory action(s): _____ _____		
Names of persons (witnesses, fellow employees, supervisors, or others) whom we may contact for additional information to investigate your complaint:		
<u>Name:</u> _____	<u>Address:</u> _____	<u>Telephone Number:</u> _____
_____	_____	_____
_____	_____	_____

Fayetteville Area System of Transit
TITLE VI And Related Statutes Discrimination Complaint

The law prohibits intimidation or retaliation against anyone because he/she has either taken action, or participated in action, to secure rights protected by these laws. If you feel you have been retaliated against (separate from the discrimination alleged above), please explain the circumstances below. Explain what action you took which you believe was the cause for the alleged retaliation.

What remedy, or action, are you seeking for the alleged discrimination?

Have you filed, or intend to file, a charge or complaint regarding the matters related in this complaint with any of the following?

- ____ U.S. Equal Employment Opportunity Commission
- ____ N.C. Human Relations Commission
- ____ Federal or State Court
- ____ Federal Highway Administration/U.S. Department of Transportation

If you have already filed a charge or complaint, please provide the following information:

Agency/Court: _____ Attorney Name: _____
 Address: _____ Address: _____
 Date Filed: _____ Phone Number: _____
 Case Number: _____
 Type of trial/hearing: _____
 Status of Case: _____

Please provide any additional information that you believe would assist with this investigation.

****We cannot accept an unsigned complaint. Please sign and date this complaint form below.****

COMPLAINANT: _____	DATE: _____
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CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen M. McDonald, City Attorney
DATE: March 7, 2011
RE: **City Attorney Items:**
(a) Council Policy Nonprofit Funding
(b) Approval of City Council Minutes

THE QUESTION:

N/A

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

(a) At the time of production of the agenda packet, staff was still formulating backup information for the nonprofit funding item.

(b) In the absence of a City Clerk, the Deputy City Clerk is transcribing the City Council minutes to bring the minutes up to date. In the process of reviewing the status of the minutes, it was noted that several minutes had been transcribed but not approved by City Council. Those minutes are attached for your approval. More minutes will be forthcoming as we continue to bring the minutes up to date.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

- (a) Provide direction to staff regarding the nonprofit funding.
- (b) Approve the City Council minutes.

ATTACHMENTS:

August 2, 2010 Work Session Minutes
August 9, 2010 Regular Meeting Minutes
August 23, 2010 Dinner & Discussion Meeting Minutes
October 6, 2010 Agenda Briefing Minutes
October 11, 2010 Dinner & Discussion Meeting Minutes
October 11, 2010 Regular Meeting Minutes

PROPOSED REVISION

SUBJECT – OUTSIDE ORGANIZATIONS Funding	Number 135.1	Revised	Effective Date 1-23-95	Page 1 of 3
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I. The City of Fayetteville may provide funding to the Arts Council of Fayetteville/Cumberland County, the City of Fayetteville Community Development Department, or other nonprofit agencies.

~~I. Definition:~~

~~A. An outside organization is defined as a nonprofit organization incorporated by the State of North Carolina and which is not a Joint City-County Agency.~~

II. Eligibility:

A. Funding provided by the City of Fayetteville shall be used to fund programs or services in one of the following areas: arts, history, culture, housing, homelessness, economic development, or community development.

~~Eligibility is limited to nonprofit organizations which have a central office in the City and which have a community service function considered to be of significant importance to the City and which have been established for at least 90 days.~~

B. ~~The organization must be governed by a Board of Trustees or a Board of Directors. Either Board must have minority representation.~~

C. ~~The organization must assure that it does not aid or perpetuate discrimination on the basis of handicap in providing any aid, benefit, or service as pursuant to Section 504 of the Rehabilitation Act of 1973, as amended.~~

III. Application:

A. Each applying organization shall make application to either the Arts Council of Fayetteville/Cumberland County or the City of Fayetteville Community Development Department consistent with their grant submittal process must submit a copy of its Bylaws, a list of the membership on the governing board, a

PROPOSED REVISION

SUBJECT – OUTSIDE ORGANIZATIONS Funding	Number 135.1	Revised	Effective Date 1-23-95	Page 2 of 3
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~~satisfactory statement of problem definition and anticipated solution and a proposed budget showing anticipated revenues and expenditures. These materials along with the request for appropriation must be submitted by March 22 to the City Manager's Office. Along with the proposed budget the agency must submit a statement of previous funding sources as well as funding sources for the fiscal year for which funding is requested in such detail as may be required by the City Manager.~~

B. In instances in which an applying organization is applying directly to the City of Fayetteville, said application shall be made 30 days after the City of Fayetteville determines if any additional funding will be made to nonprofits.

1. The applying organization must have been established for at least 180 days prior to the application submittal.

2. The applying organization must submit a copy of its bylaws, a list of the membership on the governing board, a statement identifying which of the areas of which it seeks to provide services, and a proposed budget showing the anticipated revenue and expenditure. Additionally, with the proposed budget, the applying organization must submit a statement of previous funding sources as well as funding sources for the fiscal year of which funding is requested.

IV. Funding:

A. Appropriations shall be made for ~~a~~the fiscal year period beginning July 1 and ending June 30.

B. Monetary disbursements shall be made by quarter and only after a review of quarterly operations and financial statements and pre-audit by the Internal Audit office of the Finance Department. Quarterly operational and financial statements shall be in such detail as required by the ~~Finance Director~~Chief Financial Officer

PROPOSED REVISION

SUBJECT – OUTSIDE ORGANIZATIONS Funding	Number 135.1	Revised	Effective Date 1-23-95	Page 3 of 3
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acting in compliance with the fiscal control laws of the State of North Carolina pertaining to local government. These quarterly reports must be submitted to the office of Internal Audit in the Finance Department, City Hall, 433 Hay Street, Fayetteville, North Carolina. If after a review of the previous quarterly financial report, it is determined that expenditures were made which were not in compliance with the fiscal control laws, the amount of those expenditures may either be deducted from the next quarter's appropriation or the next quarter's appropriation may be withheld, depending on whichever is recommended by the City Manager.

- C. At any time the City Manager deems necessary or appropriate, an Internal Audit may be made of the organization's books or records to assure the accuracy and reliability of the financial condition of the organization.

V. Early Termination:

- A. The City Council may terminate any grant at the end of any quarterly period.

VI. End of Fiscal Year:

- A. Organizations must provide the City a certified audit or other audit by independent auditors approved by the City Manager of their financial operation for the grant period.
- B. All unused funds, on a proposed basis of the entire certified revenue and expenditure audit, must be returned to the City's General Fund.
- C. Application for renewal grants, for each one-year period, must be made on the same requirement basis as the original grants. The City Council, at its option, may deny renewal grants.

DRAFT

FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
LAFAYETTE ROOM
AUGUST 2, 2010
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 5:12 p.m.); Robert A. Massey, Jr. (District 3) (arrived at 5:04 p.m.); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Captain Charles Hunter, Police Service Bureau
Craig Hampton, Special Projects Director
Tom Bergamine, Police Chief
Charles Kimble, Assistant Police Chief
Benjamin Nichols, Fire Chief
Bruce Daws, Historic Properties Manager
Jackie Tuckey, Public Information Officer
Rita Perry, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Meredith moved to approve the agenda.

SECOND: Council Member Bates

VOTE: UNANIMOUS (8-0)

4.0 OTHER ITEMS OF BUSINESS

4.1 Revisions of Alarm Ordinance and Fees

Captain Charles Hunter, Police Service Bureau, presented this item and explained the prior presentation had included information regarding fees charged in other cities that was inaccurate. He stated staff had been directed to review the fees and to consider revisions to the appeal process. He further stated staff met with alarm industry representatives on July 20, 2010, and topics of discussion included the fee schedule, alarm permitting process, and appeals process.

Mayor Pro Tem Haire questioned whether the appeals process would be overseen by an interagency department. Ms. Karen McDonald, City Attorney, replied in the negative and summarized the proposed appeals process.

Captain Hunter responded in the affirmative to Council's inquiries regarding the possibility of future stakeholder involvement.

A discussion period ensued regarding warnings, fines, user education, penalties, and the appeals officer's responsibilities.

DRAFT

Consensus of Council was to bring this item back to Council at the August 9, 2010, meeting for action and to provide an update in March 2011.

4.2 Development of Fire Station #19 - Andrews Road

Mr. Benjamin Nichols, Fire Chief, presented this item and provided a synopsis. He stated the site and station design were almost identical to the recently constructed Station #15 on Cliffdale Road and the City was using the same drawings and specifications from that station to bid and construct Fire Station #19.

Mr. Craig Hampton, Special Projects Director, reviewed the project schedule, planning activities, and required hearings for the revision to the developer's conditional use permit. He stated the proposed location would require a revision to the conditional use permit issued for the development area, which would require two public hearings and final approval by Council.

Following a question and answer period, the consensus of Council was to proceed with the project as scheduled, bid the station project, and perform other related work per the scheduled tasks.

4.3 Certificate of Appropriateness Presentation.

This item was presented after Item 4.5.

4.4 Fayetteville Area System of Transit (F.A.S.T.) Operations and Work Plan Update.

Mr. Doug Hewett, Assistant City Manager, presented this item. He presented the following power point presentation:

Discussion Items

- Council's Policy Direction
 - Transit development work plan and funding usage
 - o \$519,000.00 Council directive
 - Revenue structure
 - o Local Funds Per Capita (LFPC) model
 - o Fare philosophy for F.A.S.T.
- Citizen involvement
 - Possible modifications to existing Transit Advisory Committee and former Blue Ribbon Task Force
- Departmental Overview and Successes

Unspent FY 10 Funds Designated for One-Time Transit Enhancements

- Installation of +/- 22 shelters
- Installation of +/- 45 benches
- Installation of necessary sidewalks and curbs, as needed, to place the benches and shelters within 12 months
- Purchase of hybrid light transit vehicle for use on Route 3
- Business partnership development and marketing for F.A.S.T. to increase ridership and share the environmental/sustainable benefits of transit

Identified Funds Budget Overview

▪ Amount	\$519,000.00
▪ Activities and uses:	
- Business development	\$ 60,000.00
- Hybrid LTV	69,300.00

DRAFT

- Bench/Shelter kits (new) 165,100.00
 - o Includes trash cans and needed parts for existing inventory
 - o Provides for 3 shelters/6 benches in inventory for future placement
 - o 10 shelter and 40 bench kits to order
- Bench/shelter installations 27,550.00
- Sidewalk improvements 161,050.00
- Existing shelters to ADA compliance 36,000.00
- \$519,000.00
- o When received we will add in \$25,000.00 from LTV insurance settlement

Local Funds Per Capita (LFPC)

- Derived by dividing 'local funds expended by service area population'
 - Fayetteville's LFPC includes General Fund Transfer to operations, dedicated vehicle license fee and local match for planning activities
 - Fayetteville's service area population
 - o Does not include Fort Bragg
 - o Changes from 174,000 in FY 09 to 181,436 for FY 10.

LFPC Comparisons

- Comparisons are made with NC cities with transit system budgets less than \$10 million:
 - Fayetteville
 - Asheville
 - Wilmington
 - High Point
 - Cary
- Average LFPC:
 - In 2008: \$17.26
 - FY 2010: \$18.31 (estimated)
 - FY 2011: \$18.86 (estimated)

Local Funds Per Capita a Comparison

Fiscal Year	CoF	Source	Peers
FY 06	\$7.14*	NTD	N/A
FY 07	\$8.90*	NTD	\$15.32
FY 08	\$11.12*	NTD	\$17.26
FY 09 - 1st Year of Directive	\$13.62*	NTD	\$17.78 est.
FY 10 - 2nd Year	\$14.02**	Projected***	\$18.31 est.
FY 11 - 3rd Year	\$18.29**	Budgeted***	\$18.86 est.

* Using the population figure of 174,000.
 ** Using the population figure of 181,436.
 *** Does NOT include \$519,000.00 Council Directive.

Fare Comparison

Agency	Regular Fixed Route	E&D Fixed Route	ADA Para Transit
Asheville	\$1.00	\$0.50	\$1.25* Shared Service Mile
Cary	\$1.00	\$0.50	\$2.00** Peak Times
Chapel Hill	Free	Free	Free
Charlotte	\$1.75	\$0.85	\$2.80
Durham	\$1.00	\$0.50	\$2.00
Fayetteville	\$1.00	\$0.35	\$1.50
Greensboro	\$1.30	\$0.65	\$1.30
High Point	\$1.00	\$0.50	\$2.00
Raleigh	\$1.00	\$0.50	\$2.00

DRAFT

Agency	Regular Fixed Route	E&D Fixed Route	ADA Para Transit
Wilmington	\$1.50	\$0.75	\$3.00
Winston-Salem	\$1.00	\$0.50	\$0.50

Fare Philosophy

- Staff recommendation is that City Council annually set the regular F.A.S.T. fare and other fares would adjust as follows:

<u>Fare Type</u>	<u>Percentage</u>	<u>Example</u>	<u>Current</u>
Regular Fare	100%	\$1.00	\$1.00
Elderly & Disabled	50%	\$0.50	\$0.35
FASTtrac!	200%	\$2.00	\$1.50

- Fare changes require a public hearing and review prior to implementation

Council Member Applewhite questioned whether Chapel Hill was free due to the university. Mr. Hewett confirmed. Council Applewhite explained students were charged as part of their tuition.

Mr. Dale Iman, City Manager, this fare increase could be contingent upon transit service improvement.

Mayor Chavonne made an inquiry as to when fare increase decision should proceed in relation to the service level improvements. He suggested this decision be included during the strategic planning process.

Citizen Involvement

- Transit Advisory Committee - To meet, exchange ideas, and identify opportunities from citizen input to the Fayetteville Area System of Transit
- Blue Ribbon Taskforce - Explore all the creative ideas for additional funding for Fayetteville Area System of Transit

F.A.S.T. Successes

- MPR (Completed 38 of 42 recommendations for 90 percent)
- TDP (Implementing)
- City/County Transit Study (Report October Work Session)
- 1,000,000 + rider status
- Extended service hours - Routes 6, 12, and 14
- New route - 9 + extended hours
- New website and branding efforts
- 61 percent reduction in collisions per 100,000 miles
- Improved on-time performance
- Route and stop analysis completed
- Improved training for staff
- Replaced transfer center
- Renovated administrative offices
- Issuance of Findings of No Significant Impact (FONSI) to proceed with land acquisition for Multi-Modal Center - FTA advises as signed, awaiting an electronic copy

First Transit

- Provides Director, Assistant Director, and technical assistance
- 3 contracts to date, with current contract set to expire November 30
- Initiated management contract originally because we had difficulty hiring an assistant director

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Following discussion and a question and answer period, the consensus of Council was:

- That the budget overview and work plan met with Council's interest;
- For staff to outline a service level action plan, which includes citizens' input, for consultation with Council;
- To discuss the fare philosophy when Council evaluates the strategic view of the transit system; and
- To modify the goals of the Transit Advisory Committee and to delay the reappointment its members

4.5 Nightclub Behavior - Informational/Update Purposes Only

Mr. Tom Bergamine, Police Chief, and Mr. Charles Kimble, Assistant Police Chief, presented this item and provided an update on the process to promote the City's quality of life, security and safety, and establish partnerships. Mr. Kimble stated the team members included the Responsible Hospitality Institute (RHI) which assists businesses and communities creating safe and vibrant places to socialize, Development Services, City Attorney's office, Law Enforcement, and Downtown Manager.

Mr. Kimble reviewed the issues, special problems downtown, types of calls, and history of calls. He stated there was a need for partnerships to address some of the problems. Mr. Kimble explained the statutes do not prohibit law enforcement from working in alcohol establishments, however, police policy does.

Ms. Karen McDonald, City Attorney, explained the police could not enforce alcohol violations as explained in 18B-500 but could enforce all other violations, i.e., noise ordinance, littering, fights, etc., and local police could enforce criminal violations but not enforce ABC violations as it pertained to the establishment.

Mr. Kimble stated an issue was loud music from establishments, patrons, and vehicles. Ms. McDonald explained the City's noise ordinance and Mr. Kimble explained the police response procedure.

A discussion and question and answer period ensued regarding the possible requirement for some level of security, the noise ordinance, stakeholder engagement, nuisance and abatement, ABC support, and zoning categories.

4.3 Certificate of Appropriateness Presentation - Informational/Update Purposes Only

Mr. Bruce Daws, Historic Properties Manager, presented this item and provided an outline of the Certificate of Appropriateness process to Council. He reviewed the Application for Certificate of Appropriateness. He stated appeals were heard by the Board of Adjustment and were susceptible to appeals to the Superior Court. Mr. Daws clarified that the State Historic Preservation Office monitors and evaluates the City's efforts on a yearly basis.

Discussion ensued regarding the qualifying factors for historic consideration and the Cool Spring Traffic Circle.

4.6 Council Member Request(s): (In order of receipt date)

(a) Council Member Mohn - Parking of Big-Rig Cabs in Residentially Zoned Areas

Council Member Mohn stated he had been contacted several times by truck drivers living within the Fayetteville city limits concerning the current ordinance prohibiting the cab portion of tractor-trailers

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from being parked within residential areas. He explained that many of those drivers were on the road 20 to 25 days per month, only came home on occasion, and had no secure place to park their cabs. He requested Council to consider revising the current ordinance [Section 30-221(i)(1)] concerning the parking of tractor-trailer cabs within neighborhoods for over-the-road drivers that were only home a portion of each month and by permitting them to park their cabs on their property or in front of their home.

Consensus of Council was not in support this item.

(b) Council Member Davy - Consider Restoring 25 Percent Funding Cuts for Non-Profits

Council Member Davy requested revenues from internet café fees be earmarked for non-profit funding and to direct staff to revisit the application and funding process.

A discussion period ensued regarding the proposed funds generated from the internet café fees.

Consensus of Council was to earmark the first \$77,000.00 of internet café fees for nonprofit funding.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:00 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

080210

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**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
AUGUST 9, 2010
7:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member Valencia A. Applewhite (District 7)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Karen M. McDonald, City Attorney
Stanley Victrum, Chief Information Officer
Charles Hunter, Police Captain
Jackie Tuckey, Public Information Officer
Rita Perry, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order at 7:00 p.m.

2.0 INVOCATION

The invocation was offered by Reverend Johnson, Associate Pastor of Williams Chapel Free Will Baptist Church.

3.0 PLEDGE OF ALLEGIANCE

Following the invocation, the Pledge of Allegiance to the American Flag was led by the audience.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Meredith moved to approve the agenda.
SECOND: Council Member Bates
VOTE: UNANIMOUS (9-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mayor Chavonne, on behalf of the City Council and City of Fayetteville, recognized and thanked the Fayetteville Area Anglers' Network, in conjunction with the Cumberland Outdoor Recreation Club, Cub Scout Troops 477 and 756, and Boy Scout Troop 40, for the trash clean-up around Lake Rim conducted on June 12, 2010.

Mayor Chavonne, on behalf of the City Council and City of Fayetteville, recognized the Methodist University Women's and Men's Golf Teams on winning their respective NCAA Division III National Championships.

6.0 PUBLIC FORUM

NAME/ADDRESS	SUBJECT/CONCERN
Robert Jennings 7471 Stoneykirk Drive Fayetteville, NC 28314	Correspondence received from Code Enforcement regarding RV storage regulations in a residential area.
Rick Layne 4746 Belford Road Fayetteville, NC 28314	Correspondence received from Code Enforcement regarding boat storage regulations in a residential area.

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NAME/ADDRESS	SUBJECT/CONCERN
Geary M. Chlebus 4551 Chambersburg Road Fayetteville, NC 28314	Correspondence received from Code Enforcement regarding RV storage regulations in a residential area. Requested an exemption for older/established neighborhoods.
Gwen York 5703 Cypress Road Fayetteville, NC 28304	Domestic violence.
Melvin Pierce 1635 Rudolph Street Fayetteville, NC 28301	Stormwater run off issues in the Broadell neighborhood.
Moses Best 1824 Broadell Road Fayetteville, NC 28301	Police substation, sidewalks and play areas needed on Murchison Road.

7.0 CONSENT

MOTION: Council Member Meredith moved to approve the consent agenda.
SECOND: Council Member Massey
VOTE: UNANIMOUS (9-0)

7.1 Interlocal agreement between the City of Fayetteville and Cumberland County for placement of FAST stops on County-owned property.

RESOLUTION AUTHORIZING AN INTERLOCAL AGREEMENT FOR THE INSTALLATION OF FAYETTEVILLE AREA SYSTEM OF TRANSIT (FAST) BUS SHELTERS ON COUNTY-OWNED PROPERTY. RESOLUTION NO. R2010-069.

7.2 Approval of quitclaim deed to Mount Sinai Foundation, Inc., in conjunction with the Fayetteville Redevelopment Commission.

7.3 Special sign permit request for temporary event signs for the 2010 Fayetteville Greek Festival. Signs would be put out from August 21 through September 13, 2010.

7.4 Special Revenue Fund Project Ordinance 2011-4 (Gangs across the Carolinas Training Conference 2010).

8.0 OTHER ITEMS OF BUSINESS

8.1 Consideration of the revisions to the Alarm Ordinance and fees.

Mr. Charles Hunter, Police Captain, presented this item and provided the following alarm fee schedule comparison chart. He stated the chart was generated as a result of the meeting with the stakeholders and other options were explored.

Alarm Fee Schedule		
	As Adopted July 12, 2010	Proposed Changes Based On August 2 Work Session
<u>PERMITS</u>		
<u>REQ/AMT</u>	NO	No: To be reviewed in 6 months WRITTEN NOTICE-NO CHRGE-
ALARM 1	NO CHARGE	RES/BUS
ALARM 2	\$25.00	NO CHARGE
ALARM 3	\$50.00	\$25.00
ALARM 4	\$50.00	\$50.00
ALARM 5	\$100.00	\$50.00
ALARM 6	\$100.00	\$100.00
ALARM 7	\$200.00	\$100.00
ALARM 8	\$200.00	\$200.00 AND Each After 8
ALARM 9	\$400.00 and Each after 9	
CIVIL PENALTIES of \$50.00 will not change for the original fee schedule as adopted by Council for the FY 2010-2011 budget.		

Mayor Pro Tem Haire questioned whether stakeholders participated in informing customers of the proposed increases and if that was an industry practice. Captain Hunter responded dialogue had included the City and industry presenting the same message.

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Mayor Pro Tem Haire questioned what role the stakeholders played in the proposed fee revision process. Captain Hunter responded the stakeholders made recommendations of what the fee should be and provided input regarding the appeal process. He stated the registration program would be discussed at a future meeting.

A discussion period ensued regarding monitored and unmonitored alarms and the process of determining the validity of the alarms.

Ms. Karen McDonald, City Attorney, reviewed the appeals process. She stated notices included information regarding how to appeal to the Alarm Coordinator and should citizens not agree with the Alarm Coordinator's decision they had the ability to appeal to an Administrative Hearing Officer for other citations.

Council Member Massey questioned whether that person would be a City employee. Ms. McDonald responded in the negative.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING SECTION 4-7 OF CHAPTER 4, ALARM SYSTEMS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE. ORDINANCE NO. S2010-010.

MOTION: Council Member Meredith moved to adopt the revisions of the Alarm Ordinance and fees.

SECOND: Council Member Hurst

FRIENDLY AMENDMENT:

Mayor Chavonne made a friendly amendment for staff to provide an update to Council in six months.

Council Members Meredith and Hurst accepted the friendly amendment.

VOTE: UNANIMOUS (9-0)

9.0 ADMINISTRATIVE REPORTS

9.1 Settlement for fiscal year July 1, 2009, through June 30, 2010.

The settlement was required under the provisions of N.C.G.S. § 105-373(a)(3). The following covered the period from July 1, 2009, through June 30, 2010:

Charge:

Real & Personal Charge 2009	\$53,581,707.75
Storm Water Charge 2009	1,702,140.00
Fayetteville Storm Water Charge 2009	3,405,072.00
Vehicles Charge 2009	7,173,175.82
2005 Annexation in 2009 Charge	.00
Curbside Recycle Charge 2009	2,257,998.00
Added Charge Real & Personal 2009	202,759.70
Added Charge Storm Water 2009	744.00
Added Charge Fayetteville Storm Water 2009	1,392.00
Added Charge Vehicles 2009	10,559.43
Added Charge Annexation 2009	969.94
Added Charge Curbside Recycle 2009	194.00
Fayetteville Gross Receipts Vehicle Tax Current Year 2009	402,867.14
Fayetteville Heavy Equipment Gross Receipts 2009	38,057.31
Total Interest Collected	349,027.82
Total Charge:	<u>\$69,126,664.91</u>

Credits:

Deposited with Finance Real & Personal 2009	\$52,964,833.73
Deposited with Finance Vehicles 2009	5,310,339.17
Deposited with Finance Annexation Taxes 2009	623.95
Deposited with Finance Storm Water 2009	1,689,623.94
Deposited with Finance Fayetteville Storm Water 2009	3,379,943.97
Deposited with Finance Curbside Recycle 2009	2,229,314.40
Fayetteville Gross Receipts Vehicle Tax Current Year 2009	402,867.14

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Fayetteville Heavy Equipment Gross Receipts 2009	38,057.31
Interest Deposited with Finance	349,027.82
Releases Real/Personal Allowed 2009	477,848.61
Releases Vehicles Allowed 2009	628,918.53
Storm Water Releases Allowed 2009	3,072.00
Fayetteville Storm Water Releases Allowed 2009	6,144.00
Annexation Releases Allowed 2009	4.22
Curbside Recycle Releases Allowed 2009	7,676.00
Real/Personal Balance 2009	341,785.11
Vehicles Balance 2009	1,244,477.55
Storm Water Balance 2009	10,188.06
Fayetteville Storm Water Balance 2009	20,376.03
Annexation Balance 2009	341.77
Curbside Recycle Balance 2009	21,201.60
Total Credits:	<u>\$69,126,664.91</u>

Charge:

Real & Personal 2008	\$ 265,468.11
Vehicles 2008	1,464,936.00
2005 Annexation in 2008 Charge	136.46
Storm Water 2008	18,275.30
Fayetteville Storm Water 2008	18,808.43
Curbside Recycle 2008	20,353.72
Real & Personal 2007	73,094.82
Vehicles 2007	326,172.82
2005 Annexation in 2007 Charge	62.41
Storm Water 2007	5,414.26
Fayetteville Storm Water 2007	6,735.22
Real & Personal 2006 & Prior	352,662.65
Vehicles 2006 & Prior	1,412,299.86
2005 Annexation in 2006 Charge	25,180.29
Storm Water 2006 & Prior	18,665.41
Total Charge:	<u>\$4,008,265.76</u>

Barred by Statute:

Barred by Statute - Real/Personal - 1999	\$ 34,278.23
Barred by Statute - Vehicles - 1999	153,851.03
Barred by Statute - Storm Water - 1999	165.00
	<u>188,285.26</u>

Credits:

Real & Personal Collections 2008	181,241.29
Vehicle Collections 2008	978,288.66
2005 Annexation in 2008 Charge Collections	76.19
Storm Water 2008 Collections	12,602.55
Fayetteville Storm Water 2008 Collections	11,822.19
Curbside Recycle 2008 Collections	15,126.46
Real & Personal Collections 2007	23,891.78
Vehicle Collections 2007	49,139.30
2005 Annexation in 2007 Charge Collections	.00
Storm Water 2007 Collections	1,664.05
Fayetteville Storm Water 2007 Collections	1,300.20
Real & Personal 2006 & Prior Collections	24,620.67
Vehicle 2006 & Prior Collections	53,293.08
2005 Annexation in 2006 Collections	20,490.57
Storm Water 2006 & Prior Collections	1,271.50
Real & Personal Releases Allowed 2008	2,559.40
Vehicles Releases Allowed 2008	154,773.41
2005 Annexation in 2008 Releases Allowed	10.53
Storm Water Releases Allowed 2008	24.00
Fayetteville Storm Water Releases Allowed 2008	24.00
Curbside Recycle Releases Allowed 2008	42.00
Real & Personal Releases Allowed 2007	4,383.81
Vehicles Releases Allowed 2007	15,415.35
2005 Annexation in 2007 Releases Allowed	.00
Storm Water Releases Allowed 2007	.00
Fayetteville Storm Water Releases Allowed 2007	.00
Real & Personal Releases Allowed 2006 & Prior	359.94
Vehicles Releases Allowed 2006 & Prior	17,925.24
2005 Annexation in 2006 Releases Allowed	173.72
Storm Water Releases Allowed 2006 & Prior	.00
Real & Personal Balance 2008	81,667.42
Vehicles Balance 2008	331,873.93
2005 Annexation in 2008 Balance	49.74
Storm Water Balance 2008	5,648.75

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Fayetteville Storm Water Balance 2008	6,962.24
Curbside Recycle Balance 2008	5,185.26
Real & Personal Balance 2007	44,819.23
Vehicles Balance 2007	261,618.17
2005 Annexation in 2007 Balance	62.41
Storm Water Balance 2007	3,750.21
Fayetteville Storm Water Balance 2007	5,435.02
Real & Personal Balance 2006 & Prior	293,403.81
Vehicles Balance 2006 & Prior	1,187,230.51
2005 Annexation in 2006 Balance	4,416.00
Storm Water Balance 2006 & Prior	17,237.91
Adjustment	.00
Total:	<u>3,819,980.50</u>
Total Credits:	<u>\$4,008,265.76</u>

The following covered the verification of tax funds for fiscal year ended June 30, 2010:

	General Fund	CBDT	Annexation
1. Current Year Original Levy (Real and Personal)			
Total Property Valuation	11,712,669,121	124,137,170	0
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	53,409,771.19	124,137.17	0.00
Late List Levy	47,600.24	199.15	
2. Discoveries and Releases			
Discoveries			
Total Property Valuation	35,542,259	605,260	168,350
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	161,890.30	605.26	669.19
Late List Discoveries	40,149.50	122.64	300.75
Releases			
Total Property Valuation	101,655,529	604,400	0
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	463,549.21	604.40	0.00
Late List Releases	13,667.07	27.93	4.22
3. Taxes remitted to the City for Tax Years:			
2009	52,842,029.48	122,804.25	623.95
2008	181,014.60	226.69	76.19
2007	23,887.27	4.51	0.00
2006 & Prior	24,620.67	0.00	20,590.57
4. Interest	160,500.88	720.62	2,575.25
5. Balance due the City at June 30, 2010, for:			
2009	340,157.47	1,627.64	341.77
2008	81,643.40	24.02	49.74
2007	44,774.44	44.79	62.41
2006 & Prior	327,514.15	167.89	4,416.00

	General Fund Vehicles	CBDT Vehicles	Vehicle License Tax	Transportation Fee
1. Current Year Original Levy (Vehicles)				
Total Property Valuation	1,268,564,425	4,802,040		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	5,784,653.78	4,802.04	691,860.00	896,860.00
2. Discoveries and Releases				
Discoveries				
Total Property Valuation	1,979,042	0		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	9,024.43	0.00	790.00	745.00
Releases				
Total Property Valuation	122,249,971	318,660		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	557,459.87	318.66	35,570.00	35,570.00
3. Taxes remitted to the City for Tax Years:				
2009	4,284,746.39	4,204.65	510,713.96	510,674.17
2008	784,284.56	362.22	102,032.25	91,609.63
2007	40,631.91	24.13	8,483.26	0.00
2006 & Prior	43,658.53	10.61	9,623.94	0.00
4. Interest	162,313.16	46.02		
5. Balance due the City at June 30, 2010, for:				
2009	951,471.95	278.73	146,366.04	146,360.83
2008	261,802.31	118.23	41,624.66	28,328.73
2007	226,992.49	51.18	34,574.50	0.00
2006 & Prior	1,159,717.65	345.93	181,071.96	0.00

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	Storm Water Management	Fayetteville Storm Water Management	Curbside Recycling
1. Current Year Original Levy (Real and Personal) Total Property Valuation Tax Rate Per \$100 Amount of the Levy	1,702,140.00	3,405,072.00	2,257,998.00
2. Discoveries and Releases Discoveries Total Property Valuation Tax Rate Per \$100 Amount of the Levy	744.00	1,392.00	194.00
Releases Total Property Valuation Tax Rate Per \$100 Amount of the Levy	3,072.00	6,144.00	7,676.00
3. Taxes remitted to the City for Tax Years:			
2009	1,689,623.94	3,379,943.97	2,229,314.40
2008	12,602.55	11,822.19	15,126.46
2007	1,664.05	1,300.20	0.00
2006 & Prior	1,271.50	0.00	0.00
4. Interest	5,709.42	8,953.10	8,209.37
5. Balance due the City at June 30, 2010, For:			
2009	10,188.06	20,376.03	21,201.60
2008	5,648.75	6,962.24	5,185.26
2007	3,750.21	5,435.02	0.00
2006 & Prior	17,393.91	0.00	0.00

The following summarized the 1999 real/personal and vehicle taxes to be barred:

	Vehicles	Personal	Real	Public Service	Fees	Total
County	482,901.64	54,160.32	45,671.90	-	-	582,733.86
County Pets	-	801.21	-	-	-	801.21
Fayetteville	132,549.31	9,921.35	24,305.77	-	-	166,776.43
Revit	77.75	51.11	-	-	-	128.86
Fayetteville Vehicle Fee	21,223.97	-	-	-	-	21,223.97
Hope Mills	6,492.09	421.34	550.05	-	-	7,463.48
Hope Mills Vehicle Fee	1,545.00	-	-	-	-	1,545.00
Hope Mills Pets	-	56.21	-	-	-	56.21
Spring Lake	13,201.23	698.24	55.62	-	-	13,955.09
Stedman	202.08	-	-	-	-	202.08
Stedman Vehicle Fee	75.00	-	-	-	-	75.00
Godwin	73.51	-	-	-	-	73.51
Wade	256.89	74.26	-	-	-	331.15
Falcon	24.37	-	-	-	-	24.37
Linden	86.68	9.08	-	-	-	95.76
Solid Waste User Fee	-	-	-	-	384.00	384.00
Storm Water Fee	-	-	-	-	156.00	156.00
Advertising Fee	-	-	-	-	324.24	324.24
Total	658,709.52	66,193.12	70,583.34	-	864.24	796,350.22
TA500 MR VEHICLES	658,709.52	-	-	-	-	-
TA500 MR CC	137,640.70	-	-	-	-	-
TA500 MR PS	-	-	-	-	-	-
	<u>796,350.22</u>	-	-	-	-	-

9.2 Levy for 2010-2011 Fiscal Year

City of Fayetteville:	No. of Accts.	Real Value	Personal Value	**Exempt Value	Taxable Value
Real Property with Personal	92,145	11,219,668,323	537,992,190	176,989,141	11,580,671,372
*Public Service	-	-	-	-	-
Total:	92,145	11,219,668,323	537,992,190	176,989,141	11,580,671,372
Description:		Taxes	Late List	Total	
Real Property with Personal		52,807,882.24	35,566.90	52,843,449.14	
*Public Service		-	-	-	
Total:		52,807,882.24	35,566.90	52,843,449.14	

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Revitalization	No. of Accts	Real Value	Personal Value	***Exempt Value	Taxable Value
Real Property with Personal	821	111,542,359	13,427,367	---	124,969,726
*Public Service	-	-	-	-	-
Total:	821	111,542,359	13,427,367	---	124,969,726

	Taxes	Late List	Total
Real Property with Personal	124,970.06	256.69	125,226.75
*Public Service	-	-	-
Total:	124,970.06	256.69	125,226.75

Exempt Value:	
Real	175,051,0710
Personal	1,937,431
Total:	176,989,141

Revit Exempt Value:	
Real	-
Personal	-
Total:	-

Fayetteville Storm Water:	3,429,710.40
Fayetteville Recycling:	2,264,838.00
Storm Water:	1,714,855.20

10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:28 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

080910

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**FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
AUGUST 23, 2010
6:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Lisa Smith, Chief Financial Officer
Patricia Bradley, Assistant City Attorney
Sherrod Banks, The Banks Law Firm
Adam Shestak, The Banks Law Firm
Doug Peters, FCCCC
Bo Gregory, FCCCC
Doug Byrd, FCCCC

Mayor Chavonne called the meeting to order.

Closed session for consultation with the attorney.

MOTION: Mayor Chavonne moved to go into closed session for consultation with the attorney regarding attorney-client privileged matter, economic development incentives, and internet café litigation.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

The regular session recessed at 6:00 p.m. The regular session reconvened at 7:52 p.m.

MOTION: Council Member Mohn moved to go into open session.
SECOND: Council Member Meredith
VOTE: UNANIMOUS (10-0)

There being no further business, the meeting adjourned at 7:52 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

082310

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FAYETTEVILLE CITY COUNCIL
AGENDA BRIEFING MINUTES
LAFAYETTE ROOM
OCTOBER 6, 2010
4:00 P.M.

Present: Mayor Anthony G. Chavonne (departed at 5:29 p.m.)

Council Members Keith A. Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 4:10 p.m.); Darrell J. Haire (District 4) (departed at 4:50 p.m. and returned at 6:32 p.m.); Bobby Hurst (District 5) (departed at 5:15 p.m.); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Wesley A. Meredith (District 9) (departed at 5:15 p.m.)

Absent: Council Members Robert A. Massey, Jr. (District 3); Theodore W. Mohn (District 8)

Others Present: Dale Iman, City Manager
Kristoff Bauer, Assistant City Manager
Janet Smith, Assistant City Attorney
Bradley Whited, Airport Director
Rob Anderson, Chief Development Officer
Karen Hilton, Planning & Zoning Division Manager
Craig Harmon, Planner II
David Nash, Planner II
Rita Perry, City Clerk
Press

City staff presented the following items scheduled for the Fayetteville City Council's October 11, 2010, agenda:

CONSENT ITEMS:

Airport land acquisition along Doc Bennett Road, Budget Ordinance Amendment 2011-3 and Capital Project Ordinance 2011-7.

Mr. Bradley Whited, Airport Director, presented this item and provided an overview. He stated the Airport Commission recommended the purchase of 35.1 acres along Doc Bennett Road.

Case No. P10-30F. The rezoning of 82.87 acres between Santa Fe Drive, Bragg Boulevard, All American Freeway, and Fort Bragg Military Reserve (the Military Business Park) from R6 Residential and C1P and C3 Commercial Districts to M2 Industrial District. Waverly Broadwell Family LLC and Broadwell Brothers LLC, owners.

Mr. Rob Anderson, Chief Development Officer, presented this item. Mr. Anderson showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He clarified that the purpose for rezoning was to consolidate zoning districts to accommodate a business park aimed at military contractors and support facilities. He stated the Zoning Commission and staff recommended approval of the rezoning to M2 based on the following: (1) the 2010 Land Use Plan called for heavy commercial and industrial for the property (M2 would allow for both commercial and industrial uses), and (2) the property was currently zoned mainly M2.

Council Member Bates inquired whether there would be access to Bragg Boulevard. Mr. Dale Iman, City Manager, responded in the affirmative and illustrated the location of the proposed access to Bragg Boulevard.

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Case No. P10-32F. The rezoning of 0.43 acres located at 120 N. Cool Spring Street from R5 Residential District to P4 Neighborhood Professional District. Frank Crawford, owner.

Mr. Rob Anderson, Chief Development Officer, presented this item and provided a brief summary.

Case No. P10-34F. The rezoning of 3.93 acres located at 2515 Downing Road from C1P Commercial District to M2 Industrial District. Richard and Howard King, owners.

Mr. Rob Anderson, Chief Development Officer, presented this item and provided a brief summary.

Ordinance authorizing the demolition of 1301 Hillsboro Street.

Mr. Rob Anderson, Chief Development Officer, presented this item and informed Council that the building was condemned on July 28, 2010, as a dangerous or vacant/abandoned structure. He stated a hearing was held via telephone with the owner and an order issued to repair or demolish the structure within 60 days. He stated there was no progress to date and no repair or demolition permits have been issued.

A discussion period ensued regarding a property lien, the demolition contractor's responsibilities, and the funding sources.

Ordinance authorizing the demolition of the structure at 811 Bedrock Drive.

Mr. Rob Anderson, Chief Development Officer, presented this item and informed Council that the building was condemned on May 4, 2010, as a dangerous or vacant/abandoned structure. He stated a hearing was held and the owner did not attend, but had contacted the hearing officer by telephone to discuss her plans for the structure. He stated the owner was also mailed an application for the Community Development Demolition Program to assist in the removal of the structure. He stated the owner failed to repair or demolish the structure.

A brief question and answer period ensued.

PUBLIC HEARINGS:

Case No. P10-31F. The rezoning of 2.2 acres located between Raintree Drive and Coinjock Circle on the west side of Strickland Bridge Road from R10 Residential District to C1P Commercial District. Elite Investments, Inc., owners.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the purpose for rezoning was to create commercial properties for retail outlets. He stated the Zoning Commission recommended approval of the rezoning based on the following: (1) the rezoning would not be detrimental to the surrounding neighborhood and (2) would be close enough to other commercial properties to not be spot zoning. He stated the Planning staff recommended denial of the rezoning to C1P or any other commercial district based on the following: (1) the 2010 Land Use Plan called for low-density residential; (2) the property was currently surrounded by residential zoning and uses; (3) the 2030 Growth Vision Plan cautioned against rezoning residential properties just because they front major roads; and (4) the possible illegal spot zoning.

Ms. Janet Smith, Assistant City Attorney, provided an outline of what would define spot zoning.

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Case No. P10-33F. Special Use Permit to allow a nursing home in an R6 Residential District on property located at 523 Country Club Drive containing 8.66 acres. Noah and Gail Duncan, owners.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the purpose of the rezoning was for the expansion of an existing nursing home to create more private rooms. He stated the bed count, number of clients, and staff would remain the same. He stated the Zoning Commission recommended approval based on the following: (1) the use would fit the character of the neighborhood; (2) the use would not be detrimental to the surrounding area; and (3) be built to the specifications of the site plan.

Case No. P10-36F. Special Use Permit to allow the location of a wireless telecommunications tower on property located at 1624 Ireland Drive containing 2.0 acres. Cumberland County, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. Mr. Harmon stated the Zoning Commission recommended approval based on the following: (1) that all requirements of the Zoning Ordinance be met regarding the site of communication towers; (2) the use would fit the character of the neighborhood; (3) the use would not be detrimental to the surrounding area; and (4) be built to the specifications of the site plan. He stated staff recommended the following conditions for approval in addition to the submitted site plan: (1) prior to issuing a building permit, there would be written confirmation that there was an agreement with one or more providers to use the tower once built; (2) the Special Use Permit would become null and void if a building permit was not issued after two years from the date of approval of the request; and (3) that the specific details of the City Code [Section 30-107(17)] will be adhered to on the approval of the communication tower.

Mr. Dale Iman, City Manager, stated an addendum to the October 11, 2010, agenda packet was forthcoming which would include the Zoning Commission minutes and all backup materials.

OTHER ITEMS OF BUSINESS:

Request for waivers from the City standards (sidewalks, curb and gutter, and right-of-way width) for property within the City of Fayetteville MIA, Baywood Point, located on the southwest corner of Highway 24 and Baywood Road.

Ms. Karen Hilton, Planning & Zoning Division Manager, presented this item. Ms. Hilton stated the developer had submitted a plan to the County Planning Department for Baywood Point Subdivision and indicated that this would be the final phase of Baywood Point. She stated the developer would like to construct the final phase of the subdivision to the same standards as the existing subdivision. She stated the existing subdivision was platted prior to the MIA agreement and did not contain sidewalks or curbs and gutters.

Council Member Meredith stated he would be recusing himself from this case.

A discussion period ensued regarding adjacent property ownership and issues pertaining to sidewalks should annexation occur.

Hospital Plan Presentation

Mr. David Nash, Planner II, presented this item and provided a summary and outlined the proposed plan.

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Mr. Dale Iman, City Manager, clarified that the proposed plan would allow new requests for rezoning districts and emphasized that existing uses would remain legal nonconformities.

A discussion period ensued regarding Special Use Permits, clear cut and replanting.

There being no further business, the meeting adjourned at 5:20 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

100610

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**FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
OCTOBER 11, 2010
6:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Janet C. Smith, City Attorney
Brian Leonard, Assistant City Attorney

Mayor Chavonne called the meeting to order.

Closed session for consultation with the attorney.

MOTION: Mayor Chavonne moved to go into closed session for consultation with the attorney regarding litigation in the matters of *Jeffery Smith, et al. v. City of Fayetteville* and *City of Fayetteville v. Mitchell Brewer Richardson Adams Burge & Boughman and attorney-client privilege matters.*

SECOND: Council Member Bates

VOTE: UNANIMOUS (9-0)

The regular session recessed at 6:05 p.m. The regular session reconvened at 6:50 p.m.

MOTION: Council Member Bates moved to go into open session.

SECOND: Council Member Mohn

VOTE: UNANIMOUS (9-0)

There being no further business, the meeting adjourned at 6:50 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

101110

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
OCTOBER 11, 2010
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Janet Smith, Assistant City Attorney
Craig Harmon, Planner II
Frank Lewis, Senior Code Enforcement Administrator
Doug Byrd, Fayetteville-Cumberland County Chamber of Commerce
Nathan Walls, Public Information Specialist
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order at 7:00 p.m.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Bates moved to approve the agenda with the addition of Item 7.16, Fire Antz Special Sign Permit request, and Item 9.2, closed session to discuss an economic development matter.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (9-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mayor Chavonne and Council Member Davy, on behalf of the City Council and City of Fayetteville, presented a proclamation to Ms. Gwen York proclaiming October 2010 Domestic Violence Awareness Month.

6.0 PUBLIC FORUM

Mr. Homer Walker, 3307 Wishing Lane, Fayetteville, NC 28302, expressed concerns regarding harassment by a police officer during a traffic stop.

Mr. James McLeod, 1805 J Street, Fort Bragg, NC; Ms. Lucinda Stocks, 4422 Ellenbrook Drive, Fayetteville, NC 28312; Mr. Leroy Nunn Touche, Sr., 3231 Bardaman Avenue, Hope Mills, NC 28348; Ms. Louise D. Hammond, 1600 Veanna Drive, Fayetteville, NC 28301; Ms. Roenitha McNeill, 5005 Tangerine Drive, Fayetteville, NC 28304; Ms. Lanessa Edmonds, 224 Grove View Terrace, Fayetteville, NC 28301; expressed concerns of children being withdrawn from sports activities at

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recreation centers and not being allowed to complete the season due to an error in assignments.

Due to the time limit expiring on the public forum, the remaining speakers were not allowed to speak. Mayor Chavonne requested those in the audience in agreement with the concerns raised to stand. Several members of the audience stood.

7.0 CONSENT

MOTION: Council Member Bates moved to approve the consent agenda with the exception of Items 7.5 and 7.6.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (9-0)

7.1 Airport Land Acquisition along Doc Bennett Road, Budget Ordinance Amendment 2011-3 and Capital Project Ordinance 2011-7.

7.2 Case No. P10-30F. The rezoning of 82.87 acres between Santa Fe Drive, Bragg Boulevard, All American Freeway, and Fort Bragg Military Reserve (the Military Business Park) from R6 Residential and C1P and C3 Commercial Districts to M2 Industrial District. Waverly Broadwell Family LLC and Broadwell Brothers LLC, owners.

7.3 Case No. P10-32F. The rezoning of 0.43 acres at 120 N. Cool Spring Street from R5 Residential District to P4 Neighborhood Professional District. Frank Crawford, owner.

7.4 Case No. P10-34F. The rezoning of 3.93 acres located at 2515 Downing Road from C1P Commercial District to M2 Industrial District. Richard and Howard King, owners.

7.5 Pulled for discussion by Council Member Bates.

7.6 Pulled for discussion by Council Member Bates.

7.7 Award contract for the purchase of one 35,000 lb. rubber tire loader to Rob's Hydraulics, Inc., Grimesland, NC, low bidder, in the amount of \$141,000.00.

Bids were received as follows:

Rob's Hydraulics, Inc. (Grimesland, NC)	\$141,000.00
Interstate Equipment Co. (Cary, NC)	\$141,085.00
R. W. Moore Equipment Co. (Raleigh, NC)	\$149,300.00
Gregory Poole Equipment Co. (Hope Mills, NC)	\$169,962.00

7.8 Purdue Drive Municipal Agreement for railway crossing signals and gates.

COPY OF A RESOLUTION PASSED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2010-078.

7.9 Capital Project Ordinance Amendment 2011-11 (railway grade crossing signals on Purdue Drive).

7.10 Capital Project Ordinance 2011-6 (FY 2011 Transit Multi-Modal Center grant).

7.11 Budget Ordinance Amendment 2011-4 (public safety software, hardware, and radio antennas).

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7.12 Award contract for the purchase of two 10' non-walk-in rescue units to KME Fire Apparatus, c/o Slagle Fire Equipment Company, South Boston, VA, low bidder, in the amount of \$228,600.00

Bids were received as follows:

KME Fire Apparatus, c/o Slagle Fire Equipment Co. (South Boston, VA).....	\$228,600.00
Pierce Manufacturing, c/o Triad Fire, Inc. (Kernersville, NC).....	\$246,932.00
Anchor-Richey E.V.S. (Taylorsville, NC).....	\$259,550.00

7.13 Bid Recommendation - Award contract for Annexation Phase V, Project III, Area 9-Summerhill, to Colt Contracting Co, Clinton, NC, lowest responsive, responsible bidder, in the amount of \$2,219,490.60.

Bids were received as follows:

Colt Contracting Co. (Clinton, NC)	\$2,219,490.60
ES&J Enterprises, Inc. (Autryville, NC)	\$2,247,924.80
T.A. Loving Co. (Goldsboro, NC)	\$2,339,742.00
State Utility Contracts (Monroe, NC)	\$2,370,008.00
Dellinger, Inc. (Monroe, NC)	\$2,526,367.00

Plans and specifications were requested by 13 contractors with 6 responding.

7.14 Resale of foreclosed property at 4907 Rosehill Road to previous owner in accordance with N.C.G.S. § 105-376(C).

7.15 Extension of Grant Agreement for Cape Fear River Trail - Phase 2.

7.5 Ordinance authorizing the demolition of the structure at 1301 Hillsboro Street.

This item was pulled for discussion by Council Member Bates.

Mr. Frank Lewis, Senior Code Enforcement Administrator, presented this item and advised the structure was a church that had burned. He stated the property changed hands and the new owners applied to Community Development for funding assistance to have the structure removed. He stated Community Development scheduled an appointment with the owners for October 14, 2010. He stated they were requesting the ordinance in case the owners failed to proceed with demolition or repair of the structure.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY. ORDINANCE NO. NS2010-012.

MOTION: Council Member Bates moved to approve the ordinance authorizing the demolition of the structure at 1301 Hillsboro Street.

SECOND: Council Member Davy

VOTE: UNANIMOUS (9-0)

7.6 Ordinance authorizing the demolition of the structure at 811 Bedrock Drive.

This item was pulled for discussion by Council Member Bates.

Mr. Frank Lewis, Senior Code Enforcement Administrator, presented this item and advised the structure was a privately owned house that had burned. He stated the owner of the property applied to Community Development for assistance in the demolition of the structure and the contract was awarded. He stated they were requesting the ordinance in

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case the owner failed to proceed with demolition or repair of the structure.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY. ORDINANCE NO. NS2010-013.

MOTION: Mayor Pro Tem Haire moved to approve the ordinance authorizing the demolition of the structure at 811 Bedrock Drive.
SECOND: Council Member Massey
VOTE: UNANIMOUS (9-0)

8.0 PUBLIC HEARINGS

8.1 Economic development incentives for Strategic Solutions Unlimited, Inc., to support redevelopment within the City's Revitalization Zone.

Mr. Doug Byrd, Fayetteville-Cumberland County Chamber of Commerce, presented this item and provided background information. He stated Strategic Solutions Unlimited, Inc. (SSU), was currently located on Maxwell Street and would maintain that building and keep the current employment level at that location. He stated they were seeking to acquire and renovate an additional building in the Revitalization Zone located at 225 Gray Street. He stated the project would include expending an estimated \$450,000.00 to renovate the building and increasing the estimated tax value of the property by 117 percent to an estimated \$1.3 million. He stated they would employ at the new location from 20 to 50 people and would recruit locally.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

MOTION: Council Member Bates moved to approve the proposed incentives package for SSU and authorize the City Manager to execute an economic development incentive agreement with SSU consistent with the agenda item and Council's adopted policy.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

8.2 Case No. P10-31F. The rezoning of 2.2 acres located between Raintree Drive and Coinjock Circle on the west side of Strickland Bridge Road from R10 Residential District to C1P Commercial District. Elite Investments, Inc., owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the purpose for rezoning was to create commercial properties for retail outlets. He stated the Zoning Commission recommended approval of the rezoning based on the following: (1) the rezoning would not be detrimental to the surrounding neighborhood and (2) would be close enough to other commercial properties to not be spot zoning. He stated the Planning staff recommended denial of the rezoning to C1P or any other commercial district based on the following: (1) the 2010 Land Use Plan called for low-density residential; (2) the property was currently surrounded by residential zoning and uses; (3) the 2030 Growth Vision Plan cautioned against rezoning residential properties just because they front major roads; and (4) the possible illegal spot zoning.

A question and answer period ensued regarding the zoning of the surrounding properties and whether accident and traffic reports were requested. Mr. Harmon responded that the reports were not requested.

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This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Thomas Neville, Attorney for the applicant, 150 North McPherson Church Road, Fayetteville, NC 28303, appeared in favor. He provided information on the lots in the area. He stated there were very old businesses in the area that were commercial activities already and the area was a mixture of commercial, vacant and abandoned, and residential properties.

Ms. Deloris Leflore, 2111 Coinjock Circle, Fayetteville, NC 28304, appeared in opposition and advised her property was across the street and expressed traffic concerns. She stated they took pride in their neighborhood and would not want a strip mall and car lot in the heart of the neighborhood.

Mr. William Manuel, 813 TC Jones Road, Raeford, NC 28376, appeared in opposition and advised he attended the church in the neighborhood and expressed traffic concerns.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Applewhite moved to deny the rezoning of the property as recommended by staff from R10 to C1P.
SECOND: Council Member Bates
VOTE: UNANIMOUS (9-0)

Mayor Chavonne advised the next two cases would be quasi-judicial hearings. All speakers were sworn in.

8.3 Case No. P10-33F. Special Use Permit to allow a nursing home in an R6 Residential District on property located at 523 Country Club Drive containing 8.66 acres. Noah and Gail Duncan, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the purpose of the rezoning was for the expansion of an existing nursing home to create more private rooms. He stated the bed count, number of clients, and staff would remain the same. He stated this was a quasi-judicial hearing and would require findings be made based on the recommendations of staff and the Zoning Commission. He stated the Zoning Commission recommended approval based on the following: (1) the use would fit the character of the neighborhood; (2) the use would not be detrimental to the surrounding area; and (3) be built to the specifications of the site plan.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Bill Daniel, representing applicant, 1150 SE Maynard Road, Suite 260, Cary, NC 27511, appeared in favor and reiterated they were not expanding the number of beds but were expanding the facility. He stated the expansion would allow them to enhance the offerings to the community in the form of additional private rooms.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Massey moved to approve the Special Use Permit for the property located at 523 Country Club Drive for the necessary expansion including the findings of fact.
SECOND: Council Member Meredith
VOTE: UNANIMOUS (9-0)

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8.4. Case No. P10-36F. Special Use Permit to allow the location of a wireless telecommunications tower on property located at 1624 Ireland Drive containing 2.0 acres. Cumberland County, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. Mr. Harmon stated the Zoning Commission recommended approval based on the following: (1) that all requirements of the Zoning Ordinance be met regarding the site of communication towers; (2) the use would fit the character of the neighborhood; (3) the use would not be detrimental to the surrounding area; and (4) be built to the specifications of the site plan. He stated staff recommended the following conditions for approval in addition to the submitted site plan: (1) prior to issuing a building permit, there would be written confirmation that there was an agreement with one or more providers to use the tower once built; (2) the Special Use Permit would become null and void if a building permit was not issued after two years from the date of approval of the request; and (3) that the specific details of the City Code [Section 30-107(17)] will be adhered to on the approval of the communication tower.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Thomas Johnson, 201 Shannon Oaks Circle, Cary, NC 27511, appeared in favor and stated they concurred with the conditions recommended by staff. He provided information on the location and specifications of the tower.

Mr. Dave Lacava, Raleigh, NC, appeared in favor and presented a power point explaining the different levels of coverage by usage and the need for the site.

Mr. Graham Herring, 8052 Grey Oak Drive, Raleigh, NC 27615, appeared in favor and provided information on the impact the tower would have on the surrounding area. He advised his findings were the tower would not create any adverse influence or decrease the value of the surrounding properties.

There being no one further to speak, the public hearing was closed.

A question and answer period ensued regarding the usage in the area, the signal strength, whether co-location would occur with other companies, and the fall zone. Mr. Johnson responded in the affirmative on the co-location and provided explanations on usage, signal, and the fall zone.

Concerns were expressed with the tower being on school property in regard to the fall zone. Mr. Johnson explained the standards and setback for the fall zone and the design of the tower.

MOTION: Council Member Hurst moved to approve the Special Use Permit with the conditions provided in addition to the conditions in Section 30-107.

SECOND: Council Member Bates

VOTE: PASSED by a vote of 5 in favor (Council Members Bates, Hurst, Chavonne, Massey, and Mohn) to 4 in opposition (Council Members Davy, Meredith, Applewhite, and Haire)

9.0 OTHER ITEMS OF BUSINESS

9.1 Request for waivers from the City standards (sidewalks, curb and gutter, and right-of-way width) for property within the City of Fayetteville MIA, Baywood Point, located on the southwest corner of Highway 24 and Baywood Road.

Council Member Meredith requested to be recused from this item.

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MOTION: Council Member Mohn moved that Council Member Meredith be recused from discussion and voting on Item 9.1.
SECOND: Council Member Bates
VOTE: UNANIMOUS (9-0)

Ms. Karen Hilton, Planning & Zoning Division Manager, presented this item. Ms. Hilton showed the site profile, vicinity maps, and photos. She stated the developer had submitted a plan to the County Planning Department for Baywood Point Subdivision and indicated this would be the final phase of Baywood Point. She stated the developer wanted to construct the final phase of the subdivision to the same standards as the existing subdivision. She stated the existing subdivision was platted prior to the Municipal Influence Area (MIA) agreement and contained no sidewalks or curbs and gutters. She stated the developer was requesting waiver of the sidewalks, curb and gutter requirement, and the minimum width of the streets. She stated staff's recommendation was approval of the waivers for curb and gutter and for sidewalks and disapproval of the waiver for a reduced right-of-way for the streets.

A discussion period ensued regarding the purpose of the MIA.

MOTION: Council Member Bates moved to deny the request for waivers from City standards the sidewalks, curb and gutter, and right-of-way width for property within the City of Fayetteville MIA, Baywood Point located on the southwest corner of Highway 24 and Baywood Road.
SECOND: Council Member Massey

Ms. Janet Smith, Assistant City Attorney, inquired if Council Member Bates had reasons for his motion. Council Member Bates responded that the purpose of the MIA was to ensure if an area was annexed it would not have to be retrofitted.

VOTE: FAILED by a vote of 4 in favor (Council Members Bates, Haire, Massey, and Mohn) to 4 in opposition (Council Members Applewhite, Hurst, Chavonne, and Davy)

MOTION: Council Member Mohn moved to approve the waivers for curb and gutter and sidewalks and disapprove the waiver of the 45-foot right-of-way and instead require the 50-foot right-of-way requirements based on the findings of fact.

SECOND: Council Member Applewhite

VOTE: PASSED by a vote of 6 in favor to 2 in opposition (Council Members Bates and Massey)

9.2 closed session to discuss an economic development matter.

MOTION: Council Member Bates moved to go into closed session to discuss an economic development matter.

SECOND: Council Member Hurst

VOTE: UNANIMOUS (9-0)

The regular session recessed and the regular session reconvened.

10.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

101110

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council

FROM: Applicable City Council Member(s)

DATE: March 7, 2011

RE: City Council Request(s): (In order of receipt date)

(a) Council Member Mohn - City Council Policy 115.11 - Replacing A Vacancy on the City Council

(b) Council Member Arp - Small Business Defense Contract Network Opportunity

THE QUESTION:

As stated on attached City Council Agenda Item Request Form(s)

RELATIONSHIP TO STRATEGIC PLAN:

As stated on attached City Council Agenda Item Request Form(s)

BACKGROUND:

N/A

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

As stated on attached City Council Agenda Item Request Form(s)

ATTACHMENTS:

Council Member Mohn's Agenda Item Request

Revision to City Council Policy 115.11

City Attorney's Documentation

Examples of Other NC Cities Replacement Processes for City Council Vacancies

Council Member Arp's Agenda Item Request



City Council Agenda Item Request

Date of Request: 27 February 2011

Name of Requester: Council Member Ted Mohn - District 8

Agenda Item Title: Revise Council Policy 115-11 "Replacing A Vacancy on the City Council"

What do you want to accomplish with this item?

Update Council Policy 115-11 - "Replacing a Vacancy on the City Council" as the current policy simply identifies a time-frame for a replacement decision by council.

Provide future city councils, citizens and city staff a procedural outline for when it becomes necessary to replace a vacancy on the City Council.

Clarify when a sitting council member leaving office votes on his/her replacement.

How does this item connect to the City's Strategic Plan?

More Efficient City Government.

Partnership of Citizens.

Comments:

Future councils can revise this policy as they can revise any council policy. During the recent replacement process for Council Member Meredith questions were raised as to if CM Meredith was able to vote on his replacement. City Attorney McDonald has provided documentation indicating the outgoing council member is required to vote if the vote is taken prior to the outgoing council member officially leaving office. Supporting documents attached. Additionally. It is common practice in NC for citizens wishing to fill a vacancy to submit some type of application for the position and also speak before council. I have included wording to include an application requirement and opportunity for applicants to speak before council.

SUBJECT – CITY COUNCIL Replacing a Vacancy on the City Council	Number 115.11	Revised	Effective Date 9-25-00	Page 1 of 1
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CURRENT WORDING

If a vacancy shall occur on the City Council mandating a replacement pursuant to N.C.G.S. § 160A-63, the City Council shall make the selection within 30 days of the event mandating the replacement. If the 30th day falls on a Saturday, Sunday, or a holiday, then the time shall be extended until the following Monday or the next regular meeting of the City Council.

Ted Mohn - Initial Proposed Additions to the Above Current Policy

A vacancy on City Council may occur in several ways: a) death of a sitting council member, b) the formal resignation of a sitting council member, c) a certified medical professional declaring a sitting council unfit/unable to perform their council duties (incapacitated), d) any other legal disqualification of a sitting council member allowed under North Carolina General Statutes (i.e., moving out of the district they were elected in).

The "event" mandating the replacement is the effective date of the vacancy examples listed in the immediate preceding paragraph.

North Carolina General Statutes require Council Members to vote unless it is a matter involving their own financial interest or official conduct. Therefore, a sitting council member is required to vote on their replacement unless the sitting council member has vacated their city council position prior to the City Council calling for a vote on this issue.

Vacancy Replacement Process:

Citizens interested in filling a vacancy on the City Council will submit an application for the vacancy to the City Clerk's Office or other city office identified by council. City Staff will verify each applicant's eligibility for the vacancy. Once verified by staff qualified applicants will have the opportunity to speak before council during the regularly scheduled council meeting or specially called council meeting when this item is placed on the council's agenda.

Questions I Am Frequently Asked
**May We Fill a Vacancy Before It Occurs
(and May a Board Member Participate in
Filling His or Her Own Vacancy)?**

David M. Lawrence

Sometimes local government officials or members of local government boards resign with the understanding that the resignation will take effect at some future date. The question then often arises: May the official or board with power to fill the vacancy do so before the vacancy actually occurs? And, if the vacancy is within the membership of the appointing board itself, may the board member who is resigning participate in filling her or his own vacancy? Although this set of questions is not directly answered by statute in North Carolina and has not been litigated in this state, the answer to both questions appears to be yes. The chain of reasoning is as follows:

First, a member of a local government board clearly may resign effective some date in the future.¹ Once the resignation is accepted, it may not be withdrawn, but it takes effect upon its own terms.

Second, the case law nationally is clear that when an appointing board or official knows of a vacancy that will occur at a specific future date, the board or official may appoint someone to fill the vacancy before that future date. Numerous cases support this rule; two will illustrate it. In *Board of Education v.*

Nevels,² the school board, acting in December 1975, reappointed the superintendent for a term to begin the succeeding July. A new board took office in January 1977 and sought to have the reappointment invalidated. The Kentucky court upheld the reappointment, writing that "[i]t has long been the rule in Kentucky that there can be a valid appointment to an office in advance of the time the vacancy actually occurs. Prospective appointments to office are generally deemed to be valid."³ In *State ex rel. Oklahoma Tax Commission v. Mourer*,⁴ the state tax commission made its appointment to a county board of equalization on December 13, for a term beginning the upcoming January 1. The enabling statute also called for appointments to the board of equalization by the board of county commissioners but prohibited the tax commission and the county commissioners from appointing persons residing in the same commissioners' district. On January 2 the county commissioners purported to make their appointment to the board of equalization but appointed a person who resided in the same commissioners' district as the tax commission appointee. When the tax commission sued to uphold their appointment, the Oklahoma court ruled in favor of the earlier appointment: a board may make an appointment before a vacancy actually

The author is an Institute of Government faculty member whose specialties include public records and local government law.

occurs. Therefore, the tax commission appointment was valid, and, having been first, the tax commission appointment had precedence.⁵ I have found no cases disagreeing with this basic rule, and therefore I expect the North Carolina courts would adopt it as well, should they face the question. The rule, after all, does make sense: it allows an appointing official or board, knowing of an impending vacancy, to make sure there is no interruption in the performance of the duties associated with the office or position in question.

There is one important exception to this general rule, one that would probably be accepted in North Carolina along with the rule. When the vacancy will not become effective until after the conclusion of the terms of some or all of the members of the appointing body, the vacancy may not be filled by the current members of the appointing body. For example, in *State ex rel. Norman v. Viebranz*,⁶ a school board appointed one of its members (Marcial) to a regional vocational education board as the school board's *ex officio* representative on that regional board. Marcial was then defeated for reelection, which also cost him his seat on the regional board. In anticipation of Marcial's leaving the regional board, the remaining members of the school board appointed another school board member, Norman, to the seat on the regional board. Shortly thereafter, the new members of the school board qualified for office, and they appointed Viebranz to the same seat on the regional board. In a suit between Norman and Viebranz, the Ohio Supreme Court held that it was the new school board, rather than the retiring board, that was empowered to make the appointment.⁷

Third, until the effective date of the resignation, a resigning board member remains a full member of his or her board, as entitled (or required) to participate in board matters as any other

member.⁸ When a board is filling a vacancy in its own membership, as county commissioners and city councils are authorized to, and therefore the person resigning is resigning as a member of that board, he or she still remains a member of the appointing board until the resignation becomes effective. The North Carolina statutes impose a duty on the members of city councils and boards of county commissioners to vote on all matters that come before the board, unless excused as permitted by statute.⁹ The statutes limit the reasons that justify such an excuse, and those reasons are inapplicable to filling one's own vacancy.¹⁰ Therefore, if the board acts to fill the vacancy in its own membership before the vacancy in fact occurs, the resigning member not only may, but must, vote on the issue.

In conclusion, then, when it becomes settled that a vacancy in an office will occur at some date in the future, the official or board with authority to fill the vacancy may do so before the vacancy in fact occurs; the only exception to this rule occurs when the vacancy will not become effective until after the end of the term of the appointing official or of the terms of some or all of the members of the appointing board. In addition, if the board is filling such a future vacancy among its own membership, the member whose resignation is causing the vacancy may participate in filling it.

Notes

1. *See In re Peoples*, 296 N.C. 109, 250 S.E.2d 890 (1978), in which a district court judge had resigned with a future effective date and the court clearly assumed such a resignation was possible and proper.

2. *Board of Educ. v. Nevels*, 551 S.W.2d 15 (Ky. Ct. App. 1977).

3. *Nevels*, 551 S.W.2d at 18.

4. *State ex rel. Oklahoma Tax Comm'n*, 596 P.2d 882 (Ok. 1979).

5. Another relatively recent case accepting this general rule is *Morrison v. Michael*, 159 Cal. Rptr. 568 (Cal. Ct. App. 1979), in which the court upheld a pros-

Karen McDonald

From: Frayda Bluestein [bluestein@sog.unc.edu]
Sent: Wednesday, February 02, 2011 12:50 PM
To: bluestein@sog.unc.edu
Subject: [Coates' Canons: NC Local Government Law Blog] Filling a Vacancy on the Town Council

Coates' Canons: NC Local Government Law Blog has posted a new item, 'Filling a Vacancy on the Town Council'

Judy Bailey was not just a member of the town council. She was well-known in town for her dog training business and often entertained at local events with her troupe of trained poodles. So it was no surprise when she – literally – ran off and joined the circus. Once the excitement settled down, questions arose about how to fill the vacancy on the town council. State law clearly provides that the city council is responsible for filling vacancies. But the timing and method are not spelled out. This blog post provides answers to the following questions, which often arise when a vacancy occurs: 1) Must the council fill the vacancy (and if so, how long do they have to do it), or can they decide to allow the vacancy to remain until the next election? 2) Does the law require the council to use any particular process to select the person to fill the vacancy? 3) Are records relating to applicants or nominees to fill the vacancy subject to public access? 4) May the council meet in closed session to discuss candidates under consideration to fill the vacancy? 5) Must the council vote “yes” or “no” for each candidate, or can they vote from a slate of candidates? 6) If there are two votes for one candidate and two for another, can the mayor break the tie? 7) Is an appointment to fill a vacancy for the remainder of the term or only until the next election?

You may view the latest post at
<http://sogweb.sog.unc.edu/blogs/localgovt/?p=3894>

You received this e-mail because you asked to be notified when new updates are posted.

Best regards,
Frayda Bluestein
bluestein@sog.unc.edu

- Coates' Canons: NC Local Government Law Blog - <http://sogweb.sog.unc.edu/blogs/localgovt> -

Filling a Vacancy on the Town Council

Posted By [Frayda Bluestein](#) On February 2, 2011 @ 1:49 PM In [Board Structure & Procedures](#), [General Local Government](#), [Open Government](#) | [No Comments](#)

Judy Bailey was not just a member of the town council. She was well-known in town for her dog training business and often entertained at local events with her troupe of trained poodles. So it was no surprise when she – literally – ran off and joined the circus. Once the excitement settled down, questions arose about how to fill the vacancy on the town council. State law clearly provides that the city council is responsible for filling vacancies. But the timing and method are not spelled out. This blog post provides answers to the following questions, which often arise when a vacancy occurs: 1) Must the council fill the vacancy (and if so, how long do they have to do it), or can they decide to allow the vacancy to remain until the next election? 2) Does the law require the council to use any particular process to select the person to fill the vacancy? 3) Are records relating to applicants or nominees to fill the vacancy subject to public access? 4) May the council meet in closed session to discuss candidates under consideration to fill the vacancy? 5) Must the council vote "yes" or "no" for each candidate, or can they vote from a slate of candidates? 6) If there are two votes for one candidate and two for another, can the mayor break the tie? 7) Is an appointment to fill a vacancy for the remainder of the term or only until the next election?

1) Must the council fill the vacancy (and if so, how long do they have to do it), or can they decide to allow the vacancy to remain until the next election?

G.S. 160A- 63 [1] says: "A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council." Does the "shall" in this sentence mean that they are required to fill the vacancy or does it mean that if it is to be filled, the council is the body to fill it? There appears to be no case interpreting this provision, so it could be read either way. I think the safest and most appropriate reading is that the council must fill the vacancy.

The statute does not set a time frame within which this must be done. In contrast, the statute directing county commissioners to fill vacancies clearly requires them to do it, and provides for the clerk of superior court to do it if the commissioners fail to within 60 days after the vacancy occurs. See, **G.S. 153-27** [2]. It could be argued that the difference suggests a legislative intent to allow cities an indefinite amount of time to fill the vacancy, but it's hard to square that with the statute's provision that city councils "shall" fill a vacancy. If there is no time within which the appointment must be made, in effect, they never have to make it. If the legislature intended this result, it seems that the statute would say they "may" fill the vacancy.

City council members sometimes suggest that they would prefer to leave it to the electorate to choose a new council member – essentially making a decision not to fill the vacancy before the next election. While this may reflect a genuine desire to avoid displacing the public's opportunity to choose a council member, it opens the process up to manipulation. For example, in the case of an odd-numbered board operating with one less member, a decision not to fill the vacancy increases the role of the mayor in breaking ties. To avoid this, and to provide citizens with the benefit of deliberation and action by the full complement of members called for in the charter, the vacancy should be filled as soon as reasonably possible.

What is the risk of refusing to fill the vacancy, or waiting too long to do it? Citizens may raise concerns, and ultimately, could file a lawsuit, giving a court the opportunity to determine what the "shall" in the statute means. If the court reads the statute as creating a duty to fill the vacancy, the court might order the council to carry out that duty – probably within a "reasonable" time, since no other time is specified. A court would not, however, order the council to appoint a particular person. Courts generally won't interfere with governmental discretion on things like this. See, *In Re Alamance County Court Facilities*, 329 N.C. 84, 105 (1991) ("In matters involving the exercise of discretion, mandamus will lie only to compel public officials to take action; ordinarily it will not require them to act in any particular way.") On the other hand, if a court interprets the statute to allow, but not require the council to fill the vacancy, or if a court finds that it is mandatory but there is no time within which it must be done (essentially reaching the same result), there would be no grounds for a court order

requiring the council to act.

2) Does the law require the council to use any particular process to select the person to fill the vacancy?

No. Some city charters may have provisions dictating how vacancies are filled. Under the general law, however, there are no specific rules about who must be appointed or how they are selected. Some cities decide to appoint the next highest vote-getter in the most recent election, though, again, unless provided for in the charter, there is no legal requirement to do this. Some boards may ask for nominations and applications from the community, while others may create a nominating committee to develop names, or simply make nominations themselves.

3) Are records relating to applicants or nominees to fill the vacancy subject to public access?

Yes. Whatever method the council uses to identify candidates for appointment, the city may receive or create records of the names and qualifications of those candidates. These materials are public records, and are probably *not* protected under the personnel privacy statutes. There is a case (*Durham Herald Co. v. County of Durham*, 334 N.C. 677 (1993)) in which the court held that records of applicants for appointment as sheriff were confidential under the county personnel privacy statute. The sheriff is an elected official, like a council member. But a sheriff is more like a regular employee than is a council member. David Lawrence argues in his book on North Carolina's public records law, that certain types of council member records (such as tax records) may be protected, but that council members (and candidates for appointment to the council) are otherwise unlikely to be considered employees for personnel record privacy purposes. See, ***Public Records Law for North Carolina Local Governments*** [3], pp.148-149. The exception in the public records law that protects individual identifying information and social security numbers (**G.S. 132-1.10** [4]) protects some information that might be in these records, but bear in mind that home addresses and phone numbers are not covered by this exception. So the point here is: Make sure to include in the process (and in any application forms) fair warning about the public nature of the information provided by or about applicants, and avoid asking for private, personal information from applicants that the council doesn't really need.

4) May the council meet in closed session to discuss candidates under consideration to fill the vacancy?

No. As noted earlier, it isn't really accurate to characterize these applicants as potential employees. More directly, the open meetings law specifically says, "A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another public body and may not consider or fill a vacancy among its own membership except in an open meeting." **G.S. 143-318.11(a)(6)** [5].

5) Must the council vote "yes" or "no" for each candidate, or can they vote from a slate of candidates?

Again, the statutes don't say anything about this, but there does not appear to be any bar to voting from a ballot containing multiple names, and appointing the person who receives the most votes. Indeed, there are some distinct advantages to the "ballot" approach, which are described in Fleming Bell's publication, ***Suggested Rules of Procedure for a City Council***. [6] Anyone considering how to approach voting on appointments would be well-served by reviewing his discussion of the alternatives (see, Rule 31 Appointments, pp.37-39). If the ballot approach is not used, then the votes are by individual motion with members voting "yes" or "no" for each nominee. This approach can be difficult to manage if there are multiple nominees.

6) If there are two votes for one candidate and two for another, can the mayor break the tie?

No, unless a provision in the city's charter specifically allows it. Under **G.S. 160A-69** [7], the mayor votes "only when there are equal numbers of votes in the affirmative and in the negative." If the city's mayor has the right to vote on all matters, the issue does not arise and the mayor is free to vote for his or her preferred candidate. If the mayor is "non-voting" and can't break the tie, the members will have to continue to vote until one person gets a majority. Of course, if the voting is by motion on each nominee rather than by ballot, the votes would be "yes" or "no" and the mayor would have authority to break a tie.

7) Is an appointment to fill a vacancy for the remainder of the term or only until the next election?

This is one of the few things about appointments to fill vacancies that the statute actually addresses. The basic requirement is that the person appointed serves until the next election, even if the original term would extend beyond the next election. The person appointed may run for the seat and be reelected, but otherwise, the appointment will end when someone else is elected to that seat. The one exception to this rule provides that if the vacancy actually occurs within 90 days of the next election, the person appointed will serve for the entire remaining term, even if it extends beyond the next election. I've always found the wording of this statute to be a bit confusing, but I believe the intent is to limit the term of a person appointed to fill a vacancy and to let the electorate choose a new person at the next election, except in cases where the vacancy occurs too soon before the election to allow time for the actual conduct of the election.

Article printed from Coates' Canons: NC Local Government Law Blog:
<http://sogweb.sog.unc.edu/blogs/localgovt>

URL to article: <http://sogweb.sog.unc.edu/blogs/localgovt/?p=3894>

URLs in this post:

[1] G.S. 160A-63: <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-63>

[2] **G.S. 153-27**: <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-27>

[3] **Public Records Law for North Carolina Local Governments**:

<http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2178/.f>

[4] **G.S. 132-1.10**: <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-1.10>

[5] **G.S. 143-318.11(a)(6)**: <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.11>

[6] **Suggested Rules of Procedure for a City Council.**: <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.43/.f>

[7] **G.S. 160A-69**: <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-69>

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Wilmington, NC Replacement Story (November 2008):
<http://www.starnewsonline.com/article/20081105/ARTICLES/811050252/1004>

Council seeks quick replacement for Thompson

By Patrick Gannon
Staff Writer

Published: Wednesday, November 5, 2008 at 5:05 p.m.
Last Modified: Wednesday, November 5, 2008 at 8:57 p.m.

Wilmington City Councilman Jason Thompson submitted his resignation from the council on Wednesday, a day after voters picked him to be a county commissioner.

The resignation will take effect later this month.

Although he won't take his seat on the New Hanover County Board of Commissioners until December, Thompson said he wanted to allow the city to begin the process of choosing someone to replace him.

That process now begins Thursday, when applications will be accepted from interested city residents for 12 days. The application will be posted Thursday on the city Web site, www.wilmingtonnc.gov.

According to a new process approved by council this summer, here's how the appointment process will work:

First, any city resident 21 or older may apply to the city clerk. Second, at the Nov. 18 council meeting, each candidate will address the council for three minutes about why they believe they should be selected. Finally, either at that meeting or a subsequent meeting, the council will nominate candidates and vote. The first nominee to get a majority vote will be the replacement. The appointee will serve until the voters elect a new council member in the October city elections.

Council members make \$10,670 per year, plus \$350 month car allowance and are eligible for city health benefits.

As early as June, council members already were getting inquiries from people interested in Thompson's seat if he won the election. This summer, with Thompson's possible departure, council amended its process for filling vacancies to make it more transparent.

In 2006, after the resignation of former mayor Spence Broadhurst, council spent less than 6 minutes during two meetings elevating **Bill Saffo** from councilman to mayor and naming attorney J.C. Hearne to Saffo's council seat. The lack of discussion about candidates caused

some to criticize the council for what appeared to be a behind-closed-doors decision. It “made a mockery of the democratic process,” one resident wrote to the council shortly after the votes.

Before changes to the process, the council had little to go by other than a mandate to select a replacement themselves.

Thompson was first elected to council in 2001 and is serving his second four-year term. He said Wednesday that the council needs someone who has already demonstrated a willingness to serve by volunteering on boards and commissions.

Also, he added, “They need someone like me who has strong opinions and is not afraid to stick up for them, good or bad.”

Wilmington City Councilman Jim Quinn didn’t waste time before congratulating his council colleague on his election victory.

“Will you forget we little people now?” Quinn wrote in an e-mail. “Way to go.”

Mayor Bill Saffo said Thompson tells it like he sees it, referring to his in-your-face style and knack for attention-grabbing commentary.

The mayor called Thompson the “Howard Cosell of elected officials.”

Patrick Gannon: 343-2328

Cherryville, NC Replacement Story (November 2010):
<http://www.shelbystar.com/articles/council-51345-city-replacement.html>

City Council seeks replacement for deceased friend

Tuesday, Nov 9 2010, 7:52 pm

Diane Turbyfill

Nearly a month after the death of Cherryville City Councilman Davis Browne III, the mayor and remaining council members are ready to move forward with finding a replacement.

“We can find somebody to put in that seat but it’s going to be awfully hard to find another Davis Browne,” said Councilman Ron Hovis.

Applications are now available at Cherryville City Hall at 116 S. Mountain St. No time frame has been set for filling Browne’s Ward 1 seat, but all applications must be turned in by the end of December.

Mayor Bob Austell said he hopes to have some applications to mull over by the council's December work session.

Council drafted a statement to the public acknowledging its intent to fill the slot while focusing on finding a quality person.

Though any Ward 1 resident may apply for the position, council will consider even those who don't apply.

"This application process is merely to gauge interest in the vacant seat and to make sure the council does not overlook any citizen who has an interest in serving on council," according to the official statement signed by Austell and the three council members.

"We're looking to fill that position with a highly qualified person," said Austell.

Browne, 61, died Oct. 14, 2010, of an apparent heart attack.

Browne was in the first of his four-year term on City Council. State law puts the duty of an appointment for the position on council members. That person will fill the spot until the next municipal election, which will be Nov. 1, 2011.

Despite his rather brief stint on the council, Browne cared about the task and wanted to accomplish a lot, said Austell.

"Davis came into this job really determined to do a good job," said Austell. "He wanted to be a good council member. He was dogmatic about what he believed in."

Hovis and Councilman Rick Campbell, friends of Browne's, both expressed grief over losing a man who had much to offer.

"He was stopped before he had the opportunity to really get started," said Campbell. "I lost a dear friend, somebody I've known all of my life. Nobody can replace him, nobody. But the citizens deserve a full council."

You can reach Diane Turbyfill at 704-869-1817.

Minutes from Raleigh, NC City Council Meeting (21 September 2010)

CITY COUNCIL VACANCY – DECLARED; REPLACEMENT PROCEDURE - ANNOUNCED

Mayor Meeker pointed out Mayor Pro Tem West was sworn in as a Wake County Commissioner yesterday to replace Commissioner Harold Webb who resigned due to health reasons. He indicated a ceremony will be held Wednesday, September 29 at 5:00 p.m. light refreshments will be served and comments could be made at that time. He stated the public is invited, there will be some invitations issued by email and other means to City boards and commissions. He invited all and pointed out any body is welcome to make comments. He stated after that the Council, the City Manager, City Attorney and the City Clerk and Council staff will hold a private party at the Busy Bee which will be privately funded to honor Mr. West.

Mayor Meeker stated the Council needs to go about the business of getting a representative for District D and he would suggest a 3-step process, 1) declare the seat open, 2) ask anyone who has an interest in serving to send a letter or communication on or before 5:00 p.m. on October 4, 2010 with the communication to be sent to the City Council staff who will put all of the applications, letters or expressions of interests in a book to be circulated to City Council members. On October 5, under Special Items, all candidates will be given an opportunity to speak for four to five minutes each if they do desire. The City Council would take a vote during the evening session. Mayor Meeker put the three suggestions in the form of a motion which was seconded by Ms. Baldwin and put to a vote which passed unanimously. The Mayor ruled the motion adopted on a 7-0 vote.



City Council Agenda Item Request

Date of Request: 2 March 2011

Name of Requester: Jim Arp

Agenda Item Title: Small Business Defense Contract Network Opportunity

What do you want to accomplish with this item?

To work with the Chamber of Commerce on the establishment of a quarterly meeting that focuses on Small Business Defense Contract Network Opportunities. Specifically, establish a day each quarter where Contracting Representatives and executives from Large Defense Contractors meet with Small Business Defense Contractors in the Fayetteville Area to network, review existing and upcoming defense contracting opportunities at Fort Bragg. This event would be similar to an event hosted by the Charleston Defense Contractors Association at the Trinity Community College each quarter.

How does this item connect to the City's Strategic Plan?

This impacts the strategic plan as it focuses on small businesses and the opportunity to bring new small and large business to Fayetteville to perform work at Fort Bragg.

Comments:

This event is very successful in the Charleston area and helps defense contractors in that region gain access to the U.S. Navy opportunities in the area.