

**FAYETTEVILLE CITY COUNCIL  
WORK SESSION AGENDA  
NOVEMBER 1, 2010  
5:00 P.M.**

**VISION STATEMENT**

**The City of Fayetteville  
is a GREAT PLACE TO LIVE with  
a choice of DESIRABLE NEIGHBORHOODS,  
LEISURE OPPORTUNITIES FOR ALL,  
and BEAUTY BY DESIGN.**

**Our City has a VIBRANT DOWNTOWN,  
the CAPE FEAR RIVER to ENJOY, and  
a STRONG LOCAL ECONOMY.**

**Our City is a PARTNERSHIP of CITIZENS  
with a DIVERSE CULTURE and RICH HERITAGE,  
creating a SUSTAINABLE COMMUNITY.**



FAYETTEVILLE CITY COUNCIL  
WORK SESSION AGENDA  
NOVEMBER 1, 2010  
5:00 P.M.  
Lafayette Room

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**1.0 CALL TO ORDER**

**2.0 INVOCATION**

**3.0 APPROVAL OF AGENDA**

**4.0 OTHER ITEMS OF BUSINESS**

4.1 Stormwater Projects Overview & Financing Update

Presented By: Jeffery Brown, Engineering & Infrastructure Director  
Lisa Smith, Chief Financial Officer

4.2 Workforce Options to Balance FY 2011 Budget

Presented By: Terri Hutaff, Human Resource Development Director

4.3 Proposed Revisions to the Code of Ethics

Presented By: Renny W. Deese, Chair  
Karen McDonald, City Attorney

4.4 Youth Protection Ordinance (Curfew)

Presented By: Tom Bergamine, Police Chief

4.5 Update on the Unified Development Ordinance (UDO) draft

Presented By: Rob Anderson, Chief Development Officer

4.6 Memorandum of Understanding Establishing the Sustainable  
Communities Foundation to Manage the Development of the Campus for  
Advanced Sustainability

Presented By: Dale Iman, City Manager

**5.0 ADJOURNMENT**

## **CLOSING REMARKS**

### **POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS**

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

### **POLICY REGARDING PUBLIC HEARING AGENDA ITEMS**

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

### **POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM**

Individuals who have not made a written request to speak on a nonpublic hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

***Notice Under the Americans with Disabilities Act (ADA):*** The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at [rmcelrath@ci.fay.nc.us](mailto:rmcelrath@ci.fay.nc.us), (910) 433-1696, or the office of Rita Perry, City Clerk at [cityclerk@ci.fay.nc.us](mailto:cityclerk@ci.fay.nc.us), (910) 433-1989, as soon as possible but no later than 72 hours before the scheduled event.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Jeffery P. Brown, PE, Engineering & Infrastructure Director  
**DATE:** November 1, 2010  
**RE:** **Stormwater Projects Overview & Financing Update**

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**THE QUESTION:**

Does the plan for stormwater capital projects meet City Council's interest?

**RELATIONSHIP TO STRATEGIC PLAN:**

Growing City, Livable Neighborhoods - A Great Place to Live

**BACKGROUND:**

- The quantity portion of the stormwater fee was implemented in July 2007 at a rate \$2/month in order to generate revenue to address flooding and drainage problems within the City.
- These fees have been used to design and construct drainage improvement projects to reduce isolated street and private property flooding issues throughout the City.
- Two neighborhood drainage studies and two watershed studies have been completed.

**ISSUES:**

The funding need to move stormwater construction projects forward exceeds the revenue being currently generated by the stormwater quantity fee.

**OPTIONS:**

- Use revenues generated each year to construct a limited amount of drainage improvement projects.
- Take advantage of the opportunity to seek some installment financing with Fire Station #19 located off of Andrews Road to construct projects where the designs have been completed.
- Utilize revenue bonds in the future for long term financing options to construct drainage improvement projects.

**RECOMMENDED ACTION:**

Utilize installment financing in conjunction with the fire station to meet the immediate short term need and seek revenue bonds for long term financing for identified drainage improvement projects.

<b>CITY COUNCIL ACTION MEMO</b>
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**TO:** Mayor and Members of City Council  
**FROM:** Terrie M. Hutaff, HRD Director  
**DATE:** November 1, 2010  
**RE:** **Workforce Options to Balance FY 2011 Budget**

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**THE QUESTION:**

If we are unable to balance the budget for next fiscal year, in what areas is the Council willing to explore to reduce the workforce and the subsequent services provided?

**RELATIONSHIP TO STRATEGIC PLAN:**

This will be dependent upon the decisions made by Council.

**BACKGROUND:**

Based upon the information provided in last year's financial forecast, along with the decisions made by Council during last year's budget, there will be a gap this year between revenues and expenditures.

**ISSUES:**

**OPTIONS:**

**RECOMMENDED ACTION:**

There are no recommendations from the staff at this time. This presentation is only to solicit feedback from City Council during the work session discussion. Staff will come back at a later date with recommendations based upon City Council's feedback.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Terrie Hutaff, Human Resource Development Director  
**DATE:** November 1, 2010  
**RE:** **Proposed Revisions to the Code of Ethics**

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**THE QUESTION:**

What changes does the Ethics Commission think are needed in the Code of Ethics to enable it to work most effectively?

**RELATIONSHIP TO STRATEGIC PLAN:**

Principle I: Partnership with Citizens

**BACKGROUND:**

The Code of Ethics was revised in September 2009 to include a provision for a newly formed Ethics Commission to render advisory opinions and make decision regarding whether actions by employees, City Manager and City Attorney, Boards and Commission members, and City Council violate the City's Code of Ethics. As the commission was selected and the members began working with the Code, they found that there were revisions that were needed to make the Code of Ethics more effective. Some of the recommended changes were suggestions made by Fleming Bell of the UNC Institute of Government, the author of *A Model Code of Ethics for North Carolina Local Elected Officials*, (Chapel Hill: UNC School of Government, 2010) and others were due to procedural issues that the Commission envision may occur in the future that needed to be clarified in the Code.

**ISSUES:**

The proposed revisions also incorporate the resolution containing a code of ethics mandated by the NC General Assembly approximately a year ago. This has to be approved by January 1, 2011. (Revised Article IV. Code of Ethics attached)

**OPTIONS:**

1. Direct the Commission to bring back to the next public City Council meeting for adoption the recommended changes to the Code of Ethics as proposed by the Ethics Commission.
2. Direct the Commission to make revisions to the recommended changes to the Code of Ethics as proposed by the Ethics Commission and to bring back to the next public City Council meeting for adoption.

**RECOMMENDED ACTION:**

Option 1: Direct the Commission to bring back to the next public City Council meeting for adoption the recommended changes to the Code of Ethics as proposed by the Ethics Commission.

**ATTACHMENTS:**

Revised Article IV. Code of Ethics

## ARTICLE IV. CODE OF ETHICS

### Sec. 2-91. Policy.

(a) The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed.

(b) The people have a right to expect that every public official and employee will conduct himself in a manner that will tend to preserve public confidence in and respect for the government he represents.

(c) Such confidence and respect can best be promoted if every ~~public official and employee, whether paid or unpaid, and whether elected or appointed, will uniformly as hereinafter defined will:~~

~~(1) Treat all citizens with courtesy, impartiality, fairness and equality under the law; and~~

~~(2) Avoid both actual and potential conflicts between their private self interest and the public interest.~~

(1) Obey all applicable laws regarding official actions taken as a board member;

(2) Uphold the integrity and independence of the board member's office;

(3) Avoid impropriety in the exercise of the board member's official duties;

(4) Faithfully perform the duties of the office; and

(5) Conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

### Sec. 2-92. Definitions.

The terms used in this code of ethics are hereby defined as follows:

*Advisory opinion* means an opinion issued by the ethics commission regarding whether the past, present or proposed conduct by an elected or appointed official or employee of the city violates or would violate the provisions of section 2-94.

*Appointed official* shall mean any person appointed to any board or commission of the city.

*Business and transaction* mean any purchase of supplies or services, or the construction of any public facility or project by a public body.

*Complaint* means a written request under oath seeking an investigation by the ethics commission into the past or present conduct of an elected or appointed official or employee on a form approved by the ethics commission. At a minimum, the form shall contain the name(s) and home address(es) of the person(s) seeking such an investigation; the name(s) of the person(s) who is(are) the subject of the investigation; a detailed statement of the facts and reasons why the subject(s) should be investigated; a description of the City Code provision which may have been violated; and a statement that the person(s) requesting such an investigation knows and/or believes such information is true.

*Confidential information* means any drawings, specifications, cost estimates, oral communications or other documents or information relative to a business or transaction not available to the general public.

*Elected official* shall mean the mayor and members of the Fayetteville City Council.

*Employee* shall mean a full-time or part-time employee of the City of Fayetteville.

*Ethics commission* means the members of the ethics commission appointed by the mayor and city council.

*Ethics commission's purview* means those provisions of the Fayetteville City Code contained in sections 2-91 through 2-94.

*Financial interest* means an interest which shall yield, directly or indirectly, a monetary or other material benefit (other than the duly authorized salary or compensation for his services to the city) to the elected or appointed official or employee, or to any person employing or retaining the services of the elected or appointed official or employee.

~~*Inquiry* means any communication seeking an investigation by the ethics commission into the past or present conduct of an official or employee on either a signed, approved form submitted to the city clerk or by any other manner which contains the same degree of reliability and detail~~ a written request under oath for an advisory opinion which shall be submitted on a form approved by the ethics commission. At a minimum, such communications the form shall contain the name(s) and home address(es) of the person(s) seeking such an investigation the inquiry; the name(s) of the person(s) who is(are) the subject of the investigation; a detailed statement of the facts and reasons why the subject(s) should be investigated advisory opinion is being requested; a description of the City Code provision, if any, which may have been be violated based on the facts submitted; and a statement that the person(s) requesting such an investigation knows and/or believes such information is true.

~~*Official and employee* mean any person appointed to, or employed or retained by, any public office or public body of the city whether paid or unpaid and whether part-time or full-time.~~

*Personal interest* means any interest arising from blood or marriage relationship or any financial interest.



*Public body* means the City Council, or any agency, board, body, commission, committee, department or office of the city.

~~*Referral or referred matter* means any communication in any form and from any source intended for the ethics commission to review for any reason.~~

#### **Sec. 2-93. Fair and equal treatment.**

No elected or appointed official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or to make available to the public at large.

#### **Sec. 2-94. Conflict of interest.**

(a) *Participation in business transaction involving public funds.* No appointed official or employee shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, unless the contract is authorized pursuant to G.S. 14-234, and the following conditions are met:

- (1) The appointed official or employee has not been privileged to any confidential information relating to the business or transaction;
- (2) The appointed official or employee shall make a public disclosure of their financial interest and not participate in any deliberations or voting on such business or transaction;
- (3) The public body on which the appointed official or employee works or serves is not the initiator, recipient, user of the supply or service, or public body involved with the purchase, implementation, construction or management of the public project or facility.

If ~~the~~ an elected or appointed official or employee no longer serves or works for the public body, the business or transaction cannot be one for which such official or employee had voted upon or been privilege to confidential information while in office or employed by the public body.

(b) *Voting.* No elected or appointed official ~~or employees~~ shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. On all other cases, failure to vote by a member who was physically present at a meeting, or who has withdrawn without being excused by a majority of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowance of members of the board or commission is not a matter involving a member's own financial interest or official conduct.

(c) *Incompatible employment.* No elected or appointed official or employee shall engage in private employment with, or render services for, any private person, firm or corporation who has business transactions with any public body unless the same is permitted by N.C.G.S. § 14-234 and he/she shall first make full public disclosure of the nature and extent of such employment or services.

(d) *Representation of private persons.* No elected or appointed official or employee shall appear as an advocate or agent of any person, other than himself, before any public body in the city. This shall not preclude a member of the governing body from participating in deliberations or voting on a matter where that member has first brought the matter to the attention of the public body and but for this limited involvement has no other interest in the matter for which other provisions of this Code would require disclosure.

(e) *Gifts and favors.* No elected or appointed official or employee shall knowingly accept from any person, firm or corporation, a gift whether in the form of money, things, favor, loan or promise that would not be offered or given to such elected or appointed official or employee if they were not an elected or appointed official or employee. This section is not intended to prevent the gift and receipt of the following by an elected or appointed official or employee:

- (1) Honorariums in an amount not to exceed ~~\$25.00~~\$50.00, or expenses to include meals, travel and lodging for participating at meetings, seminars, conferences, grand openings, or anniversary celebrations of businesses, or other similar activities where the elected or appointed official or employee is either a speaker, participant or invited in his official capacity;
- (2) Nominal advertising items or souvenirs of ~~\$10.00~~\$25.00 or less in value, or meals furnished at banquets;
- (3) Customary gifts or favors received ~~by an official or employee~~ from their friends, relatives or employer where it is clear that it is the relationship of the donor which is the motivating factor for the gift or favor;
- (4) Discounts offered by retail merchants, places of entertainment or similar commercial enterprises where the discount is offered to all elected or appointed officials or employees or similar categories of elected or appointed officials or employees of other units of government;
- (5) Gift certificates, merchandise or services not to exceed an amount of \$200.00 per donor to be offered as prizes at the annual city employee picnic;
- (6) Gifts to nonsupervisory employees no more than once a year not to exceed a value of \$25.00.

All such gifts knowingly made or received as permitted in this section and made by a contractor, subcontractor or supplier currently doing business directly or

indirectly with the city shall be reported to the city manager or the city council as appropriate within ten days of receipt.

(f) *Confidential information.* Unless required or permitted by law, no elected or appointed official or employee shall, without prior formal authorization of the public body having jurisdiction, disclose any confidential information concerning any other elected or appointed official or employee, or any other person, or any property or governmental affairs of the city. Whether or not it shall involve disclosure, no elected or appointed official or employee shall use or permit the use of any such confidential information to advance the financial or personal interest of himself or any other person.

(g) *Nepotism.* No elected or appointed official or employee shall appoint or vote for appointment of any person related to him by blood or marriage to any clerkship, office, position, employment or duty when the salary, wages, pay or compensation is to be paid out of public funds.

#### **Sec. 2-95. Ethics commission.**

(a) *Creation and organization.* There is hereby created an ethics commission to consist of five members, all of whom shall be known for their personal integrity and all of whom shall be residents of the City of Fayetteville.

(b) *Membership.* The ~~members of the~~ ethics commission shall be ~~comprised~~ composed of:

- (1) One member selected by the Cumberland County Bar Association, chosen from the attorney members of the association;
- (2) One member selected by the Sandhill Chapter of Certified Public Accountants, chosen from the members of the organization;
- (3) One member selected from among the universities/colleges of Fayetteville State University, Methodist University, and Fayetteville Technical Community College; and
- (4) Two members selected by the city council from the general citizenry.

(c) *Terms of members.* Each member shall serve for a term of three years; however the initial terms of the Cumberland County Bar Association and Sandhill Chapter of Certified Public Accountants shall be for three years and the initial terms of the first appointee from the universities/colleges and the two members appointed by the city council from the general citizenry shall be for two years. The members shall serve without compensation.

(d) *Election of chair and vice-chair.* The ethics commission shall elect:

- (1) A chair by majority vote of the serving members. Each chair will serve a one-year term and shall be eligible to serve as chair in successive years.
- (2) A vice-chair to preside in the absence of the chair. The vice-chair will serve a one-year term and shall be eligible to serve as vice-chair in successive years. The chair shall preside at the meetings and decide all points of order, procedure and evidence.

(e) *Meetings and minutes.* All meetings of the ethics commission shall be conducted ~~as required by~~ in accordance with the Open Meetings Law, N.C.G.S. § 143-318.9, et seq. Rules of procedure for consideration of a complaint or an inquiry shall be as established by the ethics commission; otherwise, Except as otherwise provided in this article, the meetings of the ethics commission will be governed by the Suggested Parliamentary Rules of Procedure for City Council as prescribed in section 2-4 of this code of ordinances. ~~All meetings shall be scheduled by the city clerk and shall meet as necessary.~~ Written minutes of all ethics commission meetings shall be taken by the city clerk and after approval, filed with the city clerk.

(f) *Quorum and decisions; vacancies.* The ethics commission shall conduct its business only with a quorum. Any hearing pursuant to section 2-95(i) shall require a quorum of at least four members of the ethics commission. ~~Otherwise,~~ a quorum shall be the majority of the actual members of the ethics commission, excluding vacant seats. A majority opinion of the members sitting at any hearing shall govern as to decisions of the ethics commission. Vacancies shall be filled as soon as is practicable, in accordance with the procedure for appointment of members under subsection (b) of this section.

(g) *Political activities.* The members of the ethics commission shall be prohibited from engaging in any city election political activities and from making campaign contributions to candidates in city elections during their terms as commission members. Violations of this subsection shall result in removal from board membership.

(h) *Intake and screening of inquiries.* Any person, elected or appointed official, or employee who witnesses or becomes aware of a violation of this section may file a complaint of that violation as follows an inquiry to obtain an advisory opinion as follows:

- (1) ~~Referrals-Inquiries~~ to the ethics commission must be submitted to the ~~city clerk, the city's human resources development department, or the ethics commission directly.~~
- (2) ~~All referrals-inquiries~~ to the ethics commission shall initially be reviewed by one or more designees from the city's human resources development department within three business days of receipt by the human resources development director.
- (3) A record shall be made and kept of all such ~~referrals~~ inquiries.

- (4) ~~Referrals-Inquiries~~ that fall within the ethics commission's purview to any degree shall be forwarded to the ethics commission and placed upon the agenda for consideration at the next regularly scheduled meeting. If the subject matter of the inquiry appears to be a violation of a criminal statute, the matter shall be referred to the appropriate law enforcement agency or the district attorney.
- (5) ~~Referrals-Inquiries~~ deemed not to fall within the ethics commission's purview shall be forwarded to such other departments within the city or other authorities as is appropriate. Summaries outlining the substance of these ~~referrals-inquiries~~ shall be prepared by designees from the city's human resources development department. These summaries shall be presented to the ethics commission and placed upon the agenda for review at the next regularly scheduled meeting. The ethics commission may, however, review any referral inquiry in its entirety. At the ethics commission's request, any matter presented in summary fashion shall be presented in its entirety and placed upon the agenda for the next regularly scheduled meeting.
- (6) The inquiry shall be submitted to the human resources development department. The inquiry will be deemed "received" by the ethics commission when it is first reviewed by the ethics commission pursuant to subsection 2-95(h).

~~(i) — Advisory opinions.~~

- (1) ~~Any official or employee may submit a request that the ethics commission issue an advisory opinion.~~
- (2) ~~The request for an advisory opinion may be submitted on the approved form to the city clerk's office, or in any other manner that contains the same information. A request for an advisory opinion will be deemed "received" by the ethics commission when it is first reviewed by the ethics commission pursuant to subsection 2-95(h).~~
- (37) The ethics commission or its designee may request any additional information deemed necessary to render an advisory opinion. If it deems necessary, the ethics commission may conduct a fact-finding hearing to assist in rendering an advisory opinion.
- (48) The ethics commission shall render an advisory opinion in writing no later than six weeks from the time it receives the request, unless the person who requests the opinion has withdrawn the request in writing, or unless the requested additional information has not been received by the ethics commission, or unless the ethics commission has given written notice to the requestor explaining the reason for the delay and stating an expected issuance date. The advisory opinion will be issued to the person who requests the opinion.

(59) The ethics commission may publish advisory opinions with such deletions as may be lawful and necessary to prevent disclosure of records which are exempt pursuant to the North Carolina Public Records Act or confidential pursuant to N.C.G.S. § 160A-168. The ethics commission may also publish guidelines based on an advisory opinion if the subject of the opinion may be of general interest and guidance.

(610) All ethics commission advisory opinions ~~involving city employees shall be forwarded in writing to the person's supervisor or department head and the city manager in writing along with a request that the supervisor or department head take appropriate disciplinary action~~ individual who requested the advisory opinion and the city manager or city council, as deemed appropriate by the ethics commission, and if permitted by law, the city manager or city council shall report any action taken as a result of said advisory opinion.

(j1) *Inquiries Complaints.*

(1) Any person, elected or appointed official, or employee may file an inquiry complaint with the ethics commission city clerk or the human resources development department.

(2) Inquiries Complaints will be deemed "filed" when they are received by the city clerk in writing or when received by the city's human resources development department. Inquiries Complaints will be deemed "received" by the ethics commission when they are first reviewed by the ethics commission.

(3) The ethics commission or its designee may request any additional information deemed necessary to screen the inquiry complaint or to render a decision.

(4) No inquiries complaints shall be accepted or considered which relate to actions that took place more than one year prior to the date of filing unless recurring benefits or consequences attributable to such actions are apparent.

(5) The ethics commission's designee must notify the person who is the subject of the inquiry complaint no more than three business days from the day the inquiry complaint was filed. The notification shall include a copy of the full inquiry complaint; and a copy of any portion of the code of ethics that is alleged to may have been or that may be violated.

(6) The ethics commission shall provide the subject of the inquiry complaint with a copy of the inquiry complaint before it provides copies to any other parties. ~~The ethics commission may recognize that distribution to the public of an inquiry prior to screening by the ethics commission as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the inquiry is prohibited until the screening process has been completed.~~

- (7) Screening pursuant to subsection 2-95(h)(2) shall occur no more than ~~three-five~~ business days from the date ~~an inquiry complaint~~ is filed. If the ~~inquiry complaint~~ is deemed to fall within the purview of the ethics commission pursuant to ~~subsection 2-95(h)~~, the ethics commission shall ~~consult~~ convene to review the ~~inquiry complaint~~ at a properly noticed meeting under the Open Meetings Law. If the subject matter of the complaint appears to be a violation of a criminal statute, the matter shall be referred to the appropriate law enforcement agency or the district attorney.
- (8) The ethics commission may immediately dismiss ~~an inquiry complaint~~ at any time if:
- a. The ethics commission has no jurisdiction over the subject matter or the alleged violator;
  - b. The alleged violation, if true, would not constitute a violation of the code of ethics;
  - c. The alleged violation is *de minimis*;
  - d. The ~~inquiry complaint~~ is, on its face, frivolous, groundless, or brought for purposes of harassment;
  - e. The matter has become moot because the person who is the subject of the ~~inquiry complaint~~ is no longer an official or employee. If the ethics commission determines that the public interest would be served by publishing an advisory opinion, it shall subsequently issue an opinion;
  - f. The person who is the subject of the ~~inquiry complaint~~ had obtained an advisory opinion under section 2-95 permitting the conduct; or
  - g. The ethics commission deems the supervisor or department head has already taken action as a result of finding a violation, dealt satisfactorily with the allegation which is the subject of the inquiry complaint.

All dismissals shall be in writing, contain the reason for the dismissal, and be made available to the public.

- (9) If, after initial review by the ethics commission, the ~~inquiry complaint~~ has not been dismissed pursuant to subsection 2-95(ji), the commission shall prepare and issue a notice of hearing, which shall set forth in reasonable detail the alleged violations of the code of ethics and the facts supporting the allegations. The notice of hearing shall be mailed to the person filing the ~~inquiry complaint~~ (complainant) and to the subject of the ~~inquiry complaint~~ (~~inquiry complaint~~ subject) within five days of its approval by the chair of the ethics commission. The notice shall

provide the ~~inquiry-complaint~~ subject an opportunity to prepare and file an answer to the notice of hearing within ten days, unless an extension is granted for good cause. When received by the ethics commission, the answer shall be promptly mailed to the complainant.

- (10) Within ten days of the receipt of the answer, the city clerk shall issue a notice setting forth a date and place for the hearing, ~~which may be open to the public~~. The ethics commission will attempt to accommodate the parties in selecting a date that is mutually agreeable.
- (11) The ethics commission shall stay the inquiry and refer the entire matter to the appropriate law enforcement agency when credible evidence of a crime is discovered.
- (12) At least ten days before the hearing, the parties or their representatives shall submit to the ethics commission a proposed list of witnesses and a list of possible documentary evidence to be introduced at the hearing, as well as an estimate of the length of time needed to present the testimony and evidence.
- (13) The ethics commission may request its attorney to subpoena witnesses and documents after having made a written request to appear or provide the records. Subpoenas shall be issued pursuant to North Carolina State Law. Persons who are subpoenaed or whose records are subpoenaed may object to testimony or the production of documents on the grounds that such information is privileged under North Carolina State Law.
- (14) Any elected or appointed official or employee of the City of Fayetteville who is called before the ethics commission for a hearing shall be required to participate in providing information that is in their custody unless such information is protected by a privilege under North Carolina State Law.
- (15) After the notice of hearing has been issued, none of the parties or their representatives may communicate with the ethics commission or any ethics commission member on any matter pertaining to the inquiry. All communications pertaining to the inquiry shall be sent to the commission's attorney.
- (16) At any time after the issuance of the notice of hearing, the ethics commission, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. However, the ~~inquiry-complaint~~ subject shall have the right to demand a hearing which may be open to the public.
- (17) At any time after the issuance of the notice of hearing, the ethics commission may dismiss ~~an inquiry~~ a complaint without a finding for or against the ~~inquiry~~ complaint subject if it finds that the person committed the violation due to oversight and comes into voluntary compliance.



- (18) The ethics commission may dismiss ~~an inquiry~~ a complaint if the complainant does not appear at the hearing and if, in the opinion of the ethics commission, it would be unfair to the ~~inquiry~~ subject of the complaint not to have the opportunity to examine the complainant. Nothing herein shall prevent the ethics commission from conducting the hearing where there is reason to believe that the code of ethics has been violated.
- (19) At the hearing, the complainant or the complainant's representative will be provided the opportunity to make an opening statement and presentation of the evidence in support of the allegations set forth in the notice of hearing. The inquiry subject or their representative shall be entitled to cross-examine witnesses called by the complainant or the commission's attorney.
- (20) At the conclusion of the evidence offered by the complainant or the complainant's representative, the ~~inquiry~~ subject of the complaint or their representative shall have the opportunity to make an opening statement and present evidence. The complainant or their representative shall have the opportunity to cross-examine witnesses called by the ~~inquiry~~ complaint subject. Either party shall be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing. At the conclusion of the evidence, the parties may make closing statements or, with the consent of the ethics commission, submit written summaries of their respective positions.
- (21) The chair of the ethics commission and, in the absence of the chair, the vice-chair shall preside at the hearing, administer oaths or accept affirmations from witnesses, and decide all points of order, procedure and evidence. The hearing need not be conducted according to technical rules of evidence, and any relevant evidence, including hearsay, of probative value shall be admitted at the discretion of the chair. Incompetent, immaterial, or unduly repetitious evidence may be excluded.
- (22) An electronic or stenographic record of the hearing shall be made and kept by the city clerk.
- (23) At the conclusion of the hearing, the ethics commission shall deliberate towards a decision. Upon a majority vote of the members present for the hearing, the matter shall be decided. The ethics commission shall then direct its attorney to draft findings, conclusions and recommendations for approval at the following regularly scheduled meeting.
- (24) The ethics commission shall conduct a hearing of all ~~inquiries~~ complaints within ~~60~~ 90 days of receipt of the ~~inquiry~~ complaint by the ethics commission. Procedural delays caused by the subject of the inquiry shall toll the ~~60~~ 90-day time limit.

(25) Within 30 days of the conclusion of deliberations, the ethics commission shall issue and publish its decision to include findings, conclusions and recommendations. In the alternative, the ethics commission where it deems appropriate may issue an advisory opinion in lieu of making findings and recommendations.

(26) The commission's attorney shall send a written copy of the ethics commission's findings and recommendations to the inquiry subject and the complainant and, unless provided otherwise in these rules, in the code of ethics, or in state law, shall make the findings and recommendations public.

(27) The ~~inquiry~~ complaint subject shall have the right to be represented by legal counsel in the hearing or any other proceeding, before the ethics commission.

(~~k~~) *Conflict of interest questionnaire.* All elected officials, members of the city senior management team, and a random sample of city employees shall be required to complete the conflict of interest questionnaire sent by the city's internal auditor and certify that they have read the City of Fayetteville Code of Ethics.

(~~l~~) *Conflict of laws.* Nothing in this section is intended to circumvent, repeal, or otherwise supersede other provisions of the Fayetteville City Code. To the extent that there is a conflict between the provisions of this section and other sections of the Fayetteville City Code, the North Carolina General Statutes, the North Carolina Constitution, or the Constitution of the United States, those provisions will control.

(l) Public record. No inquiry or complaint may be released to the public in violation of N.C.G.S. § 160A-168, or it if is protected from public disclosure by Chapter 132 of the North Carolina General Statutes.

## Sec. 2-96. Violations; appeals.

~~(a) Any violation of this article or the failure to follow an opinion rendered by the ethics commission shall subject the violator to any one or more of the following:~~

~~(1) Penalty of not more than \$1,000.00 assessed by the ethics commission; and/or~~

~~(2) Public reprimand by the ethics commission.~~

(a) If a decision of the ethics commission finds the person to be in violation of this article or failing to comply with an opinion rendered by the ethics commission, and the person is:

(1) An elected official, the matter shall be referred to the city council for consideration of censure;

(2) An appointed official, he/she may be subject to public reprimand by the ethics commission, and/or may be referred by the ethics commission to the city council for consideration of removal; and

(3) An employee, the ethics commission may recommend disciplinary action to the employee's supervisor, department head, and city manager.

~~\_\_\_\_\_ (b) With regard to violations by employees, in addition to the remedies in subsection (a) above, the ethics commission may recommend disciplinary action to the employee's supervisor, department head, and city manager.~~

(e**b**) The decision of the ethics commission after a hearing shall be final. Any appeal shall be made within ten days and shall be taken to superior court and subject to review by writ of certiorari.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Tom Bergamine, Police Chief  
**DATE:** November 1, 2010  
**RE:** Youth Protection Ordinance (Curfew)

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### **THE QUESTION:**

Will a youth protective ordinance benefit the City of Fayetteville and its citizens?

### **RELATIONSHIP TO STRATEGIC PLAN:**

1. Great Place to Live: a clean and safe community
2. Desirable Neighborhoods: safe and secure neighborhoods
3. Partnership of Citizens: citizens taking responsibility and ownership within the community
4. Greater Community Unity: collaborative working relationships

### **BACKGROUND:**

On September 7th, City Council asked Chief Bergamine to look into this topic.

### **ISSUES:**

In order to provide applicable information to City Council, a working group has been formed to research practices from different areas of the state, as well as academic research in regards to curfew laws. Consideration to cost, burden to police department and other city departments has also been researched.

### **OPTIONS:**

N/A

### **RECOMMENDED ACTION:**

There are no recommendations from staff at this time. This presentation is only to solicit feedback from City Council during the work session discussion. Staff will come back at a later date with recommendations based upon City Council's direction.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Rob Anderson, Chief Development Officer  
**DATE:** November 1, 2010  
**RE:** **Update on the Unified Development Ordinance (UDO) draft**

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### **THE QUESTION:**

Is the City Council prepared to receive the information update and move forward with setting a public hearing?

### **RELATIONSHIP TO STRATEGIC PLAN:**

The UDO speaks to nearly every major goal of the Strategic Plan, but most particularly:

- Greater Tax Base Diversity - Strong Local Economy
- Growing City, Livable Neighborhoods - A Great Place to Live
- More Attractive City - Clean and Beautiful

### **BACKGROUND:**

In preparing the final draft for City Council consideration, the recent efforts to consider the many different, sometimes apparently conflicting, interests and objectives have included:

- two public hearings by the Planning Commission, 6/15, 6/24.
- preparation of the revised final draft dated August 2010 incorporating responses to suggestions and issues raised during the hearings and Advisory Committee meeting.
- a third public hearing by the Planning Commission, 8/17. A "tracking chart" was prepared capturing the comments, the source(s) of the comments, changes, and reasons for the changes made in the August 2010.
- three more meetings, 8/31, 9/9/ and 9/23, with the UDO Advisory (Stakeholder) Committee, after which staff prepared a new tracking form and final recommendations.
- two Planning Commission meetings, 10/19 and 10/21, to discuss the August 2010 draft and final staff recommendations and prepare recommendations to the City Council.

### **ISSUES:**

The Planning Commission has considered staff recommendations and development community responses to those recommendations. At a special meeting on Thursday, October 21, the Commission prepared and approved its recommendations for City Council consideration.

At the work session, staff will review those recommendations, remaining issues, and the proposed schedule for a Final Draft, the public hearing by City Council, and implementation. The next step in the schedule would be for the City Council, at its meeting on November 8, to set a public hearing to be held November 22 to consider the final draft.

### **OPTIONS:**

1. Receive the update and concur with the proposed approach and schedule.
2. Provide different direction regarding the approach and schedule.

### **RECOMMENDED ACTION:**

Receive the update and concur with the proposed approach and schedule.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Dale Iman, City Manager  
**DATE:** November 1, 2010  
**RE:** **Memorandum of Understanding Establishing the Sustainable Communities Foundation to Manage the Development of the Campus for Advanced Sustainability**

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### **THE QUESTION:**

Does the City Council wish to enter into this Memorandum of Understanding?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Goal 1 - Great Tax Base Diversity - Strong Local Economy

### **BACKGROUND:**

PWC has approximately 39 acres on their campus that they are interested in seeing developed. They approached the Chamber of Commerce to help with that development.

The following objectives have been identified:

- FSU University needs - To interject sustainability into the University curriculum - To provide a portal to the UNC system
- Homeland Security
- Military - To leverage growing interests in sustainability by the military and provide training and educational opportunities at the site
- Provide office space in a park concept
- To encourage local investment by major private sector companies

The attached draft Memorandum of Understanding contains the following key elements:

- Creation of an 8-member Board comprised of representatives from FSU (2); Fayetteville PWC (2); the City of Fayetteville (2); the Fayetteville-Cumberland County Chamber of Commerce (1); and Sustainable Sandhills (1)
- The military would be represented by an Ex Officio member
- Some sort of non-profit or not-for-profit entity would be established
- FSU and PWC will contribute \$125,000 as start-up funds to facilitate the advancement of the Sustainable Communities Foundation
- The Board will assume the responsibility to move the initiative forward

All parties have agreed to get any needed authorization from their respective organizations according to the following schedule:

- PWC - Wednesday, October 27<sup>th</sup>
- City of Fayetteville - Monday, November 1<sup>st</sup>
- Sustainable Sandhills - Tuesday, November 9<sup>th</sup>

### **ISSUES:**

Without all parties agreeing to this Memorandum of Understanding, development of the Sustainable Communities Foundation will not occur and the project cannot move forward.

### **OPTIONS:**

Authorize/Approve the Memorandum of Understanding  
Do not authorize/Approve the Memorandum of Understanding

### **RECOMMENDED ACTION:**

Authorize/Approve the Memorandum of Understanding

### **ATTACHMENTS:**

Memorandum of Understanding - PWC Sustainability Campus Project

**Memorandum of Understanding**  
**Establishing the Sustainable Communities Foundation**  
**To Manage the Development of the**  
**Campus for Advanced Sustainability**

The Public Works Commission of the City of Fayetteville ("FPWC"), the City of Fayetteville (COF), Fayetteville State University ("FSU"), Fayetteville/Cumberland County Chamber of Commerce (FCCCC), and Sustainable Sandhills (SS) agree to the following guidelines in establishing the Sustainable Communities Foundation (SCF) to manage the development of the Campus for Advanced Sustainability ("CAS"), initially on the 39 acres of FPWC-owned property adjacent to the PWC Campus:

**Governance**

- The SCF, an independent 501 (c) (3) organization, will be created and charged with managing the development and operation of the proposed CAS.
- An initial Board of Directors will be solicited from FSU, FPWC, COF, FCCCC, and SS to govern the SCF.
- FSU, FPWC and the COF will each have two voting members on the Board of Directors of the SCF; the FCCCC and SS will each have one voting member on the Board of Directors of the SCF.
- Ft. Bragg will be extended an ex-officio membership to the Board of Directors.
- Board Members will select a Chairman at the first formal meeting of the SCF and will select an Executive Director as soon as possible, thereafter, to oversee the organization.
- The Executive Director may be a full-time or part-time employee or a consultant as determined by the Board of Directors.
- The Board of Directors may select consultants to help establish the SCF and provide services to the SCF in the development, and operations and maintenance of the CAS.

**Funding**

- FSU and FPWC will each contribute \$125,000 as start-up funds to facilitate the advancement of the SCF.
- Other sources of funds will be identified by the Board of Directors and targeted by the Executive Director of the SCF.

### **Equity Ownership**

- Entities with representation on the Board of Directors of the SCF will have an equity ownership or interest in the SCF equitable to the level of investment that such entities make into the SCF.
- Examples of investment in SCF include, but are not limited to, market value of land transferred, cash or in-kind contributions, other assets transferred to SCF, infrastructure improvements or building additions to CAS, etc.
- Rents, gifts, grants, third party contributions, etc. will not accrue to any specific owner but will be allocated 25% each to FSU, FPWC and the COF and 12.5% each to the FCCCC and SS.
- The initial ownership would be 50% FSU and 50% FPWC due to each contributing \$125,000 to establish the SCF.

### **Legal**

- An attorney will be hired by the Board of Directors to represent the matters of the SCF and CAS.
- Such matters may include organizational, equity ownership, financing and operational issues of the SCF and CAS.

All parties agree to the provisions stated within this Memorandum of Understanding and it shall become effective November 15, 2010.

**Fayetteville Public Works Commission**

**City of Fayetteville**

\_\_\_\_\_  
Steven K. Blanchard, CEO/General Manager

\_\_\_\_\_  
Anthony G. Chavonne, Mayor

**Fayetteville State University**

**Sustainable Sandhills**

\_\_\_\_\_  
Dr. James Anderson, Chancellor

\_\_\_\_\_  
Jon Parsons, Executive Director

**Fayetteville/Cumberland County Chamber of Commerce**

\_\_\_\_\_  
Doug Peters, President