

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
July 3, 2012**

A meeting of the Fayetteville City Council was held on July 03, 2012 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Boudreaux, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Gray

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

Advertising & Promotion Commission Replacement

Mayor Jordan asked that he be replaced on the A&P Commission. He nominated Alderman Bobby Ferrell to replace him.

Alderman Tennant: If you think it is necessary to do this I agree with it.

Alderman Boudreaux moved to appoint Bobby Ferrell to the A&P Commission due to the resignation of Mayor Jordan. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Alderman Bobby Ferrell was appointed.

Amend §94.05 Use of Fireworks: An ordinance to amend §94.05 Use of Fireworks of the Fayetteville Code to allow consumer fireworks to be discharged on Labor Day if a burn ban has prohibited the discharge of any consumer fireworks during the normal July 1st, 2nd, 3rd, and 4th period.

Alderman Boudreaux moved to add Amend §94.05 Use of Fireworks to the agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan gave a brief description of the ordinance.

Alderman Boudreaux: I think using Labor Day might be a better idea because it is a recognized holiday that can be planned for.

City Attorney Kit Williams: I have drafted something similar to that but I want to know what the City Council wants to do.

Alderman Ferrell: Does anybody know of a down side to changing it?

Alderman Tennant: The first football game here is Labor Day weekend.

Don Marr: We need to be clear that this is assuming that there is no burn ban on Labor Day weekend.

City Attorney Kit Williams: You could make it on Labor Day if you think that the football is a problem.

Alderman Boudreaux: People are off because it's a holiday just like the 4th.

A discussion followed on what time the fireworks should end.

City Attorney Kit Williams: Let's make it 11:00 p.m.

Alderman Tennant: What is the date that the fireworks stands have to close?

City Attorney Kit Williams: They can sell through the 5th.

Alderman Lewis: Do we want to just revisit it if the burn ban has not lifted?

City Attorney Kit Williams: We will have to cross that bridge when we get to it. If you do want to change it to Labor Day I think we need to drop the emergency clause.

Alderman Petty: I do think it's wise that we do it the same day as Springdale did. There would be a lot less confusion.

Alderman Tennant: Do we know if they extended the selling time frame for the stands?

City Attorney Kit Williams read the proposed amended ordinance.

Alderman Boudreaux moved to amend the date that fireworks are allowed due to the burn ban to Labor Day. Alderman Ferrell seconded the motion.

Martin Bimberg, a resident of the Historic District commended Mr. Petty for suggesting the day that is selected be the same as surrounding communities.

Upon roll call the motion passed 7-0. Alderman Gray was absent.

Alderman Boudreaux moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Don Marr clarified that the Springdale Council approved Sunday and Monday.

Alderman Boudreaux: I am not making that motion. We only have one day now and we are kind of being consistent with them now.

Alderman Boudreaux moved to suspend the rules and go to the third and final reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5509 as Recorded in the office of the City Clerk.

Consent:

Approval of the June 19, 2012 City Council meeting minutes.

Removed from the agenda

Bid #12-53 Mid-America Pool Renovation, Inc.: A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool Renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations, approving a ten percent (10%) project contingency and approving a budget adjustment.

Resolution 137-12 as recorded in the office of the City Clerk.

2012 Assistance to Firefighters Grant: A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.

Resolution 138-12 as recorded in the office of the City Clerk

Federal Emergency Management Agency Reimbursement: A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.

Resolution 139-12 as recorded in the office of the City Clerk

Steele Boulevard/Malco Theatre Entry Traffic Signal: A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

Resolution 140-12 as recorded in the office of the City Clerk

Alderman Adams moved to remove the minutes from the Consent Agenda. Alderman Lewis seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell was absent during the vote. Alderman Gray was absent.

Alderman Tennant moved to approve the Consent Agenda as read with the June 19, 2012 City Council meeting minutes removed. Alderman Lewis seconded the motion. Upon roll call the motion passed 6-0. Alderman Boudreaux was absent during the vote. Alderman Gray was absent.

Unfinished Business:

RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne): An ordinance revoking R-PZD 07-2576 (Woodstock) and rezoning that property described in rezoning petition RZN 12-4108, for approximately 31.68 acres, located at 4847 West Wedington Drive from R-PZD, Residential Planned Zoning District 07-2576, to CS, Community Services; R-O Residential Office; NC, Neighborhood Conservation; and RSF-4 Residential Single Family Four Units Per Acre. ***This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on the Second Reading at the June 19, 2012 City Council meeting.***

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated signs did go up for this particular site.

Alderman Petty: At the last meeting I asked about the possibility of a Community Services zoning across the street frontage and we heard from a resident some really good reasons not to do that. I will support this as is and I think it's the right way to go.

Alderman Lewis: I appreciate the applicant coming to the Ward 4 meeting. Would having form based zoning along Wedington reduce the setbacks and create more of that feeling of walkability along Wedington? Also, what is the process for establishing a park area in that zoning? There were concerns about being able to communicate that as that would get developed? Jeremy, can you address that?

Jeremy Pate addressed her questions.

Alderman Lewis: So signs would go back up for any development that came into that area.

Jeremy Pate: Any and all those developments. .

Valerie Biendara, resident of Fieldstone stated I agree with the new changes. She spoke in favor of the ordinance.

A representative of the applicant stated I am here if you have any questions.

Alderman Adams: I feel like we have done a really nice job of talking to the public and Ward 4. I appreciate the work you have done Jeremy to listen to the citizens.

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

Ordinance 5510 as Recorded in the office of the City Clerk.

Public Hearing:

Water and Sewer Relocation Project Condemnation and Possession: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A. Kisor, Wolfredrick & Serena McMichael, SM-WLJ FAC Owner, Inc., PCC Properties, LLC, Presbytery of Arkansas, and Dunnerstock

Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

Mayor Jordan opened the Public Hearing.

Chris Brown, City Engineer gave a brief explanation of the resolution.

Mayor Jordan closed the Public Hearing.

Alderman Ferrell clarified whether or not he should recuse due to being a part of one of the organizations that were listed in the ordinance.

City Attorney Kit Williams: You can if you want to. I don't think you would be wrong not doing it.

Chris Brown: That is one of the organizations that we have already settled so that one is not a part of this resolution.

Alderman Ferrell: Okay.

Alderman Lewis thanked them for continuing to work on this negotiation.

Alderman Adams moved to approve the resolution. **Alderman Tennant** seconded the motion. Upon roll call the resolution passed 7-0. **Alderman Gray** was absent.

Resolution 141-12 as recorded in the office of the City Clerk.

New Business:

Town and Gown Advisory Committee: An ordinance enacting Article XXIV Town and Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commissions, and Authorities of the Code of Fayetteville to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.

City Attorney Kit Williams read the ordinance.

Mayor Jordan gave a brief explanation of the ordinance.

Julie McQuade, Community Outreach Coordinator gave a brief description of the purpose of the committee and went on to explain the ordinance.

Alderman Lewis spoke on the importance of the board and thanked Mayor Jordan and Julie McQuade for their work on this. She stated I will be in support of this.

Alderman Boudreaux: I do hope this is an active committee and some things come from it.

Alderman Lewis: Who will facilitate the meeting? Do we know that?

Mayor Jordan: I don't think we do. The committee will usually get together and elect the chair.

Julie McQuade: The discussion was that they would elect the chair. I would be the staff support but the chair would facilitate the meetings.

Alderman Adams: We already saw a good working relationship between the University and the City at the neighborhood meeting.

Alderman Ferrell: Is there any prohibition against saying that the representatives from the wards would not be employees of the University of Arkansas which could have a weighing influence on the number of people?

City Attorney Kit Williams explained the current process that is used.

A discussion followed.

Alderman Ferrell moved to amend the ordinance as follows: *Appointee or their spouse shall not be an employee of the City or the University of Arkansas.* Alderman Kinion seconded the motion.

Alderman Lewis pointed out that the University of Arkansas and the City of Fayetteville are huge employers which would eliminate a large percentage of people that can participate on this. When you are a representative you are coming at this from your neighborhood and that is your concern.

Alderman Kinion agreed with Alderman Lewis's comments and stated that the Nominating Committee could look at the applicants and balance out the structure. This is rather restrictive and I would not support it.

Alderman Ferrell: I don't think we are going to have a problem coming up with fourteen people.

Alderman Adams: I don't want to restrict people based on their marital status.

Upon roll call the motion failed 1-6. Alderman Ferrell voting yes. Alderman Adams, Lewis, Boudreaux, Kinion, Petty and Tennant voting no. Alderman Gray was absent.

The motion failed.

Alderman Boudreaux moved to suspend the rules and go to the second reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Martin Bimberg asked that this be tabled until Cathy Short is here and can weigh in.

Alderman Boudreaux: I would rather vote on this tonight and move it forward. This came from staff and I think we need to move it forward.

Alderman Boudreaux moved to suspend the rules and go to the third and final reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 6-1. Alderman Adams, Lewis, Boudreaux, Kinion, Petty and Tennant voting yes. Alderman Ferrell voting no. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: On the application for the Nominating Committee there is information about your employment and where you work?

Alderman Kinion: Yes, and there also is a question of who your spouse is but you are not required to answer either one of them.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Alderman Adams, Lewis, Boudreaux, Kinion, Petty and Tennant voting yes. Alderman Ferrell voting no. Alderman Gray was absent.

Ordinance 5511 as Recorded in the office of the City Clerk.

ADM 12-4144 3078 N. College Ave. Siebert Appeal: A resolution to reverse the Planning Commission's decision to grant and thereby to deny the variance to Eric Siebert to operate his Shave the Planet business longer than 90 days as an outdoor mobile vendor.

Alderman Ferrell gave a brief explanation of the resolution.

A discussion followed on what was previously determined on how to handle appeals like this.

Jeremy Pate gave the background of the resolution.

Alderman Kinion: What initiated this were the vendors at the corner of Trenton and College. When we wrote this ordinance, that Kit handed out, certainly what has to be considered is compatible and not detrimental to nearby properties, will not adversely affect nearby businesses and will not create an unfair advantage over similar or nearby businesses. So we have language that we can refer to in the current code to help us understand the specific nature of anyone that claims to be a mobile vendor. Alderman Petty has done a lot of research and we will be revisiting this. We have to honor this code as it is currently written.

Alderman Ferrell: There is no intent to be punitive to the people that have the business there right now. I will try to offer something that will be palatable for the people that are there right now. They came in good faith and made an application. I plan to make a motion that hopefully will make everybody a little happier.

Alderman Boudreaux: Why don't you make it now?

Alderman Lewis: Everyone on this Council is pro business because these are two businesses.

Alderman Ferrell: Jeremy, if we reverse the Planning Commission, aren't they on grace period right now?

Jeremy Pate: They would be operating within their 90 day permit which is allowed by the ordinance.

Alderman Ferrell: When is that up?

Jeremy Pate: In July I believe but I would have to go back and calculate that.

Alderman Ferrell: My intent is to table until the last meeting in August or the first meeting in September. My plan is to render final decision and to table it.

Mayor Jordan: That would give Alderman Petty time to bring something forward and they would not have to leave.

Alderman Ferrell: Yes.

Alderman Kinion: On a counterpoint of that we do have in front of us the variance language and the fact that we do have code in place right now. There may be other individuals that will be approaching the Planning Commission at the corner of Trenton and College. By delaying the discussion on this further it could put more businesses in jeopardy. I hate for this to be dangling when there is current movement by business owners to move forward to ask for a variance.

Alderman Lewis: Is 2011 the first time this business was placed there?

Jeremy Pate: No, they have been there for several years.

Alderman Boudreaux questioned why this variance test was not discussed more at the Planning Commission.

Jeremy Pate explained the discussions from the Planning Commission meeting.

Alderman Boudreaux: So the discussion was that it was not a comparable product.

Jeremy Pate: Correct.

Alderman Boudreaux: This also says will not affect nearby and similar businesses.

City Attorney Kit Williams referenced a memo that he submitted to the Planning Commission explaining what the test should be.

Alderman Petty: I think they considered those things at length and what I think they decided was it's not an unfair advantage even if the menus are similar. They voted according to their consciences. I think we have to do the same thing here.

Tracy Hoskins, who filed the appeal gave an explanation of why he requested the appeal and gave a brief slide presentation.

Alderman Petty asked Mr. Hoskins to explain what he meant by a litmus test.

Tracy Hoskins explained what he meant by his statement.

Alderman Petty: You mentioned some of the ways Maggie Moo's contributes to the community. Have your sponsorships changed this year or have you continued to maintain them?

Tracy Hoskins: We maintain all our sponsorships that I know of.

Eric Siebert and Kate Siebert with Shave the Planet gave a brief presentation to the Council and asked the Council to support the Planning Commissions decision.

Alderman Boudreaux: Is this the only facility that you have?

Kate Siebert: We have another one on Wedington.

Alderman Boudreaux: And you have exhausted all other locations in that same vicinity?

Kate Siebert: There is nothing on past Millsap until you get to Joyce.

Eric Siebert: Yes, there are probably more locations out there but we do not have enough time to find one.

Alderman Kinion: You are saying that you are compatible with and not detrimental to nearby properties and have not affected the nearby businesses based on HMR taxes. You have showed that you do not have an unfair advantage over similar and nearby businesses because your product is not only different but a different type of business. This is what we have to look at. I think I am hearing some valid arguments.

Eric Siebert stated we would love to have a permanent structure however he explained the issues with having an indoor facility.

Kate Siebert: If we were to have a permanent building we would still be closed for four months out of the year and have a vacant building.

Martin Bimberg spoke in support of Shave the Planet.

A discussion followed.

Ben Israel, resident of 1501 Starr Drive also spoke in support of Shave the Planet. He asked who brought up the fact that you needed to change the code so that they could not just move to the next lot.

City Attorney Kit Williams: I believe that it was Planning, because the code said moving a location they considered an adjoining parcel was a change in location. As City Attorney I felt like that was a misreading of the intent of the City Council. So when it was brought back I suggested we put in the half mile and that was approved by the City Council so it would be a true change in location.

Ben Israel: I don't understand why it would come up. We were told it would not be any trouble moving 10 feet because you will be on the next lot. Then we were told no and that it was changed by the City Council. I would like to know who instigated that.

Mayor Jordan: It probably came from my Planning Staff and we brought it forward to the Council and they voted it in.

City Attorney Kit Williams: I suggested it too.

Ben Israel: That night the City Attorney said you can move 10 feet and meet the current requirements.

City Attorney Kit Williams: If you look at the minutes it was actually Planning Staff that gave that interpretation and they do have the interpretation rights in the UDC. When it was redrafted I felt we needed to come up with a more definite amount of moving because 10 feet is not a move.

Ben Israel: Does it not seem unusual to any of you that it came up before we had a chance to be heard? He went on to express his support for Shave the Planet.

Alderman Boudreaux: You own the parking area that they are located in right?

Ben Israel: Yes.

Alderman Boudreaux: But you do not own the buildings that Maggie Moo's is in?

Ben Israel: No, that is across the street.

Alderman Boudreaux: I thought it was in the same parking lot.

Ben Israel confirmed the location.

Cody Yancy, a Fayetteville business owner pointed out the differences between the two businesses and spoke in favor of Shave the Planet.

Amanda Siebert, who currently works for Shave the Planet addressed some of the concerns and spoke in support of Shave the Planet.

James Cogger, a citizen spoke in support of Mr. Hoskins and asked the Council to over turn the Planning Commission.

Celeste Hoskins, owner of Maggie Moo's asked for clarification on how long Shave the Planet had been at that location. She also stated that other small businesses agree that something needs to be done with the ordinance. She encouraged the Council to focus on the ordinance in protecting all entities.

Joseph Morrison, who runs Maggie Moo's clarified that we do sell very similar products as Shave the Planet.

Ben Israel: Shave the Planet was not the first vendor there. There has been ice there for 17 years.

Alderman Petty explained how this relates to the ordinance. He stated I feel like we have enough information to make a decision given the criteria we have before us. I want this ordinance to apply fairly to any business type. I am not willing to make the judgment call myself to say this type of business is unfair by default and so we are going to discriminate against it operating at this location. That is what makes the decision for me.

Alderman Ferrell stated you do not have to discriminate against any business. You just have to follow the code. If someone asks for an appeal I will be happy to appeal on their behalf. Mr. Hoskins factually illustrated assertions he made in his appeal. To me that is hard to refute. He asked Kit to explain what happened at the Planning Commission meeting.

City Attorney Kit Williams gave a brief explanation of the previous discussions from the Planning Commission meeting.

Alderman Ferrell: I was trying to illustrate that I think there was some confusion. If I were to vote right now I would vote for the appeal because to me it's pretty black and white. He went on to list the reasons why.

Alderman Ferrell moved to table the appeal to the September 4, 2012 City Council meeting. Alderman Boudreaux seconded the motion.

Alderman Petty: I support the motion. One thing I would like the Council to indicate is if we make that table one of the things that we are doing is setting a soft deadline for having that comprehensive ordinance discussion. If that is really the case, it would help a lot in assigning staff resources to that task if they knew the Council was intending that as well.

Alderman Boudreaux: That could certainly be something that the Ordinance Review Committee could look at and discuss.

Alderman Adams: You could make it October 1st to give it a little more time.

A discussion followed on how much time was needed.

Mayor Jordan stated that when an Alderman is asked to appeal something they appeal it because they need the chance to have their say. Everyone should have a voice and there is no doubt in my mind that Alderman Ferrell responded to Mr. Hoskins request. He also addressed comments that were made to City Staff and he stated I have the responsibility of the staff and that is my job, so for any misunderstandings there might have been I do apologize for that. I never intended to cause any issues. We felt it was something that needed to be changed, staff brought it forward, we sought the recommendation of the City Attorney and I approved what the staff brought forward.

Alderman Lewis: In some cities unattached businesses are mobile but they are there all the time. So there is a need for clarification on what our goals and approach is on that in the language.

Alderman Boudreaux: I think we have the definitions of everything.

Alderman Lewis: They are not very clear at this point.

Don Marr added that for the staff assignment to the request of Alderman Petty, we never fully use all of staff capacity, because each of you have the opportunity to bring us things that we don't know that you are thinking about that you would like us to research. In terms of providing staff resources for you to expedite this, we are certainly able to accommodate that. Many of these things that you are talking about are policy related decisions.

City Attorney Kit Williams: I would suggest that it go first to Ordinance Review so that they can clarify what they want staff to do.

Alderman Boudreaux: I don't know that I agree simply because I feel like definitions are something that staff would be better equipped to set down. Then the Ordinance Review Committee could review that rather than drafting it.

City Attorney Kit Williams: We are talking about very general policy direction to staff.

A discussion followed.

Don Marr: Staff has been working on this with Alderman Petty in a research mode looking at other cities and policies that are in place. Designing from a blank sheet is much more difficult than changing something that is in front of you. This was driven from Alderman Petty and Alderman Kinion. They have given us some guiding standpoints. We have been given some direction. We are not starting from no direction.

Mayor Jordan: Alderman Kinion brought up a good point that other businesses may be coming in here that want to set up. What are we going to do on that?

Alderman Ferrell: I would move that we go by the existing law right now.

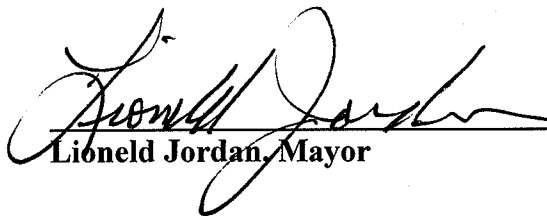
Mayor Jordan: Until we get something done in September. Is everybody good with that?

Alderman Kinion: At that point people would have the right to come and appeal.

Alderman Boudreaux: The only reason we are considering tabling this is because the owners of the shaved ice would have changed their date on the application if they would have understood how it was going to work out for them. I feel like that is a justified reason to table this.

Upon roll call the motion passed 7-0. Alderman Gray was absent.

Adjournment: 8:30 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer