

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 17, 2012**

A meeting of the Fayetteville City Council was held on July 17, 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 Gray, Boudreaux, Kinion, Petty, Tennant, Ferrell, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Adams

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

Mayor Jordan recognized the pre-academic Fulbright students representing 15 countries.

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Mayor Jordan: We are going to remove Item #4.

City Attorney Kit Williams: You don't really need a motion because it will be considered immediately after the Consent Agenda. There is an amendment to it.

Approval of the June 19, 2012 and July 3, 2012 City Council meeting minutes.

Approved

Parkland Dedication Fees: A resolution approving a budget adjustment in the total amount of \$38,426.00 recognizing parkland dedication fees from the Northeast and Northwest Quadrants to be applied for additions to Gulley Park and insurance proceeds related to the destruction of the Red Oak Park playground.

Resolution 142-12 as recorded in the office of the City Clerk.

Bid #12-40 Luber Bros, Inc.: A resolution awarding Bid #12-40 and authorizing the purchase of one (1) Deweze ATM72LG slope mower from Luber Bros., Inc. of Tulsa, Oklahoma in the total amount of \$41,209.40, for use by the Transportation Division, and approving a budget adjustment.

Resolution 143-12 as recorded in the office of the City Clerk.

Bid #12-48 Williams Tractor: A resolution awarding Bid #12-48 and authorizing the purchase of one (1) large square baler from Williams Tractor of Fayetteville in the total amount of \$81,488.00, for use by wastewater treatment, and approving a budget adjustment.

Removed from the Consent Agenda for discussion.

Bid #12-49 Sellers Trading Post: A resolution awarding Bid #12-49 and authorizing the purchase of two (2) Rhino FR180 batwing cutters from Sellers Trading Post of Siloam Springs in the total amount of \$30,192.00, for use by the Parks Department and wastewater treatment.

Resolution 145-12 as recorded in the office of the City Clerk.

Bid #12-50 Countryside Farm & Lawn: A resolution awarding Bid #12-50 and authorizing the purchase of one (1) mower conditioner from Countryside Farm & Lawn of Springdale in the total amount of \$20,916.08, for use by wastewater treatment.

Resolution 146-12 as recorded in the office of the City Clerk.

Bid #12-42 Endless Power Corp.: A resolution awarding Bid #12-42 and authorizing the purchase of one (1) power generator from Endless Power Corp. in the amount of \$61,330.00, plus applicable sales tax, for use at the Owl Creek lift station, and approving a budget adjustment.

Resolution 147-12 as recorded in the office of the City Clerk.

Bid #12-54 Instrument & Supply, Inc.: A resolution awarding Bid #12-54 and authorizing the purchase of three (3) large water pumps from Instrument & Supply, Inc. in the amount of \$88,800.00, plus applicable sales tax, for use at the South Mountain pump station.

Resolution 148-12 as recorded in the office of the City Clerk.

John David Brown Settlement Agreement: A resolution approving a settlement agreement with John David Brown, concerning condemnation litigation filed as part of the Highway 265 Water and Sewer Relocation and Improvement Project, in the total amount of \$46,666.50.

Resolution 149-12 as recorded in the office of the City Clerk.

Richard and Caren Hanna Settlement Agreement: A resolution approving a settlement agreement with Richard and Caren Hanna, concerning condemnation litigation filed as part of the N. Garland Avenue Improvement Project, in the total amount of \$1,600.00.

Resolution 150-12 as recorded in the office of the City Clerk.

Street Name Change – N. Chrysler Drive: A resolution renaming Frazier Street between Vantage Drive and Mountain View Drive to N. Chrysler Drive.

Resolution 151-12 as recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda as read with Bid #12-48 Williams Tractor removed for discussion. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

The following resolution was removed from the Consent Agenda for discussion:

Bid #12-48 Williams Tractor: A resolution awarding Bid #12-48 and authorizing the purchase of one (1) large square baler from Williams Tractor of Fayetteville in the total amount of \$81,488.00, for use by wastewater treatment, and approving a budget adjustment.

Mayor Jordan read the amended resolution.

Alderman Gray moved to amend the resolution as read by the Mayor. Alderman Boudreaux seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

City Attorney Kit Williams: I will note that the only change was the inclusion of sales tax that was not included in the original amount.

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

Resolution 144-12 as recorded in the office of the City Clerk.

Unfinished Business:

Amend §173.08 Arkansas Energy Code: An ordinance to amend §173.08 Arkansas Energy Code of the Building Regulations chapter of the U.D.C. to adopt the 2009 International Energy Conservation Code, for residential structures, with amendments herein. *This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on*

the First Reading at the June 19, 2012 City Council meeting and Tabled to the July 17, 2012 City Council meeting.

Mayor Jordan: I understand that the City Attorney does not want us to go to the second reading because he wants to read the whole thing in its entirety.

City Attorney Kit Williams: This went to the Ordinance Review Committee and several changes were made. I think that the whole ordinance should be read due to the changes. An amendment to the ordinance that was presented in your packet is in order.

Alderman Boudreaux moved to amend the ordinance. Alderman Kinion seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance.

Alderman Boudreaux: As Chair of the Ordinance Review Committee we supported this. We made some really good amendments to it. I certainly support it and hope we can get it passed.

Alderman Petty: There was one amendment that I did not previously notice and am not sold on regarding the Hertz rating index sticker and how it is required to be displayed until the home is sold or until 90 days has past, whichever is less.

Jeremy Pate: We had a concern because there are residential structures and small apartment buildings to which this would apply that are never intended to be sold.

Alderman Petty: Do you think it would meet your intent to say until sold or first leased?

Jeremy Pate: Yes. Essentially it is until someone moves in.

Alderman Boudreaux: So until occupied.

Alderman Petty moved to amend Section 2 to read until occupied. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Boudreaux seconded the motion.

Alderman Ferrell: Kit, did you want that left on this reading tonight because you just read it?

City Attorney Kit Williams: It certainly wouldn't hurt to leave it tonight because it does not go into effect until September.

Alderman Ferrell: I was just wondering, was your intent to try and move forward tonight and vote on it?

Alderman Petty: I am recognizing that we didn't hear any comment tonight and I do not see any harm in being expedient.

Alderman Boudreaux: It's already gone through Ordinance Review.

A discussion followed.

Upon roll call the motion passed 6-1. Alderman Ferrell voting no. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: There has been a lot of work with stake holders all through this process and there are people here involved in this issue. This is a way to level the playing field, increase energy efficiency and have long term benefits for our community. This will also help create jobs. I am very supportive of this.

Alderman Ferrell: I think it is commendable that Alderman Petty, Lewis and staff want Fayetteville and its citizens to conserve energy. When I ran for office the citizens in my Ward asked if I would stand against discretionary mandated taxes, revenue measures and City requirements pronounced to them by City passed mandates that don't affect life or limb. We are asked to be the first in the state to accept an international standard that not only drives the homeowner cost up for new construction but possibly requires existing home remodels or repairs to be subject to the hand of government. I would consider voting for an incentive ordinance.

Alderman Petty: When people have asked me about this I have said this is probably the most important thing I have done since I have been elected. I would like to thank the Mayor and staff for their part on pursuing the partnerships in getting this done. The incentive is the Hertz rating. This will open a green jobs market.

Alderman Ferrell: You said we were on a race to the bottom. Do you think there is any other first class city in the State of Arkansas that has as stringent requirements for building and development as Fayetteville?

Alderman Petty: Yes, in fact most of the state is on the 2003 Code. After we pass this the answer will be no. North Little Rock is looking at the 2009 Code for commercial buildings which if passed would put them ahead of us on the commercial side.

Alderman Ferrell: I wasn't talking about just the energy side. I was talking about the whole side for development requirements. Are there some that are overall lower in the state than Fayetteville?

Alderman Petty: I think in Arkansas Fayetteville does the best. When we talk about what we can do better I think we need to cast a wider net than Arkansas.

Alderman Ferrell: I respect you but I respectfully disagree.

Mayor Jordan thanked John Coleman, who was in the audience, for his efforts in making Fayetteville better. He also thanked everyone that worked on this.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Alderman Ferrell voting no. Alderman Adams was absent.

Ordinance 5512 as Recorded in the office of the City Clerk.

New Business:

Amend §154.03 Private Parties/Zoning Amendment: An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams gave a brief description of the ordinance.

Alderman Lewis asked what the process was when petitions are presented. She asked if they can be included in the packet.

City Clerk Sondra Smith: Anything we receive on an agenda item is included in the packet as long as we get it in time.

City Attorney Kit Williams: There have been many petitions submitted but this particular provision saying you have to have 75% vote, that issue has never come up before to my knowledge.

Alderman Lewis: And only for zoning in this case.

City Attorney Kit Williams: The Unified Development Code is for zoning only.

City Clerk Sondra Smith: We get petitions for other items so all we are talking about are petitions on an agenda item that is going before the City Council.

Alderman Ferrell: Before we went paperless it was not out of the ordinary at all to have large packets. We had petitions all the time.

City Attorney Kit Williams: This is not saying that there shouldn't be petitions, it just says that even if there are, you are still bound by the state law that a majority controls and not 75%.

Alderman Kinion: My concern is the timing. It looks like we are taking some type of process that in the past protected neighborhoods and it is taking less protection of the neighborhood that is already established, that has an organization to move forward. We need to be sure that we understand that there still is a way that a group of individuals around the zoning still has input and they still have the authority to come forward with an appeal to a City Council member and the member can bring it forward. He expressed concerns that have been expressed to him.

City Attorney Kit Williams: There is certainly no rush on this at all. It has been on the books for decades. It is just my job when I see something, that I believe is illegal, that I need to bring it to your attention and ask for a remedy on that. I am not saying that you need to pass it tonight.

Mayor Jordan: So you want to hold it on the first reading?

Alderman Kinion: Yes.

This ordinance was left on the First Reading.

Amend §167.04 Tree Preservation and Protection During Development and §177.05 Street Tree Planting Standards: An ordinance amending §167.04 Tree Preservation and Protection During Development and §177.05 Street Tree Planting Standards of the Code of Fayetteville to provide a fixed amount to be paid into the tree escrow account rather than reasonable maintenance cost estimates.

City Attorney Kit Williams read the ordinance.

Megan Dale, Urban Forester gave a brief description of the ordinance. She stated if a project comes through and we allow them to take out a certain amount of preservation, if they walk away from the bond we can not plant the number of trees required by the bond and maintain them.

Alderman Boudreaux: You referred to some examples of how developers walk away from the required trees they had planted. So they had cut down a certain amount of trees and we have lost the tree canopy.

Megan Dale: Correct, we have lost the tree canopy. They had bonded the trees with a maintenance bond and it is cheaper for them economically to walk away than to plant the trees and maintain them. We are obligated as a city to take the money we have from that bond and use it on the project.

Alderman Ferrell: Would you have any idea of what percentage of the trees that are planted make it for three years?

Megan Dale: The ordinance states that there needs to be a 90% survival rate. Realistically the people who maintain their trees pass the 90% survival rate. The ones who don't water typically don't pass.

Alderman Boudreaux: From what you have said they removed some canopy of trees so if they hadn't done anything then I could understand us not charging anything, but they have removed them. This might also encourage people to keep the trees they have on a development rather than mitigating or putting money in lieu of.

Megan Dale: The money they would make selling the lots would be almost equal to the amount of preservation not equal but it starts to even out.

Aubrey Shepherd: We are trying to get back toward the original intent and wording of the ordinance to encourage people to keep the canopy. He asked the council to please pass this.

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

City Attorney Kit Williams read the ordinance.

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

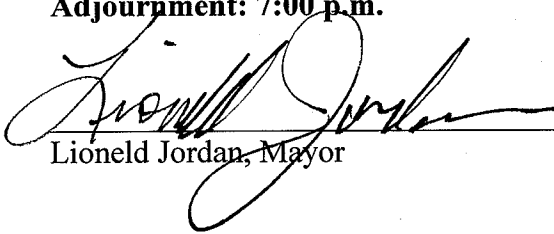
City Attorney Kit Williams read the ordinance.

Alderman Lewis: I will support this because it provides an incentive to preserve. I feel this will ensure the consumer will be provided with the components of their property they were entitled to.

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

Ordinance 5513 as Recorded in the office of the City Clerk

Adjournment: 7:00 p.m.


Lioneld Jordan, Mayor
Sondra E. Smith, City Clerk/Treasurer