

Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**City of Fayetteville Arkansas
City Council Meeting
June 17, 2014**

A meeting of the Fayetteville City Council was held on June 17, 2014 at 5:30 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, Rhonda Adams, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items:

Nominating Committee Report:

Alderman Tennant presented the Nominating Committee Report.

A copy of the report is attached.

Alderman Marsh moved to approve the Nominating Committee Report. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously.

Agenda Additions: None

Consent:

Approval of the June 03, 2014 City Council meeting minutes.

Approved

Net Neutrality: A resolution to express the City Council's support for Net Neutrality.

Resolution 110-14 as recorded in the office of the City Clerk.

Arkansas Historic Preservation Program: A resolution approving a grant agreement with the Arkansas Historic Preservation Program in the amount of \$8,515.00 for travel and training, and for hiring a qualified consultant to research and catalog historic structures; and approving a budget adjustment recognizing the grant revenue.

Resolution 111-14 as recorded in the office of the City Clerk.

Arkansas State Highway and Transportation Department: A resolution to authorize a payment of \$3,500,000.00 to the Arkansas State Highway and Transportation Department representing an initial payment of the City's portion of construction, right of way acquisition and utility relocation costs related to the widening of Highway 112.

Resolution 112-14 as recorded in the office of the City Clerk.

Repeal Resolution No. 143-14 & Pacific Vet Group-USA, Inc. Land Sale: A resolution to repeal Resolution No. 143-14 and to sell about 24 acres in the Fayetteville Commerce District (formerly Industrial Park) to Pacific Vet Group-USA, Inc. for \$360,000.00 and other valuable consideration and to approve a budget adjustment.

Resolution 113-14 as recorded in the office of the City Clerk.

Benedict Settlement – Van Ashe Drive: A resolution to authorize a settlement agreement with Dale and Martha Benedict concerning condemnation litigation filed as part of the Van Ashe Drive construction project.

Resolution 114-14 as recorded in the office of the City Clerk.

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

Unfinished Business: None

New Business:

Fayetteville Natural Areas Preservation Account: A resolution to establish the "Fayetteville Natural Areas Preservation Account" and to establish requirements for disbursements therefrom.

City Attorney Kit Williams: We have been approached by some generous donors that wish to help pay for the share of the Natural Heritage Association commitment to the Mt. Kessler project. They want to do that by setting up a special account here in the city to donate to. They are beginning it with a very generous donation of almost \$5,000.00. They are encouraging other citizens to follow their lead. I recommend you to allow the establishment of the Fayetteville Natural Areas Preservation Account within the General Fund. There are restrictions on how this money can be used.

Connie Edmonston, Parks & Recreation Director gave a brief description of the resolution. She thanked donors Dr. Pete and Margo Heinzelmann and Duane and Judy Woltgen. She stated they started the Fayetteville Natural Areas Foundation.

Dr. Pete Heinzelmann stated he is happy to be in Fayetteville and that it is an incredible community. He believes there are natural areas that need to be conserved and improved. He stated the Fayetteville Natural Areas Foundation was developed to save special areas for future generations. He spoke in favor of the resolution.

City Attorney Kit Williams: I would like to thank them and I would like for you all to stand up for a round of applause.

Mayor Jordan: Thank you all very much.

Alderman Gray moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 115-14 as recorded in the office of the City Clerk.

Amended Articles of Incorporation for the Walton Arts Center Council and Foundation: An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: This has been a long process and one that has been necessitated by the expansion of the Walton Arts Center, that was approved at the end of 2010 by the two

committees, the foundation and the council that operate the Walton Arts Center. The decision was made that a larger performing arts facility would be located in Bentonville. Fayetteville may be able to maintain the Dickson Street facility but I was a little bit concerned. I was afraid the majority of the big broadways shows and musicals would end up in the brand new bigger facility in Bentonville and the Walton Arts Center on Dickson Street would suffer and lose many of the major shows that we have enjoyed for 20 years at the Walton Arts Center.

About a year ago there were discussions between the University of Arkansas, Mayor Jordan and the Walton Arts Center about potentially changing some of the governing documents. We entered into those negotiations and our major goal was to protect and preserve the Walton Arts Center on Dickson Street. We wanted to try to ensure the same quality and quantity of performances we have enjoyed for so long would continue to be there and it would not become a second rate ignored facility once the larger facility in Bentonville was built.

I would like to thank the University and the Walton Arts Center for negotiating fairly with us and allowing me to place language in the Articles of Incorporation that gives us the best assurances and guarantees that it will happen. The Walton Arts Center and Walton Family Foundation did insist on some things. The Articles of Incorporation as they were first begun with the University of Arkansas and the city had concentrated on developments solely of the Walton Arts Center on Dickson Street. The sole purpose of both of those corporations was the Walton Arts Center on Dickson Street. In order to legally move into Benton County and build facilities other places, those Articles of Incorporations needed to be changed and their purposes needed to be broadened to include Bentonville, Rogers and all of Northwest Arkansas. That was one of the major changes in the Articles of Incorporation that are presented to you for approval.

There was a provision in both of the Articles of Incorporation of the Foundation and the Council that they were the agent for the City of Fayetteville and the University of Arkansas, jointly. This is important because an agent is supposed to have your back. It did not work out well for us in 2010 when both the University and the City made an identical joint proposal to keep the major performing arts facility here in Fayetteville. Because of financial considerations that the major donor would not be a lead donor here, but would only be in Bentonville, the decision was made to move it to Bentonville and the University and the City went along with the decision. The City Council and the University of Arkansas did not want to challenge that. Since that time, the Walton Arts Center has decided to embark on an enhancement program for the Walton Arts Center in Fayetteville. Mayor Jordan campaigned to have citizens approve a bond issue for it and all the City Council voted in favor of submitting that question to the citizens. This will refurbish, enhance, and enlarge the Walton Arts Center on Dickson Street.

I wanted assurances, if we gave up our status as the principal over the agent, and if we broadened the purpose to be able to build in Bentonville and Rogers, that we would have similar sort of performances in Fayetteville that we have enjoyed for so long. I have two kinds of wording on this. One is the same quality and quantity of performances. Also within the lease and in the Articles of Incorporation of the Walton Arts Center Council, there is a specific metric to look at. What we had in 2013 is the standard they have agreed they will maintain for the Walton Arts Center on Dickson Street. I was pleased when that decision was finally made. I want to thank them for realizing the concern that we share for the Walton Arts Center on Dickson Street. I told them if

there was too weak a standard, I could not come to you and recommend approval. The Articles of Incorporation specifically includes a provision that says that we, the University and the Walton Family Foundation can enforce the Articles of Incorporation in court in Washington County.

In order for the Walton Arts Center Foundation to no longer be our agent, their Articles of Incorporation say they will return the one and a half million dollars that was placed as the initial beginning of their endowment. The interest was used for operational expenses for the Walton Arts Center through the years and they would return that to the city so we could use it on the deck. We might need that additional money to ensure that we will have the deck we envisioned and told our voters we wanted to build.

Mayor Jordan stated there had been many meetings of negotiations. City Attorney Williams explained it well. He stated he is supportive of what was negotiated.

Terri Trotter, Chief Operating Officer of the Walton Arts Center: I want to thank the Mayor and Kit for their work on this. This is something we have been working on and we are really excited about the plans that we have at the Walton Arts Center. We are about under way on this expansion and it's going to be an exciting time in Fayetteville. We appreciate the cooperation and the opportunity to work together.

Alderman Tennant: Thank you Mayor Jordan and City Attorney Williams. I think this has been very time consuming and you both have been acting in the best interest of the city.

I think this is a really good start. We are very close to being able to do something that will please all parties. FOIA has been brought up a few times and changes that might take place if we pass this governance. The way I understand it now, FOIA rules apply to the meetings and budget discussions of the Walton Arts Center. Does anything change with regards to FOIA as it exist now if we pass this governance?

City Attorney Kit Williams: I don't think it would change. They are subject to some FOIA requirements because they are dealing with public monies. When they are dealing with that money, which is operational money, then I think that they should have an open public meeting with proper notification. If they aren't dealing with that money, then probably the open meetings requirement does not apply to them. When using our tax payer dollars, they should have to follow the open public meetings requirements.

Alderman Tennant: You don't see this changing that if we pass this?

City Attorney Kit Williams: We can't change state law. They can't change state law.

Alderman Tennant: We have four groups with three major goals. The four groups are the Walton Foundation, Walton Arts Center, City of Fayetteville and the University of Arkansas. I want to move the University of Arkansas out of this conversation because they have gotten themselves out of the theatre business on Dickson Street and they are building their own.

The three goals are the ones from the three that are left. The Walton Foundation wants the governance changed because they feel they need this to happen for the regional expansion and so we don't exercise any veto powers. I understand their concern. The Walton Arts Center management want this change to better help them raise money. The citizens of Fayetteville want what was promised to them. We were the only municipality 25 years ago that stepped forward to be a partner in the Walton Arts Center and we were the only ones that have stepped up recently. Fayetteville has proven that we are a partner with the Walton Arts Center in their growth.

Kit, Don and the Mayor have given us a great future of entertainment and culture in the new facility once it's built and with the language written in the agreement. Citizens of Fayetteville have placed over seven million dollars of their own money, plus a sizeable donation each year puts us as the second highest donor to the Walton Arts Center. We need to keep that in mind. We chose to be a partner with the Walton Arts Center, with the promise of a renovated facility on Dickson Street, which now looks to be a total project cost of about 23 million dollars.

Alderman Tennant suggested some proposed amendments to the ordinance. He suggested two contingencies. The Walton Arts Center present the City of Fayetteville a certificate of occupancy for a new 23 million dollar Dickson Street facility constructed to the specifications that the citizens were promised in November. A second option could be conclusion of a successful capital campaign that raises 23 million dollars to be used exclusively for the Walton Arts Center on Dickson Street. I think this is a win for all parties to have these two contingencies. They need this to help raise money so let us empower them to do that. These contingencies reinforce what has been stated as the priorities all three parties already have. As a representative of the people of Fayetteville I think this is valuable for them. We asked them for the most valuable thing they own last November, their vote. We asked them for something very precious and we have to help them protect that.

City Attorney Kit Williams: This would be an amendment not to the agreement, but to the ordinance.

Alderman Marsh: I think Alderman Tennant raises some very good points. I would like us to hold this on the first reading to give the City Attorney the opportunity to get the language right, to give us some time to consider the proposal and get more feedback from our citizens.

A discussion followed about holding the ordinance on the first reading and giving City Attorney Williams time to write out an amendment.

Mayor Jordan asked for public comment on the proposed amendment.

Peter Lane, President/CEO of the Walton Arts Center: What all the parties tried to do in this governance document was to create some clarity. Clarity around what our mission has been since Ms. Helen helped found this organization, which is to serve all of Northwest Arkansas. The governance documents help do that in a number of ways that I think Kit so aptly articulated. The reason there are so many entities and parties involved in this is because we have a lot of stakeholders. There are over a thousand donors and over a couple hundred thousand citizens who purchase tickets every day. The key stakeholders came up with this model because as stakeholders

and contributors, they wanted the confidence that their gifts and other gifts of other donors would know that they had the assurance of being able to give to the Walton Arts Center expansion, but also future opportunities. Clarity was one thing we absolutely needed to have. The ability to operate and run venues throughout Northwest Arkansas. The assurance of what would happen for the Fayetteville facility is in the new lease.

The current lease ends in 2017. When I speak to our largest donors and tell them we have a lease for another three years I can't steward the gift for the term that they would expect that gift to be memorialized. The lease is where we create the assurances you are looking for.

Putting a trigger on the governance that we would have to raise 23 million dollars first is a challenge. The very same people who are parties to this governance are those who would most likely continue to be large donors, especially to the capital campaign. Our largest donors collectively want the assurance that we can operate on a regional basis.

We want to be able to say we have governance documents that show us as a regional entity and a lease document that says we are committed to this facility for 25 years. We are very committed. We see the Walton Arts Center on Dickson Street as the cornerstone to what we want to do. We have a great vision. We want to make the theater a two theater complex. We have a lot of improvements we want to do. We are in the quiet phase meeting with our major donors. We are committed to do this campaign. That is our primary focus. We hope we can get a new lease that will allow us to say to our donors, we have a commitment, we need to honor it and we are going to fulfill it over the period of the 25 years. We hope to fulfill it in the next three years because our goal is to finish this by 2016 and I think we can. Putting the attachment on the governance I would caution you puts us in a position where our largest donors might not feel that comfort level to be able to give to the campaign.

Alderman Tennant: I can't imagine that some of your donors would think, if their big issue was the governance and we passed it, and they knew that they were giving their money for a Walton Arts Center expansion in Fayetteville anyway, why they would care. Your stated priority was the Dickson Street facility. If 23 million dollars doesn't get it, then come back and say we can't raise 23 million dollars. If we have already given up our governance, you have all the control to do that and it is not fair to the people of Fayetteville. If there was a seven million dollar donor sitting next to you, I believe you would be much more concerned about where they wanted to put their money. They want to put their money in the Fayetteville facility, which you have stated is your priority. I can't imagine you would have a problem with this. I can't imagine the Walton Foundation would have a problem with this because they are getting what they want. You are raising money for this facility and it is your priority, so all this does is assure the people that they get their building.

Peter Lane: There are no assurances in the world of fundraising. I can assure you that when we started this campaign it was well below 20 million dollars. As our wish list grew, as our desire to improve the facility grew, the cost for this project escalated to 23 million dollars. We want to finish everything we need to do. It has to be a partnership with the city because the city is putting their parking deck where our current offices are.

Our top ten donors know about the fact that we are doing governance. Our donors have the confidence that we are running an organization they feel has the right kind of programs, services and impact. We serve the region because our audiences come from all over. Our donors come from all over Northwest Arkansas and we have acted as a regional entity. Fayetteville is our current home and it will remain our cornerstone. In order to assure those donors that we have their confidence, that we can operate as an independent 501(c)(3) and that we can be a regional player, the governance needs to happen to give them confidence.

Alderman Tennant: The governance will happen when everybody does what they said they were going to do and when everyone gets the promises that they were made. Donors already know it is regional. This has nothing to do with that. This has to do with stating as a City of Fayetteville, we absolutely understand that the governance is in the best interest of the region. We do it willingly, just like we have always done. We have always stepped up as a city and said we are the partner. None of it matters except timing. The timing of when you are going to do what you already said you are going to do and I have no doubt you are capable of.

I have been to the AMP and I understand how fantastic of a facility it is. Maybe you can only raise 19 million dollars, but a 19 million dollar renovation to the facility will make it spectacular. Maybe it doesn't give us everything we want and you can come back a year from now and we make an exception, the governance is passed and everything is done. Everybody should be happy.

Peter Lane: The Walton Arts Center will not be happy, neither will the board or the University of Arkansas or our major donors if governance does not pass. Without the ability to secure the donors, I can't raise the money. I need the governance.

Alderman Tennant: I think that is a "you" problem, not an "us" problem.

Alderman Adams requested more information about operating as an independent 501(c)(3).

City Attorney Kit Williams: They do not operate independently. They should operate pursuant to the purposes and powers that we have given them in the Articles of Incorporation when we incorporated the arts center and the lease agreement.

Alderman Gray: I am troubled by what I hear. Is it that you feel like the big donors won't trust that the governance is going to happen or is it the time at which the governance takes place that you think will be their concern? We are the home of the Walton Arts Center. I feel like what I am hearing you say is that the big donors are saying we can't trust the Fayetteville City Council and the decisions they make.

Peter Lane: No, I wasn't saying that and I apologize if that is the impression. That is not my point. I am saying in order to do a capital campaign, our largest donors know that governance has been discussed. Our large donors want to make sure that the governance changes help codify the elements I have shared with you before.

Alderman Gray: I think you need to recognize that we are taking care of the citizens of Fayetteville and the seven million dollars, we need assurances and some guidelines to make sure we get what we have been promised.

Peter Lane: The intent of the Walton Arts Center is to raise as much money of the 23 million dollars and put it into the Fayetteville facility. We have no intention to do anything other than that.

Alderman Petty: I am not comfortable making a vote on this tonight. I feel like we have reached a point where the productivity of this discussion is starting to dwindle.

City Attorney Kit Williams: We don't have a tremendous amount of public here. I think this will get in the news and there will be a lot more input if we wait. I never thought these issues, which I think are very important for Fayetteville, should be decided in one night. With respect to Alderman Tennant, I think Alderman Petty has a good point that we should not move forward with this. This is an important issue and I would like to have more time for the wording.

Alderman Tennant moved to amend the ordinance to delay its effective date. Alderman Long seconded the motion.

Alderman Petty moved to table the amendment to the ordinance to the July 1, 2014 City Council meeting. Alderman Kinion seconded the motion. Upon roll call the motion to table passed unanimously.

Walton Arts Center Council, Inc. Lease: A resolution to approve an amended and restated lease agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant.

City Attorney Kit Williams: Rather than discussing this since it was already a part of the other discussion, I ask the City Council to table this.

Alderman Adams moved to table the resolution to the July 1, 2014 City Council meeting. Alderman Long seconded the motion. Upon roll call the motion to table passed unanimously.

City Council Agenda Session Presentations:

1. "My Fayetteville Services" Presentation by City GIS director Greg Mitchell

City Council Tour: None

Announcements:

Alderman Long: We have a Ward 4 meeting on June 30, 2014 at 6:00 p.m. in Room 111 at City Hall.

Mayor Jordan: We will be attending Arkansas Municipal League conference tomorrow.

Adjournment: 6:35 p.m.


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

Nominating Committee Report

Wednesday, June 11, 2014

Members Present – Chair Justin Tennant, Adella Gray and Mark Kinion

Members Absent – Rhonda Adams

The Mayor recommends the following candidate for appointment:

HISTORIC DISTRICT COMMISSION

Laura Chioldi – One Term ending 06/30/17

Joshua Youngblood – One Term ending 06/30/17

The Nominating Committee recommends the following candidates for appointment:

ANIMAL SERVICES ADVISORY BOARD

Lea Criss – One Citizen-at-Large term ending 06/30/17

Michael Compton – One Citizen-at-Large term ending 06/30/17

CITY BOARD OF HEALTH

No applications were received – One Unexpired Physician term ending 12/31/16

ENVIRONMENTAL ACTION COMMITTEE

Kelly Magoulick – One Science Discipline term ending 06/30/17

Richard Russell – One Community Citizen-at-Large Term Ending 06/30/17

FAYETTEVILLE ARTS COUNCIL

Dianne Wood Williams – One Working Artist term ending 06/30/17

Beth Woessner – One Arts and Cultural/Citizen-at-Large term ending 06/30/17

Justin Hunter – One Arts and Cultural/Citizen-at-Large term ending 06/30/17

WALTON ARTS CENTER COUNCIL

Hershey Garner – One term ending 06/30/17

Sarah Lewis – One term ending 06/30/17

WALTON ARTS CENTER FOUNDATION

Craig Shy – One Term ending 06/30/17