

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
October 07, 2014**

A meeting of the Fayetteville City Council was held on October 07, 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:

Bi Monthly Report on Public Transportation

No report was given.

Agenda Additions: None

Consent:

Approval of the August 19-20, 2014 and September 02, 2014 City Council meeting minutes.

Approved

Paige Mulhollan Waterfowl Blind: A resolution to honor Paige Mulhollan by naming the waterfowl blind to be constructed at Lake Fayetteville Park the Paige Mulhollan Waterfowl Blind.

Resolution 172-14 as recorded in the office of the City Clerk.

Bid #14-31 Cummins Mid-South: A resolution to award Bid #14-31 and authorize a generator preventative maintenance contract with Cummins Mid-South in the amount of \$15,040 per year plus non-scheduled service calls at the rate of \$115.20 per hour.

Resolution 173-14 as recorded in the office of the City Clerk.

2014-2015 Selective Traffic Enforcement Program (STEP) grant: A resolution to authorize acceptance of a 2014-2015 Selective Traffic Enforcement Program (STEP) grant award in the amount of \$116,900.00, and to approve a budget adjustment.

Resolution 174-14 as recorded in the office of the City Clerk.

Arkansas State Police Special State Asset Forfeiture Grant: A resolution to authorize acceptance of a non-matching Arkansas State Police Special State Asset Forfeiture Grant in the amount of \$36,069.00 for the purchase of a covert cellular wire and two (2) undercover drug enforcement vehicles, and to approve a budget adjustment.

Resolution 175-15 as recorded in the office of the City Clerk.

Bid #14-52 Teeco Safety, Inc.: A resolution to award Bid #14-52 to Teeco Safety, Inc., to authorize the immediate purchase of twelve (12) replacement tactical body armor vests for emergency response team officers in the amount of \$23,580.00 plus applicable taxes, and to authorize the purchase of body armor vests as needed through 2019 for use by the Police Department.

Resolution 176-14 as recorded in the office of the City Clerk.

Bid #14-53 Cameron Bridge Works, LLC: A resolution to award Bid #14-53 and authorize the purchase of a prefabricated steel bridge from Cameron Bridge Works, LLC of Elmira, New York in the amount of \$53,991.00 plus applicable taxes for installation over Town Branch Creek as part of the Frisco Trail extension.

Resolution 177-14 as recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc.: A resolution to approve a professional engineering services agreement with McClelland Consulting Engineers, Inc. for engineering design and bidding services for the Ramsey and Overcrest Sanitary Sewer Rehabilitation Project in an amount not to exceed \$228,644.00, and to approve a budget adjustment.

Resolution 178-14 as recorded in the office of the City Clerk.

Grubbs, Hoskyn, Barton & Wyatt, Inc.: A resolution to authorize a contract with Grubbs, Hoskyn, Barton & Wyatt, Inc. for materials testing and construction observation services on the Spring Street Parking Deck Project in an amount not to exceed \$120,000.00.

Resolution 179-14 as recorded in the office of the City Clerk.

Garver, LLC Amendment No. 3: A resolution to approve Amendment No. 3 to the contract with Garver, LLC for construction administration services on the Spring Street Parking Deck Project in an amount not to exceed \$168,600.00.

Resolution 180-14 as recorded in the office of the City Clerk.

Alderman Marsh moved to approve the Consent Agenda as read. Alderman Long seconded the motion. Upon roll call the consent agenda passed unanimously.

Unfinished Business: None

New Business:

Special Referendum Election Ordinance No. 5703: A resolution to set the date for the special election for the referendum election on Ordinance No. 5703 which enacted Chapter 119 of the Fayetteville code to create a process for the protection of civil rights in the city of Fayetteville and requesting the Washington County Board of Election Commissioners to place this referendum on the ballot and to approve a budget adjustment to pay for the special election.

City Attorney Kit Williams: I have a couple of amendments. One is that I am concerned there might be possible litigation in this matter. I need to add in Section 1 that if litigation delays the printing of ballots or otherwise necessitates any delay, the Washington County Election Commission may move the Special Election date to January 13, 2015. It will be set for December 9, 2014 if there are no problems. I wanted to have that in there so there would be no issue about whether or not we would have to go back and reset the date.

The second part is I have changed the exhibit to some extent by adding the entire Exhibit A, Chapter 119 Civil Rights Administration to the exhibit. This is a lot of language. We have the entire ballot. This is a special election, it is a big ballot and I think we can get all the language on there. The previous special elections we had on the smoking ordinance was much shorter, but we

did include all the language there. I think we should do it here. There would need to be a motion to amend to that resolution.

Alderman Petty: I'll make that motion, including the amendment with giving the Election Commission the ability to change the date with respect to litigation.

Alderman Petty moved to amend the language in the resolution to the new language in the resolution handed out at the City Council meeting. Alderman Marsh seconded the motion.

City Attorney Kit Williams: I have been in contact with the petitioners' attorney. His concern was the language that could have gone where the ballot title language might go, he wished to have that language as the ballot title. My opinion is that is probably not legal. I don't think it follows our rules. I have a resolution, which I'm not asking you to amend right now, that would have the ballot title as requested by the proponents of the petition. That ballot title would read repeal in its entirety ordinance number 5703 which enacted Chapter 119 of the Fayetteville, Arkansas City Code. The other change at the end of that instead of saying, for the referred ordinance or against the referred ordinance, would say, For Repeal of Ordinance 5703 or Against Repeal of Ordinance 5703. Those are the two changes they wanted on this and so I did put that in there because that would be an option for the City Council. It's not one that I can recommend, but it would be one the City Council could pass.

I have a further memo about the ballot language. One of the key parts of this memo is about the ballot title. The Supreme Court has said we have explained that the purpose of the ballot title is to allow a voter to reach an intelligent and informed decision, for or against the proposal and to understand the consequences of his or her vote. That's a 2012 Supreme Court case. When I read the ballot title proposed by the applicants it only described the ordinance by number, not by name. This is why I felt like I could not support that.

I have not changed my position that I stated at the Agenda Session. I gave you my memo on why I felt like we had to include the actual language of the ordinance, the title of the ordinance, rather than any other kind of ballot language.

Mayor Jordan: We have two amendments?

City Attorney Kit Williams: We have one possible amendment that is on the floor now that would be amending the original resolution to the one I described, which included the extra date for the Election Commission. A couple other changes just in the ordinance to make it work with the new exhibit and the exhibit would now have both the ordinance and the exhibit, which is the Chapter 119 Civil Rights Administration Code Chapter. The ballot would have the entire language which was passed by the City Council for the voters to be able to look at it before they voted.

Alderman Kinion: What we are talking about now is the amendment. The current resolution as it has been published and sent through the agenda session with the amendment of adding the complete language of the resolution.

City Attorney Kit Williams: Also, allowing the Election Commission to extend the date if necessary.

Alderman Petty: Thank you to City Attorney Williams for doing a thorough job in trying to research this. It is clear that there may be some further action, but I think we have what we need to be able to make a sound decision based on the knowledge available to us. The purpose of the ballot title is to allow the voter to reach an intelligent and informed decision and understand the consequences of the vote. I think our attorney's recommendation is the one that does that the best.

Alderman Marsh: Thank you to the City Attorney. It is beneficial to include the entire language of our ordinance in there. There has been a lot of confusion about what our ordinance actually does and doesn't do. It's beneficial for the voter to be able to read it in its entirety and make an informed decision based on that.

Travis Story, Attorney for Petitioners: Today the petitioner, in this case as representative for the ballot question committee Repeal 119, and on behalf of the more than 4,095 registered voters of Fayetteville who signed the petition, we are asking you to do two simple things. One, I concur that the date should be set and to set that date for December 9, 2014. Second, is not to include any ballot language in the resolution passed and forwarded on to the Election Commission. My reason behind that is the petition itself all 802 petition parts, signed by the registered citizens of Fayetteville, all included basically the ballot language which Mr. Williams has previously read and that is the ballot title according to Amendment 7. The petition turned in to Mrs. Smith on September 20, 2014, the petition we as Repeal 119 handed in on behalf of all the voters of Fayetteville has this title, which is the only thing I believe that needs to be on the ballot for it to be valid. I don't think changing that is this body's prerogative or right. The language cited in Mr. Williams previous memo would have been applicable had Amendment 3, which was Councilman Tennant's amendment, passed the night of the passage of the ordinance, which was, if the Council referred this matter to the residents of the City of Fayetteville. I believe at that point it would have been appropriate and required under the statute for this Council to create the ballot title and the ballot language.

At this point, the citizens of Fayetteville have had to go through the extraordinary act of doing the referendum petition, in what they have previously reserved under the Constitution of Arkansas to do. I believe they have done that and done that successfully. When they do that we are able to have those signatures certified, which the clerk did on September 26, 2014. Once she certified that we believe the date is all that needs to be set. We also believe that the date is called for in the petition to be December 9, 2014. Anything other than that, if the budget part needs to be approved or done, we think that would be appropriate for the Council. Anything else that would be added or subtracted from the petition language we don't believe is found as a jurisdictional matter in this Council at that point. We feel the language that is on the petition should be what's included in the ballot.

This afternoon I filed the petition with Washington County to have that certified to the election and I believe that in conjunction with this body coming in and certifying that December 9, 2014 would be the date, would be the appropriate manner for this Council to proceed forward. I ask that this Council would effectively do neither of the recommendations by the City Attorney which is

to add or subtract either one of the languages, unless it's simply the language he proposed which comes directly from the ballot. That would be repeal in its entirety Ordinance 5703 which enacted Chapter 119 of the Fayetteville Arkansas City Code. The ballot form would be, For Repeal of Ordinance 5703 or Against Repeal of Ordinance 5703. We believe that would be the proper ballot under Amendment 7 to the Arkansas Constitution which requires the petition language as brought to Mrs. Smith when it was certified would be the only language and the proper language to be on the ballot. Any other language starts to run afoul of other Arkansas Supreme Court rulings which says any change between the petition which was signed by the more than 4, 095 registered voters of Fayetteville, and any change to that becomes almost an automatic dismissal of whatever ends up on the ballot because that is not what the residents of Fayetteville signed.

We have the unique issue that the citizens of Fayetteville have specifically told this Council what they would like and that is to put this on the ballot to have repealed and that has been done. That part has been included in every single petition part that was submitted, all 802 of them. We believe because of that, this Council would be directly going against the registered voters of the City of Fayetteville at this point if they were to change that ballot title at all. We are asking that this Council either adopts that simple ballot title as I read it earlier or to not certify the ballot, not put in the resolution any particular ballot language, just resolve to have the election on December 9, 2014.

Mayor Jordan: What you are saying is since the Council decided not to put it on the General Election in November, if they had voted to do that they could have changed and put on the ballot what they wanted to put on it. Since they did not, the voters took it into their own hands and created their own wording. You believe it would be against state law to change any of the wording of what was signed by the voters. Correct?

Travis Story: Exactly, Mr. Mayor.

Mayor Jordan: Kit, you are saying you believe that they can?

City Attorney Kit Williams: I think we must if they want to have a valid election. You can't ignore the Supreme Court's ruling that a ballot title has a very important part in this and that is to inform the voters. If you only refer to numbers and not even the name of the ordinance, then how can somebody looking at the ballot understand what they are voting for? Most of us don't know what Ordinance 5703 means or Chapter 119. The ordinary citizen might have an understanding if you talk about Civil Rights Administration, but the proposed ballot title here only talked in numbers, not even a name.

Travis and I talked briefly before the meeting and what can possibly happen and maybe what's the best thing to happen here, is he's already filed his petitions with the County Clerk. If we then forward our resolution with our proposed ballot title including the guts of the ordinance, just like we did in the smoking ordinance, which was brought by the people and we referred it after the petitions came in then we went through this very process and sent the referendum petitions setting a date for the election and what the ballot should say. We should do that. If the County Clerk or the Election Commission thinks we have overstepped our bounds and that the petitioner is correct then the county can make that decision. They have a County Attorney there to look at that and that

might be the way to resolve this. Not put ourselves up as judges, but instead just do what we have done in the past, which I believe is correct. Travis believes it is not correct and another way to go. Maybe he's correct, but I don't know.

What we agree on is that election law, especially on municipal referendums is really vague. There are no cases that I could find where the Supreme Court has ever made any interpretation on municipal referendums. They make all their decisions on state actions and issues which are much better described by the statute. Maybe we could bring a little light into these referendum elections for municipal ordinances. Something needs to be done. I would ask the legislature to take another look at this and provide us some guidance like they do with counties. Counties have a very clear system about what their petitions and ballots are supposed to look like. The people that should decide are one step above us, which is the county.

Travis Story: I've spoken with the local Election Commission and members of the Election Commission for the State of Arkansas. The two things to be aware of is in November there are two referendum matters that are going to be voted on, on the Washington County ballot. Both from similar circumstances. It's people of other cities doing a petition to repeal city ordinances. There will be two petitions to repeal that have been certified now to the Election Commission for Washington County for the November General Election ballot. Both of those are laid out in a simple to repeal ordinance number, for or against repeal of that ordinance number.

I agree with Mr. Williams that the law on this part is very murky and at this point we have agreed to disagree on the law. What we are trying to do, is do something short of throwing this into litigation. Nobody wants that. We believe the residents of Fayetteville want the December 9, 2014 date. October 10, 2014 is the last day for the Election Commission to put this on the ballot. They have to have that in order to under their guidelines to be able to accomplish everything that needs to be done. We ask that what's placed in the resolution tonight would be what is on the ballot. Unfortunately for us, it's either good or bad. If someone says this is inappropriate and there is a legal challenge, then we'll have to deal with that. We ask that we don't cause the confusion which would end up having to be decided by the Election Commission and turned over to the county to deal with. We ask the only thing to be put in the resolution tonight, having anything to do with ballot language, would be exactly what we have submitted on all the petitions, that same language or something that says the language of the petition shall be the ballot language. That way we could work through the normal process. We believe it would be appropriate and allow the process to move forward smoothly at the county level so that the election could be scheduled and the will of the people to hold this election at a special election on December 9, 2014.

Alderman Adams: I understand you are a paid attorney representing this group. Are you a resident of Fayetteville?

Travis Story: I am not a resident of Fayetteville. I am a business owner in Fayetteville. This is one of those things where I wish I was a resident of Fayetteville.

Mayor Jordan: We are going to open it up for public comment. We will stay with the amendments first.

City Attorney Kit Williams: It should only be about the legal issue. There is no factual or any other kind of issue. It's just whether or not someone has some legal ability to explain Travis's position better than he did or my position better than I did. This is whether or not we should go with his interpretation of the law or mine.

Alderman Kinion: I believe the protocol is to discuss the amendments in front of us which does not include the language of Mr. Story. Am I wrong?

City Attorney Kit Williams: That is correct, but I still think that is obviously the issue that is before you. Whether you should pass the resolution with the ballot language I have suggested, the language of the ordinance only.

Alderman Kinion: The discussion is do we pass this amendment and support this amended resolution or not.

Laura, 920 North Leverett Avenue spoke in favor of the amendment proposed by City Attorney Williams.

Ann Shelley, 774 South Cherry Lane spoke in favor of the amendment proposed by City Attorney Williams.

Kyle Smith, 2801 West Dove Drive spoke in favor of the amendment proposed by City Attorney Williams.

Alderman Petty: I know one of our Alderman has an engagement with a political forum tonight at 7:00 p.m. I would like to suggest a temporary rule change as we did at the last discussion of this and to limit public comment from each speaker to three minutes.

Alderman Petty moved to allow a three (3) minute comment period. Alderman Kinion seconded the motion. Upon roll call the motion passed 6-2. Alderman Gray, Marsh, Kinion, Petty, Adams and Long voting yes. Alderman Tennant and Schoppmeyer voting no.

Carol (Chris) Kristophel, 1505 East Overcrest stated she appreciates all the wording on the ballot so that everybody's vote counts the way they want it to count.

Erin Zudith, 1002 West Hugh Street, Apt. #8 spoke in favor of the amendment proposed by City Attorney Williams.

Gwendolyn Wind, 147 East Spring Street spoke in favor of the amendment proposed by City Attorney Williams.

Anthony McCaskill, 730 West Van Gogh Place spoke in favor of the amendment proposed by City Attorney Williams.

Alderman Tennant: Kit, during the smoking vote was the wording changed? What was the wording on the petitions as opposed to what ended up on the ballot and do you remember the difference?

City Attorney Kit Williams: I did not study that. I do think the petitions were a little bit closer to what would have been required for county ordinances, which is what should have been here and what the initial petitions that were submitted to me looked like. They did not have the repeal language. The first one that I said looked fine did not have the repeal language on it. The second one, which I said I really didn't have time to look at it, but I thought the title of the ballot should be pretty close to the title of the ordinance did begin to have the repeal language on it. It also had the names of the ordinances and the name of the chapter. That was at least getting closer to being okay and that's why I have not opined that I think the petition was invalid. I've said that it's probably a valid petition. That is only my decision and it could be challenged and a court could decide. I don't remember precisely what the smoking ordinance titles were. I did not look that up. I have been studying this issue.

Alderman Tennant: You think consistency would be followed if we did what you are suggesting?

City Attorney Kit Williams: I think that is correct. It also would be absolutely consistent with the county ordinance. The county language tells you exactly what the ballot should say and that is what I followed, which is basically the title of the ordinance being referred to the citizens. You either vote for or against the ordinance. Unfortunately, that does not explicitly apply to municipalities and why I do not know. As part of our legislative package we are going to do for the next legislature, we might ask our legislators to correct the void we have in the law so we don't have this problem.

Alderman Tennant: At the end of the day it sounds like we are either going to have, for or against the ordinance or for or against repeal. That's what the wording difference is. I don't want to say this isn't as important as the vote itself. I have a tough time going against what has been said by the Supreme Court. Knowing the county might go back and change it and there might be litigation, I lean on the side of supporting what they said, which is to make the ballot language clear.

Alderman Kinion: I support what our City Attorney has suggested and the amendments. This is the clear way to get the information on the ballot. I don't like a bully proposition that threatens litigation. I feel confident as we move forward we are doing the right thing.

Alderman Long: After reading what our City Attorney has proposed, I think he has drafted the clearest version of what would be most clear to my constituents.

The motion made by Alderman Petty seconded by Alderman Marsh to amend the resolution language upon roll call passed unanimously.

Alderman Petty moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 181-14 as recorded in the office of the City Clerk.

BlueInGreen, LLC: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of an ozone disinfection system from BlueInGreen, LLC of Fayetteville, Arkansas in the amount of \$1,780,825.00 plus any applicable taxes for the Noland Wastewater Treatment Plant.

City Attorney Kit Williams read the ordinance.

Tim Nyander, Water & Sewer Operations Manager gave a brief description of the ordinance.

Billy Ammons, CH2M Hill: An innovative and environmentally sound disinfection solution is within our grasp. Ozone has long been known to be a highly disinfectant producing many positive benefits without the negative side effects of using chlorine. For most potential installations, ozone has been too expensive and inefficient to use in wastewater treatment, unless there were a compelling regulatory or local environmental reason to do so. BlueInGreen is a local company through the University of Arkansas Genesis program and has developed a system to utilize ozone for disinfection that is much more efficient than previous technologies.

Ozone will not only thoroughly disinfect the water we introduce into the White River, it will also produce a highly oxygenated stream of water that will virtually have no color and will have a significantly reduced level of emerging contaminants of concerns such as pharmaceuticals that typically pass through the biological components of our existing treatment process. Due to the innovative nature of this system and the fact that it is protected by patents and pending patents, it is a complicated system of equipment, and it is not feasible to engage in a normal competitive bidding process. The proposed purchase of this ozone disinfection system from BlueInGreen is expected to continue the highly successful pattern of implementing innovative systems the City of Fayetteville has established for many years to protect our resource of fresh water.

Mayor Jordan: I think it is a real good program. I have been looking at this since I was on City Council.

Don Marr, Chief of Staff: We met with Vice Mayor Kinion and the Water & Sewer Committee to go through this process. The fact that emerging contaminants while not regulated totally today is something that could be coming forward in the future. Why make this type of investment now only to turn around and have to do something later when it becomes a regulated item. It gives us the opportunity to use proprietary technology developed right here in our own local community. Thank you to Billy, Tim, Lynn, Clete Brewer and the team at BlueInGreen for the work they have done to keep this city on the leading edge. We hope you will support this. We did an extensive study and pilot program because we will be the first city in the state to be permitted for this use.

Mayor Jordan: I remember first looking at this when I was on the Water & Sewer Committee. I thought this would be a wonderful investment someday and here it is before you. It did go through the Water & Sewer Committee.

Alderman Kinion: It is exciting we can utilize technology that has shown efficiency in the plant where they have done their research. This gave me confidence in the technology as well as

knowing we are going to have further demands of controlling contaminants and effluent in the future. I think this investment is valuable.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Marsh seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5714 as Recorded in the office of the City Clerk.

Tree Preservation Area Modification for the Frisco and Town Branch Trails: A resolution to approve a request by the City of Fayetteville to modify the geographic extent and location of certain Tree Preservation Areas pursuant to § 167.04(1)(2), Tree Preservation and Protection, Unified Development Code of the Code of Fayetteville, to construct sections of the Frisco and Town Branch Trails.

Derek Linn, Urban Forester gave a brief description of the resolution. Staff is recommending approval.

Alderman Kinion: There is some concern about whenever we have a tree preservation area and we look at taking trees out, help me understand why this is necessary?

Derek Linn: Years ago Allied Storage and another property north of 18th Street, as part of their development requirements to meet minimum tree preservation requirements through Chapter 167 were required to plat tree preservation areas to ensure the future protection of trees. This was done with coordination of the trails coordinator and the intention was to both preserve trees and also maintain this land for this future trail connection that was actually anticipated at that point.

Alderman Marsh: The trees that they are going to replace to mitigate this loss, is there an opportunity for those trees to be utilized along the south school corridor? We have been looking for some trees to go in with the sidewalk improvements that are planned for the area. Is this a possible source for trees for that project?

Derek Linn: Sometimes there is difficulty with the city gaining approval from the State Highway Department to do tree planting projects. I believe that is a state highway corridor. I wouldn't say it is totally out of the question. It would be a challenge. The proposal from the Trails Coordinator and from Urban Forestry is to try to put these trees back along trail easements.

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

Resolution 182-14 as recorded in the office of the City Clerk.

Walton Arts Center Cost-Share Agreement: An ordinance to waive the requirements of formal competitive bidding and approve a cost-share agreement with the Walton Arts Center for the construction of the new Walton Arts Center Administrative Headquarters Building.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff is recommending approval of the cost share agreement.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Marsh seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5715 as Recorded in the office of the City Clerk.

Baldwin & Shell Construction Company Amendment No. 2: A resolution to authorize Amendment No. 2 to the contract with Baldwin & Shell Construction Company for construction phase services for the Spring Street Parking Deck project, and to approve a budget adjustment.

Jeremy Pate, Director of Development Services gave a description of the resolution. He stated this project is necessary for the Walton Arts Center to expand at this location. Staff is recommending approval.

Greg Lee, Walton Arts Center Chairman of the Board: We urge you to pass this resolution to go forward with the parking deck. We are not happy about how cost have come in much higher than originally anticipated. This parking deck is a very important element of the expansion and it's important to the Entertainment District. When the people originally supported bond money for a parking deck they recognized the value to the Entertainment District and for the City of Fayetteville.

Alderman Petty: I have been impressed how this has been managed since the start of the year whenever the management of the project changed hands. We had a staff member leave who managed it previously.

I brought a tentative proposal to you about six months ago that we form a partnership with Partners for Better Housing to construct housing and potentially retail as an east liner building instead of building it ourselves. That process is still moving forward based on our tentative agreement to allow that to happen. It's not a done deal or a guarantee, but as much risk that can be managed on that is being managed. I'm still optimistic it's going to happen. That's a savings of around \$300,000 on this project. If we do fund the gap out of reserves that we consider using those reserves to pay for the liner buildings we do construct. We have been advised in the past that if those are paid for out of bond money then there are restrictions on tax exempt activities that can take place which is why we have talked about using those for municipal purposes. If we were able to direct the reserves here to those portions of the project, we may be able to consider other uses in those buildings.

Those of us that were here had different reasons when we implemented paid parking. Mine was to give us the opportunity to see some of the properties in downtown Fayetteville filled in. Building this deck is absolutely paramount. We have the potential to pay these reserves cost back through a number of means such as increased revenue from the parking program and the potential sale of land we own in the city. When looking at this project and what building this deck will be able to do for Fayetteville, we need to think about what it enables us to do next. That is one of the most important things we can do if we get this deck built. We should consider that action as a follow up piece for the exact same strategy we are considering tonight.

Alderman Kinion: The frontage property along Dickson Street is so valuable. If we can sacrifice a few parking spaces to develop that property to pick up some of this gap it helps me move forward with this. When you look at the Design Center study and the possibility of the density and development there and green space reclamation, this will add to the value of the area. I'm not going to forget that whenever I move forward to take this out of the General Fund. Some people have said, you are taking this out of the General Fund, but you are not looking at other needs in the city such as salaries. This is very different because this is a onetime expenditure we can reclaim with careful management of some options by moving some parking over to the deck. That is the reason I will consider this, even though I don't like it. I will be supporting this.

Alderman Marsh: I appreciate Jeremy and his team. They have done a great job keeping us informed throughout the whole process. It's important we take the long view. We are constructing a building that will stand in our downtown for a 100 plus years. It is important we make wise decisions from a budgetary perspective, but it's also important we not cut corners.

Alderman Long: Thank you to staff for getting the excess down to about \$2.1 million which is remarkable considering we were looking at a funding gap of about \$5 million. This is a feasible level. If we didn't build the deck and take the money from the reserves it would cost the city about the same amount to get out of the bond fund. We might as well build the deck and have the asset for the City of Fayetteville.

Alderman Tennant: Paul, the \$250,000 that is contracted a year, that goes back to the Walton Arts Center for operational services, of that \$250,000 I'm trying to think of a way to use that or renegotiate it to raise money for this. It bothers me that we are writing that check every year. I'm just thinking that could go a long way. They are getting a parking deck and new offices out of this. Could we partner with them to offset some of this cost using some or all of the \$250,000? Is that a possibility?

Paul Becker, Finance Director: I did not negotiate that contract, Don did. Anything is possible through discussions. Of course that is \$250,000 per year, we would have to front the money under any case out of the General Fund. That \$250,000 essentially was to provide services for shows, things of that nature to children and for people who couldn't otherwise afford to appreciate the entertainment. The Council at that point in time considered that was something of value to the complete citizenry.

Alderman Tennant: I don't think we saw this shortfall coming. It would have changed my mind back then.

Don Marr, Chief of Staff: None of that money goes toward event parking staff. The city used to contract separately for event parking staff and then we took that back in house with your approval prior to last year's budget. We felt like we could do it at a cost that was less to the city than what we were contracting. The \$250,000 does have a contingency as it relates to bond coverage. You all approved that if we were into a problem of revenue coverage for the bonds, we would take that as a means of paying that coverage and not buy services that year. It is a direct correlation to the services that were attached to the contract the Council approved. If we cut that money to apply the money to other items it would affect the operating budget of the Walton Arts Center. This would reduce the programming we are currently getting for those dollars, which is primarily school age children education.

Alderman Tennant: I'm not saying we should take it away. I am just trying to think of a way to use that money and not dip into reserves. This is about as disappointed as I have ever been in the city. We can blame the price of concrete, we can blame the recovery from the recession, but none of that really matters. What bothers me is there is a lot of, "it's not our fault."

Thank you Jeremy Pate for your work. Jeremy is doing not only his full time job, but a full time job of a man that was the highest paid employee in the city. I know we are trying to hire that position. When you are short staffed like this, things like this happen. I don't think Jeremy, the Mayor or anybody else had anything to do with this from a personal standpoint. It is a problem when you don't have enough people working in the city. It happened on my watch and on every Council members watch and Mayor's watch. That bothers me. The city has to take a leadership position here and I don't hear that. We have 18 frozen positions in this city and we haven't filled those. That is difficult for me to swallow, that we are going to keep letting our city staff do the work of many people. We have owed our firemen raises for years. Not a raise to make them rich, but a raise to get them to market value. We are pulling \$2.4 million out of our reserve, when \$250,000 of it would pay them off to a market wage. I want the parking deck, but we are throwing good money after bad. I have asked many times, when we have passed a good idea, how are we going to do the details and sometimes I get an answer of, don't you remember the ice storm we

got through that, we can figure this out too. It is unacceptable to me. I can't vote for this because we have too many things right now. This is taxpayer money and I don't think the taxpayers approve of us doing this right now.

Mayor Jordan: I am the Mayor of this city. I take full and complete responsibility for this deck and the overage of the deck. Staff works for me. It's not the fault of the Council, staff or citizens. I take the responsibility. I got so much coming in and I got so much going out. My job is to keep us between the road ditches. You can add policemen, firemen and build some new stations all that takes is one important thing and that is money. It's about \$2 million to get out of this or \$2.3 to build the deck. Jeremy Pate has kept this Council up every month with a report of where this thing is going. I knew it was beginning to skyrocket. If you did not know that was your fault. I do the best I know how to do around here and I'm going to keep doing it to the end. We have got to build this deck. I listened to the Walton Arts Center and they said their number one priority was to build the deck. I talked to business owners in 2009 and they said we have been promised a deck for 20 years when are you going to build it. We implemented paid parking because we knew it was important. If you don't build this deck you don't get expansion. If you don't get the deck and expansion, this downtown area is going to start to die. I'm not going to let that area of this city die. You all steered me in the right course after the first of the year because I wanted to cut the cost of this deck and you told me we owed it to the citizens to build this deck right. I apologized back in January that I took that position. I'm sorry this is \$2 million over, but we need to build this deck for this city to be competitive with this region.

Alderman Tennant: The Mayor campaigned on this and it was a cornerstone of his campaign in 2008 and 2012. I have no doubt he wants to build this deck. I want this deck built. It doesn't change my concern about where we are as a city. Do I think if the parking deck doesn't go up that the area will die, no? I believe the Mayor wants to build this deck and if it gets built, so be it. I have to vote my conscience based on where we have needs in this city and where to move money from one pile to another. That is part of my responsibility.

Alderman Gray: I am ready to build the deck.

Alderman Petty moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 7-1. Alderman Schoppmeyer, Adams, Long, Gray, Marsh, Kinion and Petty voting yes. Alderman Tennant voting no.

Resolution 183-14 as recorded in the office of the City Clerk.

Police Department Ninth Beat Feasibility Study: A resolution to request that the administration study the necessity and feasibility of adding a ninth beat and five additional police officers to the Fayetteville police department.

Alderman Long: Thank you to Alderman Adams for co-sponsoring this with me. We have one of the best police forces in the State of Arkansas. I want to research this to continue being the best police force in the state. This does not address frozen positions. It does address things that haven't been evaluated in years. We have the lowest number of police per capita out of the ten largest cities

in the State of Arkansas. We have a median crime rate. Our fire and police are part of the number one services provided by our city and response times have slightly increased. This is something we can control if we have the data to back it up and keep that from being a continuing trend. We can discuss this at a budget time to see if we can find the resources to accommodate this if it is needed. The disparity between the population and our police coverage will continue to grow if we do not start taking steps to correct this disparity.

Mayor Jordan: During the budget discussions I am going to bring the cost of the five officers and the 26 frozen positions. You need to know those cost. You need to know what it's going to cost to bring the firemen up to market. You need to know what it will cost to do a step for the police, fire and whatever it takes for our non-uniform staff. I'm going to let you look at what I look at.

Alderman Adams: I co-sponsored this with Alderman Long after he did a lot of work on this ahead of time. I appreciate our Chief giving us some information. Some of this has already been done as far as the research is concerned. Having this conversation and looking forward is important. I feel very safe in this city. Alderman Long and I have heard from citizens in our ward who are requesting this study. We know the Mayor and the Chief visit all the time and there is good communication, but let's take it outside of that and talk about it publicly.

Mayor Jordan: We will be glad to do that. As the Mayor of this city and speaking for the Police Chief we will take the police officers and be glad to get them, but there is cost associated with everything.

Alderman Petty: I don't have any problem with the request itself. I'm in favor of getting good information. You said we had a median crime rate, but had a lower number of officers per capita. I know our population includes on campus students at the University. Did you include in your police officer count the members of the University Division?

Alderman Long: That was information given to me by the Chief of Police and it did not include students.

Greg Tabor, Chief of Police: The numbers we provided Alderman Long does not include the officers at the University. The students do count as part of our population.

A discussion followed about services and population at the University of Arkansas.

Greg Tabor: We had four frozen positons in 2008 and 2009. Two years ago we were able to get one of those back with a grant. This year we got three of those back with a grant. We currently have no frozen police officer positions. We have some civilian positions that are frozen.

City Attorney Kit Williams: How long are those grants good for?

Greg Tabor: They are a 75/25 grant for three years and the fourth year we have to pay 100% of the bill.

Alderman Long: Could you point out to the Council when the last time the number of police officers versus the crime rate in Fayetteville and the crime mapping was done.

Greg Tabor: In 2007 was the last time. I don't want you to think there are always eight policeman out there working because we have an eight beat. Eight is the minimum number that we have to have before we feel like we have to hire somebody for overtime. I'm talking about officers in a car answering calls. It doesn't include motorcycle and bike officers, canines or supervisors. I did an average number of how many officers we had on a shift and it was 10.4 the week before Bikes, Blues and Barbeque.

Alderman Petty: You intend this to be an internal study, not a third part study?

Mayor Jordan: Right.

Alderman Petty: Was the nine beat map generated like the eight beat map?

Greg Tabor: Yes, it was based on call volume.

Alderman Long: Thank you to Chief Tabor and Deputy Chief Reynolds for their work in helping me put some of this together. You are a tremendous asset to our city.

Alderman Marsh: You mentioned you would be bringing us information about our Fire Department. I am concerned we are looking at police, but not fire. They are the ones that haven't been raised up to market. Are we going to be adequately addressing that?

Mayor Jordan: My proposal next spring is to bring the firemen up to market. Fire and police each get a step so that everyone is caught up. I am going to recommend that in the budget and we will see what occurs.

Alderman Adams moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the resolution passed 7-0. Alderman Schoppmeyer, Adams, Long, Marsh, Kinion, Petty and Tennant voting yes. Alderman Gray was absent during the vote.

Resolution 184-14 as recorded in the office of the City Clerk.

City Council Agenda Session Presentations:

Building Energy Efficiency Update – Peter Nierengarten and Paul Becker

City Council Tour: None

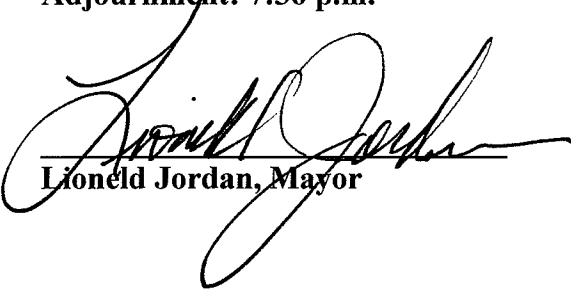
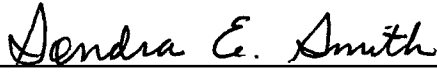
Announcements:

Don Marr, Chief of Staff: The first Fayetteville Hero Half Marathon is Saturday, October 18, 2014. It is being sponsored by our Fire Department.

Ward 1 cleanup is October 18, 2014 at Shaver Foods parking lot and the Recycling and Trash Collection Facility.

The last fall ward cleanup is November 1, 2014 at Woodland Jr. High and the Recycling and Trash Collection Facility.

Adjournment: 7:36 p.m.


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