

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 John La Tour
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**City of Fayetteville Arkansas
City Council Meeting
March 17, 2015**

A meeting of the Fayetteville City Council was held on March 17, 2015 at 5:30 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 Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, John La Tour, 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 Kinion presented the Nominating Committee report and recommended the appointments as submitted.

A copy of the report is attached.

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

Agenda Additions: None

Consent:

Approval of the March 3, 2015 City Council meeting minutes.

Approved

Gulf Coast High Intensity Drug Trafficking Area Funding: A resolution to authorize acceptance of funding from the Gulf Coast High Intensity Drug Trafficking Area in the amount of \$116,644.00 for the Police Department, and to approve a budget adjustment.

Resolution 63 -15 as recorded in the office of the City Clerk

Fayetteville Police Department Policies: A resolution to approve Fayetteville Police Department Policies 1.2.1 Limits of Authority; 1.3.1 Use of Force; 1.3.4 Less Lethal Weapons and Defensive Tactics; 46.1.10 Active Threats; 48.1.1 Next of Kin Notifications/Assistance Services; and 71.1.1 Detainee Transport.

Resolution 64-15 as recorded in the office of the City Clerk

Sport Court: A resolution to authorize a contract with Sport Court in the amount of \$54,785.00 pursuant to the Tips/Taps interlocal purchasing system contract for the purchase and installation of new gymnasium flooring at the Yvonne Richardson Community Center, to approve a project contingency in the amount of \$5,089.32, and to approve a budget adjustment.

Resolution 65 -15 as recorded in the office of the City Clerk

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

Unfinished Business:

Enact Article III Procedure to Exercise Initiative and Referendum Rights of Chapter 36: Elections: An ordinance to enact Article III Procedure to Exercise Initiative and Referendum Rights of Chapter 36: Elections into the Fayetteville Code to clarify the proper procedure for the citizens' right of the initiative and referendum. ***This ordinance was left on the First Reading at the January 20, 2015 City Council Meeting. This ordinance was tabled to the March 17, 2015 City Council Meeting at the February 3, 2015 City Council Meeting.***

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-1. Alderman La Tour voting no.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: When I originally drafted this proposed ordinance concerning municipal ordinance referendum language, the state statutory requirements of county ordinance referendums was simple and clear. It was also in agreement with the statutory requirements for state statute referendums. Thus, I believed it would be clear how a municipal ordinance referendum would be worded if we just ensured it complied with the state statutory language for county ordinances and state statutes.

State Representative Ballinger has proposed House Bill 1687 which changes the wording for county ordinance referendums, but does not change the statutory requirement for the wording for state statute referendums. In some cases, these statutes would be conflicting if this House Bill is passed without any changes. If this bill becomes law, it would no longer be a simple and easy decision on how to word municipal referendums. I do not want to be put in the middle in this particular case, to have to try to decide something when it's no longer clear. I recommend the current ordinance, which is in front of you, be amended to remove the City Attorney from having to make those decisions and go with the same proposal I provided you in February, which instead talks about the petitioner complying with those particular state statutes rather than the City Attorney having to review the ordinance.

Alderman La Tour: I would like to ensure when the people begin a petition process, the authority for the wording of that petition remains with the people and their legal representatives, not with city administration. My understanding of this new proposal that is the case. Is that correct?

City Attorney Kit Williams: Yes. It will follow state law to some extent, so it's not just with the wording of the people, but the wording from the people's representatives the state legislature who has the power to say how county referendums should be worded. It is with the state legislature that makes that decision.

Alderman Kinion: I think we should leave this on the Second Reading, so we will have some time to see what happens with the legislature and then review it.

A discussion followed about allowing the legislature to conclude before taking action.

Duncan Campbell, Fayetteville resident spoke in opposition in allowing the City Attorney to be given the power to amend petition language. He stated that the proposed language will not slow down litigation because every referendum will likely cause litigation.

Peter Tonnessen, 3500 Hearthstone Drive spoke in opposition in allowing the City Attorney to be given the power to amend petition language.

Mayor Jordan: Mr. Williams has suggested tonight, that he not be the one to review the referendum. Is this correct, Kit?

City Attorney Kit Williams: That is correct.

Peter Tonnessen stated his dissatisfaction with the second page of the February 18th memo in regards to the ordinance.

Paul Phaneuf, Aqua Crossing: The City Attorney said he does not believe that the City Attorney should be the one who makes these determinations. Where exactly is it that we stand?

Mayor Jordan explained the options that were previously discussed. He stated the City Council did not want to take action yet to allow time to see what occurs with the state legislature.

Paul Phaneuf: If the state legislature does not resolve it completely to the Council's satisfaction, what would be the next step for City Council?

Mayor Jordan: The Council will bring it back and they will make a determination on what they want to do with it. There might be amendments. The state law may supersede anything the City Council passes. We don't know the answers to those questions for at least another two weeks.

A discussion followed about bringing the ordinance back to the City Council in two weeks after the state legislature has made their decision.

Paul Phaneuf spoke in opposition of the ordinance.

Kyle Smith, Ward 4 stated the state does not have good quality guidelines for the city and this ordinance would fill in the gap.

City Attorney Kit Williams: We have undergone three referendums since I have been City Attorney. We only had litigation involving one which involved the ballot or how the signatures were obtained. The first two, there was no litigation about that. If there had been, I would have been looking at this language earlier.

The state legislature requires the Attorney General to look at every petition or referendum or initiative on a state statute and make sure it passes his muster. The Attorney General is a state official and an elected official. It's not a violation of Amendment 7 for him to do that, just like it would not have been a violation of Amendment 7 for me to look at this and make sure it complies with state law. The law I cite does not affect municipal ordinances. It is for county ordinance or the state statutes. My language would say we want to comply with that. Amendment 7 says that municipalities have the right to have the procedure to enforce Amendment 7, where the state statutes control county ordinances. I don't know why Amendment 7 broke it up like that and if we don't have language saying we will comply with the county ordinance referendum language, then there is no real guidance.

The power in Amendment 7 was reserved to the people. The power of the people I hope is going to be improved by this language. That was my intent, so people would not be confused and know better how to exercise their referendum rights. I think the City Attorney can be objective. Even though I work with you and have a lot of respect for the Council and Mayor, my primary duty is to our citizens. It is easy for me to be objective. I hope you will remove me from the middle of this ordinance.

Alderman La Tour: Mr. Williams, I appreciate your candidness. We can't guarantee that the next City Attorney will be as objective as you are and that is what concerns me. Let the people be

free to hire their own legal counsel and free to bring their own petitions, without interference from someone who may not be as objective as our current City Attorney.

This ordinance was left on the Second Reading

Raze and Removal Kenneth C. and Wanda L. Easterling: A resolution to order the razing and removal of a dilapidated and unsafe structure owned by Kenneth C. and Wanda L. Easterling located at 909 W. Eagle Street in the City of Fayetteville, Arkansas, and to approve a budget adjustment. *This resolution was tabled at the September 16, 2014 City Council Meeting to the December 2, 2014 City Council Meeting. This resolution was tabled at the December 2, 2014 City Council Meeting to the March 17, 2015 City Council Meeting.*

Jeremy Pate, Director of Development Services stated the structure has been removed and staff is recommending the resolution to be denied.

City Attorney Kit Williams thanked Jeremy and his staff for working with the Easterling family who voluntarily cleaned up the structure.

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

This resolution failed.

Public Hearing:

Mayor Jordan opened the Public Hearing

Destiny Limousines, LLC DBA Ambassador Transportation Services: A resolution to grant a Certificate of Public Convenience and Necessity to Destiny Limousines, LLC dba Ambassador Transportation Services for the operation of two (2) to six (6) taxicabs in the City of Fayetteville.

Greg Tabor, Chief of Police gave a brief description of the resolution. He stated all proper documentation had been received.

Alderman Tennant: On the application, do they make specific mention if they would do business on certain days of the week?

Greg Tabor, Chief of Police: It says they are closed on Christmas day and run limited on Thanksgiving and Christmas Eve. That is the only limitations they list.

Dane Zimmerman, Destiny Limousines dba Ambassador Transportation gave an overview of his Bentonville based business and the challenges his company endures by not having a permit in Fayetteville. He is requesting a Certificate of Public Convenience and Necessity to do business in Fayetteville.

Alderman Tennant: There might be a necessity for more cabs on the weekend, but there is the question of the other days of the week and that it may be unfair to the companies who run seven days a week if another company comes in for just the busy time. Do you run in Benton County seven days a week and do you have the intention to do that if the need arises here?

Dane Zimmerman: We run Benton County 24 hours, 7 days a week. I don't have any problems with sending business to other competitors. I'm not trying to put anybody out of business. I have to be able to do something with my cars when we come down here.

Alderman Tennant: If you don't already have a car here in Fayetteville and somebody calls you to pick them up, would you pass that call on to another cab service?

Dane Zimmerman: Absolutely.

Alderman La Tour: The best way to serve the people of Fayetteville is to offer the maximum number of service providers we can. Service will be elevated to levels we haven't experienced before. If there are too many taxi cabs, somebody will go broke. It won't be the best service that goes broke, it will be the most expensive and worse service.

Dane Zimmerman: I'm not here to try and run people out of business. Our way to save our industry is to make sure we are as accessible as possible to the public.

Stewart Larrabee, Fayetteville Taxi gave an overview of insurance rates. He stated he doesn't believe that another taxi service is needed in Fayetteville and spoke in opposition of the resolution.

Alderman Long: You think there are too many cabs to service the population with no gaps in service?

Stewart Larrabee stated there are some gaps in service, but he doesn't believe a 10 to 20 minute wait time is too long.

Alderman Long: My car broke down at 8:00 p.m. and I tried for 30 minutes to get a cab. I question that there is not a gap in service on a normal basis.

A discussion followed about Uber taxi cab service.

Alderman Long: You would like us as a city, even though there are gaps in service, to protect your business by stopping competition?

Stewart Larrabee stated the insurance listed on Destiny Limousines says airport transportation insurance. He stated it did not say taxi and believes it is a completely different rate structure.

Mayor Jordan: Chief of Staff, didn't you speak against the Uber legislation?

Don Marr, Chief of Staff: Yes. Anything that would remove the ability for the city to regulate our services, is something the city has typically taken a position on.

Alderman La Tour: The more competition we have, the better service we will have for our people. It guarantees they are paying the lowest price for the service and getting the best service.

Robby Freeman, General Manager for Dynasty Taxi stated his income has decreased with the amount of taxi cabs being operated in Fayetteville. He spoke in opposition of the resolution.

Alderman Gray: I appreciate what you all are doing. What kind of explanation do you have for Alderman Long, that at 8:00 p.m. he couldn't get a taxi?

Robby Freeman: Did you call Dynasty?

Alderman Long: Yes, I did. It was the first call I made.

Chris Burchell, College Town Limo spoke in favor of the resolution.

Brice Curry, Dynasty Transportation Owner stated he would like the taxi ordinance to be reviewed. He spoke in opposition of Uber. He stated if Mr. Zimmerman wants to come into Fayetteville and play by the rules, then it should be looked into.

Alderman Kinion: It is my understanding if we allow a taxi company to operate in Fayetteville, they have to have a presence in Fayetteville and operate 24 hours a day in Fayetteville. Is that correct?

City Attorney Kit Williams: That might be correct. I haven't looked at the ordinance to make sure it is absolutely required by the ordinance.

Alderman Kinion: With discussions in the past that is what we have requested taxi cab services to do.

Joshua Crawford spoke in favor of the resolution.

Mayor Jordan: We need to answer Alderman Kinion's question.

Don Marr, Chief of Staff read City Code 117.34. It states every holder of a Certificate of Public Convenience and Necessity for taxicabs and pedicabs shall ensure the City Clerk's office is promptly notified of any change of its business address. He stated it does not necessarily require location.

A discussion followed about the city code for taxicabs.

City Attorney Kit Williams: I don't believe the ordinance requires every taxi company to be 24 hours a day, 7 days a week. As you consider to grant this certificate, you should consider the proposal of the applicant and see whether or not the proposed hours of service are found to be unreasonable to meet the public need.

Dane Zimmerman: I'm trying to help out and serve people that are coming to your city to do business. We are willing to compromise and make sure there is additional coverage. If I send a car to Fayetteville, it is going to stay here and operate. I am willing to compromise, to ensure that nobody is suffering income to their drivers.

Alderman Gray: I would like us to rework this ordinance. How do we go about that?

City Attorney Kit Williams: If you have any proposals, we can look at them. The Ordinance Review Committee sometimes looks at taxi cab ordinances. We should delay until we see what the legislature is going to do in relation to the Ubers and Lyfts. This will have a major effect upon taxi companies in the city.

Alderman Gray stated she would like to work together to improve the taxi cab ordinance after the legislature meets.

Alderman Tennant: As the Chairman of the Ordinance Review Committee, I would be happy to schedule something after the legislative session. I would be in favor of a public input meeting.

Alderman Marsh: I intend to support this request. One of the things we can do to fight off the Ubers and the Lyfts is to have a very robust and responsive taxi cab industry. We do not have enough taxi service.

Alderman Long: I plan to support this. We have a need in Fayetteville for companies that follow the rules. I don't support Uber coming into Fayetteville, us telling them not to operate and them doing it. It is wrong.

Alderman La Tour: Uber are the innovators. They are bringing in technology. It is not just Uber selling service, it is our citizens buying the service.

Alderman Marsh moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the resolution passed 7-1. Alderman Schoppmeyer voting no.

Resolution 66-15 as recorded in the office of the City Clerk

College Town Limo: A resolution to grant a Certificate of Public Convenience and Necessity to College Town Limo for the operation of one (1) to three (3) limousines in the City of Fayetteville.

Greg Tabor, Chief of Police gave a brief description of the resolution.

Chris Burchell, College Town Limo: There is a lack of variety in the types of services that are offered. There are zero limousines permitted in the City of Fayetteville. I would bring a different type of style, variety and amenities to the hired car sector.

Alderman Long: The quote for your insurance expired on February 18, 2015.

Chris Burchell: They are good for 30 days. It was approximately a month ago when I turned in that application. I'm not going to run it without insurance.

City Attorney Kit Williams: It will be incumbent on the Police Department after the car has been inspected to get the rest of the documentation to confirm insurance coverage.

Don Marr, Chief of Staff: The code states that it can't be permitted until the certificate is received by the clerk.

Sondra Smith, City Clerk Treasurer: The City Clerk office issues the certificate. We will not issue the certificate until we receive valid insurance.

Mayor Jordan closed the Public Hearing

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

Resolution 67-15 as recorded in the office of the City Clerk

New Business:

VAC 15-4948 (3215 N North Hills Drive/WRMC Women's Clinic): An ordinance approving VAC 15-4948 submitted by USI Consulting Engineers for property located at 3215 North Hills Drive to vacate portions of existing utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission voted in favor 7-0 with the two conditions listed in the ordinance.

Alderman Gray 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 5757 as Recorded in the office of the City Clerk

Announcements:

Don Marr, Chief of Staff: The City of Fayetteville will break ground on Phase I of the Fayetteville Regional Park on Wednesday, March 18, 2015 at 12:30 p.m.

The Ward 4 Bulky Waste cleanup will be on Saturday, March 21, 2015 from 7:00 a.m. until 2:00 p.m. The locations are at Owl Creek School and the Recycling & Trash Collection Facility.

The 2015 Community Development Block Grant Action Plan public comment hearing is March 18, 2015 at 5:30 p.m. in room 326 at City Hall.

Alderman Long: There will be a Ward 4 meeting on March 30, 2015 in room 111 at 6:00 p.m. in City Hall.

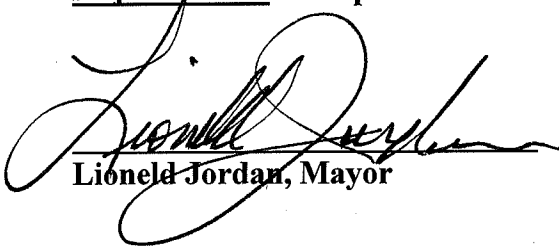
City Council Agenda Session Presentations:

Agenda Session Presentation - Urban Forestry Advisory Board

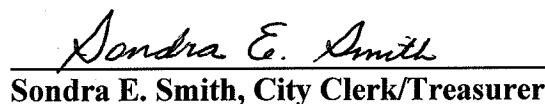
Presentation led by UFAB Chair, Don Steinkraus.

City Council Tour: None

Adjournment: 7:29 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer